



Sussex County Council Public/Media Packet

**MEETING:
June 20, 2023**

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**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 20, 2023

10:00 A.M.

Call to Order

Approval of Agenda

Approval of Minutes – June 13, 2023

Reading of Correspondence

Public Comments

Todd Lawson, County Administrator

1. Reappointment of Planning and Zoning Commissioner Bruce Mears
2. Public Interview for Planning and Zoning Commission Nominees
 - a. Gregory Scott Collins
 - b. Robert D. Mitchell
3. Administrator's Report



10:15 a.m. Public Hearings

Fiscal Year 2024 Budget and Related Ordinances

ASSESSMENT ROLLS FOR SEWER AND WATER DISTRICTS

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

“AN ORDINANCE ESTABLISHING THE ANNUAL OPERATING BUDGET FOR FISCAL YEAR 2024”

Andrea Wall, Manager of Accounting

- 1. FY 2024 Insurance Recommendation**

Hans Medlarz, County Engineer

- 1. Artesian Wastewater Management, Inc. & Artesian Water Company, Inc.**
 - A. 2016 Bulk Wastewater Services Agreement – Addendum No. 7**
- 2. Inland Bays Preservation Company, LLC**
 - A. Biosolids Agreement**
 - B. Bulk Wastewater Services Agreement**
- 3. Mallard Creek Sewer Expansion, Project S20-26**
 - A. Change Order Nos. 1, 2 and Substantial Completion**
- 4. Western Sussex Contract 5D, Project S19-29**
 - A. Change Order No. 4**

Old Business

Ordinance No. 23-01

“AN ORDINANCE TO AMEND THE SUSSEX COUNTY SEWER TIER MAP OF THE COMPREHENSIVE PLAN FROM THE TIER 4 AREA (SYSTEM OPTIONAL AREAS) TO THE TIER 2 (SUSSEX COUNTY PLANNING AREA) IN RELATION TO TAX PARCELS 533-11.00-23.00, 23.03 & 23.04” (properties lying on the southwest side of Zion Church Road [Route 20], approximately 605 feet northwest of Deer Run Road [S.C.R. 388], and the north side of Deer Run Road [S.C.R. 388], approximately 159 feet southwest of Zion Church Road [Route 20] (911 Address: 36054 Zion Church Road, Frankford) (Tax Map Parcels: 533-11.00-23.00, 23.03 & 23.04) (Zoning: AR-1 [Agricultural Residential])

Conditional Use No. 2346 filed on behalf of TPE DE SU114, LLC

“AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A SOLAR FARM TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LITTLE CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 63.86 ACRES, MORE OR LESS” (property lying on the north side of Dorothy Road [Rt. 64] and the west side of Sussex Highway [Rt. 13]) (911 Address: N/A) (Tax Map Parcel: 332-7.00-19.00)

Conditional Use No. 2347 filed on behalf of TPE DE SU94, LLC

“AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A SOLAR FARM TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN CEDAR CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 39.33 ACRES, MORE OR LESS” (property lying on the east side of North Old State Road [S.C.R. 213], approximately 0.10 mile north of the intersection of Haflinger Road [S.C.R. 625]) (911 Address: N/A) (Tax Map Parcel: 230-12.00-39.00)

Ordinance No. 23-02

“AN ORDINANCE TO AMEND THE FUTURE LAND USE MAP OF THE COMPREHENSIVE PLAN IN RELATION TO TAX PARCEL NOS. 334-5.00-153.00 & 334-5.00-153.02” (properties lying on the west side of Janice Road, approximately 0.10 mile west of Nassau Commons Boulevard) (911 Address: 32172 Janice Road, Lewes) (Tax Parcels: 334-5.00-153.00 & 334-5.00-153.02)

Change of Zone No. 1995 filed on behalf of Janice CRP3, LLC

“AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT AND C-1 GENERAL COMMERCIAL DISTRICT TO AN MR-RPC MEDIUM-DENSITY RESIDENTIAL DISTRICT-RESIDENTIAL PLANNED COMMUNITY FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 61.39 ACRES, MORE OR LESS” (property lying on the west side of Janice Road, approximately 0.10 mile west of Nassau Commons Boulevard) (911 Address: 32172 Janice Road, Lewes) (Tax Parcel: 334-5.00-153.02)

Introduction of Proposed Zoning Ordinances

Council Members’ Comments

Adjourn

-MEETING DETAILS-

In accordance with 29 Del.C. §10004(e)(2), this Agenda was posted on June 13, 2023 at 4:15 p.m. and at least seven (7) days in advance of the meeting.

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

Agenda items may be considered out of sequence.

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

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

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

To join the meeting via telephone, please dial:

Conference Number: 1-302-394-5036

Conference Code: 570176

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

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

##

SUSSEX COUNTY COUNCIL - GEORGETOWN, DELAWARE, JUNE 13, 2023

A regularly scheduled meeting of the Sussex County Council was held on Tuesday, June 13, 2023, at 10:00 a.m., in Council Chambers, with the following present:

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

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

**Call to
Order**

Mr. Vincent called the meeting to order.

**M 276 23
Approve
Agenda**

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

Motion Adopted: 5 Yeas

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

Minutes

The minutes from June 6, 2023, were approved by consensus.

**Corre-
spondence**

Mr. Moore read letters received from Georgetown Elementary Robotics Club, Rehoboth Summer Childrens Theatre and First State Community Action Agency thanking Council for their support.

**Public
Comments**

There were no public comments.

**M 277 23
Approve
Consent
Agenda**

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

- 1. Use of Existing Sewer Infrastructure Agreement, Sussex Shores Water Company (Plant #2), Cedar Neck Area**
- 2. Use of Existing Sewer Infrastructure Agreement, IUA S-18-96 Orchard Plaza, West Rehoboth Area**

M 277 23
Approve
Consent
Agenda
(continued)

- 3. Use of Existing Sewer Infrastructure Agreement, IUA S-18-94
Tranquility at Breakwater, West Rehoboth Area**
- 4. Proclamation Request – Selbyville Fire Company 100th Anniversary**
- 5. Proclamation Request – Delaware State Police 100th Anniversary**

Motion Adopted: 5 Yeas

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

LAB
Appoint-
ment

Mr. Lawson reported that there is a vacancy on the Library Advisory Board in District 2 due to a resignation. Mrs. Green would like to appoint Ms. Sandy Winterbottom to fill the vacancy.

M 278 23
Approve
Library
Advisory
Board
Appoint-
ment

A Motion was made by Mrs. Green, seconded by Mr. Hudson, be it moved that the Sussex County Council approves the appointment of Ms. Sandy Winterbottom to the Library Advisory Board effective immediately until June 2026.

Motion Adopted: 5 Yeas

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

Disposition
of County
Owned
Property

Mr. Lawson discussed disposition of County owned property adjacent to the Delmarva Christian School in Georgetown for Council's consideration.

The County acquired the property in 2008 for the purpose of any potential airport expansion. In 2021, Sussex County and the Delaware Department of Transportation (DelDOT) entered into an agreement to allow DelDOT to acquire nearly 10 acres of the property for the purpose of the Park Avenue realignment. Currently, that road construction is taking place.

Officials with Delmarva Christian School approached the County about the potential purchase of 10 acres adjacent to their current campus. The land is needed for the school's expansion plans. The property appraised at a fair market value of eight thousand dollars per acre.

Per the County Property Disposition Policy, County Directors were asked if they had a need for the property and they do not. In addition, the Airport Manager was contacted to ensure that this property was not needed for the airport expansion.

M 279 23

A Motion was made by Mr. Rieley, seconded by Mr. Hudson, be it moved

**Approve
Disposition
of County
Property**

that the Sussex County Council approves the disposition of a certain portion of land consisting of approximately 10 acres more or less located on Zoar Road, south of Georgetown identified as Tax Map Parcel No. 135-20.00-31.00 as presented today.

Motion Adopted: 5 Yeas

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

**Adminis-
trator's
Report**

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

1. Five Points Transportation Study – Public Open House

The Delaware Department of Transportation (DelDOT) invites you to the Five Points Transportation Study Public Open House on Wednesday, June 14, 2023, from 4 p.m. to 6 p.m. at the Cape Henlopen High School Cafeteria, located at 1250 Kings Highway, Lewes, DE 19558. The team will provide a review of the 2022 Five Points Transportation Study Annual Report and share the schedule for the remainder of the calendar year. A presentation will be held at 4 p.m. and repeated at 5 p.m. The presentation and all related workshop documents, including comment forms, will be posted online at <https://publicinput.com/t6338>.

2. Project Receiving Substantial Completion

Per the attached Engineering Department Fact Sheet, Egret Shores – Phase 1 (Construction Record) received Substantial Completion June 1st.

3. Holiday Schedule

County offices will be closed on Monday, June 19th, in observance of Juneteenth. Offices will reopen on Tuesday, June 20th.

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

**Old
Business/
CU2323**

Under Old Business, Mr. Whitehouse presented a Proposed Ordinance entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A GR GENERAL RESIDENTIAL DISTRICT FOR A TREEHOUSE AND YURT TO BE UTILIZED FOR SHORT-TERM RENTALS TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY,

**Old
Business/
CU2323
(continued)**

CONTAINING 0.26 ACRES, MORE OR LESS” (property lying on the south side of Reading Street, approximately 0.14 mile south of Old Mill Road [Route 349] and is Lot 45 within the Banks Acres Subdivision) (911 Address: 31631 Reading Street, Millville) (Tax Parcel: 134-12.00-1198.00) filed on behalf of Leslye Brossus

The County Council held a Public Hearing on the application at its meeting of November 15, 2022. At that time, Council deferred action for further consideration.

**M 280 23
Adopt
Ordinance
No. 2928
/CU2323**

A Motion was made by Mr. Hudson, seconded by Mr. Rieley, to Adopt Ordinance No. 2928 entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A GR GENERAL RESIDENTIAL DISTRICT FOR A TREEHOUSE AND YURT TO BE UTILIZED FOR SHORT-TERM RENTALS TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 0.26 ACRES, MORE OR LESS” for the reasons and conditions given by the Planning and Zoning Commission as follows:

- 1. This Application is for a treehouse and yurt as short-term vacation rental units in addition to the existing house on the property.**
- 2. With the conditions and limitations included in this recommendation, it will not adversely affect neighboring properties or roadways.**
- 3. No parties appeared in opposition to this Application.**
- 4. This recommendation is subject to the following conditions:**
 - a. As part of the Sussex County Council hearing process, Council and its attorney should consider whether there are any recorded restrictive covenants that may impact this proposed use.**
 - b. There shall be no more than one treehouse and one “yurt”-style structure on this property in addition to the existing mobile home. A “yurt” is a semi-permanent tent-like structure built upon a permanent platform. This use shall be considered a tourist home under the Code and neither the yurt nor the treehouse shall have kitchen facilities.**
 - c. The location of the yurt and treehouse, along with the bathroom facilities, shall be shown on the Final Site Plan.**
 - d. There shall be at least one on-site parking space designated for each structure in addition to the two spaces required for the existing home. These shall be shown on the Final Site Plan and clearly marked at the site itself.**
 - e. The yurt, treehouse, and bathroom facilities shall be screened from the view of neighboring properties and roadways by a vegetative buffer. The location, dimensions, and plantings of this buffer shall be shown on the Final Site Plan.**
 - f. One small unlighted sign shall be permitted. It shall not exceed 8 square feet in size.**
 - g. All trash receptacles shall be screened from the view of neighboring properties and roadways. The location of these receptacles shall be**

M 280 23
Adopt
Ordinance
No. 2928
/CU2323
(continued)

shown on the Final Site Plan.
h. The Final Site Plan shall be subject to the review and approval of the
Sussex County Planning and Zoning Commission.

Motion Adopted: 4 Yeas, 1 Nay

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

Old
Business/
CU2325

Under Old Business, Mr. Whitehouse presented a Proposed Ordinance
entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF
LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A
CAMPGROUND TO BE LOCATED ON A CERTAIN PARCEL OF
LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX
COUNTY, CONTAINING 30.76 ACRES MORE OR LESS” (property
lying on the northeast side of Jay Patch Road [S.C.R. 376A], approximately
0.5-mile southeast of Pepper Road [S.C.R. 376]) (911 Address: N/A) (Tax
Parcel: 533-9.00-58.00) filed on behalf of David & Sandra Blank

The County Council held a Public Hearing on the application at its meeting
of January 24, 2023. At the conclusion of the Public Hearing, Council
deferred action on the application for further consideration.

M 281 23
Approve
CU2325/
DENIED

A Motion was made by Mr. Hudson, seconded by Mr. Rieley to Adopt a
Proposed Ordinance entitled “AN ORDINANCE TO GRANT A
CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL
RESIDENTIAL DISTRICT FOR A CAMPGROUND TO BE LOCATED
ON A CERTAIN PARCEL OF LAND LYING AND BEING IN
BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 30.76
ACRES MORE OR LESS” for the reasons and conditions given by the
Planning and Zoning Commissions.

Motion DENIED: 5 Nays

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

The Motion was denied for the reasons provided by Council Member
Hudson.

Old
Business/
CU2366

Under Old Business, Mr. Whitehouse presented a Proposed Ordinance
entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF
LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A
GROUP HOME FOR MORE THAN 10 PEOPLE TO BE LOCATED ON
A CERTAIN PARCEL OF LAND LYING AND BEING IN SEAFORD
HUNDRED, SUSSEX COUNTY, CONTAINING 17.26 ACRES, MORE
OR LESS” (property lying on the north side of Boyce Road [S.C.R. 547],

**Old
Business/
CU2366
(continued)**

approximately 0.15 mile east of Neals School Road [S.C.R. 553]) (911 Address: 4973 Boyce Road, Seaford) (Tax Map Parcel: 531-9.00-7.03) filed on behalf of IMPACT Life, Inc.

The County Council held a Public Hearing on the application at its meeting of March 28, 2023. At the conclusion of the meeting, Council deferred action on the application for further consideration.

**M 282 23
Approve
CU2366/
DENIED**

A Motion was made by Mr. Rieley, seconded by Mr. Hudson to Adopt a Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A GROUP HOME FOR MORE THAN 10 PEOPLE TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN SEAFORD HUNDRED, SUSSEX COUNTY, CONTAINING 17.26 ACRES, MORE OR LESS” for the reasons and conditions given by the Planning and Zoning Commission.

Motion DENIED: 5 Nays

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

The Motion was denied for the reasons provided by Council Member Vincent.

**Old
Business/
CU2367**

Under Old Business, Mr. Whitehouse presented a Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A GROUP HOME FOR MORE THAN 10 PEOPLE TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 1.86 ACRES, MORE OR LESS” (property lying on the east side of Hurdle Ditch Road [S.C.R. 290], approximately 0.28 mile north of Hollyville Road [Rt. 48]) (911 Address: 22703 Hurdle Ditch Road, Harbeson) (Tax Map Parcel: 234-10.00-69.01) filed on behalf of AtTack Addition Foundation

The County Council held a Public Hearing on the application at its meeting of March 28, 2023. At the conclusion of the Public Hearing, Council deferred action on the application for further consideration.

**M 283 23
Approve
CU2367/
DENIED**

A Motion was made by Mr. Rieley, seconded by Mr. Hudson to Adopt a Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A GROUP HOME FOR MORE THAN 10 PEOPLE TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 1.86 ACRES, MORE OR LESS” for the reasons and conditions given by the Planning and Zoning Commission.

Motion DENIED: 5 Nays

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

The Motion was denied for reasons provided by Council Member Rieley.

**Public
Hearing/
Suncrest
Annexation
into
SCUSSD**

A Public Hearing was held on the Suncrest Annexation into the Sussex County Unified Sanitary Sewer District (Angola Area).

John Ashman, Director of Utility Planning and Design reported that County Council approved permission to prepare and post notices on April 25, 2023, for the expansion. The Engineering Department had received a request from Davis, Bowen and Friedel, Inc. on behalf of their client WV3, LLC the owners/developers of a project to be known as Suncrest formerly Marsh Homestead. The request includes parcel 243-12.00-22.31 and the project is proposed at 36 single family homes and has received preliminary subdivision approval.

The project will be responsible for System Connection Charges in place at prior to issuance of connection permits and subject to an Infrastructure Use Agreement. The Engineering Department advertised May 31, and June 7 and on the County webpage. The area was posted on May 16, and to date, there has been no correspondence either in support or opposition to the annexation.

There were no public comments.

The Public Hearing and public record were closed.

**M 284 23
Adopt
Resolution
No. R 013
23/Suncrest
Annexation
into
SCUSSD**

A Motion was made by Mr. Schaeffer, seconded by Mr. Hudson to Adopt Resolution No. R 013 23entitled "A RESOLUTION TO EXTEND THE BOUNDARY OF THE SUSSEX COUNTY UNIFIED SANITARY SEWER DISTRICT (SCUSSD) ANGOLA NECK AREA, TO INCLUDE THE SUNCREST AREA, ON THE SOUTH SIDE OF CAMP ARROWHEAD ROAD AND THE SOUTH SIDE OF WATERVIEW ROAD LOCATED IN THE INDIAN RIVER HUNDRED, SUSSEX COUNTY, DELAWARE AND RECORDED IN THE OFFICE OF THE RECORDER OF DEEDS, IN AND FOR SUSSEX COUNTY, DELAWARE.

Motion Adopted: 5 Yeas

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

**SCHTF
Recommen-**

Brandy Nauman, Director of Community Housing and Development presented Housing Trust Fund award recommendations for Council's

ation consideration. Mrs. Nauman reported that the second round of funding was opened on April 3, 2023, and closed on May 1, 2023. During that period, eight applications were received. On June 7, 2023, the SCHTF Advisory Board met to review the applications. After review of the Advisory Board, four applications are being recommended for funding. Mrs. Nauman reported that it is a total of 156 units that would be supported by ARPA funding through the Housing Trust Fund and a total of 163 affordable units in Sussex County.

M 285 23 A Motion was made by Mr. Schaeffer, seconded by Mr. Rieley, be it moved based on the recommendation of the Sussex County Housing Trust Fund Advisory Committee that Sussex County award grants of \$500,000 to NeighborGood Partners, Sussex County Habitat for Humanity, Leon N. Weiner & Associates and Commonwealth Development Corporation contingent on meeting American Rescue Plan Funding Act requirements.

Motion Adopted: 5 Yeas

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

CARES Act Update Brandy Nauman, Director of Community Housing and Development presented an update on the CARES Act for Council's consideration. Mrs. Nauman explained that on September 22, 2020, County Council approved \$250,000 in CARES Act funding for eight non-profit organizations in Sussex County. All recipients were tasked with supporting the efforts of COVID-19 pandemic response and prevention through eligible public service activities.

Mrs. Nauman reported one non-profit has elected to return their award to Sussex County; they were not able to meet the requirements needed for reporting purposes. It is being recommended to reallocate the funding to LOVE, Inc. to provide additional assistance with subsistence payments.

M 286 23 A Motion was made by Mr. Rieley, seconded by Mr. Schaeffer, be it moved that Sussex County Council approve the recommended reallocation of CARES Act CBDG/CB1 funding as presented.

Approve CARES Act Funding Reallocation **Motion Adopted:** 5 Yeas

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

Dewey Tower/ Sprint Lease Hans Medlarz, County Engineer presented a sprint lease agreement extension for the Dewey Tower for Council's consideration.

A Motion was made by Mr. Schaeffer, seconded by Mr. Hudson, the Sussex

M 287 23 County Engineering and Finance Department recommend approval of the first amendment to the personal communication system PCS site agreement.

Approve Dewey Tower/ Sprint Lease Motion Adopted: 5 Yeas

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

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

M 288 23 A Motion was made by Mr. Rieley, seconded by Mr. Hudson to give \$3,000 (\$3,000 from Mr. Rieley's Councilmanic Grant Account) to the Town of Georgetown for their outreach program.

Town of Georgetown Motion Adopted: 5 Yeas

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

M 289 23 A Motion was made by Mr. Hudson, seconded by Mr. Schaeffer to give \$2,000 (\$2,000 from Mr. Vincent's Councilmanic Grant Account) to the City of Seaford for the Nanticoke Riverfest event.

City of Seaford Motion Adopted: 5 Yeas

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

M 290 23 A Motion was made by Mr. Schaeffer, seconded by Mr. Hudson to give \$750 (\$750 from Mr. Vincent's Councilmanic Grant Account) to Blades Police Department for their National Night Out.

Blades Police Department Motion Adopted: 5 Yeas

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

Introduction of Proposed Ordinance Mr. Schaeffer introduced a Proposed Ordinance entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A CONVENIENCE STORE AND GAS STATION TO BE LOCATED ON A 3.35 ACRE PORTION OF CERTAIN PARCELS OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 17.24 ACRES, MORE OR LESS" filed on behalf of Royal Farms

**Council
Member
Comments**

**M 291 23
Adjourn**

The Proposed Ordinance will be advertised for a Public Hearing.

There were no Council member comments.

A Motion was made by Mr. Hudson, seconded by Mr. Schaeffer to adjourn at 10:37 a.m.

Motion Adopted: 5 Yeas

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

Respectfully submitted,

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

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

ORDINANCE NO.

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

THE COUNTY OF SUSSEX HEREBY ORDAINS:

Section 1. The annual service charge and annual assessment rate for distribution and transmission and/or treatment for the Water District are established as follows:

- (a) For an EDU annual service charge: \$392.00 per EDU; or
- (b) For a meter service charge: current tariff and rates approved by the Public Service Commission for the applicable regulated utility.
- (c) For water irrigation system service charge will be billed one EDU; \$392 per connection.

Section 2. The annual service charge, annual assessment rate for distribution and transmission and/or treatment, and connection charge for the Unified Sanitary Sewer District is established as follows:

- (a) For an annual service charge: \$330.00 per EDU;
- (b) For an assessment rate per billable front foot for distribution: see below;
- (c) For an assessment rate per billable front foot for transmission and/or treatment, see below; and
- (d) For assessment rate by EDU, see below.

<u>Area</u>	Annual Assessment Charge		
	Distribution or Collection \$/foot	Transmission and/or Treatment \$/foot	Total \$/foot
OCEAN WAY ESTATES I & II	1.82	.00	1.82
CEDAR NECK EXPANSION	2.31	.68	2.99
NORTH MILLVILLE EXPANSION	3.55	.46	4.01
FENWICK ISLAND SEWER	.23	.03	.26
FENWICK ISLAND ROUTE 54 AREA	1.04	6.02	7.06
DAGSBORO-FRANKFORD SEWER	.38	.22	.60
PRINCE GEORGE'S ACRES SUBDISTRICT ³	3.41	.22	3.63
WEST REHOBOTH SEWER EXPANSION	.83	.47	1.30
MILLER CREEK SEWER	5.99	.41	6.40

Area	Annual Assessment Charge - continued		
	Distribution or Collection \$/foot	Transmission and/or Treatment \$/foot	Total \$/foot
ELLENDALE SEWER	.62	.60	1.22
NEW MARKET VILLAGE SUBDISTRICT ¹	1.98	.60	2.58
OAK ORCHARD SEWER	2.12	2.14	4.26
OAK ORCHARD EXPANSION NO. 1 & CAPTAINS GRANT EXP.	2.61	1.58	4.19
SOUTH OCEAN VIEW SEWER	4.88	.59	5.47
ANGOLA NECK SEWER	3.10	2.03	5.13
ANGOLA NORTH SEWER	.91	7.39	8.30
GOLF VILLAGE SEWER	1.47	-	1.47
WOODLANDS OF MILLSBORO	-	.42	.42
JOHNSON'S CORNER	2.60	1.95	4.55
BLADES – CONCORD ROAD AREA SEWER	4.24	-	4.24
HERRING CREEK SEWER	4.12	4.12	8.24
MULBERRY KNOLL	-	8.00	8.00
	\$/EDU		
DEWEY BEACH AND HENLOPEN ACRES	318.54		
CHAPEL BRANCH	680.00		
MALLARD CREEK	540.00		
WESTERN SUSSEX	285.00		
PINTAIL POINTE	954.00		

- (e) Assessable footage, used for the Annual Assessment Charge, shall be limited to 100 feet for residential, non-delinquent customers.
- (f) For a connection charge per equivalent dwelling unit, see below:

District	Connection Charge		Total System Connection Charge \$/EDU
	Transmission \$/EDU	Treatment \$/EDU	
DEWEY BEACH WATER	1,500	0	1,500
UNIFIED SEWER	3,120	4,580	7,700
GOLF VILLAGE SEWER ¹	-	-	-
WOODLANDS OF MILLSBORO ²	-	-	-
ELLENDALE WATER ³	-	-	-
Notes: 1. Amount equal to the Town of Georgetown's Impact Fee. 2. Amount equal to the Town of Millsboro's Impact Fee. 3. Amount equal to the Artesian Water Company's Impact Fee.			

Section 3. The annual rate for the one-time septic installation charge for the Holts Landing area is as follows:

- (a) For a one-time septic installation charge, per equivalent dwelling unit: \$2,889.00.

Section 4. Revenues from annual assessment rates can be expended for bond debt service payments pertaining to a respective sewerage or water system, for maintaining or improving the sewerage or water system, and for paying the necessary general expenses of the sanitary sewer or water district.

Section 5. The annual service charge, annual assessment rate for collection and transmission and/or treatment, septic installation charge, and connection charge shall become effective July 1, 2023.

Section 6. The annual service charge, annual assessment rate for collection and transmission and/or treatment, and connection charge for the Unified Sanitary Sewer Districts identified in this ordinance may be amended from time to time at a public hearing duly noticed.

I DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE AND CORRECT COPY OF ORDINANCE NO. ADOPTED BY THE SUSSEX COUNTY COUNCIL ON THE ___TH DAY OF JUNE 2023.

TRACY N. TORBERT
CLERK OF THE COUNCIL

ORDINANCE NO. ____

**AN ORDINANCE ESTABLISHING THE ANNUAL OPERATING BUDGET FOR
FISCAL YEAR 2024**

THE COUNTY OF SUSSEX HEREBY ORDAINS:

Section 1. The Statement of Anticipated General Fund Revenues for the Fiscal Year Ending June 30, 2024 is as follows:

	<u>Amount Year</u> <u>Ending</u> <u>June 30, 2024</u>
<u>Revenues:</u>	
<u>Taxes</u>	
Real Property - County	\$ 16,558,000
Real Property - Library	1,941,000
Realty Transfer	31,500,000
Fire Service	1,800,000
Lodging Tax	1,000,000
Penalties and Interest	180,000
<u>Intergovernmental</u>	
Federal Grants	
Emergency Operations	300,000
Housing and Urban Development	2,537,000
Payments in Lieu of Taxes	6,100
State Grants	
Economic Development	100,000
Local Emergency Planning Commission	75,940
Library	400,000
Other	200,000
Paramedic	6,356,000
<u>Charges for Services</u>	
Constitutional Office Fees	
Marriage Bureau	200,000
Recorder of Deeds	5,011,000
Recorder of Deeds - Maintenance	49,500
Recorder of Deeds - Town Realty Transfer Tax	129,000
Register of Wills	1,500,000
Sheriff	950,000

	<u>Amount Year</u> <u>Ending</u> <u>June 30, 2024</u>
General Government Fees	
Building Permits & Zoning Fees	2,267,000
9-1-1 System Fee	559,630
Manufactured Home Placement Fee	200,000
Building Inspection Fees	1,608,000
Airport Operations	110,000
Miscellaneous Fees	84,500
Private Road Review & Inspection Fees	2,122,000
<u>Miscellaneous Revenue</u>	
Fines and Forfeits	60,000
Investment Income	1,000,000
Miscellaneous Revenues	846,500
<u>Other Financing Sources</u>	
Interfund Transfers In	47,000
Appropriated Reserve	10,017,000
	<hr/>
Total Revenues	<u>\$ 89,715,170</u>

Section 2. The Statement of Anticipated General Fund Appropriations and Expenditures for the Fiscal Year Ending June 30, 2024 is as follows:

<u>EXPENDITURES</u>	<u>AMOUNT</u> <u>YEAR</u> <u>ENDING</u> <u>JUNE 30, 2024</u>
<u>General Government</u>	
County Council	\$ 760,070
Administration	669,551
Legal	500,000
Finance	2,843,847
Assessment	5,791,308
GIO	1,084,977
Human Resources & General Employment	1,152,232
Records Management	315,807
Facilities Management	2,599,762
Information Technology	2,725,462

<u>Expenditures (continued)</u>	<u>Amount Year Ending June 30, 2024</u>
<u>Planning and Zoning</u>	
Planning and Zoning	1,919,190
Constable	1,533,018
Building Code	1,640,087
<u>Emergency Medical Services</u>	21,058,621
<u>Emergency Preparedness</u>	5,776,296
<u>Engineering</u>	2,438,100
<u>Library</u>	
Administration	908,895
Operations	2,869,897
<u>Economic Development</u>	
Economic Development	564,530
Safety and Security	609,867
Airport and Business Park	1,245,723
<u>Community Development</u>	2,902,803
<u>Grant-in-aid</u>	24,343,586
<u>Constitutional Offices</u>	
Marriage Bureau	295,823
Recorder of Deeds	946,450
Register of Wills	695,832
Sheriff	807,936
<u>Other Financing Uses</u>	
Transfers Out	115,500
Reserve for Contingencies	600,000
Total Expenditures	<u>\$ 89,715,170</u>

Section 3. The Tax Rate, Fireman’s Enhancement Funding Program, Cluster Fees, fee increases and new sources of revenue for the Fiscal Year Ending June 30, 2024 are as follows:

- (a) County Property Tax Rate \$.4450 per \$100.00 of taxable assessed valuation.
- (b) Firemen’s Enhancement Funding Program - Building Permit surcharge of one-quarter of one percent (.25%) of construction values. Distribution will be made to fire companies and ambulance companies who are in good standing with the Sussex County Volunteer Fire Association.

- (c) Cluster Fee for density bonus.
 - 1.) For the Town Centers and Developing Areas around Greenwood, Bridgeville, Seaford, Blades, Laurel and Delmar - \$15,000 per unit in excess of two dwelling units per acre.
 - 2.) For the Town Centers and Developing Areas around Milford, Milton, Ellendale, Georgetown, Millsboro, Dagsboro, Frankford and Selbyville - \$15,000 per unit in excess of two dwelling units per acre.
 - 3.) For the Coastal Area (previously known as environmentally sensitive areas) - \$20,000 per unit in excess of two dwelling units per acre.
- (d) Fee increases.
 - 1.) Enterprise Fund - Water Annual Service Charge based on EDU - increased from \$377 per EDU to \$392.
 - 2.) Utility Enterprise - Sewer Annual Service Charge - increased from \$320 per EDU to \$330.
 - 3.) Enterprise Fund - Sewer Connection Fee - increased from \$6,600 per EDU to \$7,700 per EDU.
 - 4.) Enterprise Fund - Water Connection Fee - increased from \$1,155 per EDU to \$1,500 per EDU.
 - 5.) Enterprise Fund - Sewer Plan Review Fees - flat fee for (2) reviews of submitted plans - increased from \$2,000 to \$3,000.
 - 6.) Enterprise Fund - Sewer Plan Review Fees - per unit (addition to Flat Fee) from \$20 per unit to \$30 per unit; or \$10 per unit for a multi-family building.
 - 7.) Enterprise Fund - Sewer Plan Review Fees - Plan Revisions - after obtaining County approval increase from \$1,000 to \$2,000.
 - 8.) Enterprise Fund - Water Plan Review Fees - flat fee for (2) reviews of submitted plans – increased from \$1,500 to \$3,000.
 - 9.) Enterprise Fund - Water Plan Review Fees - Plan Revisions - after obtaining County approval increase from \$1,000 to \$2,000.
 - 10.) Enterprise Fund - Water Plan Review Fees - per unit (addition to flat fee) increase from \$10 per unit to \$20 per unit; or \$10 per unit for a multi-family building.
 - 11.) Enterprise and General Fund - Field inspection fee - overtime and holiday or weekend hours increase from \$50 per hour to \$70 per hour.
 - 12.) Enterprise Fund - Sewer and Water connection permits - increase from \$100 per permit to \$130 per permit.
 - 13.) Enterprise Fund - Sewer inspection camera fee - increase from \$125 per to \$150 per hour.
 - 14.) General Fund - Engineering - Road Plan Review Fees - flat fee for (2) reviews of submitted plans from \$2,500 to \$3,500 flat fee.
 - 15.) General Fund - Engineering - Road Plan Review Fees - per unit (addition to flat fee) increase from \$45 per unit to \$55 per unit; or \$20 per unit for a multi-family building.
 - 16.) General Fund - Engineering Road Review Fees - Plan Revision - after obtaining County approval - from \$1,000 to \$2,000 per review.
- (e) New Sources of Revenue
 - 1.) Enterprise Fund - Sewer Inspection - Camera Flagger - \$50 - per hour per employee in addition to sewer inspection camera fee hour rate.
 - 2.) Enterprise Fund - Commercial sewer site review fee - \$1,000 per review.
 - 3.) Enterprise Fund – Sewer Assessment Fee – Mallard Creek - \$540 based on equivalent dwelling unit (EDU).

Section 4. The Statement of Anticipated Capital Project Fund Revenues and Expenditures for the Fiscal Year Ending June 30, 2024 is as follows:

<u>Revenues and Other Financing Sources</u>	<u>Amount Year Ending June 30, 2024</u>
Appropriated Reserves	\$ 14,958,500
Federal Grant	3,825,000
Investment Income	100,000
State Grant	212,500
	<hr/>
Total Revenues and Other Financing Sources	\$ 19,096,000
	<hr/>
<u>Expenditures</u>	
Administrative	8,978,000
Airport and Business Park	6,838,000
Engineering	450,000
Library	580,000
Public Safety	2,250,000
	<hr/>
Total Capital Improvement Expenditures	\$ 19,096,000
	<hr/>

Section 5. The Statement of Anticipated Enterprise Fund Revenues and Expenses for the Fiscal Year Ending June 30, 2024 is as follows:

<u>Revenues and Other Financing Sources</u>	<u>Amount Year Ending June 30, 2024</u>
Operating Revenues	
Service Charges	\$ 29,910,579
Holding Tank Fees	438,000
Licenses, Permit, and Review Fees	1,453,737
Miscellaneous Fees	467,400
Non-Operating Revenues	
Assessment Charges	7,971,459
Capitalized Ord. 38 Fees	2,300,000
Connection Fees	9,096,682
Investment Results	739,000
Miscellaneous Revenues	590,000
Other Financing Sources	
Available Funds	732,146
Transfers	115,500
	<hr/>
Total Revenues and Other Financing Sources	\$ 53,814,503
	<hr/>

Expenses

**Amount Year
Ending
June 30, 2024**

Administrative Costs	\$ 9,091,612
Operations and Maintenance Costs	26,787,378
Capital Expenditures	4,507,094
Debt Service	13,428,419
Total Expenses and Debt Service	<u>\$ 53,814,503</u>

Section 6. Supplemental funding provided by the American Rescue Plan Act as follows:

Revenue and Other Financing Sources

Coronavirus State and Local Fiscal Recovery Grant	<u>\$ 39,818,714</u>
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Expenses and Other Financing Uses

Coronavirus State and Local Fiscal Recovery Eligible Expenses	<u>\$ 39,818,714</u>
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Section 7. Unappropriated or unobligated General Fund expenditures requiring a transfer from the General Fund Undesignated Fund Balance require approval by not less than four-fifths of the members of Sussex County Council concurring.

Section 8. The County Pay Plan and Salary Structures for employees not in a collective bargaining unit for Fiscal Year Ending June 30, 2024 shall be:

Grade	35-Hour Employees		
	Minimum	Midpoint	Maximum
1	\$13.93	\$17.41	\$20.89
2	\$14.62	\$18.28	\$21.93
3	\$15.35	\$19.19	\$23.03
4	\$16.12	\$20.15	\$24.18
5	\$16.93	\$21.16	\$25.39
6	\$17.77	\$22.22	\$26.66
7	\$18.66	\$23.33	\$27.99
8	\$19.59	\$24.49	\$29.39
9	\$20.57	\$25.72	\$30.86
10	\$21.60	\$27.00	\$32.40
11	\$22.68	\$28.35	\$34.02
12	\$23.82	\$29.77	\$35.73
13	\$25.01	\$31.26	\$37.51
14	\$26.26	\$32.82	\$39.39
15	\$27.57	\$34.46	\$41.36
16	\$28.95	\$36.19	\$43.42
17	\$55,323	\$69,154	\$82,984
18	\$58,089	\$72,611	\$87,133
19	\$60,993	\$76,242	\$91,490
20	\$64,043	\$80,054	\$96,065

35-Hour Employees (continued)			
Grade	Minimum	Midpoint	Maximum
21	\$67,245	\$84,056	\$100,868
22	\$70,607	\$88,259	\$105,911
23	\$74,138	\$92,672	\$111,207
24	\$77,845	\$97,306	\$116,767
25	\$81,737	\$102,171	\$122,605
26	\$85,824	\$107,280	\$128,736
27	\$90,115	\$112,644	\$135,172
28	\$94,621	\$118,276	\$141,931
29	\$99,352	\$124,190	\$149,028
30	\$104,319	\$130,399	\$156,479
31	\$109,535	\$136,919	\$164,303
32	\$115,012	\$143,765	\$172,518
33	\$120,763	\$150,953	\$181,144
34	\$126,801	\$158,501	\$190,201

40-Hour and 42-Hour Employees			
Grade	Minimum	Midpoint	Maximum
8	\$19.59	\$24.49	\$29.39
9	\$20.57	\$25.72	\$30.86
10	\$21.60	\$27.00	\$32.40
11	\$22.68	\$28.35	\$34.02
12	\$23.82	\$29.77	\$35.73
13	\$25.01	\$31.26	\$37.51
14	\$26.26	\$32.82	\$39.39
15	\$27.57	\$34.46	\$41.36
16	\$28.95	\$36.19	\$43.42
17	\$30.40	\$38.00	\$45.60
18	\$31.92	\$39.90	\$47.88
19	\$33.51	\$41.89	\$50.27
20	\$35.19	\$43.99	\$52.78
21	\$36.95	\$46.18	\$55.42
22	\$38.80	\$48.49	\$58.19

Section 9. The County has invested \$10 million of Appropriated Reserves from Realty Transfer Tax funds with a goal to earn five percent per year. The fire companies are to receive a grant for the annual investment income from this investment up to four percent per year; these fire service grants are to be awarded annually based on recommendations from the Fire Resource Committee of the Sussex County Volunteer Firefighters Association, but at the discretion of the Sussex County Council. The County will receive the first one percent of the investment income earned. The fire service would receive investment income of up to four percent after the County receives one percent. A four-fifths vote of the County Council is required to use principal for any other purpose. If there is a loss from the investments, then the principal balance must be restored before any additional grants are made from investment income in the future to the County or fire service. The County is to receive the investment income over five percent per year. These grants

to the fire service will be awarded annually, based on the previous calendar year's annual investment results.

Section 10. This Ordinance shall become effective on July 1, 2023.

I DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE AND CORRECT COPY OF ORDINANCE NO. ____ ADOPTED BY THE SUSSEX COUNTY COUNCIL ON THE ____TH DAY OF JUNE 2023.

TRACY N. TORBERT
CLERK OF THE COUNCIL

GINA A. JENNINGS, MBA, MPA
FINANCE DIRECTOR

(302) 855-7741 T
(302) 855-7749 F
gjennings@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 Green
The Honorable Douglas B. Hudson
The Honorable Mark Schaeffer

FROM: Andrea M. Wall
Manager of Accounting

SUBJECT: **INSURANCE RECOMMENDATION**

DATE: June 16, 2023

As we approached the renewal of our insurance package on July 1, our broker Alliant recommended that Sussex County not market our property and liability package but recommended marketing all other lines. Alliant recommends that we market our program every 2-3 years in order to not over-exercise the market and maintain relationships with our key insurer partners. These insurers presented renewal indications that were below market increases. Despite a difficult state of the market where rates are increasing significantly and capacity is shrinking as well as extenuating events Alliant was able to secure pricing that was in line with budget projections.

On Tuesday, I will be recommending we renew with the insurers listed below, and this recommendation is supported by our insurance consultant, Angela Tennis:

- Package Policy (Property, Inland Marine, Auto and Liability)-*Glatfelter*
- Pipeline Floater-*Chubb*
- Equipment Breakdown-*CNA*
- Workers' Compensation-*Liberty Mutual*
- Airport Liability-*Chubb*
- Public Officials-*Indian Harbor/RSUI*
- Crime-*Great American*
- Cyber-*Lloyds/Crum & Forster*
- Pollution-*Chubb*
- Fiduciary-*Hudson*



Although we are presenting an increase in cost of 7%, it reflects current market conditions, and not the claim activity or insurability of Sussex County. Many other jurisdictions are seeing much larger increases even with no claim activity.

Angela Tennis from Insurance Buyers Council, and Courtney Ramirez from Alliant will be available to discuss the renewal and market conditions further and answer any questions.

Sussex County Insurance Overview FY 24

Coverage Type	Expiring Costs FY 23	Recommended Placement	FY 24 Renewal Costs	Premium Change \$	Premium Change %
Property & Inland Marine	\$ 249,294.00	Glatfelter	\$ 303,703.00	\$ 54,409.00	21.83%
General Liability	\$ 74,336.00	Glatfelter	\$ 76,967.00	\$ 2,631.00	3.54%
Business Auto	\$ 282,256.00	Glatfelter	\$ 335,030.00	\$ 52,774.00	18.70%
Umbrella	\$ 100,226.00	Glatfelter	\$ 95,046.00	\$ (5,180.00)	-5.17%
Package Total	\$ 706,112.00	Glatfelter	\$ 804,697.00	\$ 98,585.00	13.96%
Pipeline Floater	\$ 68,769.00	Westchester	\$ 100,000.00	\$ 31,231.00	45.41%
Eqpt Breakdown	\$ 22,515.00	C.N.A	\$ 24,000.00	\$ 1,485.00	6.60%
Workers Comp	\$ 662,841.00	Liberty	\$ 666,898.00	\$ 4,057.00	0.61%
Airport Liability	\$ 5,738.00	Chubb/ACE	\$ 5,738.00	\$ -	0.00%
Public Officials	\$ 261,417.00	Indian Harbor / RSUI	\$ 264,327.00	\$ 2,910.00	1.11%
Crime	\$ 17,519.00	Great American	\$ 17,519.00	\$ -	0.00%
Cyber	\$ 42,500.00	Lloyds	\$ 45,000.00	\$ 2,500.00	5.88%
Excess Cyber	\$ 60,750.00	Crum and Forester	\$ 45,000.00	\$ (15,750.00)	-25.93%
Pollution	\$ 20,933.00	Chubb	\$ 30,839.00	\$ 9,906.00	47.32%
Fiduciary	\$ 10,177.00	Hudson	\$ 10,287.00	\$ 110.00	1.08%
Additional Enhancements	\$ 10,000.00		\$ 25,000.00	\$ 15,000.00	150.00%
Broker Fee	\$ 100,000.00		\$ 90,000.00	\$ (10,000.00)	-10.00%
Total	\$ 1,989,271.00		\$ 2,129,305.00	\$ 140,034.00	7.04%

ENGINEERING DEPARTMENT

HANS M. MEDLARZ
COUNTY ENGINEER

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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: Hans Medlarz, P.E., County Engineer

RE: *Inland Bays Preservation Company, LLC*
A. Biosolids Agreement
B. Bulk Wastewater Services Agreement

DATE: June 20, 2023

In 2016 Sussex County Council started a proactive wastewater infrastructure interconnection process in the service area north of the Indian River Inlet. The goal was and still is expansion of utility coordination between wastewater service providers avoiding duplication of capital expenditures by utilizing existing sewer transmission and treatment capacity up to its permitted limits. The Council's efforts resulted in a number of agreements with other wastewater service providers for the utilization of available, existing wastewater treatment capacity as well as the creation of a regional County biosolids facility.

The Department is now presenting a request for the approval for the inclusion of the Inland Bays Preservation Company, LLC in the County's regionalization efforts by executing a Bulk Wastewater Services Agreement and a Biosolids Handling Agreement. The Inland Bays Preservation Company is building a new wastewater treatment facility off Banks Road which allows the exchange of wastewater and the County's regional biosolids facility has still unused capacity benefitting from more customers.

The proposed agreements are identical to the ones executed with other utilities and do not require modification of the either party's underlying DNREC wastewater permits. It is the intention of the parties that this agreement will be substantially revenue neutral, in other words, all flows should balance out at the end of the true up periods and only volumes above 500,000 gallons shall be paid out.

The Agreement has been reviewed and approved by the Inland Bays Preservation Company, LLC. The Engineering Department is requesting approval of the agreements as presented.



BIOSOLIDS HANDLING AGREEMENT

Between Sussex County and Inland Bays Preservation Company, LLC

THIS AGREEMENT (the “Agreement”), made this 20th day of June 2023 (“Effective Date”), by and between **Sussex County** (the “County”) and **Inland Bays Preservation Company, LLC**, a Delaware corporation IBP

WITNESSETH:

WHEREAS, the County owns and maintains a wastewater treatment facility known as the Inland Bays Regional Wastewater Facility (“IBRWF”); and

WHEREAS, the County owns and maintains a Class A biosolids treatment facility at the IBRWF (“Biosolids Facility”); and

WHEREAS, IBP desires to dispose of its biosolids produced at The Baywood Water Reclamation Facility (BWRf) at the Biosolids Facility for treatment and disposal.

NOW, THEREFORE, in consideration of the mutual covenants and other consideration contained herein, the sufficiency of such consideration being hereby acknowledged, the parties hereto agree as follows:

1. **Definitions.** The parties agree to the following definitions for the purposes of this Agreement:
 - a) **Treatment:** shall mean those processes as are necessary to provide a Class A biosolids that can be land applied or otherwise beneficially used by the County in compliance with future Limited Distribution Permit(s) to be issued by the State of Delaware.
 - b) **Biosolids:** shall mean the sludges generated by biological treatment of wastewater that is not recycled back to the biological facility. Class A biosolids are those wastewater sludges that meet the pathogen control requirements of 40 CFR 503.32(a). Class B biosolids are those wastewater sludges that meet the pathogen control requirements of 40 CFR 503.32(b).

2. Term. The term of this Agreement shall commence from the date that the last party hereto executes this Agreement and shall remain in effect for twenty (20) years from the Effective Date, unless earlier terminated for default as provided herein.

3. Transportation. SC agrees to transport the biosolids from BWRf to IBRWF via its tanker truck(s). In order to initiate transport acceptance at IBRWF, IBP shall send electronic notice to the County's staff member(s) designated to receive orders at the Biosolids Facility.

4. Treatment. The County agrees to accept for further treatment up to two hundred (200) dry tons per year of digested Class B biosolids with a minimum 1% solids content up to a maximum of 4% solids content, provided that the County reserves the right to refuse any truckloads of biosolids that exceed the concentrations of parameters set forth in Exhibit A which is attached and incorporated by reference herein. The County also reserves the right to refuse truckloads that are not within the mandatory range of 1% to 4% solids content. In addition, operation and maintenance of facilities not owned by the County and before the point of acceptance by the County, will be responsibility of IBP.

5. Payment. The County shall invoice IBP on a quarterly basis for the biosolids treatment and transportation charges incurred in the previous quarter in accordance with below.

(a) The transportation fee was six dollars and ninety-two cents (\$6.92) per truck mile for the 2022 calendar year. At the end of each calendar year, the actual cost covering personnel time will be calculated based upon actual hours logged for biosolids transportation. At the end of each calendar year, the County will recalculate the actual transportation cost per truck mile and invoice IBP based on the actual rate for the following year. The transportation rate subsequently shall be revised annually for the years remaining in this Agreement.

(b) The treatment fee was six hundred and eight dollars (\$604.00) per dry ton during the 2022 calendar year. At the end of each calendar year, the County will calculate the previous year's maintenance and operation expenses of handling, treating and disposing of each dry ton in its Biosolids Facility and will submit a revised rate to IBP that shall become applicable in the following calendar year. The annually revised rate will

be set on this same day each year based upon the overall costs of maintenance and operations at the Biosolids Facility during the previous calendar year divided by the number of total of dry tons processed during the previous calendar year.

- (c) IBP shall pay any invoice within forty-five (45) days of the mailing date. Late payments shall be assessed a one percent (1%) late fee, compounded monthly and shall be considered a breach of this Agreement as long as the payments remain outstanding.

6. Biosolids Standards. Prior to commencement of transfers to the Biosolids Facility, IBP shall ensure that all biosolids meet the requirements of the standards set forth in Exhibit A.

7. Calculation of Dry Tons. The solids content of each truckload of digested Class B biosolids received from IBP shall be determined as follows: 1) the County will weigh the truckload received from IBP at its Biosolids Facility on its calibrated IBRWF scales; and 2) the County will take a grab sample from each truck and test it in order to determine the solids content. The weight of the entire truckload will be deemed to have that same percentage as determined in the sample results. A receipt for each delivery noting the results of the weighing and sampling will be provided to IBP within a reasonable timeframe after delivery of each load. IBP may send a representative to observe any of these steps, in its discretion.

8. Termination.

- (a) Should IBP breach or fail to comply with any of the provisions of the Agreement, the County may in writing order the IBP to remedy such breach. IBP shall cure said breach or failure to comply within thirty (30) days from receipt of notice from the County. In the event that the breach or failure to comply is not capable of correction within thirty (30) days, then IBP must inform County of such fact and County will determine a reasonable time to cure. In the event that IBP does not cure within thirty (30) days or the time designated by the County, whichever time period is applicable, this Agreement may be terminated immediately upon County's written notice of such termination. Any costs or expenses that the County incurs as the result of IBP's breach of this Agreement shall be reimbursed to the County within thirty days of sending a detailed invoice, and this obligation survives termination of this Agreement. The remedies of this Agreement for default by the breaching party shall be cumulative and not limited to the provisions

contained in this Agreement but shall include all other remedies available to it at law or in equity.

(b) Should the County breach or fail to comply with any of the provisions of the Agreement, IBP may in writing order the County to remedy such breach. The County shall cure said breach or failure to comply within thirty (30) days from receipt of notice from the IBP. In the event that the breach or failure to comply is not capable of correction within thirty (30) days, then the County must inform IBP of such fact and IBP will determine a reasonable time to cure. In the event that the County does not cure within thirty (30) days or the time designated by IBP, whichever time period is applicable, this Agreement may be terminated immediately upon IBP's written notice of such termination. Any costs or expenses that IBP incurs as the result of the County's breach of this Agreement shall be reimbursed to IBP by the County within thirty days of sending a detailed invoice. The remedies of this Agreement for default by the breaching party shall be cumulative and not limited to the provisions contained in this Agreement but shall include all other remedies available to it at law or in equity.

9. Inspection of Records. With at least three business days' written notice, each party hereto, by a duly authorized representative, shall have the right at any time during business hours to inspect the books and records of the other party to the extent necessary to ascertain the accuracy of any information used in the calculations of the payments to be made under this Agreement, including but not limited to, the transportation and treatment charges.

10. Permit Compliance. The County will immediately notify IBP if permit compliance issues are experienced at the IBRWF facility as a result of the biosolids sent to IBRWF by IBP. The County shall provide notice of any compliance issues in writing to IBP. Upon receipt of the notice, IBP will take immediate steps to remedy the issues. If IBP is unable to immediately correct such compliance issues, IBP shall make verbal contact with the County and shall submit a written plan of correction to the County for approval within a reasonable timeframe, as determined by the County, from discovery of the compliance issue and/or receipt of the County's notice, whichever first occurred. Failure of IBP to comply with a correction plan shall constitute a default of this Agreement and shall be a basis to terminate the Agreement in accordance with Section 8.

11. Compliance with Applicable Laws. The parties agree to comply with all applicable permits, statutes, ordinances, rules, orders, policies, regulations and

requirements of the Federal, State, County and City Governments and any and all Courts, Departments and Bureaus that may apply to this Agreement. Further, IBP agrees to comply with any reasonable instructions of the County with regard to the preparation of its biosolids to the County for transport.

12. Assignment. IBP shall not assign or transfer any interest in this Agreement to any entity(s) or person(s) whatsoever without first receiving the County's written consent.

13. Notice. Any notice provided for herein, unless otherwise noted, shall be given by hand or registered or certified mail, postage prepaid and addressed to, if for the County: Sussex County Engineer, Sussex County Department of Engineering, 2 The Circle, P.O. Box 589, Georgetown, Delaware 19947 and if for IBP: Robert Tunnell III, Inland Bays Preservation Company, LLC, 34026 Anna's Way, Long Neck, DE 19966.

The parties must provide advance written notice of any changes to the above-listed addresses. Notices sent to the addresses above or to an updated address properly noticed in writing shall be deemed to be delivered on the third business day after sending to the other party via USPS.

14. Amendments/Modification. No amendments or modifications to this Agreement shall be binding unless in writing and signed by the County and IBP.

15. Binding on Heirs. This Agreement shall be binding upon and for the benefit of the heirs, executors, administrators, and successors of the County and IBP in like manner as upon the original parties, except as provided by mutual written agreement.

16. Integration. This document comprises the entire Agreement between the parties hereto relative to this matter and supersedes any prior agreements or representations, whether verbal or in writing.

17. Laws of Delaware. The Agreement shall be governed by and construed in accordance with the substantive laws of the State of Delaware without regard to principles of conflict of laws. Any action at law, suit in equity, or judicial proceeding for the enforcement of this Agreement or regarding any provision hereof shall be instituted and maintained only in a court of competent jurisdiction located in Sussex County, Delaware, or if under federal jurisdiction, in the District Court of the State of Delaware.

18. **Signature Authority.** Both the County and IBP represent and warrant that they have the full and complete authority to execute this Agreement on behalf of their respective organizations.
19. **Opportunity to Consult with Legal Counsel.** The parties acknowledge that each has had the opportunity to consult with legal counsel of their own choosing concerning the provisions of this Agreement.
20. **Time Calculations.** Time is of the essence. The term “day” as used herein shall mean calendar day, unless specifically defined as a “business day.”
21. **Legal Construction.** The parties acknowledge that each had the ability to negotiate terms and conditions, and this Agreement shall not be construed against the party who prepared and drafted the Agreement documents. If one or more of the provisions of the Agreement is held to be invalid, illegal or unenforceable in any respect for any reason, such invalidity, illegality, or unenforceability shall not affect any other provision of the Agreement, and the Agreement shall be construed as if the invalid, illegal, or unenforceable provision had never been included.
22. **Headings and Subheadings.** The headings and subheadings herein are for convenience only and shall not be used to relieve either party of any obligation under this Agreement.
23. **Non-Waiver of Rights.** Any forbearance by either party in exercising its rights hereunder shall not be construed as a waiver thereof, unless expressly set forth in writing and signed by the parties. Any waiver by either party of any provision or condition of this Agreement shall not be construed or deemed to be a waiver of any other provision or condition of this Agreement, nor a waiver of a subsequent breach of the same provision or condition.
24. **No Third-Party Beneficiaries.** Neither the provisions of this Agreement nor the performance of the parties hereunder is intended to benefit, nor shall inure to the benefit, of any third party.
25. **Execution in Counterparts.** This Agreement may be executed in one or more counterparts, any or all of which shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals the day first above-mentioned.

SUSSEX COUNTY

WITNESS

(Seal)
Michael H. Vincent
President, Sussex County Council

STATE OF)
DELAWARE)
) ss.
SUSSEX COUNTY)

Be it remembered that on this _____ day of _____, 2023, personally came before me, a notary public in and for the State and County aforesaid, Michael H. Vincent, known or satisfactorily proven to me to be the President and of the Sussex County Council, party to the foregoing Agreement, and acknowledged that, in his capacity as such, he executed this Agreement in his own hand for the County.

As given under my hand and seal of office this day and year aforesaid.

Notary Public
Name: _____

INLAND BAYS PRESERVATION COMPANY, LLC

[Signature]
WITNESS

[Signature] (Seal)
Robert Tunnell III, President

STATE OF)
DELAWARE)
) ss.
SUSSEX COUNTY)

Be it remembered that on this 14th day of June, 2023, personally came before me, a notary public in and for the State and County aforesaid, Robert Tunnell III, known or satisfactorily proven to me to be the President of Inland Bays Preservation Company, LLC party to the foregoing Agreement, and acknowledged that, in his capacity as such, he executed this Agreement in his own hand for the above-named entity.

As given under my hand and seal of office this day and year aforesaid.

JENNY HARRISON
NOTARY PUBLIC
STATE OF DELAWARE
My Commission Expires 03-05-2025

[Signature]
Notary Public
Name: Jenny Harrison

BULK WASTEWATER SERVICES AGREEMENT

Between Sussex County and Inland Bays Preservation Company, LLC

THIS BULK WASTEWATER SERVICES AGREEMENT is made this _____ day of June, 2023, between **SUSSEX COUNTY**, a political subdivision of the State of Delaware (“Sussex County”), and **Inland Bays Preservation Company LLC.**, a Delaware limited liability company (“IBP”)

NOW THEREFORE, in consideration of the mutual promises made and herein set forth, the parties agree as follows:

1. **Definitions.** The following capitalized terms as used herein shall have the meaning ascribed below unless the context of their usage shall clearly indicate otherwise:

- a. The “Baywood Wastewater Facility” or “IBP Facilities” means any IBP Wastewater Treatment Facility owned, operated or controlled by IBP for disposal and treatment of Wastewater.
- b. The “Sussex County Wastewater Treatment Facilities” or “SC Facilities” means any Sussex County Wastewater Treatment Facilities owned, operated, or controlled by Sussex County for disposal and treatment of Wastewater.
- c. “Wastewater” means water containing domestic waste deposited into the wastewater collection and transmission system from residential and non-residential structures.
- d. “Effluent” means Wastewater treated to a degree of water quality necessary to meet or exceed the conditions imposed by the State permit issued to the treatment facility receiving such Wastewater.

2. **Purpose.** The purpose of this Agreement is to document the terms, pursuant to which IBP is to provide Wastewater treatment and disposal services to Sussex County and the terms pursuant to which Sussex County is to provide Wastewater treatment and disposal services to IBP. In furtherance of such purpose:

a. Each of IBP and Sussex County have periodic need of additional Wastewater treatment and disposal capacities and facilities in Sussex County, beyond those under their own ownership or control, to assure the timely, efficient and cost effective transmission and management of Wastewater. In that regard, there are locations in Sussex County where each party’s facilities are capable of being connected or integrated to allow for the movement from one party’s system to the other party’s system of Wastewater for treatment and of Effluent for disposal.

b. The parties agree that either party shall, upon 30 days' prior written notice from the other party, accept, treat and dispose of such an amount of Wastewater on an ongoing basis as the receiving party states it is ready and willing to accept, subject to any applicable regulatory requirements.

c. The parties agree that, once Wastewater is accepted by either party, the party accepting Wastewater from the other party will provide 90-day prior written notice of discontinuance or reduction of receipt of amounts of Wastewater previously accepted. The party receiving any such notice of discontinuance or reduction may discontinue or reduce delivery of Wastewater at any time subsequent to receipt of notice but will discontinue or reduce the amount of Wastewater to the amount provided in the notice no later than the 90th day from the date of delivery of notice.

d. Notwithstanding the notification period in Section 2(c) above, should either party's systems and facilities experience operating limitations that will likely result in violations of applicable permits, potential damage to the systems or facilities, or insufficient capacity to accept, treat or discharge the other party's Wastewater, the acceptance, treatment and disposal of Wastewater by a receiving party may be limited or discontinued for such period of time as agreed to by the parties or as necessary as a matter of law or sound engineering principles.

e. On June 30th of each calendar year beginning on June 30, 2024, the parties shall exchange any and all reports of their metered flows for the previous year (July 1 to June 30) measured at the parties' respective connection points. On a five (5) year basis beginning on June 30, 2028, the parties shall engage in a true-up process. If either party's flows to the other party exceeds 500,000 gallons, then that party shall be responsible for paying for the amount of annual flow exceeding 500,000 gallons at the rate of \$8.00 per thousand gallons. Such payment shall be made to the other party within thirty (30) days of receiving notice thereof of the amount of such exceedance. Other than the payments required by this Paragraph, it is the intention of the parties that this Agreement will be substantially revenue neutral. If both parties' flow totals at the time of true up are within 500,000 gallons or less, then the parties shall take no action and credits or debits shall be carried over into the next five (5) year period.

f. This Agreement shall be subject to all governmental and regulatory approvals required to enable either party to enter into and perform pursuant to this Agreement including but not limited to any approvals required from Sussex County government, the Delaware Public Service Commission and the Delaware Department of Natural Resources and Control.

g. Each party shall establish and maintain flow metering at a location sufficiently near the connection point to the accepting party's system in order to capture the flow into the accepting party's system, and such connection point(s) shall be approved by the party into whose system the flow is entering. Any and all measurements of flow shall be made by the party with origination of such flow and shall be supervised by the accepting party. The results of the flow metering shall be reviewed and evaluated by the originating party at least quarterly, and such quarterly reports shall be promptly shared

with the accepting party. The metering devices used to measure flow shall be calibrated annually by a qualified third-party testing agency. The results of the calibration, including any written reports, shall be sent to both the originating, and accepting parties. If the calibration reveals a discrepancy greater than five percent (5%) above or below the actual, calibrated reading, the party with the flow discrepancy shall pay or receive a credit for the value of the discrepancy for a three-month period immediately preceding the calibration. If the value of this discrepancy affects the annual flow amount determined at the annual true-up, the parties shall adjust the final true-up amount and make any necessary payments to account for said adjustment within thirty (30) days of the notice of such adjusted annual flow amount.

3. Operation and Maintenance of the IBP Wastewater Treatment Facilities. IBP shall be responsible for all repairs and replacements associated with IBP Facilities and for all costs of operation and maintenance, including without limitation all costs incurred in connecting any portion of any IBP Facility to any SC Facility. No structure, pipes or other infrastructure of any type shall be connected to the to either party's Facilities until IBP or SC inspects and approves any such proposed connection.

4. Operation and Maintenance of Sussex County Wastewater Treatment Facilities. Sussex County shall be responsible for all repairs and replacements associated with SC Facilities and for all costs of operation and maintenance, including without limitation all costs incurred in connecting any portion of any SC Facility to any IBP Facility. No structure, pipes or other infrastructure of any type shall be connected to the SC Facilities until Sussex County inspects and approves any such proposed connection.

5. Further Assurances. Each party hereto shall use reasonable efforts to comply with all legal requirements imposed upon it by reason of the commitments, obligations and terms as set forth in this Agreement.

6. Warranties with Respect to Sussex County. Sussex County hereby represents and warrants to IBP as follows:

a. *Organization and Authority.* Sussex County has the requisite power and authority to carry on its business as now being conducted in regard to the provision of wastewater treatment and disposal.

b. *Authority.* Sussex County has requisite power and authority to enter into and perform its obligations under this Agreement. Neither the execution and delivery of this Agreement nor the consummation of the transactions contemplated hereby, nor the performance of this Agreement shall: (a) violate, conflict with, or constitute a material default under any contract, commitment or agreement to which Sussex County is a party or by which Sussex County is bound; or (b) violate any (i) order, writ, injunction, decree, judgment or ruling of any court, or (ii) law, statute, ordinance or regulation applicable to Sussex County.

c. *Execution.* Delivery of this Agreement and all other technical documents associated with existing or proposed infrastructure to be delivered by Sussex

County in connection herewith, and the consummation of the transactions contemplated hereby and thereby, have been duly authorized by Sussex County.

d. *Valid and Binding Agreement.* This Agreement constitutes the valid and binding agreement of Sussex County, enforceable against Sussex County in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, receivership, conservatorship, moratorium or other laws of general application relating to or affecting the enforcement of creditors' rights and remedies, as from time to time in effect, and the application of equitable principles, regardless of whether such enforceability is considered in a proceeding in equity or at law.

7. Warranties with Respect to IPB. IPB hereby represents and warrants to Sussex County as follows:

a. *Organization.* IPB has the requisite power to carry on its business as now being conducted.

b. *Authority.* IPB has requisite power and authority to enter into and perform its obligations under this Agreement. Neither the execution and delivery of this Agreement nor the consummation of the transactions contemplated hereby, nor the performance of this Agreement shall: (a) violate, conflict with, or constitute a material default under any contract, commitment or agreement to which IPB is a party or by which IPB is bound; or (b) violate any (i) order, writ, injunction, decree, judgment or ruling of any court, or (ii) law, statute, ordinance or regulation applicable to IPB

c. *Execution.* Delivery of this Agreement and all other technical documents associated with existing or proposed infrastructure to be delivered by IPB in connection herewith, and the consummation of the transactions contemplated hereby and thereby, have been duly authorized by IPB

d. *Valid and Binding Agreement.* This Agreement constitutes the valid and binding obligation of IPB, enforceable against IPB in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, receivership, moratorium or other laws of general application relating to or affecting the enforcement of creditors' rights and remedies, as from time to time in effect, and the application of equitable principles, regardless of whether such enforceability is considered in a proceeding in equity or at law.

8. Term. This Agreement shall be in effect for a term of five years, to be automatically renewed for an additional term of five years upon the expiration of each such five-year term, unless a written notice is delivered by either party to the other, one year in advance of the expiration of the then current five year term, stating that that party is not agreeing to another five year renewal.

9. Notices. All notices and other communications, whether required or otherwise, made under this Memorandum shall be in writing and shall be deemed to have

been given if personally delivered or mailed by registered, certified, or first-class mail, postage prepaid, or sent by overnight delivery, email, telecopier, or facsimile transmission:

If to Sussex County:
Sussex County Council
2 The Circle
PO Box 589
Georgetown DE 19947

If to IBP:
Inland Bays Preservation Company, LLC
34026 Anna's Way
Long Neck, DE 19966
Attention: Robert Tunnell III

or to such other address or to such other person as one party shall have last designated by notice to the other party hereto. Notices delivered personally or by overnight delivery shall be effective upon delivery. Notices properly addressed and delivered by mail, return receipt request, shall be effective upon deposit with the United States Postal Service. Notices sent by email, telecopier, or facsimile transmission shall be effective upon confirmation of transmission.

10. Section Headings. The headings of Sections contained in this Agreement are provided for convenience only, form no part of this Agreement and shall not affect its construction or interpretation. All references to Sections in this Agreement refer only to the corresponding Sections of this Agreement.

11. Amendment. Neither this Agreement nor any terms or provision herein may be changed, waived, discharged, or terminated orally or electronically. Any such amendment shall be valid only by a written instrument, executed by all Parties hereto.

12. Counterparts. This Agreement may be executed simultaneously in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. It shall not be necessary for a single counterpart to be executed by all parties provided that each Party shall have executed at least one counterpart.

13. Waiver Of Trial By Jury. The Parties hereto shall and do hereby waive trial by jury in any action, proceeding or counterclaim brought by either of the parties hereto against the other as to any dispute or disputes arising out of or in any way connected with this Agreement or the performance, or lack thereof, by a party hereto of such party's obligations hereunder.

14. Jurisdiction. Each Party hereby consents to the exclusive jurisdiction of the courts of the State of Delaware as to all matters relating to the enforcement, interpretation or validity of this Agreement and, if such party is a non-resident of the State of Delaware, hereby appoints the Secretary of State of the State of Delaware as its agent for service of process. The Parties agree that this Agreement may be enforced in equity; and that specific performance or other equitable relief, in addition to any monetary or other damages that may be proved, would be an appropriate remedy in any such action.

15. Severability. If any provision of this Agreement or the application thereof to any person or circumstance shall be invalid or unenforceable to any extent, the remainder of this Agreement and the application of such provisions to other persons or circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

16. No Presumption Against the Drafter. Each of the Parties to this Agreement participated in drafting this Agreement, and the interpretation of any ambiguity contained in the Agreement will not be affected by a claim that a particular Party drafted any particular provision hereof.

17. Benefit. This Agreement shall be binding upon and inure to the benefit of the Parties hereto, and to each respective Party's legal representatives, heirs, successors and permitted assigns.

(Signature Pages to Follow)

IN WITNESS WHEREOF, the Parties, intending hereby to be legally bound, caused this Agreement to be executed by their duly authorized representatives as of the date and year first above written.

SUSSEX COUNTY:

WITNESS:

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

STATE OF DELAWARE)
) ss.
_____ COUNTY)

BE IT REMEMBERED that on this ____day of _____, A.D. 2023, personally came before me, the Subscriber, a Notary Public of the State and County aforesaid, Michael H. Vincent, known to me to be the Council President of Sussex County, a party to this Agreement, and as such, being authorized so to do, acknowledged that he executed this Agreement in his own hand for the company.

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

Notary Public
My Commission Expires:

ENGINEERING DEPARTMENT

HANS M. MEDLARZ
COUNTY ENGINEER

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

hans.medlarz@sussexcountyde.gov



Sussex County

DELAWARE
sussexcountyde.gov

Memorandum

TO: Sussex County Council
The Honorable Michael H. Vincent, President
The Honorable 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: ***Mallard Creek Sewer Expansion, Project S20-26***
A. Change Order Nos. 1, 2 and Substantial Completion

DATE: June 20, 2023

On October 20th, 2017, a public hearing was held for an expansion of the Unified Sanitary Sewer District to serve the Mallard Creek subdivision in the Holt's Landing area. The Engineering Department presented results of the hearing and on November 7, 2017, County Council adopted the expansion Resolution No. R 032 17.

Subsequently the Engineering Finance Departments applied for funding through the United States Department of Agriculture (USDA) which on September 27, 2019, issued the letter of conditions outlining loan (\$1,526,000) and grant (\$1,247,000) funding associated with the Mallard Creek Sewer Extension Project. USDA officially obligated the funding assistance on October 16, 2019. On February 4, 2020, Council approved the issuance of general obligation bonds and the associated USDA loan resolution.

On May 14, 2019, County Council awarded a five (5) year base contract for miscellaneous engineering services to three (3) consulting engineering firms (i) Davis, Bowen & Friedel, Inc.; (ii) George Miles and Buhr, Inc.; and (iii) KCI Technologies, Inc. (KCI). Additionally, the motion authorized the Engineering Department to negotiate Base Professional Service Agreements for a five-year period of July 1, 2019, through June 30, 2024. Project-based contract amendments under the base agreements, or individual project-specific agreements if required by a funding source, were each to be brought to Council for authorization.

As requested, GMB submitted a Base Owner-Engineer Professional Services Agreement for design and bidding services associated with the Mallard Creek Sewer Expansion, Project S20-26, On March 10, 2020, Council authorized said professional services agreement with GMB at a not-to-exceed value of \$177,780.00, for design and bidding of the Mallard Creek Sewer Expansion, Project S20-26. With the bidding phase concluded, the Department requested GMB's proposal for construction administration and inspection services. The proposal was reviewed, and several



A. Change Order Nos. 1, 2 and Substantial Completion

modifications incorporated. With all modifications addressed, the Engineering Department recommends Council's approval of GMB's Amendment No. 1 in the not to exceed amount of 167,729.00, contingent upon USDA concurrence.

Invitations to the Mallard Creek Sewer Expansion bid were advertised in the newspaper, viewable on the Sussex County website, and directly sent to contractors experienced with the type of work. On April 20, 2022, five (5) bids were received. The overall project cost was within the available funding provided by USDA.

The initial low bidder for this project was Carrow Construction LLC. However, they failed to submit the required Schedule E as outlined in the specifications, in addition to committing numerous mathematical errors on the bid sheet. For those reasons, the Engineering Department and George Miles & Buhr, determined the bid to be non-responsive. On May 10, 2022, Council approved award of the contract to Teal Construction, Inc. the lowest responsive bidder in the amount of \$1,338,338.00. USDA subsequently concurred in the award.

The Engineering Department proposed and USDA pre-approved a 30 day, no cost time extension Change Order No.1 due to underground utility conflicts and manpower availability issues. The project is now substantially complete, and Change Order No. 2 has been established finalizing actual quantities resulting in a net decrease to the contract in the amount of (\$95,829.25).

Therefore, the Engineering Department requests Council's approval for Change Order Nos. 1 & 2 as well as the granting substantial completion effective May 25, 2023, contingent upon USDA concurrence.

CHANGE ORDER NO.: 2 (Final)

Owner: Sussex County
 Engineer: George, Myles & Buhr, Inc.
 Contractor: Teal Construction, Inc.
 Project: Mallard Creek Sewer Expansion
 Contract Name: Mallard Creek Sewer Expansion
 Date Issued: 6/13/23

Owner's Project No.: S 20-26
 Engineer's Project No.: 200054
 Contractor's Project No.: T022012

Effective Date of Change Order: 6/20/23

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

Description:

Project Closeout Change Order

Attachments:

Attached Change Order No. 2 Spreadsheet

Change in Contract Price	Change in Contract Times
Original Contract Price: \$ <u>1,338,338.00</u>	Original Contract Times: Substantial Completion: <u>180 Days</u> Ready for final payment: <u>210 Days</u>
[Increase] [Decrease] from previously approved Change Orders No. 1 to No. [Number of previous Change Order] : \$ <u>0.00</u>	[Increase] [Decrease] from previously approved Change Orders No.1 to No. [Number of previous Change Order] : Substantial Completion: <u>30 Days</u> Ready for final payment: <u>30 Days</u>
Contract Price prior to this Change Order: \$ <u>1,338,338.00</u>	Contract Times prior to this Change Order: Substantial Completion: <u>210 Days</u> Ready for final payment: <u>240 Days</u>
[Increase] [Decrease] this Change Order: \$ <u>95,829.25</u>	[Increase] [Decrease] this Change Order: Substantial Completion: <u>0</u> Ready for final payment: <u>0</u>
Contract Price incorporating this Change Order: \$ <u>1,242,508.75</u>	Contract Times with all approved Change Orders: Substantial Completion: <u>210 Days</u> Ready for final payment: <u>240 days</u>

Recommended by Engineer (if required)		Accepted by Contractor	
By: _____	_____	_____	_____
Title: _____	_____	_____	_____
Date: _____	_____	_____	_____
Authorized by Owner		Approved by Funding Agency (if applicable)	
By: _____	_____	_____	_____
Title: _____	_____	_____	_____
Date: _____	_____	_____	_____

**MALLARD CREEK - PROJECT S20-16
CHANGE ORDER 2**

Bid Item No.	Description	Contract Information				Work Completed		
		Item Quantity	Units	Unit Price	Value of Bid Item	Actual Quantity	Final Value of Bid Items	Difference
Original Contract								
A1	Mobilization	1.00	LS	38,374.00	38,374.00	1.00	38,374.00	-
A2	Survey & Stakeout	1.00	LS	12,744.00	12,744.00	1.00	12,744.00	-
A3	Sediment & Control Measures	1.00	LS	51,149.00	51,149.00	1.00	51,149.00	-
A4	Stormwater Pipe Replacement	1.00	LS	43,844.00	43,844.00	1.00	43,844.00	-
B1	Standard Simplex Grinder	21.00	EA	15,141.00	317,961.00	21.00	317,961.00	-
B2	Watertight Simplex Grinder	18.00	EA	20,544.00	369,792.00	18.00	369,792.00	-
B3	Watertight Simplex Grinder Shell	2.00	EA	18,150.00	36,300.00	2.00	36,300.00	-
B4	Furnish to County Watertight Simplex	1.00	EA	-	-		-	-
B5	Low Pressure Laterals 1.25" - Directional Drill	3,800.00	LF	18.50	70,300.00	4,126.00	76,331.00	6,031.00
B6	Low Pressure Laterals 1.25" - Open Cut	500.00	LF	26.00	13,000.00	275.00	7,150.00	(5,850.00)
B7	Low Pressure Laterals 1.5" - Directional Drill	2,200.00	LF	20.00	44,000.00	2,016.00	40,320.00	(3,680.00)
B8	Low Pressure Laterals 2" - Directional Drill	1,200.00	LF	23.75	28,500.00	1,180.00	28,025.00	(475.00)
B9	Low Pressure Laterals 3" - Directional Drill	1,200.00	LF	31.75	38,100.00	1,145.00	36,353.75	(1,746.25)
B10	Terminal Flushing Connections 1.5"	5.00	EA	8,183.00	40,915.00	5.00	40,915.00	-
B11	Intersection Flushing Connections	4.00	EA	12,657.00	50,628.00	4.00	50,628.00	-
B12	In-Line Flushing Connection 3"	1.00	EA	10,429.00	10,429.00	1.00	10,429.00	-
B13	Lateral Assembly Isolation Valve & Control	41.00	EA	1,933.00	79,253.00	41.00	79,253.00	-
B14	Sod Restoration	40.00	SY	61.00	2,440.00	15.00	915.00	(1,525.00)
C1	Excavation Below Subgrade	500.00	CY	10.00	5,000.00		-	(5,000.00)
C2	Gravel Bedding	500.00	CY	45.00	22,500.00	45.00	2,025.00	(20,475.00)
C3	Special Backfill	500.00	CY	16.00	8,000.00		-	(8,000.00)
C4	Misc. Excavation & Backfill	10.00	CY	15.00	150.00		-	(150.00)
C5	Concrete	10.00	CY	177.00	1,770.00		-	(1,770.00)
C6	Secured Modified Proctor Test	2.00	EA	177.00	354.00		-	(354.00)
C7	Secured Field Density Test	5.00	EA	207.00	1,035.00		-	(1,035.00)
C8	Milling	300.00	SY	14.00	4,200.00		-	(4,200.00)
C9	2" Superpave Type "C"	300.00	SY	32.00	9,600.00		-	(9,600.00)
C10	3" Superpave Type "B"	300.00	SY	36.00	10,800.00		-	(10,800.00)
C11	8" GABC	300.00	SY	29.00	8,700.00		-	(8,700.00)
C12	2" Superpave Type "C" & 6" GABC	500.00	SY	37.00	18,500.00		-	(18,500.00)
					-			-
Original Contract Totals					\$ 1,338,338.00			
Balance of Unused/Used Item Quantities								\$ (95,829.25)
Final Contract Total					\$ 1,242,508.75			

ENGINEERING DEPARTMENT

HANS M. MEDLARZ
COUNTY ENGINEER

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

hans.medlarz@sussexcountyde.gov



Sussex County

DELAWARE
sussexcountyde.gov

Memorandum

TO: Sussex County Council
The Honorable Michael H. Vincent, President
The Honorable 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 Unified Sewer District:
Contract 5, Project S19-29
A. Segment D: Change Order No. 4*

DATE: June 20, 2023

In February 2017, the municipal councils of Bridgeville and Greenwood requested investigation of an alternate County Sewer District based scenario. Upon review of the findings both municipal Councils requested formation of a County sewer district pursuant to Title 9 Del. Code § 6501, and on August 22, 2017, County Council adopted a resolution establishing the Western Sussex Area of the Unified Sanitary Sewer District.

The County requested 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 to cover unanticipated change orders associated with the DelDOT restoration on RT-13. The County's request was approved by the Water Infrastructure Advisory Council during their July 15, 2020 meeting in the form of "Loan Forgiveness.

Council also authorized a 2nd request for supplemental funding for the Western Sussex District Area Expansion Project through the CWSRF in the amount of \$1,336,315.00. Once an offer is received, an associated debt ordinance would be introduced and voted on by Council after a public hearing. Since the project is already at the affordability limits an offer in the form of mostly "Loan Forgiveness" is expected.



The project has three components; transmission under Contracts 1-4, treatment plant demolition/system rehabilitation Contract 5, maintenance garage under Contract 6 and a Bridgeville Branch restoration project spearheaded by the Sussex Conservation District.

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. Awarded by Council on May 14, 2019.
- Contract No.2 to Pact One LLC in the amount of \$2,063,255.00, for the gravity sewer upgrades. Awarded by Council on May 14, 2019.
- 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. Awarded by Council on January 7, 2020.
- 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. Awarded by Council on November 12, 2019.
- Contract No. 6 to GGI, Inc. in the amount of \$410,525.00, for construction of a new Office/Garage Building. Awarded by Council on June 23, 2020.

During the construction of Contract No.1 awarded to A-Del Construction Co, Inc., DelDOT did not allow the reuse of most of the excavated trench material and required Type C Borrow instead. Therefore, this unit price item went considerably above the bid quantity. In addition, a wider concrete base course was encountered under the Cannon Road crossing. Rather than using hot-mix for restoration, DelDOT required reinstallation of the concrete base course adding 25% to the cost of this lump sum item. On February 4, 2020, Council approved the associated Change Order No.1 in the amount of \$254,188.92. During the final restoration phase DelDOT required additional matting and utility adjustments resulting in a final balancing Change Order No. 2 in the amount of \$26,486.65. Council issued Change Order No.2 and granted final project completion on June 2, 2020.

The award of Contract No.2 to Pact One, LLC included the base bid and two alternate bid items. At the time of award, the Alternate Bid Item D5 was not awarded due its significantly higher than anticipated cost. In subsequent discussions, Pact One LLC realized they had misinterpreted the scope for Item D5 and submitted an alternate proposal at approximately 16% of the original bid. On September 10, 2019 Council awarded Change Order No. 1 in the amount of \$96,840.00 to cover item D5. On June 2, 2020 Council approved a final balancing Change Order No. 2 in the credit amount of (\$128,708.70) and granted final project completion.

Contract No.3 awarded to A-Del Construction Co, Inc. encountered no issues and on June 15, 2021 Council approved the balancing Change Order No. 1 in the credit amount of \$643,915.22 together with final project completion as of April 7, 2021.

During the construction of Contract No. 4 awarded to Zack's Excavating, Inc. a groundwater contamination was encountered, in addition to a construction sequencing issue at the Bridgeville site. In response, the Department developed a value engineering approach approved by Council on June 2, 2020 under Change Order No.1 in the amount of \$40,045.00. The north Seaford pump station included RT-13 entrance improvements which required a more substantial reconstruction due to lack of an existing base course as well as a compromised subbase. In response Council approved Change Order No. 2 in the amount of \$22,642.78 on July 28, 2020. On September 30, 2020 Zack's Excavating, Inc. encountered a previously unknown ductile iron water pipe within the area of the deep excavation of the Bridgeville pump station structures. On November 10, 2020 Council approved Change Order No. 3 in the total amount of \$32,644.19 for the time and material relocation effort.

On February 3, 2021, Delmarva Power and Light contacted Sussex County with an opportunity for net schedule and cost savings by adjusting the transformer type from pad mount to a pole mounted system. While this decreased the charges from Delmarva Power and Light, it increased Zack Excavating Inc.'s electrical subcontractor's scope by \$5,504.87. However, the coordination with DP&L did affect the critical schedule and caused a two-week delay. In addition, the Environmental Services team did additional assessments of the Heritage Shores Pump Station pre-existing conditions and recommended additional upgrades to the existing SCADA system to bring it up to the current county standard exceeding the stipulated contract allowance by \$16,000.00. On March 9, 2021 Council approved Change Order No. 4 in the amount of \$21,504.87 and the associated two-week contract time extension.

The final gravity sewer line to transferred to the new Bridgeville pump station had significant, previously unknown, infiltration. The Department requested a change order for the necessary repairs but Zack's Excavating, Inc. declined any further change orders. Subsequently, after receiving concurrence from the funding agency, the Engineering Department mobilized the County's General Labor & Equipment contractor to the site. Furthermore, the Department suggested to transition Zack's contract to a lump sum approach, requesting credit proposals for several remaining incidental work items and allowances. On May 25, 2022 Council issued the close out credit Change Order No. 5 in the amount of (\$92,704.30) as well as the granting of substantial project completion.

The Invitation to Bid for the last remaining Western Sussex Unified Sewer District, Contract 5, Project S19-29 was advertised in the local newspaper, available to view on the County website and directly forwarded to interested contractors. On February 9, 2022, seven (7) bids were received.

On February 22, 2022, Council made the following three awards 7 one rejection:

- Segment A to A-Del Construction Co., Inc. for \$427,000.00
- Segment B to Richard E. Pierson Construction Co., Inc. for \$920,800.00
- Segment D to Standard Pipe Services, LLC for \$525,100.00
- Segment C due to irregularities in the low bid, Council rejected all bids for Segment C and authorized an immediate re-bid.

On March 25, 2022, two (2) re-bids were received and on April 26, 2022 Council awarded Segment C to Zack's Excavating, Inc. in the amount of \$551,585.16.

Western Sussex Unified Sewer District Contract 5, Project S19-29 change order requests and substantial completion summary.

- Segment A was awarded to A-Del Construction Co, Inc for \$427,700.00. The contractor stated they were 'substantially complete' as of June 23, 2022, with the last remaining waste materials picked up from the Bridgeville Wastewater Treatment plant for disposal. Part of this last removal were some additional chemicals not in the original bid inventory sheets. The additional chemicals in Change Order No. 1 amounted to \$2,628.88 for a new contract amount of \$430,328.88. The substantial complete balancing Change Order No. 2 with consideration for less than anticipated removal of residual liquids, solids and sludger resulted in a surplus of \$216,097.35. On July 12, 2022, Council approved Change Order No. 1. On June 23, 2022 Council approved the balancing Change Order No. 2 and granted substantial completion.
- Segment B was awarded to Richard E. Pierson Construction Co., Inc. for \$920,800.00. In the process of demolition, Richard E. Pierson recognized that the existing water main crossing the site could not be sustained in its current location. Therefore, Richard E. Pierson Construction Co., Inc. proposed Change Order No. 1 for the relocation of the main in the amount of \$27,743.89 which was approved by Council on July 12, 2022. The project contained contingency items which were not all used and on October 18, 2022, Council approved the balancing Change Order No. 2 in a credit amount of \$177,857.89 as well as the granting substantial completion effective October 11, 2022.
- Segment C rebid was awarded to Zack's Excavating, Inc. for \$551,585.16. Zack's Excavating, Inc. requested a Change Order No.1 for additional unit price work at the Bridgeville Pump Station and the Engineering Department is requesting to uncouple the work at the heritage Shores Pump Station.
 - Bridgeville Pump Station repair with existing condition challenges relative to the position of the existing gravity sewer pipe and the existing inverts at the manholes required 62.75 feet of additional length to ensure adequate slope.
 - The railing system of the equalization chamber was damaged in a recent emergency response triggering an increase of the previously bid repair amount.
 - Heritage Shores Pump Station has new upgrade requirements for the pump station including access and odor control triggering another redesign. T

On December 6, 2022 County Council approved Change Order No. 1 for Zack's Excavating, Inc. in the aggregate credit amount of (\$229,133.70).

- Segment D was awarded to Standard Pipe Services, LLC for \$525,100.00. Standard Pipe Services, LLC proposed Change Order No. 1 in the amount of \$52,500.00 for unit rates covering camera work beyond the main for locating, cleaning and televising laterals estimated and Change Order No. 2 in the amount of \$33,900.00 or contingent

unit rates approval for heavy cleaning services prior to camera work. Council approved both change orders on July 12, 2022.

At the end of 2022 Standard Pipe Services, LLC proposed a no-cost extension of the contract timeline by 180-day due in part to:

- Equipment down time associated with the heavy cleaning effort.
- Delays associated with the consolidation, formatting, reviewing, and analysis of the videos from Standard Pipe Services and supplemental video support from the Sussex County team.
- Based on the video more lining work than the original bid quantities is proposed.

On December 6, 2022, County Council approved Standard Pipe Services, LLC's Change Order No. 3. for a 180-day no-cost extension from December 18, 2022, to June 23, 2023.

The Standard Pipe Services, LLC is now requesting Change Order No. 4 for repairs to additional compromised infrastructure discovered while completing the original scope within the Town of Bridgeville. In addition, the County camera crews have identified repairs, as they were mapping lateral connections to the mains. In total, these repairs are estimated using the unit prices bid, at approximately \$75,500.00. With the June 23rd contract completion date approaching, the Department is also proposing a four-week contract time extension to July 21st, 2023.

The Engineering Department recommends the approval of Change Order No. 4 to Standard Pipe Services, LLC's contract in the not to exceed amount of \$75,500.00 for additional repair scope at the unit prices bid and a four (4) week contract extension associated with the scope expansion contingent upon SRF concurrence.

Date of Issuance: 6/20/23	Effective Date: 6/20/23
Owner: Sussex County	Owner's Contract No.: S19-29
Contractor: Standard Pipe Services, LLC	Contractor's Project No.:
Engineer: Davis, Bowen & Friedel, Inc.	Engineer's Project No.: 1897B016
Project: Western Sussex Transmission	Contract Name:
Facilities: Contract 5 Segment D	

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

CHANGE IN CONTRACT PRICE	CHANGE IN CONTRACT TIMES <i>[note changes in Milestones if applicable]</i>
Original Contract Price: \$ 525,100.00	Original Contract Times: Substantial Completion: <u>December 18, 2022</u> Ready for Final Payment: _____ 60 calendar days
Increase from previously approved Change Orders No. 1 to No. 3: \$86,400.00	Increase from previously approved Change Orders No. to No. 3: Substantial Completion: <u>December 18, 2022</u> Ready for Final Payment: _____
Contract Price prior to this Change Order: \$ 611,500.00	Contract Times prior to this Change Order: Substantial Completion: <u>June 23, 2023</u> Ready for Final Payment: _____
Increase of this Change Order: \$75,500.00	[Increase] [Decrease] of this Change Order: 28 days Substantial Completion: <u>July 21, 2023</u> Ready for Final Payment: _____
Contract Price incorporating this Change Order: Order: \$ 687,000.00	Contract Times with all approved Change Orders: Substantial Completion: <u>July 21, 2023</u> Ready for Final Payment: _____

RECOMMENDED:	ACCEPTED:	ACCEPTED:
By: <u>[Signature]</u>	By: _____	By: <u>[Signature]</u>
Engineer (if required)	Owner (Authorized Signature)	Contractor (Authorized Signature)
Title: <u>County Engineer</u>	Title _____	Title <u>President</u>
Date: <u>6/13/2023</u>	Date _____	Date <u>6/14/23</u>

Approved by Funding Agency (if applicable)

By: _____ Date: _____
Title: _____



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 16, 2023

RE: County Council Old Business Report for Ord. 23-01 relating to the Sewer Tier Map of the Comprehensive Plan in relation to Tax Parcels 533-11.00-23.00, 23.03, and 23.04

On January 10, 2023, the County Council introduced an Ordinance to consider a potential amendment to the Sewer Tier Map element of the Comprehensive Plan in relation to Tax Parcels 533-11.00-23.00, 23.03, and 23.04.

The requested change is to change the designation of the parcels from being in the Tier 4 Area (System Optional Areas) to the Tier 2 (Sussex County Planning Area).

The Planning & Zoning Commission held a Public Hearing on the Ordinance on March 23, 2023. At the meeting of March 23, 2023, the Planning & Zoning Commission recommended approval of the Ordinance for the 4 reasons stated as outlined within the motion (copied below).

The County Council held a Public Hearing on the Ordinance at the meeting of April 25, 2023. At the conclusion of the Public Hearing, action on the application was deferred to allow for the Ordinance to be reported to the State of Delaware Preliminary Land Use Review Service (PLUS).

Below is a link to the minutes of the April 25, 2023, County Council meeting.

[Link to the April 25, 2023 County Council Meeting Minutes](#)

Below are the minutes from the Planning & Zoning Commission meeting of March 23, 2023.



Minutes of the March 23, 2023, Planning & Zoning Commission Meeting

ORD. 23-01

AN ORDINANCE TO AMEND THE SUSSEX COUNTY SEWER TIER MAP OF THE COMPREHENSIVE PLAN FROM THE TIER 4 AREA (SYSTEM OPTIONAL AREAS) TO THE TIER 2 (SUSSEX COUNTY PLANNING AREA) IN RELATION TO TAX PARCELS 533-11.00-23.00, 23.03 & 23.04. The properties are lying on the southwest side of Zion Church Road (Route 20), approximately 605 feet northwest of Deer Run Road (S.C.R. 388), and the north side of Deer Run Road (S.C.R. 388), approximately 159 feet southwest of Zion Church Road (Route 20). 911 Address: 36054 Zion Church Road, Frankford. Tax Map Parcels: 533-11.00-23.00, 23.03 & 23.04. Zoning: AR-1 (Agricultural Residential).

Mr. Whitehouse advised the Commission that submitted into the record were a copy of the Ordinance introduced by the County Council, and a copy of Exhibit A, which shows the existing two areas in relation to the Application site. Mr. Whitehouse advised the Commission that zero comments were received on behalf of the Application.

The Commission found that Mr. Hans Medlarz with Sussex County Engineering spoke on behalf of the Application. Mr. Medlarz stated that the application's circumstance is unusual, as normally Tier 4 does not touch Tier 1 locations; that the Tier system was approved by County Council; that the Sewer System is codified in Chapter 110 of the County Code; that the description of the tiers are enforceable by the Sussex County Engineering Department; that the Tier Map was adopted by the Planning Commission and County Council in the Comprehensive Plan; that this makes the Sewer Map similar to the Future Land Use Map; that Tier 1 areas are located within the Unified County Sanitary Sewer District; that within Tier 2, the County exclusively reserve the right to serve every and all parcels within the designation; that within Tier 3, the County requires a community system to be installed, which can be private or public; that within Tier 3, the County does have the right to refuse service; that within Tier 4, central sewer service and community sewer service is optional; that normally, the Engineering Department would not provide comment on Tier 4 subdivision proposals; that within Tier 5, community systems are not allowed, and only permit for individual on-site systems; that the subject Ordinance could not be brought before County Council, as it is not within the County's Tier 2 Planning Area; that they received a petition, which would be brought forward as an annexation and extension request; that the extension request would follow Title 9 of the Delaware Code, which spells out how to extend sewer districts; that with the subject Ordinance, the Sussex County Engineering Department supports the map amendment of the Sewer Tier Map of the Comprehensive Plan, which would bring the area to a Tier 2 designation; that by allowing the amendment, it will allow the proposed subdivision to proceed forward through the Commission's planning process, before the final decision could be made to bring the area into the Tier 1 Sewer district; that if they attempted to bring the area into Tier 1 right away, they would run afoul from the core role, which states that no sewer decisions are to be made before land use decisions are rendered; that the Engineering Department will not bring forward a sewer extension decision before County Council without the two-step process; that the original Tier Map lines were drawn by the Commission and County Council in the attempt to avoid these kinds of issues and the Sussex County Engineering Department supports the Sewer Tier Map amendment from Tier 4 to Tier 2.

Mr. Robertson stated that the proposal received a greater review as it was driven by engineering issues.

Mr. David Hutt, Esq., with Morris James, LLP, spoke on behalf of the Ordinance; that also present were the Applicant, Mr. Jamie Sechler, with Davis, Bowen & Friedel, Inc., and Mr. Brad Absher, Principal of the Developer, Zion Church Ventures, LLC. Mr. Hutt stated that Chapter 4 is significant to the Planning Commission, as it defines the property's designation on the Future Land Use Map; that when looking at the four where-as clauses for the Ordinance, it states that part of the property is found within the Developing Area, with the balance of the property being located within the Coastal Area; that both of these areas are considered Growth Areas within Chapter 4 of the Comprehensive Plan; that the Ordinance states and supports the reasons why the amendment should be granted; that the Ordinance notes that within both growth areas, as stated by the Comprehensive Plan, central sewage is strongly encouraged and based on this reasoning, and the reasons previously stated by Mr. Medlarz, the Applicant would request the Commission recommend approval of the Sewer Tier Map amendment be approved.

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

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. Robertson advised the Commission that he had a motion prepared, which he read into the record per Ms. Stevenson's request.

Ms. Stevenson motioned that the Commission recommend approval of Ordinance 23-01 to amend the Sewer Tier Map of the Sussex County Comprehensive Plan from Tier 4 to Tier 2 for Tax Map Parcels 533-11.00-23.00, 23.03, and 23.04, based upon the record made during the public hearing and for the following reasons:

1. The Sussex County Engineering Department is in favor of this map amendment and provided reasons in support of it.
2. The property is currently within the Coastal Area and the Developing Area according to the Sussex County Comprehensive Plan. Both of these areas are "Growth Areas", and the Plan suggests that "central sewer is strongly encouraged" in them. This Tier Map amendment is in furtherance of the goal of the Comprehensive Plan.
3. This map amendment does not affect the future development of this property, which will require a separate public hearing in the future if and when any attempt to develop this property shall occur.
4. No parties appeared in opposition to this map amendment request.

Motion by Ms. Stevenson, seconded by Mr. Mears and carried unanimously to recommend approval for ORD. 23-01 to amend the Sewer Tier Map of the Sussex County Comprehensive Plan from Tier 4 to Tier 2 for Tax Map Parcels 533-11.00-23.00, 23.03, and 23.04, for the reasons stated in the motion. Motion carried 3-0.

Vote by roll call: Ms. Stevenson – yea, Mr. Mears – yea, Chairman Wheatley – yea

ORDINANCE NO. _____

AN ORDINANCE TO AMEND THE SUSSEX COUNTY SEWER TIER MAP OF THE COMPREHENSIVE PLAN IN RELATION TO TAX PARCELS 533-11.00-23.00, 23.03 & 23.04

WHEREAS, on September 27th, 2022, the Sussex County Planning and Zoning Office received an Application for a requested Comprehensive Plan Amendment to amend the Sussex County Sewer Tier Map element of the Comprehensive Plan to change the Sewer Tier designation of Sussex County Parcel Nos. 533-11.00-23.00, 23.03 and 23.04; and

WHEREAS, the Parcels comprise 31.83 acres of land, more or less, lying and being within Baltimore Hundred, and are located on the north side of Deer Run Road (S.C.R. 388) and the southwest side of Zion Church Road (Route 20), approximately 0.42 mile south of the intersection of Evans Road (S.C.R. 383) and Zion Church Road (Route 20);

WHEREAS, The Properties are designated as being within the Tier 4 – System Optional Areas as set forth in the Sussex County Sewer Tier Map as Figure 7.3-2 in the 2018 Comprehensive Plan for Sussex County;

WHEREAS, a portion of Parcel 23.00 contains the Future Land Use Map designation of Developing Area as set forth in the Sussex County 2045 Future Land Use Map identified as Figure 4.5-1 of the Sussex County Comprehensive Plan; and

WHEREAS, as noted in the Sussex County Comprehensive Plan, central sewer facilities are “strongly encouraged” within the Developing Area; and

WHEREAS, the remainder of the Parcels within this 31.83 acres of land contain the Future Land Use Map designation of Coastal Area as set forth in the Sussex County 2045 Future Land Use Map identified as Figure 4.5-1 of the Sussex County Comprehensive Plan; and

WHEREAS, as noted in the Sussex County Comprehensive Plan, central sewer facilities are “strongly encouraged” within the Coastal Area; and

WHEREAS, Sussex County Council desires to adopt this Ordinance amending the Sussex County Sewer Tier Map element of the Plan with minor amendments; and

WHEREAS, in accordance with the required process for public hearings on Ordinances such as this one, both the Sussex County Planning & Zoning Commission and the Sussex County Council will hold public hearings on this Ordinance but limited in scope to this specific proposed Amendment to the Sussex County Sewer Tier Map contained in the Plan.

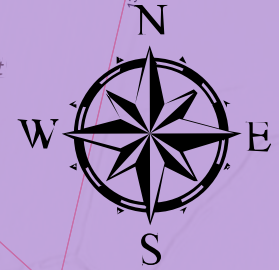
NOW, THEREFORE, THE COUNTY OF SUSSEX HEREBY ORDAINS:

Section 1. The Sussex County Sewer Tier Map identified as Figure 7.3-2 of the Sussex County Comprehensive Plan is hereby amended to change the Parcels currently classified as Tier 4 – System Optional Areas for Sussex County Parcel Nos. 533-11.00-23.00, 23.03 and 23.04 from the Tier 4 – System Optional Areas Sewer Tier designation to the Tier 2 – Sussex County Planning Area designation; Sussex County Parcel Nos. 533-11.00-23.00, 23.03 and 23.04 so changed as 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.








Exhibit A
Ord. 23-01 - Proposed Sewer Tier Amendment from
Tier 4 "System Optional Areas" to Tier 2 "Sussex
County Planning Area"
Tax Parcels: 533-11.00-23.00, 23.03 & 23.04




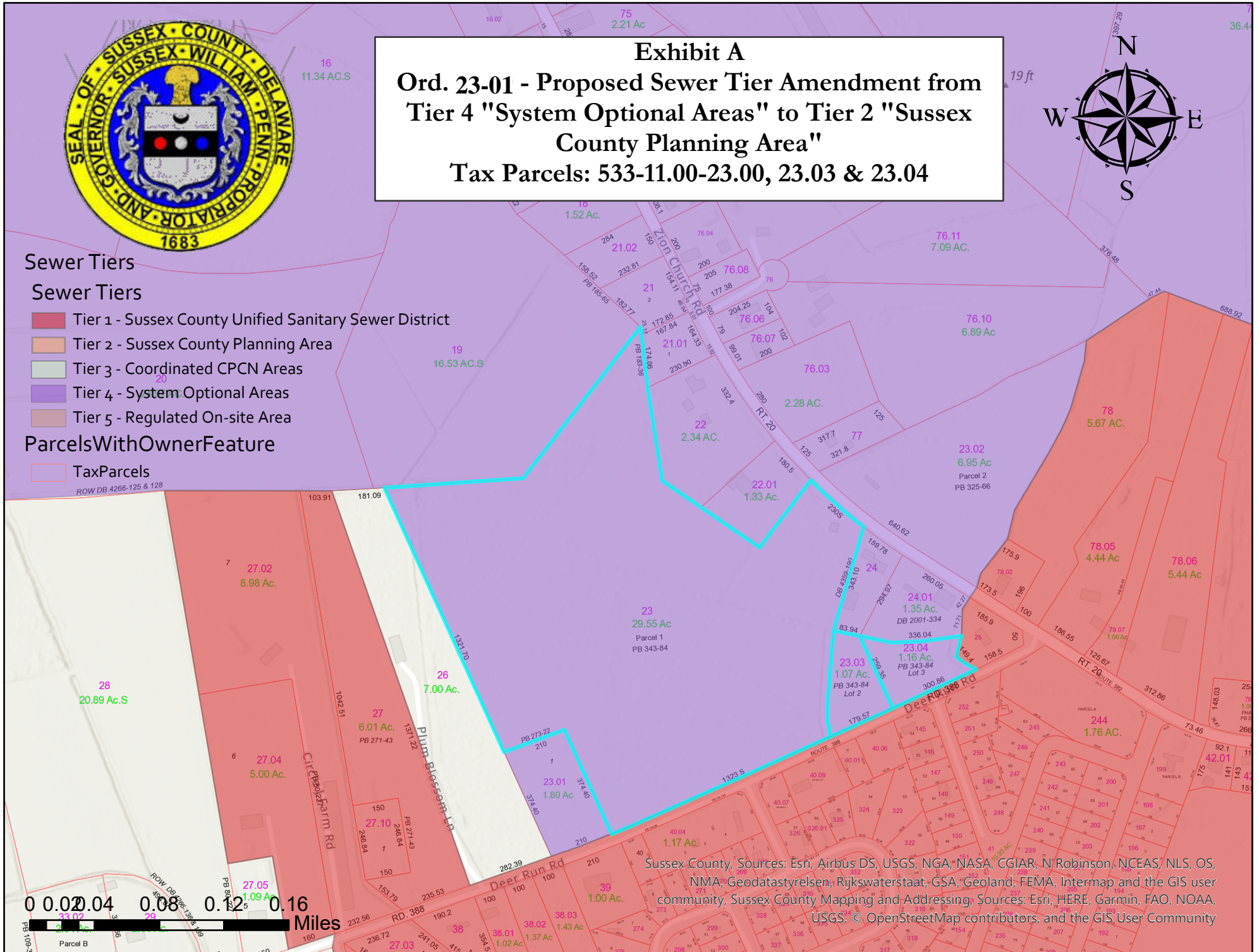
Sewer Tiers

Sewer Tiers

-  Tier 1 - Sussex County Unified Sanitary Sewer District
-  Tier 2 - Sussex County Planning Area
-  Tier 3 - Coordinated CPCN Areas
-  Tier 4 - System Optional Areas
-  Tier 5 - Regulated On-site Area

ParcelsWithOwnerFeature

-  TaxParcels



Sussex County, Sources: Esri, Airbus DS, USGS, NGA, NASA, CGIAR, N Robinson, NCEAS, NLS, OS, NMA, Geodastystrelsen, Rijkswaterstaat, GSA, Geoland, FEMA, Intermap and the GIS user community, Sussex County Mapping and Addressing, Sources: Esri, HERE, Garmin, FAO, NOAA, USGS, © OpenStreetMap contributors, and the GIS User Community

JAMIE WHITEHOUSE, AICP
DIRECTOR OF PLANNING & ZONING
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Sussex County

DELAWARE
sussexcountyde.gov

Memorandum

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

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

CC: Everett Moore, County Attorney

Date: June 16, 2023

RE: County Council Old Business Report for C/U 2346 filed on behalf of TPE DE SU 114, LLC

The Planning and Zoning Department received an application (C/U 2346 filed on behalf of TPE DE SU 114, LLC) for a Conditional Use for parcel 332-7.00-19.00 for a solar farm. The property is located on the north side of Dorothy Road (Rt. 64) and the west side of Sussex Highway (Rt. 13). The parcel size is 63.86 acres +/-.

The Planning & Zoning Commission held a Public Hearing on the application on March 9, 2023. At the meeting of March 23, 2023, the Planning & Zoning Commission recommended approval of the application for the 8 reasons stated and subject to the 11 recommended conditions as outlined within the motion (copied below).

The County Council held a Public Hearing on the application at its meeting of April 25, 2023. At the conclusion of the Public Hearing, action on the application was deferred for further consideration. Below is a link to the minutes of the County Council meeting of April 25, 2023

[Link to the Minutes of the April 25, 2023, County Council Meeting](#)

Below are the minutes from the Planning & Zoning Commission meetings of March 9, 2023 and March 23, 2023.

[Minutes of the March 9, 2023, Planning & Zoning Commission Meeting](#)

C/U 2346 TPE DE SU 114, LLC

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A SOLAR FARM TO BE LOCATED



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

ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LITTLE CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 63.86 ACRES, MORE OR LESS. The property is lying on the north side of Dorothy Road (Rt. 64) and the west side of Sussex Highway (Rt. 13). 911 Address: N/A. Tax Map Parcel: 332-7.00-19.00.

Mr. Whitehouse advised the Commission that submitted into the record were the Staff Analysis, the Exhibit Booklet, the Conceptual Site Plan, the DelDOT Service Level Evaluation Response, and a letter received from the Sussex County Engineering Department Utility Planning Division. Mr. Whitehouse advised the Commission that one mail return and no comments were received for the Application.

The Commission found that Mr. Jon Falkowski, Civil Engineer with Becker Morgan Group, Inc., spoke on behalf of the Application; that also present was Mr. Jordan Belnap, Director of Development with Turning Point Energy. Mr. Falkowski stated that the property is located in Laurel, along Dorothy Rd.; that the proposed use is for a community solar project; that the property is zoned AR-1 (Agricultural Residential); that half of the site is in existing agricultural use; that the remaining half of the site is comprised of existing woodlands; that the existing woodlands are intended to remain; that the solar array area is comprised of just over 20 acres; that when including the proposed buffers the solar array area is comprised of approximately 27 acres of the site; that the total parcel area is just under 74 acres; that they have proposed a 25-ft wide landscaped buffer between the site and adjacent residential properties; that the 25-ft wide landscape buffer will be comprised of 12 trees and 15 understory shrubs, per 100 linear feet of the buffer; that the landscape buffer will surround the site until it ties into the existing woodlands on the rear of the site; that additionally, they are proposing a chain-link fence, being a minimum of seven foot in height, to completely surround the property; that the chain-link fence will have an access gate, containing a Knox box for emergency provisions; that they have allowed area for emergency vehicle turn around; Mr. Belnap did host and attend a community outreach meeting on February 8th, 2023, which was held at the Laurel Fire Department; that the project would not create an increase in traffic; that only one to two maintenance visits per month are anticipated; that the facility will not produce any odors, dust, gas, smoke and/or fumes; that the project will create little to no noise from the power inverters, which are proposed to be centrally located, away from any adjacent residences; that a Glare Study was completed for the site; that the Glare Study indicated there would be no adverse impacts to adjacent properties; that a pollinator seed mix is proposed for the site; that by doing this it will create the existing agricultural land to become a meadow; that the presence of a meadow will reduce stormwater runoff; that they will seek approval from Sussex Conservation District for this; that the project does have a decommissioning plan for when the solar farm has reached the end of its operation life; that the proposed project meets the purposes of a Conditional Use, as the use is of public or semi-public character; that the proposed use is essential and desirable for the general convenience and welfare of Sussex County residents; that the proposed project does promote Goal 7.3 of the Sussex County Comprehensive Plan, which encourages the use of renewable energy and the proposed project will have no adverse impact on any of the neighboring properties.

The Commission found that Mr. Jordan Belnap spoke on behalf of the Application. Mr. Belnap stated that TurningPoint Energy is an experienced solar energy developer, who is active in Delaware, as well as several other U.S. markets; that TurningPoint Energy focuses on developing community solar energy facilities; that TurningPoint believes their projects should create economic, environmental and community value; that their business creates economic value through their community solar projects; that community solar provides ability for residents to subscribe to a solar project, allowing the resident

to receive credits which can be applied to the electric bill; that their business provides environmental value by building facilities that generate clean, renewable energy, which replaces more carbon intensive forms of electricity generation; that their business creates community value by making charitable contributions for every project they do, to organizations who are on the ground and making a difference within their local communities; that on September 17th, 2021, Senate Bill 2 was signed into the law, allowing for the development of community solar facilities; that community solar is a model where residents, businesses, and organizations can subscribe to the facilities, allowing them to receive credits to reduce their electric bill; that the cost of the credit is less than the value of the credit received; that many homeowners have installed solar energy on their homes; that not all residences are suitable for installation of solar energy systems; that community solar allows residents to go solar without the requirement of installing a solar energy system; that community solar is especially appealing to low-income households, condominiums, mobile homes, and properties that may not be well suited for solar energy systems; that it allows a community solar developer to build a cost effective solar farm, being at a lower cost per watt; that it allows the solar developer to pass the savings onto homeowners and businesses in the area; that this project, as well as all of their projects, allows Sussex County residents to source their renewable energy locally, while saving money; that the solar project will not create any long-term increase in traffic; that their solar facilities are remotely monitored; that their facilities do have periodic inspections; that a team would visit the facility if any issue should arise; that the existing vegetation at their facilities is maintained; that one pick-up truck may visit the site monthly, once the facility is in operation; that the local nature of the energy production helps to ease the burden on the transmission system; that energy is used in closer proximity to the point of the generation; that all facility sites are enhanced with pollinator friendly seed mix; that the proposed type of development is not permanent development; that the site is able to return to its existing state at the end of the project's life; that the project will be fully decommissioned, and removed from the premise, at the end of its useful life; that TurningPoint Energy feels the solar project promotes the goal of the Sussex County Comprehensive Plan, as set forth in Goal 7.3, which encourages the use of renewable energy options, such as solar farms, and the solar farm will be a benefit to Sussex County.

Ms. Wingate questioned the location of the proposed access for maintenance vehicles, if the seven-foot fence was proposed around the entire perimeter of the property, and if the pollinator mixed seed will be required to be maintained and cut.

Ms. Stevenson questioned if any of the solar projects had completed their life span to the point of decommissioning and if a bond was set in place to provide financial security for the project.

Mr. Hopkins questioned if sheep were proposed to reside at the site.

Mr. Jon Falkowski stated there is an access road to the west of the property, along Dorothy Rd.; that the access road leads to the location of the inverters, which will be placed away from the residential properties; that the seven-foot chain-link fence is proposed around the entire perimeter of the site; that the fencing is reflected as a green line on the Conceptual Site Plan; that the fence is proposed to be located behind the 25-ft. landscape buffer; that there will be an additional interior buffer before the placement of the solar arrays, and the site would have a schedule in place for the maintenance of the grass.

Mr. Belnap stated that TurningPoint Energy has a 25-year lease on all their solar projects; that none of their solar projects had yet reached the end of their operational lives, therefore project decommissioning had not yet been performed; that they understand financial security had been a part

of previous solar project conditions; that if the Application were approved, they would provide financial security for the decommissioning of the project and they are not proposing sheep to reside on the site.

The Commission found there were two people present in the room who wished to speak in support of the Application.

Mr. Jeff Seemans spoke in support of the Application. Mr. Seemans stated that he intended to speak on a different Application; that he is a current resident in Milton; that conceptually he approved of the proposed use of a solar farm; that he felt solar is the way of the future, relating to energy supply; that the project will hopefully allow Sussex County to ween off of fossil fuels; that he understood half of the site to be comprised of existing woodlands; that he questioned if the Applicant had any plan to preserve the remaining woods, or proffering a conservation easement toward the wooded portion; that no one knows if the solar project would expand, requiring the woods to be cut down; that the Commission is not aware of the leasing conditions; that he questioned if the Applicant is obligated to preserve the woods for the remainder of the lease and he questioned if there was any intention of expanding the project in the future.

Chairman Wheatley stated he understood the property is being leased by TurningPoint Energy, which would not allow them permission to proffer a conservation easement.

Mr. Robertson stated the Commission is not aware of the lease terms; that the Applicant has provided a site plan, proffering the specified area of the property; that if the Applicant wished to expand and/or change the site plan, it would require the Applicant to submit an amended site plan to the Commission; that in doing so, it most likely would trigger an additional public hearing; that the Commission is dealing with the lease-hold tenant of the property; that the current property owner could cut the trees down and it would have no relation to the subject Conditional Use.

Chairman Wheatley granted the Applicant the ability to provide comments if desired but advised the Applicant it is not required as the question is beyond the scope of the proposed Conditional Use.

Mr. Belnap and Mr. Jon Falkowski did not provide any additional comments.

Mr. Ed Markiewicz spoke in support of the Application. Mr. Markiewicz stated that he resides across the street from the project with the Little Acres community; that many people within the community already have solar systems installed on their homes; that he had questions on how the project provides financial credit to residents; that he questioned why the project would need the woodland area and he supported the Application as he would rather see a solar farm than a Royal Farms.

The Commission found there was one person present in the room who wished to speak in opposition to the Application.

Mr. Randall Wood spoke in opposition to the Application. Mr. Wood stated that he had resided along Dorothy Rd. for the past 25 years; that during that time he had the view of a beautiful field; that he had concerns about what view will now be seen; that he questioned if he will be seeing a landscaped buffer or a prison-style fence across the street and he questioned how long the landscaping will take to mature.

Mr. Falowski stated Mr. Wood would be looking at the landscape buffer; that the landscape buffer is comprised of 12 evergreen trees and 15 shrubs per every 100 linear feet; that depending on the width of Mr. Wood's lot he could be looking at 12 to 24 evergreen trees, with 15 to 30 shrubs, which would make up the landscape buffer; that the trees will start as two and a half inch caliber trees, being a minimum of seven to nine feet; that Sussex County does have landscape buffer requirements, relating to minimum tree sizes, which the buffer must comply with; that the trees will take time to grow into full maturity; that the planted trees will be a good size; that the trees will not be saplings and he cannot provide an exact growth rate.

Chairman Wheatley stated the Commission has the authority to require the placement of any tree(s) that may die within the buffer areas and that the Applicant is required to maintain the landscape buffer as it is required by the Code.

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

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

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

In relation to C/U 2346 TPE DE SU114, LLC. Motion by Ms. Wingate to defer action for further consideration, seconded by Ms. Stevenson and carried unanimously. Motion carried 4-0.

Minutes of the March 9, 2023, Planning & Zoning Commission Meeting

The Commission discussed the Application which had been deferred since March 9, 2023.

Mr. Mears moved that the Commission recommend approval of C/U 2346 for TPE DE SU114, LLC for a solar farm in the AR-1 District based on the record made during the public hearing and for the following reasons:

1. The proposed facility is a public utility use under the Sussex County Zoning Code, and it meets the purposes of a Conditional Use because it has a public or semi-public character that is essential and desirable for the general convenience and welfare of Sussex County residents.
2. This is an adaptive use of farmland that will preserve it from more intensive development. The solar farm will be located on approximately 27 acres of a larger 63.86-acre tract.
3. The proposed facility promotes Goal 7.3 of the Sussex County Comprehensive Plan which encourages the use of renewable energy options such as solar farms. There was testimony that this solar farm will benefit residential, business, and municipal subscribers with lower power costs.
4. With the conditions imposed in this recommendation including landscaped buffers, the proposed use will not have any adverse impact on the neighborhood. In addition, there is information in the record that solar facilities do not have a negative impact upon adjacent property values.

5. The proposed solar generation facility will not result in any noticeable increase in traffic on area roadways. There are no regular employees at the site, only periodic visits for inspections, maintenance, or repair of the solar panels.
6. Based upon the testimony in the record, it is evident that no significant noise, glare, dust, or odor will be generated by the facility.
7. There will be a buffer of planted vegetation along the east and south sides of this site to screen the view of the solar farm from the nearby residential properties while allowing the solar arrays to function properly. The trees on the northern and western sides of the property will be maintained.
8. The proposed use provides a renewable energy source that is a benefit to the residents and businesses of Sussex County.
9. This recommendation is subject to the following conditions:
 - A. The use shall be for a ground-mounted solar farm. No other types of electric generation shall be permitted at the site.
 - B. The Final Site Plan shall clearly show the limits of the Conditional Use area for this solar farm as well as the remaining acreage that is not part of this Conditional Use.
 - C. Any lighting on the facility shall only consist of perimeter lighting needed for security purposes. All lighting shall be downward screened so that it does not shine on neighboring properties or roadways.
 - D. One unlit sign, not to exceed 32 square feet in size, shall be permitted. The sign shall identify the operator of the solar farm and shall provide contact information in case of emergency.
 - E. The site shall be secured by fencing with a gate with a “Knox Box” or similar device to accommodate emergency access by the local fire company or other emergency responders. The fence line shall be shown on the Final Site Plan.
 - F. Any transformers or similar equipment or structures shall be centrally located on the site away from any nearby residential uses. The location of these structures and equipment shall be shown on the Final Site Plan.
 - G. The entire site, including the area outside the fence, shall be maintained so that it does not become overgrown.
 - H. Stormwater management and erosion and sedimentation control facilities shall be constructed in accordance with all applicable State and County requirements. These facilities shall be operated using Best Management Practices.
 - I. There shall be a 25-foot-wide buffer of planted vegetation along the eastern and southern sides of the solar area. These buffer areas shall be clearly shown on the Final Site Plan. These buffers shall screen solar arrays while allowing the solar arrays to function properly. As stated by the Applicant, this planted area shall include 12 trees and 15 understory shrubs per 100 linear feet. The trees shall be at least 9 feet tall with a caliper of at least 2.5 inches at the time of planting.
 - J. The Final Site Plan shall identify a Decommissioning Plan that includes a financial security to ensure that funds are available for decommissioning and removal of the solar farm in its entirety throughout the life of the Conditional Use.

K. 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. Stevenson and carried unanimously to recommend approval of C/U 2346 TPE DE SU114, LLC for the reasons and conditions stated in the motion. Motion carried 3-0.

Vote by roll call: Ms. Stevenson – yea, Mr. Mears – yea, Chairman Wheatley - yes

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



Sussex County

DELAWARE
sussexcountyde.gov

Memorandum

To: Sussex County Planning and Zoning Commission Members
From: Elliott Young, Planner I
CC: Mr. Vince Robertson, Assistant County Attorney and Applicant
Date: February 20, 2023
RE: Staff Analysis for CU 2346 TPE DE SU114, LLC

The purpose of this memo is to provide background and analysis for the Planning and Zoning Commission to consider as a part of Application CU 2346 (TPE DE SU114, LLC) to be reviewed during the March 9th, 2023 Planning and Zoning 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: 332-7.00-19.00 to allow for a solar array farm. The property is lying on the north side of Dorothy Road (Rt. 64) and on the west side of Sussex Highway (Rt. 13), approximately 0.52-miles east of the intersection of Bi State Boulevard (S.C.R. 13A) and Dorothy Road. The applicant is applying for all 63.86 acres +/- to be included in the Conditional Use area.

Comprehensive Plan Analysis

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

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

Zoning Information

The subject property is zoned Agricultural Residential (AR-1) District. Almost all adjacent properties to the north, south, west and east of the subject property are zoned Agricultural Residential (AR-1) District. The only property adjoining the subject parcel that is not within the Agricultural Residential (AR-1) District, is parcel 332-7.00-18.00 directly south of the subject Parcel. Parcel 18.00 is zoned Neighborhood Business (B-1) District.



Existing Conditional Uses within the Vicinity of the Subject Property

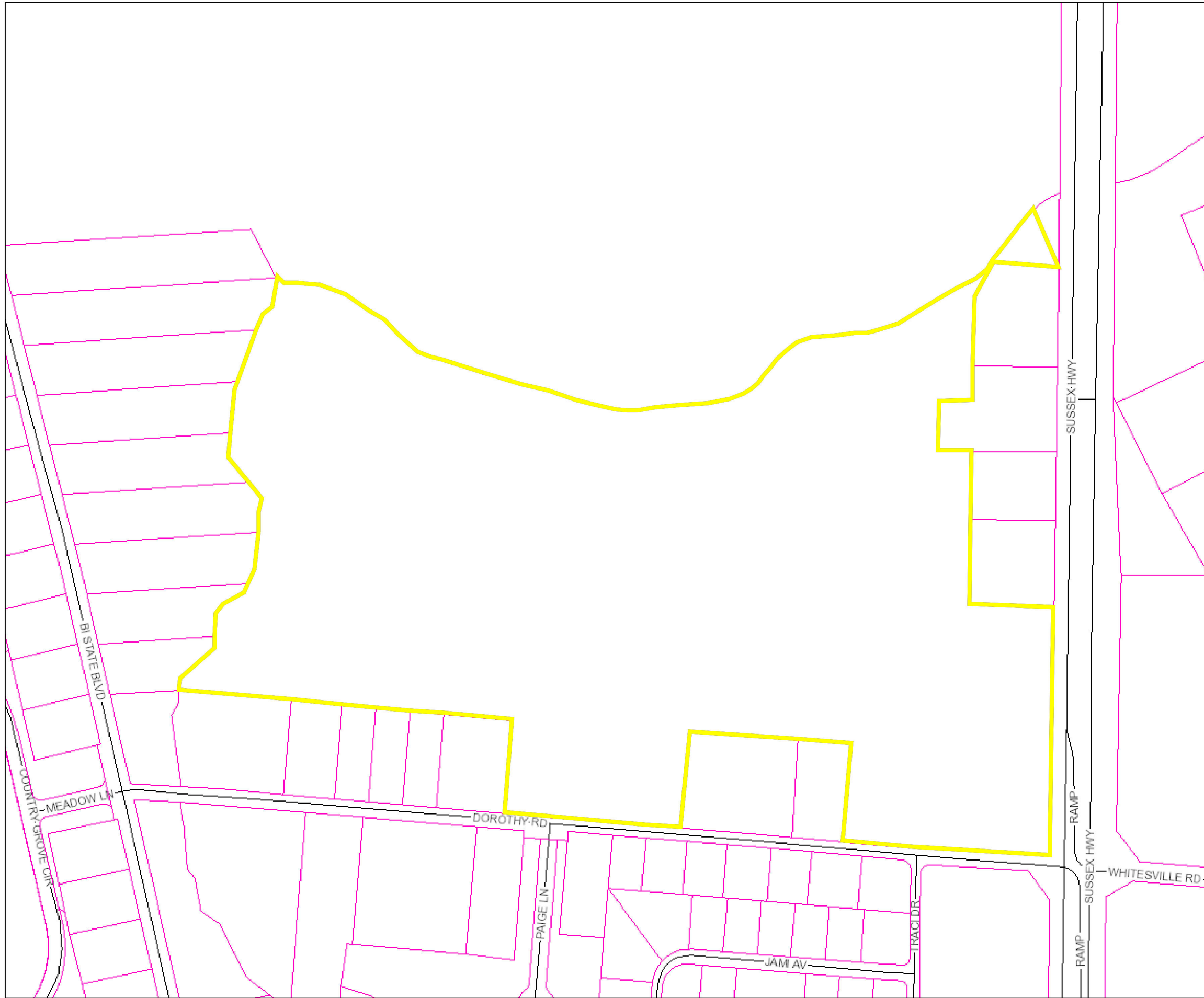
Since 2011, there have been five (5) Conditional Use applications within a one (1) mile radius of the Application Site.

CU	Applicant	Proposed Use	CC Decision Date	Ordinance No.
1971	Greg N. Johnson	Countertop Manufacturing Business	12/3/2013	2329
2224	Pamela Price	Real Estate Office	6/9/2020	2714
2386	Consolidated Edison Development, Inc.	Solar Farm	N/A	N/A (Public hearings not held yet)
2387	Consolidated Edison Development, Inc.	Solar Farm	N/A	N/A (Public hearings not held yet)
2408	Efren Fernando Acevedo	Car Dealership	N/A	N/A (Public hearings not held yet)

Based on the analysis provided, the Conditional Use to allow for solar farm in this location could be considered as being consistent with the surrounding land use, zoning, and uses, subject to considerations of scale and impact.



Sussex County



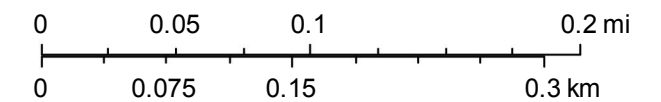
PIN:	332-7.00-19.00
Owner Name	IVA J BOARDMAN TTEE
Book	5659
Mailing Address	2215 NASSAU DR
City	WILMINGTON
State	DE
Description	N/RT 64
Description 2	W/RT 13
Description 3	FX
Land Code	

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 - Override 1
- polygonLayer**

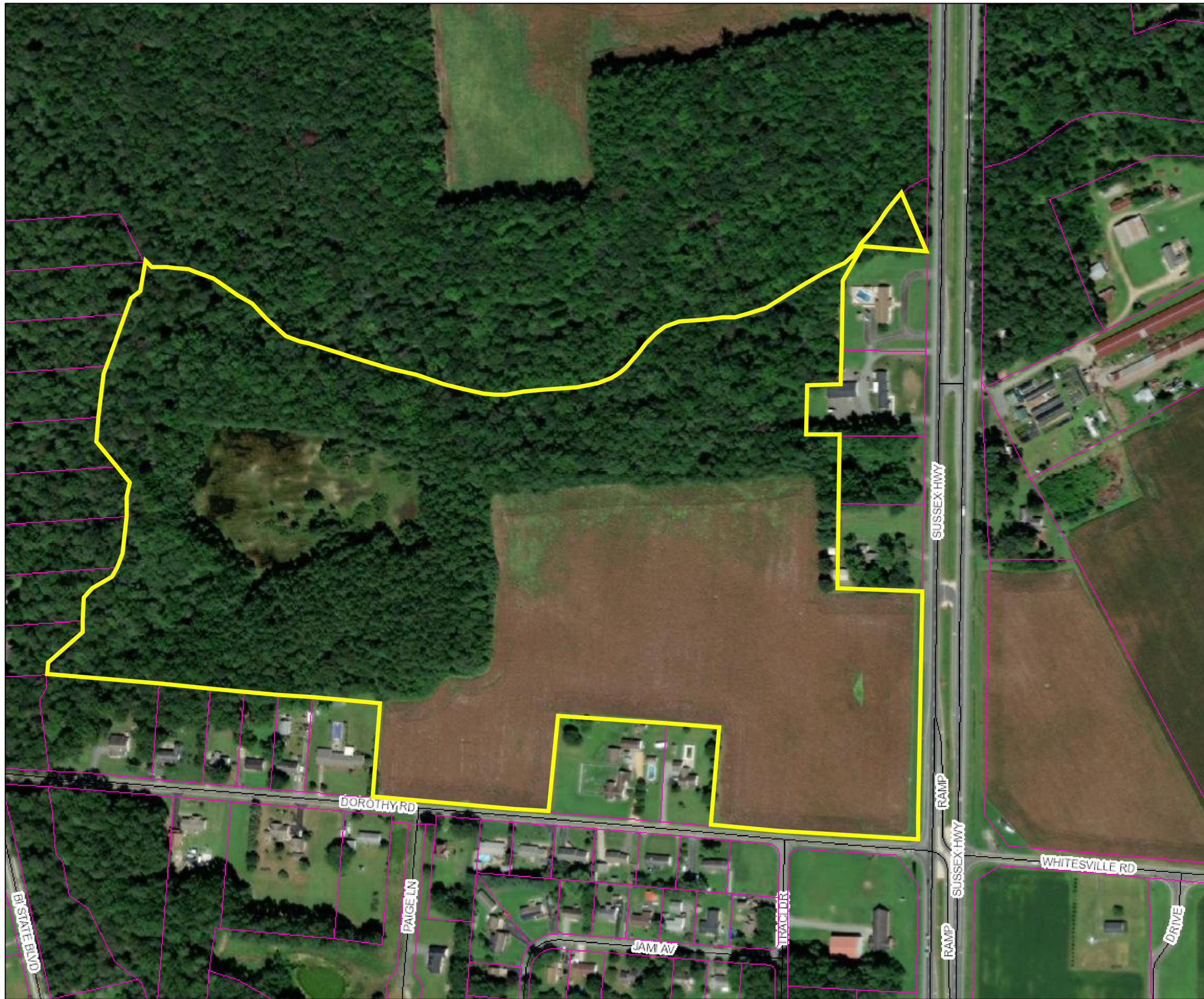
 - Override 1
- ⋯ Tax Parcels
- Streets
- ⋯ County Boundaries

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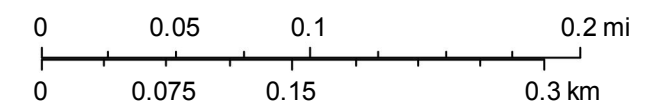
Sussex County



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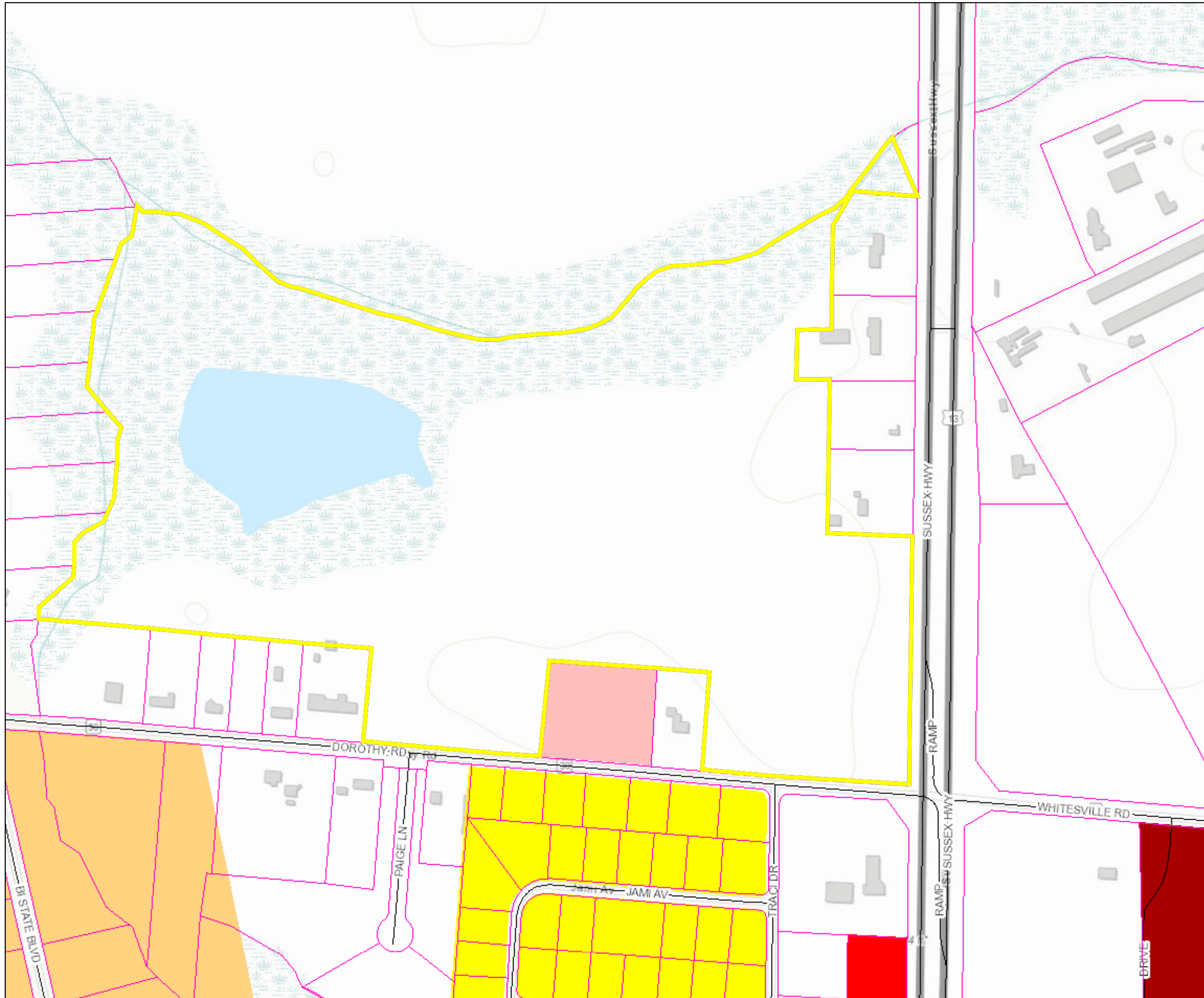
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Sussex County



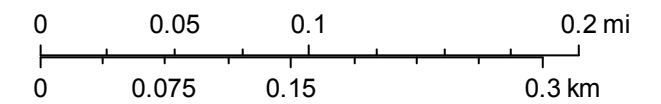
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- polygonLayer**

 - Override 1
- polygonLayer**

 - Override 1
- Tax Parcels
- Streets

1:4,514



Introduced: 05/17/2022

Council District 1: Mr. Vincent
Tax I.D. No. 332-7.00-19.00
911 Address N/A

ORDINANCE NO. ____

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

WHEREAS, on the 7th day of February 2022, a conditional use application, denominated Conditional Use No. 2346 was filed on behalf of TPE DE SU114, LLC; and

WHEREAS, on the ____ day of _____ 2022, a public hearing was held, after notice, before the Planning and Zoning Commission of Sussex County and said Planning and Zoning Commission recommended that Conditional Use No. 2346 be _____; and

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

NOW, THEREFORE, THE COUNTY OF SUSSEX HEREBY ORDAINS:

Section 1. That Chapter 115, Article IV, Subsection 115-22, Code of Sussex County, be amended by adding the designation of Conditional Use No. 2346 as it applies to the property hereinafter described.

Section 2. The subject property is described as follows:

ALL that certain tract, piece or parcel of land, lying and being situate in Little Creek Hundred, Sussex County, Delaware, and lying on the north side of Dorothy Road (Rt. 64) and the west side of Sussex Highway (Rt. 13) at the intersection of Dorothy Road (Rt. 64) and Sussex Highway (Rt. 13) and being more particularly described in the attached legal description prepared by Kevin A. O'Brien, Esq., said parcel containing 63.86 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.



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 16, 2023

RE: County Council Old Business Report for C/U 2347 filed on behalf of TPE DE SU94, LLC

The Planning and Zoning Department received an application (C/U 2347 filed on behalf of TPE DE SU94, LLC) for a Conditional Use for parcel 230-12.00-39.00 for a solar farm. The property is located on the east side of North Old State Road (SCR 213), approximately 0.1 mile north of the intersection of Haflinger Road (SCR 625). The parcel size is 39.33 acres +/-.

The Planning & Zoning Commission held a Public Hearing on the application on March 9, 2023. At the meeting of March 23, 2023, the Planning & Zoning Commission recommended approval of the application for the 8 reasons stated and subject to the 9 recommended conditions as outlined within the motion (copied below).

The County Council held a Public Hearing on the application at its meeting of April 25, 2023. At the conclusion of the Public Hearing, action on the application was deferred for further consideration. Below is a link to the minutes of the April 25, 2023 County Council meeting.

[Link to the minutes of the April 25, 2023, County Council Meeting](#)

Below are the minutes from the Planning & Zoning Commission meetings of March 9, 2023 and March 23, 2023.

[Minutes of the March 9, 2023, Planning & Zoning Commission Meeting](#)

C/U 2347 TPE DE SU94, LLC

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A SOLAR FARM TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN CEDAR CREEK



HUNDRED, SUSSEX COUNTY, CONTAINING 39.33 ACRES, MORE OR LESS. The property is lying on the east side of North Old State Road (S.C.R. 213), approximately 0.10 mile north of the intersection of Haflinger Road (S.C.R. 625). 911 Address: N/A. Tax Map Parcel: 230-12.00-39.00.

Mr. Whitehouse advised the Commission that submitted into the record were the Exhibit Booklet, the Conceptual Site Plan, the DelDOT Service Level Evaluation Response, and a letter received from the Sussex County Engineering Department Utility Planning Division. Mr. Whitehouse advised the Commission zero comments were received for the Application.

Chairman Wheatley granted permission to include the testimony provided from the public hearing for C/U 2346 TPE DE SU114, LLC, to be incorporated into the public hearing for C/U 2347 TPE DE SU94, LLC, as requested by the Applicant, as the two applications had substantial similarities in their proposed uses as solar farms.

The Commission found that Mr. Jon Falkowski, Civil Engineer with Becker Morgan Group, Inc., spoke on behalf of the Application; that also present was Mr. Jordan Belknap, Director of Development with TurningPoint Energy. Mr. Falkowski stated that there were not many differentiators between the previous solar project application and the subject Application; that the subject site is located in Lincoln, on a parcel comprised of 41 acres; that the portion proposed for the solar project is comprised of 18 acres; that they have modified the solar array layout from what was initially submitted; that the modification came after discussions with the property owner, to avoid an existing irrigation pivot, located at the center of the site; that by avoiding the pivot it would allow existing full irrigation and farming operations to continue on the site; that the site has maintenance accesses along two roads, being N Old State Rd. and Lofland Dr.; that they will seek approval from DelDOT for entrance permits; that the site is mostly surrounded by agricultural uses, therefore they are not proposing a landscape buffer on the site; that they are proposing a chain-link fence, being a minimum of seven foot in height, to completely surround the property; that the chain-link fence will have an access gate, containing a Knox box for emergency provisions; that they have allowed area for emergency vehicle turn around; that Mr. Belnap did host and attend a community outreach meeting on February 7th, 2023; that the project will not create any increase in traffic; that only one to two maintenance visits per month are anticipated; that the facility will not produce any odors, dust, gas, smoke and/or fumes; that the project will create little to no noise from the power inverters, which are proposed to be centrally located, away from any adjacent residences; that a Glare Study was completed for the site; that the Glare Study indicated that there would be no adverse impacts to adjacent properties; that a pollinator seed mix is proposed for the site; that by doing this it will create the existing agricultural land to become a meadow; that the presence of a meadow will reduce stormwater runoff; that they will seek approval from Sussex Conservation District for this; that a seven foot chain-link fence is proposed to surround the site; that the project does have a decommissioning plan for when the solar farm has reached the end of its operation life; that the proposed project meets the purposes of a Conditional Use, as the use is of public or semi-public character; that the proposed use is essential and desirable for the general convenience and welfare of Sussex County residents; that the proposed project does promote Goal 7.3 of the Sussex County Comprehensive Plan, which encourages the use of renewable energy and the proposed project will have no adverse impact on any of the neighboring properties.

Chairman Wheatley questioned if the intention is to provide a Conditional Use for the entire acreage of the site or to provide a Conditional Use to only the boundary of the solar arrays.

Mr. Whitehouse advised the Commission that staff typically place the total acreage within the advertised short title; that on some previous solar farm applications, staff had sought to clarify the short title to the acreage proposed for the use, and staff, in an abundance of caution, always use the larger amount of acreage for the legal advertisement.

The Commission found Mr. Jordan Belnap spoke on behalf of the Application. Mr. Belnap stated that TurningPoint Energy is an experienced solar energy developer, who is active in Delaware, as well as several other U.S. markets; that TurningPoint Energy focuses on developing community solar energy facilities; that TurningPoint believes their projects should create economic, environmental and community value; that their business creates economic value through their community solar projects; that community solar provides ability for residents to subscribe to a solar project, allowing the resident to receive credits which can be applied to the electric bill; that their business provides environmental value by building facilities that generate clean, renewable energy, which replaces more carbon intensive forms of electricity generation; that their business creates community value by making charitable contributions for every project they do, to organizations who are on the ground and making a difference within their local communities; that on September 17th, 2021, Senate Bill 2 was signed into the law, allowing for the development of community solar facilities; that community solar is a model where residents, businesses, and organizations can subscribe to the facilities, allowing them to receive credits to reduce their electric bill; that the cost of the credit is less than the value of the credit received; that many homeowners have installed solar energy on their homes; that not all residences are suitable for installation of solar energy systems; that community solar allows residents to go solar without the requirement of installing a solar energy system; that community solar is especially appealing to low-income households, condominiums, mobile homes, and properties that may be not well suited for solar energy systems; that it allows a community solar developer to build a cost effective solar farm, being at a lower cost per watt; that it allows the solar developer to pass the savings onto homeowners and businesses in the area; that this project, as well as all of their projects, allows Sussex County residents to source their renewable energy locally, while saving money; that the solar project will not create any long-term increase in traffic; that their solar facilities are remotely monitored; that their facilities do have periodic inspections; that a team would visit the facility if any issue should arise; that the existing vegetation at their facilities is maintained; that one pick-up truck may visit the site monthly, once the facility is in operation; that the local nature of the energy production helps to ease the burden on the transmission system; that energy is used in closer proximity to the point of the generation; that all facility sites are enhanced with pollinator friendly seed mix; that the proposed type of development is not permanent development; that the site is able to return to its existing state at the end of the project's life; that the project will be fully decommissioned, and removed from the premise, at the end of its useful life; that TurningPoint Energy feels the solar project promotes the goal of the Sussex County Comprehensive Plan, as set forth in Goal 7.3, which encourages the use of renewable energy options, such as solar farms, and the solar farm will be a benefit to Sussex County.

Mr. Hopkins questioned what type of fencing was proposed for the property; that he expressed concern that a buffer was not proposed relating to the circumstance the property would be purchased for residential use in the future.

Mr. Falkowski stated the proposed fence would be a chain-link fence and the proposed height is seven feet, as any height above that would require a variance.

The Commission found there was one person present in the room who wished to speak in support of

the Application.

Mr. Collin Ennis spoke in support of the Application. Mr. Ennis stated he represented the Ennis family who are the owners of the proposed property; that also present were his grandmother and his uncle; that his father, as well as other family members were present via teleconference; that the proposed land had been in the Ennis family for generations; that his great grandfather, Mr. Woodrow Morgan, was a farmer, an entrepreneur, and a community leader; that his great grandfather farmed the land, as well as ran a tractor service business, located in Lincoln, for many years; that his great grandfather was the Sussex County Register of Wills in the 1950s and 1960s; that the land was passed to his grandmother, Ms. Joyce Ennis; that the property had been held within a family trust in the past few years; that for the past 40 years, his grandmother had worked to keep the land in the family, using the land for the values that the family holds; that Ms. Ennis' three sons had spent their summers growing up alongside Mr. Morgan on the farm, embodying Mr. Morgan's love for tinkering; that his father, Mr. Randy Ennis, owns a technology company, Response Computer Group, located in Milford; that his uncle, Mr. Kurt Ennis, is a Lead Programmer for Response Computer Group; that he, himself, currently works for Response Computer Group as the Leader of Operations; that his uncle, Mr. Brian Ennis, had been a mechanic and team leader for DelDOT, DART and the City of Dover; that all three have constructed gardens at their homes, where they farm on a small scale; that the next generation, being his generation, are in the early stages of their careers, where they are pursuing passions in technology and horticulture; that they hold careers as a Landscaper with Baywoods, Mechanical Service Education and medical positions within Sussex County; that they were all driven on their career paths by the core values the family shares; that the land had been used for farming for generations; that when the opportunity came to develop a portion of the land for solar energy and green energy production, they were enticed by the ability to keep the land for farming purposes currently and in the future; that once the project life cycle is complete, they would be able to farm the property once again; that the undercover under the panels will not be rocks, as it appears in other locations; that the family performed due diligence with other companies; that they understood the success record that TurningPoint Energy had in the past, in working with land owners and the community to ensure the projects are a success; that the family believed the proposed use would be a great use of the land, by performing an important service for the community; that the proposed project will generate enough power for roughly 300 homes; that the newest generation of the family has started; that his daughters will be attending Kindergarten down the street from the property and he is looking forward to passing the family farm, showing his children the blend of technology and farming that the family has had.

The Commission found that one person was present in the room who wished to speak in opposition to the Application.

Ms. Deborah Morgan spoke in opposition to the Application. Ms. Morgan stated that she owns the property adjacent to the Ennis property; that much like the Ennis family, her husband's family had been farming for 100 years; that she is not opposed to clean energy in any respect; that she felt it is inappropriate to take productive agricultural land to use for a solar project; that the proposed use is not a farm, it is a project; that her husband rented the property from Ms. Ennis for many years; that once her husband retired, someone else began to till the land on their behalf; that her husband had since passed away; that the proposed use will interfere with her irrigation systems, which were placed on the property with Ms. Ennis's approval; that TurningPoint Energy had promised her they would address her concerns relating to the irrigation; that the proposed project will impact the farmer who is currently tilling the land, by impacting his total tillable acreage and as a result the farmer's income,

as well as her income will be impacted.

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

Upon there being no further questions, Chairman Wheatley closed the public hearing. At the conclusion of the public hearing, the Commission discussed the Application.

In relation to C/U 2347 TPE DE SU94, LLC. Motion by Mr. Hopkins to defer action for further consideration, seconded by Ms. Stevenson and carried unanimously. Motion carried 4-0.

Minutes of the March 23, 2023, Planning & Zoning Commission Meeting

The Commission discussed the Application which had been deferred since March 9, 2023.

Ms. Stevenson moved that the Commission recommend approval of C/U 2347 TPE DE SU 94, LLC for a solar farm in the AR-1 District based on the record made during the public hearing and for the following reasons:

1. The proposed facility is a public utility use under the Sussex County Zoning Code, and it meets the purposes of a Conditional Use because it has a public or semi-public character that is essential and desirable for the general convenience and welfare of Sussex County residents.
2. This is an adaptive use of farmland that will preserve it from more intensive development. The solar farm will be located on approximately 18 acres of a larger 39.76-acre tract.
3. The proposed facility promotes Goal 7.3 of the Sussex County Comprehensive Plan which encourages the use of renewable energy options such as solar farms. There was testimony that this solar farm will benefit residential, business, and municipal subscribers with lower power costs.
4. With the conditions imposed in this recommendation, the proposed use will not have any adverse impact on the neighboring or adjacent properties and there are no homes in close proximity to this site. In addition, there is information in the record that solar facilities do not have a negative impact upon adjacent property values.
5. The proposed solar generation facility will not result in any noticeable increase in traffic on area roadways. There are no regular employees at the site, only periodic visits for inspections, maintenance, or repair of the solar panels.
6. Based upon the testimony in the record, it is evident that no significant noise, dust, glare, or odor will be generated by the facility.
7. The site is surrounded by land that is actively farmed. As a result, no buffer is required.
8. The proposed use provides a renewable energy source that is a benefit to the residents and businesses of Sussex County.
9. This recommendation is subject to the following conditions:
 - A. The use shall be for a ground-mounted solar farm. No other types of electric generation shall be permitted at the site.

- B. Any lighting on the facility shall only consist of perimeter lighting needed for security measures. All lighting shall be downward screened so that it does not shine on neighboring properties or roadways.
- C. One unlit sign, not to exceed 32 square feet in size, shall be permitted. The sign shall identify the operator of the solar farm and shall provide contact information in case of emergency.
- D. The site shall be secured by fencing with a gate with a “Knox Box” or similar device to accommodate emergency access by the local fire company or other emergency responders. The fence line shall be shown on the Final Site Plan.
- E. Any transformers or similar equipment or structures shall be centrally located on the site away from any nearby residential uses. The location of these structures and equipment shall be shown on the Final Site Plan.
- F. The entire site, including the area outside the fence, shall be maintained so that it does not become overgrown.
- G. Stormwater management and erosion and sedimentation control facilities shall be constructed in accordance with all applicable State and County requirements. These facilities shall be operated using Best Management Practices.
- H. The Final Site Plan shall identify a Decommissioning Plan that includes a financial security to ensure that funds are available for decommissioning and removal of the solar farm in its entirety throughout the life of the Conditional Use.
- I. 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. Mears and carried unanimously to recommend approval of C/U 2347 TPE DE SU94, LLC for the reasons and conditions stated in the motion. Motion carried 3-0.

Vote by roll call: Ms. Stevenson – yea, Mr. Mears – yea, Chairman Wheatley – yea

PLANNING & ZONING COMMISSION

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



Sussex County

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

PLANNING AND ZONING AND COUNTY COUNCIL INFORMATION SHEET
Planning Commission Public Hearing Date: March 9th, 2023

Application: CU 2347 TPE DE SU94, LLC

Applicant: TPE DE SU94, LLC c/o Adam Beal
3720 South Dalia Street
Denver, CO 80237

Owner: Randall W. & Joyce E. Ennis
37487 Liverpool Lane
Rehoboth Beach, DE 19971

Site Location: East side of North Old State Road (S.C.R. 213), approximately 0.10 mile north of the intersection of Haflinger (S.C.R. 625)

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

Proposed Zoning: No zoning change proposed

Proposed Use: Conditional Use for a Solar Farm

Comprehensive Land Use Plan Reference: Low Density

Councilmanic District: Ms. Green

School District: Milford School District

Fire District: Ellendale Fire District

Sewer: N/A

Water: N/A

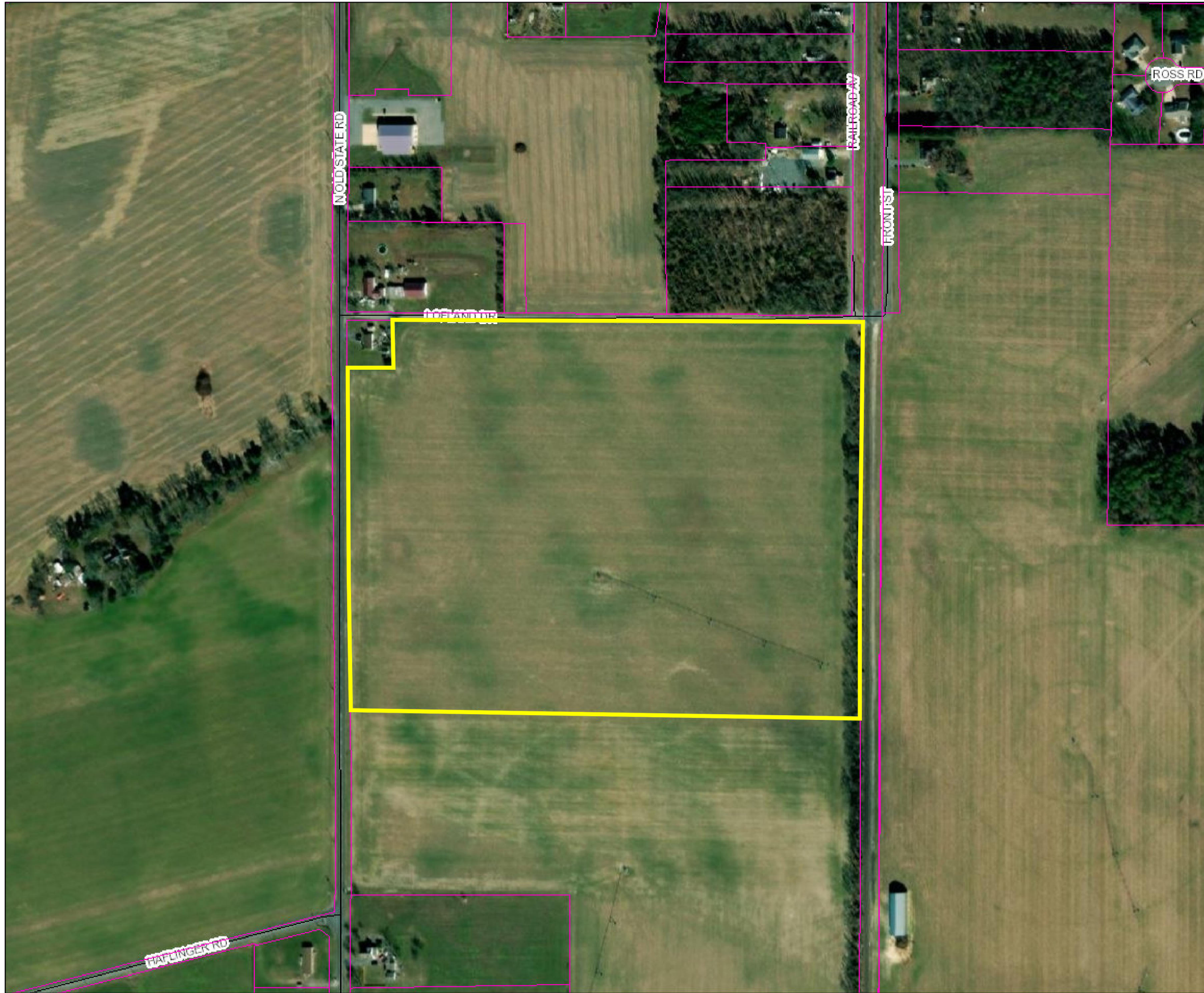
Site Area: 39.33 acres +/-

Tax Map ID: 230-12.00-39.00





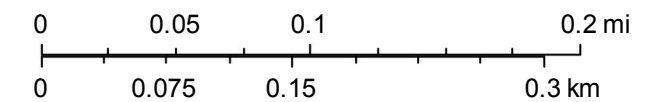
Sussex County



PIN:	230-12.00-39.00
Owner Name	ENNIS RANDALL W TTEE
Book	4753
Mailing Address	37487 LIVERPOOL LN
City	REHOBOTH BEACH
State	DE
Description	E/RT 213 S/RT 38 A
Description 2	N/A
Description 3	N/A
Land Code	

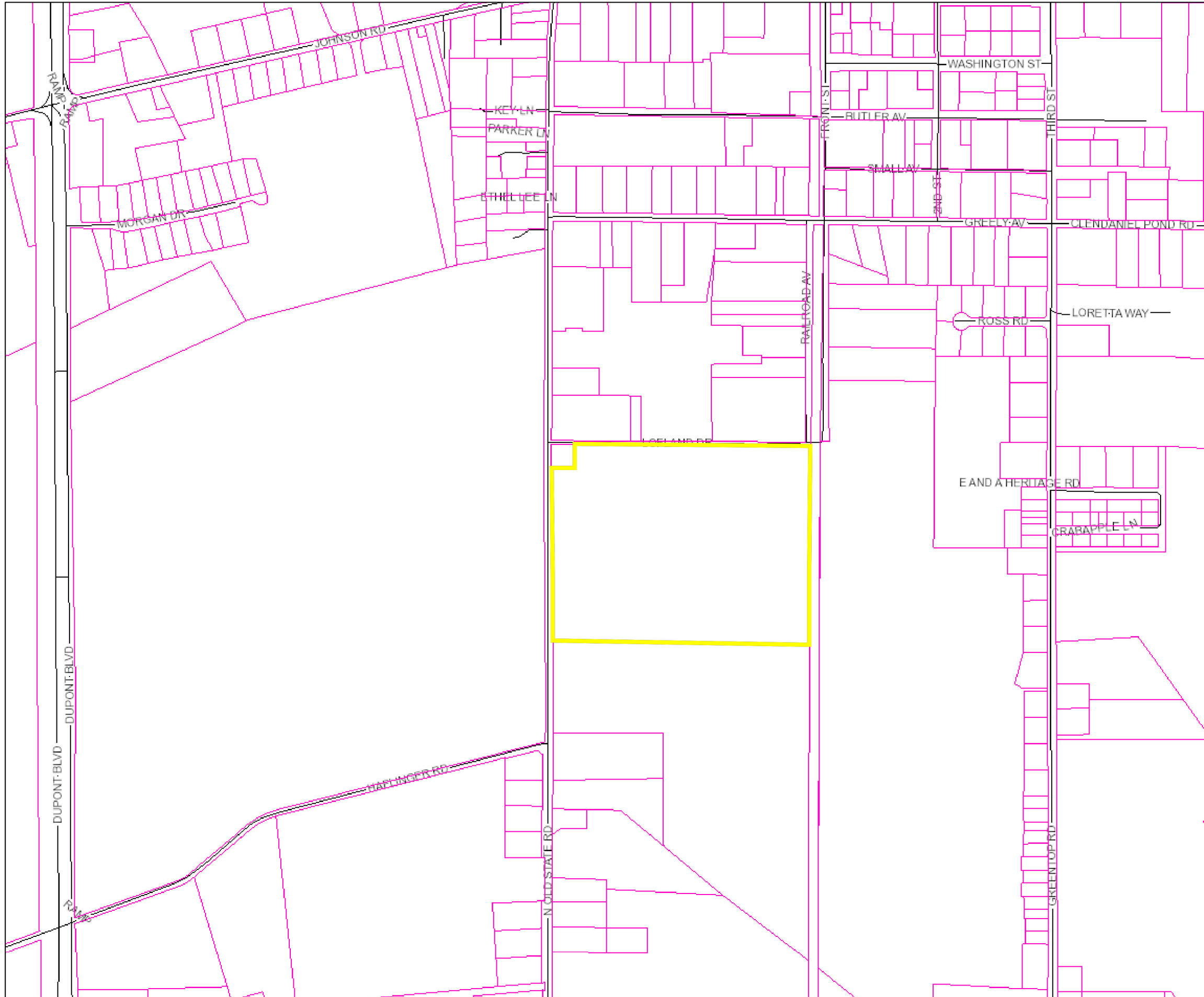
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- Tax Parcels
- Streets
- County Boundaries

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Sussex County



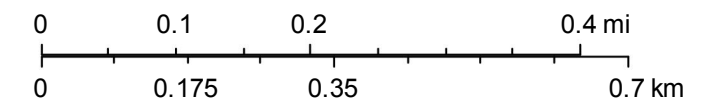
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- polygonLayer

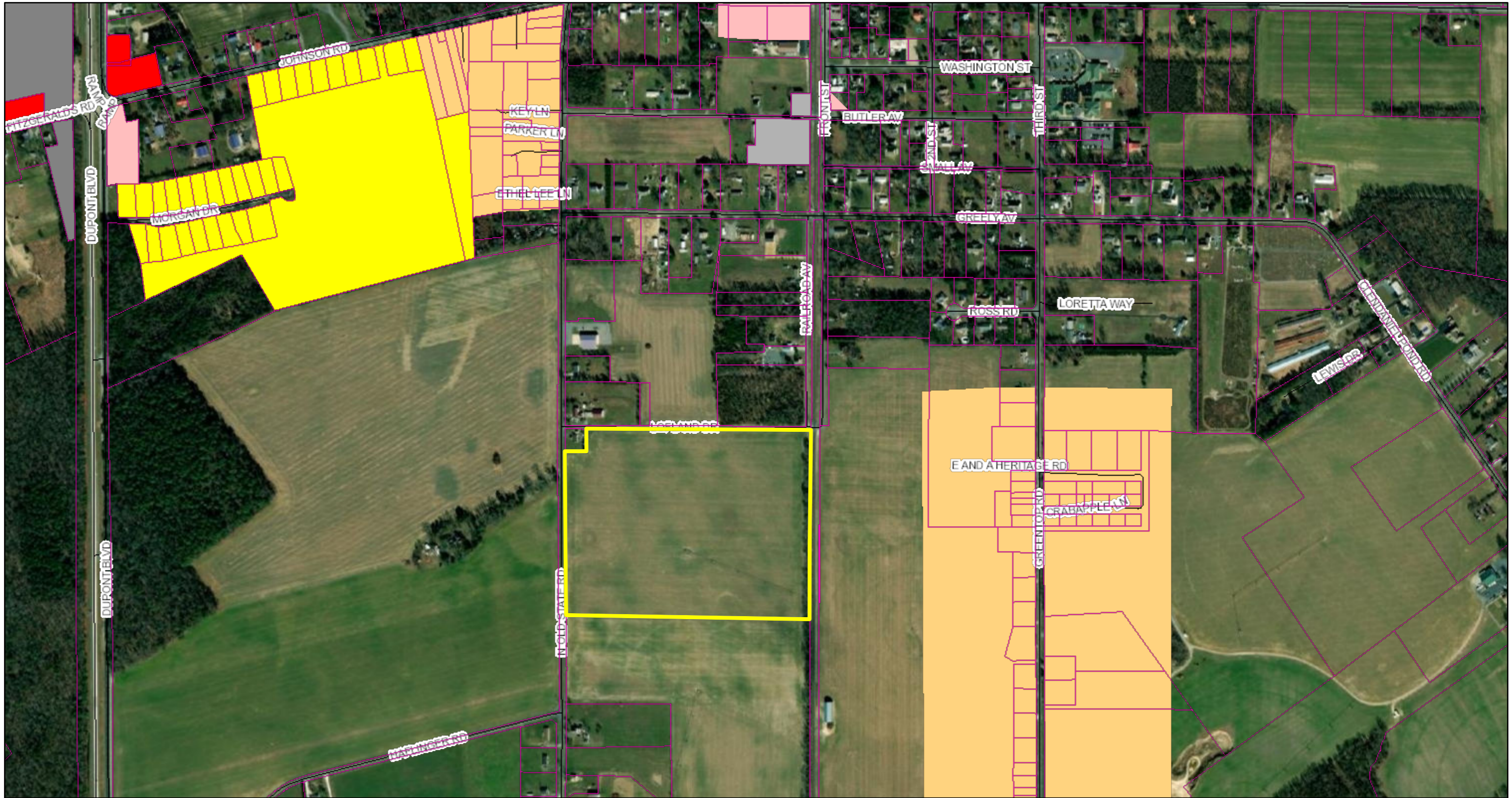
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Override 1
- ⋯ Tax Parcels
- Streets
- ⋯ County Boundaries

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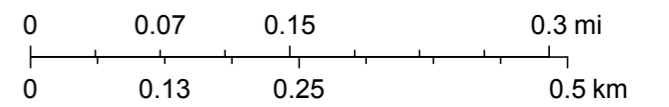
Sussex County



February 6, 2023

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- | | | | | |
|---------------------------------|----------------------------------|-----------------------------|-------------------------------|-------------------------|
| Override 1 | Agricultural Residential - AR-2 | Neighborhood Business - B-1 | General Commercial - C-4 | Light Industrial - LI-2 |
| Override 1 | Medium Residential - MR | Neighborhood Business - B-2 | General Commercial - C-5 | Heavy Industrial - HI-1 |
| Tax Parcels | General Residential - GR | Business Research - B-3 | Commercial Residential - CR-1 | County Boundaries |
| Streets | High Density Residential - HR-1 | General Commercial - C-1 | Institutional - I-1 | |
| Zoning | High Density Residential - HR-2 | General Commercial - C-2 | Marine - M | |
| Agricultural Residential - AR-1 | Vacation, Retire, Resident - VRP | General Commercial - C-3 | Limited Industrial - LI-1 | |



Sussex County, Sussex County Government, Maxar

Introduced: 05/24/22

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

ORDINANCE NO. ____

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

WHEREAS, on the 7th day of February 2022, a conditional use application, denominated Conditional Use No. 2347 was filed on behalf of TPE DE SU94, LLC; and

WHEREAS, on the ____ day of _____ 2022, a public hearing was held, after notice, before the Planning and Zoning Commission of Sussex County and said Planning and Zoning Commission recommended that Conditional Use No. 2347 be _____; and

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

NOW, THEREFORE, THE COUNTY OF SUSSEX HEREBY ORDAINS:

Section 1. That Chapter 115, Article IV, Subsection 115-22, Code of Sussex County, be amended by adding the designation of Conditional Use No. 2347 as it applies to the property hereinafter described.

Section 2. The subject property is described as follows:

ALL that certain tract, piece or parcel of land, lying and being situate in Cedar Creek Hundred, Sussex County, Delaware, and lying on the east side of North Old State Road (S.C.R. 213), approximately 0.10 mile north of intersection of Haflinger Road (S.C.R. 625), and being more particularly described in the attached legal description prepared by Becker Morgan, said parcel containing 39.33 acres, more or less.

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



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 16, 2023

RE: County Council Old Business Report for Ordinance 23-02 relating to the Future Land Use Map Element of the Comprehensive Plan

The Planning and Zoning Department received an application to request consideration of a potential amendment of the Future Land Use Map element of the Comprehensive Plan (Ord. 23-02 filed on behalf of Janice CRP3, LLC) for Tax Parcels 334-5.00-153.00 and 153.02. The property is located at 32171 Janice Road, Lewes. The parcel size is 65.169 acres +/- . The requested change is to change the Commercial Area designation to the Coastal Area designation.

The Planning & Zoning Commission held a Public Hearing on the Ordinance on January 12, 2023. At the meeting of February 9, 2023, the Planning & Zoning Commission recommended approval of the Ordinance for the 8 reasons as outlined within the motion (copied below).

The County Council held a Public Hearing on the Ordinance at its meeting of March 7, 2023. At the conclusion of the Public Hearing, Council deferred action for further consideration. Below is a link to the County Council minutes of March 7, 2023,

[Link to the minutes of the March 7, 2023, County Council Meeting](#)

Below are the minutes from the Planning & Zoning Commission meetings of January 12, 2023, and February 9, 2023.

[Minutes of the January 12, 2023, Planning & Zoning Commission Meeting](#)

Ord. 23-02

AN ORDINANCE TO AMEND THE FUTURE LAND USE MAP OF THE COMPREHENSIVE PLAN IN RELATION TO TAX PARCEL NOS. 334-5.00-153.00 &



334-5.00-153.02. The properties are lying on the west side of Janice Road, approximately 0.10 mile west of Nassau Commons Boulevard. 911 Address: 32172 Janice Road, Lewes. Tax Parcels: 334-5.00-153.00 & 334-5.00-153.02.

Chairman Wheatley granted the Applicant's request to combine the presentations for the next two Applications, ORD. 23-02, and C/Z 1995 Janice CRP3, LLC, as they were related.

Mr. Whitehouse advised the Commission that submitted into the record were the Applicant's Boundary Plans, the property's legal description, and a letter received on behalf of the property owner.

Mr. Whitehouse advised the Commission that no comments were received for the Application; that the request is to change the Commercial designation to the Coastal designation on the Future Land Use Map and that due to having written responses from PLUS on both the Future Land Use Map Amendment and the Change of Zone request, this will not be required to return to PLUS to proceed through the new PLUS process.

The Commission found that Mr. David Hutt, Esq., with Morris James, LLP, spoke on behalf of the Applications; that also present were Mr. Ring Lardner with Davis, Bowen & Friedel, Inc., and Mr. Jon Hoffman, representative of the owner and developer; that in May 2021, an amendment to the Future Land Use Map was filed via a letter submitted to Mr. Whitehouse; that in June 2021, the request went to the Office of State Planning Coordination; that three zoning applications were submitted in addition to the Future Land Use Map request; that a Change of Zone application, which sought to change the zoning designation of a portion of the property from AR-1 (Agricultural Residential) to MR (Medium-Density Residential); that another Change of Zone application was submitted, which sought to change the C-1 (General Commercial) zoning to MR zoning; that a Conditional Use application was submitted for townhomes; that a minor subdivision of the property did occur; that a storage facility, previously known as AAA Storage, located at the right corner of the property, was subdivided off of the main property; that after discussions and review with staff it was determined the multiple application requests could be simplified into one application in addition to the Future Land Use Map amendment, that are the subject applications; that the current Application is seeking to change the combination of AR-1 and C-1 zoned land to an MR-RPC (Medium-Density Residential – Residential Planned Community); that the initial name was changed; that the project was originally known as Ritter Farm; that the current project name is Vintners Reserve; that Vintners Reserve reflects the sites proximity to the Nassau Valley; that the property is located immediately west of the Nassau Overpass; that immediately to the north and west of the property is the Whispering Pines Manufactured Home Community; that to the southeast of the property is The Vineyards at Nassau Valley with the vineyard and winery; that the Lewes Volunteer Fire Department is located adjacent to the property; that the Whispering Pines Community was approved in 1971, as C/U 25; that the majority of the property is located within Investment Level 2; that a small portion of the property, at the location of the storage facility, is located within Investment Level I; that the 2045 Future Land Use Map, within the Comprehensive Plan, designates the property within the Coastal Area and Commercial Area; that the Application request is to have one consistent designation, for the Coastal Area; that Table 4.5-2 within the Comprehensive Plan identifies applicable zoning districts for each of the Future Land Use Map categories; that the only applicable zoning districts within the Commercial Area are the business and commercial districts; that to allow for any other use aside from business or commercial would require a Future Land Use Map Amendment; that the Coastal Area includes all the business and commercial

zoning districts, as well as MR (Medium-Density Residential), GR (General Residential) and HR (High Density Residential) Zoning Districts; that at one time, Commercial Zoning did permit for residential use; that due to this, there are residential properties located within the Commercial zoning near the site; that C-1 (General Commercial) and CR-1 (Commercial Residential) did permit for residential uses; that the property consists of 61.7 acres with the split zoning of AR-1 and C-1 Zoning; that the request is to change to zoning entirely to MR Zoning with an RPC (Residential Planned Community) overlay; that the Applicant is seeking approval of 316 townhomes; that the C-1 portion of the property consists of 4.2 acres; that the AR-1 portion of the property consists of 57.5 acres; that the State describes Level 2 areas are similar to Level 1 areas, being locations where State investments should support a wide range of uses and densities; that State investments should encourage departure from the typical single-family dwelling developments to promote a broader mix of housing types and commercial sites, encouraging compact mixed-use development where applicable; that Chapter 8 of the Comprehensive Plan echoes the concerns expressed by the State; that 90% of all building permits were issued for single-family homes, with 10% of permits being for multi-family homes in 2016; that the gap between single-family and multi-family issued permits increased in 2017 and 2018, leaving only five percent of the issued building permits for multi-family homes; that the Coastal Area is described as being some of the County's most desirable, designated in locations that can accommodate development, providing a special environment where environmental concerns are addressed; that there are no wetlands located on the property; that the Coastal Area permits for a range of housing types, including single-family homes, townhomes and multi-family homes; that medium and higher densities, being four to 12 units per acre), can be appropriate in certain locations; that medium and higher densities can be supported in areas where central water and sewer are provided, where sufficient commercial uses and employment centers, where the density would keep in character of the area, where located along a main road, or located at or near a major intersection, where there is adequate levels of service or where other considerations exist that are relevant to the requested project and density; that the 316 townhomes requested, which results in a density of 5.12 units per acre; that the densities of the most immediate neighbors to the project are 6.10 units/acre for Whispering Pines, 11.94 units/acre for The Vineyards at Nassau Valley and 12.00 units/acre for Sandbar Village; that Lewes Crest, located across the street from the project, has a density of 10.00 units/acre; that the projects meet all the factors of when medium to higher densities are appropriate; that Tidewater Utilities will provide water service to the site; that the site is located with Tier I of the Sussex County Unified Sanitary Sewer District; that there are plenty of commercial uses and employment centers in any direction; that the site is situated along a main road; that DelDOT classifies Rt. 1 as an other principal arterial road; that the County Code classifies Rt. 1 as one of the seven major arterial roadways within Sussex County; that to the north of the project, DelDOT has a Grade Separated Interchange planned at the intersection of Rt. 1 and Minos Conaway Rd. in the near future; that when this takes place, Janice Rd. will become more a service road; that the project will contribute to the Henlopen Transportation Improvement District (TID); that the proposed project does keep in character to the surrounding areas of Whispering Pines, Sandbar Village and Lewes Crest; that the MR Zoning District is the County's medium-density district; that MR Zoning Code purpose is described as areas which are expected to become generally urban in character, where sanitary sewer and public water supplies may or may not be available at the time of construction; that areas nearby the property are currently considered urban in character; that the purpose of an RPC is to encourage large scale developments as a means to create a superior living environment, through unified developments to provide of the application of designed ingenuity while protecting existing and future developments and achieving the

goals of the Comprehensive Plan; that the RPC overlay was chosen, as it would allow for several sizes of townhomes to be offered; that the RPC overlay offered multiple open spaces areas and central amenities; that the open spaces areas make up over 45% of the total site; that there is a request to reduce the average lot size, which allow for the greater amount of open space; that by using the proposed design of the site, the RPC overlay and proposed screening, the project protects the existing residence and businesses located along Rt. 1; that all of the same characteristics which make the property appropriate for MR Zoning, also apply for the Coastal Area designation; that the project complies with all the considerations for Growth Areas listed in §4.4.2.1; that Chapter 4 describes Commercial Growth Areas, being for large scale retail ; that the proposed use is a far less intense use than large scale commercial; that a less intensive use makes far more sense given the existing residential uses surrounding the property; that Chapter 4 and Chapter 8 of the Sussex County Comprehensive Plan indicate that the proposed Coastal Area designation for the site, allowing for residential uses, is appropriate for this property within Sussex County; that in relation to the requested Future Land Use Amendment, the PLUS comments stated *this parcel is surrounded by Coastal Area, and is currently slated for a higher area use, being commercial; that it is also located within Investment Level Areas 1 and 2 according to the Strategies for State Policies and Spending; that the State has no objection to the amendment as written;* that upon review of the actual project, the State noted the property was located in Investment Level 2 and stated *in Investment Level 2 reflects areas where growth is anticipated by local, County and State plans in the near term future;* that *State investments will support growth in these areas;* that one provision mentioned was that Sussex County makes the amendment to the Future Land Use Map, otherwise the project would be deemed inappropriate, creating a conflict between the Comprehensive Plan and Zoning Code; that the Applicant would request the Commission recommend approval for the amendment to the Future Land Use Map, as well as changing the properties designation to an MR-RPC (Medium-Density Residential – Residential Planned Community) for 316 townhomes; that he did request to submit Findings of Fact and proposed Conditions of Approval for the applications; that proposed Condition B, for C/Z 1995, propose the front yard be a minimum of 20-ft. and a rear yard minimum of 10-ft.; that the data column on the site plan reflected a front yard of 25-ft. and a rear yard of 15-ft.; that the reason for the change, is it would be desirable for all the townhomes to not have the same setback; that Condition B(4) proposes the combined front and rear yard are required to be 40-ft.; that the 40-ft requirement does match the requirement by County Code; that with the proposed condition, it will allow some townhomes to be located at 20-ft., with some being located at 25-ft.; that proposed Condition B(5) states side yard be 10-ft and 10-ft, with the average lot area of 3,000 sq. ft.; that the Code requires every lot size be a minimum of 1,600 sq. ft.; that the proposed Conditions proffer that lot size be a minimum of 2,000 sq. ft.; that proposed Condition J identifies the areas where a perimeter buffer is not proposed, being along Road A, the entrance road and located behind the Lewes Fire Station; that proposed Condition L describe the recreational amenities and the requirement of when amenities are to be completed; that Condition L proposes a minimum square footage of water surface for the pool area; that the condition will allow Planning & Zoning staff to objectively determine compliance in the future and a minimum square footage approach was taken for the proposed bathhouse as well.

The Commission found that Mr. Ring Lardner, with Davis, Bowen & Friedel, Inc. spoke on behalf of the Applications; that the property is located along Janice Rd., which is classified as a local road per the DelDOT Functional Classification Map; that Janice Rd. is parallel with Rt. 1; that Janice Rd. shares the right of way with Rt. 1; that the property is not located within the 100-Year Flood Plain; that Mr.

Edward Launay with Environmental Resources, Inc. did perform a Wetland Delineation; that the delineation was submitted to the U.S. Army Corp of Engineers; that the U.S. Army Corp of Engineers did determine that there were no Waters of the U.S. and no wetlands located on the property; that based on historical photographs, the wetland area is the location of a previous borrow pit which helped construct Rt. 1; that there is a small Excellent Water Recharge Area, consisting of 1.324 acres, being less than 2.2% of the total site, located to the southwest corner of the site; that there are no special requirements per Chapter 89 for the project; that the impervious area, within the 1.3 acres, will be less than one half or 1% of the total site, being well below the 35% threshold which requires additional mitigation within the recharge area; that the soils located on the site are conducive for development of the property; that the DelDOT Minos Conaway Grade Separate Interchange Project will improve Janice Rd. to the local road standards; that proposed are 11-ft. travel lanes, five foot shoulders with a five foot sidewalk that will connect to the Trailhead Parking Lot, which will provide connectivity to the Georgetown trails; that the project is located within the Henlopen Transportation Improvement District (TID); that conversations were had with Ms. Sarah Coakley, DelDOT Principal Planner with the Henlopen TID; that Ms. Coakley did confirm the project is eligible to be located within the TID; that DelDOT assigned only 81 single-family homes as the proposed trip generation for the site; that they were able to demonstrate the traffic projection is in compliance with the trip generation from the 81 homes plus an allowable percentage, therefore they are eligible to remain within the TID; that a 50-ft access easement is proposed, which will be jointly shared with the storage facility; that the entrance will consist of left-turn and right-turn lanes; that the turn lanes are still being determined through the design process; that the internal roads will be designed to exceed Sussex County standards; that the pavement width for the roads will be 32-ft. in width, which exceeds the 24-ft. width requirement; that the small loop roads within the development will be 24-ft. in width; that each lot will have a minimum of two parking spaces; that additional overflow parking is provided throughout the site; that the total overflow parking includes 147 parking spaces, which are in addition to the two provided parking spots per lot; that the project will include a 20-ft. forested buffer along the northern, southern and eastern edge of the site; that they are requesting a waiver to the required forested buffer along the rear of the Lewes Fire Station and along the portion of the storage area, due to the tight access for the placement of the road; that with the provided open space, there will be plenty of screening from the Lewes Fire Station; that the project does propose a forested road interconnection for emergency personnel from the Vineyard parcel; that a pedestrian connection is proposed to allow pedestrian movement to the Vineyards and winery or for pedestrians wishing to access the Georgetown Trail; that Nassau Commons does have a project forthcoming in the future; that at a minimum, activities are to include a dog park, an unorganized play area and a pocket park with playground equipment; that the location of the playground areas will be shown on the Final Site Plan; that within the open space, located within the middle of the site, will be the location of the central amenities; that these amenities will include 42 parking spaces, 3,500 sq. ft. pool house, 2,000 sq. ft. pool and a pickleball court; that the project proposes 29 acres of total open space, which is about 47% of the project area; that stormwater management will be designed to meet or exceed DNREC standards; that they will be utilizing the area of the previous borrow pit for stormwater management; that the project is proposed a RPC (Residential Planned Community); that due to this, they are requesting two deviations from the standards of the Code; that they are requesting the average lot area be reduced from 3,630 sq. ft. per lot, to 3,000 sq. ft.; that they are requesting the side yards be reduced from 20-ft. to 10-ft.; that as presented the project complies with the Code; that the project was reviewed by PLUS; that the current plan is slightly different than the plan reviewed by PLUS; that

PLUS provided a letter confirming a second PLUS review was not required; that DBF, Inc. prepared an Public Facilities Investment and Environmental Assessment Report; that with the mitigation measures implemented, the project is consistent with the Comprehensive Plan; that the Technical Advisory Committee (TAC) reviewed the plan; that the project will be served by Sussex County Sewer; that Tidewater Utilities will provide water to the site; that Delmarva Power will provide electric; that Chesapeake Utilities will provide gas; that Comcast and Verizon are available for phone and cable; that Chapter 99 responses were submitted into the record; that the project is integrated into existing terrain; that the site does not contain wetlands or flood plains; that the plan provides buffer to screen from objectionable features; that the plan prevents pollution of surface and groundwater; that the plan provides for safe vehicular and pedestrian movement; that the plan mitigates the impacted area roadways and transportation and the plan is compatible with other land uses.

Mr. Hopkins stated we felt the proposal was beneficial, as the proposed use could remove the need for 500 homes between Gravel Hill and Georgetown, off Rt. 9.

Ms. Stevenson stated she did not agree with Mr. Hopkins; that she felt the people will live along Gravel Hill to Georgetown, regardless of whether the project is approved; that she felt the proposed homes will be second homes for many residents and she questioned the size of the smaller areas of provided open space.

Ms. Wingate questioned if there was an estimated time when DelDOT will be performing the DelDOT improvements to Janice Rd.

Mr. Lardner stated within Exhibit F; that the data sheet located on the Preliminary Site Plan list the open space areas; that the smallest area of open space is .15 acre; that the largest is just over an acre; that the open spaces range in size throughout the site and he believed the DelDOT improvements could begin as early as June 2023 according to the Capital Transportation Program.

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

Ms. Eul Lee spoke by teleconference regarding this Application. Ms. Lee stated that she does not oppose the multi-family development but had safety concerns and if there is sufficient access for emergency vehicles if vehicles are parked on the streets within the development. Ms. Lee asked if there is a possibility for interconnectivity to provide an additional ingress/egress to the development.

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

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

In relation to ORD. 23-02 relating to Tax Parcel Nos. 334-5.00-153.00 & 334-5.00-153.02. Motion by Ms. Stevenson to defer for further consideration, seconded by Ms. Wingate and carried unanimously. Motion carried 4-0.

Minutes of the February 9, 2023, Planning & Zoning Commission Meeting

The Commission discussed the Ordinance which had been deferred since January 12, 2023.

Ms. Stevenson moved that the Commission recommend denial of Ordinance 23-02 to amend the Future Land Use Map in the current Sussex County Comprehensive Plan for Parcels 334-5.00-153.00 and 153.02, based on the record made during the public hearing and for the following reasons:

1. The property that is the subject of this Application is almost entirely designated as a “Commercial Area” according to the Future Land Use Map in the Sussex County Comprehensive Plan. There is only a small area designated as “Coastal Area” within the parcel boundaries.
2. According to the Comprehensive Plan, the “Commercial Area” designation is designed to “include concentrations of retail and service uses that are mainly located along arterials and highways.”
3. When the current Future Land Use Map was approved, considerable thought was given to the location of the “Commercial Area” designation, particularly along the Route One Corridor.
4. It is important to maintain areas set aside in appropriate locations for future commercial use and development to support all of the residential growth that is occurring in Sussex County, particularly on the eastern side of the County. This proposed amendment and the subsequent development as a residential project would further reduce the land available for commercial development in eastern Sussex County.
5. The “Commercial Area” designation is appropriate for this site given its location along the Route One corridor where DelDOT is getting ready to do substantial roadway improvements. It is also immediately next to a fire station, mini storage facility and a large parcel that contains office and warehouse uses along with a large grocery store. The Vineyards property immediately to the south of this property also has a “Commercial Area” designation. All of these reasons support the continued designation of this property as being within the “Commercial Area” within the Future Land Use Map of the County Comprehensive Plan.
6. I am not satisfied that there are sufficient reasons to convert this property from its “Commercial Area” designation to a “Coastal Area” designation.
7. For all of these reasons, it is my motion that the Commission recommend denial of this amendment to the Future Land Use Map.

Ms. Stevenson’s motion to deny failed to advance for a vote due to lack of a second motion.

Mr. Hopkins advised the Commission that he had prepared a motion and requested that his motion be read into the record by Mr. Robertson.

Mr. Robertson read Mr. Hopkins’ motion into the record, per Mr. Hopkins’ request.

Mr. Hopkins moved that the Commission recommend approval of Ordinance 23-02 to amend the Future Land Use Map in the current Sussex County Comprehensive Plan for Parcels 3-34-5.00-153.00 and 153.02, based on the record made during the public hearing and for the following reasons:

1. The parcel currently has two Area designations under the Future Land Use Map in the Sussex County Comprehensive Plan. Most of the parcel is designated as the Commercial Area while a small portion of the property is designated as the Coastal Area according to the Future Land Use Map. This application seeks to convert the entire property to one uniform “Coastal Area” designation.
2. The Coastal Area and Commercial Area are both “Growth Areas” according to the Comprehensive Plan, so this revision does not result in a substantial change to the Future Land Use Map.
3. The parcel has frontage on Janice Road, which is essentially a service road for Route One and within the Route One Right-of-Way. The property is also near the planned grade-separated intersection at Route One and Minos Conaway Road which includes service roads such as Janice Road. This is an appropriate location for a Map Amendment designating the entire parcel as Coastal Area.
4. This revision to the Future Land Use Map will not adversely affect neighboring properties, area roadways, or future land-use planning in the area.
5. There is central sewer and water available to the property.
6. This proposed amendment to the Future Land Use Map satisfies the criteria set forth in Section 4.4.2.1 of the Comprehensive Plan for a Growth area, since:
 - a. the Property is near the presence of existing public sewer and public water service;
 - b. the Property is within the County’s Tier 1 area for sewer planning;
 - c. the Property is situated along the Route 1 corridor;
 - d. the Property is near the planned grade-separated intersection (overpass) for the Minos Conaway Road/Route 1 intersection;
 - e. the Future Land Use Map change will enable development that is in character with what exists or may occur in the area;
 - f. the Property does not contain any wetlands;
 - g. the Future Land Use Map change will not adversely impact any major preserved lands, water bodies, or lands with agricultural and other protected easements.
7. The property is predominantly surrounded by other residential properties. This Map Amendment will permit residential development, which is more consistent with these surrounding uses than commercial development under the Commercial Area designation.
8. This revision of the Future Land Use Map is appropriate given the particular circumstances involved at this location. When several factors like these exist, the consideration and approval of an amendment to the Future Land Use Map is appropriate.

Motion by Mr. Hopkins, seconded by Mr. Mears to recommend approval of ORD. 23-02 in relation to Tax Map Parcel No. 334-5.00-153.00 and 334-5.00-153.02, for the reasons stated in the motion. Motion carried 4-1.

Vote by roll call: Mr. Hopkins – yea, Ms. Stevenson – nay, Ms. Wingate – yea, Mr. Mears – yea,

Chairman Wheatley – yea

Ms. Stevenson voted nay for the reasons stated in her motion to deny.

ORDINANCE NO. _____

AN ORDINANCE TO AMEND THE FUTURE LAND USE MAP OF THE COMPREHENSIVE PLAN IN RELATION TO TAX PARCEL NOS. 334-5.00-153.00 & 334-5.00-153.02.

WHEREAS, on May 21st, 2021, the Sussex County Planning and Zoning Office received an application for a requested Comprehensive Plan Amendment to amend the Future Land Use Map element of the Comprehensive Plan to change the Area designation of Sussex County Parcel Nos. 334-5.00-153.00 & 334-5.00-153.02 from the Commercial Area to the Coastal Area; and

WHEREAS, the Parcels comprise 65.169 acres of land, lying and being within Lewes & Rehoboth Hundred, and are located on the west side of Janice Road (S.C.R. 14B) approximately 520 feet west of the intersection of Coastal Highway (Route 1) and Nassau Road (S.C.R. 266B).

WHEREAS, The Properties are designated as being within the Commercial Area and Coastal Area as set forth in the Future Land Use Map identified as Figure 4.5-1 in the 2018 Comprehensive Plan for Sussex County.

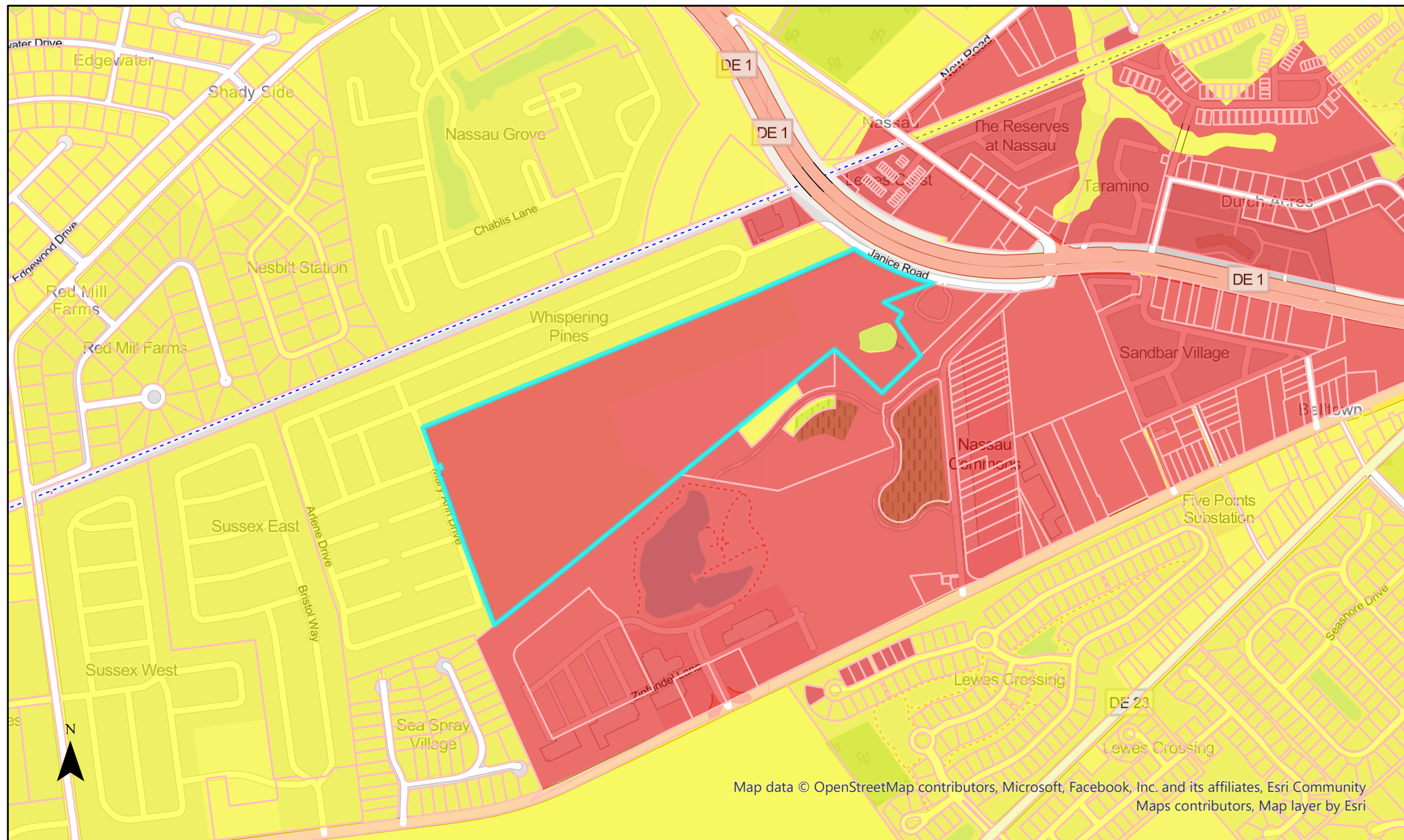
WHEREAS, Sussex County Council desires to adopt this Ordinance amending the Future Land Use Map of the Plan with minor amendments; and

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 parcels currently classified as the Commercial Area and Coastal Area designation of Sussex County Parcel Nos. 334-5.00-153.00 & 334-5.00-153.02 to the Coastal Area. Sussex County Parcel Nos. 334-5.00-153.00 & 334-5.00-153.02 so changed as 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.

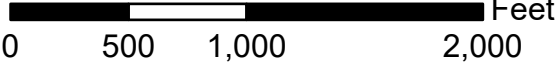


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Current FLUM Classification Map
 Ord. No. 23-02 - Janice CRP3, LLC (Ritter Farm)
 Proposed FLUM Map Amendment
 Proposed: Commercial Area to Coastal Area
 P&Z Meeting - 01/12/2023

2019 Future Land Use

- Low Density
- Coastal Area
- Commercial
- Developing Area
- Existing Development Area
- Industrial
- Municipalities
- Town Center





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 20, 2023

RE: County Council Old Business Report for C/Z 1995 filed on behalf of Janice CRP3, LLC

The Planning and Zoning Department received an application (C/Z 1995 filed on behalf of Janice CRP3, LLC) for a Change of Zone of parcel 334-5.00-153.02 from an AR-1 Agricultural Residential Zoning District and C-1 General Commercial Zoning District to an MR-RPC Medium-Density Residential District – Residential Planned Community. The property is located at 32171 Janice Road, Lewes. The parcel size is 61.39 acres +/-

The Planning & Zoning Commission held a Public Hearing on the application on January 12, 2023. At the meeting of February 9, 2023, the Planning & Zoning Commission recommended approval of the application for the 9 reasons and 16 recommended conditions as outlined within the motion (copied below).

The County Council held a Public Hearing on the application at the meeting of March 7, 2023. At the conclusion of the Public Hearing, action on the application was deferred for further consideration. Below is a link to the County Council meeting of March 7, 2023.

[Link to the minutes of the County Council meeting of March 7, 2023](#)

Below are the minutes from the Planning & Zoning Commission meetings of January 12, 2023, and February 9, 2023.

Minutes of the January 12, 2023, Planning & Zoning Commission Meeting

C/Z 1995 Janice CRP3, LLC

AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT AND C-1



GENERAL COMMERCIAL DISTRICT TO AN MR-RPC MEDIUM-DENSITY RESIDENTIAL DISTRICT-RESIDENTIAL PLANNED COMMUNITY FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 61.39 ACRES, MORE OR LESS. The property is lying on the west side of Janice Road, approximately 0.10 mile west of Nassau Commons Boulevard. 911 Address: 32172 Janice Road, Lewes. Tax Parcel: 334-5.00-153.02.

Chairman Wheatley granted the Applicant's request to combine the presentations for the next two Applications, ORD. 23-02, and C/Z 1995 Janice CRP3, LLC, as they were related.

Mr. Whitehouse advised the Commission that submitted into the record were the Staff Analysis, the DelDOT Service Level Evaluation Response, a copy of the PLUS response, the Preliminary Subdivision Plat, a copy of the Applicant's Exhibit Booklet which included the Chapter 99-9C Response, the Applicant's Environmental Assessment and Public Facility Evaluation Report, a copy of a Jurisdictional Determination Letter, Groundwater Recharge Letter and drafted deed restrictions, submitted by the Applicant. Mr. Whitehouse advised the Commission that no comments were received for the Application.

The Commission found that Mr. David Hutt, Esq., with Morris James, LLP, spoke on behalf of the Applications; that also present were Mr. Ring Lardner with Davis, Bowen & Friedel, Inc., and Mr. Jon Hoffman, representative of the owner and developer; that in May 2021, an amendment to the Future Land Use Map was filed via a letter submitted to Mr. Whitehouse; that in June 2021, the request went to the Office of State Planning Coordination; that three zoning applications were submitted in addition to the Future Land Use Map request; that a Change of Zone application, which sought to change the zoning designation of a portion of the property from AR-1 (Agricultural Residential) to MR (Medium-Density Residential); that another Change of Zone application was submitted, which sought to change the C-1 (General Commercial) zoning to MR zoning; that a Conditional Use application was submitted for townhomes; that a minor subdivision of the property did occur; that a storage facility, previously known as AAA Storage, located at the right corner of the property, was subdivided off of the main property; that after discussions and review with staff it was determined the multiple application requests could be simplified into one application in addition to the Future Land Use Map amendment, that are the subject applications; that the current Application is seeking to change the combination of AR-1 and C-1 zoned land to an MR-RPC (Medium-Density Residential – Residential Planned Community); that the initial name was changed; that the project was originally known as Ritter Farm; that the current project name is Vintners Reserve; that Vintners Reserve reflects the sites proximity to the Nassau Valley; that the property is located immediately west of the Nassau Overpass; that immediately to the north and west of the property is the Whispering Pines Manufactured Home Community; that to the southeast of the property is The Vineyards at Nassau Valley with the vineyard and winery; that the Lewes Volunteer Fire Department is located adjacent to the property; that the Whispering Pines Community was approved in 1971, as C/U 25; that the majority of the property is located within Investment Level 2; that a small portion of the property, at the location of the storage facility, is located within Investment Level I; that the 2045 Future Land Use Map, within the Comprehensive Plan, designates the property within the Coastal Area and Commercial Area; that the Application request is to have one consistent designation, for the Coastal Area; that Table 4.5-2 within the Comprehensive Plan identifies applicable zoning districts for each of the Future Land Use Map

categories; that the only applicable zoning districts within the Commercial Area are the business and commercial districts; that to allow for any other use aside from business or commercial would require a Future Land Use Map Amendment; that the Coastal Area includes all the business and commercial zoning districts, as well as MR (Medium-Density Residential), GR (General Residential) and HR (High Density Residential) Zoning Districts; that at one time, Commercial Zoning did permit for residential use; that due to this, there are residential properties located within the Commercial zoning near the site; that C-1 (General Commercial) and CR-1 (Commercial Residential) did permit for residential uses; that the property consists of 61.7 acres with the split zoning of AR-1 and C-1 Zoning; that the request is to change to zoning entirely to MR Zoning with an RPC (Residential Planned Community) overlay; that the Applicant is seeking approval of 316 townhomes; that the C-1 portion of the property consists of 4.2 acres; that the AR-1 portion of the property consists of 57.5 acres; that the State describes Level 2 areas are similar to Level 1 areas, being locations where State investments should support a wide range of uses and densities; that State investments should encourage departure from the typical single-family dwelling developments to promote a broader mix of housing types and commercial sites, encouraging compact mixed-use development where applicable; that Chapter 8 of the Comprehensive Plan echoes the concerns expressed by the State; that 90% of all building permits were issued for single-family homes, with 10% of permits being for multi-family homes in 2016; that the gap between single-family and multi-family issued permits increased in 2017 and 2018, leaving only five percent of the issued building permits for multi-family homes; that the Coastal Area is described as being some of the County's most desirable, designated in locations that can accommodate development, providing a special environment where environmental concerns are addressed; that there are no wetlands located on the property; that the Coastal Area permits for a range of housing types, including single-family homes, townhomes and multi-family homes; that medium and higher densities, being four to 12 units per acre), can be appropriate in certain locations; that medium and higher densities can be supported in areas where central water and sewer are provided, where sufficient commercial uses and employment centers, where the density would keep in character of the area, where located along a main road, or located at or near a major intersection, where there is adequate levels of service or where other considerations exist that are relevant to the requested project and density; that the 316 townhomes requested, which results in a density of 5.12 units per acre; that the densities of the most immediate neighbors to the project are 6.10 units/acre for Whispering Pines, 11.94 units/acre for The Vineyards at Nassau Valley and 12.00 units/acre for Sandbar Village; that Lewes Crest, located across the street from the project, has a density of 10.00 units/acre; that the projects meet all the factors of when medium to higher densities are appropriate; that Tidewater Utilities will provide water service to the site; that the site is located with Tier I of the Sussex County Unified Sanitary Sewer District; that there are plenty of commercial uses and employment centers in any direction; that the site is situated along a main road; that DelDOT classifies Rt. 1 as an other principal arterial road; that the County Code classifies Rt. 1 as one of the seven major arterial roadways within Sussex County; that to the north of the project, DelDOT has a Grade Separated Interchange planned at the intersection of Rt. 1 and Minos Conaway Rd. in the near future; that when this takes place, Janice Rd. will become more a service road; that the project will contribute to the Henlopen Transportation Improvement District (TID); that the proposed project does keep in character to the surrounding areas of Whispering Pines, Sandbar Village and Lewes Crest; that the MR Zoning District is the County's medium-density district; that MR Zoning Code purpose is described as areas which are expected to become generally urban in character, where sanitary sewer and public water supplies may or may not be available at the time of construction; that areas nearby the property are currently

considered urban in character; that the purpose of an RPC is to encourage large scale developments as a means to create a superior living environment, through unified developments to provide of the application of designed ingenuity while protecting existing and future developments and achieving the goals of the Comprehensive Plan; that the RPC overlay was chosen, as it would allow for several sizes of townhomes to be offered; that the RPC overlay offered multiple open spaces areas and central amenities; that the open spaces areas make up over 45% of the total site; that there is a request to reduce the average lot size, which allow for the greater amount of open space; that by using the proposed design of the site, the RPC overlay and proposed screening, the project protects the existing residence and businesses located along Rt. 1; that all of the same characteristics which make the property appropriate for MR Zoning, also apply for the Coastal Area designation; that the project complies with all the considerations for Growth Areas listed in §4.4.2.1; that Chapter 4 describes Commercial Growth Areas, being for large scale retail ; that the proposed use is a far less intense use than large scale commercial; that a less intensive use makes far more sense given the existing residential uses surrounding the property; that Chapter 4 and Chapter 8 of the Sussex County Comprehensive Plan indicate that the proposed Coastal Area designation for the site, allowing for residential uses, is appropriate for this property within Sussex County; that in relation to the requested Future Land Use Amendment, the PLUS comments stated *this parcel is surrounded by Coastal Area, and is currently slated for a higher area use, being commercial; that it is also located within Investment Level Areas 1 and 2 according to the Strategies for State Policies and Spending; that the State has no objection to the amendment as written;* that upon review of the actual project, the State noted the property was located in Investment Level 2 and stated *in Investment Level 2 reflects areas where growth is anticipated by local, County and State plans in the near term future; that State investments will support growth in these areas;* that one provision mentioned was that Sussex County makes the amendment to the Future Land Use Map, otherwise the project would be deemed inappropriate, creating a conflict between the Comprehensive Plan and Zoning Code; that the Applicant would request the Commission recommend approval for the amendment to the Future Land Use Map, as well as changing the properties designation to an MR-RPC (Medium-Density Residential – Residential Planned Community) for 316 townhomes; that he did request to submit Findings of Fact and proposed Conditions of Approval for the applications; that proposed Condition B, for C/Z 1995, propose the front yard be a minimum of 20-ft. and a rear yard minimum of 10-ft.; that the data column on the site plan reflected a front yard of 25-ft. and a rear yard of 15-ft.; that the reason for the change, is it would be desirable for all the townhomes to not have the same setback; that Condition B(4) proposes the combined front and rear yard are required to be 40-ft.; that the 40-ft requirement does match the requirement by County Code; that with the proposed condition, it will allow some townhomes to be located at 20-ft., with some being located at 25-ft.; that proposed Condition B(5) states side yard be 10-ft and 10-ft, with the average lot area of 3,000 sq. ft.; that the Code requires every lot size be a minimum of 1,600 sq. ft.; that the proposed Conditions proffer that lot size be a minimum of 2,000 sq. ft.; that proposed Condition J identifies the areas where a perimeter buffer is not proposed, being along Road A, the entrance road and located behind the Lewes Fire Station; that proposed Condition L describe the recreational amenities and the requirement of when amenities are to be completed; that Condition L proposes a minimum square footage of water surface for the pool area; that the condition will allow Planning & Zoning staff to objectively determine compliance in the future and a minimum square footage approach was taken for the proposed bathroom as well.

The Commission found that Mr. Ring Lardner, with Davis, Bowen & Friedel, Inc. spoke on behalf of the Applications; that the property is located along Janice Rd., which is classified as a local road per the DelDOT Functional Classification Map; that Janice Rd. is parallel with Rt. 1; that Janice Rd. shares the right of way with Rt. 1; that the property is not located within the 100-Year Flood Plain; that Mr. Edward Launay with Environmental Resources, Inc. did perform a Wetland Delineation; that the delineation was submitted to the U.S. Army Corp of Engineers; that the U.S. Army Corp of Engineers did determine that there were no Waters of the U.S. and no wetlands located on the property; that based on historical photographs, the wetland area is the location of a previous borrow pit which helped construct Rt. 1; that there is a small Excellent Water Recharge Area, consisting of 1.324 acres, being less than 2.2% of the total site, located to the southwest corner of the site; that there are no special requirements per Chapter 89 for the project; that the impervious area, within the 1.3 acres, will be less than one half or 1% of the total site, being well below the 35% threshold which requires additional mitigation within the recharge area; that the soils located on the site are conducive for development of the property; that the DelDOT Minos Conaway Grade Separate Interchange Project will improve Janice Rd. to the local road standards; that proposed are 11-ft. travel lanes, five foot shoulders with a five foot sidewalk that will connect to the Trailhead Parking Lot, which will provide connectivity to the Georgetown trails; that the project is located within the Henlopen Transportation Improvement District (TID); that conversations were had with Ms. Sarah Coakley, DelDOT Principal Planner with the Henlopen TID; that Ms. Coakley did confirm the project is eligible to be located within the TID; that DelDOT assigned only 81 single-family homes as the proposed trip generation for the site; that they were able to demonstrate the traffic projection is in compliance with the trip generation from the 81 homes plus an allowable percentage, therefore they are eligible to remain within the TID; that a 50-ft access easement is proposed, which will be jointly shared with the storage facility; that the entrance will consist of left-turn and right-turn lanes; that the turn lanes are still being determined through the design process; that the internal roads will be designed to exceed Sussex County standards; that the pavement width for the roads will be 32-ft. in width, which exceeds the 24-ft. width requirement; that the small loop roads within the development will be 24-ft. in width; that each lot will have a minimum of two parking spaces; that additional overflow parking is provided throughout the site; that the total overflow parking includes 147 parking spaces, which are in addition to the two provided parking spots per lot; that the project will include a 20-ft. forested buffer along the northern, southern and eastern edge of the site; that they are requesting a waiver to the required forested buffer along the rear of the Lewes Fire Station and along the portion of the storage area, due to the tight access for the placement of the road; that with the provided open space, there will be plenty of screening from the Lewes Fire Station; that the project does propose a forested road interconnection for emergency personnel from the Vineyard parcel; that a pedestrian connection is proposed to allow pedestrian movement to the Vineyards and winery or for pedestrians wishing to access the Georgetown Trail; that Nassau Commons does have a project forthcoming in the future; that at a minimum, activities are to include a dog park, an unorganized play area and a pocket park with playground equipment; that the location of the playground areas will be shown on the Final Site Plan; that within the open space, located within the middle of the site, will be the location of the central amenities; that these amenities will include 42 parking spaces, 3,500 sq. ft. pool house, 2,000 sq. ft. pool and a pickleball court; that the project proposes 29 acres of total open space, which is about 47% of the project area; that stormwater management will be designed to meet or exceed DNREC standards; that they will be utilizing the area of the previous borrow pit for stormwater management; that the project is proposed a RPC (Residential Planned Community); that due to this, they are

requesting two deviations from the standards of the Code; that they are requesting the average lot area be reduced from 3,630 sq. ft. per lot, to 3,000 sq. ft.; that they are requesting the side yards be reduced from 20-ft. to 10-ft.; that as presented the project complies with the Code; that the project was reviewed by PLUS; that the current plan is slightly different than the plan reviewed by PLUS; that PLUS provided a letter confirming a second PLUS review was not required; that DBF, Inc. prepared an Public Facilities Investment and Environmental Assessment Report; that with the mitigation measures implemented, the project is consistent with the Comprehensive Plan; that the Technical Advisory Committee (TAC) reviewed the plan; that the project will be served by Sussex County Sewer; that Tidewater Utilities will provide water to the site; that Delmarva Power will provide electric; that Chesapeake Utilities will provide gas; that Comcast and Verizon are available for phone and cable; that Chapter 99 responses were submitted into the record; that the project is integrated into existing terrain; that the site does not contain wetlands or flood plains; that the plan provides buffer to screen from objectionable features; that the plan prevents pollution of surface and groundwater; that the plan provides for safe vehicular and pedestrian movement; that the plan mitigates the impacted area roadways and transportation and the plan is compatible with other land uses.

Mr. Hopkins stated we felt the proposal was beneficial, as the proposed use could remove the need for 500 homes between Gravel Hill and Georgetown, off Rt. 9.

Ms. Stevenson stated she did not agree with Mr. Hopkins; that she felt the people will live along Gravel Hill to Georgetown, regardless of whether the project is approved; that she felt the proposed homes will be second homes for many residents and she questioned the size of the smaller areas of provided open space.

Ms. Wingate questioned if there was an estimated time when DelDOT will be performing the DelDOT improvements to Janice Rd.

Mr. Lardner stated within Exhibit F; that the data sheet located on the Preliminary Site Plan list the open space areas; that the smallest area of open space is .15 acre; that the largest is just over an acre; that the open spaces range in size throughout the site and he believed the DelDOT improvements could begin as early as June 2023 according to the Capital Transportation Program.

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

Ms. Eul Lee spoke by teleconference regarding this Application. Ms. Lee stated that she does not oppose the multi-family development but had safety concerns and if there is sufficient access for emergency vehicles if vehicles are parked on the streets within the development. Ms. Lee asked if there is a possibility for interconnectivity to provide an additional ingress/egress to the development.

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

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

In relation to C/Z 1995 Janice CRP3, LLC Motion by Ms. Stevenson to defer for further consideration, seconded by Ms. Wingate and carried unanimously. Motion carried 4-0.

Minutes of the February 9, 2023, Planning & Zoning Commission Meeting

The Commission discussed the Application which had been deferred since January 12, 2023.

Mr. Hopkins advised the Commission he had prepared a motion, which he requested Mr. Robertson read into the record.

Mr. Robertson read Mr. Hopkins' prepared motion, per Mr. Hopkins' request.

Mr. Hopkins moved that the Commission recommend approval of C/Z 1995 Janice CRP3, LLC for a change in zoning from AR-1 and C-1 to an MR-RPC, based upon the record and for the following reasons:

1. The property is currently zoned AR-1 Agricultural Residential and C-1 General Commercial. The property is adjacent to other land zoned C-1 General Commercial that is being developed as a high-density mixed-use development, a manufactured home park, and other MR-zoned land nearby. This is an appropriate location for MR zoning.
2. The Applicant seeks approval of townhomes and multi-family structures. The Comprehensive Plan states that this type of development is appropriate in areas near main roadways, near commercial areas and employment centers, and with central water and sewer. All of the considerations are satisfied here.
3. The proposed development will have no more than 316 homes on 66.73 acres. The net density is 5.12 units per acre which is similar to other nearby developments including Whispering Pines, The Vineyards, Sandbar Village, and Lewes Crest.
4. The County Engineering Department has indicated that adequate wastewater capacity is available for this site. Central water will also be provided.
5. DelDOT has determined that the project will have a minor impact on area roadways. In addition, this site is within the Henlopen T.I.D. and therefore the developer will be required to enter into an infrastructure agreement and pay the T.I.D. unit fee prior to the issuance of any building permits.
6. With the conditions and stipulations placed upon it, the RPC designation is appropriate, since it allows the creation of a superior environment through design ingenuity while protecting existing and future uses. Approximately 45% of the site will also be open space.
7. The project will not adversely affect the neighborhood or surrounding community. There are existing developments in the immediate area with similar characteristics, and this is the last parcel to be developed residentially among other existing residential properties.
8. The Commission has recommended that the Future Land Use Map for this property be changed from a split Coastal/Commercial area designation to being entirely Coastal Area. Development such as this MR-RPC is appropriate in the Coastal Area according to the Plan.

9. The Applicant has favorably addressed the items set forth in Section 99-9C of the Subdivision Code.
10. This recommendation is subject to the following conditions:
 - A. There shall be no more than 316 dwelling units within this project.
 - B. Chapter 115, Article 16, allows the modification of bulk area standards. Here, it is appropriate to allow flexibility in these bulk requirements to permit a better design of the townhouse and multi-family buildings, as follows:
 - i. Front Yard = minimum of 20 feet
 - ii. Front Corner Yard = minimum of 15 feet
 - iii. Rear Yard = minimum of 10 feet
 - iv. Combined Front & Rear Yard = minimum of 40 feet
 - v. Side Yard = minimum of 10 feet
 - vi. Minimum Lot Width = 20 feet
 - vii. Minimum Lot Length = 100 feet
 - viii. Minimum Lot Area = 2,000 square feet
 - ix. Average Lot Area = must be 3,000 square feet, provided that no lot is less than 2,000 square feet in size
 - C. A condominium association shall be formed to provide for the perpetual maintenance, repair, and replacement of buffers, stormwater management facilities, streets, amenities, and other common areas.
 - D. All entrances, intersections, roadways, and multi-modal improvements required by DelDOT shall be completed in accordance with DelDOT's requirements, and that developer shall comply with the requirements of the Henlopen T.I.D.
 - E. The RPC shall be served by Sussex County sewer. The Developer shall comply with all requirements and specifications of the County Engineering Department.
 - F. The RPC shall be served by central water for drinking water and fire protection.
 - G. Stormwater management and erosion and sedimentation control facilities shall be constructed in accordance with all applicable State and County requirements. These facilities shall be operated in a manner that is consistent with Best Management Practices.
 - H. The development shall be served by its own on-site amenities including a clubhouse, pool, dog park, playground, and pickleball courts. The pool house shall have a minimum square footage of 3,500 feet, and the pool shall have a water surface area of at least 2,000 square feet. The pool and pool house shall be completed and open for use prior to the issuance of the 175th building permit. The rest of the active amenities shall be completed prior to the issuance of the 250th building permit.
 - I. A 20-foot wide vegetated or forested buffer shall be established along the perimeter of the site, with the exception of the boundary with the fire station and the roadway next to the adjacent self-storage facility. This buffer shall utilize existing forest or

similar vegetation if it is currently present in the buffer area. Where trees currently exist in the buffer area, stump removal or construction activities that disturb the existing grade of the area within the buffer shall be prohibited. All silt fencing shall be located along the interior edge of the buffer area (the edge of the buffer nearest the interior development) and the Final Site Plan shall identify the “Limit of Disturbance” to prevent disturbance of the buffer area.

- J. If requested by the local school district, a school bus stop shall be provided by the entrance to the development, with the location and any related parking to be approved by the school district’s transportation supervisor. The location of the bus stop area shall be shown on the Final Site Plan.
- K. Road naming and addressing shall be subject to the review and approval of the Sussex County Geographic Information Office (GIO).
- L. The Final Site Plan shall contain the approval of the Sussex Conservation District for the design and location of all stormwater management areas and erosion and sedimentation control facilities.
- M. The Final Site Plan shall include a landscape plan confirming all landscaping to be provided, the preservation of all buffer areas, and the forested areas that will be preserved. The landscape plan shall also identify all “Limits of Disturbance” within the site.
- N. The Final Site Plan shall include a grading plan that shall be submitted to County Staff for review and approval.
- O. Construction, site work, grading, and deliveries of construction materials shall only occur from Monday through Saturday and only between the hours of 7:00 a.m. and 6:00 p.m. A 24-inch by 36-inch “NOTICE” sign in English and Spanish confirming these hours shall be prominently displayed at all entrances to the site during construction.
- P. The Final Site Plan shall be subject to the review & approval of the Sussex County Planning & Zoning Commission.

Motion by Ms. Stevenson, seconded by Mr. Mears to recommend approval of C/Z 1995 Janice CRP3, LLC for the reasons and conditions stated in the motion. Motion carried 4-1.

Vote by roll call: Mr. Hopkins – yea, Ms. Stevenson – nay, Ms. Wingate – yea, Mr. Mears – yea, Chairman Wheatley – yea

Ms. Stevenson voted nay as she believed commercial uses should be mixed in with the plan and she felt the parking situation was not tenable.

PLANNING & ZONING COMMISSION

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



Sussex County

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JAMIE WHITEHOUSE, AICP, MRTPI
DIRECTOR OF PLANNING & ZONING

PLANNING AND ZONING AND COUNTY COUNCIL INFORMATION SHEET
Planning Commission Public Hearing Date: January 12th, 2023

Application: C/Z 1995 – Janice CRP3, LLC (A.K.A. Ritter Farm)

Applicant: Janice CRP3, LLC
4750 Owings Mill Blvd.
Owings Mill, MD 21117

Owner: AAA Storage Limited Partnership
22114 Ritter Lane
Harbeson, DE 19951

Site Location: Lying on the south side of Janice Road approximately 520 feet west of the intersection of Coastal Highway (Route 1) and Nassau Road (S.C.R. 266B).

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

Proposed Zoning: Medium-Density Residential (AR-1) Zoning District
Residential Planned Community (MR-RPC)

Proposed Use: A residential community comprised of 316 townhouses.

Comprehensive Land Use Plan Reference: Commercial Area and Coastal Area

Councilmanic District: Mr. Schaeffer

School District: Cape Henlopen School District

Fire District: Lewes Fire Department

Sewer: Sussex

Water: Tidewater

Site Area: 61.73 acres +/-

Tax Map ID: 334-5.00-153.00





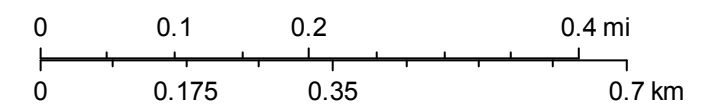
Sussex County



PIN:	334-5.00-153.02
Owner Name	AAA STORAGE LIMITED PARTNERSHIP
Book	Text
Mailing Address	22114 RITTER LN
City	HARBESON
State	DE
Description	RITTER FARM
Description 2	LOT 2
Description 3	RESIDUAL LANDS
Land Code	






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

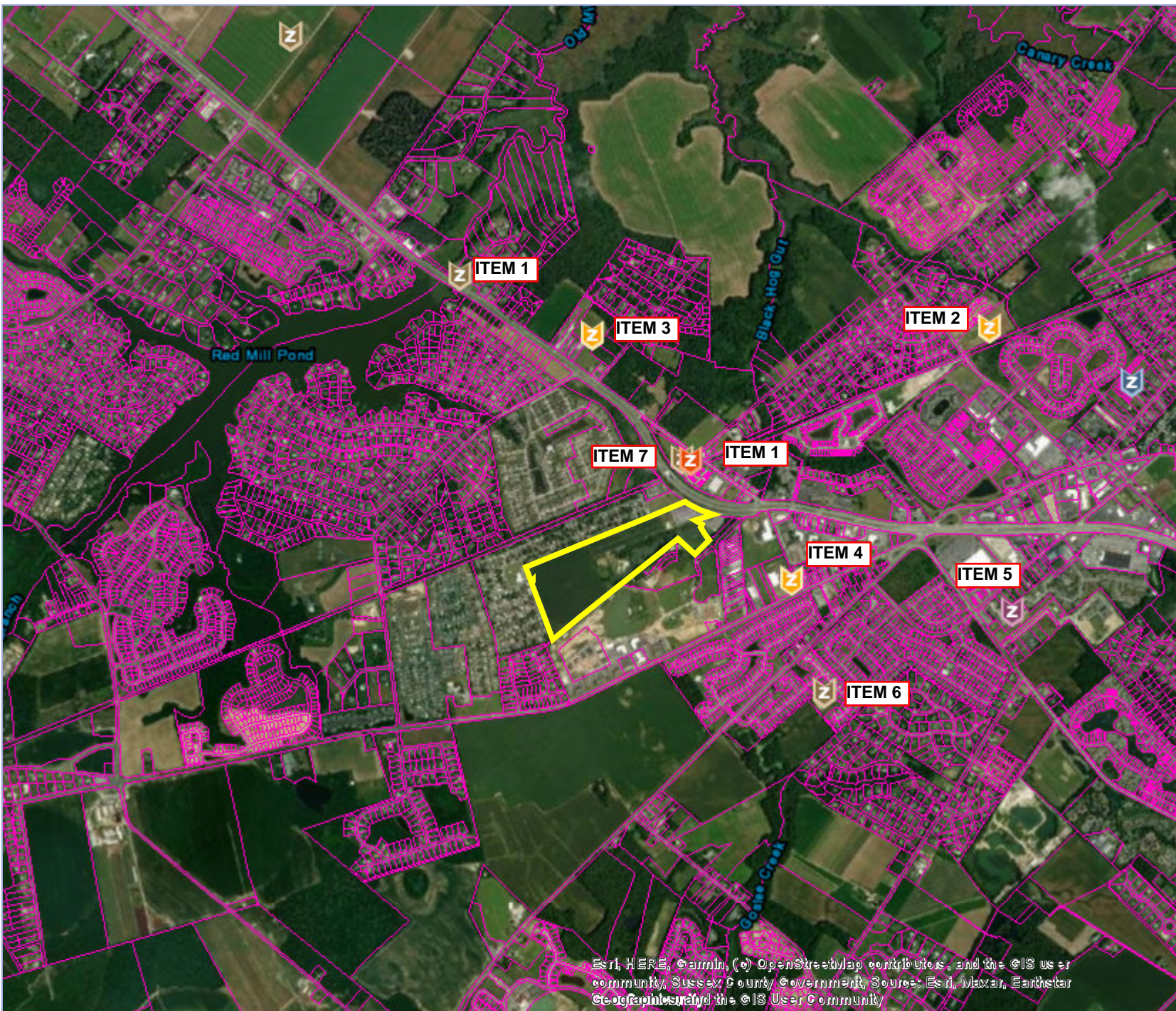
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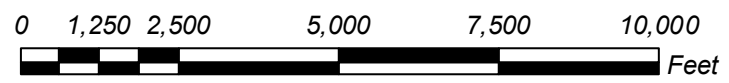


- 2011 
- 2012 
- 2013 
- 2014 
- 2015 

- Change of Zone 
- Conditional Use 
- Special Use Exception 
- Variance 
- Subdivision 



Esri, HERE, Garmin, (c) OpenStreetMap contributors, and the GIS user community, Sussex County Government, Source: Esri, Maxar, Earthstar Geographics and the GIS User Community

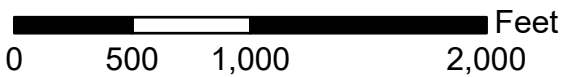




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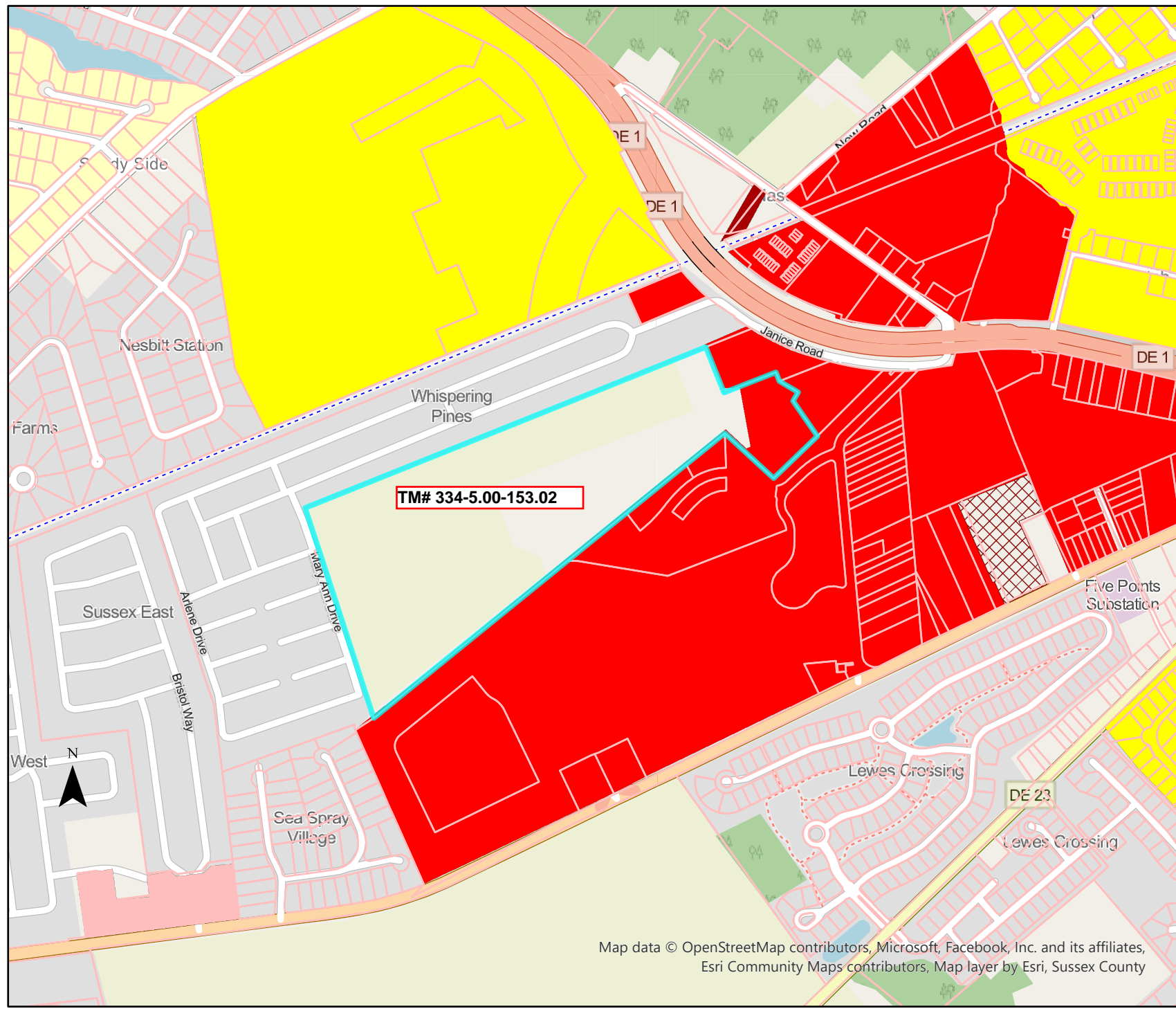
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Street Map
 CZ 1995 - Janice CRP3, LLC (Ritter Farm)
 AR-1 to MR_RPC
 P&Z Meeting - 01/12/2023



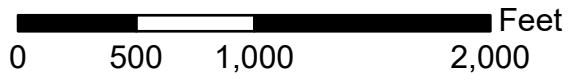
Zoning

- Agricultural Residential - AR-1
- Agricultural Residential - AR-2
- Medium Residential - MR
- General Residential - GR
- High Density Residential - HR-1
- High Density Residential - HR-2
- Vacation, Retire, Resident - 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



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Zoning Map
 CZ 1995 - Janice CRP3, LLC (Ritter Farm)
 AR-1 to MR_RPC
 P&Z Meeting - 01/12/2023



Reintroduced: 1/3/23

Council District 3: Mr. Schaeffer

Tax I.D. No.: 334-5.00-153.02

911 Address: N/A

ORDINANCE NO. ____

AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT AND C-1 GENERAL COMMERCIAL DISTRICT TO AN MR-RPC MEDIUM-DENSITY RESIDENTIAL DISTRICT – RESIDENTIAL PLANNED COMMUNITY FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 61.39 ACRES, MORE OR LESS

WHEREAS, on the 13th day of October, 2022, a zoning application, denominated Change of Zone No. 1995 was filed on behalf of Janice CRP3, LLC; and

WHEREAS, on the ____ day of _____ 2023, 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. 1995 be _____; and

WHEREAS, on the ____ day of _____ 2023, 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 and C-1 General Commercial] and adding in lieu thereof the designation and MR-RPC Medium-Density Residential – Residential Planned Community District as it applies to the property hereinafter described.

Section 2. The subject property is described as follows:

ALL that certain tract, piece or parcels of land lying and being situate in Lewes and Rehoboth Hundred, Sussex County, Delaware, and lying on the west side of Janice Road approximately 0.10 mile west of Nassau Commons Boulevard and being more particularly described in the attached legal description prepared by Davis, Bowen, and Friedel, Inc. said parcels containing 61.39 ac., more or less.

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

To Be Introduced: 06/27/23

Council District 5: Mr. Rieley
Tax I.D. No.: 135-19.00-23.03 (p/o)
911 Address: 19724 Justin Drive, 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 2.47 ACRE PORTION OF A CERTAIN PARCEL OF LAND LYING AND BEING IN GEORGETOWN HUNDRED, SUSSEX COUNTY, CONTAINING 5.42 ACRES, MORE OR LESS

WHEREAS, on the 16th day of June 2022, a zoning application, denominated Change of Zone No. 1989 was filed on behalf of Fernando Robles; and

WHEREAS, on the ____ day of _____ 2023, 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. 1989 be _____; and

WHEREAS, on the ____ day of _____ 2023, 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] 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 Georgetown Hundred, Sussex County, Delaware, and lying on the northwest side of County Seat Highway (Rt. 9) approximately 0.85 mile southwest of DuPont Boulevard (Rt. 113) and being more particularly described in the attached legal description prepared by Pennoni Engineering., said parcel containing 2.47 ac., more or less.

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