



Sussex County Council Public/Media Packet

**MEETING:
June 28, 2022**

****DISCLAIMER****

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



Sussex County

DELAWARE
sussexcountyde.gov
(302) 855-7743

SUSSEX COUNTY COUNCIL

A G E N D A

JUNE 28, 2022

10:30 A.M.

**PLEASE NOTE THE TIME CHANGE DUE TO THE FAMILY COURTHOUSE
GROUNDBREAKING**

Call to Order

Approval of Agenda

Approval of Minutes – June 21, 2022

Reading of Correspondence

Public Comments

Todd Lawson, County Administrator

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

Gina Jennings, Finance Director

1. Discussion and possible action on American Rescue Plan Act Grant Awards

John Ashman, Director of Utility Planning and Design Review

1. Request to prepare and post notices for Mayapple Farm Annexation into the Sussex County Unified Sanitary Sewer District (Bay View Estates Area)



Robert Bryant, Airport Manager

1. Ocean Aviation Airport Hangar Lease and Specialized Aviation Service Operations Agreement

11:00 a.m. Public Hearings

1. The Estuary – Phase 4 Annexation into the Sussex County Unified Sanitary Sewer District (Miller Creek Area)
2. “AN ORDINANCE TO AMEND THE CODE OF SUSSEX COUNTY, CHAPTER 72, ARTICLE II, SECTIONS 72-16 THROUGH 72-28 AND CHAPTER 115, ARTICLE IV, V, VI, VII AND VIII SECTIONS 115-20, 115-25, 115-29, 115-34, 115-37, 115-42, 115-45, 115-50, 115-53 AND 115-58 REGARDING AFFORDABLY PRICED RENTAL UNITS AND THE SUSSEX COUNTY RENTAL UNIT (SCRIP) PROGRAM”

Jamie Whitehouse, Planning and Zoning Director

1. Comprehensive Land Use Plan Annual Report

Old Business

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

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

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

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

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

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

Grant Requests

- 1. Town of Georgetown for electric scooters**
- 2. Eastern Shore AFRAM Festival for festival expenses**
- 3. Harry K Foundation for Desert Oasis Feeding Program**

Introduction of Proposed Zoning Ordinances

Council Members’ Comments

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

Possible action on Executive Session items

Adjourn

-MEETING DETAILS-

In accordance with 29 Del.C. §10004(e)(2), this Agenda was posted on June 21, 2022 at 4:15 p.m. and at least seven (7) days in advance of the meeting.

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

Agenda items may be considered out of sequence.

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

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

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

To join the meeting via telephone, please dial:

Conference Number: 1-302-394-5036

Conference Code: 570176

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

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

#

SUSSEX COUNTY COUNCIL - GEORGETOWN, DELAWARE, JUNE 21, 2022

A regularly scheduled meeting of the Sussex County Council was held on Tuesday, June 21, 2022, at 10:00 a.m., in Council Chambers, with the following present:

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

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

**Call to
Order**

Mr. Vincent called the meeting to order.

**M 282 22
Approve
Agenda**

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

Motion Adopted: 5 Yeas.

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

Minutes

The minutes of the June 14, 2022 meeting were approved by consensus.

**Corres-
pondence**

Mr. Moore reported that a letter was received from The Lewes Historical Society thanking Council for their contribution.

**Public
Comment**

There were no public comments.

**Land
Preservation
Update**

Mr. Lawson provided an update on land preservation. Mr. Lawson noted that the public has put a focus on the County's activities relating to land preservation in recent years. Mr. Lawson added that this was endorsed in the Sussex County Comprehensive Land Use Plan that was adopted in 2019. He then referenced some goals included in the Comprehensive Plan relating to land preservation that the County is undertaking.

Mr. Lawson provided a historic review of land use preservation. In FY 2003, Sussex County first appropriated funding for land preservation. Land has been preserved using County funding and partnering with numerous organizations, including, the Sussex County Land Trust, the Nature Conservancy, Chesapeake Conservancy, the Farmland Preservation

**Land
Preservation
Update
(continued)**

program, DE Division of Fish and Wildlife along with others. Since FY 2003, the County has spent nearly \$13.5 million and preserved over 5,200 acres of land.

In 2020 and 2021, the County funded the following properties:

- Piney Neck Property – Division of Fish & Wildlife – 9 acres
- Jones Farm – City of Lewes & Lewes BPW – 37 acres
- Dorman Farm – Route 24 – 17 acres
- Absher Property – Nanticoke Crossing – 41 acres at Woodland Ferry

In recent months, the County negotiated for the following acquisitions:

- Dorman Family Trust Tract (No. 2) – Route 24 – 13 acres
- Dawson Bros. Tract – Route 24 – 40 acres
- Jones Family Trust – Conaway Road, Millsboro – 47 acres
- Hopkins Preserve – Sweetbriar Road – 51 acres

Mr. Lawson noted that it is over \$5.0 million in County funding for some 150 acres. Mr. Lawson shared aerial photos of each of the properties.

Mr. Lawson added that the Hopkins Preserve property will be managed by the Sussex County Land Trust.

Mr. Mark Chura, Executive Director of the Sussex County Land Trust, came forward to provide information about the Land Trust. Mr. Chura reported that the Land Trust was founded in 2002. Since then, they have been involved in about twenty different projects and raised about \$4 million to support those projects. In addition, the Land Trust has about 5,800 acres that they have had some role in preserving.

**Adminis-
trator's
Report**

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

1. Delaware State Police Activity Report

The Delaware State Police year-to-date activity report for May 2022 is attached listing the number of violent crime and property crime arrests, as well as total traffic charges and corresponding arrests. In addition, DUI and total vehicle crashes investigated are listed. In total, there were 191 troopers assigned to Sussex County for the month of May.

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

**FY 2023
Budget
Hearings**

At 10:26 a.m., Public Hearings were held on the FY 2023 budget.

**Public Hearing/
Assessment
Rolls**

A Public Hearing was held on the Assessment Rolls for Sewer and Water Districts. Mrs. Jennings reported that the Assessment Rolls reflect the County's records for equivalent dwelling units (EDUs) and billable front footage for each sewer and water district. These records have been made available in the billing office for public inspection and review. These records are subject to individual appeal via the Board of Assessment Review. Mrs. Jennings noted that this Public Hearing is on the list of properties and their applicable front footage and EDU's that will be billable by the rates established in the rate ordinance.

There were no public comments.

The Public Hearing and public record were closed.

**M 283 22
Adopt
Assessment
Rolls**

A Motion was made by Mr. Rieley, seconded by Mr. Hudson, that the Sussex County Council adopts the Assessment Rolls for the Sussex County Unified Sewer and Water Districts for the period July 1, 2022 through June 30, 2023.

Motion Adopted: 5 Yeas

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

**Public Hearing/
Sewer Rates
and Charges
Ordinance**

A Public Hearing was held on a Proposed Ordinance entitled "AN ORDINANCE ESTABLISHING ANNUAL SERVICE CHARGES, ANNUAL ASSESSMENT RATES FOR COLLECTION AND TRANSMISSION AND/OR TREATMENT AND CONNECTION CHARGES FOR ALL SUSSEX COUNTY WATER AND SANITARY SEWER DISTRICTS".

Mrs. Jennings reviewed highlights of the sewer and water budget. (A comprehensive presentation was given at the May 24, 2022 Council meeting.)

There were no public comments.

The Public Hearing and public record were closed.

**M 284 22
Adopt
Ordinance
No. 2867**

A Motion was made by Mr. Hudson, seconded by Mr. Schaeffer to Adopt Ordinance No. 2867 entitled "AN ORDINANCE ESTABLISHING ANNUAL SERVICE CHARGES, ANNUAL ASSESSMENT RATES FOR COLLECTION AND TRANSMISSION AND/OR TREATMENT

**M 284 22
Adopt
Ordinance
No. 2867
(continued)**

**AND CONNECTION CHARGES FOR ALL SUSSEX COUNTY
WATER AND SANITARY SEWER DISTRICTS”.**

Motion Adopted: 5 Yeas

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

**Public
Hearing/
Proposed
Ordinance/
Establish-
ment of Fees**

**A Public Hearing was held on a Proposed Ordinance entitled “AN
ORDINANCE TO AMEND CHAPTER 62, ARTICLE III, §§ 62-7 AND 62-
8B AND CHAPTER 99 §§ 99-14 AND 99-39 OF THE CODE OF SUSSEX
COUNTY RELATING TO THE ESTABLISHMENT OF FEES IN THE
ANNUAL BUDGET”**

**Mrs. Jennings summarized the Proposed Ordinance. It states that the
Planning and Zoning fees listed in these sections of the Code shall be set
forth in the schedule of fees that shall be adopted by Sussex County Council
as part of the annual budget for each fiscal year commencing with FY 2023.**

**Mrs. Jennings further explained that every time the Code is touched, there
are sections with fees that are throughout the Code. For transparency
purposes, the attempt is to start creating a fee schedule in the budget so that
it is viewed every year and is located in one place to make it easier to find
the fees.**

There were no public comments.

The Public Hearing and public record were closed.

**M 285 22
Adopt
Ordinance
No. 2868**

**A Motion was made by Mr. Rieley, seconded by Mr. Hudson to Adopt
Ordinance No. 2868 entitled “AN ORDINANCE TO AMEND
CHAPTER 62, ARTICLE III, §§ 62-7 AND 62-8B AND CHAPTER 99
§§ 99-14 AND 99-39 OF THE CODE OF SUSSEX COUNTY
RELATING TO THE ESTABLISHMENT OF FEES IN THE ANNUAL
BUDGET”.**

Motion Adopted: 5 Yeas

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

**Public
Hearing/
Proposed
FY 2023**

**A Public Hearing was held on a Proposed Ordinance entitled “AN
ORDINANCE ESTABLISHING THE ANNUAL OPERATING
BUDGET FOR FISCAL YEAR 2023”.**

Budget Ordinance

Mrs. Jennings reviewed highlights of the \$294.1 million annual operating budget for Fiscal Year 2023. (A comprehensive presentation was given at the May 24, 2022 Council meeting)

Public comments were heard.

Russell Hooper, President of the Sussex County Volunteer Firefighters Association, thanked the Council, Mr. Lawson, and Mrs. Jennings for their work to increase the funding in the FY 2023 budget for the fire service through the BLS discretionary fund as well as through the capital purchase request for the technical rescue team.

The Public Hearing and public record were closed.

**M 286 22
Adopt Ordinance
No. 2869**

A Motion was made by Mr. Rieley, seconded by Mr. Hudson to Adopt Ordinance No. 2869 entitled “AN ORDINANCE ESTABLISHING THE ANNUAL OPERATING BUDGET FOR FISCAL YEAR 2023”.

Motion Adopted: 4 Yeas, 1 Nay

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

Permission to Prepare & Post Notices/ The Lands of Hete4, LLC

John Ashman, Director of Utility Planning and Design Review, presented a request for permission to prepare and post notices for The Lands of Hete4, LLC for expansion of the Sussex County Unified Sanitary Sewer District (West Rehoboth Area). Mr. Ashman reported that the Engineering Department has received a request from Matthew Hete/Lands of Hete4, LLC, the owner/developer of the property. The request is for parcel 334-6.00-686.00 on Postal Lane. The project consists of four Single Family homes on a single parcel to be owned and occupied by family members. As they are single family homes, they will require an 8” sewer connection on Postal Lane. The project will be responsible for System Connection Charges of \$6,600 per EDU based on current rates.

**M 287 22
The Lands of Hete4, LLC
Approval into SCUSSD**

A Motion was made by Mr. Schaeffer, seconded by Mr. Hudson, be it moved by the Sussex County Council that the Sussex County Engineering Department is authorized to prepare and post notices for the Hete expansion of the Sussex County Unified Sanitary Sewer District to include parcel 334-6.00-686.00 located along Postal Lane 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**

**FY 2023
Insurance
Recommendations**

Andrea Wall, Manager of Accounting, presented FY 2023 Insurance Recommendations for Council's consideration. Mrs. Wall reported that as we approach the renewal of our insurance package on July 1, our current broker, Alliant and our insurance consultant, Insurance Buyers Council both recommended that Sussex County not market our property and liability package, pollution, and crime coverages, all other lines were marketed. The recommendation is that we market our program every 2 to 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 circumstances such as COVID-19, Alliant was able to secure renewal pricing that was below our budget projections for FY 2023. Mrs. Wall and the County's insurance consultant, Scott Agar, recommended that the County renew with the following insurers:

- 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**

**M 288 22
Authorize
Placement of
Insurance
Coverage**

A Motion was made by Mr. Rieley, seconded by Mr. Schaeffer, based upon the recommendation of Alliant Insurance Services, Inc. and Insurance Buyers Council, and the Sussex County Finance Department, that Sussex County Council authorizes the placement of insurance coverage, as presented, for the period of July 1, 2022 through June 30, 2023, at a cost not to exceed \$1,990,236.00.

Motion Adopted: 5 Yeas

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

**Federal
Payment in
Lieu of
Taxes**

Andrea Wall, Manager of Accounting, reported that a check in the amount of \$38,898.00 has been received from the United States Department of the Interior, Fish & Wildlife Services, as a federal payment in lieu of taxes for the Prime Hook National Wildlife Refuge. This check represents payments under the Refuge Sharing Act covering Fiscal Year 2021. The amount is calculated by the U.S. Fish and Wildlife Service by prorating the total funds available for payment. This check is funded through revenues generated from the Prime Hook National Refuge and from a supplemental congressional appropriation. Sussex County may use these funds for any governmental purpose. Mrs. Wall advised that the recommendation is to allocate the funds in the same percentage as other County tax collections, as the County has done in the past.

**M 289 22
Approve
Refuge
Revenue
Sharing
Funds
Distribution**

A Motion was made by Mr. Hudson, seconded by Mr. Schaeffer, that the Sussex County Council approve the Accounting Department's recommended distribution of the Refuge Revenue Sharing Funds, as follows: Milford School District - \$7,805.36; Cape Henlopen School District - \$25,226.21; Sussex Technical School District - \$2,318.03; Sussex County - \$3,176.01; and Sussex County Libraries - \$372.39.

Motion Adopted: 5 Yeas

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

**EMS Public
Safety
Building/
CO No. 14**

Hans Medlarz, County Engineer, presented Change Order No. 14 for the EMS Public Safety Building, Project C19-04 for Council's consideration. Mr. Medlarz noted that two items associated with this Change Order are related to the cooling tower. In addition, the floor tile color that was selected carried an upcharge as well as corridor modifications and other miscellaneous items.

**M 290 22
Approve CO
No. 14/EMS
Public
Safety
Building**

A Motion was made by Mr. Hudson, seconded by Mr. Rieley that be it moved, based upon the recommendation of the Sussex County Engineering Department, that Change Order No. 14 for Contract C19-04, Sussex County Public Safety Building, be approved, for an increase of \$26,371.68.

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 291 22
Nanticoke
Indian
Association,
Inc.**

A Motion was made by Mr. Hudson, seconded by Mr. Rieley to give \$7,500 (\$7,500 from Mr. Hudson's Councilmanic Grant Account) to Nanticoke Indian Association, Inc. for their annual Indian Powwow.

Motion Adopted: 5 Yeas

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

**M 292 22
Slaughter
Neck
Community
Action
Organiza-
tion**

A Motion was made by Mrs. Green, seconded by Mr. Schaeffer to give \$6,300 (\$5,800 from Mrs. Green's Councilmanic Grant account and \$500 from Mr. Schaeffer's Councilmanic Grant Account) to Slaughter Neck Community Action Organization, Inc. for playground equipment.

Motion Adopted: 5 Yeas

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

**M 293 22
Greenwood
Police
Department**

A Motion was made by Mrs. Green, seconded by Mr. Hudson to give \$1,000 (\$1,000 from Mrs. Green's Councilmanic Grant Account) to Greenwood Police Department for Night Out.

Motion Adopted: 5 Yeas

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

**M 294 22
West
Rehoboth
Community
Land Trust**

A Motion was made by Mr. Schaeffer, seconded by Mrs. Green to give \$3,500 (\$3,500 from Mr. Schaeffer's Councilmanic Grant Account) to West Rehoboth Community Land Trust for housing maintenance.

Motion Adopted: 5 Yeas

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

**M 295 22
The**

A Motion was made by Mr. Rieley, seconded by Mr. Hudson to give \$5,000 (\$5,000 from Mr. Rieley's Councilmanic Grant Account) to The Christian

Christian Storehouse Inc. Storehouse Inc. for operating costs.

Motion Adopted: 5 Yeas

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

M 296 22 Georgetown Historical Society A Motion was made by Mr. Rieley seconded by Mr. Hudson to give \$2,000 (\$2,000 from Mr. Rieley's Councilmanic Grant Account) to Georgetown Historical Society for HVAC conditioning system.

Motion Adopted: 5 Yeas

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

M 297 22 West Side New Beginning, Inc. A Motion was made by Mr. Schaeffer, seconded by Mrs. Green to give \$1,800 (\$1,800 from Mr. Schaeffer's Councilmanic Grant Account) to West Side New Beginning, Inc. for Project Safety Street Lights.

Motion Adopted: 5 Yeas

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

M 298 22 Town of Blades A Motion was made by Mr. Rieley, seconded by Mr. Hudson to give \$750 (\$750 from Mr. Vincent's Councilmanic Grant Account) to the Town of Blades for Night Out.

Motion Adopted: 5 Yeas

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

Introduction of Proposed Ordinances Mr. Rieley introduced a Proposed Ordinance entitled "AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A C-2 MEDIUM COMMERCIAL DISTRICT FOR A PORTION OF A CERTAIN PARCEL OF LAND LYING AND BEING IN GEORGETOWN HUNDRED, SUSSEX COUNTY, CONTAINING 7.75 ACRES, MORE OR LESS "

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

Introduction of Proposed Ordinances (continued) **OF CONDITION NO. 9 IN ORDINANCE NO. 2378 (CONDITIONAL USE NO. 1963) TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 54.33 ACRES, MORE OR LESS”**

The Proposed Ordinances will be advertised for Public Hearings.

Council Member Comments **Mr. Hudson commented that Sheriff First Class Glen Hillard is being laid to rest today and asked for thoughts for his family.**

M 299 22 Adjourn **A Motion was made by Mr. Schaeffer, seconded by Mrs. Green to adjourn at 11:02 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.}

TODD F. LAWSON
COUNTY ADMINISTRATOR

(302) 855-7742 T
(302) 855-7749 F
tlawson@sussexcountyde.gov



Sussex County

DELAWARE
sussexcountyde.gov

Memorandum

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

FROM: Todd F. Lawson 
County Administrator

RE: **DISPOSITION OF COUNTY PROPERTY – JONES FARM –
CONAWAY ROAD**

DATE: June 24, 2022

During Tuesday's meeting, Council is scheduled to discuss and consider the disposition of County owned property on what is known as the Jones Farm on Conaway Road, west of Millsboro.

The County recently purchased three parcels from the Jones Heirs totaling 47 acres. Within this portfolio, one parcel equaled 1.5 acres and included an old farmhouse and surrounding agricultural buildings. The farmhouse was purportedly built in the 1800s. An image of the parcel is attached.

In lieu of keeping and maintaining this property and farmhouse, it is in the County's best interest to dispose of the property through an advertised sale. If approved, the County will advertise an RFP for the purchase and sale of the property.

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

Council approval is required to dispose of the property through an advertised sale.

Please let me know if you have any questions.





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 Douglas B. Hudson, Vice President
The Honorable Cynthia C. Green
The Honorable John L. Rieley
The Honorable Mark G. Schaeffer

FROM: Gina A. Jennings
Finance Director/Chief Operating Officer

RE: **American Rescue Plan Act Grant Awards**

DATE: June 24, 2022

At the March 8th Council meeting, I discussed the \$45.5 million that the County was granted through the American Rescue Plan Act. At that time, I gave a presentation on the Treasury guidelines and made a recommendation on how to best utilize these funds following those guidelines. Two of the recommendations were to grant funds to non-profit entities and affordable housing groups after an established application period.

The submitted applications have been reviewed by multiple employees and housing advocates. On Tuesday, Brandy Nauman and I will be discussing the applications and subsequently make a recommendation for your approval to award funds to the various eligible entities and projects. The awards for this round of applications total \$8 million.

If you have any questions, please feel free to contact me.

pc: Todd F. Lawson

ENGINEERING DEPARTMENT

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



Sussex County

DELAWARE
sussexcountyde.gov

HANS M. MEDLARZ, P.E.
COUNTY ENGINEER

JOHN J. ASHMAN
DIRECTOR OF UTILITY PLANNING

Proposed Mayapple Farm Expansion of the Sussex County Unified Sanitary Sewer District

PERMISSION TO POST FACT SHEET

- Expansion of the Sussex County Unified Sanitary Sewer District (Bay View Estates Area)
- The Engineering Department has received a request from GMB, LLC on behalf of their client Mayapple Farm, LLC the owners/developers of a project to be known as Mayapple Farm.
- The request includes parcel 533-19.00-289.05.
- The project is proposed at 41 single family homes under a condo regime on 20.91 acres.
- The project will be responsible for System Connection Charges of \$6,600.00 per EDU based on current rates.
- The Engineering Department would like to request permission to prepare and post notices for a Public Hearing on the annexation of the area.
- A tentative Public Hearing is currently scheduled for August 9, 2022, at the regular County Council meeting.



Permission to Prepare and Post Notices Mayapple Farm

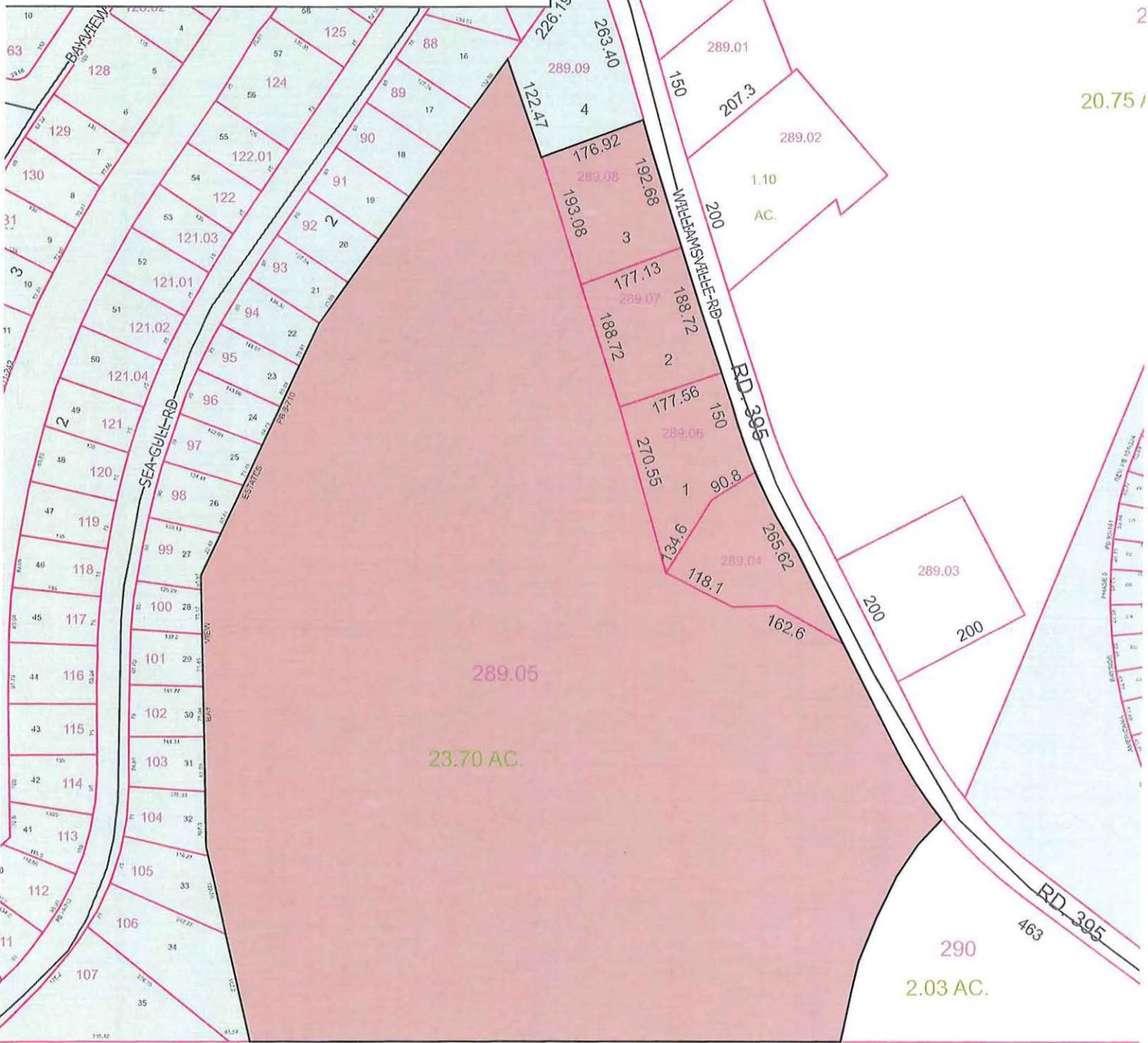
Existing SSD Parcels of Interest



0 70 140 280
Feet



6/23/2022



ENGINEERING DEPARTMENT

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



Sussex County

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

MEMORANDUM

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

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

FROM: Robert L. Bryant, A.A.E., Airport Manager

RE: ***Approval: Airport Hangar Lease and Specialized Aviation Service Operations Agreement***

DATE: June 28, 2022

On June 13, 2022, Airport Management, on behalf of Sussex County Delaware, opened Request for Proposals (RFP) for a Hangar Lease and Flight Training Operator at the Delaware Coastal Airport. Only one (1) was received:

Ocean Aviation (d/b/a Ocean Aviation Flight Academy)
12724 Airport Road
Berlin, Maryland, 21811

As per the terms of the RFP, Ocean Aviation will lease the hangar described in the RFP as “Lot C” under the terms specified in the RFP and will provide the following Specialized Aviation Service Operations (SASO):

- i. Flight Training Operator
- ii. Aircraft Storage Operator
- iii. Aircraft Rental Operator
- iv. Aircraft Sales Operator
- v. Air Charter Operator

Highlights of the “Airport Hangar and Specialized Aviation Service Operations Agreement” includes the following:



1. Leased Property that consists of the following:
 - i. Lot C (45,325 sq ft)
 - ii. One box hangar building (4,500 sq ft)
 - iii. 15 capacity vehicle parking lot
 - iv. Aircraft parking apron (7,700 sq ft)
2. Provide Flight Training regulated under the guidance of Federal Aviation Regulation Part 141 and/or Part 61.
3. Lease shall be for a period of five (5) years with the option to renew the lease for three (3) additional five (5) year consecutive periods.
4. Rent begins at \$11,197.20 (\$933.10 per month) and is subject to annual adjustments to the most recent CPI, not to exceed 3% in any one year.
5. Tenant shall maintain, at Tenant's own cost and expense, the leased property including the hangar and any other improvements thereon in good, clean condition.
6. The primary use of the leased property shall be a Flight Training Operator.

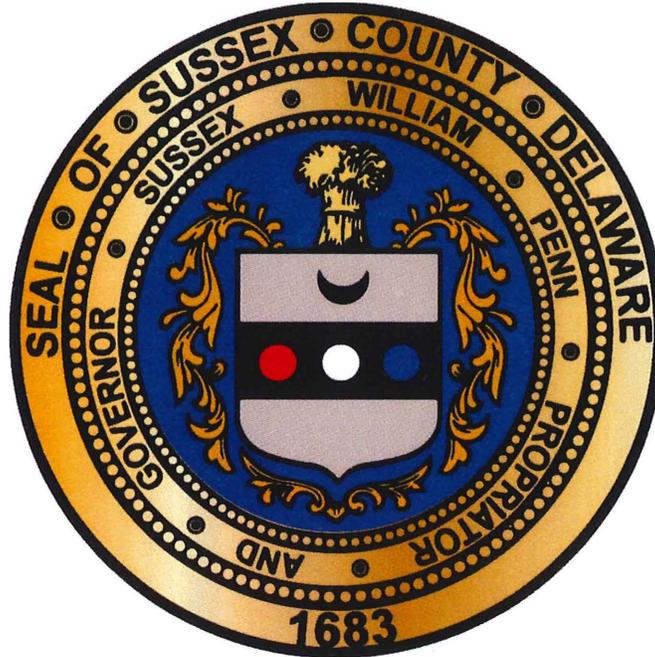
Ocean Aviation has been active in the business of providing flight training over the past fifteen (15) years. Ocean Aviation operates as a Cessna Pilot Center which are recognized as the largest and most prestigious flight school chain in the world. In 2022, Ocean Aviation was recognized as one of the top Hawk Cessna Pilot Centers in the country and was awarded (from Cessna) a brand-new Cessna Skyhawk 172 aircraft. Ocean Aviation maintains a fleet of ten (1) Cessna Skyhawk aircraft and plans to initially maintain three (3) aircraft at the Delaware Coastal Airport.

Sussex County Engineering Department is seeking the approval by the Sussex County Council on the Airport Hangar Lease and Specialized Aviation Service Operations Agreement with Ocean Aviation.

Attached:

1. Advertised Request for Proposal
2. Ocean Aviation response to RFP
3. Airport Hangar Lease and Specialized Aviation Service Operations Agreement

Sussex County, Delaware



REQUEST FOR PROPOSALS

HANGAR LEASE AND FLIGHT TRAINING OPERATOR
DELAWARE COASTAL AIRPORT

MAY 24, 2022



REQUEST FOR PROPOSALS
GROUND LEASE AND HANGAR DEVELOPMENT
AT DELAWARE COASTAL AIRPORT

CONTENTS:

- I. Public Advertisement
- II. Instructions for Proposal
- III. General Information
- IV. Required Submittals
- V. Insurance Requirements
- VI. Grounds for Denial of Proposal
- VII. Evaluation and Selection Process
- VIII. (DRAFT) Airport Hangar Lease and Specialized Aviation Service Operations Agreement
- IX. Delaware Coastal Airport Policies: Minimum Standards for Commercial Aeronautical Activity
 - Exhibit A – Lot C
 - Exhibit B – Lot C Aerial View
 - Exhibit C – Hangar Outside
 - Exhibit D – Hangar Inside
 - Exhibit E – Hangar Offices

DATE RELEASED: June __, 2022

REQUEST FOR PROPOSALS

The Sussex County Government (County) is seeking sealed Proposals from experienced Petitioners for:

An AIRPORT HANGAR LEASE AND SPECIALIZED AVIATION SERVICE OPERATIONS AGREEMENT (Lease Agreement) between Sussex County, a political subdivision of the State of Delaware, and a Petitioner for the purposes of providing a Flight Training Operator at the Delaware Coastal Airport (GED). The Lease Agreement shall be subject to the terms and conditions approved by the County. The County will lease to one Petitioner, Lot C (along with all existing improvements thereon), located at 21431 Rudder Lane, Georgetown, DE 19947, at Delaware Coastal Airport for the purpose of establishing a Flight Training Operator.

Sussex County will accept proposals for the following Lease Agreement package.

- Lot C ranging is size of 175.0' x 259.0' (45,325 square feet) and includes the following:
 - o One (1) 70'(w) x 65'(L) x 26'(H) (4,500 square feet) box hangar building
 - o 15 capacity vehicle parking lot area
 - o 110' x 70' (7,700 square feet) aircraft parking apron
- Provide a Flight Training Operator, commercial activity, regulated under the guidance of Federal Aviation Regulations Part 141 and/or Part 61, engaged in providing flight instruction to the public and/or providing such related ground school instruction as is necessary to complete the knowledge and/or practical tests for any category of pilot certificate or rating.

Based on the criteria established, an evaluation committee will be selected to review and rank all proposals. The evaluation committee shall determine whether a Petitioner's proposal meets the minimum qualifications. At any point in the process, the evaluation committee may, at its discretion, terminate negotiations with any, and all, Petitioners.

Interested parties must submit a written proposal to the Airport Manager, Attention: Robert L. Bryant, A.A.E., Delaware Coastal Airport, 21553 Rudder Lane, Georgetown, DE 19947, by **3:00 p.m., June __, 2022** at which time the proposals will be publicly opened, read aloud recording only the name of the respondent(s). All other information shall be confidential until County Council awards the lease determined to be the most advantageous to the County in a public meeting. Award of a successful proposal is expected in **mid-July __, 2022**.

The Request for Proposals may be obtained by visiting Sussex County's website sussexcountyde.gov/legal-notices/bids or by contacting Robert L. Bryant, A.A.E., Airport Manager at Delaware Coastal Airport, 21553 Rudder Lane, Georgetown, Delaware, telephone: (302) 855-7774, email: robert.bryant@sussexcountyde.gov during regular business hours from 8:30 a.m. to 4:30 p.m., Monday through Friday. In its sole discretion, Sussex County may extend the time and place for opening of proposals from that described in the advertisement by providing not less than two (2) calendar days' notice, by posting an Addendum on the Sussex County website and by providing notice thereof by certified delivery, facsimile machine, or other electronic means such as email, to those potential Petitioners who obtained copies of the RFP and provided notice thereof to Robert L. Bryant at the email address provided herein.

Petitioners having questions concerning the proposal should submit them in writing via e-mail no later than 12:00 p.m., **May __ 2022**, to Robert L. Bryant, A.A.E., Airport Manager, at robert.bryant@sussexcountyde.gov.

II. Instructions for Proposals “Flight Training Operator”

Each written proposal must be submitted in a sealed envelope, addressed to Robert L. Bryant, A.A.E., Airport Manager, 21553 Rudder Lane, Georgetown, DE 19947. Each sealed envelope containing a proposal must be plainly marked on the outside as “**Flight Training Operator**” and bear the name and address of the Petitioner. If sent by mail, the sealed envelope should be sent by certified mail and be indicated as received on the certified receipt prior to the Proposal Opening. Late proposals will not be accepted. Sussex County may extend the time and place for opening of proposals from that described in the advertisement, by providing not less than two (2) calendar days’ notice, by posting an Addendum on the Sussex County website and by providing notice thereof by certified delivery, facsimile machine, or other electronic means such as email, to those potential Petitioners who obtained copies of the Request for Proposals and provided notice thereof to Robert L. Bryant, A.A.E., at the email address provided herein.

Sussex County reserves the right to reject any and all proposals, to waive any informalities in proposals received, except with respect to the date, time and place where the documents are submitted, to cancel this RFP in whole or in part, to reissue this RFP and/or to accept or reject items of proposals received. In the event this RFP is canceled in whole or in part prior to the opening of proposals, all Petitioners shall receive a notice of cancellation and all proposals received shall be returned to the respective Petitioners unopened.

FAX proposals will not be accepted.

Interested parties are asked to submit one (1) written proposal to Sussex County, Attention: Robert L. Bryant, A.A.E., Airport Manager, Delaware Coastal Airport, 21553 Rudder Lane, Georgetown, DE 19947, by 3:00 p.m., **June __, 2022**, at which time the proposals will be publicly opened, reading aloud, and recording only the name of the Petitioner. All other information shall be confidential.

Mailing Address: Robert L. Bryant, A.A.E., Airport Manager
Delaware Coastal Airport
PO Box 589
Georgetown, DE 19947

Delivery Address: Robert L. Bryant, A.A.E., Airport Manager
Delaware Coastal Airport
21553 Rudder Lane
Georgetown, DE 19947

Telephone Number: (302) 855-7774

III. General Information

The County anticipates granting to the successful Petitioner the right and privilege to operate, conduct and perform the following services and accommodations, subject to the terms of a binding Lease Agreement for a period of five (5) years at which time the Petitioner shall become known to as “Tenant”.

- Lot C ranging is size of 175.0' x 259.0' (45,325 square feet) and includes the following:
 - o One (1) 70'(w) x 65'(L) x 26'(H) (4,500 square feet) box hangar building.
 - o 15 capacity vehicle parking lot area.
 - o 110' x 70' (7,700 square feet) aircraft parking apron.
- Provide a Flight Training Operator, commercial activity, regulated under the guidance of Federal Aviation Regulations Part 61 and/or Part 141, engaged in providing flight instruction to the public and/or providing such related ground school instruction as is necessary to complete the knowledge and/or practical tests for any category of pilot certificate or rating.

Provided that Tenant is current with all rent payments owed the County and is otherwise compliant with the terms and conditions of the Lease Agreement, Tenant shall have the option to renew the Lease Agreement for three (3) additional five (5) year consecutive terms subject to the same terms and conditions as stated in the Lease Agreement. At the end of the lease term and the three (3) option terms, if exercised, the parties agree that the Lease Agreement shall terminate, and that Tenant shall have no right to continue to occupy the Leased Property absent a new Lease Agreement being executed.

The minimum responsive lease rent proposal has been established at \$11,197.20 per year (\$933.10 per month). Lease Agreement area covers all of Lot C (along with all existing improvements thereon) any ancillary uses for the benefit of the Tenant such as but not limited to public access roads, and taxiways. Rent under this Lease Agreement shall be adjusted every year of the Lease Agreement term and any option term, if exercised, to reflect any change in the Consumer Price Index. The rent for each subsequent year, including the option terms if exercised, will be adjusted by the percentage increase from the last preceding calendar year, if any, not to exceed three percent (3%) in any one Lease Agreement year.

Terms of the Lease Agreement shall be Triple Net – the Tenant shall be solely responsible for all cost and expense relating to the property being leased, including the hangar and any other improvements thereon in good, clean condition and state of repair free from noxious activities or appearance and in accordance with any current or future Airport guidelines or policies.

Successful Petitioner shall sign and execute the “AIRPORT HANGAR LEASE AND SPECIALIZED AVIATION SERVICE OPERATIONS AGREEMENT” within thirty (30) days following approval of the Lease Agreement by the Sussex County Council and occupy the Leased Property and must begin and provide Flight Training Operator, commercial activity, regulated under the guidance of Federal Aviation Regulations Part 61 and/or Part 141, flight instruction to the public within ninety (90) days following approval of the Lease Agreement by the Sussex County Council.

An on-site inspection of the Leased Property may be arranged by calling the Airport Administration office at (302) 855-7774.

IV. Required Submittals

The following information must be included in the Petitioner's proposal. Failure to provide any of the information will result in the rejection of the application:

1. Petitioner's informational cover page that includes the following:
 - a. The Petitioner's legal name.
 - b. Petitioner's mailing address.
 - c. Petitioner's telephone and facsimile numbers.
 - d. Petitioner's email address.
 - e. Name of Petitioner's representative or contact person.
 - f. Petitioner's telephone number.
2. Business Information (if the proposed Lessee is a business entity). Provide a full description of the Petitioner's business, including the following information:
 - a. A description of the business, including years of experience as a Flight Training Operator, any relationship to a larger corporate entity;
 - b. Names of key officers and owners.
3. Type of Flight Training Operator training and/or school being proposed (FAR Part 141 flight training school and/or FAR Part 61 flight instruction). Flight Training Operator courses to be provided.
4. Type and number of aircraft expected to be stored in the proposed leased property. Other Flight Training Operator equipment expected to be stored in the proposed leased property.
5. A summary of the Petitioner's proposed use of the facility being leased, including the following information:
 - a. Describe how the use will benefit the area's aviation community.
 - b. Proposed hours of operation (if a business entity).
6. Evidence of the Petitioner's ability to supply all required insurance coverages as specified by the County.

V. Insurance Requirements

Petitioner shall secure insurance requirements identified in the AIRPORT HANGAR LEASE AND SPECIALIZED AVIATION SERVICE OPERATIONS AGREEMENT, Section 22, titled Insurance which insures against, but is not limited to, bodily injury and property damage claims arising from the Petitioner's ownership, maintenance or use of entity-owned aircraft while the aircraft is stored at or being operated to or from the leased property.

VI. Grounds for Denial of Proposal

The following may be used as grounds for declaring a proposal “non-responsive”:

- The applicant does not meet qualifications standards and requirements established by the Minimum Standards.
- The applicant’s proposed operations will create an unacceptable safety hazard on the Airport.
- The granting of the application will require the expenditure of County funds, labor or materials on the facilities described in or related to the application, or the operation will result in a financial loss to Sussex County.
- Any party applying or having interest in the business has supplied false information or has misrepresented any material fact in the application or in supporting documents or has failed to make full disclosure on the application.
- Any party applying, or having an interest in the business, has a record of violating the rules, or the Rules and Regulations of this or any other Airport, or the Federal Aviation Regulations.
- Any party applying, or having an interest in the business, has defaulted in the performance of any lease or other Agreement with Delaware Coastal Airport or any lease or other agreement on any other airport.
- Any party applying, or having an interest in the business, is not sufficiently credit worthy and responsible in the judgment of the Sussex County Council to provide and maintain the business to which the application relates and to promptly pay amounts due under an Agreement.

VII. Evaluation and Selection Process

All Petitioners are advised that in the event of a receipt of adequate number of proposals which, in the opinion of the County, require no clarification and/or supplementary information, such proposals may be evaluated without discussion. Hence, proposals should be initially submitted on the most complete and favorable terms which Petitioners are capable of offering the County. Proposals will be evaluated using the following criteria:

EVALUATION CRITERIA

Proposals will be evaluated based on the following criteria (maximum of 100 points).

Points Scale	Criterion
20	Qualifications of the Petitioner
20	Petitioner’s understanding of the purpose and objectives of the objectives of the Request for Proposal
40	Petitioner’s knowledge and experience as a Flight Training Operator in the past five (5) years.
20	Petitioner’s organizational capacity to meet the demands of the RFP specifications.

Information provided under Section IV above will be used in case of a tied score.

VIII. Option to provide added Commercial Aeronautical Activity

The intended purpose of this Request for Proposal is for providing a Flight Training Operator engaged in providing flight instruction to the public and/or providing such related ground school instruction as is necessary to complete the knowledge and/or practical tests for any category of pilot certificate or rating at the Delaware Coastal Airport. However, the Petitioner has also the option to provide added Commercial Aeronautical Activity. that can include:

Commercial Aeronautical Activity can include:

Specialized Aviation Service Operator (SASO) – means a single-service provider performing less than full services. Fuel sales are not allowed as a SASO. SASO single services can include:

- a. Aircraft Maintenance Operator (SASO)
- b. Aircraft Rental Operator (SASO)
- c. Aircraft Sales Operator (SASO)
- d. Aircraft Storage Operator (SASO)
- e. Air Charter or Air Taxi Operator (SASO)
- f. Specialized Commercial Aeronautical Operator (SASO)
 1. Limited Aircraft Services and Support
 2. Miscellaneous Commercial Services and Support
 3. Air Transportation Service for Hire

Any Petitioner that proposes the option to provide added Commercial Aeronautical Activity is required to identify the added Commercial Aeronautical Activity in their proposal as outlined under Section IV Required Submittals.

Commercial entities operating within the Leased Property shall be required to maintain insurance as found in Delaware Coastal Airport Policies, Volume IV, *Minimum Standards for Commercial Aeronautical Activity*, as a condition of lease. A copy of this document may be obtained from the Delaware Coastal Airport office or by visiting the County's website at https://delawarecoastalairport.com/wpcontent/uploads/2018/07/MinimumStandardsVolIV_Adopted.pdf



Ocean City Municipal Airport
12724 Airport Road
Berlin, MD 21811
410 213-8400

May 27, 2022

Mr. Robert L. Bryant
Delaware Coastal Airport
Airport Manager
21553 Rudder Lane
PO Box 589
Georgetown, DE 19947

Dear Mr. Bryant.

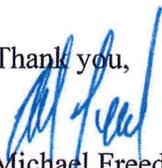
Please find attached a response to your RFP for an Airport Hangar Lease and Specialized Aviation Service Operations Agreement.

Ocean Aviation Flight Academy is an FAA Approved Part 141 Flight Academy established in 2007 at the Ocean City Municipal Airport in Berlin, Maryland. In our fifteen years here in Ocean City, we have been very successful in building our flight academy into a well recognized, well respected flight academy.

Ocean Aviation Flight Academy would be interested in expanding and would like to propose locating a second flight academy at the Delaware Coastal Airport. We believe we are uniquely qualified to provide flight instruction to the public.

If you have any questions regarding our response to this RFP, please feel free to contact me at (410) 213-8400 or via e-mail at mfreed@flyoceanaviation.com

Thank you,



Michael Freed
President

Ocean Aviation, Inc. proposes to enter into a lease agreement to operate a flight academy at the Delaware Coastal Airport.

As per the terms of the RFP, Ocean Aviation, Inc will lease the hangar described in the RFP as "Lot C" under the terms specified in the RFP.

Ocean Aviation, Inc. meets the Qualifications of the Partitioner, as stated in the RFP including 15 years of operation at the Ocean City Municipal Airport. Our CEO, Michael Freed has more than forty eight years as a pilot which includes over thirty years as an active flight instructor.

Ocean Aviation agrees to a monthly lease rental of \$933.10 (\$11,197.20 annually) with annual increases as specified in the RFP.

Required Submittals

Company Legal Name:	Ocean Aviation, Inc.
Legal Name of CEO	Michael Freed
Telephone Number	(410) 213-8400
Fax Number	n/a
E-Mail Address	mfreed@flyoceanaviation.com
Contact Person	Michael Freed
Telephone Number	(410)213-8400

Ocean Aviation is a FAA Approved Flight School, currently operating at the Ocean City Municipal Airport in Berlin, Maryland.

Ocean Aviation has been operating year around since 2007. Ocean Aviation is a Cessna Pilot Center. Cessna Pilot Centers are recognized as the largest and most prestigious flight school chains in the world. High standards must be maintained to be designated as a CPC. This year, Ocean Aviation has been recognized as one of the Top Hawk CPC's in the country. The Top Hawk designation was awarded to schools in West Chicago, Illinois, Cincinnati, Ohio, Fort Lauderdale Florida, and The University of South Dakota. More information regarding this honor can be found online at [Top Hawk 2022 \(txtav.com\)](http://TopHawk2022.txtav.com). Our Georgetown campus has already been approved to be a Cessna Pilot Center.

Michael Freed is the President and CEO of Ocean Aviation.

The flight school campus operated at GED will be an FAA Approved Part 141 Flight Academy. We will offer training under both Part 61 and Part 141. Courses offered will include Private Pilot, Instrument Pilot, Commercial Pilot, Certified Flight Instructor. In addition, Ocean Aviation will offer finish up programs, flight review, instrument currency checks and rusty pilot courses.

Ocean Aviation currently maintains a fleet of ten Cessna Skyhawk aircraft. Ocean Aviation initially plans to maintain three Cessna Skyhawks at the Delaware Coastal Airport and adjust as necessary to best meet the needs of our students.

Ocean Aviation's location in Berlin includes a beautiful reception area, student lounge and classroom space as well as a full motion Redbird FMX flight simulator. Ocean Aviation would like to develop our Georgetown campus to match and hopefully exceed what we have built in Ocean City. We invite your representatives to visit our current location.

Hours of operation would initially be based on student schedules. We foresee eventually having a full time office manager and chief instructor based at GED and hours of operation matching our Berlin campus which is currently 9am thru 5pm, seven days per week.

Ocean Aviation maintains all necessary insurance including Flight Training and Rental Aircraft Insurance, Hangarkeeper's Insurance, Content Insurance and Liability insurance which meets or exceeds the required insurance requirements of the RFP. Ocean Aviation will maintain all required insurance at our Georgetown campus.

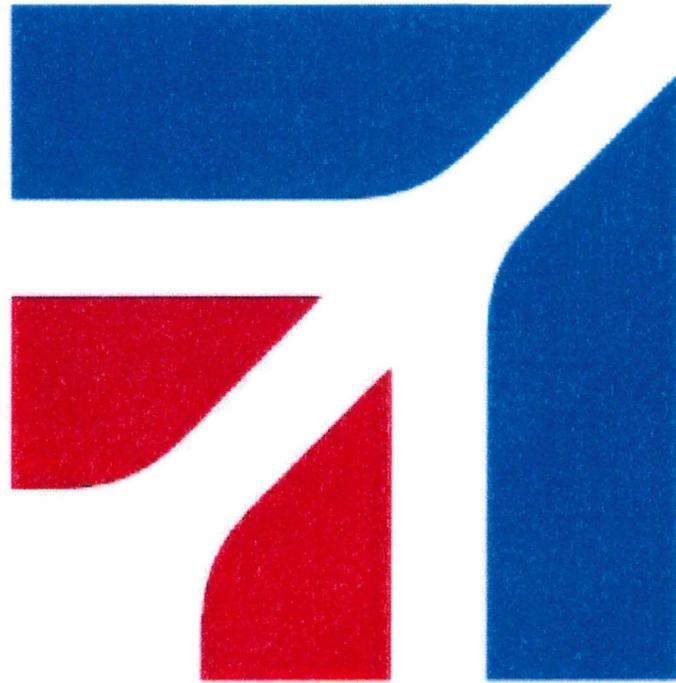
Ocean Aviation's main focus will be flight training. However, as required by the RFP, Ocean Aviation, as an SASO, requests that we will be allowed to operate the following SASO functions;

- Aircraft Maintenance Operator – Primarily to maintain our aircraft fleet
- Aircraft Rental Operator – Rentals primarily to students and graduates
- Aircraft Sales Operator – As a Cessna Pilot Center
- Air Charter Operator – Ocean Aviation maintains an FAA Part 135 certificate

If you have any questions or require clarification of any detail of this proposal, please feel free to contact us at any time at (410) 213-8400 or via e-mail at mfreed@flyoceanaviation.com.

Ocean Aviation is Proud to be a Cessna Pilot Center.

**Our Georgetown Campus Has Been Approved To Be A
Cessna Pilot Center**



Cessna
Pilot Center

Ocean Aviation Named Top Hawk By Cessna Aircraft For 2022

BERLIN, MD– March 2022– Ocean Aviation Flight Academy, a world-class flight training institution on Maryland’s Eastern Shore, today announced it has been chosen by Textron Aviation Cessna Aircraft as a “Top Hawk” Cessna Pilot Center for 2022. “To be chosen as a Top Hawk for 2022 is beyond our wildest dreams,” said Michael Freed, Ocean Aviation founder and president. “Over the years, many students have praised our staff, our programs and the overall experience we provide but to have our team recognized by Cessna Aircraft is certainly a career defining experience.” Other Top Hawk schools chosen in 2022 include Illinois Aviation Academy, West Chicago, Illinois; Berichi Aviation, Fort Lauderdale, Florida.

As part of the Top Hawk recognition, a ceremony will be held on March 22, 2022, at the Textron Cessna headquarters in Wichita, Kansas where Ocean Aviation will be presented with a brand new Cessna Skyhawk. The aircraft will be registered as N795TH and painted in Ocean Aviation's company colors with the Ocean Aviation logo proudly displayed on the tail and "Top Hawk" painted on the wingtips. After the ceremony, several Ocean Aviation team members will leave Wichita to fly the aircraft home to Berlin, Maryland.

Ocean Aviation will use the custom branded Cessna Skyhawk to promote aviation at air shows and recruiting events. Top Hawk is a partnership between Textron Aviation and the top Cessna Pilot Centers to provide students with access to the world’s most popular trainer, the Cessna Skyhawk.

“This aircraft will lead the way for aviation programs like ours to continue training the next generation of pilots,” added Freed. Ocean Aviation Flight Academy is entering its 15th year of operation at the Ocean City Municipal Airport. With nine training aircraft in their fleet as well as a Redbird AATD full motion flight simulator, nine flight instructors, and fourteen on staff, they are well positioned to meet the needs of their students.



2022 Cessna Top Hawk Skyhawk Presented to Ocean Aviation

REFERENCES

Mr. Jaime Giandomenico (410) 213-8400
Airport Manager
Ocean City Municipal Airport
12724 Airport Road
Berlin, Maryland 21811

Ms. Heather Shaner (410) 208 - 4247
M&T Bank
Vice President
11003 Manklin Creek Road
Berlin, Maryland 21811

Mr. Shane Kimbel (316) 517 - 6209
Manager Fleet Sales and Training
Cessna Pilot Center
Cessna Aircraft Corporation
101 N. Greenwich
Wichita, Kansas 67206

Ms. Mary Bixon (314) 963 -9080
Travers Insurance, Inc.
337 West Lockwood Ave.
St. Louis, Mo. 63119

AIRPORT HANGAR LEASE
AND
SPECIALIZED AVIATION SERVICE OPERATIONS AGREEMENT

THIS IS AN AGREEMENT OF LEASE (this "**Lease**"), made and entered into this 28th day of June, A. D. 2022, (the "**Effective Date**") by and between:

SUSSEX COUNTY, a political subdivision of the State of Delaware, party of the first part, hereinafter referred to as "**Landlord**",

-AND-

OCEAN AVIATION INC, with an address of **12724 Airport Road, Berlin, Maryland, 21811**, hereinafter referred to as "**Tenant**".

RECITALS:

WHEREAS, Landlord owns Lot C and all improvements including an airplane hangar and paved surfaces located at 21431 Rudder Lane, Georgetown, Delaware, at the Delaware Coastal Airport (the "**Leased Property**"), as shown on the drawing attached hereto as Exhibit A; and

WHEREAS, Tenant wishes to provide Special Aviation Service Operations ("SASO"), including primarily flight training and instructional programs, to the public as more fully described in Paragraph 5(c) below; and

WHEREAS, Tenant wishes to lease the Leased Property from Landlord pursuant to the terms set forth herein; and

WHEREAS, Landlord is willing to lease the Leased Property to the Tenant subject to the terms of this Agreement.

WITNESSETH:

IN CONSIDERATION of the mutual covenants hereinafter expressed, the parties hereto

Landlord Initials _____

1

Tenant Initials _____

agree as follows:

1. **Leased Property:** Landlord hereby leases to Tenant and Tenant hereby leases from Landlord, subject to the conditions hereinafter expressed, a certain airplane hangar site upon the lands of the Sussex County Airport, Sussex County, Delaware, (the "**Leased Property**") identified as Lot C and all improvements including an airplane hangar ("the Hangar") and paved surfaces located at 21431 Rudder Lane, Georgetown, Delaware as shown on a drawing attached hereto as Exhibit A. The Leased Property consists of approximately 45,325 square feet and has access to utility infrastructure such as a propane tank, water, sewer, and electricity. The Hangar is a single-story hangar measuring 70 feet long by 65 feet wide and is 26 feet tall. The Hangar is constructed with metal siding and a metal roof in a warehouse fashion. The interior of the Hangar is improved with 2 offices, a common kitchen area, and a restroom. The Hangar is accessible via doors on the northwest and southwest sides and via bi-fold vertical door on the southeast side of the Hangar. The Leased Property also includes a parking area for 15 vehicles and a paved aircraft parking area consisting of approximately 7,700 square feet between the Hangar and Taxiway A as shown on Exhibit B.
2. **Right to Access:** Landlord agrees that the Tenant, its servants, employees, agents, and invitees shall have at all times the free and uninterrupted right of access to the said Leased Property.
3. **Term:** It is mutually agreed by the parties hereto that the term of this Lease shall be for a period of five (5) years, to commence on the day of , A. D. 2022 (the "**Commencement Date**"), and terminating on the day of , A. D. 2027,

Landlord Initials _____

Tenant Initials _____

both dates inclusive, unless sooner terminated as provided herein. Provided that Tenant is current with all rent payments owed to Landlord and is otherwise compliant with the terms and conditions of this Lease, Tenant shall have the option to renew the Lease for three (3) additional five (5) year consecutive terms subject to the same terms and conditions as stated in this Lease Agreement. Each option term shall be considered independently from the other option term for purposes of notice to renew. To exercise the option, Tenant must give written notice to Landlord at least ninety (90) days prior to the termination date of the original lease term and of any option period of its intent to exercise the option. At the end of the lease term and the three (3) option terms, if exercised, the parties agree that this Lease Agreement shall terminate, and that Tenant shall have no right to continue to occupy the Leased Property absent a new lease being executed.

4. **Rent:**

- a. Throughout the duration of the Lease Term, Tenant covenants and agrees to pay Landlord annual rent in the minimum amount of Eleven Thousand One Hundred Ninety-Seven and 20/100 Dollars (\$11,197.20) with rent being due in advance in monthly installments of Nine Hundred Thirty-Three and 10/100 Dollars (\$933.10) which shall be paid on or before 1st day of each month of the Lease Term. The first monthly installment shall be due on or before _____, 2022.
- b. The annual rent under this Paragraph 4 of this Lease Agreement shall be adjusted every year of the Lease term and any option term, if exercised, to reflect any change in the cost of living. The adjustment, if any, will be calculated on the basis of the percentage increase equal to the most recent Consumer Price Index, for All Items,

All Urban Consumers, U.S. City Average (CPI-U Table A, unadjusted as published monthly by the United States Department of Labor, Bureau of Statistics). If publication of the above index shall be discontinued, then another index generally recognized as authoritative, shall be substituted as selected by Landlord. The rent for each subsequent year, including the option terms if exercised, will be adjusted by the percentage increase from the last preceding calendar year, if any, not to exceed three percent (3%) in any one Lease year.

c. Within thirty (30) days after Landlord gives Tenant notice of the adjusted rent, Tenant will pay the adjusted rent retroactive to the first month of the then current lease year. The adjusted rent will be the yearly rent for the balance of the then current lease year. Upon Tenant's request, Landlord will give Tenant written notice indicating how the adjusted rent amount was computed.

d. **Intentionally Omitted.**

e. **Payment Provisions:** Payments made after the fifteenth (15th) day of the month in which due shall be subject to a late fee of five percent (5%) of the total amount outstanding. All payments should be made to Sussex County Council, Sussex County Accounting Office, P.O. Box 589, Georgetown, Delaware 19947, or such other place or places as may from time to time be designated in writing by Landlord.

5. **Use:**

a. The use of the Leased Property and the Hangar thereon shall at all times comply with all laws, orders, ordinances, regulations, and requirements of any governmental authority having jurisdiction, including all rules, regulations, and

Landlord Initials _____

Tenant Initials _____

policies for Delaware Coastal Airport. Use of the Leased Property shall also comply with National Fire Protection Associated Standards, including but not limited to NFPA 409 relating to aircraft hangars, and NFPA 410 relating to aircraft maintenance. Tenant shall comply with all environmental laws, ordinances, regulations, statutes, and rules which apply to the Leased Property and Tenant's use thereof.

- b. Tenant shall maintain, at Tenant's own cost and expense, the Leased Property, including the Hangar and any other improvements thereon in good, clean condition and state of repair free from noxious activities or appearance and in accordance with any current or future Airport guidelines or policies. At the end of the lease term or any extension thereof, Tenant shall deliver to Landlord the Leased Property and any improvement which may be located thereon, including the Hangar, in good order and condition, wear and tear from reasonable use thereof and damage by the elements not resulting from the neglect or fault of Tenant excepted. Tenant shall neither encumber nor obstruct the sidewalks, driveways, yards, or entrances, but shall keep and maintain the same in a clean condition, free from debris, trash, refuse, snow, and ice. Tenant shall be responsible for providing grass cutting, trash removal, and snow removal services to the Leased Property. Grass (if any) shall be mowed regularly so as to prevent grass from growing beyond six (6) inches in height.
- c. Use of the Leased Property shall be limited to the following Commercial Aeronautical Activities, Specialized Aviation Service Operations (SASO), and

shall be subject to the most current, as may be amended from time to time in Landlord's sole discretion, Delaware Coastal Airport Policies, Minimum Standards for Commercial Aeronautical Activity, and Rules and Regulations.

i. Flight Training Operator (SASO)

ii. Aircraft Storage (SASO)

iii. Aircraft Rental Operator (SASO)

iv. Aircraft Sales Operator (SASO)

v. Air Charter Operator (SASO)

- d. It is understood and agreed that, at all times during the term of this Lease and any renewal terms thereof, primary use of the Leased Property shall be Flight Training Operator (SASO) and that all other uses of the Leased Property shall be ancillary to the Flight Training Operator (SASO) use. Tenant agrees to establish and maintain the Flight Training Operator (SASO) use within sixty (60) days of the Effective Date. In the event Tenant fails to establish and maintain the Flight Training Operator (SASO) use within sixty (60) days of the Effective Date, Landlord may declare Tenant in breach of this Lease, immediately terminate the Lease upon written notice to Tenant, and seek any remedies available under this Lease or law for unremedied breaches of this Lease. For purposes of this Lease, the establishment and maintenance of the Flight Training Operator (SASO) use shall mean that Tenant is engaged in providing flight instruction to the public and / or providing such related ground school instruction as is necessary to complete the knowledge and / or practical tests for any category of pilot certificate or rating. All

such use must also comply with the Delaware Coastal Airport Policies, Minimum Standards for Commercial Aeronautical Activity, and Rules and Regulations. Landlord shall have the right to inspect the Leased Premises and to require documentation from Tenant to verify that Tenant meets the requirements set forth in this Paragraph.

- e. Storage, Self-Fueling, and other Self-Service Activities upon Tenant-owned aircraft performed by the Tenant's own employees and using the Tenant's own equipment is permitted and shall be subject to the most current, as may be amended from time to time in Landlord's sole discretion, Delaware Coastal Airport Policies, Minimum Standards for Commercial Aeronautical Activity, and Rules and Regulations.
- f. Fuel sales into aircraft not owned by the Tenant are not allowed as a Specialized Aviation Service Operations
- g. Tenant agrees to supply to Landlord information as to the type and identification number of the aircraft using the Leased Property.

6. **Landlord Obligations.** Landlord shall at all times under the terms hereof maintain Delaware Coastal Airport as an active airport facility in compliance with the regulations of the Federal Aviation Administration.

7. **Utilities:** Landlord shall be responsible to ensure water, sewer, and electric service are available to the Leased Property. Tenant shall pay for all utilities of whatsoever kind which are furnished to the Leased Property. Tenant shall be responsible for all connection costs, fees, and expenses associated with utilities provided to the Leased Property. Tenant shall

be responsible for the installation of a water meter servicing the Leased Property. Landlord shall be responsible for the maintenance of the water meter servicing the Leased Property. Tenant shall be solely responsible for water charges, and Landlord shall have no obligation for the same.

8. **Taxes:** Tenant shall pay all ad valorem taxes or any other taxes, including taxes levied by Sussex County, on any improvements erected on the Leased Property and all equipment installed therein. In addition, Tenant shall pay any taxes or assessments which may be lawfully levied against Tenant's occupancy or use of the Leased Property or any improvements placed thereon as a result of Tenant's occupancy.
9. **Right to Contest:** Tenant shall have the right in good faith to contest by legal proceedings or otherwise the assessment upon the Leased Property by any governmental authority levying or attempting to levy taxes thereon. Landlord shall cooperate with Tenant, but at no expense to Landlord, in any such protest as Tenant shall make. In the event Tenant shall determine to contest such taxes, Tenant shall, within the time herein set forth for the payment of such taxes, post with the proper governmental authorities such sum of money or take such other action satisfactory to Landlord, as will protect the property from nonpayment during such contest. Further, Tenant shall obtain the participation of the Landlord in any tax appeal, if required.
10. **Improvements:**
 - a. Tenant shall be responsible for all maintenance and repair to any improvements, including the Hangar, parking lot, apron and taxiway pavement, grass cutting, trash removal, and general housekeeping duties located on the Leased Property.

Construction, maintenance, and repair to said improvements shall be at Tenant's sole cost and expense, including all necessary fees and permits.

- b. Except as otherwise provided herein, all improvements located on the Leased Property as of the date of this Agreement are owned by Landlord. Any improvements made by Tenant during the term of this Lease shall be at Tenant's sole cost and expense, including all necessary fees and permits. Construction of any and all improvements on the Leased Property shall be subject to approval by the County Engineer and shall be in compliance with all governmental requirements. The construction and use of the Leased Property and improvements which may be constructed thereon shall at all times comply with all laws, orders, ordinances, regulations, and requirements of any governmental authority having jurisdiction. Title to any improvements made by Tenant shall be and remain vested in Tenant until the termination of this Lease, at which time the improvements erected on the Leased Property and any fixtures which are a part thereof, shall remain a part to the Leased Property and shall be the property of Landlord. Any trade fixtures, which were installed on the Leased Property by Tenant and which are removable without substantial damage to the improvements and the Leased Property shall remain the property of the Tenant, provided that Tenant shall promptly repair any damage to the improvements on the Leased Property caused by their removal and that Tenant is not in default of any covenant or agreement contained in this Lease Agreement; otherwise such trade fixtures shall not be removed and Landlord shall have a lien thereon to secure itself on account of its

claims.

c. At the termination of this lease, should any existing structure have, in the opinion of Landlord, no further practical economic value, Landlord shall, at its option, be entitled to have the land demised herein returned to it clear of part of all improvements above ground level which have been constructed by Tenant, provided, however, that Tenant may have one hundred eighty (180) days after termination in which finally to remove such improvements and provided that such an occupancy for purposes of removal shall be subject to the last rental rates due hereunder. If Tenant fails to so remove said improvements, they may thereafter be removed by Landlord at Tenant's expense. Landlord may, at its option, take title to said improvements in lieu of removal by or for Tenant.

11. **Acceptance of Leased Property:** Tenant hereby accepts the Leased Property and all improvements located thereon, including the Hangar, in "as is" condition and acknowledges that the Leased Property is suitable for Tenant's intended use thereof.

12. **Compliance with Laws:** Tenant shall promptly comply with all laws, ordinances, rules, regulations, requirements and directives of the Federal, State and County Government and Public Authorities and of all their departments, bureaus and subdivisions, applicable to and affecting the said premises, their use and occupancy, for the correction, prevention and abatement of nuisances, violations or other grievances in, upon or connected with the said premises, during the term hereof; and shall promptly comply will all orders, regulations and directives of the State Fire Marshal or similar authority and of any insurance companies which have issued or are about to issue policies of insurance covering the said Property

and its contents, for the prevention of fire or other casualty, damage or injury, at the Tenant's own cost and expense. Tenant agrees during the term of this Lease and any extension thereof, to comply with all laws, ordinances, lawful orders and regulations issued by the Federal Aviation Administration (“the FAA”) or any other governmental authority, including Sussex County, which affect or have jurisdiction over the said Leased Property. Tenant shall comply with the rules and regulations of Delaware Coastal Airport (“the Airport”) which rules and regulations may be altered from time-to-time.

13. **Subordination of Agreement to Certain Agreements with Federal Government; FAA**

Approval: This Agreement shall be subordinate in all respects to the provisions of any existing or future leases, contracts or agreements between Landlord and the United States or any agency thereof relative to aircraft operating areas of the Airport, the execution of which has been or may be required as a condition precedent to the expenditure of federal funds for the development of the Airport. Although this Agreement shall be effective upon the execution hereof by the parties hereto, it shall nevertheless be subject to approval by the FAA, and the parties hereby covenant and agree to make any modifications or amendments hereto that may be required to obtain such approval.

14. **Assignment of Lease:** Tenant shall not have the right to assign this Lease or enter into a

sublease of all or part of the Leased Property without the written approval of Landlord which shall not be unreasonably withheld, conditioned, or delayed. Unless otherwise agreed in writing, such assignment or subletting shall in no way relieve Tenant of any responsibility of rent or for the performance of any of the other covenants or conditions hereof. The prospective assignee or subtenant shall be subject to inquiries concerning the

nature of the use of the Leased Property and employment goals. Such assignee or subtenant shall in writing assume all of the obligations to be performed by Tenant hereunder. Tenant agrees to pay for any attorney's fees incurred by Landlord resulting from any sublease or assignment. In the event Tenant receives Landlord approval for the assignment of this Lease or for the sublease of all or part of the Leased Property, it is expressly understood and agreed that the Leased Property shall only be used for the purposes agreed to by Landlord. Tenant acknowledges that Landlord may require additional insurance for the Leased Property as a condition of approval for any proposed assignment or sublease.

15. **Right to Inspection:** Landlord or its authorized representative may enter the Leased Property at any time without the consent of Tenant in case of emergency, and Landlord or its authorized representative may enter the Leased Property upon the giving of reasonable notice to the Tenant for inspections of the Leased Property. Reasonable notice shall mean no less than 48 hours prior to the entry, unless Landlord is entering to make repairs specifically requested by Tenant. Tenant shall not unreasonably withhold consent to Landlord or its authorized representative to enter the Leased Property to inspect it or make necessary or agreed upon repairs or improvements. In addition, Landlord shall be permitted to enter and view the Leased Property at any and all times for the purpose of inspecting and completing any obligation as provided herein with respect to said premises, and doing any and all things with reference thereto which Landlord is obligated to do or which may be deemed necessary or desirable for the proper conduct and operation of the Airport.

16. **Hold Harmless:** Tenant further agrees that Tenant will not hold Landlord and/or any of

its agents, employees, directors, officers, volunteers, consultants and elected or appointed officials responsible or liable for any loss occasioned by fire, theft, rain, windstorm, hail or from any other cause whatsoever, whether the cause be the direct, indirect or merely a contributing factor in producing the loss or damage to any airplane, automobile, the Hangar and associated equipment as shall be appurtenant and necessary thereto, or any other personal property, parts or surplus that may be located in or stored outside of the hangars, or upon the apron, field, runways, taxiways or other location at the Airport; and Tenant agrees that the airplane(s) and their contents are stored, whether on the field or in a hangar, at Tenant's own risk. To the fullest extent permitted by law, Tenant waives any right of recovery from Landlord for any loss of or damage to its real or personal property, improvements and aircraft, regardless of the cause of origin, including the negligence of Landlord and its agents, employees, directors, officers, volunteers, consultants and elected or appointed officials. Tenant shall advise its property insurer(s) of the foregoing and such waiver shall be permitted under any insurance policies maintained by Tenant. And further, to the fullest extent permitted by law, Tenant agrees to hold harmless, indemnify and defend Landlord, and its agents, employees, directors, officers, volunteers, consultants and elected or appointed officials from and against any and all claims, damages, liability and defense costs arising from the Tenant's occupancy of the Leased Property or operations incidental thereto or its obligations under the Agreement.

17. **Indemnification:** To the extent permitted by law, Tenant shall indemnify, defend and hold Landlord and its appointed and elected officials, employees, agents, and volunteers harmless from any and all claims arising from Tenant's use of the Leased Property, the

conduct of its business, or from any activity, work or things which may be permitted or suffered by Tenant in or about the Leased Property, and shall further indemnify, defend and hold Landlord and its appointed and elected officials, employees, agents, and volunteers harmless from and against any and all claims arising from any breach or default in the performance of any obligation on Tenant's part to be performed under the provisions of this Lease Agreement or arising from any negligence of Tenant or any of its agents, contractors, employees or invitees and from any and all costs, attorney's fees, expenses and liabilities incurred in the defense of any such claim or any action or proceeding brought thereon. Tenant hereby assumes all risk of damage to property or injury to persons in or about the Leased Property from any cause, and Tenant hereby waives all claims in respect thereof against Landlord and its appointed and elected officials, employees, agents, and volunteers, except as prohibited by law. Tenant hereby agrees that, except as prohibited by law, Landlord and its appointed and elected officials, employees, agents, and volunteers shall not be liable for injury to Tenant's business or any loss of income there from or for damage to the equipment, wares, merchandise, or other property of Tenant, Tenant's employees, invitees, customers, or any other person in or about the Leased Property; nor shall Landlord and its appointed and elected officials, employees, agents, and volunteers be liable for injury to the person of Tenant, Tenant's employees, agents or contractors and invitees, whether such damage or injury is caused by or results from fire, steam, electricity, gas, water, rain or other elements, or from the breakage, leakage, obstruction or other defects of pipes, sprinklers, wires, appliances, plumbing, air conditioning or lighting fixtures, or from any other cause, whether the said damage or injury results from conditions

arising upon the Leased Property.

18. **Landlord Representations:** Landlord agrees, covenants and represents as follows:

- a. That Tenant, its volunteers, servants, employees, agents and invitees shall at all times during the term of this lease and any extension thereof have free and uninterrupted non-exclusive right of access in common with others (over paved roadways) to the Leased Property herein relevant for all varieties and types of vehicular traffic and movement. And, Tenant shall have the right in common with others so authorized, to use the common areas of the Airport, including runways, taxiways, taxilanes, aprons, roadways, and other conveniences for the ground movement, take-off, flying and landing of aircraft. Landlord agrees, at no expense to Tenant, to provide and maintain all roadways required to afford such access to the Leased Property from nearby public highways and roads. Provided, however, that Landlord shall not be obligated to provide snow removal services, grass cutting, or any other maintenance on the Leased Property
- b. That the Leased Property is owned in fee simple by the Landlord and that the Leased Property herein relevant is free from any encumbrances of any type.
- c. That Landlord has the right to make this Lease and that it will execute or procure any further assurances of title that may be required by Tenant.
- d. That electric services are available to the Leased Property.
- e. That water and sewer services are available to the Leased Property.
- f. That Tenant, on paying the rent and performing the conditions and covenants herein contained, shall and may peaceably and quietly have, hold and enjoy the Leased

Property for the term aforementioned

19. **Signs**: Landlord will not suffer or permit to be maintained upon the outside or any improvements on the Leased Property any billboards or advertising signs except that Tenant may maintain neatly painted, electric or neon sign or signs; such signs, however, as to their size, construction, location, content, color and general appearance, to be approved by Landlord.
20. **Reservation of Rights**. Landlord reserves the right to further develop or improve the landing and ground movement areas of the Airport as Landlord sees fit, regardless of the view or desires of the Tenant and without Tenant's interference or hindrance. In addition, it is specifically agreed that this Lease is non-exclusive and that Landlord reserves the right to lease other property at the facility for identical or similar uses.
21. **Notices**: It is mutually agreed by the parties hereto that any notice under this Lease shall be in writing and must be either hand delivered or sent by Registered or Certified Mail to the last address of the party to whom the notice is to be given, as designated by such party in writing. Landlord hereby designates its address as Sussex County Administrative Office Building, Attention: Airport Manager, 2 The Circle, P O Box 589, Georgetown, Delaware 19947. Tenant hereby designates its address as **Ocean Aviation, 12724 Airport Road, Berlin, Maryland, 21811.**
22. **Insurance**: During the Term of this Lease, Tenant shall secure and maintain at its own expense the following insurance:
- a. **Aircraft Liability Insurance** that insures against bodily injury and property damage claims arising from the Tenant's ownership, maintenance or use of Tenant-

Landlord Initials _____

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Tenant Initials _____

owned and non-owned aircraft while stored at or being operated to or from the Leased Property, with a combined single limit of \$1,000,000 per occurrence.

- b. **Airport Liability Insurance** that insures against bodily injury, property damage, personal and advertising injury claims arising from the Tenant's occupancy of the Leased Property or operations incidental thereto with combined single limits of \$5,000,000 per occurrence, \$5,000,000 general aggregate and \$5,000,000 products/completed operations aggregate. Such insurance shall be endorsed to name Landlord and its appointed and elected officials, employees, agents and volunteers as additional insureds on a primary and non-contributory basis for claims caused in whole or in part by Tenant or others acting on its behalf. A copy of the additional insured endorsement(s) that evidence the required additional insured status must accompany any certificate of insurance provided to Landlord.
- c. **Workers' Compensation & Employers' Liability Insurance** that insures Tenant's workers' compensation obligations to its employees in Delaware under State or Federal law. Employers' liability insurance must be secured with minimum limits of \$500,000 for bodily injury by accident, \$500,000 each employee for bodily injury by disease, and a \$500,000 policy limit for bodily injury disease.
- d. **Business Auto Liability Insurance** that insures against bodily injury and property damage claims arising out of the maintenance, use or operation of any auto with a minimum combined single limit of \$1,000,000 per accident.
- e. **Hangar Keepers Liability Insurance** that insures against physical loss of or damage to aircraft while in the care, custody and control of Tenant including, but

not limited to, the storage, servicing, fueling and repair of non-owned aircraft. The minimum limits of liability for this insurance are \$5,000,000 any one occurrence and any one aircraft.

f. **Pollution Liability Insurance** that insures claims for pollution and remediation legal liability arising out of or in connection with the Tenant's occupancy of the Leased Property. The minimum limits of liability for this insurance are \$1,000,000 each pollution condition and \$1,000,000 annual aggregate. This insurance shall name Landlord, and its appointed and elected officials, employees, agents, and volunteers as additional insureds on a primary and non-contributory basis. The endorsement(s) evidencing the required additional insured status must be submitted in conjunction with certificates of insurance furnished to Landlord. Tenant must continue to maintain such insurance, covering incidents occurring or claims made, for a period of three (3) years after termination of the Lease.

g. **Property and Business Income Insurance** - All risk (special form) property insurance that insures against direct physical loss of or damage to the Hangar and Tenant's personal property (other than Tenant-owned aircraft) including fixtures and equipment located on the Leased Properties, on a replacement cost valuation basis, with limits not less than 100% of the insurable replacement cost of all such property. Tenant shall also secure, all risk (special form) business income and extra expense insurance in amounts satisfactory to protect its interests as a result of direct physical loss of or damage to property, fixtures and equipment located on the Leased Property. Landlord shall be an insured on Tenant's property, business

income and extra expense insurance as its interests may appear.

- h. **Student / Renters Liability Insurance** that insures against bodily injury, property damage, personal and advertising injury claims arising from the Tenant's occupancy of the Leased Property or operations incidental thereto for the Tenant, its employees, representatives, agents, officials, invitees, guests, licensees, sublessees, contractors, students, clients, customers, and any other person on the Leased Property due to Tenant's occupancy thereof or operations incidental thereto. Said policy must have combined single limits of \$100,000 per occurrence. Such insurance shall be endorsed to name Landlord and its appointed and elected officials, employees, agents and volunteers as additional insureds on a primary and non-contributory basis for claims caused in whole or in part by Tenant or others acting on its behalf. A copy of the additional insured endorsement(s) that evidence the required additional insured status must accompany any certificate of insurance provided to Landlord.
- i. **Waiver of Subrogation** - To the fullest extent permitted by law, Tenant waives any right of recovery from Landlord, and its appointed and elected officials, employees, agents, and volunteers, for any loss, damage or injury to the Leased Property, including all improvements thereon, and Tenant's personal property including fixtures and equipment located on the Leased Property (or resulting loss of income or extra expense), regardless of the cause of origin, including the negligence of the Landlord and its appointed and elected officials, employees, agents and volunteers. To the fullest extent permitted by law, Tenant's property

insurer shall not hold any right of subrogation against Landlord, and its elected and appointed officials, employees, agents, and volunteers. Tenant shall advise its insurer(s) of the foregoing and such waiver shall be permitted under any property, business income and extra expense insurance policies maintained by Tenant. Any deductible amount(s) selected by Tenant shall be the sole responsibility of Tenant.

- j. **Evidence of Insurance / Insurers** - Tenant shall furnish certificates of insurance, acceptable to Landlord, to the Manager, Delaware Coastal Airport, Sussex County, Delaware evidencing all insurance required herein at execution of this Lease and prior to each renewal thereafter. Such insurance shall be written with insurers allowed to do business in Delaware, with a Financial Strength Rating of "A-" or better, and a Financial Size Category of "Class VII" or better in the latest evaluation of the A.M. Best Company, unless otherwise approved by the Landlord. All insurance policies required hereunder shall be endorsed to provide that the policy is not subject to cancellation or non-renewal in coverage until sixty (60) days prior written notice has been given to Landlord. Therefore, a copy of the endorsements to the required policies that confirm the insurer is obligated to send notice to Landlord as required herein, must accompany all certificates of insurance. Liability policies required herein (other than pollution liability) may not be written on a "claims made" basis without the prior written approval of Landlord. If Tenant shall fail, refuse or neglect to secure and maintain any insurance required of Tenant or to furnish satisfactory evidence of insurance, premiums paid by Landlord shall be recoverable by Landlord from Tenant, together with interest thereon, as additional

rent promptly upon being billed therefore.

k. All policy limits as stated herein shall be adjusted every five (5) years in accordance with increases in the consumer price index to levels satisfactory to Landlord.

l. For each type of commercial operation allowed by this Lease, Tenant shall secure and maintain, at its own expense, insurance subject, as may be amended from time to time in Landlord's sole discretion, to the most current Delaware Coastal Airport Policies, Minimum Standards for Commercial Aeronautical Activity, and Rules and Regulations.

23. **Landlord Not Liable for Debts, Acts, or Omission of Tenant:** Tenant shall not be the agent or partner of Landlord and Tenant shall have no authority to make any contract or do any act so as to bind Landlord or as to render Landlord or the Leased Property liable therefore. Tenant will save Landlord and the Leased Property harmless from any penalty, damages, neglect, or negligence of Tenant, property damage, illegal act or otherwise. Any improvements by Tenant on said Leased Property shall be constructed at the sole expense of Tenant, and Landlord and its appointed and elected officials, employees, agents, and volunteers shall not be liable in any way for any amount of money arising out of said construction. Before starting construction, Tenant shall have recorded on the public records of Sussex County, Delaware, such legal notice as may be necessary wherein the public is advised that Landlord and its appointed and elected officials, employees, agents, and volunteers are not in any way liable for any claims or obligations for labor and materials on said job, and that the laborers, material men and subcontractors shall look solely to Tenant for payment and shall not be entitled to place a lien against said demised

property. If any mechanic's or materialmen's lien is filed or any claim made on account of labor or other material furnished, alleged to have been furnished or to be furnished to Tenant at the Leased Property or against Landlord as the owner thereof, Tenant shall within ninety (90) days after written notice from Landlord thereof, either pay or bond the same or procure the discharge thereof in such manner as may be provided by law. Tenant will indemnify Landlord and its appointed and elected officials, employees, agents, and volunteers for its costs, legal fees and expenses in defending any action, suit or proceedings which may be brought thereon or for the enforcement of such lien, or liens and Tenant shall pay any damages and any judgment entered thereon and save harmless and indemnify Landlord and its appointed and elected officials, employees, agents, and volunteers from any claims of damages resulting there from. Failure to do so shall entitle Landlord to resort to remedies as are provided herein in the case of any default of this Lease Agreement, in addition to such as are permitted by law

24. **Intentionally Omitted.**

25. **Statutory Lien:** Landlord hereby claims any and all statutory or other liens which it may have upon the equipment, furniture, fixtures, real and personal property of any Tenant or Sub-Tenant placed upon the improvements, and Tenant agrees that Landlord has such a lien to the extent provided by statute or otherwise. Landlord may, at Landlord's sole discretion, subordinate its lien right to the lien of any mortgage, deed of trust, or security instrument given by Tenant for the construction of the improvements and purchase of the equipment, furniture, fixtures and personal property placed upon the Leased Property. Tenant shall furnish the Landlord copies of all such security instruments.

26. **Condemnation:** If at any time during the term hereof the whole of the Leased Property shall be taken for any public or quasi-public use under any statute or by right of eminent domain, then and in such event, when possession shall have been taken of the Leased Property by the condemning authority, the Lease Agreement hereby granted and all rights of Tenant hereunder shall immediately cease and terminate and the rent shall be apportioned and paid to the time of such termination. If pursuant to the provisions of this article, this Lease Agreement shall have been terminated and if prior to such termination, Tenant shall have made any improvements upon the Leased Property, Landlord shall be entitled to all of the condemnation proceeds except that Tenant shall be entitled to the proceeds of any condemnation awarded on account of the value of the improvements constructed by Tenant.
27. **Partial Condemnation:** If after commencement of this Lease Agreement only a part of the Leased Property, shall be taken or condemned, Landlord shall be entitled to any condemnation proceeds made with respect to the Leased Property except that Tenant shall be entitled to any award made for any portion of the improvements made by Tenant which may be condemned. In the event such condemnation shall leave a portion of the demised premises which in Tenant's sole judgment is usable by Tenant, the Lease Agreement shall remain in full force and effect, but the rents herein reserved to Landlord shall be adjusted so that Tenant shall be entitled to a reduction in rent in the proportion that the value of land taken bears to the value of the entire Leased Property. If a portion of the Leased Property is taken or condemned prior to commencement of construction hereunder, the proceeds shall belong solely to Landlord and the rental hereunder shall not be abated. Provided

however, that Tenant shall have the right to terminate this Lease Agreement if in its sole judgment the premises have been rendered unsuitable for its purpose.

28. **Damage and Casualty**: If more than fifty percent (50%) of Tenant improvements located on the Leased Property are damaged by fire or other casualty, Landlord may elect to 1) terminate this Lease Agreement, provided Tenant first removes all structures on the land at its expense and restores the surface of the land to its condition at the date of the initial term of this Lease Agreement, or 2) require that Tenant restore the improvements with reasonable promptness. Landlord shall make such election to repair the Leased Property or terminate this Lease by giving notice thereof to Tenant within thirty (30) days from the day Landlord receives notice that the Leased Property had been destroyed or damaged by fire or other casualty. In the event Landlord elects to terminate the Lease, the rent is to be paid to the date of termination. In the event Landlord elects to require restoration of the improvements, the rent shall be apportioned and suspended during the time of restoration taking into account the proportion of the Leased Property rendered untenable. If a dispute arises as to the amount of rent due under this clause, Tenant agrees to pay the full amount claimed by Landlord. Tenant shall, however, reserve the right to proceed by law to recover the excess payment, if any. Landlord shall be insured on Tenant's property and business income insurance in an amount sufficient to protect its interest therein. Tenant shall be liable for all damage occurring through fault or negligence of Tenant or those employed by or acting for Tenant. Landlord shall not be liable for any damage, compensation or claim by reason of inconvenience or annoyance arising from the necessity of repairing any portion of the Leased Property, the interruption in the use of the Leased

Property or the termination of this Lease by reason of the destruction of the Leased Property.

29. **Default:**

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

- i. Failure by the Tenant to pay the rents required to be paid at the times specified herein and continuing for a period of thirty (30) days after notice by mail is given to the Tenant that the rental payment referred to in such notice has not been received;
- ii. Failure by the Tenant to observe and perform any covenant, condition or agreement of this Lease on its part to be observed or performed, other than as referred to in Subsection (i) of this Section, for a period of sixty (60) days after written notice, specifying such failure and requesting that it be remedied, given to the Tenant by Landlord, unless the Landlord shall agree in writing to an extension of such time prior to its expiration; provided, however, if the failure stated in the notice cannot be corrected within the applicable period, the Landlord will not unreasonably withhold its consent to an extension of such time if it is possible to correct such failure and corrective action is instituted by the Tenant within the applicable period and diligently pursued until the default is corrected; or
- iii. The dissolution or liquidation of the Tenant or the filing by the Tenant of a

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

iv. Failure by Tenant to abide by any laws, statutes, rules or regulations relating to the Leased Property or the Delaware Coastal Airport and continuing for a period of thirty (30) days after notice by mail is given to Tenant that the violation referred to in such notice has not been corrected.

b. **Remedies of Default.** Whenever any event of default referred to in subsections (i) through (iv) above shall have happened and be subsisting beyond any applicable notice and cure periods, Landlord may take any one or more of the following

remedial steps:

- i. Apply any money or property of Tenant's in Landlord's possession to discharge in whole or in part any obligation or covenant to be observed or performed by Tenant hereunder.
 - ii. Perform any obligation or covenant to be performed by Tenant hereunder and charge Tenant therefore.
 - iii. Terminate the Lease.
 - iv. Seek and obtain a summary possession order to enter the Leased Property and take possession of the same and hold Tenant liable for the rent thereafter accruing and due until such time as Landlord can obtain another suitable Tenant of the Leased Property under the same terms hereof.
- c. No remedy herein conferred upon or reserved to Landlord or Tenant shall exclude any other remedy herein or by law provided, but each shall be cumulative and in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute.
30. **No Waiver of Subsequent Breach**: Tenant agrees that any waiver by Landlord of the performance of any one of the conditions of this Lease shall not be deemed to constitute a waiver of the right of Landlord to proceed against Tenant upon any subsequent breach of the same or other conditions of this Lease.
31. **Non-Performance by Landlord**: This Lease and the obligation of Tenant to pay the rent hereunder and to comply with the covenants and conditions hereof, shall not be affected, curtailed, impaired or excused because of Landlord's inability to supply any service or

material called for herein, by reason of any rule, order, regulation or preemption by any governmental entity, authority, department, agency or subdivision or for any delay which may arise by reason of negotiations for the adjustment of any fire or other casualty loss or because of strikes or other labor trouble or for any cause beyond the control of Landlord.

32. **Attorney's Fees:** Tenant shall pay to Landlord, Landlord's reasonable attorney's fees, costs, and charges, if Landlord employs an attorney or requires the use of an attorney, including appointed County Attorneys, to protect the interest of Landlord if Tenant is adjudged bankrupt, or legal process is levied upon the interest of the Tenant in the Lease or the Leased Property, or if Tenant violates any of the terms of this Lease or Landlord is otherwise required, in Landlord's exclusive judgment, to protect and defend the interests of Landlord under this Lease.

33. **Severability:** The terms, conditions, covenants and provisions of this Lease shall be deemed to be severable. If any clause or provisions herein contained shall be adjudged to be invalid or unenforceable by a court of competent jurisdiction or by operation of any applicable law, it shall not affect the validity of any other clause or provision herein, but such other clauses or provisions shall remain in full force and effect. Landlord may pursue the relief or remedy sought in any invalid clause, by conforming the said clause with the provisions of the statutes or the regulations of any governmental agency in such case made and provided as if the particular provisions of the applicable statute or regulations were set forth herein at length.

34. **Airport Protection:**

a. It shall be a condition of this lease, that Landlord reserves unto itself, its successors

and assigns, for the use and benefit of the public, a right of flight for the passage of aircraft in the airspace above the surface of the real property hereinafter described, together with the right to cause in said airspace such noise as may be inherent in the operation of aircraft, now known or hereafter used, for navigation of or flight in the said airspace, and for use of said airspace for landing on, taking off from or operating on the airport.

- b. Tenant expressly agrees for itself, its successors and assigns, to restrict the height of structures, objects of natural growth and other obstructions on the hereinafter described real property to such a height so as to comply with Title 14, Code of Federal Regulations, Part 77.
- c. Tenant expressly agrees for itself, its successors and assigns, to prevent any use of the hereinafter described real property which would interfere with or adversely affect the operation or maintenance of the Airport, or otherwise constitute an airport hazard

35. **Non-Discrimination:**

- a. Tenant for its successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree that (1) no person on the grounds of race, color, creed, sexual orientation, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over or under such land and the furnishing of services thereon, no person on the grounds of race, color, or national origin shall be excluded from participation in,

denied the benefits of, or be otherwise subjected to discrimination, (3) that Tenant shall use the Leased Property in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally assisted programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.

b. **Economic Nondiscrimination.** To the extent Tenant engages in any aeronautical activity for furnishing services to the public at the Delaware Coastal Airport, Tenant shall:

- i. Furnish said services on a reasonable, and not unjustly discriminatory, basis to all users thereof, and
- ii. Charge reasonable, and not unjustly discriminatory, prices for each unit or service, provided that Tenant may be allowed to make reasonable and nondiscriminatory discounts, rebates, or other similar types of price reductions to volume purchasers.
- iii. That in the event of breach of any of the above nondiscrimination covenants, Landlord shall have the right to terminate the Lease and to re-enter and as if said lease had never been made or issued. The provision shall not be effective until the procedures of Title 49, Code of Federal Regulations, Part 21 are followed and completed, including exercise or expiration of appeal right.

36. **Property Rights Reserved:** This Lease and all provisions hereof are subject and

Landlord Initials _____

30

Tenant Initials _____

subordinate to the terms and conditions of the instruments and documents under which Landlord acquired the Leased Property from the United States of America and shall be given only such effect as will not conflict or be inconsistent with the terms and conditions contained in the Lease of said lands from Landlord, and any existing or subsequent amendments thereto, and are subject to any ordinances, rules or regulations which have been, or may hereafter be adopted by Landlord pertaining to the Sussex County Coastal Airport

37. **Successors and Assigns:** It is mutually agreed by the parties hereto that the terms "Landlord" and "Tenant" shall refer to and bind not only the parties hereto but also their respective successors, heirs and assigns.
38. **Miscellaneous:** In all reference herein to any parties, person, entities or corporations, the use of any particular gender or the plural or singular number is intended to include the appropriate gender or number as the text of the within instrument may require. All the terms, covenants and conditions herein contained shall be for and shall inure to the benefit of and shall bind the respective parties hereto, and their heirs, executors, administrators, personal or legal representatives, successors and assigns.
39. **Contingent upon Approval by Sussex County Council:** The effectiveness of this Lease shall be contingent upon approval of the Sussex County Council in the form of a Motion or Resolution. In the absence of said approval, this Lease shall be null and void and of no further force and effect.
40. **Memorandum.** At the request of Tenant, Landlord agrees to execute a memorandum of this Lease in recordable form, which Tenant may cause to be recorded. Upon termination

of this Lease, the parties agree to sign a termination of the memorandum, which Landlord shall be entitled to execute and record unilaterally if Tenant refuses to do so

41. **Estoppels**. At any time and from time to time during the Term of this Lease upon written request of either party and at the reasonable cost and expense of the party requesting the same, Landlord or Tenant, as the case may be, will, within ten (10) days after such request, execute, acknowledge and deliver to the other party a certificate stating: (i) this Lease is unmodified and in full force and effect (or, if this Lease has been modified, stating that this Lease is in full force and effect as modified and identifying the modifications); (ii) the dates to which the Rent payable hereunder has been paid; and (iii) whether or not there are any existing defaults hereunder to the knowledge of the party executing the certificate, and specifying the nature of such defaults, if any
42. **Governing Law**. This Lease and all issues arising hereunder shall be governed by the laws of the State of Delaware
43. **Entire Contract**: This Lease Agreement contains the entire contract between the parties. No representative, agent or employee of Landlord has been authorized to make any representation or promises with reference to the within letting or to vary, alter or modify the terms hereof. No additions, changes or modifications, renewals or extensions hereof, shall be binding unless reduced to writing and signed by Landlord and Tenant.

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

SUSSEX COUNTY

APPROVED AS TO FORM:

By: _____
President of County Council

By: _____
County Attorney

Attest: _____
Clerk, County Council

TENANT

OCEAN AVIATION, INC.

By: _____

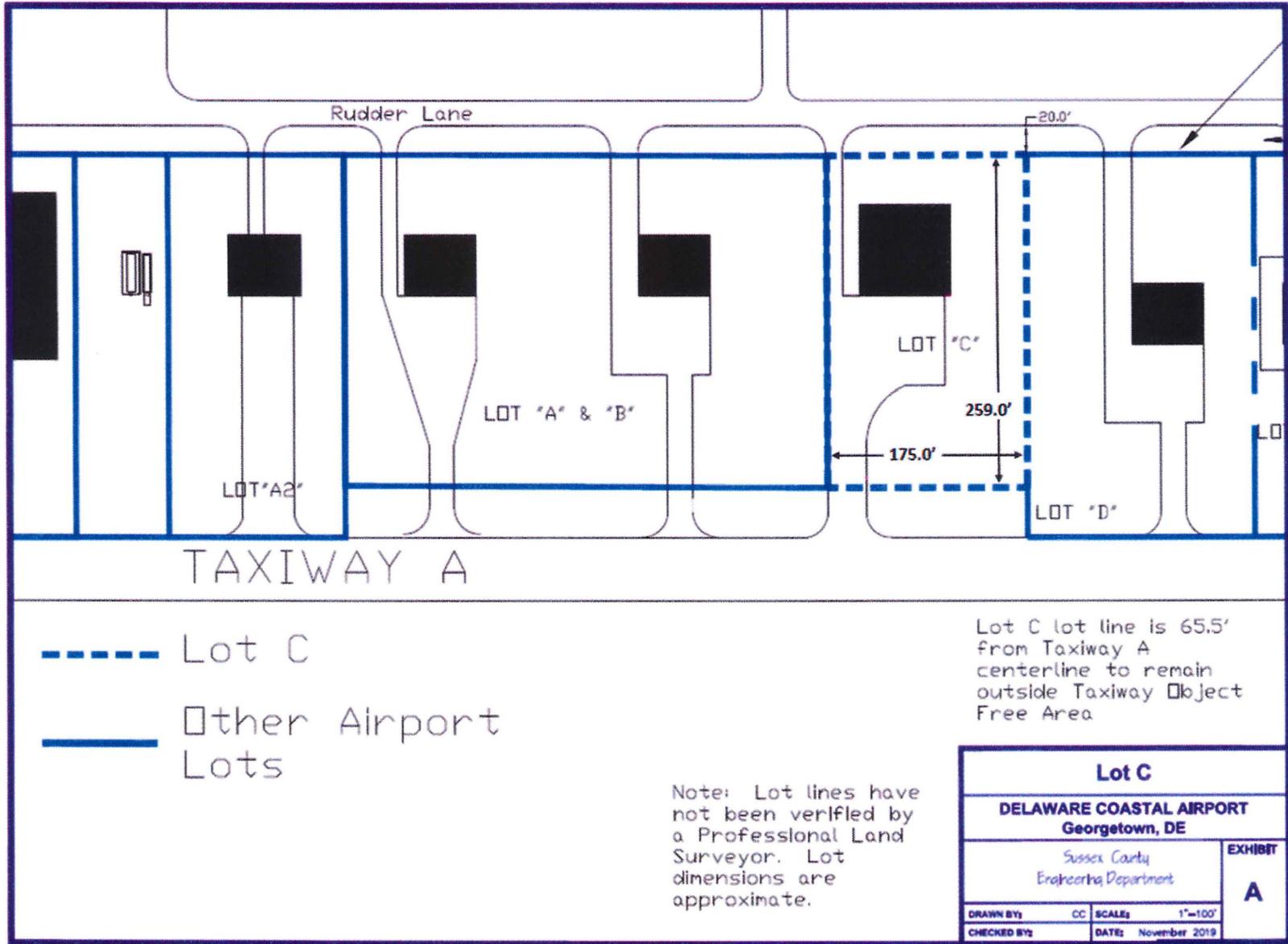
Name: _____

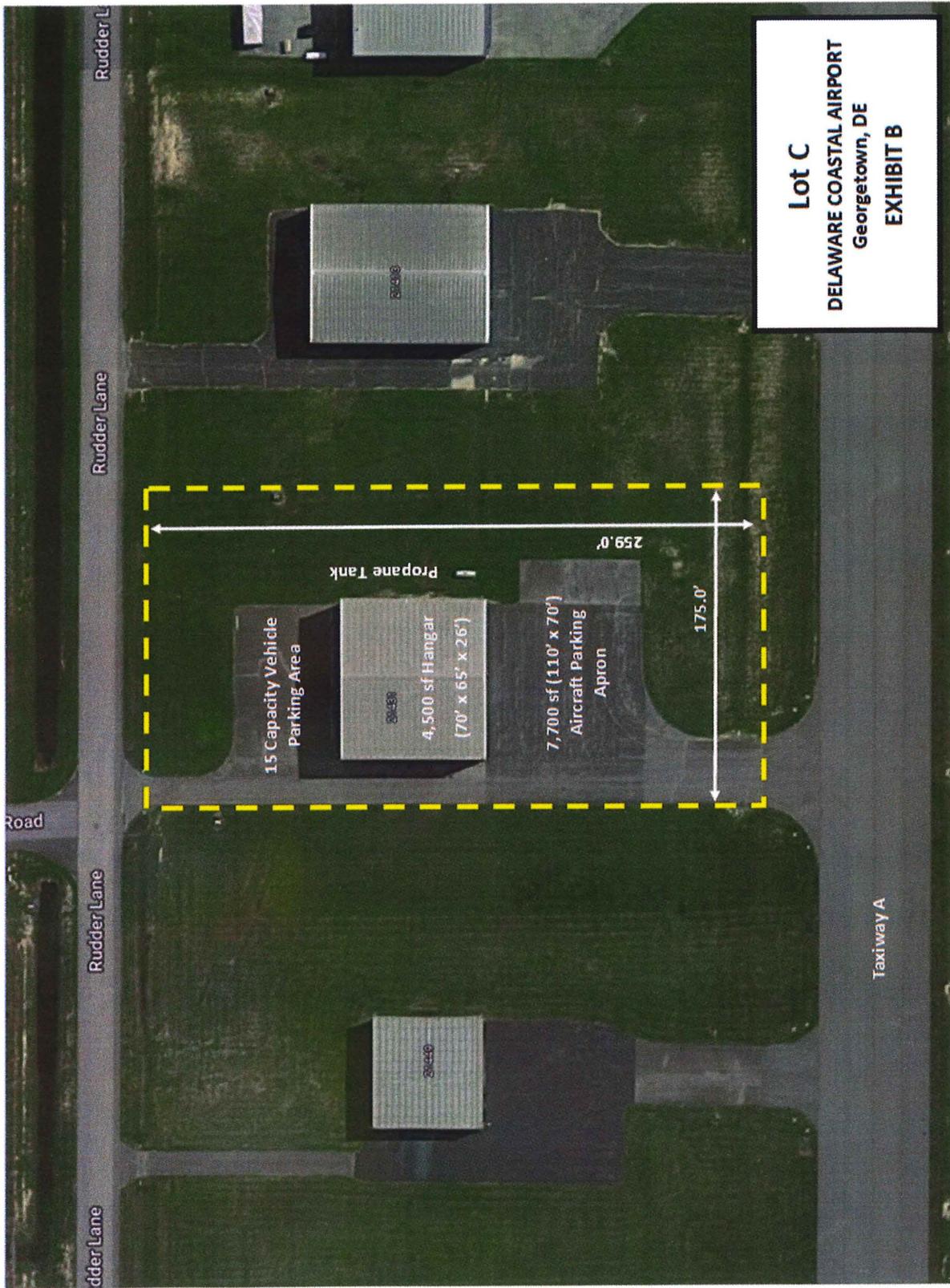
Title: _____

Landlord Initials _____

36

Tenant Initials _____





Landlord Initials _____

Tenant Initials _____

ENGINEERING DEPARTMENT

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



Sussex County

DELAWARE
sussexcountyde.gov

HANS M. MEDLARZ, P.E.
COUNTY ENGINEER

JOHN J. ASHMAN
DIRECTOR OF UTILITY PLANNING

Proposed Estuary Phase 4 Expansion of the Sussex County Unified Sanitary Sewer District

PUBLIC HEARING FACT SHEET

- Expansion of the Sussex County Unified Sanitary Sewer District (Miller Creek Area)
- County Council granted permission to prepare & post notices for the expansion on May 17, 2022
- The Engineering Department had received a request from GMB, LLC on behalf of their client Estuary Development, LLC the owners/developers of a project to be known as Estuary Phase 4.
- The request includes parcels 134-21.00-10.00, 10.01, & 11.12
- The project is proposed at 115 single family homes.
- The project will be responsible for System Connection Charges of \$6,600.00 per EDU based on current rates.
- The Engineering Department posted notices on June 2, 2022, posted on the website and advertised the expansion on June 8th & June 15th.
- To date we have received no correspondence either in support or opposition to this expansion.



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

RESOLUTION

A RESOLUTION TO EXTEND THE BOUNDARY OF THE SUSSEX COUNTY UNIFIED SANITARY SEWER DISTRICT (SCUSSD) MILLER CREEK AREA, TO INCLUDE TWO TRACTS OF LAND ON BOTH SIDES OF MILLERS NECK ROAD LOCATED IN THE BALTIMORE HUNDRED, SUSSEX COUNTY, DELAWARE AND RECORDED IN THE OFFICE OF THE RECORDER OF DEEDS, IN AND FOR SUSSEX COUNTY, DELAWARE.

WHEREAS, Sussex County has established the Sussex County Unified Sanitary Sewer Sanitary Sewer District (SCUSSD); and

WHEREAS, in the best interests of the present district and to enhance the general health and welfare of that portion of Sussex County in the vicinity of the Bayard area, the inclusion of this area will be beneficial; and

WHEREAS, in accordance with 9 Del.C., Section 6502 (a), the Sussex County Council may, upon request of the County Engineer, revise the boundary of an established sewer district when 50 or more houses have been connected by posting a public notice in four public places in the district describing the new or revised boundary; and

WHEREAS, the Sussex County Council has caused to be posted a public notice in at least four public places in the district, as verified by the affidavit of Phillip C. Calio, a copy of which affidavit and public notice is attached hereto and made a part hereof; and

WHEREAS, in accordance with 9 Del.C., Section 6502 (b), the Sussex County Council shall, within ninety days after posting the public notices pass a formal resolution establishing the new boundary of the district;

NOW, THEREFORE, BE IT RESOLVED the Sussex County Council hereby revises the boundary of the SCUSSD to encompass the lands mentioned above in the Miller Creek area and further described as follows:

Tract 1: 134-21.00-11.12

Beginning at a point, said point being on the SCUSSD (Miller Creek Area) boundary, said point also being on the westerly Right-Of-Way (ROW) of Millers Neck Road, approximately 725' southwest of the intersection with White Oak Drive; thence proceeding by and with said sewer district boundary and said ROW in a northeasterly direction a distance of 770'± to a point, said point being on the northerly ROW of Millers Neck Road, said point also being in the southerly property line Now-or-Formerly (N/F) of Christopher F. Neff; thence leaving said sewer district boundary and following said ROW in an easterly direction a distance of 1,100'± to a point, said point being the southeasternmost property corner of lands N/F of James M. & Kimberly D. Allison; thence leaving said ROW and proceeding in a southeasterly direction across Millers Neck Road a distance of 50'± to a point, said point being on the southerly ROW of Millers Neck Road, said point further being the northeasternmost property corner of lands N/F of Estuary Development, LLC; thence leaving said ROW and proceeding with said Estuary lands in a generally southerly direction a distance of 1,248'± to a point; thence continuing with said Estuary lands in a northwesterly, southwesterly and northwesterly direction respectively a total distance of 1,487'± to a point, said point being on the easterly ROW of Millers Neck Road; thence crossing Millers Neck Road in a northwesterly direction a distance of 50'± to a point, said point being that of the **BEGINNING**.

Tract 2: 134-21.00-10.00 & 10.01

Beginning at a point, said point being on the SCUSSD (Miller Creek Area) boundary, said point also being on the westerly ROW of Millers Neck Road, approximately 370' southwest of the intersection with Indian Cove Drive, said point further being a property corner of other lands N/F Estuary Development, LLC; thence leaving said ROW and proceeding by and with said sewer district boundary and other lands of Estuary in a northwesterly, northeasterly and southeasterly direction a distance of 835'± to a point, said point being on the westerly ROW of Millers Neck Road; thence leaving said ROW and other lands of Estuary and proceeding across Millers Neck Road a distance of 50'± to a point, said point being on the easterly ROW of Millers Neck Road, said point also

being on other lands of Estuary Development, LLC; thence proceeding by and with said Estuary Development lands, in a southeasterly, southwesterly and northwesterly direction respectively a total distance of 1,107'± to a point, said point being on the easterly ROW of Millers Neck Road; thence proceeding with said ROW in a southwesterly direction a distance of 361'± to a point said point being the westernmost property corner of lands N/F of Richard M. & Linda S. Ryan; thence leaving said ROW and crossing Millers Neck Road in a westerly direction a distance of 50'± to a point, said point being that of the **BEGINNING**.

NOTE: The above description has been prepared using Sussex County Tax Map 134-21.00 and Sussex County property assessment records.

A map outlining and describing the extension of the SCUSSD is attached. The area involved is crosshatched.

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

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

PUBLIC NOTICE

PROPOSED ESTURAY PHASE 4 EXPANSION OF THE SUSSEX COUNTY UNIFIED SANITARY SEWER DISTRICT (MILLER CREEK AREA)

NOTICE IS HEREBY GIVEN that the Sussex County Council voted on **May 17, 2022** to consider extending the boundary of the Sussex County Unified Sanitary Sewer District (SCUSSD), Miller Creek Area, to include the Estuary Phase 4 on Millers Neck Road, being situate in Baltimore Hundred, Sussex County, Delaware.

This action is in conformity with 9 Del. C §6502.

A description of the area, which is contiguous to and to be added to the SCUSSD is described as follows:

Tract 1: 134-21.00-11.12

Beginning at a point, said point being on the SCUSSD (Miller Creek Area) boundary, said point also being on the westerly Right-Of-Way (ROW) of Millers Neck Road, approximately 725' southwest of the intersection with White Oak Drive; thence proceeding by and with said sewer district boundary and said ROW in a northeasterly direction a distance of 770'± to a point, said point being on the northerly ROW of Millers Neck Road, said point also being in the southerly property line Now-or-Formerly (N/F) of Christopher F. Neff; thence leaving said sewer district boundary and following said ROW in an easterly direction a distance of 1,100'± to a point, said point being the southeasternmost property corner of lands N/F of James M. & Kimberly D. Allison; thence leaving said ROW and proceeding in a southeasterly direction across Millers Neck Road a distance of 50'± to a point, said point being on the southerly ROW of Millers Neck Road, said point further being the northeasternmost property corner of lands N/F of Estuary Development, LLC; thence leaving said ROW and proceeding with said Estuary lands in a generally southerly direction a distance of 1,248'± to a point; thence continuing with said Estuary lands in a northwesterly, southwesterly and northwesterly direction respectively a total distance of 1,487'± to a point, said point being on the easterly ROW of Millers Neck Road; thence crossing Millers Neck Road in a northwesterly direction a distance of 50'± to a point, said point being that of the **BEGINNING**.

Tract 2: 134-21.00-10.00 & 10.01

Beginning at a point, said point being on the SCUSSD (Miller Creek Area) boundary, said point also being on the westerly ROW of Millers Neck Road, approximately 370' southwest of the intersection with Indian Cove Drive, said point further being a property corner of other lands N/F Estuary Development, LLC; thence leaving said ROW and proceeding by and with said sewer district boundary and other lands of Estuary in a northwesterly, northeasterly and southeasterly direction a distance of 835'± to a point, said point being on the westerly ROW of Millers Neck Road; thence leaving said ROW and other lands of Estuary and proceeding across Millers Neck Road a distance of 50'± to a point, said point being on the easterly ROW of Millers Neck Road, said point also being on other lands of Estuary Development, LLC; thence proceeding by and with said Estuary Development lands, in a southeasterly, southwesterly and northwesterly direction respectively a total distance of 1,107'± to a point, said point being on the easterly ROW of Millers Neck Road; thence proceeding with said ROW in a southwesterly direction a distance of 361'± to a point said point being the westernmost property corner of lands N/F of Richard M. & Linda S. Ryan; thence leaving said ROW and crossing Millers Neck Road in a westerly direction a distance of 50'± to a point, said point being that of the **BEGINNING**.

NOTE: The above description has been prepared using Sussex County Tax Map 134-21.00 and Sussex County property assessment records. The annexation contains 27.77 acres more or less.

A map outlining and describing the extension of the SCUSSD is attached. The area involved is crosshatched.

The public hearing will be held on this issue at 11:00 a.m. on June 28, 2022 in the Sussex County Council Chambers, 2 The Circle, Georgetown, Delaware 19947. All interested persons, officials, residents, voters, taxpayers, property owners, or corporations in any way affected by this boundary extension are welcome to attend. There will be an opportunity for questions and answers. The Sussex County Council following the hearing, at one of their regularly scheduled meetings, will make the final decision on the boundary extension.

For further information, please call or write the Sussex County Engineering Department, 2 The Circle, Post Office Box 589, Georgetown, DE 19947 – (302) 855-7370.

Hans M. Medlarz, P.E.
County Engineer

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



Sussex County

DELAWARE
sussexcountyde.gov

Memorandum

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

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

CC: Everett Moore, County Attorney

Date: June 24, 2022

RE: County Council Report for an Ordinance relating to Affordably Priced Rental Units and the Sussex County Rental Unit (SCRP) Program.

On March 29, 2022 the County Council introduced an Ordinance to amend the Code of Sussex County in relation to Affordably Priced Rental Units and the Sussex County Rental Unit (SCRP) Program.

The Planning and Zoning Commission held a public hearing on the Ordinance on April 28, 2022. At the meeting of April 28, 2022, the Commission left the Public Record open until the next regular meeting for the receipt of additional comments. At the meeting of May 12, 2022 the Commission was provided with an update of the additional comments received. At the conclusion of the meeting, the Commission left the record open until the next regular meeting.

At the Planning & Zoning Commission meeting of May 26, 2022, the Commission discussed the Ordinance and closed the Public Record. The Commission then deferred action on the Ordinance for further consideration. At the Planning & Zoning Commission meeting of June 9, 2022, the Commission recommended that Council Council adopt the Ordinance for the 8 reasons stated in the motion and subject to the 4 recommended revisions outlined in the motion.

A copy of the minutes of the meetings of April 28, May 12, May 26 and June 9, 2022 is included below:

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

AN ORDINANCE TO AMEND THE CODE OF SUSSEX COUNTY, CHAPTER 72, ARTICLE II, SECTIONS 72-16 THROUGH 72-28 AND CHAPTER 115, ARTICLE IV, V, VI, VII AND VIII SECTIONS 115-20, 115-25, 115-29, 115-34, 115-37, 115-42, 115-45, 115-50, 115-



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

53 AND 115-58 REGARDING AFFORDABLY PRICED RENTAL UNITS AND THE SUSSEX COUNTY RENTAL UNIT (SCRP) PROGRAM

Mr. Whitehouse advised the Commission the Ordinance was noticed and posted on the Sussex County website; that one letter raising comment was submitted and has been circulated to the Commission.

The Commission found that Mr. Vincent Robertson spoke on behalf of the Ordinance; that also present was Ms. Brandy Nauman, who runs the Community Development and Housing Office for Sussex County; that the Ordinance originated back in 2018 with the 2018 Comprehensive Land Use Plan; that there was a lot of input offered related to the lack of affordable workforce housing in Sussex County; the basis for the initiative is cited in the Where As clauses of the Ordinance; that there is a housing vision which supports the initiative; that in 2018 the Comprehensive Plan recognized an influx of new residents in Sussex County, which fueled prosperity within the County's real estate market, hospitality industry and related economic sectors; that most housing, particularly on the eastern side of the County is new and often unaffordable to low-income families, seasonal employees, entry-level workers, and recent college graduates; that the Comprehensive Plan also recognized the shortage of affordable housing remains a very real problem for low to moderate household within Sussex County; that there were a few objectives discussed within the housing element where the need to improve the Sussex County Rental (SCRP) Program, by providing incentives to properly reflect the housing market, while incentivizing developers to participate in the provision for affordable housing; that one of the strategies mentioned explore ways for private developers to provide multi-family affordable housing opportunities in Sussex County; that there were several objectives and strategies which mentioned facilitating and promoting land use policies that enable and increase in the supply of affordable housing in areas with adequate infrastructure, increase affordable housing options, which include supplying rental units near employment opportunities, review of County Code to determine if there are regulatory barriers to development of affordable housing, to revisit the Zoning Code to determine in districts where multifamily housing is currently considered a Conditional Use versus being considered a permitted use, where water and sewer area already present to the site; that there are other objectives mentioned in the housing element as well; that Ms. Brandy Nauman's office, in following the directives of the Comprehensive Plan developed and RFP for a housing consultant to provide recommendation for Sussex County, which was done in April 2021; that the County contracted with LSA to perform a Housing Needs, Market Analysis, Economic Feasibility Analysis, Housing Opportunity and Market Evaluations; that these were broad topics within the Comprehensive Plan; that he believes people do understand the need to address and increase the affordable and workforce housing opportunities in Sussex County; that it is one thing to discuss the need, but it is another issue to figure out way which works for Sussex County, the future residence and the developers who will build the units; that there is a current Rental Unit Program for Sussex County; that this program is known as the SCR Program; that when the SCR Program was originally initiated around 2008 or 2009, there was no study performed; that there were incentives offered in the initial program; that some of these incentives were expediting the Application, bonus density and other incentives; that within the last 14 years, there has only been one developer to utilize the SCR Program; that the feedback from the SCR Program was the program was economically infeasible and the process was not smooth to go through, which resulted in no one utilizing the program; that the first issue was to identify why that was and try not to make the same mistake twice when developing a new program; that they attempted to develop a new program based on expert opinions and facts

which confirms affordable and workforce housing could be supplied and Sussex County would be able to partner with the development community in a way which would be economically viable for developers; that there are elements to those areas within the LSA report; that LSA did have discussions with people who are involved and engaged in the process; that LSA had discussion with people from the public sector, private sector, housing sector and Sussex County staff; that there are a lot of different variables which went into this, such as the land use costs; that land use costs are higher on the coastal side of the County than on the western side of the County; that on the flip side of the situation, the market rate rent is higher on the coastal side of the County than on the western side of the County; that meanwhile the fixed costs and construction costs essentially remain the same on both sides of the County; that this example is an oversimplification; that the math of the situation is, there must be enough density, referenced by LSA as “Cross Subsidizing”, where there must be enough of the market rate units to make the affordable and workforce housing units viable; that when there are lower property values on the western side of the County for market rate units; that it is tough to offer the units on the western side; that it is also difficult to offer on the eastern side, as there is higher rent, but also having higher land use; that the LSA report can be found on the Sussex County website; the LSA report determined 12 units per acre is required to make the program work; that within the LSA report it was stated the Zoning Code should be modified to promote housing and affordability within the growth areas identified within the Comprehensive Plan, which should include the by right allowance of a maximum density of 12 units per acre, where affordable units are provided; that they learned from the experience of developing the only SCRP project, known as Coastal Tide, located behind Home Depot in Lewes; that Coastal Tide was a good test case; that the existing SCRP Code provisions are located in Chapter 72; that the way the SCRP provisions are drafted, it places Sussex County in partnership with the property management, by evaluating tenants; that it creates Sussex County to become a duplicate property management agency, despite there already being a property management agency present, who works for the developer; that they chose to change this issue by allowing all of the requirements to remain in place, but require the property manager or the developer to certify that they are complying with the requirements and supply the information and certification to Sussex County on an annual basis; that this allows for checks and balances within the processes, without duplicating work which is already being performed; that this is one of the big changes made to Chapter 72 of the County Code; that it removes the bonus and expedited densities; that the proposed Ordinance states if housing is provided to the qualified individuals, the developer would be permitted to do 12 units to the acre in all the residential zoning districts; that 12 units to the acres is already permitted within the HR Zoning Districts; that this would be allowed within AR-1 and AR-2 (Agricultural Residential) Zoning Districts as well; that there are conditions and requirements placed; that there were three main strategies mentioned within the final recommendations from the LSA report; that the strategy currently being focused on is for the modification to the County Zoning Code to help promote affordability in growth areas identified in the Comprehensive Plan; that the Local Housing Trust Fund is a separate initiative, which is currently underway; that the third strategy to preserve the existing supply of affordable housing is an ongoing initiative; that they have added the annual audit requirements; that the audit must be prepared by a Certified Public Accountant (CPA), who is not otherwise affiliated with the developer; that the County requires a third-party, independent auditor; that the auditor must certify that all Chapter 72 requirements and all the terms of the SCRP agreement are being adhered to; that the auditor must confirm the status of each leased or vacant SCRP unit; that the auditor must certify that each of eligible tenants renting an SCRP unit within the project are eligible as of the date of the report; that the auditor must certify and provide the status and

duration of any SCRP unit vacancies; that the auditor must certify any marketing efforts to re-rent any vacant SCRP units; that the auditor must provide a status list of any eligible SCRP tenants waiting for an available SCRP unit; that the auditor must provide any other information requested by the Certified Public Accountant's (CPA) office or by the Sussex County Community Development Department; that by setting these requirements, it will allow the developer to run the project, providing housing to tenants; that it also allows Ms. Brandy Nauman and the Sussex County Community Development Department to perform their jobs more efficiently; that they did place a penalty provision in the Ordinance, in the attempt to avoid a developer sitting on a SCRP unit or not making a concerted effort to rent a SCRP unit; that there is a provision in place which states if a SCRP unit is rented at market rate, the developer will be required to pay the rent occurred to Sussex County, where it is placed back into the Housing fund for the County; that this penalty does provide an incentive to rent the units; that within the proposed Ordinance, affordable housing would be permitted by right in the Coastal Area, Developing Area and the Town Center Area; that these areas are all considered growth areas within Sussex County; that they placed standards within the Ordinance as to where the affordable housing could be located within the growth areas; that without the placement of the standards, it would almost eliminate the purpose of zoning; that they attempted to make sure the projects would be placed in appropriate locations, with appropriate perimeters; that the Planning & Zoning Office hired AECOM to take the proposed perimeters, attempting to confirm if development would be feasible with the proposed perimeters; that the LSA report confirmed the economic elements would work at 12 units to the acre; that AECOM was hired to ensure that the 12 units to the acre could be constructed, while meeting the separation, parking and stormwater management requirements; that stated in the proposed Design Criteria, at least 30% of the project units must be SCRP units; that there must be a perimeter buffer of 100-ft.; that the permitted building height increased to 52-ft. and four stories; that due to the height limits, many of the multi-family and apartment complexes within Sussex County have flat roofs; that they hoped of offer more flexibility for design ingenuity, where a pitched roof may be possible; that the open space is required to be at least 50%; that central water and sewer are required; that the LSA report did mention the necessity for central utilities; that he feels the project could move forward without central water, but he feels central sewer would be essential; that without central sewer, the project would require a lot more land to accommodate the required drain field for a project without central sewer; that he does understand this requirement will limit geographically where projects can be constructed; that if a commercial zoned property is located adjacent, there must be interconnectivity provided; that all sidewalks and streets will be interconnected with surrounding sidewalk systems; that walking and biking trails are required to be interconnected; that the trails would be permitted within the 100-ft buffer perimeter; that primary views for all units will be directed to open spaces and amenities; that this is a design requirement to avoid all of the units being crammed onto a parcel; that this is similar to the superiority design perimeters for cluster subdivisions; that projects should be located near and existing and/or planned DART route; that the idea is for the projects to be located near employment centers or allowing access to employment centers; that within the current Ordinance, it requires projects to be located within a half mile of an existing or proposed DART route; that DART had mentioned excitement in the Ordinance requirement, as it would promote DART ridership; that the housing requirements state only multi-family and rental units would be permitted; that the current Ordinance does not include home ownership; that home ownership is part of a separate plan for Sussex County; that home ownership would not require a property manager or developer running a project with market rate and SCRP units; that at least 30% of restricted units that average 80% of AMI or less; that compliance reporting is required, based on submitted audits

and certifications; that there is financial penalties if the requirements are violated; that AECOM did produce two site plan analysis on a 10 acre parcel and a 30 acre parcel using the proposed perimeter requirements;

Chairman Wheatley suggested an exception be made for small projects, such as projects under 20 or 40 units; that he does not know if it would be feasible but wanted to offer the suggestion.

Mr. Robertson stated should exceptions for small projects be considered, he would suggest they reach out to the experts and Mr. Hans Medlarz with Sussex County Engineering, to obtain his opinion.

Ms. Stevenson stated she did attend a Low-Income Housing symposium; that there was a non-profit organization out of Salisbury present, that would be interested in projects of the proposed use and maybe companies like them would be interested in smaller-scale projects.

Mr. Whitehouse stated there is guidance from the Federal Highway Administration as to distances that are deemed walkable; that with a bicycle considered, the distances become greater and the location distance, relative to DART routes was based on the distances deemed “physically walkable”.

Ms. Wingate stated if central sewer and water are required, it would more likely be in an area of a DART route as well.

Mr. Hopkins questioned the 30% requirement of restricted units in relation to the 12.5% requirement; that he questioned if the 30% of units that average 80% of AMI or less; that AMI stands for Average Median Income; that he questioned if the definition of “moderate to low income” within the Ordinance is 30% to 80% and he questioned if a tenant must be 30% of 80%, how does the requirement play into the big picture of almost half of the workforce, as stated by the LSA report, being considerably under 80%.

Mr. Robertson stated the 12.5% was the requirement within the current SCRIP program which they propose to remove and replace with the 30% requirement, which is the newly proposed requirement; that the State statute requires any deletions from an Ordinance, must be placed within brackets; that anything added to the Ordinance must be underlined and placed in italics; that this makes reading a document very hard to follow when in black and white print; that it is particularly difficult to locate where the brackets begin and end; that on the first part of Chapter 72, they attempted to highlight in red any place there was a change; that everything proposed to be removed is located within brackets and everything proposed to be added is referenced with underlining and italics.

Ms. Brandy Nauman stated the percentages can get confusing; that under requirement No. 2, to be eligible to receive permitted use, 30% of the project must be offered as affordable SCRIP units; that for example 30 units out of 100 units must be offered as affordable SCRIP units; that the 30% of SCRIP units must serve a population that is 80% of the AMI or less and this is a standard that is considered moderate to low income.

Chairman Wheatley stated that 80% or less of AMI does contain a large portion of the workforce.

Ms. Stevenson questioned what 80% or less of AMI would look like in real income number statistics.

Ms. Nauman stated AMI stands for Area Median Income; that AMI does not differentiate between the east and the west side; that the AMI is County specific; that for a household of two people, the

range would be \$18,030 to \$48,100 earned annually; that a one-bedroom rental unit is \$590, \$705 for a two-bedroom rental unit and \$815 for a three-bedroom rental unit; that those are the current rental prices being used within Coastal Tide; that the 2022 Income Limits were just released that week; that they will be updating the prices based off of the reported income limits, which did go up and that a family of four can earn up to \$60,100.

Mr. Whitehouse stated that they had to make certain assumptions; that they had AECOM provide site plan analysis to show projects could be constructed on a 10-acre parcel as well as a larger parcel; that for the 10-acre parcel, they assumed 1,000 sq. ft. per unit, with four floors and four units per floor; that this was able to be constructed in compliance to the 100-ft. setback requirement; that they were able to construct the project at 12 dwelling units to the acre while meeting the numerical requirements, parking requirements, setback requirements and include assumptions for stormwater management, as well as a community-building; that the model shows the flexibility and possibility to achieve development on a 10-acre parcel; that comments they received included flexibility of parking being important in allowing the arrangement of the buildings to work; that shown on the 30-acre model they used the same principle and same design assumptions, they were able to assume eight units per floor at 1,000 sq. ft. per unit with four floors; that this would allow for 30 units per building; that when again assuming 12 dwelling units to the acre, they were able to provide 360 dwelling units; that 30% of the 360 dwelling units would produce 72 Workforce Housing units; that they did show the 30 acre parcel as a slightly irregular parcel, not being a perfect rectangle; that even on the irregular parcel, they were able to consider stormwater management and the potential for the presence of wetlands; that they were able to establish that the project would be viable physically, in terms of the design and layout; that interconnectivity was able to be achieved; that they were able to place a community building at the front; that all the design criteria, unit number were met and all complied with required setbacks and this was all achieved without significant compromise and with room left over.

Ms. Stevenson questioned if there is a minimum lot requirement, or if anyone could build if they meet the requirements of the Ordinance.

Mr. Whitehouse stated there is nothing within the Ordinance that states a parcel must be a minimum of 10 acres or 30 acres and they chose those numbers for modeling purposes only.

Mr. Robertson mentioned the site plan analysis were all done to scale.

Ms. Wingate questioned if storage buildings are normally included with affordable housing.

Mr. Robertson stated they looked at several other projects; that they did not consider storage units and most affordable housing units do not offer separate storage units, as storage is typically built into the units themselves.

Mr. Hopkins questioned if the current Ordinance proposes 12 units to the acre, what would encourage developers to develop at 12 units to the acre if they are required to sacrifice 30% of their units, as they are currently only required to sacrifice 12% of the units and questioned if developers would be permitted to develop anywhere in Sussex County.

Mr. Robertson stated the proposed Ordinance permits 12 units to the acre as a permitted use; that in being a permitted use, there is no requirement for a public hearing before the Planning & Zoning Commission or County; that a developer would be permitted to go straight to Site Plan Review and a

developer would be permitted to develop 12 units to the acre if they meet all the proposed Ordinance criteria.

Mr. Hopkins questioned if Robinsonville Rd would be an ideal location.

Mr. Robertson stated he could not speak to any specific locations, but one of the criteria is near an existing or proposed DART route; that he does not believe the location of Robinsonville Rd. would meet the DART route criteria; that he stated the State controls DART routes, and the presence of DART routes will be a limiting factor for projects.

Mr. Hopkins questioned if a developer could obtain a DART route from the State, they could potentially be able to develop a project.

Ms. Wingate stated DART may expand its proposed routes if they were guaranteed opportunities for ridership.

Mr. Robertson currently stated the existing DART route consists of Rt. 9, Rt. 24, Rt. 54, Rt. 26, Rt. 1, and Rt. 113

Chairman Wheatley questioned if a developer could secure a commitment for DART to extend a route within a half-mile of a proposed site would the parcel, then qualify.

Mr. Robertson stated Final Site Plan approval shall not be granted until a route is in existence and operated by DART.

Mr. Robertson stated there is a well-established acknowledgment that Sussex County does not have enough affordable or workforce housing; that they have looked at ways to achieve more workforce housing; that Sussex County itself, does not own housing developments; that Sussex County does not build them, does not own them, does not develop them; that the LSA report did mention what can be done to create affordable housing that is not currently being built in Sussex County; that the only way for affordable housing to be achieved is through the proposed density and by allowing the density to be a permitted use; that a lot of people will want affordable housing, but if a public hearing is required, there will always be arguments regarding density; that this creates everyone being put on the spot, creating unpredictability and uncertainty and the public hearing process takes time to get through for approvals.

Ms. Stevenson stated everyone who currently does not live in Sussex County wants to see affordable workforce housing, everyone within the Government wants affordable workforce housing but the current residents of Sussex County do not necessarily want affordable workforce housing.

Mr. Robertson stated with the data he has received and the comments he has heard, he believes many people are in support of affordable workforce housing; that he stated Ms. Brandy Nauman's office has had discussions with Cape Henlopen School District regarding the issue of being unable to get teachers for the district because the teachers cannot afford to live in Sussex County.

Mr. Hopkins stated he agrees there is a current problem; that he believes the LSA report was well written; that he strongly encourages everyone to read the whole report; that the report clearly shows that half of Sussex County's workforce cannot afford a \$250,000 house; that the LSA evaluation

mentions both ownership as well as rentals and he questioned if the Ordinance was referencing rental units only.

Mr. Robertson stated the Ordinance currently focuses on rental units only; that this is due to Sussex County having a completely separate section of the County Code regarding homeownership; that when dealing with homeownership, one has to be very careful to ensure investors do not purchase the properties and flip them; that this requires Sussex County to be the regulator, ensuring the homeowner occupied properties remain that way in perpetuity; that he acknowledges the fact the homeownership issue needs to be tackled as well but right now the Ordinance is tackling rental units.

Mr. Hopkins questioned how many units are needed and how long; that if the Ordinance is peeling off tenants who just fall under the 80% criteria, he questions what happens to everyone else; that he stated the only issue he had with the LSA evaluation is the fact they had to work off the consortium numbers; on page two and page 13 it shows the projection between 2020 and 2030 which states over those 10 years, new permits are projected to be 10,290 and between 2030 and 2040 another 5,000 permits are projected; that within the last three years, Sussex County has nearly hit the 15,000 range and he believed building permits last year to have 5,200 +/-.

Mr. Whitehouse stated the permit total would include all permits located for in-town and permits within Sussex County and if one were to total all permits pulled in town and unincorporated areas, the average is approximately 5,000 permits per year.

Mr. Robertson questioned if the 5,000 permits per year include deck and accessory structures, or dwelling units.

Mr. Whitehouse stated the permits would include single-family homes, manufactured homes, and multi-family homes.

Mr. Hopkins stated the current subject is a sore subject for the Commission members who participated in the many meetings in 2017 and 2018; that currently, only three years later, Sussex County has burnt through, what the consortium stated would take 20 years to do and he requested Ms. Stevenson read a paragraph from page two of the LSA report.

Ms. Stevenson read from page two of the LSA report that:

“However, Sussex County has not seen the construction of new homes at rents and prices that are affordable to lower-income households, including individuals in key sectors of the local economy and individuals living on fixed incomes. Currently, there are nearly 10,700 households in Sussex County that are severely cost-burdened, spending more than half of their income on housing each month. To help mitigate current and future housing challenges, support economic growth, and promote a high quality of life for County residents, Sussex County should encourage the reduction of rental and for-sale homes affordable to households in different income ranges as follows.”

Mr. Hopkins stated that the LSA report goes on to list information in the table, which was based on the information provided by the consortium; that it is stated the 80% to 100% and lower; that one would take the less than 30% of AMI, the 30% to 50% of AMI, the 50% to 80% of AMI; that these are the numbers which are reference in the proposed Ordinance as medium and low categories; that it states Sussex County should be building the 99, the 131 and the 171 to keep up with the demand; that it was stated we should not touch the 10,700 households mention in the paragraph Ms. Stevenson previously read; that Sussex County should be generating 401 based on the total number of units of

1,549; that last year the total number of units was not 1,549; that it was 5,200 units, being the same the year before and the year before that; that based off of previous years, one could think the provided numbers are going to increase as well; that he suggested they use the provided numbers, which state Sussex County should be providing 401 units annually and he states Sussex County first need address how large the problem is, then how does the County achieve what is needed.

Ms. Wingate stated she feels the proposed Ordinance is a great first step in the right direction; that it used to be 70% and is proposed to increase to 80% to attempt to help those who were previously being missed; that she appreciates the work that has been placed into the Ordinance; that the models prepared by AECOM clearly shows the projects can be done and the other great part being the Ordinance does not require a public hearing.

Mr. Robertson stated with the current SCRIP Program has only provided 30 units, within Coastal Tide, in the last 14 years.

Mr. Hopkins mentioned on page 20 of the LSA report it is stated the best-case rental scenario, the model becomes viable at 10 units per acre at 12 units per acre, the project could support a 25% units set aside affordable to households earning 80% or below; that he feels the LSA analysis has already proven the Ordinance wrong; that the Ordinance proposes 12 units to the acre while setting aside 35%, which seems to be in opposition to the LSA report.

Mr. Robertson stated on page 20 of the LSA report it states that in a best-case rental scenario, the coastal model at 12 units to the acre, the project could support a 25% set aside of units affordable to households earning 80%; that they took it a step further, in the attempt to shoot a little higher, requesting 30%; that this was in the attempt to obtain more affordable units out of the 12 units to the acre; that the Ordinance is going to allow, by right, a permitted 12 units to the acre, Sussex County should get something back in return; that it would be a lot easier to begin at 30% and back the percentage down to 25% than to begin at 25% and attempt to increase to 30%.

Mr. Hopkins stated within the next sentence on page 20 of the LSA report it stated to achieve the level of housing affordable to 50% or less of AMI, the project would need at least 16 units per acre.

Mr. Robertson stated the statement Mr. Hopkins referenced within the LSA report is correct, however, they attempted to reach a greater range of people by looking at 80% or less of AMI.

Mr. Hopkins stated that 80% is higher and is considered a higher income.

Mr. Robertson stated that 80% is a higher income; that the LSA report referenced that many residents within Sussex County are at the 80% and lower who currently cannot afford rental and homeownership in Sussex County, and they are attempting to capture 80% and down, even below 50% of AMI.

Mr. Hopkins stated that to capture 80% and lower one must look at the lowest number; that provisions must be made for the 30% tenant; that a 30% tenant will not fit within an 80% category, and he feels the Ordinance has it backward.

Ms. Nauman stated this is one of the reasons they hired someone to perform all the math; that it was her understanding that all the mentioned scenarios were played out as part of the provided modeling; that the level of incomes that would be able to be viable at the proposed model location.

Mr. Hopkins questioned an explanation of the sentence within the LSA report, which stated, “*to achieve about this level of housing affordable to 50% AMI and below the project would need at least 16 units per acre.*”

Mr. Hopkins stated the statement is correct; that if one were to only look at 50% and below, a lower rental rate would be charged, which would require more units to be offered at market rate to offset the 50%.

Mr. Hopkins questioned if Sussex County is attempting to help the 50% or below AMI tenants, or only those tenants who are at 80% of AMI.

Mr. Robertson stated tenants are eligible at 80% or less of AMI, it allows for tenants at 80%, 70%, 60%, 50%, 40%, 30%, and below to be eligible.

Mr. Hopkins stated as Sussex County makes provisions for the people who make less money, there is a need for more units to be offered.

Mr. Robertson stated the proposed Ordinance states, based on the LSA report if a person were to bring in tenants of 80% of AMI and less, going all the way down, allowing for 80%, 50%, and 30%, 12 units to an acre is required at 25% of the units.

Mr. Hopkins disagreed with Mr. Robertson stating he does not believe him to be correct and he feels the math is not correct.

Mr. Robertson stated the presented Ordinance is based on the information provided to them by the hired experts; that the statement Mr. Hopkins referenced is regarding the attempt to look at only tenants at 50% and below of AMI; that in that circumstance, one would not capture the 80% to 50% of AMI range of people; that if the goal was to only look at 50% and below of AMI, the stated 16 units per acre would be required, which would be four additional units per acre to offset that 50%; that if one looks at 80% and below of AMI, it can be achieved at 12 units per acre and 30% of proposed units and they do not want to exclude the people located within the 50% to 80% of AMI range; that the people in this range make up the majority of the workforce for Sussex County.

Mr. Hopkins stated by only building 12 units to the acre, Sussex County will only accommodate people located within the 80% range, not people located within the 50% and below range.

Mr. Robertson stated Mr. Hopkins's view was not correct; that he was not certain how else to explain the Ordinance and if Sussex County looks at people at 80% and below of AMI it would include 78%, 77%, 76%, and below.

Mr. Hopkins stated he did not see Mr. Robertson's information to be true; that he stated that 80% of \$100 is \$80; that he understood the Ordinance to state he would be eligible at \$80 when everyone else is paying \$100; that he would be sliding in just under the threshold at 80%; that he questioned what happens if he only makes \$50 and he would not be eligible to rent.

Ms. Wingate stated the Ordinance proposes 80% and down.

Mr. Robertson stated they are not proposing to take just anyone at 80%; that if an eligible tenant came forward at 50%, they would be accepted; that if an eligible tenant came in at 60% or 70%, they would be accepted, and the Ordinance provides a wider range.

Ms. Stevenson questioned how it is determined that the rentals are a good mixture of all percentages, making sure rentals are not only going to tenants at 80% and no tenants at 30%.

Ms. Nauman stated the slide stated the request for an average of mixed incomes; that it is very difficult to get someone at precisely at 80% of AMI; that someone may come in at 60% of AMI and another person come in at 100% of AMI; that if the average of the units is 80% of AMI annually, that is what they are hoping to achieve.

Mr. Hopkins questioned if the people who provided the LSA report, or any of the other mentioned providers and stakeholders, were in any way involved in writing the proposed Ordinance.

Ms. Nauman stated the mentioned providers were a part of many focus groups and stakeholders to develop the provided report and the provided report was used to construct the proposed Ordinance.

Mr. Hopkins stated his intention is not to give everyone a hard time; that he wants the Ordinance to work; that the Ordinance is a big deal; that the affordable workforce housing issue is one of the biggest issues Sussex County is currently dealing with; that he feels the issue should be handled with all hands on deck; that he appreciates the models provided by AECOM and he would like to hear and receive opinions from developers as well.

Mr. Robertson stated the report reflects the information provided by housing developers and others.

Mr. Hopkins questioned if those developers were part of the writing of the Ordinance.

Mr. Robertson stated the developers were not part of the writing of the Ordinance itself, but the comments and suggestions provided within the LSA report were the guidelines for the writing of the Ordinance.

Mr. Hopkins stated he feels the devil is in the details.

Chairman Wheatley stated he understood where Mr. Hopkins is coming from, however, they are not the people who write Ordinances.

Mr. Hopkins questioned why there is a 100-ft buffer requirement.

Mr. Robertson stated they attempted to ensure if this type of high density were to be placed in other residential areas, they offer some separation; that this type of separation is offered in other areas of the County Code, such as with RPCs; that also due to the permitted height increase; that they considered ratios of the height to the setbacks, but this was found to be very complicated to plan; that they proposed the 100-ft. buffer as it would provide a vegetated buffer and separation from the property boundaries and the development; that this is one reason they requested AECOM; that they wanted to ensure they were not impacting the ability to construct 12 units to the acre by imposing the 100-ft. separation and buffer; that they, as staff, drafted the proposed Ordinance based on the information provided in the LSA report and the Comprehensive Plan; that many people had an opportunity to participate in the drafting of the Comprehensive Plan; that they did not invent an Ordinance that was not based upon all of the stakeholder information provided in the LSA report and Comprehensive Plan; that there was a lot of thought that went into the Ordinance, as well as a lot of verification was performed to ensure the Ordinance would work;

Chairman Wheatley stated he feels there should be some consideration given to small projects that may be achievable without central water and sewer; that he is very concerned about the DART route requirement; that he feels the DART route requirement will be the chokepoint for the Ordinance; that he feels consideration should be given for a circumstance where DART was to agree, in writing, to provide service for a complex once the apartments are available for rent, even if the service or route does not currently exist; that otherwise, construction of projects would be waiting on DART; that if one can build the project, people will come and if one cannot get permission to build a project, the people will not come.

Mr. Robertson stated they did have conversations regarding the DART requirement; that they wanted to allow the Applicant to approach DART to request a new route be created; that this would allow an Applicant to move forward with preliminary site plan approval and all State agency approvals; that the thought was during the preliminary stages, a new DART route would be in the process of being established; that the DART route would be established in time for final site plan approval, allowing building permits to be pulled and construction underway; that the Ordinance is subject to change; that their intention was to ensure there would not be constructed projects without DART nearby and they did obtain the distance number from the federal standards.

Mr. Hopkins stated the program in 2014 was a failure; that he does not want the proposed Ordinance to be a failure; that he feels the LSA report, and the proposed Ordinance are completely different and that he would like to see more involvement.

Chairman Wheatley stated that public hearings are held to promote involvement from developers and members of the public.

Mr. Robertson stated when the SCRP Program was established in 2008, everyone thought it would work; that conversations were had with developers, who provided comments they thought the SCRP Program was great; that in reality, the program did not work; that even with an amendment to the SCRP Program, it still had the same outcome; that the program only results in 30 units in the last 14 years; that with the current proposed Ordinance, they chose to frontload with hiring an expert in the field providing information on what works based on their own experience; that the experts did have conversations with advocates for housing, towns with current housing issues, housing developers, such as Christian Hudson, Doug Motley, Jack Lingo, Joseph Mastrangelo, Carl Freeman, Boardwalk Development, Kevin Gilmore with Habitat for Humanity; Ryan Homes, Ocean Atlantic, and Milford Housing; that a lot of the mentioned developers are developing multi-family housing projects currently; that the developers know the land costs; that listed in the appendix of the LSA report, it mentioned where they looked at the economics; that the numbers provided to them, were real cost numbers provided by real developers who are currently constructing and involved in multi-family projects within Sussex County; that they do not want to make the same mistake twice and they also want the Ordinance to work.

Mr. Hopkins stated he had spoken to a developer, who he believes had developed more low-income and affordable housing than anyone else; that the developer had stated he would not touch the proposed Ordinance with a 10-ft. pole.

Chairman Wheatley stated he hoped the developer would be present at the current public hearing and would tell the Commission his reasons why he does not agree with the Ordinance.

Mr. Hopkins stated the developer he mentioned was not present at the public hearing.

Chairman Wheatley questioned if Mr. Hopkins knew what the developer's issues were with the proposed Ordinance and he appreciates feedback from developers, however, if the feedback cannot be provided to the Commission it does not mean much.

Mr. Hopkins questioned if anyone was concerned that no developers had made comments regarding the proposed Ordinance.

Chairman Wheatley stated he is not yet concerned, as the public hearings are part of the public comment process; that he is not sure what else the Commission can provide other than public hearings where public comment can be given; that developers were consulted by the team who constructed the LSA report; that it is not a fact where developers had no idea the Ordinance is being proposed and if developers do not care enough to be present at the public hearings, offering concerns and comments, the Commission cannot help them.

Mr. Hopkins stated his main concern is that the density number is not high enough and the 50% open space requirement and if developers cannot make the same percentage, they will not be interested in the Ordinance.

Mr. Robertson stated they wanted to have the 50% open space, without impacting the 12 units to the acre; that they hired AECOM to ensure the requirements are achievable; that the LSA report does discuss what a developer needs to make on return; that the report looks at return on cost and yield on cost; that they mention a hurdle rate, which is the minimum percentage a project must achieve to be financially viable; that the hurdle rate is the threshold which must be met before a developer begins making any money; that the LSA report looked at what those yields were; that they mentioned return on cost at 25% and a minimum yield on cost at 7.5%; that the provided information is the reason they hired LSA to provide the evaluation and report, based off of information provided by the developers who are currently building within Sussex County; that they made every attempt to establish the Ordinance the right way, compared to the previous way in 2008 and the proposed Ordinance was constructed based off of actual data.

Mr. Hopkins stated he felt the LSA evaluation and provided data were good; that he would like to see a focus group, constructed of developers the Commission respects, voicing their interest in the Ordinance.

Ms. Stevenson stated she felt it should be mentioned within the Comprehensive Plan, locations in which Sussex County would like to see the development of this nature; that she questioned if there had been any consideration regarding the State Investment Levels and Spending and she stated the Ordinance will eventually become a political talking point.

Mr. Robertson stated consideration was not made directly based on the Delaware Strategies for State Policies and Spending; that this was due to the fact the State Levels state they are not to be used as land use tools for Sussex County to follow; that there is a strong indirect correlation with projects being limited to Growth, Developing, Coastal and Townhome Center areas; that these areas are mostly located within Investment Level Areas 1 and 2; that there have been Investment Level 4 areas being applied for development; that the Coastal Area is not located within Investment Level 4; that he does believe the Delaware Office of State Planning & Spending recently updated their Investment Level

map; that they chose to keep the Ordinance compatible with Sussex County land use and the Sussex County Comprehensive Plan; that the State can always change where Investment Levels are located, which could impact the Ordinance and locations where Sussex County desires the projects be built; that the Henlopen TID is based on density assumptions; that if a project were to be located within the Henlopen TID, the project would be required to go through the TIS process; that the developer would not be permitted to pay the TID fee and continue as the project is not two units to the acre.

Ms. Stevenson questioned if there were an additional incentive for anyone who would construct an infill project, increasing the density where it is presently located, which is mostly located within city centers where people can walk to work.

Mr. Robertson stated the Ordinance cannot offer incentives for that circumstance as those areas are located within municipalities.

Chairman Wheatley stated the Ordinance will only permit projects within Sussex County; that the requirement for central water and sewer will limit the locations projects can be located; that central water and sewer are not offered throughout Sussex County; that central water and sewer are offered more on the eastern side of the County, but not as much on the western side; that the majority of sewer is controlled within municipalities and is the reason he suggested considering a small project exemption to create a greater opportunity to expand projects within Sussex County.

Ms. Stevenson feels most of the need is on the eastern side; that most of the traffic she frequently gets stuck in is the workforce leaving the eastern side to go home to the western side and questioned if there was more affordable workforce housing located on the western side of the County.

Chairman Wheatley stated there is lower-priced housing located on the western side of the County.

Mr. Robertson stated the Ordinance is not limiting central water and sewer to be provided by Sussex County; that the water and sewer could be provided by another company, and they are not considering only housing-cost burdens, but also transportation-cost burdens; that with current gas prices, they attempted to get people living closer to the locations they work to help minimize travel costs.

Ms. Stevenson stated she agreed with Mr. Robertson, but she questioned if people will utilize transit opportunities; that the kids attempting to work at the beach, will ride the bus for 45 minutes to work and the next day decide they would rather park in town.

Chairman Wheatley stated he does agree that there should be buy-in from the developers who could be constructing the projects; that he requested to ensure a draft of the proposed Ordinance gets circulated to all the people and developers on the list within the LSA report allowing the opportunity to receive comments from them.

Ms. Stevenson questioned if Sussex County is looking at accessory dwelling units (ADU), allowing people to live in RVs and other options; that she feels other alternative options would allow a solution to the current problem without requiring people to sell all their farmland to developers.

Ms. Nauman stated she believes considering alternative dwelling options is on the radar for Sussex County, as it was mentioned during the Comprehensive Plan; that another initiative happening currently within her office is the Housing Trust Fund; that the Housing Trust Fund just rolled out at the beginning of April; that the Housing Trust Fund initiative is hoping to address the homeownership

components of the LSA report; that Sussex County is offering direct homeownership assistance with the Housing Trust Fund; that they are offering down payment closing and offering a developer grant program for those who are building affordable housing; that between the current proposed Ordinance and the current Housing Trust Fund initiative, it has been two large lifts for the six staff members within the Sussex County Community Development Department and homelessness is also an issue they hope to address.

The Commission found that Mr. Christian Hudson spoke on behalf of the proposed Ordinance; that he is glad to see Sussex County attempting to address the affordable housing issue; that he feels affordable housing is a massive crisis; that he feels it has taken too much time for action to be taken for the issue; that he had not heard any comment, since providing comment to LSA in the summer of 2019; that he had heard no talk regarding the current Ordinance or any other Ordinance related to the affordable housing issue; that the provided population consortium numbers are laughable; that had Sussex County used other population growth estimates back when the 2018 Comprehensive Plan was written, Sussex County would most likely not be in its current predicament; that many people within the development community warned Sussex County during the Comprehensive Plan process and the 37 public hearings; that the 10-acre model provided by AECOM is completely unworkable; that he does not believe AECOM was aware of current Fire Marshal regulations; that the buildings do not have drive-aisle or fire lanes located on all four sides of the buildings; that he would assume, based on the model, AECOM does not know much about the groundwater table for Sussex County, especially locations down below the Indian River; that there are no turning radiuses referenced in the model parking lot; that depicted on the model are nice, square, right angle turns; that there are violations to the Sussex County Code in regards to how many parking spaces can be placed side by side; that he can point out these issues, which ensure the model is a very unbuildable plan, after only reviewing the plan for 30 seconds; that the mentioned issues are the reasons he greatly advocates for a task force or working group where the people included on LSA's list and any other person could be requested to provide critical input and feedback on the proposed Ordinance; that he mentioned the Ordinance stated projects are subject to "public" sewer and water; that he would suggest the Ordinance state projects are subject to "central" sewer and water to allow Artesian and Tidewater to provide those services; that he does understand and agrees with the concern and comments regarding the location distance to nearby DART routes; that he feels the limiting factors should be the project location near a DART route and central sewer and water; that he does not feel the limitation should be the DART route, central water and sewer and growth zoning; that he feels with all three requirements, a lot of Sussex County will be cut out; that this is due to the map for the State Strategies for Spending are not always accurate; that years ago, he was before the Commission for his application for Chapel Farm; that DelDOT had budgeted \$30,000,000 for infrastructure at the intersection of Cave Neck Rd. and Rt. 1; that the Chapel Farm project bordered the proposed infrastructure improvements on two sides and yet the project was designated within Level 4; that within Level 4 designates for no State spending; that he had approached Mr. David Edgell's predecessor regarding updating the Investment Level maps to reflect what DelDOT had included within their budget; that the State Planning Office refused to update the maps at that time; that he questioned if there were an idea of how many units the Ordinance will provide or impact analysis performed; that a shortened version of his comments would be, good, congratulations, too little too late, we are in a crisis and the current Ordinance is a band-aid; that he feels the Ordinance is a band-aid on a big gaping wound, in a submarine hole, completely underwater; that the report was done in 2019, and prices have increased drastically since then; that he was looking

at a housing project, which had been constructed near Plantation Rd. and Rt. 24 intersection; that the homes were constructed by a large home builder; that the project had been approved years ago; that the homes started at \$500,000; that now, the same homes with the same floor plan is listed within the \$800,000 range; that this price increase was over a two year time period, similar to the two year period of the home evaluation performed by LSA; that the housing crisis is even more acute than the LSA report reflected a few years ago; that when he said too little too late, he is not trying to criticize the Council; that he believes the Ordinance is heading in the right direction, however, he feels Sussex County needs to head in the right direction a lot faster; that everyone is dealing with inflation and shortages in labor, materials and supplies; that housing costs are going up; that wages have become stagnant; that this is a toxic mix for the work force; that a major issue for many employers he has spoken with is housing their workforce; that many employers are now seeking to purchase housing, to house their workforce; that he has heard stories about company towns and how awful those scenarios were; that is the direction Sussex County is heading if the housing issue does not get solved and he is in support of the permitted use provision of the Ordinance.

Mr. Robertson stated the term “public” versus “central” in regards to water and sewer, was discussed and the term used was taken from Chapter 110 of the County Code; that an impact analysis would almost require a prediction of how many parcels would utilize the Ordinance, the acreage of the parcels and the density would be; that their goal was to maximize density at 12 units to the acre; that there has been discussion at 16 units to the acre; that they chose 12 units to the acre as that is the maximum density permitted within Sussex County in any zoning; that they wanted to stay consistent with the density; that they did not go into the Ordinance with any projected numbers and he feels the proposed Ordinance is much more ambitious than the current SCRP Program.

Chairman Wheatley stated he feels the permitted use provision of the Ordinance is the biggest driving force of the Ordinance; that the current proposed Ordinance is not meant to answer the whole housing crisis within Sussex County; that it is intended to deal one this one particular part of the housing issue; that for now, they need to attempt to get this Ordinance right; that the comments made regarding the site plan model are well taken and he hopes to study the model, as the mentioned issues are concerning and he questioned if Mr. Hudson had any recommendations to how the Commission and Council could provide relief to the housing situation in a faster manner.

Mr. Hudson stated he feels the bulk standards could be lessened; that he felt the 100-ft. buffer was almost discriminative against low-income residents, in the fact, the Ordinance would require a 100-ft. buffer, but does not require single-family housing to have a 100-ft. buffer; that he questioned if the Ordinance wants density, why is there a requirement to take away land; that if the project is considered permitted and the projects are limited on the location they can be constructed, why would we not maximize the density; that these densities would be specifically located near the DART routes, with central water and sewer and located near major highway corridors; that those areas should be the densest areas within Sussex County; that the height requirement is a huge issue when considering all the other setback requirements; that he questioned if Sussex County cared what the shape or look of the building would be; that he questioned if the look and shape of the building should be an issue for the developer or the people who live in the units; that he questioned why a building could not be required to meet a square footage; that the bulk requirements are the largest limiting factor; that this is the reason every apartment building looks like every other apartment building within Sussex County; that it is because the design is maxed out and the maximum allowed by County Code; that to allow

these buildings to be efficient to build, there are exterior corridors instead of interior corridors; that this limits elevators and other ADA amenities; that there is a lot of limitation to the height requirements within the Code; that he just built a hotel; that he had to place his HVAC underground to meet the height restriction of the County Code; that a peak on a roof offers more design flexibility and allows for a more attractive look; that he suggested a working group as there are many provisions within the County Code which are technical in nature; that there has been a lot of great work completed by the Commission and by LSA; that on page 30 of the LSA report it stated “*the restrictive Land Use and Zoning Code in Sussex County born out of the efforts to reduce traffic congestion, promote environmental stewardship, preserve the County’s agricultural landscape and/or reduce strain on infrastructure, is setting rules and regulations that place limits on the number and type of housing units that can be built in areas of the County that have been designated for growth*”; that in other words, although projects may be located within a growth zone, it is still limited to what you can construct, therefore affordability is impacted; that the report continues to state “*while well intentioned the Zoning Code is inadvertently placing upward pressure on housing prices and exacerbating the same policies the restrictions are working to address, low density single-use developments, increased traffic congestion, lengthy commutes to work, the cost of installing new infrastructure and the degradation of even more land from sprawling development*”; that due to the non-by-right nature and lack of inventory of other zonings encourages sprawling development; that his application for Chapel Farm, which was approved for 10.4 units to the acre, has been the highest density the Commission has approved in the last 20 years; that the LSA report suggested a minimum of 12 units to the acre to solve the issue; that would be 1,500 units per year, being almost 30% of Sussex County built last year; that those are phenomenal numbers Sussex County must achieve; that the by-right provision is the key part of the Ordinance; that politicians are required to be re-elected every two to four years; that it is difficult to approve property for 12 units to the acre for low-income housing, when the higher-income residents will oppose; that this issue is a very big disservice to Sussex County; that this issue is causing our children a major crisis and our children are not making enough money to afford a \$800,000 home in Lewes and Rehoboth.

Mr. Robertson stated that some of the suggested bulk requirements were initiated by Fire Marshal requirements; that Mr. Hudson made many very good points; that this Ordinance is not the end of the affordable housing discussion; that there may be other areas that require attention within the Zoning Code and the limiting factors it may be causing; that he requested whatever the ending result of the proposed Ordinance would be, we get a better Ordinance through; that he would hate to see the Ordinance be held up for the rewriting of the Zoning Code, which could take years and the Zoning Code was written in 1973.

Chairman Wheatley stated he agreed with Mr. Robertson; that he does not want to get the Ordinance through and go back to sleep; that he wants to get the current Ordinance through and move on to the next affordable housing issue.

Mr. Robertson stated when Sussex County staff came up with the Ordinance the biggest factor being considered were what would the density be, and would the density be permitted; that the 100-ft buffer or the 50-ft open space requirements are not going to make or break the Ordinance; that they are components of the Ordinance, but less important than providing the housing at the density required while expediting the process by making it permitted.

Chairman Wheatley stated he agreed with Mr. Robertson's point; that he stated the buffer and open space requirements do have an impact and he feels those requirements should be reconsidered as they may potentially become the limiting factors in the proposed Ordinance.

Ms. Stevenson questioned if there was any input from the Fire Marshal's Office on the proposed Ordinance.

Mr. Whitehouse stated the model was a special concept and it did look at stormwater and separation distances and some vehicle parking standards.

The Commission found that Ms. Katie Millard who spoke in support of the Ordinance; that she supports the by-right aspect of the Ordinance; that she wished to add a personal face to the affordable housing issue of the Ordinance; that she works within Sussex County for Habitat for Humanity; that the day before the current public hearing, she gave up her apartment as she could no longer afford the rent; that she has had to move back in with her parents while attempting to find a new apartment; that it is very difficult to find affordable housing in Sussex County; that she wanted to ensure she expressed how important the proposed Ordinance is; that it will affect many people within Sussex County and she hopes it is most impactful Ordinance, ensuring the most affordable units possible.

The Commission found that Mr. Kevin Gilmore spoke on behalf of the Ordinance; that he works for Sussex County Habitat for Humanity; that he supports the proposed Ordinance; that he wanted to express how enthusiastic he is to the conversation taking place on affordable housing; that for 18 years he has worked toward addressing affordable housing within Sussex County; that in those 18 years he had never seen the current level of conversation take place regarding affordable housing; that a lot of the conversation had was regarding how does Sussex County move forward in addressing the affordable housing issues; that the proposed Ordinance is the first step in helping to fix the current issue; that he was one of the people who provided comment in the early conversations for the provided LSA report; that the big topic pieces previously discussed, shine through in the proposed Ordinance; that the key pieces to the Ordinance is the by-right use and the permitted density; that he is not a developer who focuses on rentals; that he currently focuses on affordable homeownership; that he hopes to be present to support an Ordinance for homeownership in the future; that he does appreciate some of Chairman Wheatley's comments regarding DART routes and reconsideration to smaller scale projects; that he lends his support to the Ordinance and thanked the Commission for the work they do.

Mr. Robertson requested Mr. Gilmore explain to the Commission what Habitat for Humanity is currently doing and how many houses they are constructing a year.

Mr. Gilmore stated Habitat for Humanity has built over 160 affordable homes in Sussex County; that it has taken 30 years to achieve the 160 homes; that the majority home have been built within the last 15 years; that they average about 10 to 12 affordable units per year; that Habitat for Humanity finances the unit to allow affordability to the homebuyer; that they maintain the values in the community, but allow the payments to become affordable to the homebuyer; that they have been exploring other ideas on how to make the unit affordable; that they have launched impressive programs in the past to help keep people in their current homes; that there is an aging population, who is on a fixed income, who may not always be able to perform minor repairs to their home; that last year Habitat for Humanity performed 100 repairs to homes in Sussex County; that this helped keep residents in their current homes; that these repairs were everything from placing skirting around manufactured homes, to help

improve energy efficiency to placing grab bars, tub cuts, ramps and updated windows; that the home improvements has been a growing aspect of what Habitat for Humanity does; that they are not going to be able to just build their way out of the affordable housing crisis at only 10 to 12 homes a year; that they have had over 30,000 volunteers help build houses in Sussex County; that they asked themselves what they could do in their current public forum; that they felt they could help improve housing conditions to homes, even if they are not constructing the homes themselves; that Habitat for Humanity has received support from Sussex County Council for many years; that he appreciates working with Ms. Brandy Nauman and the Sussex County Housing Development team; that they tag team on many projects to help the community; that they perform a lot of work intown as well; that they have been doing a lot of work in Georgetown, Seaford and Laurel; that they have been focusing on blocks; that if a block has eight houses, they may try to focus on five homes to improve; that this may be tearing down homes and rebuilding or renovating existing homes and by doing this is causes the market to go up and encourages people to invest more money into the properties.

Chairman Wheatley stated the work performed by Habitat for Humanity has made a big difference in the town of Laurel.

The Commission found that Mr. Robert Mitchell spoke on behalf of the Ordinance; that he has been a mortgage banker for the last 30 years; that affordable housing has recently been getting a lot of press; that the press and conversation is a great move forward in the right direction; that the LSA report was done in 2019; that unfortunately in the last three years the curve for housing has gone straight up; that the need for housing has increased due to the pricing of housing; that within the last three years Sussex County has issued 1,500 building permits; that he questioned what the average price was for the homes issued building permits; that two and a half years ago it was recognized there was an issue with affordable housing; that over the last three years Sussex County has issued 1,500 building permits, for the vast majority of the houses to unaffordable for the majority of Sussex County residents; that he looked over the LSA report; that he feels the LSA report establishes the 12 units to the acre as a minimum; that the Ordinance does require 100-ft buffer on each side of the property; that when meeting the Ordinance, projects will be utilizing less than 50% of the property; that the 100-ft. buffer requirement, placed on a nine acre parcel, would create almost five acres of open space when located on a perfectly square lot; that he questioned how many parcels are available to meet the Ordinance criteria and requirements; that he questioned if there was an analysis to how much acreage it would take to perform a project; that staff had two and a half years to perform these analysis; that he asked these questions in hopes to obtain a goal; that the goal would help provide a target number of affordable homes the Ordinance would be projected to provide; that he questioned if 12 units to the acre enough density to provide the units needed; that he questioned if the people who have had to leave their homes care about the 100-ft. buffer and 50% open space; that he questioned why the Ordinance could not propose 15 to 16 units to the acre; that he feels the 100-ft. buffer requirement is a lot to be required on every side of the property; that when reading the Ordinance he felt it portrayed, affordable housing being an issue, the Ordinance being what Sussex County wants to do about the issue, but the Ordinance is also how Sussex County will protect certain areas of the County from affordable workforce housing from being built, that he is concerned the Ordinance will be pushed through, but be impossible to make work

Mr. Whitehouse stated Sussex County would be able to state the estimated cost for building the home, which received a building permit, but Sussex County would not know the selling price of the home, as Sussex County does not collect data on selling price; that he would estimate, under \$200,000 on average, considering all units that received building permits; that manufactured homes do bring down

the pricing of larger homes; that they did conduct an analysis to look at how many parcels could be subdivided, how many parcels are undeveloped near transit areas; that he did not have the number in front of him, but an analysis was performed; that they do have a number to the acreage, but he did not have the exact number at that moment

Mr. Robertson stated the 50% open space and 100-ft buffer requirements are not separate; that those requirements may overlap each other; that the setback areas may be counted toward the 50% open space requirement of the Ordinance and they do have the number related to acreage; that the information regarding acreage can be pulled from the Sussex County GIS Mapping System; that they currently do not have the exact number in front of them; that he questioned Mr. Mitchell if he is suggesting Commission hold the Ordinance until the numbers and information are provided; that based on the comments and complaints on how long the Ordinance has taken to come forward, he struggled with the idea of holding the Ordinance any longer, unless there were valid reasons to do so; that the number of 12 units to the acre was provided by the LSA report; that 12 units to the acre are also the current maximum density permitted in any zoning with Sussex County Code; that the reasoning for the proposed design criteria is due to projects being located in areas that are not high density areas; that the by-right portion of the Ordinance would permit 12 units to the acre in AR-1, where currently only two units to the acre is permitted; that the Code does currently have separation requirements for residential adjacent to commercial, for example; that the reason for the design requirements was due to the potential difference in density; that the proposed numbers are a starting point; that they could consider reduction of the 50% open space or the 100-ft. buffer to ensure the 12 units to the acre or would it allow better design flexibility to build a better project; that he questioned what number Mr. Mitchell felt would work regarding the open space and buffer requirements; that he stated the other portion of the Ordinance is it increases the permitted height from 42-ft to 52-ft. to allow for an extra story and a pitched roof; that the thought process was if it was permitted to go up, the project to could come in more and spread out less; that this would create more of a Cluster design;

Chairman Wheatley stated if Mr. Mitchell had an issue with the timing of the performed analysis and Ordinance, he would need to express his issues with Sussex County Council, as they are the governing body that regulates the time management of the Ordinance; that he agrees if the questions to the number of units and acreage can be calculated with accuracy, he agreed, the Commission should review the numbers; that he feels the market will answer some of the questions; that in some cases the answer will be a judgment call; that there may be a parcel that meets the Ordinance requirements, but may not be a location that developers would be interested building in; that there may also be a case where there are geological issues which exclude the parcel but would not be found in a calculation; that he understands Mr. Mitchell's desire to have answers to his questions, but he questions how valuable the information and numbers would be;

Mr. Mears stated he disagreed with Mr. Mitchell on his impression of what the proposed Ordinance is trying to achieve, and he does not feel the proposed Ordinance is being put through to, in the end, not want to do it.

Ms. Wingate stated the Commission just went through a similar issue within the Town of Bethany; that she questioned if a project is constructed adjacent to single-story or two-story residential homes, then placing a 52-ft building next to the homes, the people within the 52-ft. units will likely be able to see through the windows of the single-story and double-story homes; that people have previously testified to have concern and issues with that fact; that she stated a 100-ft. buffer may be too large, but there does need to be a consideration for the communities already existing

Mr. Robertson stated that the RPC section of the County Code does discuss that issue and states there needs to be an appropriate transition between densities; that he stated the proposed number may not be right; that they felt having a defined number was more appropriate, than an undefined number and would allow a developer to know the number and progress on.

Mr. Mitchell stated maybe the 100-ft. buffer is needed adjacent to residential communities, but possibly that adjacent to a highway the buffer could be lessened to allow for more units.

Chairman Wheatley stated he feels a 50-ft. buffer would suffice for the projects.

Ms. Wingate and Mr. Mears stated they both agree with Chairman Wheatley's comment that a 50-ft. buffer requirement would suffice for proposed projects.

Ms. Stevenson questioned if the Sussex County Code defines what an apartment is; that she questioned why dorm-style units are not being constructed, where people would have an individual room but would share a kitchen and bathroom; that she questioned if dorm-style units are currently permitted; that she questioned if the location where individual people sleep considered a dwelling unit and she questioned if the sleeping quarters or the kitchen defined a dwelling unit.

Mr. Whitehouse stated in the County Code there is a definition as to what a dwelling unit is; that the definition is based on the number of related and/or unrelated individuals; that this is currently stated in Chapter 115 of the County Code; that if there were eight people sharing cooking facilities, who were unrelated, it would be considered outside the definition of a dwelling unit; that the definition would then become multi-family and the definitions would not be changed by the proposed Ordinance.

Ms. Stevenson stated that dorm-style units could be a solution to help cut into the current affordable housing problem.

The Commission found there was no one present by teleconference who wished to speak in support or opposition to the proposed Ordinance in relation to the workforce housing.

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 the Ordinance. Motion by Mr. Hopkins to hold the record open for written comment until the next regular Planning & Zoning Commission meeting for the receipt of additional written comments, seconded by Ms. Wingate, and carried unanimously. Motion carried 5-0.

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

The Commission discussed the Ordinance, which was heard on April 28, 2022, and the record was left open until the current meeting to allow for receipt of additional written comments.

Mr. Whitehouse stated that seven additional documents and responses that had been received; that the correspondence was circulated to the Commission within the Paperless Packets; that there were additional comments received after the publication of the Paperless Packet; that those comments were printed and circulated to the Commission; that within the printed documents was a report received from Century Engineering; that there was some discussion during the public hearing regarding the number of parcels County wide could potentially, from a numerical point of view, benefit from the potential Ordinance; that Century Engineering provided a County wide analysis, that the majority of the document outlines the methodology applied within the analysis; that Century Engineering did use real-time data provided from the Planning & Zoning Department; that at the bottom of the second page, the report stated the total number of parcels that met the criteria established as part of the analysis is over 2,521 acres; that a one acre threshold was chosen due to the Ordinance's buffer requirement; that they chose to exclude parcels of less than one acre; that County-wide, 612 potential parcels were found that fulfilled the requirements of the Ordinance; that the 612 parcels totals 6,291-acres; that he mentioned other multi-family housing examples within Sussex County; that not all of the existing multi-family housing examples currently offer affordable housing units within the program; that the offer examples show the ability to offer the proposed number of stories, the number of units and the amount of open space; that Beach Plum Dunes currently has a density of 3.25 dwelling units to the acre, which equals 144 units; that staff requested attention be drawn to the open space of 89%; that the Ordinance requirements are physically capable to being achieved currently in projects that are or have already been built; that Costal Tide offers 168 units on 18.33 acres; that Costal Tide was able to deliver 63% open space with a density of 9.17 dwelling units to the acre; that all of the current examples are compliant with the 42-ft. maximum height requirement; that Weston Willows is a three-story building, which still complied with the 42-ft. maximum building height; that Weston Willows offered 287 units, with a density of approximately 10.65 dwelling units to the acre; that Weston Willows was still able to deliver 48% open space for the project; that the final example was Sea Glass, which is a four story building with a flat roof design; that Sea Glass also complied with the 42-ft. maximum building height requirement; that Sea Glass offered 224 units on 18.75 acres; that this offered an approximate density of 11.94 dwelling units to the acre and these examples show, even at below 12 dwelling units to the acre, the deliverable percentages of open space are in the region of 50% or more.

Mr. Robertson stated that there were a couple of variables to mention; that the Commission is somewhat seeing the proposed Ordinance for the first time; that County Council has been discussing the issue for some time; that the examples shown were information staff had when heading into the County Council presentations; that there are some notable differences; that the buildings of Beach Plum Dunes are 42-ft. in height; that the Ordinance proposes 52-ft., which would allow for another story; that the addition of another story would increase the ability to have more affordable units and greater density; that the threshold for open space within the Ordinance is 50% and the open space offered in Beach Plum Dunes is 89%.

Chairman Wheatley reminded the Commission, that due to not having a full Commission, and without having any serious pressure to vote, the Commission is not obligated to vote; that he did feel it would be good if all five Commissioners had the opportunity to vote and the Commission is welcome to have a discussion.

Mr. Hopkins stated the issue is similar to taking a drink from a fire hydrant; that all the information received as been good information; that the Workforce Housing issue is such a large issue for Sussex County; that he recalled the LSA report stated the approximate total workers within Sussex County was 8,000 workers; that the AMI, at the time, was about \$50,000 annually per worker; that the Commission is trying to help people find homes, allowing them to serve in all the capacities Sussex County needs; that he wished the Commission had the opportunity to be involved in workshops related to the Ordinance; that he views the Ordinance as one solution; that he feels the Commission needs to be unfolding multiple solutions; that he feels the Ordinance is concentrated to locations where the highest dollar amount of land is; that the bulk of the potential locations are within the Coastal Area; that the evaluation discussed multiple different analysis which were made; that the Ordinance made the most sense on areas closest to the shore; that he feels the Ordinance may be good for the three categories mentioned in the Ordinance; that he stated Sussex County also needs workforce housing within the Georgetown area and beyond; that in order for the numbers to work, the Commission must go back to consider density; that it is difficult to attempt to figure everything out on a Thursday evening; that the Ordinance is an amendment to the original Ordinance written in 2008; that the Ordinance was amended in 2016; that no one seemed interested in the previous Ordinances; that County Council has been involved and discussing the issue the past two and a half years; that he counted the items and lines deleted and added from the original Ordinance; that there were about 26 items deleted and 16 items added for the proposed Ordinance; that he does believe the Ordinance will work in the growth areas; that he feels there should be another option, in the other areas, as staff looks at areas further west; that he believes the report reflects the requirement to increase density when moving further west, to allow projects to work and he feels they could do better; that he questioned how many of the 612 parcels are ten acres or more and he requested this numerical data be presented at the next scheduled meeting.

Mr. Whitehouse stated to achieve the number of how many of the 612 parcels are ten acres or more, would require additional math and calculation; that he could provide the information by the next scheduled meeting, and he requested the Commission leave the record open allowing for the receipt of the data information requested in relation to parcel distribution.

Mr. Robertson stated within the past two and a half years, the COVID-19 pandemic stopped everything for a while; that the Commission and County Council were not permitted to have meetings in person to allow discussion; that over the past two and a half years, the Coastal Tide project was being put to use; that Coastal Tide offered real-time education about the SCRIP Program and how the program was working or not working; that staff utilized information learned from experiencing a project in real-time; that this offered opportunities to see issues which needed to be fixed and Chapter 72; that they spent a lot of time reviewing the LSA report; that they spent a lot of time to ensure a project would be feasible with the Ordinance requirements and the few changed lines was not the cause of the delay.

Chairman Wheatley stated Sussex County will have to do better with the workforce housing issue; that he believes the proposed Ordinance is not the end, but intended to be the beginning; that the Ordinance is one piece of a very large pie; that apartments and houses cost the same amount regardless of where they are built; that housing will cost the same in Seaford, as they would in Rehoboth; that the variable cost for developers is the land; that the construction cost is the same; that the land cost will not come down to the point it will cause a large disparity, due to the construction costs being

fixed; that in order to offer more reasonable rents in areas which are less desirable, the Commission may have to consider additional incentives on the western side of the County; that when it comes to specifics, he is still concerned about a 50-ft. setback versus a 100-ft. setback, as well as the 50% versus 30% of open space; that after the numerical data and project examples, he does recognize the 50% open space is achievable; that deferring action would allow the Commission time to digest the newly presented information; that he does agree the Ordinance needs to be advanced; that he stated the Commission should keep in mind, many projects are built upon multiple parcels which are purchased and combined into one parcel; that the data being presented is based on individual tax parcels; and he requested to know the distribution numbers, from one to five acre parcels, five to ten acre parcels, 10 to 20 acre parcels and 20+ acre parcels.

Mr. Hopkins requested the parcel distribution data include parcels of 20 to 30 acres and 30+ acre parcels as well.

Motion by Mr. Hopkins, seconded by Ms. Stevenson and carried unanimously to defer action, holding the record open for the receipt of additional information requested to be provided from the Planning & Zoning staff. Motion carried 4-0.

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

Minutes of the May 26, 2022 Planning & Zoning Commission Meeting

The Commission discussed the Ordinance, which had been deferred since April 28, 2022; that the Commission meeting of May 12, 2022, the record was left open for the receipt of additional information requested to be provided from the Planning & Zoning staff in relation to the distribution data to applicable properties within Sussex County.

Mr. Whitehouse advised the Commission that there were no additional comments from members of the public. He submitted the requested GIS Spatial Analysis report into the public record.

The Commission discussed the proposed Ordinance in relation to the SCRP Program.

Motion by Mr. Hopkins, seconded by Ms. Wingate and carried unanimously to defer action for further consideration. Motion 4-0.

Minutes of the June 9, 2022 Planning & Zoning Commission Meeting

The Commission discussed the Ordinance which had been deferred since May 26, 2022.

Ms. Wingate moved that the Commission recommend approval of the Ordinance to amend various sections of Chapters 72 and 115 of the Sussex County Code, known as the Affordable Housing Ordinance, based on the record made during the public hearings and for the following reasons:

1. It is undisputed that there is a real need for more affordably priced housing opportunities in Sussex County. This ordinance will help serve that need through incentives to private developers to provide affordably priced units as part of multi-family developments here in Sussex County.

2. This Ordinance is the result of a study commissioned by the Sussex County Council to determine the current deficiencies in the County Code and recommend improvements that can be made to the Code to enable more affordable rental units in Sussex County.
3. Chapter 72 of the Sussex County Code previously established the Sussex County Rental Program or SCRP. In the years that the SCRP Program has been in existence, only one development has utilized it. For that reason and based upon lessons learned from the process involved in establishing the SCRP units within that lone development, an amendment to Chapter 72 is appropriate. This Ordinance significantly improves and streamlines the existing SCRP Program.
4. There was little or no opposition to the Ordinance. Instead, constructive comments were received from the public, housing advocates, and developers suggesting possible improvements so that it is utilized, and more affordably priced rental units are actually constructed in Sussex County.
5. By creating a “by-right” process for multi-family developments that provide at least 30% affordably priced rental units, the uncertainty associated with a rezoning or conditional use is eliminated.
6. As stated in the “Whereas” clauses of the Ordinance, this type of amendment was described in Sussex County’s Comprehensive Plan and its Goals, Objectives, and Strategies.
7. The affordable rental units created by operation of this Ordinance will be monitored by Sussex County’s Community Development and Housing Department to ensure that they are occupied by, and available to, qualifying households.
8. This ordinance promotes the health, safety, and welfare of current and future Sussex County residents by enabling the creation of more affordably priced rental units in Sussex County.
9. This recommendation is subject to the following suggested improvements to the Ordinance:
 - A. In Sections 2, 4, 6, 8, and 10 of the Ordinance, the listing of appropriate “Areas” designated on the Future Land Use Map for the affordably priced units should include the “Commercial Area” in addition to the “Town Center”, “Developing Area” and “Coastal Area” as currently required in the Ordinance. “Commercial Area” locations are appropriate for affordably priced rental units because they are adjacent to major roadways, near DART routes, and by their nature are employment centers.
 - B. In Sections 2, 4, 6, 8, and 10 of the Ordinance, Council should consider reducing the Open Space requirements from 50% to 30%. I am concerned that the 50% Open Space requirement in the ordinance as introduced is too limiting and will inhibit the creation of new affordable housing opportunities.
 - C. In Sections 2, 4, 6, 8, and 10 of the Ordinance, the setback requirements should be revised so that they state that if the proposed buildings do not exceed 42 feet in height, which is the current maximum height for building in these zoning districts, then the setback shall only be 50 feet which is what is currently required by Code. If the building heights exceed 42 feet up to the maximum of 52 feet as provided in the Ordinance, then the greater setback of 100 feet shall be required as currently stated in the introduced version of the Ordinance.
 - D. In Sections 2, 4, 6, 8, and 10 of the Ordinance, the requirement for proximity to DART Routes should be amended so that the development can also occur in a location where DART certifies in writing that a DART Route will be established within 3 years from the date of Final Site Plan approval for the development, OR the Developer obtains a written commitment from DART that it will serve the development no later than when 50% of the leasable units are fully constructed and ready for occupancy.

Motion by Ms. Wingate, seconded by Mr. Mears and carried to recommend approval of the Ordinance to amend various sections of Chapters 72 and 115 of the Sussex County Code, known as the Affordable Housing Ordinance for the reasons and conditions stated in the motion. Motion carried 3-2.

Ms. Stevenson stated: “I vote no. While I agree that there is a need for more workforce and affordable housing in the eastern part of the county, and I appreciate the effort put into this ordinance, I see this as doing little to resolve the actual problems of affordable rental housing in the county. In fact, it could actually exacerbate other problems that already exist.

For every three units created of affordable housing, it would also create another 7 units of market-rate housing.

Those seven units, and indeed the entire 10 units, would contribute to the already overburdened road system of the county and create more congestion and dangerous situations. Yes, I understand the requirement for it to be near a bus route – or what might become a bus route, but the reality is that most, if not all, of the people moving to these apartments, would be using their own automobiles to get around on a regular basis. And much of that driving would probably be on two-lane country roads, as they are often called, where there are little or no shoulders.

The by-rights feature that is said to be needed to make this ordinance work could allow high-density apartment buildings to be built within otherwise low-density housing areas, without allowing for input from those people already living in those areas. Under this ordinance, my understanding is that someone could build an apartment building on a one-acre lot in AR zoning. We don’t even allow duplexes in this zoning, but now we could have an apartment building?

The map areas where these units would be allowed are too broad – The coastal area and developing areas encompass most of the county. An apartment building could crop up almost anywhere under this ordinance. Keeping it within the town center areas and/or possibly creating a new designation on the comprehensive plan maps could keep this type of high density closer to already developed areas where there would be possibilities for walking, biking, and using public transportation on a more regular basis.

I believe this ordinance would provide very little in the way of affordable and workforce housing.

Options such as ADU’s additional dwelling units, and garage apartments could create immediate supply. The county could support dormitory-style housing and non-profits that build workforce housing. The county could also create incentives such as waivers on height restrictions to allow companies to provide housing on top of new business construction. The county could even up-zone areas where there are already affordable housing developments so more of that housing could be built as in-fill. Support of tiny homes, manufactured housing (land-lease), and even year-round campground options could provide more equitable, faster, and broader relief for the problems we face in the workforce housing arena”.

Mr. Hopkins stated: “In a nutshell, the affordable housing crisis is a supply issue. There simply isn’t a supply of moderately priced housing in Sussex County. This has the greatest negative impact on

gainfully employed hard-working middle-class citizens. I think Sussex County should be a wonderful place to work and live for people of all economic backgrounds.

As we all learned in school, when there is an issue of supply and demand, the solution is obvious. There aren't enough moderately priced houses. Despite the complaints of so many who speak before this commission, the issue in Sussex County isn't over development, it's not enough development across the economic spectrum. We need to create more housing for people who want to live, raise a family, and call Sussex County home for generations to come.

I think this can be done without creating sprawl and overdevelopment.

I also think that, if we are not careful, the government will end up being part of the problem rather than the catalyst for the solution. Poor planning by the Sussex County government has played a role in creating the issues we are facing today.

As pointed out in the H.O.M.E. report it is a problem created by County Ordinance and Policy:

Quote:

"The restrictive land use and zoning code in Sussex County, born out of efforts to reduce traffic congestion, promote environmental stewardship, preserve the County's agricultural landscape, and/or reduce strain on infrastructure, is setting rules and regulations that place limits on the number and type of housing units that can be built in areas of the County that have been designated for growth.

While well-intentioned, the zoning code is inadvertently placing upward pressure on housing prices and exacerbating the same policies, the restrictions are working to address. Low-density, single-use developments increase traffic congestion, lengthen commutes to work, increase costs of installing new infrastructure, and promote the degradation of even more land from sprawling development."

End of Quote.

The combination of low-density policies, lack of undeveloped inventory in all residential districts except AR-1, overly restrictive bulk standards, and an arbitrary land-use decision-making process has left our middle-class and financially disadvantaged citizens out in the cold. To quote President Ronald Reagan "Government is not the solution, government is the problem".

It is a government-caused problem that has grown over time into a crisis. According to the 2019 final HOME report, approximately 50% of our workforce can only afford a home that costs \$250,000 or less. As of today, there aren't many of those to be found.

The County recognized affordable housing was an issue in 2008. This effort failed miserably. So much so that it amazes me that it took ten years to recognize the failure. Even after the 2018 Comprehensive plan review highlighted the growing crisis it has taken the County four years to move forward with a partial solution that doesn't offer a fee simple purchase option. It is noteworthy that home ownership is the single largest store of wealth in the United States.

Ignoring this crisis for so long and then only offering a partial solution indicates that either the County Government simply doesn't care, or it is a governing body that willfully discriminates against its middle- and lower-income citizens.

Even the proposed partial solution was drafted with the intent to limit its success. A proposed 100-foot setback. Really, do these citizens have leprosy or something? A draft with a 50% open space requirement. A requirement that reduces the economic viability of a project. A draft with an arbitrary cap of 12 units per acre even if the project could achieve higher density while adhering to building setbacks and bulk standards. A draft requiring a specific building footprint rather than allowing builders design flexibility which might make a project more economically feasible.

Do you think citizens that are struggling to put a roof over their head want to hear an excuse? That fourteen years after recognizing a problem we couldn't rectify it sooner because of Covid? Well, those citizens have had to live those fourteen years with or without Covid in spite of the inaction of the County.

While I believe this ordinance will perform better than its predecessor, it appears to me that this ordinance was drafted for public relations purposes rather than address the multiple issues clearly identified in the H.O.M.E. report.

I do commend the Commission for recommending changes to improve the ordinance. However, it is not easy attempting to make chicken salad out of chicken manure.

Mr. Chairman, we can do better than this. I am voting against this ordinance. While something is better than nothing, I do not want to be a part of a half-hearted, self-serving effort that does little more than present office holders with a public relations opportunity.

Mr. Chairman, I vote no".

Ms. Wingate voted yes for the reasons stated in the motion.

Mr. Mears stated "That we all know that affordable housing is a massive need. As we discussed in the Hearing, this is a small step of many steps that need to occur. But at least we are making a step, therefore, I vote yes for the reasons stated in the motion".

Chairman Wheatley voted yes for the reasons stated in the motion.

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

1 **AN ORDINANCE TO AMEND THE CODE OF SUSSEX COUNTY,**
2 **CHAPTER 72, ARTICLE II, SECTIONS 72-16 THROUGH 72-28**
3 **AND CHAPTER 115, ARTICLE IV, V, VI, VII AND VIII**
4 **SECTIONS 115-20, 115-25, 115-29, 115-34, 115-37, 115-42, 115-45,**
5 **115-50, 115-53 AND 115-58 REGARDING AFFORDABLY PRICED**
6 **RENTAL UNITS AND THE SUSSEX COUNTY RENTAL UNIT**
7 **(SCRIP) PROGRAM.**

8
9 WHEREAS, Sussex County Council has adopted the 2018
10 Comprehensive Development Plan (the “Plan”); and

11
12 WHEREAS, The Housing Element of the Plan contains the following
13 “Housing Vision”: To ensure the provision of decent, safe, affordable and
14 safe housing opportunities to improve communities and quality of life for
15 the residents of Sussex County; and

16
17 WHEREAS, The Housing Element of the Plan recognizes that an influx
18 of new residents in Sussex County has fueled prosperity in the County’s
19 real estate market, hospitality industry, and related economic sectors, yet
20 most housing, particularly on the eastern side of the County, is new and
21 often unaffordable to low-income families, seasonal employees, entry-
22 level workers, or recent college graduates; and

23
24 WHEREAS, The Housing Element of the Plan recognizes that “the
25 shortage of affordable housing remains a very real problem for low to
26 moderate-income households in Sussex County, including many with
27 full-time, year-round jobs; and

28
29 WHEREAS, Goal 8.2 of the Housing Element within the Plan states that
30 Sussex County should “Ensure that a diversity of housing opportunities
31 are available to meet the needs of residents of different ages, income
32 levels, abilities, national origins and household configurations”; and

34 WHEREAS, Objective 8.2.1 and Strategy 8.2.1.1 of the Housing Element
35 within the Plan states that Sussex County will “Affirmatively further
36 affordable and fair housing opportunities in the County to accommodate
37 the needs of all residents” and in so doing “improve the County’s SCRP
38 and MPHU Programs to provide incentives to properly reflect the housing
39 market and incentivize developers to participate in the provision of
40 affordable housing”; and

41
42 WHEREAS, Strategy 8.2.1.3 of the Housing Element within the Plan
43 states that Sussex County should “explore ways for private developers to
44 provide multi-family and affordable housing opportunities; and

45
46 WHEREAS, Objective 8.2.3 and Strategies 8.2.3.1, 8.2.3.2 and 8.2.3.6 of
47 the Housing Element within the Plan state that Sussex County should
48 “facilitate and promote land use policies that enable an increase in the
49 supply of affordable housing in areas with adequate infrastructure” by
50 “increasing affordable housing options, including the supply of rental
51 units, near employment opportunities”; by reviewing “County code to
52 determine if there are regulatory barriers to development of affordable
53 housing”; and by “revisiting [the] zoning code to determine in districts
54 where multifamily housing is currently a conditional use, if it should be
55 made a permitted use if water and sewer are already present and available
56 on the site”; and

57
58 WHEREAS, Strategy 8.3.1.1. of the Housing Element within the Plan
59 states that Sussex County should “evaluate current County code on an on-
60 going basis to determine if any regulatory barriers exist that impede the
61 development of multi-family and affordable housing”; and

62
63 WHEREAS, this Ordinance is in furtherance of these Goals, Objectives
64 and Strategies as set forth in the of the Housing Element within the Plan;
65 and

66

67 WHEREAS, Sussex County Council commissioned a study of Housing
68 Opportunities and Market Evaluation to evaluate and recommend
69 strategies and policies designed to promote housing choice and economic
70 vitality for Sussex County’s residents and workforce; and

71

72 WHEREAS, in November of 2019, LSA, the housing consultant retained
73 by Sussex County Council, issued its Final Report on “Housing
74 Opportunities and Market Evaluation” following an eight-month
75 initiative that included input from residents, homebuilders, developers,
76 housing advocates, County staff, County Council and Planning
77 Commissioners (“the LSA Report”); and

78

79 WHEREAS, one of the primary Strategy Recommendations included in
80 the LSA Report was a recommendation to “Modify the Zoning Code to
81 promote housing affordability in the Growth Areas identified in the
82 Comprehensive Plan, including the allowance for a maximum density of
83 12 units per acre “by-right” where affordable housing units are provided;
84 and

85

86 WHEREAS, this Ordinance carries out the Goals, Objectives and
87 Strategies of the Sussex County Comprehensive Plan and the LSA
88 Report; and

89

90 WHEREAS, Sussex County Council, with the assistance of the Office of
91 Community Development and Housing, has determined that the current
92 Sussex County Rental Unit program contained in Chapter 72 of the Code
93 of Sussex County requires an update based upon lessons learned in the
94 implementation and application of that Chapter to the single rental project
95 in Sussex County that has utilized the Program; and

96

97 WHEREAS, Sussex County Council, with the assistance of the Office of
98 Community Development and Housing, has determined that the current
99 Sussex County Rental Unit program contained in Chapter 72 of the Code

100 of Sussex County should be revised to attract more affordable housing
101 developments within Sussex County; and

102
103 WHEREAS, it has been determined that this Ordinance promotes and
104 protects the health, safety, convenience, orderly growth and welfare of
105 the inhabitants of Sussex County.

106
107 **NOW, THEREFORE, THE COUNTY OF SUSSEX HEREBY**
108 **ORDAINS:**

109
110 **Section 1. The Code of Sussex County, Chapter 72, Article II, §72-16**
111 **through 72-28 is hereby amended by deleting the language in**
112 **brackets and inserting the italicized and underlined language as**
113 **follows:**

114
115 **§ 72-16 Intent.**

116
117 This chapter seeks to better protect the health, safety and welfare of
118 Sussex County's residents and workforce by stimulating the provision of
119 affordable rental housing for residents with low and moderate incomes
120 and is hereafter known as the "Sussex County Rental Program" or
121 "SCRIP" or "program."

122
123 **§ 72-17 Governmental findings.**

124
125 The Sussex County Council hereby finds that a shortage exists within the
126 County for housing for residents with low and moderate incomes.
127 Specifically, the Council finds that:

- 128
129 A. It is well known that Sussex County rents have inflated far beyond
130 the ability of an average wage earner to pay. It is also known that
131 federal rental assistance programs, such as the state-administered
132 Public Housing and Section 8 Housing Choice Voucher

133 Programs, are unable to completely satisfy the need for affordable
134 rental housing.

135
136 B. Council finds that new development is not adequately addressing
137 the rental housing needs of the County's low- and moderate-
138 income residents and workforce. Without influencing this trend,
139 local employers will have a difficult time maintaining an ample
140 workforce.

141
142 C. Without an adequate supply of affordable rental housing in close
143 proximity to employment and Town Centers, the County's
144 workforce must commute a great distance for work. Not only do
145 long commutes have a negative effect on the environment and
146 transportation, but commuting also comes with high fuel
147 expenses.

148
149 D. Given the proper incentives, the private sector possesses the
150 necessary resources and expertise to provide the type of
151 affordable rental housing needed in Sussex County.

152
153 **§ 72-18 Declaration of public policy.**

154
155 The Sussex County Council hereby declares it to be the public policy of
156 the County to:

157
158 A. Encourage the creation of a full range of housing choices,
159 conveniently located in suitable living environments, for all
160 incomes, ages and family sizes.

161
162 B. Encourage the production of affordable rental units to meet the
163 existing and anticipated future employment needs in the County.

164
165 C. Assure that affordable rental units are dispersed throughout the
166 County consistent with the Comprehensive Plan.

167

168 D. Encourage developments in Growth Areas as defined within the
169 County's most current comprehensive plan and Areas of
170 Opportunity as defined by the Delaware State Housing Authority
171 to include [a minimum percentage of] affordable rental units on
172 public water and sewer systems.

173
174 E. Provide incentives for developers to construct affordable rental
175 units through tools such as the density incentive and expedited
176 review (defined below).

177
178 **§ 72-19 Definitions.**

179
180 The following words and phrases have the following meanings:

181
182 **APPLICANT**

183 Any person, firm, partnership, association, joint venture,
184 corporation, or other entity or combination of entities owning or
185 controlling via contract qualifying land (defined below) and any
186 transferee or successor in interest of all or part of the qualifying land
187 pursuing the development of affordable rental housing under the
188 SCRCP that:

189 A. Submits to the County for approval or extension of approval a
190 plan of housing development for any type of site plan review,
191 subdivision plan or development approval (hereinafter, a "site
192 plan") that provides for the development of affordable rental
193 units on qualifying land in one or more subdivisions, parts of
194 subdivisions, resubdivisions, multi-family townhouse
195 developments or phases of development under the terms and
196 conditions as set forth in this article.

197 B. With respect to land in zones not subject to subdivision approval
198 or site plan review, applies for building permits for the
199 construction of affordable rental units on qualifying land under
200 the terms and conditions as set forth in this article.

201 AREA MEDIAN INCOME

202 The midpoint family income for Sussex County, calculated each year
203 by the U.S. Department of Housing and Urban Development (HUD),
204 adjusted for household size.

205

206 AT ONE LOCATION

207 All land of the [a]Applicant if:

208 A. The property lines are contiguous; or

209 B. The property lines are separated only by a public or private right-of-
210 way at any point; or

211 C. The property lines are separated only by other land of the
212 [a]Applicant and not subject to this section at the time of the
213 submission of an application or development plan by the
214 [a]Applicant.

215

216 [CERTIFICATE OF ELIGIBILITY

217 A certificate valid for a period of time, which is issued to eligible
218 tenants by the landlord (defined below) and supplied to the
219 Department (defined below) as further set forth within this article.
220 This certificate must be issued before a tenant will be permitted to
221 sign a lease agreement.]

222

223 [CONTROL PERIOD

224 The time a SCRP unit is subject to rental controls and occupancy
225 requirements. The control period is 30 years and begins on the date
226 of lease (defined below).]

227

228 DATE OF LEASE

229 The date of the initial lease agreement signing of an approved
230 [e]Eligible [t]Tenant for a SCRP [u]Unit.

231

232 DENSITY INCENTIVE

233 [Any increase in density pursuant to § 72-21 that allows a residential
234 development to achieve a density greater than would have been
235 possible under the applicable provisions of current and future zoning
236 ordinances and the County subdivision regulations then in effect.]
237 The density permitted by §72-21 and as a permitted use for SCRP
238 projects in Chapter 115.

239
240 DEPARTMENT

241 The Sussex County Department of Community Development and
242 Housing or its successors.

243
244 DEPARTMENT-DESIGNATED ENTITY (DDE)

245 Any agency, authority or political subdivision of the State of
246 Delaware or any other public housing development agency or
247 nonprofit housing corporation, land trust or similar entity designated
248 by the Department and approved by the County Administrator.

249
250 DIRECTOR

251 The head of the Department of Community Development and
252 Housing or head of a DDE, as applicable.

253
254 DWELLING

255 Any building, structure, or portion thereof which is occupied as, or
256 designed or intended for occupancy as, a residence; and any vacant
257 land which is offered for sale or lease for the construction or location
258 thereon of any such building, structure, or portion thereof.
259 "Dwelling" shall not include hotels, motels, motor lodges, boarding
260 and lodging houses, tourist houses, or similar structures.

261
262 ELIGIBLE INCOME

263 The levels of income designated by the County Administrator which
264 prohibit or severely limit the financial ability of persons to rent a
265 dwelling unit in Sussex County. Eligible [i]Income is low- to
266 moderate-income, defined as 30% to 80% of the area median
267 income for Sussex County adjusted for household size as defined by

268 the U.S. Department of Housing and Urban Development (HUD).
269 Income includes gross salary, wages, dividends, interest and all
270 other sources recognized by HUD from the [e]Eligible [t]Tenant and
271 all other adults (age 18 and older) who will occupy the SCRP
272 [u]Unit. Income will be verified by a copy of the filed income tax
273 returns from the previous year and any other personal and financial
274 information requested by the [l]Landlord in order to accurately
275 verify the potential tenant's qualifications and income, which may
276 include, but is not limited to, a credit history report and a criminal
277 background report on the proposed adult tenants, so long as these
278 are requirements for all leases in the housing development.

279 280 ELIGIBLE TENANT

281 Person(s):

282 A. Whose household *income is within the Eligible Income* [is of low or
283 moderate income;].

284 [B. Who has been found eligible to participate in the Sussex County
285 Rental Program; and

286 C. Who holds a valid certificate of eligibility from the landlord.]

287 288 EXPEDITED REVIEW

289 A project entering the SCRP will receive priority in the County's
290 planning and zoning process, with the Director of Planning and
291 Zoning and the County Administrator to determine the
292 [a]Applicant's placement in the list of pending applications. The
293 expedited review is provided to the [a]Applicant to assist the
294 [a]Applicant in managing, to the extent possible, the risk of changes
295 to cost, interest rates, schedule and other factors that the [a]Applicant
296 is taking on by virtue of participation in the SCRP. If an [a]Applicant
297 at any time during processing elects to withdraw from the SCRP,
298 any approvals granted for the development through the date of
299 withdrawal will be vacated and the [a]Applicant will have to

300 resubmit the project through the normal County process. A project
301 receiving expedited review does not exempt the project from the
302 County's planning and zoning process, nor guarantee approval
303 through that process.

304
305 FORECLOSURE EVENT

306 A foreclosure, deed-in-lieu of foreclosure or other court-ordered
307 sale of the rental unit or of the subdivision or development in which
308 the unit is located, subject to rental restrictions continuing in force
309 after foreclosure sale of disposition.

310
311 LANDLORD

312 The owner of the property that contains SCRCP [u]Units or an entity
313 designated by the owner to manage and lease dwelling units.

314
315 QUALIFYING LAND

316 All land that:

- 317 A. Is owned by or under contract to the [a]Applicant; and
- 318 B. *[Is located within a Growth Area as defined within the County's most*
319 *current comprehensive plan or within an Area of Opportunity as*
320 *defined by the Delaware State Housing Authority; and] Allows the*
321 *SCRP Units as a Permitted Use pursuant to Chapter 115.*
- 322 *[C. Requires the submission and approval of a site plan or, where a site*
323 *plan is not required, one or more building permits; and*
- 324 *D. Is served by a public water and sewer system; and*
- 325 *E. Is at one location as defined above.]*

326
327 SUSSEX COUNTY RENTAL PROGRAM UNIT (SCRP UNIT)

328 A dwelling which is:

- 329 A. Offered for lease to [e]Eligible [t]Tenants through or pursuant to the
330 provisions of this article and any regulations promulgated

331 thereunder by the Department and approved by the County
332 Administrator; or

333 B. Leased under another government program designated by the County
334 Administrator designed to assist in the construction or occupancy of
335 affordable rental housing.

336

337 **§ 72-20 Minimum standards of eligibility for tenants.**

338

339 A. Eligible [t]Tenants must:

340

341 (1) Have proof of citizenship.

342

343 (2) Be of [e]Eligible [i]Income, as defined in § 72-19 above,
344 and be able to pay the first month's rent and any required
345 security deposit.

346

347 (3) Be employed [and live] in Sussex County for at least one
348 year preceding application to the SCRP. Sussex County
349 employers may seek waivers to this restriction from the
350 Director and County Administrator. Waivers are evaluated
351 on a case-by-case basis and are not guaranteed.

352

353 (4) Provide proof that adult tenants have not been convicted of
354 a felony and have a satisfactory credit and criminal history,
355 so long as these are requirements of all leases within the
356 proposed housing development.

357

358 (5) Occupy the SCRP [u]Unit as the tenant's principal residence
359 during the lease period. Each [e]Eligible [t]Tenant must
360 certify before taking occupancy that the tenant will occupy
361 the SCRP [u]Unit as the tenant's principal residence. Any
362 tenant who violates occupancy requirements will be subject
363 to eviction procedures.

364

365 B. Where necessary or advisable to achieve the objectives of this
366 chapter or to comply with state or federal housing laws, the
367 Department may propose changes to these standards for approval
368 by the County, including changes to eligibility requirements for
369 tenants as recommended by the Department.

370
371 **§ 72-21 Density and expedited review incentives.**

372
373 A. Density incentive. [Subject to meeting the requirements outlined
374 in § 72-22, a proposed development on qualifying land at one
375 location may receive a density bonus of 20%. The project entering
376 the SCRCP with the execution of a SCRCP [a]Agreement will be
377 allowed to utilize the density permitted by the zoning district in
378 which the property is located, provided that the total density,
379 including any SCRCP density bonus, shall not exceed 12 units per
380 acre.] See Permitted Uses in Chapter 115.

381
382 B. Expedited review. A project entering the SCRCP through execution
383 of an SCRCP [a]Agreement will receive expedited review, as
384 defined in § 72-19 above, through the County's Planning and
385 Zoning process.

386
387 C. Incentives will only be granted to projects submitted for new
388 development that meet all requirements of this program.

389
390 [D. To the extent necessary, Council shall amend the provisions of
391 the County's Zoning Ordinances as needed to achieve the density
392 incentives and the specific design elements (e.g., minimum lot
393 sizes, setbacks, building heights, parking requirements, etc.) of
394 approved SCRCP projects.]

395
396 **§ 72-22 Minimum standards of eligibility for SCRCP developments.**

397
398 [A. Applicants must contribute 12.5% of all units to SCRCP inventory.
399 In applying and calculating the number of affordable units within

400 a proposed development, any decimal fraction less than or equal
401 to 0.50 may be disregarded, and any decimal fraction greater than
402 0.50 shall be constructed as one unit. In the case where the total
403 number of units being constructed is four or less, the minimum
404 number of SCRП units must be one unit.

405
406 B.] A. All parcels in the proposed project must be on qualifying land,
407 as defined in § 72-19.

408
409 [C]B. All units contributed as SCRП [u]Units will remain at the
410 affordable rental rates specified herein [for the remainder of the
411 control period]. SCRП [u]Units shall never be leased as market-
412 rate units [during the control period], regardless of vacancy,
413 except in accordance with § 72-23N(1).

414
415 D. SCRП [u]Units must be fully integrated into the communities of
416 which they are a part and shall not be substantially different in
417 external appearance from market-rate units. SCRП [u]Units shall
418 be equipped with the same basic appliances as the market rate
419 units, such as an oven, refrigerator, dishwasher, and washer and
420 dryer.

421 422 § 72-23 SCRП Agreements.

423
424 To participate in the SCRП and secure any incentives provided for
425 herein, an [a]Applicant must execute an SCRП [a]Agreement
426 prepared by the Department and the County Attorney. Each
427 agreement must include, at a minimum, the following information
428 and/or evidence the following agreements and any others deemed
429 necessary by the Department and the County Attorney to properly
430 implement the chapter:

431
432 A. The specific number of SCRП [u]Units to be constructed in the
433 project. If a final site plan has not been approved when the SCRП
434 [a]Agreement is executed, an amendment to the SCRП

435 [a]Agreement will be made to incorporate the approved final site
436 plan.

437
438 B. [The schedule pursuant to which the SCRP units will be
439 constructed, marketed, and delivered and explaining the
440 relationship between the delivery of market-rate units and the
441 delivery of SCRP units (i.e., a stated number of SCRP units to be
442 created for each market-rate unit created).] A description of how
443 the SCRP Units will be marketed and delivered. The SCRP Units
444 must be constructed and delivered in equal proportion to non-
445 SCRP Units within the development.

446
447 (1) Applicants [should] *shall* affirmatively market the SCRP
448 [U]Units to diverse populations, and meet with the
449 surrounding residents early in the development approval
450 process.

451
452 C. Any economic risk created by changes, whether within or outside
453 of the [a]Applicant's control, in development and construction
454 costs, interest rates, processing and construction schedules,
455 permitting and any other factor impacting the [a]Applicant's costs
456 and development obligations are borne solely by the [a]Applicant.

457
458 D. Building permits, performance bonds and letters of credit.

459
460 [(1)] No building permits shall be issued in any subdivision or
461 housing development where SCRP [u]Units are included until
462 the [a]Applicant executes a valid SCRP [a]Agreement which
463 applies to the entire subdivision.

464
465 [(2)] If an applicant does not build the SCRP units in accordance
466 with the construction schedule along with or before other
467 dwelling units the County Administrator may withhold
468 building permits or call in performance bond or letter of credit
469 from the applicant until the SCRP units contained in the

470 construction schedule are built and contributed to SCRP rental
471 inventory to the satisfaction of the Department.]
472

473 E. Be signed by the [a]Applicant and all other parties having an
474 interest in the property whose signatures are required for the
475 effective and binding execution of contracts conveying real
476 property. SCRP [a]Agreements must be executed in a manner that
477 will enable them to be recorded in the land records of the County.

478 [If the applicant is a corporation or limited liability company, the
479 principal officers of the entity must sign the agreements
480 individually and on behalf of the corporation pursuant to a duly
481 adopted resolution.]
482

483 F. Partnerships, associations, corporations and other entities may not
484 evade the requirements of the SCRP [a]Agreement through
485 voluntary dissolution, bankruptcy, or the sale or transfer of
486 qualifying land.
487

488 G. The SCRP [a]Agreement may only be assigned with the prior
489 written approval of the Department and only if the proposed
490 assignee demonstrates the financial ability to fulfill all of the
491 [a]Applicant's obligations under the SCRP [a]Agreement.
492

493 H. Landlords are responsible for marketing, leasing, and determining
494 tenant eligibility for the SCRP [u]Units. [A lease agreement shall
495 not be signed unless validated by a certificate of eligibility.] A
496 landlord shall not be permitted to refuse to rent a unit to an
497 [e]Eligible [t]Tenant [without providing the Department with just
498 cause, to the Department's satisfaction, for the refusal]. The
499 reasons for a refusal to rent to an Eligible Tenant shall be
500 documented and included in the Annual Audit and Certification
501 required by §72-28
502

503 I. If the [a]Applicant is not also the builder, the relationship between
504 the [a]Applicant and the builder shall be fully disclosed to the

505 Department's satisfaction, as soon as the relationship is
506 established.

507

508 J. SCRP [u]Units must be fully integrated into the communities of
509 which they are a part (not separated geographically from the
510 market rate units and not grouped together) and shall not be
511 substantially different in external appearance from non-SCRP
512 [u]Units. When the SCRP [u]Units are a part of a phased
513 development, a proportionate number or percentage of said
514 [u]Units will be placed within each phase and/or constructed
515 within each housing type appearing in the development. The
516 planning and design of individual SCRP [u]Units must be
517 consistent with the planning and design of *non-SCRP Units (i.e.*
518 *market-rate units)* within a single project.

519

520 (1) The ratio of SCRP [u]Units by type must reflect the ratio by
521 type of market rate units, to the extent feasible. For instance,
522 if a development has 200 two-bedroom dwelling units and
523 100 one-bedroom dwelling units, the ratio of two-bedroom to
524 one-bedroom SCRP [u]Units should also be 2:1.

525

526 K. *[The applicant will execute and record covenants confirming*
527 *that]The SCRP Agreement shall be recorded in the Office of the*
528 *Recorder of Deeds confirming that:*

529

530 (1) The covenants *contained within it* will bind the [a]Applicant,
531 any assignee, mortgagee, or buyer and all other parties that
532 receive title to the property. In the event the mortgagee
533 acquires the property through a foreclosure or acceptance of
534 deed-in-lieu of foreclosure, the SCRP [a]Agreement
535 covenants will continue in effect. The covenants must be
536 senior to all instruments securing financing.

537

538 (2) In any deed or instrument conveying title by the [a]Applicant,
539 the property shall remain subject to all of the terms and

540 conditions contained in the SCRP [a]Agreements by the
541 [a]Applicant required under the chapter [during the control
542 period]. The source of the SCRP [a]Agreements and any deed
543 restrictions related thereto must be included in the public land
544 records so that they are readily identifiable in a routine title
545 search.

546
547 L. Where the [a]Applicant is a DDE, agreements will be negotiated
548 between the Department and the DDE so as to be consistent with
549 the mission, strategies, business plans and operating procedures
550 of the DDE and may, with Council approval, deviate from the
551 requirements of this chapter.

552
553 M. The SCRP [a]Agreement requires that the [l]Landlord ensure that
554 the SCRP [u]Units are occupied only by tenants whose [monthly]
555 *annual* income levels do not exceed the eligible income limit, and
556 shall prohibit tenants from subletting or subleasing the [u]Units.
557 [The agreement shall also require the landlord to submit a copy of
558 the initial and all renewal leases to the Director within 30 days of
559 signing the lease.]

560
561 (1) In addition, the [l]Landlord must supply the information listed
562 below in a format acceptable to the Director on an annual
563 basis:

564
565 (a) The number of SCRP [u]Units, by bedroom count, that are
566 leased to [e]Eligible [t]Tenants and those that are vacant,
567 and the monthly rent charged for each SCRP [u]Unit;

568
569 (b) For each SCRP [u]Unit, the tenant's name, household size,
570 and total household income as of the date of the lease, and
571 the effective date of the lease;

572

573 (c) A statement that, to the best of the [l]Landlord's
574 information and knowledge, tenants who are leasing the
575 SCRP [u]Units meet the eligibility criteria[; and
576

577 (d) A copy of each new or revised certificate of eligibility
578 obtained since the last annual report].
579

580 (2) The Department shall audit the report and may require such
581 additional information *monthly* needed to evaluate and accept
582 the annual report.
583

584 N. The tenant must vacate the SCRP [u]Unit if the tenant's household
585 income exceeds 80% of the area median income by 20% *at the*
586 *time of lease renewal*. The [a]Applicant must take the necessary
587 action to have the tenant vacate the SCRP [u]Unit within six
588 months of receiving information that the tenant's household
589 income exceeds the [e]Eligible [i]Income limit.
590

591 (1) Notwithstanding the provisions of § 72-23N above, if the
592 [a]Applicant immediately designates an additional
593 comparable unit as an affordable dwelling unit to be leased
594 under the controlled rental price and requirements of the
595 SCRP program, the tenant of such SCRP [u]Unit referenced
596 in § 72-23N above may continue to lease such [u]Unit at the
597 market value rent.
598

599 *O. The Landlord shall comply with the Annual Audit and*
600 *Certification Requirements of Section 72-28*
601

602 § 72-24 SCRP [u]Units.

603

604 A. Rent.

605

606 (1) Rent shall be established and updated annually by the
607 Department based upon 25% of household income for 50% of

608 the area median income adjusted for household size and unit size
609 and shall not include trash services, parking, water and sewer
610 utilities and any other charges to be paid by the tenant.

611
612 (2) The [e]Eligible [t]Tenant must provide to the [l]Landlord income
613 tax returns (and proof of payment of any taxes owed) from the
614 previous year for all members of the household who were
615 required to file such returns. If an [e]Eligible [t]Tenant was not
616 required to file tax returns or if the [l]Landlord believes that
617 information from the previous tax returns is insufficient to
618 determine income, the [l]Landlord is authorized to request such
619 information as it deems necessary to confirm the income levels
620 of the proposed tenants.

621
622 B. Unit and household size. Households must be placed in units
623 according to the following distribution:
624

Unit Size (number of bedrooms)	Household Size
Efficiency	1
1	1 to 2
1 plus Den	2 to 4
2	2 to 4
2 plus Den	2 to 4
3	4 to 6
4	5 to 8

625 **§ 72-25 Leasing of SCRP [u]Units.**

626
627 A. Leases to [e]Eligible [t]Tenants.

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- (1) Every SCRP [u]Unit constructed under this program must be offered to all [e]Eligible [t]Tenants for lease as the [e]Eligible [t]Tenant's principal residence. Notification to the public of SCRP [u]Unit availability will be made by the [l]Landlord and is recommended to be made by advertising on DelawareHousingSearch.org *and similar sites*. The Department may, but is not obligated to, provide notice of SCRP [u]Unit availability through the Department's website.
- (2) The [l]Landlord will determine SCRP tenant eligibility under § 72-20[, and lease agreements shall not be signed until the tenant has received a certificate of eligibility from the landlord].
- (3) Annually, the Department will provide updated income guidelines and rental rates to the [l]Landlord for use in leasing the SCRP [u]Units.
- (4) Lease agreements shall contain the same terms and conditions as the lease agreements with market-rate renters with the exception of the rental rates and other terms and conditions as required under this article.
- (5) All lease agreements of SCRP [u]Units shall cover a period of one year.
- (6) An [e]Eligible [t]Tenant already occupying a SCRP [u]Unit *[has]shall have a* first-option to renew the lease agreement each year, as long as the tenant maintains good standing with the [l]Landlord and continues to qualify as an [e]Eligible [t]Tenant. *[The Department shall be notified by the landlord of the intent to evict and the reasons therefor at the same time the landlord first provides notice to the tenant.]*

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B. Tenants of SCRP [u]Units shall provide an executed affidavit on an annual basis certifying their continuing occupancy of the unit as their principal residence. Tenants shall provide such affidavit to the [l]Landlord by the date that may be specified in their lease or that may otherwise be specified by the [l]Landlord.

C. In the event the tenant of an SCRP [u]Unit fails to provide his or her [l]Landlord with an executed affidavit as provided for in the preceding paragraph within 30 days of written request for such affidavit, then the lease shall automatically terminate, become null and void and the occupant shall vacate the [u]Unit within 30 days of written notice from the [l]Landlord.

§ 72-26 Foreclosure or default.

A. The [l]Landlord must provide the Department with a copy of any mortgage default notification immediately upon receipt and a written explanation of how the default will be remedied.

B. If a foreclosure event occurs [during the control period], the covenants endure through the transfer of property [until the end of the control period].

[C. If the foreclosure event occurs after the thirty-year control period, then all binding restrictions of this chapter will dissolve.]

§ 72-27 Implementation.

Improvements to concepts, processes and rules and regulations of the SCRP program will be incorporated into future amendments of this article. Council views this article as a living document that will be modified as needed to respond to economic, housing, development, land use and other trends in the County and to best practices in affordable rental programs.

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§72-28 Annual Audit and Certification.

The Landlord shall contract with an independent Delaware Certified Public Accountant that has no other relationship with the Landlord/Developer/Owner/Manager to audit the Landlord's Compliance with this Chapter 72, the conditions of approval for the project, the terms of the SCRP Agreement, the rental of the SCRP Units and the status of the Eligible Tenants (and their Eligible Income) within the project. In this engagement, the Delaware Certified Public Accountant will perform this obligation in accordance with attestation standards established by the American Institute of Certified Public Accountants. This annual audit and report shall certify that the project remains in compliance with (i) all of the Chapter 72 requirements and the terms of the SCRP Agreement; (ii) the status of each of the SCRP Units (whether leased or vacant); (iii) certification that each of the Eligible Tenants renting an SCRP Unit within the project are an Eligible Tenant as of the date of the annual audit and report; (iv) the status and duration of any vacancy of any SCRP Unit; (v) the marketing efforts to re-let any vacant SCRP Unit to an Eligible Tenant; (vi) the status of any list of Eligible Tenants waiting for an SCRP Unit to come available; and (vii) such other information as the Delaware Certified Public Accountant and/or the Community Development and Housing Office may deem appropriate and necessary. This annual audit and report shall be submitted to both the Office of Planning & Zoning and the Community Development & Housing Office no later than March 1 of each year.

§ 72-2[8]9 Government regulations; enforcement.

A. The Department will maintain a list of all SCRP [u]Units constructed and leased under this program, and the Council hereby authorizes the County Administrator to promulgate and

733 adopt regulations and approve the various agreements/documents
734 necessary to administer this program.

735
736 B. The Director may, with Council approval, waive or modify the
737 provisions of the program if the Director finds the program in
738 conflict with state or federal housing laws.

739
740 C. This program applies to all agents, successors, and assigns of an
741 [a]Applicant. A building permit shall not be issued and a
742 preliminary plan of subdivision, development plan, or site plan
743 shall not be approved for a development that will contain
744 affordable rental units to be submitted to this program unless it
745 meets the requirements of this program. The County
746 Administrator may deny, suspend, or revoke any building or
747 occupancy permit upon finding a violation of this program. Any
748 prior approval of a preliminary or final plan of subdivision,
749 development plan or site plan may be suspended or revoked upon
750 the failure to meet any requirement of this chapter. An occupancy
751 permit shall not be issued for any building to any [a]Applicant, or
752 a successor, or assign of any [a]Applicant, for any construction
753 that does not comply with this program. The County
754 Administrator may also withhold or call in performance bond
755 funds, letters of credit, and certificates of compliance or
756 occupancy from the [a]Applicant for any violation of this
757 program.

758
759 D. In the event that the Landlord rents any of the SCRP Units at non-
760 SCRIP Unit rates (i.e. market rental rates) so that the
761 proportionate share of SCRP Units versus non-SCRIP Units as
762 originally approved is not maintained, the Landlord of the project
763 shall be required to pay to Sussex County the monthly market rent
764 collected from any such SCRP Unit that is rented at a non-SCRIP
765 Unit Rate. Any such funds collected by Sussex County shall be
766 used for housing purposes and administered by the Sussex County
767 Office of Community Development and Housing.

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D)E. The Director is authorized to pursue any available remedy, legal or equitable in nature, to enforce the requirements of this program or to prevent or abate a violation of this program.

[E)F. The Director may take legal action to stop or cancel any lease of an SCRIP [u]Unit if any party does not comply with all requirements of this program. The Director may recover any funds improperly obtained from the rental of a SCRIP [u]Unit in violation of this chapter.

[F)G. In the event of litigation to enforce the terms and conditions of this chapter or any agreement or obligation under the SCRIP program, the Department shall be entitled to an award of legal costs and fees to be collected from the party who is determined to be in violation of such agreements and obligations.

Section 2. The Code of Sussex County, Chapter 115, Article IV, §115-20 “Permitted Uses”, is hereby amended by inserting the italicized and underlined language as a new subpart A.(17) thereof as follows:

§115-20 Permitted Uses.

- A. A building or land shall be used only for the following purposes:
...

(17) A Sussex County Rental Program, or SCRIP, townhouse or multi-family development governed by, and subject to, Chapter 72, where at least 30% of all dwelling units are SCRIP Units pursuant to Chapter 72. The SCRIP development must satisfy the following criteria:

801 (a) The site must be located within a Town Center, a Developing
802 Area, or the Coastal Area as described within the Land Use
803 Element and as shown on the Future Land Use Plan of the
804 adopted Sussex County Comprehensive Plan.

805
806 (b) The site shall be located within 2,640 feet of an existing or
807 proposed DART Route operated by the Delaware Transit
808 Corporation. In the case of a proposed DART Route, Final Site
809 Plan approval shall not be granted until the Route is in existence
810 and operated by DART.

811
812 (c) The site must be served by a central sewer system and a central
813 water system.

814
815 (d) The total maximum number of dwelling units (including both
816 SCRP Units and non-SCRP Units) that may be permitted shall be
817 determined by dividing the gross area by 3,630 square feet.
818 "Gross area" shall exclude any area designated as a tidal
819 tributary stream or tidal wetlands by § 115-193.

820 (e) There shall be a one-hundred foot wide setback around the
821 entire site, which shall incorporate the "Forested and/or
822 Landscaped Buffer Strip" identified in Section 99-4. This setback
823 shall include walking and biking trails.

824 (f) The height of any townhouse or multi-family buildings shall
825 not exceed 52 feet or four stories, whichever is greater.

826 (g) There shall be sidewalks on all streets, roadways and parking
827 areas, with interconnectivity to adjacent walkway systems.

828 (h) There must be interconnectivity with any adjacent property
829 that is zoned C-1, CR-1, C-2, C-3, C-4, C-5, B-1, B-2 or B-3.

830 (i) There shall be open space that exceeds fifty percent of the
831 gross area of the entire site. The Primary view from each

832 dwelling unit shall be directed to open space and recreational
833 amenities.

834
835 **Section 3. The Code of Sussex County, Chapter 115, Article IV, §115-**
836 **25 “Height, Area and Bulk Requirements”, is hereby amended by**
837 **inserting the italicized and underlined language as a new subpart G**
838 **thereof as follows:**

839
840 **§115-25 Height, Area and Bulk Requirements.**

841
842 . . .

843
844 G. Sussex County Rental Unit development permitted by §115-20A.(17).
845 The minimum lot size, lot area per dwelling unit, open space, height and
846 setback requirements for a Sussex County Rental Unit development
847 permitted by §115-20A.(17) shall be governed by the dimensional
848 requirements set forth in that Section.

849
850 **Section 4. The Code of Sussex County, Chapter 115, Article V, §115-**
851 **29 “Permitted Uses”, is hereby amended by inserting the italicized**
852 **and underlined language as a new subpart K. thereof as follows:**

853
854 **§115-29 Permitted Uses.**

855
856 A building or land shall be used only for the following purposes:

857
858 . . .

859
860 K. A Sussex County Rental Program, or SCRP, townhouse or multi-
861 family development governed by, and subject to, Chapter 72,
862 where at least 30% of all dwelling units are SCRP Units pursuant
863 to Chapter 72. The SCRP development must satisfy the following
864 criteria:

865 (1)The site must be located within a Town Center, a Developing
866 Area, or the Coastal Area as described within the Land Use
867 Element and as shown on the Future Land Use Plan of the
868 adopted Sussex County Comprehensive Plan.

869
870 (2)The site shall be located within 2,640 feet of an existing or
871 proposed DART Route operated by the Delaware Transit
872 Corporation. In the case of a proposed DART Route, Final Site
873 Plan approval shall not be granted until the Route is in existence
874 and operated by DART.

875
876 (3)The site must be served by a central sewer system and a central
877 water system.

878
879 (4)The total maximum number of dwelling units (including both
880 SCRP Units and non-SCRP Units) that may be permitted shall be
881 determined by dividing the gross area by 3,630 square feet.
882 "Gross area" shall exclude any area designated as a tidal
883 tributary stream or tidal wetlands by § 115-193.

884 (5)There shall be a one-hundred foot wide setback around the
885 entire site, which shall incorporate the "Forested and/or
886 Landscaped Buffer Strip" identified in Section 99-4. This setback
887 shall include walking and biking trails.

888 (6)The height of any townhouse or multi-family buildings shall
889 not exceed 52 feet or four stories, whichever is greater.

890 (7)There shall be sidewalks on all streets, roadways and parking
891 areas, with interconnectivity to adjacent walkway systems.

892 (8)There must be interconnectivity with any adjacent property
893 that is zoned C-1, CR-1, C-2, C-3, C-4, C-5, B-1, B-2 or B-3.

894 (9)There shall be open space that exceeds fifty percent of the
895 gross area of the entire site. The Primary view from each

896 dwelling unit shall be directed to open space and recreational
897 amenities.

898
899 **Section 5. The Code of Sussex County, Chapter 115, Article V, §115-**
900 **34 “Height, Area and Bulk Requirements”, is hereby amended by**
901 **inserting the italicized and underlined language as a new subpart D.**
902 **thereof as follows:**

903
904 **§115-34 Height, Area and Bulk Requirements.**

905
906 . . .

907
908 D. Sussex County Rental Unit development permitted by §115-29K. The
909 minimum lot size, lot area per dwelling unit, open space, height and
910 setback requirements for a Sussex County Rental Unit development
911 permitted by §115-29K shall be governed by the dimensional
912 requirements set forth in that Section.

913
914
915 **Section 6. The Code of Sussex County, Chapter 115, Article VI, §115-**
916 **37 “Permitted Uses”, is hereby amended by inserting the italicized**
917 **and underlined language as a new subpart C. as follows:**

918
919 **§115-37 Permitted Uses.**

920
921 Permitted uses are as follows:

922 . . .

923
924 C. A Sussex County Rental Program, or SCRP, townhouse or multi-
925 family development governed by, and subject to, Chapter 72, where at
926 least 30% of all dwelling units are SCRP Units pursuant to Chapter
927 72. The SCRP development must satisfy the following criteria:

928 (1)The site must be located within a Town Center, a Developing
929 Area, or the Coastal Area as described within the Land Use
930 Element and as shown on the Future Land Use Plan of the
931 adopted Sussex County Comprehensive Plan.

932
933 (2)The site shall be located within 2,640 feet of an existing or
934 proposed DART Route operated by the Delaware Transit
935 Corporation. In the case of a proposed DART Route, Final Site
936 Plan approval shall not be granted until the Route is in existence
937 and operated by DART.

938
939 (3)The site must be served by a central sewer system and a central
940 water system.

941
942 (4)The total maximum number of dwelling units (including both
943 SCRP Units and non-SCRP Units) that may be permitted shall be
944 determined by dividing the gross area by 3,630 square feet.
945 "Gross area" shall exclude any area designated as a tidal
946 tributary stream or tidal wetlands by § 115-193.

947 (5)There shall be a one-hundred foot wide setback around the
948 entire site, which shall incorporate the "Forested and/or
949 Landscaped Buffer Strip" identified in Section 99-4. This setback
950 shall include walking and biking trails.

951 (6)The height of any townhouse or multi-family buildings shall
952 not exceed 52 feet or four stories, whichever is greater.

953 (7)There shall be sidewalks on all streets, roadways and parking
954 areas, with interconnectivity to adjacent walkway systems.

955 (8)There must be interconnectivity with any adjacent property
956 that is zoned C-1, CR-1, C-2, C-3, C-4, C-5, B-1, B-2 or B-3.

957 (9)There shall be open space that exceeds fifty percent of the
958 gross area of the entire site. The Primary view from each

959 dwelling unit shall be directed to open space and recreational
960 amenities.

961
962 **Section 7. The Code of Sussex County, Chapter 115, Article VI, §115-**
963 **42 “Height, Area and Bulk Requirements”, is hereby amended by**
964 **inserting the italicized and underlined language as a new subpart D.**
965 **thereof as follows:**

966 **§115-42 Height, Area and Bulk Requirements.**

967
968 . . .

969
970 D. Sussex County Rental Unit development permitted by §115-37C. The
971 minimum lot size, lot area per dwelling unit, open space, height and
972 setback requirements for a Sussex County Rental Unit development
973 permitted by §115-37C shall be governed by the dimensional
974 requirements set forth in that Section.

975
976 **Section 8. The Code of Sussex County, Chapter 115, Article VII,**
977 **§115-45 “Permitted Uses”, is hereby amended by inserting the**
978 **italicized and underlined language as a new subpart F. thereof as**
979 **follows:**

980
981 **§115-45 Permitted Uses.**

982
983 Permitted uses are as follows:

984
985 . . .

986
987 F. A Sussex County Rental Program, or SCRP, townhouse or multi-
988 family development governed by, and subject to, Chapter 72, where at
989 least 30% of all dwelling units are SCRP Units pursuant to Chapter
990 72. The SCRP development must satisfy the following criteria:

991 (1) The site must be located within a Town Center, a Developing
992 Area, or the Coastal Area as described within the Land Use Element
993 and as shown on the Future Land Use Plan of the adopted Sussex
994 County Comprehensive Plan.

995
996 (2) The site shall be located within 2,640 feet of an existing or
997 proposed DART Route operated by the Delaware Transit
998 Corporation. In the case of a proposed DART Route, Final Site Plan
999 approval shall not be granted until the Route is in existence and
1000 operated by DART.

1001
1002 (3) The site must be served by a central sewer system and a central
1003 water system.

1004
1005 (4) The total maximum number of dwelling units (including both
1006 SCRP Units and non-SCRP Units) that may be permitted shall be
1007 determined by dividing the gross area by 3,630 square feet. "Gross
1008 area" shall exclude any area designated as a tidal tributary stream or
1009 tidal wetlands by § 115-193.

1010 (5) There shall be a one-hundred foot wide setback around the
1011 entire site, which shall incorporate the "Forested and/or Landscaped
1012 Buffer Strip" identified in Section 99-4. This setback shall include
1013 walking and biking trails.

1014 (6) The height of any townhouse or multi-family buildings shall
1015 not exceed 52 feet or four stories, whichever is greater.

1016 (7) There shall be sidewalks on all streets, roadways and parking
1017 areas, with interconnectivity to adjacent walkway systems.

1018 (8) There must be interconnectivity with any adjacent property
1019 that is zoned C-1, CR-1, C-2, C-3, C-4, C-5, B-1, B-2 or B-3.

1020 (9) There shall be open space that exceeds fifty percent of the
1021 gross area of the entire site. The Primary view from each dwelling
1022 unit shall be directed to open space and recreational amenities.

1023
1024 **Section 9. The Code of Sussex County, Chapter 115, Article VII,**
1025 **§115-50 “Height, Area and Bulk Requirements”, is hereby amended**
1026 **by inserting the italicized and underlined language as a new subpart**
1027 **G. thereof as follows:**

1028
1029 **§115-50 Height, Area and Bulk Requirements.**

1030
1031 . . .

1032
1033 G. Sussex County Rental Unit development permitted by §115-45F. The
1034 minimum lot size, lot area per dwelling unit, open space, height and
1035 setback requirements for a Sussex County Rental Unit development
1036 permitted by §115-45F. shall be governed by the dimensional
1037 requirements set forth in that Section.

1038
1039 **Section 10. The Code of Sussex County, Chapter 115, Article VIII,**
1040 **§115-53 “Permitted Uses”, is hereby amended by inserting the**
1041 **italicized and underlined language as a new subpart K. thereof as**
1042 **follows:**

1043
1044 **§115-53 Permitted Uses.**

1045
1046 A building or land shall be used only for the following purposes:

1047
1048 . . .

1049
1050 K. A Sussex County Rental Program, or SCRP, townhouse or multi-
1051 family development governed by, and subject to, Chapter 72, where at

1052 least 30% of all dwelling units are SCRP Units pursuant to Chapter
1053 72. The SCRP development must satisfy the following criteria:

1054 (1) The site must be located within a Town Center, a Developing
1055 Area, or the Coastal Area as described within the Land Use Element
1056 and as shown on the Future Land Use Plan of the adopted Sussex
1057 County Comprehensive Plan.

1058
1059 (2) The site shall be located within 2,640 feet of an existing or
1060 proposed DART Route operated by the Delaware Transit
1061 Corporation. In the case of a proposed DART Route, Final Site Plan
1062 approval shall not be granted until the Route is in existence and
1063 operated by DART.

1064
1065 (3) The site must be served by a central sewer system and a central
1066 water system.

1067
1068 (4) The total maximum number of dwelling units (including both
1069 SCRP Units and non-SCRP Units) that may be permitted shall be
1070 determined by dividing the gross area by 3,630 square feet. "Gross
1071 area" shall exclude any area designated as a tidal tributary stream or
1072 tidal wetlands by § 115-193.

1073 (5) There shall be a one-hundred foot wide setback around the
1074 entire site, which shall incorporate the "Forested and/or Landscaped
1075 Buffer Strip" identified in Section 99-4. This setback shall include
1076 walking and biking trails.

1077 (6) The height of any townhouse or multi-family buildings shall
1078 not exceed 52 feet or four stories, whichever is greater.

1079 (7) There shall be sidewalks on all streets, roadways and parking
1080 areas, with interconnectivity to adjacent walkway systems.

1081 (8) There must be interconnectivity with any adjacent property
1082 that is zoned C-1, CR-1, C-2, C-3, C-4, C-5, B-1, B-2 or B-3.

1083 (9) There shall be open space that exceeds fifty percent of the
1084 gross area of the entire site. The Primary view from each dwelling
1085 unit shall be directed to open space and recreational amenities.

1086
1087 **Section 11. The Code of Sussex County, Chapter 115, Article VIII,**
1088 **§115-58 “Height, Area and Bulk Requirements”, is hereby amended**
1089 **by inserting the italicized and underlined language as a new subpart**
1090 **E. thereof as follows:**

1091
1092 **§115-58 Height, Area and Bulk Requirements.**

1093
1094 . . .

1095
1096 E. Sussex County Rental Unit development permitted by §115-53K. The
1097 minimum lot size, lot area per dwelling unit, open space, height and
1098 setback requirements for a Sussex County Rental Unit development
1099 permitted by §115-53K shall be governed by the dimensional requirement
1100 set forth in that Section.

1101

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



Sussex County

DELAWARE
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REPORT TO GOVERNOR'S ADVISORY COUNCIL ON PLANNING

SUSSEX COUNTY, DELAWARE

2021-2022

June 28, 2022

INTRODUCTION

This is the third annual report regarding Sussex County's 2018 Comprehensive Plan ("the Plan"), which was adopted by County Council on Tuesday, December 4, 2018. The Plan was subsequently certified by Governor John C. Carney on March 19, 2019 as being in compliance with Title 9, Chapter 69, Subchapter II (The Quality of Life Act) of the Delaware Code.

This report is intended to comply with Title 9, Section 6958 of the Delaware Code. Delaware law mandates that all counties and municipalities have a Comprehensive Plan in place. Counties and municipalities must review and update those plans for State certification every 10 years, while also providing annual updates on the progress of implementation.

NEW INITIATIVES

In the July 2021 to June 2022 reporting year, Sussex County has undertaken a number of initiatives to implement the strategies within the Comprehensive Plan.

FY 23-28 Capital Transportation Program Update for Sussex County

Every two years the Department of Transportation develops a 6-year Capital Transportation Program (CTP) that identifies anticipated capital investments. This program is developed in cooperation with the Salisbury-Wicomico Metropolitan Planning Organization, and Sussex County. The program provides information on various DelDOT capital and maintenance programs and on the estimated



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cost expenditures for the project phasing of a capital project that are anticipated in each specific fiscal year. In June 2021, Sussex County finalized its submissions for new CTP candidates for the FY 23-28 Capital Transportation Program Update. The Draft FY 23 CTP was released on August 18, 2021, by the Council on Transportation. A Public Hearing was held on September 29, 2021.

A new project added to the CTP is the Mulberry Knoll Road Extension from Cedar Grove Road to US 9 at Old Vine Road. The project includes a new two (2) lane roadway to connect communities and alleviate congestion on parallel routes. This new road segment was recommended by the Five Points Working Group and was studied as an alternative to widening Plantation Road from Robinsonville to Cedar Grove because of the high cost of the widening project. Based on the findings of the Henlopen Transportation Improvement District (TID), if Mulberry Knoll Road was extended to US 9, the Plantation widening would not be necessary prior to 2050.

A link to an online map showing the new FY 23-28 CTP Projects, can be found at the link below:

[DelDOT FY23-FY28 CTP New Projects \(arcgis.com\)](#)

Henlopen Transportation Improvement District

The County has successfully implemented Strategy 13.1.1.2 of the Comprehensive Plan by working with Delaware Department of Transportation to implement the County's first Transportation Improvement District for the 24 square mile Henlopen area south of Rt. 9 and west of SR.1. The Henlopen TID was adopted on October 29, 2020 and unless a development falls within a specified exemption, is required to contribute to planned transportation infrastructure improvements within the District.

Projects have continued to come forward for consideration during the review period. As of June, 2022, the total amount of financial commitments for the Henlopen TID now stands at \$4.4 million. The table below illustrates the amount of the existing commitments and the number of residential units and new floor area:

Property Identification	Use	Size (units/sf)	Contribution
Cambria Hotel	Hotel	96,481	\$ 281,724.52
Cambria Hotel	General Office	7,200	\$ 21,024.00
Cardinal Grove	Residential SF Detached	98	\$ 486,864.00
Chase Oaks	Residential SF Detached	253	\$ 1,256,904.00
DGAS, Inc. Minor Subdivision	Residential SF Detached	4	\$ 19,872.00
Howeth Property	Residential MF Low-Rise	84	\$ 338,520.00
Lands of Hete4, LLC	Residential SF Detached	3	\$ 15,498.00
Lands of H&S Properties, LLC	Home office expansion	1,571	\$ 4,587.32
Scenic Manor	Residential SF Detached	319	\$ 1,584,792.00
Turtle Drive Commercial	Office	800	\$ 2,336.00
Turtle Drive Commercial	General Light Industrial	4,200	\$ 12,264.00
Turtle Drive Commercial	Wholesale/Warehouse	14,050	\$ 41,026.00
Wil King Station	Residential SF Detached	68	\$ 337,824.00

Resource Buffer Ordinance

Objective 4.3.1 of the Future Land Use Element outlines an objective to consider strategies for preserving environmental areas from development and the protection of wetlands and waterways. Objective 4.3.2 promotes new development that incorporates preserved usable open space and mitigates for the protection or replacement of environmental resources in subdivision design. There are multiple strategies within the Comprehensive Plan that flow from these objectives including, Strategy 4.3.2.1 and 4.3.2.2 and 4.4.1.1.

County Council, at its Tuesday, May 17, 2022, meeting, adopted an Ordinance that overhauls the County's environmental safeguards for critical waterways and wetland areas as development springs up near and around those features. The action represents the most significant update to the County's environmental protection laws in more than 30 years including greater distances between development and nature – for protecting and preserving some of the County's most critical environmental areas.

The Ordinance follows a yearslong process – called for under the County’s adopted Comprehensive Plan – that began in early 2019 and involved nearly two dozen stakeholders with expertise or interests in various disciplines, including land use, environmental science, agriculture, and public policy. The County conducted numerous workshops, as well as Public Hearings, that culminated in County Council’s decision.

Among the most significant changes, the Ordinance will:

- Double, from 50 feet to 100 feet, the size of buffering along and around new residential communities that adjoin tidal wetlands and waterways, such as rivers, bays, and streams;
- Add a 30-foot buffer requirement – up from none currently – for new developments along non-tidal wetlands and intermittent streams;
- Prohibit the clear-cutting of trees and other vegetation in buffer areas, leaving them largely in their natural state;
- Give project designers flexibility and incentives in certain zones to ‘average’ a buffer’s size in order to preserve worthwhile ecological features;
- Require site plans to show points of access to buffered waterways for maintenance work, such as removing debris and sediment, that can cause blockages and lead to flooding;
- Establish penalties, up to \$10,000 a quarter-acre per occurrence, for intrusion into and/or damage caused to buffers and forested areas.

Potential Master-Planned Zoning District (MPZ)

As part of Strategy 4.4.1.5, Strategy 12.2.2.2, Strategy 13.1.1.3 & Strategy 13.6.2.1, the County has continued to explore the creation of a new Zoning District designed to secure a superior planned design in new larger-scale mixed-use developments. The potential new Zoning District, which would be targeted at developments of more than 400 units, or with gross site areas greater than 400 acres, would allow for a more streamlined approach to decision making by front-loading larger amounts of information into the application process. It is anticipated that work will continue on the preparation of this Ordinance during the upcoming reporting year.

LAND USE

In the reporting year there has been a change in the number and type of applications received. Since July 1, 2021, the Planning & Zoning Department has received a total of 83 applications for Conditional Uses and 42 Changes of Zone, compared with a total of 55 and 21 respectively for the previous 12-month period.

	Change of Zone	Conditional Use
July 1, 2019 – June 30, 2020	30	41
July 1, 2020 – June 30, 2021	21	55
July 1, 2021 – June 30 2022	42	83

Total Conditional Use and Change of Zone applications by received date

During the reporting year, the total number of Major Subdivision applications has decreased from 34 to 32, and the total number of lots proposed has increased from the previous year, as outlined below:

	Total Number of Applications	Total Number of Lots Proposed
July 1, 2019 – June 30, 2020	24	942
July 1, 2020 – June 30, 2021	34	1,817
July 1, 2021 – June 30 2022	32	3,334

Total of Major Subdivision Applications by received date

Major subdivisions include applications for the creation of more than 4 lots, or on parcels where the permitted number of minor subdivisions has been utilized. The above totals do not include Change of Zone applications for Residential Planned Communities. The increase over the prior year was associated with a reduction in the number of applications received in the July 1, 2019 - June 30, 2020, reporting period due to COVID-19.

WASTEWATER

Sussex County continues to increase the availability of central sewer to environmentally sensitive areas of the county. The County mainline sanitary sewer infrastructure and transmission systems for Herring Creek, Conley's Chapel Village and Mulberry Knoll are under construction at this time. Several

projects are preparing to go into construction in the near future including Pintail Pointe, Mallard Creek and Lochwood. There are multiple additional projects in various stages of design scheduled for installation of central sewer. Those areas include Oak Acres, Joy Beach, Long Neck Communities and Slaughter Beach. Other areas being brought into the Unified Sanitary Sewer District and in the pipeline for design include Briarwood Estates, Blackwater Village, North Georgetown, and Indian River Acres.

The County has been continuing its efforts to utilize private utility infrastructure owned by regulated utilities under bilateral agreement(s) in an effort to prevent the installation of parallel underutilized infrastructure. There is an ongoing effort to gauge the desire for central sewer service in the Oak Orchard area including John Burton Manor, Warwick Park, Warwick Cove, and Gull Point. The County circulates polling letters, at the request of the homeowners to determine if there is sufficient interest in a central water system for their community. If deemed sufficient a public hearing will be held addressing the potential impacts and a proposed boundary prior to annexation or scheduling a referendum of legal voters.

The County is designing a major transmission line for sewer to redirect flows from the Piney Neck Regional Wastewater Facility to the South Coastal Regional Wastewater Facility for treatment and disposal. This transmission line will eliminate the need for the Piney Neck facility. The County has entered into numerous utility interconnect agreements in an effort to continue the prevention of the installation of parallel underutilized infrastructure.

WATER

The County has completed the installation of the water transmission system for the residents of the Greater Ellendale Water District. County Council approved the water district in October 2018. Subsequently, the Engineering Department submitted a State Drinking Water SRF capital funding package which made it on the State's Project Priority List with the highest ranking, the design was completed, and the project is now complete. The town has requested that the County provide a loop system for the existing system with funding assistance from the town and Sussex County will apply for CPCNs for the additional parcels served by the loop system.

County Council approved a Resolution creating the Winding Creek Village Water District in October of 2017. The water infrastructure is scheduled to be installed in parallel with a sanitary sewer project for the community. The County has applied for and been granted the Certificate of Public Convenience and Necessity (CPCN) for the Winding Creek Village Water District and the system is in the bidding stage.

Constructed Wetlands Project

The Inland Bays Submerged Gravel Wetland (SGW) is an innovative land application enhanced polishing and disposal option for wastewater effluent and groundwater with elevated nutrient levels. Although this project does not conform to the standard wastewater disposal paradigm, it will attempt to follow the applicable sections of the existing regulations for wastewater disposal. The process will provide an effective and enhanced treatment of effluent and contaminated groundwater in terms of nutrient uptake while using a smaller, runoff-controlled footprint than the conventional spray irrigation systems.

The Project will be designed and constructed in coordination with DNREC under a 5-year “operational testing” program. A standard wastewater construction permit application will be submitted concurrently with this request for “operational testing.” Based on the data from the basin test and the information provided in the preceding sections, it is estimated that between 750,000 and 900,000 gallons of treated effluent, supplemental groundwater and stormwater could be passed through the SGW daily without excessive mounding under the SGW or at the infiltration gallery.

HOUSING

Sussex County continues to promote fair and affordable housing through the Planning & Zoning Department and the Community Development and Housing Department. The construction of the first large-scale housing project approved under the Sussex County Rental Program (SCRIP) known as Coastal Tide (formerly known as The Arbors of Cottagedale Apartments) remains underway in 2022. Coastal tide is an 18.08 ac. parcel of land located in Lewes and Rehoboth Hundred (Tax parcel 334-6.00 504.02). The Final Site Plan includes 168 apartments including 1, 2 and 3-bedroom units, with 26 of the apartments set-aside as affordably priced housing units through SCRIP. In June 2022, Sussex

County Council approved an additional building for the project, thereby increasing the number of SCRP units to 32 and total units to 198. As of June 2022, six apartment buildings are constructed, with two awaiting Certificates of Occupancy. To date, 18 SCRP units are occupied by eligible tenants earning less than 80% of Area Median Income for Sussex County.

The County continues to work with applicants proposing residential developments to explore ways to deliver an increase in affordably priced units within the County.

Following the final report and recommendations in October 2019 from LSA Planning, the organization contracted to provide an intensive housing study, an internal County working group composed of Administration, Community Development and Housing, Planning and Zoning, and Legal worked to develop an implementation plan to expand affordable housing opportunities. The plan was approved in the County's FY2022 budget and includes a Housing Trust Fund and updates to the County's inclusionary zoning programs. The Sussex County Housing Trust Fund (SCHTF) was officially launched in April 2022, funded by Sussex County Council and American Rescue Plan (ARPA) dollars. SCHTF includes two main components: a direct homebuyer assistance program and a developer grant program. The homebuyer assistance program provides grants of up to \$30,000 for down-payment and closing for households below 120% AMI seeking to purchase a home in Sussex County. The developer grant program offers up to \$500,000 per project for applicants seeking to create or preserve affordable housing for households earning 65% or below AMI.

In addition, and based in large part on the findings of the LSA Report, Sussex County introduced an ordinance seeking to provide more affordable rental opportunities for Sussex County residents. This ordinance not only amended Chapter 72 of the Sussex County Code to streamline the SCRP process, but also added a new and substantial change to the zoning code to allow "by-right" multi-family housing projects at a density of twelve units per acre if at least thirty percent of those units are set aside as SCRP units. As of this writing, the ordinance received a favorable recommendation from the Sussex County Planning & Zoning Commission with suggested improvements. It is currently under consideration by Sussex County Council.

During the reporting year, Sussex County has assisted 270 households with owner-occupied rehabilitations and emergency repairs, water and sewer hookups for low- and moderate-income

households, with a total value of \$2+ million. The County continues to work and partner with the Sussex Housing Group and its affiliates to coordinate public/private partnerships that leverage dollars for community development efforts in impacted communities.

In addition to the above, an Ordinance was introduced by County Council on March 29, 2022 regarding affordably priced rental units and the Sussex County Rental Unit (SCRUP) Program. This Ordinance was considered at Public Hearings before the Planning & Zoning Commission in April and May 2022. The Ordinance is due to be heard by the County Council as part of a Public Hearing on June 28, 2022.

RECREATION AND OPEN SPACE

The Sussex County Subdivision Code allows for applicants to apply under the cluster development option whereby the lot size and lot width requirement of the AR-1 Zoning District is reduced for subdivisions that provide a minimum of 30% of the site area as open space. This option is also available within the Coastal Area. During the review period, the following areas of open space were approved or recommended for approval under this option:

P&Z Reference Number	Name	# of Units	Open Space (Acres)
2022-01	Henlopen Properties, LLC	267	11.74
2021-30	Independence (Phase 13)	37	5.79
2021-26	Harpers Glen (F.K.A. Workman Subdivision)	34	6.09
2021-22	The Woods at Burton's Pond (Phase II)	19	5.74
2021-19	East Gate	102	14.48
2021-15	Cobb Property	68	34.64
2021-12	Miralon (F.K.A. Cool Spring)	119	36.42
2021-11	Lightship Cove (F.K.A. Fisher Road)	97	26.5
2021-10	Graywood Springs	38	10.17
2021-09	Brookland Farm	92	19.33
2021-08	The Knoll	33	6.2
2021-05	Turnberry (F.K.A. Unity Branch)	196	88.14
2021-04	Autumndale (F.K.A. Autumndale & Fairmont)	104	50.73
2020-19	Monarch Glen	246	37.66

2020-13	Terrapin Island (F.K.A. Salt Cedars)	42	16.14
CZ 1942	Twin Cedars GR-RPC	254	41.36
CZ 1931	Lands of Lighthipe, LLC MR-RPC	173	14.39
CZ 1922	Baywood Gardens HR-RPC	514	27.5

The total new open space approved during the review period is 453.02 Acres which is an increase from the 362.33 Acres of open space that was created through subdivision approvals during the 2020-2021 review period.

In addition to the above, on June 21, 2022, as part of the County's Fiscal Budget, the Sussex County Council announced a series of open space purchases that will protect four parcels in eastern and central Sussex, where the landscape is under increased pressure from residential development. In total, the purchases will cost more than \$5 million and preserve in perpetuity 151 acres of agricultural and wooded lands, including a portion of the prominent Lewes-area Hopkins Farm. Funding comes from County reserves, specifically savings accumulated through the County's portion of Delaware's realty transfer tax. The parcels include:

- Fifty-one acres known as the Hopkins Preserve, along Sweetbriar Road, just north of U.S. 9, outside Lewes, for a price of \$1.5 million. The property owner, Walter Hopkins and his family (a fourth generation farmer), discounted the sale price by 50 percent in exchange for the parcel being used at a later time as open space and a recreational amenity, specifically as part of a trailhead that will be developed and managed by the Sussex County Land Trust for the still-under-construction Georgetown to Lewes Trail;
- Forty-seven acres known as the Jones Family tract, at a cost of \$650,000, located off Conaway Road adjacent to the State-owned Midlands Wildlife Area, west of Millsboro;
- Forty acres, named the Dawson Bros. tract, for a price of \$2.5 million, located along the south side of Del. Route 24, near the Nanticoke Indian Center, east of Millsboro;
- Thirteen acres, for a sale price of \$400,000, adjoining a larger parcel acquired by the County in 2020 and collectively known as the Dorman Family Farm Preserve, located along Herring Creek and Sarah Run, near Angola.

INTER-GOVERNMENTAL COORDINATION

In July 2021, the County's Planning & Zoning Department provided comments to both the City of Seaford and the Town of Ellendale on the proposed Comprehensive Plan updates for those municipalities. In May 2022, the Planning & Zoning Department worked with the Town of Ellendale to update the County's online maps to reflect the annexations to the north and east of the Town that were approved in Spring 2022. In March 2022, the Planning & Zoning Department provided comments to the City of Rehoboth in relation to the City's draft Comprehensive Plan update.

In addition to providing comments on emerging Comprehensive Plans, the Planning & Zoning Department has continued to participate in Delaware Department Public Workshops and events held throughout the year, including the DelDOT Five Points group, the Southeast Sussex Study, and the five Coastal Corridors Study workshops held in Spring 2021.

CONCLUSION

The 2021-2022 reporting period has seen solid progress towards the implementation of the Strategies contained within the 2018 Comprehensive Plan. The County looks forward to continuing to implement the Comprehensive Plan during the 2022-2023 reporting period.

JAMIE WHITEHOUSE, AICP
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Sussex County

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Memorandum

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

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

CC: Everett Moore, County Attorney

Date: June 24, 2022

RE: County Council Report for C/Z 1967 filed on behalf of Henlopen Properties, LLC

The Planning and Zoning Department received an application (C/Z 1967 filed on behalf of Henlopen Properties, LLC) to amend the Comprehensive Zoning Map of Sussex County from an AR-1 Agricultural Residential District to a MR Medium Residential District. The property is located on the southeast side of Kings Highway (Rt. 9) and on the north side of Gills Neck Road (S.C.R. 267). The change of zone is for 43.777 acres, more or less.

The Planning and Zoning Commission held a public hearing on March 10, 2022. At the meeting of April 14, 2022, the Commission recommended approval of the application for the 7 reasons as outlined within the motion (included below).

The County Council held a public hearing on April 26, 2022. A motion was made to defer action on the application for a period of two weeks to May 6th for the Lewes Board of Public Works and any other member of the public to submit their reports on the well head protection issue. Subsequent to that, the Applicant would have an additional period of time until May 20th to submit any response to that. At the meeting of May 24, 2022, the County Council closed the Public Record and deferred action on the application for further consideration.

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

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



COUNTY ADMINISTRATIVE OFFICES
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GEORGETOWN, DELAWARE

Minutes of the March 10, 2022 Planning & Zoning Commission Meeting

C/Z 1967 Henlopen Properties, LLC

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

Mr. Whitehouse advised the Commission that submitted into the record for C/Z 1967, C/Z 1968, and C/U 2334 for Henlopen Properties, LLC is the Applicant's Site Plan, the Applicant's Exhibit Booklet, the Traffic Impact Study (TIS), and the DelDOT response to the TIS, a letter from Sussex County Engineering Department Utility Planning Division, the PLUS Comments, the responses to the PLUS comments, a Cultural Resource Assessment, an Environmental Assessment, three letters of support, two letters of opposition and four mail returns.

The Commission found that Mr. David Hutt, Esq. with Morris James spoke on behalf of Applications 2022-01, C/Z 1967, C/Z 1968 and C/U 2334 for Henlopen Properties, LLC; that he is representing both the owners of the property, Mitchell Family, LLC and the Applicant, Henlopen Properties, LLC; that also present were Mr. Robert Mitchell, a member of the Mitchell Family, LLC, Mr. John Myer and Mr. Jon Hoffman, representatives of Henlopen Properties, LLC., Mr. Ring Lardner and Mr. Cliff Mumford, civil engineers with Davis, Bowen & Friedel, Inc.; Mr. Dennis Hughes, II, the traffic engineer with Davis, Bowen & Friedel, Inc., Mr. Steven Cahill, geologist, Mr. Edward Otter, archeologist and Mr. Mark Davidson, a principal land planner with Pennoni; that the current Applications were not the first Applications to be filed for the project; that the first proposed plan for the property was filed in April 2019; that the name of the project has changed several times; that the project was called "The Mitchell Farm" with the submission of the first Application; that the approved name became Zwaanendael Farm; that the property is currently known as Mitchell's Corner; that a number of things have changed since the Applications were filed; that the world experienced the COVID-19 Pandemic; that there has been a change in the directorship of Sussex County Planning & Zoning, from Ms. Janelle Cornwell to Mr. Jamie Whitehouse; that since the submission of the Application there have been numerous conversations and correspondence regarding the scheduling of the public hearings for the Applications; that in order to have a public hearing on a land use application, pursuant to the memorandum of understanding between DelDOT and Sussex County, a Traffic Impact Study (TIS) Review Letter was required; that the Applicant was awaiting the completion of the TIS Review Letter; that the initial response to the TIS Review Letter occurred October 2021; that the response was to the TIS performed for the initial Application; that the initial proposal had the Cape Henlopen Medical Center on the corner of Kings Hwy and Gills Neck Rd., C-3 Heavy Commercial properties along Kings Hwy., B-2 Business Community District properties located along Gills Neck Rd. and MR Medium-Density Residential located for the rest of the property, where apartments and other housing were proposed with a Conditional Use and Subdivision Application; that initially there was a total of five submitted applications; that since then, the applications have been reduced to four applications; that the current Applications received a Supplemental TIS Review letter; that the currently proposed Applications reduced the commercial

impact of the project; that stated within the Supplemental TIS Review Letter, the Applications being heard are a trip generation reduction of almost 50% from the initial Applications; the subject property is located across the street from the Cape Henlopen High School; that next to the Cape Henlopen School is the Jack Lingo Real Estate office; that currently under construction is the Lewes Medical Campus, which is proposed to be an assisted living facility; that west of Gills Neck Rd. is the future location of the Village Center; that located on the same side as the subject property, at the corner of Gills Neck Rd. and Kings Hwy. is the Cape Henlopen Medical Center; that the Mitchell Family filed a previous Conditional Use Application (C/U 2112) in 2018 for the Cape Henlopen Medical Center; that C/U 2112 was for medical professional offices in a 39,000 sq. ft. building; that the Cape Henlopen Medical Center is a good demonstration of the need for professional services within Sussex County as it serves many residents within the immediate area; that continuing down Kings Hwy, on the same side as the subject property, toward the City of Lewes, are the offices of Lane Builders; that the next property is the Big Oyster Brewery; that on the northern boundary of the property is Jefferson Apartments and Bay Breeze Estates, both of which are located within the City of Lewes; that on the eastern side of the subject property is The Moorings, formally known as Cadbury at Lewes; that the most detailed history of the project can be found within the Cultural Resource Assessment, prepared by Dr. Otter; that the majority of the mentioned culturally significant resources are found closer to Pot Hook Creek than the subject site; that the historical item mentioned is the existing farmhouse located on the subject property; that

the farmhouse is still occupied by Mr. Jerry Mitchell; that Dr. Otter's report mentioned the farmhouse, outbuilding and additional structures require documentation before being removed from the property; that a condition proposed by the Applicant states the property and structures would be properly documented before removal; that the Applicant plans to have Dr. Otter perform the documentation before the removal of the farmhouse; that the subject property has been with the Mitchell Family since the late 1800's; that the first Mitchell family member was a Robinson; that if one looks at the George Robinson ownership in the late 1800's, that is when the Mitchell Family ownership began; that most recently Mr. Mitchell and his family have owned the 58-acre farm; that from 1998 until 2013 the property was located with the Agricultural Preservation; that with the development around the subject property, the farmland was becoming very difficult to farm, which resulted in the decision to sell the property; that as the Mitchell Family was working toward selling, they were approached by adjacent property owners; that several portions of the 58-acre parcel was sold to adjacent neighbors; that the portion to the rear of the property was sold to The Moorings, which was the subject of a recent Application Change of Zoning to Medium-Density Residential and to request an Residential Planned Community (RPC); that there was a portion sold to The Big Oyster, which was the subject of an application for rezoning from AR-1 to C-3; that the parcel, located on the corner of Kings Hwy. and Gills Neck Rd. was the subject of C/U 2112 for the Cape Henlopen Medical Center; that property most recently sold again sold to The Big Oyster Brewery for additional expansion; that the recently sold property will be the subject of a Change of Zone application, requesting rezoning from AR-1 to C-3, at the Planning & Zoning meeting on April 14, 2022; that after the pieces of lands were sold off, the property currently consists of 47-acres; that the current Applications request a Change of Zone, for approximately three acres, next to the site of the Cape Henlopen Medical Center; that the Change of Zone Application seeks to change the zoning designation from AR-1 to C-2 Medium Commercial; that an additional Change of Zone Application request to change the zoning classification of approximately 44-acres of the property

from AR-1 to MR (Medium-Density Residential); that there is also a Conditional Use Application seeking approval for a multi-family use of the property, for 267 units, on the MR zoned portion of the property; that the final Application is a Subdivision application, which was necessary to create all the various component parts of the project; that currently the property is completely zoned AR-1; that immediately south of the proposed site is B-1 Neighborhood Business Zoning, which is the location of the Village Center Project; that moving closer toward Rt. 1, there is existing C-1 and B-1 properties at the corner of Clay Rd. and Kings Hwy.; that more toward the City of Lewes, the Big Oyster property is zoned C-1, with C-3 property immediately behind it; that across the street from the subject site are two properties, located within the City of Lewes, zoned as General Commercial; that immediately behind that property is R-5 Zoning, which is the City of Lewes' mixed residential zoning; that adjacent to those properties is the City of Lewes', CFHC Zoning, which is Community Facilities Health Care Zoning; that this is the site of the Lewes Senior Campus; that located closer to the City of Lewes is more General Commercial properties; that to the north side of the property is R-5, Mixed Residential for the City of Lewes; that also located near the subject property is R-2, Residential Low Density Zoning with the City of Lewes; that nearby, The Moorings, Breakwater and Admirals Chase, are located within the MR (Medium-Residential Zoning) with Sussex County; that the project is located within the Coastal Area according to the Future Land Use Map; that surrounding areas to the project are also located within the Coastal Area or a commercial area; that the Coastal Area is designated as one of the Sussex County's seven growth areas; that Chapter 4 of the Comprehensive Plan includes Table 4.5-2, which compares zoning districts applicable to Future Land Use categories; that both the C-2 (Medium Commercial District) and the MR Medium-Density Residential District are applicable zoning districts within the Coastal Area; that the County Code describes the purpose of the C-2 (Medium Commercial Zoning District) as a district which supports retail sales and performance of consumer services, permitting a variety of retail, professional and services businesses; that the district should be primarily located near arterial and collector streets; that the district accommodates community commercial users who do not have outside storage or sales; that the County Codes description of the C-2 Medium Commercial District exactly describes the purpose the Applicant desires with the proposed project; that the project proposes to provide additional professional and business services in an area where the services are needed; that this need is demonstrated best by the success of the Cape Henlopen Medical Center; that the previously approved Conditional Use for the Cape Henlopen Medical Center mirrors the purpose proposed for the property; that the developer hired an architect to design a building for the site; that the architect studied the architecture in the area; that the architect provided a letter explaining the proposed building, as shown on the rendering; that there are comments on record regarding the architecture along Kings Hwy. and how the proposed building does not match; that the architect described the architecture along Kings Hwy. as numerous architectural motifs in the context which may be evoked to rationalize any architectural style; that do to the various architectural styles along Kings Hwy. it is difficult to match any one of those; that the developer requested the architect consider the nearest architectural style and blend the building to those nearest to the property; that features from the Cape Henlopen Medical Center and Cape Henlopen High School, compliment those features while performing the same idea for the proposed townhomes along Kings Hwy.; that once the site plan was established, the Applicant requested Mr. Mark Davidson, Land Planner with Pennoni, to review the land plan; that the peer review provided by Mr. Davidson is included in the record; that the developer determined the square footage of all buildings in the surrounding area; that some of the buildings considered were Cape Henlopen High School at 367,000 sq. ft., Lewes

Senior Living Campus at 223,000 sq. ft., The Moorings at 117,000 sq. ft., the future Village Center at 75,000 sq. ft. and Cape Henlopen Medical Center at 39,000 sq. ft.; that the building proposed for the project is smaller than almost all other studied buildings, being just slightly bigger than the Cape Henlopen Medical Center; that the proposed building is an appropriate size and scale for the area; that the County Code states commercial properties should be located along arterial and collector streets; that Kings Hwy. is a perfect match for this proposed use as it is considered a major arterial by Sussex County; that the same process and considerations were made regarding the proposed rezoning of 44-acres to be MR Medium-Density Residential; that according to the Sussex County Code, the MR District is to provide for medium-density residential development in areas which are, or expected to become, generally urban in character and where sanitary sewer and water supplies may or may not be available at the time of construction; that a permitted Conditional Use is for multi-family dwelling structures, which created the need for the Conditional Use application, which accompanies the Change of Zone application; that the purpose of a Conditional Use is to provide uses which are generally public or semi-public in character, being essential and desirable for the convenience and welfare; that because of the nature of the use, the importance to the relationship of the Comprehensive Plan and possible impact on neighboring properties and Sussex County, create the requirement for extra planning judgement on location and site plan; that housing is considered public or semi-public in character; that housing is desirable, particularly within the Coastal Area; that the purpose of the presented Applications are to provide for medium residential development, in areas which are becoming more urbanized; that there are townhomes and duplexes located within Governors, Admirals Chase, Breakwater, The Moorings and The Lewes Senior Living Campus; that within the City of Lewes, multifamily housing is offered at Jefferson Apartments, Dutchman's Harvest and Henlopen Gardens; that Bay Breeze Estates is a single-family use, located within the R-2 zoning classification with the City of Lewes, that the density within Bay Breeze Estates is still three units to an acre; that Jefferson Apartments, Dutchman's Harvest and Henlopen Gardens, within the City of Lewes, are all zoned R-5; that R-5 Zoning is the City of Lewes' multifamily residential district, where the purpose is to provide a mix of housing types to include multifamily and affordable housing alternatives; that multifamily is located adjacent to the subject property, as well as across the street from the property; that in correspondence in the file, there is reference to the density for the project; that include in the project book, are the densities for the surrounding communities; that Dutchman's Harvest is 17 units to the acre; that Jefferson Apartments is 9.8 units to the acre; that The Moorings is 6.4 units to the acre; that Henlopen Gardens is 5.5 units to the acre; that Bay Breeze Estates is 3 units to the acre; when considering the Future Land Use Map and the densities of surrounding areas, the proposed density of 6.1 units to acre is consistent to the surrounding area; that the more intense uses should be located closer to the highway, decreasing in intensity moving further away from the highway; that this is accomplished by placing the townhomes and commercial area along Kings Hwy.; that moving closer to Bay Breeze Estates and The Moorings the uses become duplexes, which are a less intense use; that the Comprehensive Plan states lands within the Coastal Area should be able to accommodate both commercial and residential provided special environmental concerns are addressed; that medium to higher densities, between 4 to 12 units to the acre, can be appropriate in certain locations; that an appropriate location for this is where there is central water and sewer, when near a significant number of commercial uses and employment centers, when keeping with the character of the area, when situated along a main road or near a major intersection and where there is adequate level of service; that the project meets all of those characteristics; that the TIS Review Letter did state there

are several intersections without adequate levels of service within the area; that the final solution to the issue is the dualization of Kings Hwy.; that waiting on the improvements would not be beneficial to the community or the project; that due to this, the developer and DelDOT agreed upon interim improvements, to allow traffic to be improved for the time period it takes for DelDOT to complete the dualization project; that the proposed interim improvements are more than what is required within the Memorandum of Understanding between Sussex County and DelDOT; that the Memorandum of Understanding seeks to have a Level of Service D at intersections; that the most recent Memorandum of Understanding recognizes the Level of Service D is not always obtainable and this requirement may create an undue burden on a property owner looking to develop a property, given the prior development which has occurred in an area contributing to the existing level of service; that a level of service cannot be degraded by a project; that with the proposed interim improvements, there will be no degrading by the proposed project; that the improvements will provide and upgrading of service until DelDOT provides the final solution with the dualization of Kings Hwy.; that it would be unfair to request the last individual developing a property to fix all the issues; that in 2009 the need for the dualization of Kings Hwy. was recognized; that the improvements along Gills Neck Rd. have been accomplished; that during the February 23, 2022 workshop with DelDOT, it was said the estimate for the construction improvements was \$23,000,000.00; that it would be an undue burden to require the last property owner to dualize Kings Hwy.; that although the Applicant cannot provide the dualization of Kings Hwy., they did desire to provide some temporary relief, which will be afforded through the interim improvements; that the developer did meet with the Lewes Byways Committee; that the developer agreed upon, as a Condition of Approval for the proposed project, the developer would maintain permanent easement areas and multi-modal path; that DelDOT is pushing the vast majority of the improvements onto the project side of Kings Hwy.; that the property is located within the Level 1 Investment area according to the State Strategies Map; that PLUS had no objection to the proposed project; that Investment Level 1 reflect areas which are already developed in an urban or suburban fashion, infrastructure is available and where future redevelopment or infill projects are expected; that State Strategies Map, Comprehensive Plan and the Zoning Code were all guideposts for the project's design and layout and he submitted proposed Findings and Conditions for the Application and a Willing and Able Letter from Tidewater Utilities.

The Commission found that Mr. Ring Lardner spoke on behalf of the Application; that he is a professional engineer with Davis, Bowen & Friedel, Inc.; that the property is a total of 46.81-acres; that the portion of land requesting C-2 Zoning is located along Kings Hwy., adjacent to the Cape Henlopen Medical Center; that per DelDOT, Kings Hwy. is classified as an Other Principal Arterial, and furthermore identified as a major arterial roadway per No. 7 of the definition found in 115-4 of the County Code; that the remaining portion of land is approximately 43.77-acres and subject to the other three applications; that this portion of land also has frontage along Kings Hwy. and along Gills Neck Rd.; that Gills Neck Rd. is classified as a local road per DelDOT Functional Classification Map; that the layout of the site first began with a 20-ft. forested buffer along The Moorings, Bay Breeze and Jefferson Apartments; that this provides some additional open area to help establish the rear lot lines and allow for drainage; that this was how the lot lines were established for the townhomes and the duplexes; that they looked at the existing entrance, which is currently being utilized for Cape Henlopen Medical Center; that the developer desired to do more residential and move away from the grid street which currently exist; that they designed an arch entrance, which allows the service road to access

both commercial properties; that this allows them to avoid redesigning the entrance and roadway; that in doing this, it allowed the proposed area for a stormwater pond to serve the project; that they looked at how to best connect with the adjacent Big Oyster property; that Mr. Mitchell, the developer and Big Oyster have worked together on various land acquisitions and interconnectivity; that their goal was to separate the commercial traffic from Big Oyster from interacting with the residential traffic; that the same intent was to keep the commercial traffic from traveling through the residential area; that this was their motive for providing the direct connection to Gills Neck Rd.; that commercial traffic is heavier than residential traffic on a normal day; that they designed a mini round-about; that the round-about will be designed allowing vehicles of all types to navigate the circle; that the round-about will be reviewed by both the Fire Marshal and Sussex County Engineering; that once those spots were created, they then focused on a plan which offered a mixture of duplexes, 28-ft. wide and 24-ft. wide townhomes; that there are various prototypes offered within the proposed community; that the roads will be designed to Sussex County standards; that the right-of-way has been narrowed to 40-ft., which is allowable per County Code; that this allows them to bring the houses closer to the roadway, providing at least 20-ft between the sidewalk and the house; that this prevents vehicles from blocking the sidewalk; that No Parking signs will be added to prevent on street parking; that on street parking is always a concern of the Fire Marshal; that No Parking signs will allow enforcement to be occurred within the community if needed; that all lots were designed so no lots were backed up against each other; that all lots have some type of open space between them; that this will help facilitate drainage and landscaping; that sidewalks will be located on both sides of the road for all roadways within the community, with the exception of Road C; that the reasoning is the shared-use path is adjacent to the roadway; that it would not make sense to have a shared-use path and sidewalk next to each other; that active amenities will include a dog park, two mailcenters, a community center, a playground and sports courts for the community to use; that they have added some additional walking paths to promote pedestrian connectivity and walkability within the community; that stormwater management will be provided by infiltration through grass swales, which are located in the open area, to the rear of the lots, perforated pipes and an infiltration basin with the primary and secondary basins being located along Gills Neck Rd.; that higher volume storms, like the 10-yr. and 100-yr. storm events, will discharge via storm pipe through the lands of JG Townsend, which will discharge into a tidal discharge; that the plan was previously approved by Sussex Conservation District for the previous Application; that the pipe will still be able to be used for the current project; that the project does not contain any wetlands; that the project is not located within a flood plain; that the State Housing Preservation Office provided information regarding a known archeological site and some known prehistorical sites with high potential resources due to the known historic structures; that they hired Dr. Edward Otter to complete the Cultural Resource Assessment; that the Resource Assessment can be found in Appendix R of the Exhibit Booklet; that the existing buildings are proposed to be demolished; that Dr. Otter has confirmed he will perform the documentation for the existing buildings, should the Application receive approval; that about 6.34-acres of the project is located within the Wellhead Protection Area and must comply with Chapter 89 of the Sussex County Code; that Verdantas was hired to provide an Environmental Assessment Report; that there was a typo in the some calculations submitted into the record; that Post-Development calculations for Total Area is 9.34-acres and the Recharge Volume is 58-in.; that the total Post-Development, Recharge Volume for Stormwater Basin should have read 135,771 gallons; that with those correct numbers, the calculation remains the same as reported, which is 1,574,948 gallons; that the proposed impervious area with the 6.34-acres is approximately 2.75-acres based on the current preliminary plan provided;

that this equates to 44% of impervious coverage; that they always agreed to provide stormwater management for the Cape Henlopen Medical Center; that when they add in the Cape Henlopen Medical Center property the total impervious coverage becomes approximately 52%; that in accordance with Chapter 89 a Water Climatic Budget is required due to the project coverage being greater than 5% but less than 60%; that the Water Budget report can be found in Exhibit S of the Exhibit Booklet; that the budget shows there is a deficit of 2,646-sq. ft. of rooftop to balance the budget; that there is approximately 450,000-sq. ft. of rooftop available outside of the recharge area to balance the budget; that the project proposes to recharge more groundwater than what currently exists; that a pre-chamber system will be installed for debris and potential petroleum releases to help protect the ground water; that the pre-chamber will filter out the hydrocarbons; that the water quality will also be improved by converting the farm from its use of chemical applications to the proposed project; that Verdantas stated in their report, that the property as proposed can be constructed without adversely impacting the Lewes supply wells; that the property is located within the Sussex County Unified Sewer District; that the property will be served by a gravity sewer system, which will discharge to the Governors pump station; that the property may be served by both the City of Lewes Board of Public Works and Delaware Electric Cooperative as the parcel is split by both providers based on the map for electric territories; that water can be provided to the project by the City of Lewes Public Works or Tidewater Utilities; that both utilities have waterlines along the property frontage; that a CPCN will be required for either utilities; that Tidewater Utilities did provide a Willing & Able Letter to serve the project; that natural gas is available from Chesapeake Utilities, as they have a gas main along Gills Neck Rd.; that a Traffic Impact Study was prepared in 2019; that an addendum was prepared in April 2020 for the previous withdrawn Application; that the withdrawn Application consisted of 206,500 sq. ft. of medical office buildings, 60 single-family homes and 150 multi-family homes; that the TIS Review Letter was prepared on October 7, 2021; that the improvements included within that letter were right-of-way dedication, interim improvements and build-out improvements; that subsequent to the review letter, a new plan, which is currently being proposed was submitted to DelDOT and Sussex County; that as part of the submission the developer stated to DelDOT that despite the reduction of traffic of approximately 50%, they would abide by the recommendations from the original study; that after review of the request in the reduction of traffic, DelDOT did not require a new TIS; that DelDOT provided an amended study and a letter; that during the same time, DelDOT had sped up the design of the DelDOT US Rt 9., Kings Hwy., Dartmouth Dr. to Freeman Hwy., DelDOT Contract T202212901 or also known as the dualization of Kings Hwy.; that the dualization of Kings Hwy. was first identified in 2009 as part of a larger agreement involving projects which have all completed their construction and their portions of overall improvements; that those projects include Senators, Governors, Showfield and Whites Pond Meadow who will construct their portion in summer to fall of 2022; that the last remaining piece is the dualization of Kings Hwy.; that DelDOT held a public workshop on February 23, 2022, on their improvement project; that the developer was agreeable with the interim improvements; that the developer began working on various projects for the current public hearing before the information from the DelDOT workshop was available and before final interim improvements were negotiated; that the rendering submitted was constructed before they received information regarding how the dualization of Kings Hwy. would occur with the landscape guidelines and shared-use path; that the rendering does provide an idea how the project would look from an aerial view; that they must create a corridor effect with landscaping and shared-use path meandering through and integrate the project with the dualization of Kings Hwy. to create a corridor the byways would be pleased with; that they

recognize it is a byway and the gateway into the City of Lewes; that a second through lane was added in the southbound direction; that after discussion of the project, the time of the dualization and the reduction in traffic, DelDOT did not support the interim improvements; that after further discussion and the developers willingness and desire to provide some temporary relief, DelDOT has agreed to interim improvements; that the improvements are slightly different from what was originally required in the October 7, 2021 letter; that DelDOT proposed additional requirements; that DelDOT's first requirement is the developer will mill an overlay approximately 3,500 linear feet of Kings Hwy.; that DelDOT's second requirement is to construct a rights-in and rights-out entrance on Kings Hwy.; that this will be located across from the Lewes property; that the entrances will align across from each other; that at that location DelDOT has proposed to make a round-about for the two entrances as part of the overall project; that the round-about is the reason the developer is agreeable to the rights-in and rights-out entrance during the interim condition; that the third DelDOT requirement was to maintain the entrance on Gills Neck Rd.; that no changes are required for this, as the entrance is designed for proposed amount of traffic for the project; that the developer is to improve Kings Hwy., Gills Neck Rd. and Cape Henlopen High School; that they will convert the through lane from Gills Neck Rd. onto Kings Hwy. into a dedicated left turn lane; that this will create two left turn lanes from Gills Neck Rd. onto Kings Hwy.; that the right turn lane will be converted to a through right turn lane; that this will allow traffic to go through to Cape Henlopen High School or turn right in the intersection; that they will be adding a second through lane in the southbound direction; that a separate right turn lane will remain; that they will be shifting the intersections roadway approximately 10-ft. into the site to accomplish the improvement; that there will be two through lanes in the southbound direction and a dedicated left turn lane going onto Gills Neck Rd.; that the dual through lane will continue south; that there will be a lane drop where the right hand through lane will become a dedicated right turn lane onto Clay Rd. in the interim condition; that a separate bicycle lane will be provided through the intersection; that they will also install a shared-use path from Cape Henlopen High School to Clay Rd. to complete pedestrian connectivity to Clay Rd.; that the developer will enter into an agreement to provide an equitable contribution to the dualization project; that the developer will dedicate 50-ft. of right of way from the center line of the road; that the developer will reserve an additional 30-ft. of right of way parallel to Kings Hwy. for the dualization of the project; that a 30-ft. dedication will occur along Gills Neck Rd.; that in addition to the reservation and dedicated right of way, a 15-ft. permanent easement will be provided for a shared-use path; that a shared-use path will be provided, wrap around and connect to the Big Oyster; that the developer will enter into an agreement to provide an equitable contribution to the Clay Rd. and Marsh Rd. intersection as part of the overall realignment project; that they will provide connections and cross-access easements between the onsite lots; that there is interconnectivity provided to the Cape Henlopen Medical Center and Big Oyster; that there will also be an interconnection into Lane Builders once the roundabout is installed; that they will provide bicycle, pedestrian and transit improvements to include the shared-use paths; that they will provide a Type 2 bus stop; that the developer had a meeting with select individuals of the Lewes Byway Committee; that the meeting was held prior to the release of the dualization plan; that during the meeting the developer committed to working with the committee on the shared use path, landscaping and fencing; that after the release of the dualization plan, the developer reached out to the Lewes Byway Committee to reconfirm their commitment; that DelDOT is equally supportive of the development of the 10-ft shared-use path, landscaping and maintenance within the permanent easement; that the project was reviewed by PLUS on December 15, 2021; that the PLUS comments and responses can be found in Exhibit M; that the

PLUS comments provided were general in nature and will comply with all regulatory requirements; that Davis, Bowen & Friedel, Inc. (DBF) prepared an Environmental Assessment and Public Facility Evaluation Report in accordance of County Code, Chapter 115-194.3; that the written responses can be located within Exhibit K; that they have analyzed all of the respected items; that all mitigation measures are consistent with the Comprehensive Plan; that DBF prepared a written response to items listed in Chapter 99-9C; that the responses can be located within Exhibit J; that the project is integrated into existing terrain and surrounding landscape; that the project does not contain wetlands or flood plains; that the project provides buffers to screen objectionable features; that the project prevents pollution of surface and groundwater; that the plan provides for vehicular and pedestrian movement; that the plan mitigates the effect on area roadways and public transportation and the project is compatible with otherland areas.

Ms. Stevenson questioned if the Applicant will be using the recommendations and plans of the Lewes Byway Commission, if the Applicant is agreeable to the proposals made in the TIS Review Letter, if swales would be placed along Kings Hwy. or a closed stormwater system, if she could see a rendering of the interim highway is proposed to look like, if there will be shoulders on the roadways once the improvements are built; that shoulders are a big concern for her since Kings Hwy. is a major roadway for ambulances; that she questions what the Applicant is doing to create more pervious surfaces and questioned extra parking possibilities; that she mentioned the adjacent multi-family housing offers a lot of additional parking; that since the Applicant is offering multi-family housing, her hope is the units would be workforce housing; that she believes younger families, who work in the area, would live there and more than likely will have family and friends who visit; that with no parking on the street, additional parking will be needed; that she questioned the interconnectivity to the property; that she questioned the reasoning for not promoting access from Kings Hwy; that Gills Neck Rd. is much smaller than Kings Hwy.; that she fears the plan will encourage 400 to 500 additional people to utilize Gills Neck Rd. to enter Lewes; that she questioned if the entrance from Gills Neck Rd. could be a right-in and right-out, prohibiting traffic to turn left onto Gills Neck Rd.; that she feels until improvements are made, people will attempt to take the back way of Gills Neck Rd. into Lewes and she questioned if the Applicant has had any discussions with the school district.

Mr. Hutt stated he is unsure if there is a defined plan, especially with the new plan of the roundabout; that the Applicant intends to work with the Byway Commission as the dualization process moves forward; that the Byway Commission was excited with the Applicant's proposal shown in the rendering; that the Byway Commission did want trees and boulevards; that the Applicant hopes to accomplish as much as they can within the remaining area; that the Applicant is agreeable to the proposals made in the TIS Review Letter; that DelDOT will regulate if there should be open or closed drainage system along Kings Hwy.; that they are learning what the proposed plans are for the dualization of Kings Hwy.; that he cannot speculate on what will be required and the Sussex County Engineering Department verified the calculations to ensure there is a balanced budget on what is proposed.

Mr. Bryan Behrens spoke on behalf of the Application, that he is the group engineer for DelDOT's project development for the south section; that he is in charge of the design of the Kings Hwy. dualization project; that proposed currently is open drainage, which will be swales adjacent to the roadway; that they did reach out to the Lewes Byways Commission ahead of the DelDOT public workshop to present their proposal; that he believes Lewes Byways Commission was similarly as

enthusiastic about the proposal as DelDOT was; that they are proposing a shared-use path and landscaping, which is the same proposal as the Applicant, providing room for collaboration and he does not have a rendering of the highway during the interim improvements.

Mr. Lardner stated they only have a drawing to show what the proposed travel lanes will look like; that he does not have a rendering of what the improvements will look like; that he has a drawing showing where the travel lanes will be once the roadway is shifted; that all details will be worked out with Mr. McCabe and his staff as part of the review process; that there is still a lot more collaboration to go through of how the final lanes will look; that there will be two lanes heading southbound out of the City of Lewes, heading toward Dartmouth Dr.; that there will be shoulders on both sides the roadways, in the interim condition, and upon final construction; that the driveway material has not been finalized, as the homeowners need to be part of the conversation when discussing long-term maintenance; that there will be infiltration in all rear yard swales; that this will allow the back half of roof run off to drain into the rear yard swales with infiltration in them; that the roadways will have perforated piping; that this will allow the roadways to infiltrate as soon as the drainage hits the system; that drainage will infiltrate through the roadbed; that any runoff which still makes it to the infiltration ponds, will further infiltrate within the pond; that the pond will have a pre-treatment system on it; that this will further protect the wellheads; that their intent is to infiltrate at the source; that they will balance the budget to ensure they comply completely with the Wellhead Protection requirements; that they have proposed two parking spaces per unit; that there is a parking area by the clubhouse; that during non-business hours the parking lot of the Cape Henlopen Medical Center could be used; that he believes there are other opportunities for overflow parking elsewhere, however those areas are not reflected on the current site plan; that they do have an exit from the property to Big Oyster; that he can speak to Big Oyster's plan, as they have worked very closely with Mr. Hammer and the Big Oyster staff to ensure Big Oyster's and the Applicant's needs are both met; that the stub shown on the site plan is the interconnection to Big Oyster's proposed plans in the back; that they would have access to Big Oyster, through the roundabout, both in and out; that once the improvements are completed along Kings Hwy. they will have access to the dualized roundabout; that this will provide interconnectivity to Big Oyster; that collaborations will be ongoing as the Applicant and Mr. Hammer have been partners for a long time; that traffic accessing the project from Kings Hwy. would be required to cut through the residential section, in trying to keep the peaceful nature of the neighborhood; that they were attempting to separate the medical office commercial traffic, by only using the Gills Neck intersection; that commercial traffic can be heavy at times; that Gills Neck Rd. is not much smaller in the particular section being referred to; that traffic coming down Gills Neck Rd. toward Kings Hwy. would access the medical center by turning right, before reaching Kings Hwy; that the frontage of Gills Neck Rd. is adequately sized to handle the traffic when using the intersection, where as a subdivision street at 24-ft. wide is not designed for the commercial use; that he does not feel residents from the proposed community would take Gills Neck Rd. to access Lewes, as they will have access to Kings Hwy. as well as the Gills Neck Rd. intersection; that the potential for a right-in and right-out only would be regulated by DelDOT; that DelDOT granted the access as a full access and entrance; that DelDOT prefers the access to be on the lower classification roadway rather than the high classification roadway; that this causes competing interests regarding the entrance; that it would be quicker for residents to take a right onto Kings Hwy. into Lewes than to take the back way through Gills Neck Rd.; that he does not understand how eliminating the left onto Gills Neck Rd. will achieve Ms. Stevenson's goal; that he reached out to the Superintendent and

Director of Operations; that they did not want to provide a letter in support or opposition; that the school district was sent a letter with the plans; that they currently are and will continue coordinating with the school district regarding school bus stops.

Mr. Thomas Brockenbrough spoke on behalf of DelDOT in relation to the Application; that it is physically possible to create a no left turn onto Gills Neck Rd. from the project by widening Gills Neck Rd. and providing a median; that the construction of this will not be easy; that it will be costly, and it may be out of character with the Lewes Byway.

Ms. Wingate stated people wanting to make the left onto Gills Neck Rd. will most likely cause a lengthy wait, as there will not be a light at the location, causing people to avoid turning left and she would also like to see additional parking provided within the community.

Mr. Mears stated he also agrees with the need for additional parking; that he questioned if every proposed unit would have a garage and a garage will help with the parking issues.

Mr. Lardner stated every unit is proposed to have a garage. The Commission found that Mr. Tom Panetta spoke in opposition to the Application; that he is speaking on behalf of Lewes Board of Public Works; that he also lives in Lewes; that Lewes Board of Public Works opposes the Change of Zone request; that the five wells providing for the City of Lewes are located directly across the street from the project; that the proposed project along with the existing medical office complex building, the Village Center, the Village Center Cottages, along with 37 additional acres, sit directly over the Wellhead Protection Area; that this creates grave concern for them; that the Lewes Board of Public Works presented in front of the Planning & Zoning Commission before; that all of the water for Lewes and the service territories comes from the five wells; that the wells were replaced in the late 1950's to early 1960's; that DNREC has mentioned the placement of the wells is the most ideal locations for the Aquaphor; that they have been searching for redundant sites, but have been unsuccessful in finding a more suitable location; that the last study on the Wellhead Protection Area was performed in 2003; that since the study they have seen an increase in the pumping rate of 25%, from 400 to 500 million gallons per year; that the pumping is currently still within the permits; that Lewes has increased their pumping, but the surrounding wells have also increased pumping; that they have been in discussions with Geotech and DNREC questioning if the Wellhead Protection Area is currently sufficient as is; that the subject property and other properties mentioned, cover a third to a quarter of the Wellhead Protection Area; that the five wells drawn from 85-ft. to 100-ft. deep; that they are not very deep; that placing stormwater infiltration ponds directly within the Wellhead Protection Area, adjacent to the wells, does not allow much time to recover if something were to spill; that all of the nutrients from landscaping and surface contamination from the roads are going to be sent to the stormwater ponds; that he finds it hard to believe the site will be 44% of impervious coverage, given the density, roads, walkway, tennis courts and pool; that he had also spoke at the PLUS meeting; that the PLUS report submitted to Sussex County stated the pavement should be pervious; that the plan shows the pavement as conventional hot mix; that the use of pervious pavement would greatly reduce the amount of water to be sent to the stormwater ponds; that the PLUS report also mentioned using rain gardens, filter strips and other best practices; that he did not see these proposed in the plans; that Sussex County, the City of Lewes and the Lewes Board of Public Works have already purchased the Jones Farm due to the concern for protecting the Wellheads; that collectively \$6,000,000.00 was spent to accomplish this; that with this project the remaining portion of the Wellhead Protection Area is in

danger of being developed; that this is a cumulative issue, not being just the proposed project; that this issue needs to be looked at holistically; that the Lewes Board of Public Works has not issued a Readiness to Serve, for the electric for the project; that without a master plan, a holistic overview of all the lands along Kings Hwy., the wellhead will suffer a death by a thousand cuts and this will jeopardize everyone in Lewes, and all of the service territory.

Chairman Wheatley questioned if the property is located within the service area of Lewes Board of Public Works.

Ms. Stevenson questioned if Mr. Panetta had any suggestions as to how the project could make things better regarding the Wellhead Protection Area.

Mr. Robertson questioned if the Wellhead Protection Area is important to Lewes, what was the reasoning for Lewes not annexing the surrounding areas.

Mr. Panetta stated half of the property is located within the CPCN of Lewes Board of Public Works and the other half of the property is not; that the City of Lewes must agree to any service outside of the city limits; that he stated the City of Lewes wanted to attend the public hearing, but they had a Mayor and City Council meeting going on concurrently, which included all staff; that they intend to submit a formal letter to Planning and Zoning; that moving the stormwater pond out of the Wellhead Protection Area would help; that the stormwater pond is located within the worst possible area on the property; that the Wellhead Protection Area is located within the lower corner for the property; that the soils on the entire property are part of the recharge area; that they are having additional studies performed to confirm the true impact on the wells, as well as the private wells in the area; that the Village Center Cottages is located completely in the Wellhead Protection Area; that without looking at these projects holistically, decisions will be difficult to make and the City of Lewes does not have the right to annex properties without the owner applying for annexation first.

Mr. Robertson stated the public hearing will be closed for the Planning & Zoning Commission unless the Commission chose to hold the record open, however, public comments can be submitted for the public hearing before the County Council.

Chairman Wheatley questioned what the County Code states regarding the Wellhead Protection Area; that he questioned if there was a prior situation where the existence or location of the stormwater ponds caused adverse issues for a municipal water system and if the land was currently being tilled with chemicals.

Mr. Whitehouse stated Chapter 89 of the County Code focuses more on the site plan review rather than the use; that in any Wellhead Protection Area, with less than 35% impervious cover, there is no requirement; that there is a requirement an Environmental Assessment be submitted when 35% to 60% of impervious cover is proposed; that the Environmental Assessment must include an appropriate level of detail of how the area should be managed and development within the area is not prohibited within the 35% to 60% range, however, does require supporting technical analysis.

Mr. Panetta stated if the Commission performs a search they will find examples, such as a dry cleaning business contaminating wells with trichloroethylene; that there are issues with contaminants on roadways, such as hydraulic fluid and gasoline being washed into the stormwater ponds; that farmers apply fertilizer as required to meet the soil requirements; that this is different than a homeowner who

applies fertilizer twice a year; the difference is a business operation versus residential use; that the Chesapeake and Coral Gables, Florida are controlling the amount of fertilizer being used for residential use and he feels this should be considered with the proposed project.

The Commission found Mr. Jay Tomlinson spoke by teleconference with questions regarding a potential construction date for the interim improvements for the proposed project, as the previous TIS referenced the former project; that he questioned if it was intended to have commercial businesses along the first floor and the possibility of leaving the record open.

Mr. Hutt stated he believes Mr. Tomlinson's concern originated from the statement within the TIS regarding the separation between retail business and professional office space.

Mr. Lardner stated the milestone for the proposed interim improvements is immediate, that the interim improvements are required to be installed and accepted before the first Certificate of Occupancy is granted for the project; that there will not be businesses along the first floor of the proposed professional office building; that the office building will be strictly for professional, dental and/or medical offices; that there will be no intent for retail or convenient stores; that with the original study they had proposed a 6,500 sq. ft. commercial shopping center; that this intent is where the initial 117,500 threshold originates from and the proposed project generates less traffic than the 117,500 trips, which is why they have agreed to perform the interim improvements immediately before the first Certificate of Occupancy. Ms. Wingate questioned the potential to move the location of the stormwater management pond. Ms. Stevenson questioned which direction the runoff would naturally run.

Mr. Lardner stated there is an opportunity to relocate the stormwater management pond; that it would require a redesign of the site, with a potential loss of units; that they have proposed recharge in excellent areas and Wellhead Protection Areas; that there have been conversations regarding impervious surfaces; that there are stormwater management practices within the Wellhead Protection Areas; that these are different practices to achieve the same result; that the Applicant has proffered for pretreatment of the system, should there be a leaking vehicle or a similar situation; that the runoff naturally runs away from the Wellhead Protection Area and this is stated within the report prepared by Mr. Cahill.

The Commission found there was no one present in the room or by teleconference who wished to speak in support or opposition to Applications, 2022-01, C/Z 1967, C/Z 1968, and C/U 2334 for Henlopen Properties, LLC.

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

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

In relation to Application 2022-01 Henlopen Properties, LLC. Motion by Ms. Stevenson to defer action for further consideration, seconded by Mr. Hopkins, and carried unanimously. Motion carried 5-0.

In relation to Application C/Z 1967 Henlopen Properties, LLC. Motion by Ms. Stevenson to defer action for further consideration, seconded by Ms. Wingate, and carried unanimously. Motion carried 5-0.

In relation to Application C/Z 1968 Henlopen Properties, LLC. Motion by Ms. Stevenson to defer action for further consideration, seconded by Mr. Hopkins, and carried unanimously. Motion carried 5-0.

In relation to Application C/U 2334 Henlopen Properties, LLC. Motion by Ms. Stevenson to defer action for further consideration, seconded by Ms. Hopkins, and carried unanimously. Motion carried 5-0.

Minutes of the April 14, 2022 Planning & Zoning Commission Meeting

The Commission discussed the application which has been deferred since March 10, 2022.

Ms. Wingate moved that the Commission recommend approval of C/Z 1967 Henlopen Properties, LLC, for a Change in Zone from AR-1 to MR based upon the record made during the public hearing and for the following reasons:

1. This application seeks a change in zone from AR-1 to MR. The purpose of the MR zone is to provide housing in an area which is expected to become urban in character and where central water and sewer is available.
2. Both central water and central sewer will be available to this site.
3. This site is the location of the Gill's Neck Road and King's Highway lighted intersection. DelDOT is also planning to improve the King's Highway Corridor in the near future. Given its location adjacent to these roadways and this intersection, MR zoning is appropriate for this property.
4. The property is in the immediate vicinity of other properties that are commercially zoned or are being used for business, commercial and institutional uses. The site is also across from the Cape Henlopen High School campus. There is also extensive MR-zoned property to the east of this site. This rezoning is consistent with other zoning and land uses in the area.
5. The proposed MR Zoning meets the purpose of the Zoning Ordinance in that it promotes the orderly growth of the County in an appropriate location.
6. The site is located within the Coastal Area according to the Sussex County Comprehensive Plan. MR Zoning is appropriate in this Area according to the Plan.
7. For all of these reasons, MR zoning is appropriate for this site.

Motion by Ms. Wingate, seconded by Mr. Hopkins and carried unanimously to recommend approval of C/Z 1967 Henlopen Properties, LLC for the reasons and conditions stated in the motion. Motion carried 4-0.

The vote by roll call: Ms. Stevenson – Yea, Mr. Hopkins – Yea, Ms. Wingate – Yea, Chairman Wheatley – Yea

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Sussex County

DELAWARE
sussexcountyde.gov

Memorandum

To: Sussex County Planning Commission Members
From: Christin Scott, Planner I
CC: Vince Robertson, Assistant County Attorney, and applicant
Date: March 2, 2022
RE: Staff Analysis for CZ 1967 Henlopen Properties, LLC

This memo is to provide background and analysis for the Planning Commission to consider as a part of application CZ 1967 Henlopen Properties, LLC to be reviewed during the March 10, 2022, Planning Commission Meeting. This analysis should be included in the record of this application and is subject to comments and information that may be presented during the public hearing.

The request is for a Change of Zone for part of Tax Parcel 335-8.00-37.00 (portion of) to allow for a change of zone from an Agricultural Residential (AR-1) Zoning District to a Medium Residential (MR) Zoning District. The property is lying on the southeast side of Kings Highway (Rt. 9), approximately 390 feet northeast of Gills Neck Road (S.C.R. 267) and on the north side of Gills Neck Road (S.C.R. 267) approximately 329 southeast of Kings Highway (Rt. 9). The portion of the parcel to be rezoned consists of 43.777 acres +/-.

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

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

The portion of this property is zoned Agricultural Residential (AR-1) Zoning District. Adjacent parcels to the north are also zoned Agricultural Residential (AR-1) Zoning District, as well as General Commercial (C-1) and Heavy Commercial (C-3). The properties to the north are zoned Medium Residential (MR) and the properties across Kings Highway and Gills Neck Road to the west and south are zoned Agricultural Residential (AR-1) Zoning District and Neighborhood Business (B-1).



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

Since 2011, there have been nine (9) Change of Zone applications within a 2-mile radius of the application site. The Change of Zone applications approved include Medium Residential (MR), Neighborhood Business (B-1), Heavy Commercial (C-3) and Medium Commercial (C-2) Zoning Districts.

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



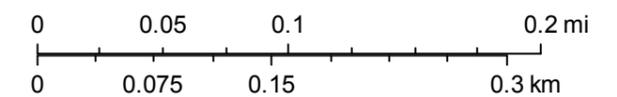
Sussex County



PIN:	335-8.00-37.00
Owner Name	JEFF-KAT LLC
Book	5613
Mailing Address	1007 KINGS HWY
City	LEWES
State	DE
Description	SE/KINGS HWY
Description 2	RESIDUAL LANDS
Description 3	N/A
Land Code	

- polygonLayer**
 - Override 1
- polygonLayer**
 - Override 1
- Tax Parcels
- Streets
- Hundred Boundaries
- County Boundaries
- Tax Ditch Segments**
 - Tax Ditch Channel
 - Pond Feature
 - Special Access ROW
 - Extent of Right-of-Way
 - Municipal Boundaries
 - TID

1:4,514





Addresses / Parcels

■ TaxParcels

Council Districts

■ Fire Districts

■ County District 01

■ County District 02

■ County District 03

■ County District 04

■ County District 05

□ County Boundaries

Schools/Libraries

■ School Buildings (Various)

■ School Library

■ Public Library

■ Special Library

■ DOE School Districts

■ DOE VoTech School Districts

Hydrology

■ Streams / Rivers

■ Lakes, Ponds, Bays

Flood Zones

■ 0.2% Annual Chance Flood Hazard

■ A

■ AE

■ AO

■ Open Water

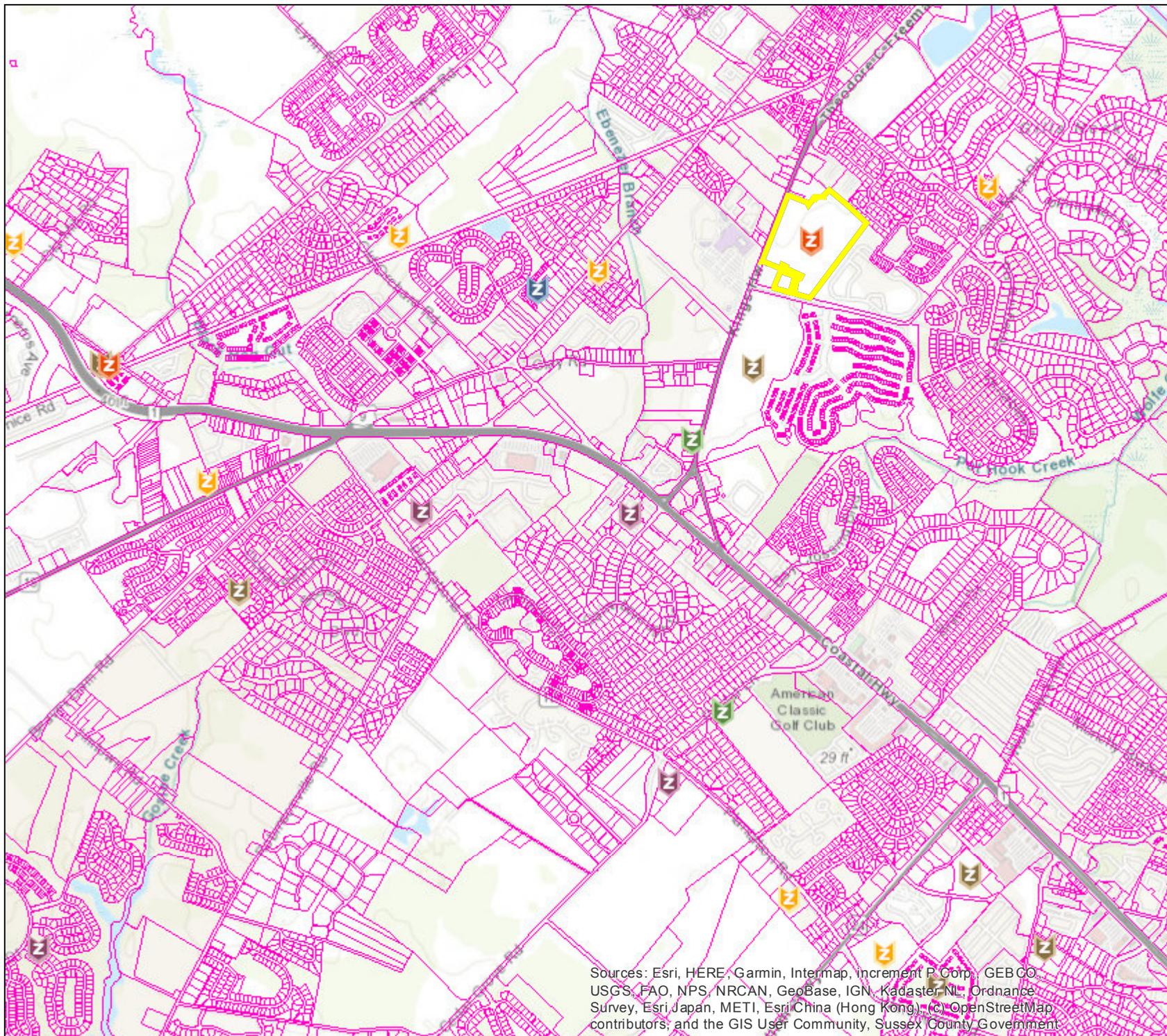
■ VE

■ Public Protected Lands

■ Municipalities

■ Communities

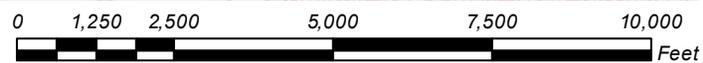
■ Boundaries State County



Sources: Esri, HERE, Garmin, Intermap, increment P Corp., GEBCO, USGS, FAO, NPS, NRCAN, GeoBase, IGN, Kadaster NL, Ordnance Survey, Esri Japan, METI, Esri China (Hong Kong), (c) OpenStreetMap contributors, and the GIS User Community, Sussex County Government

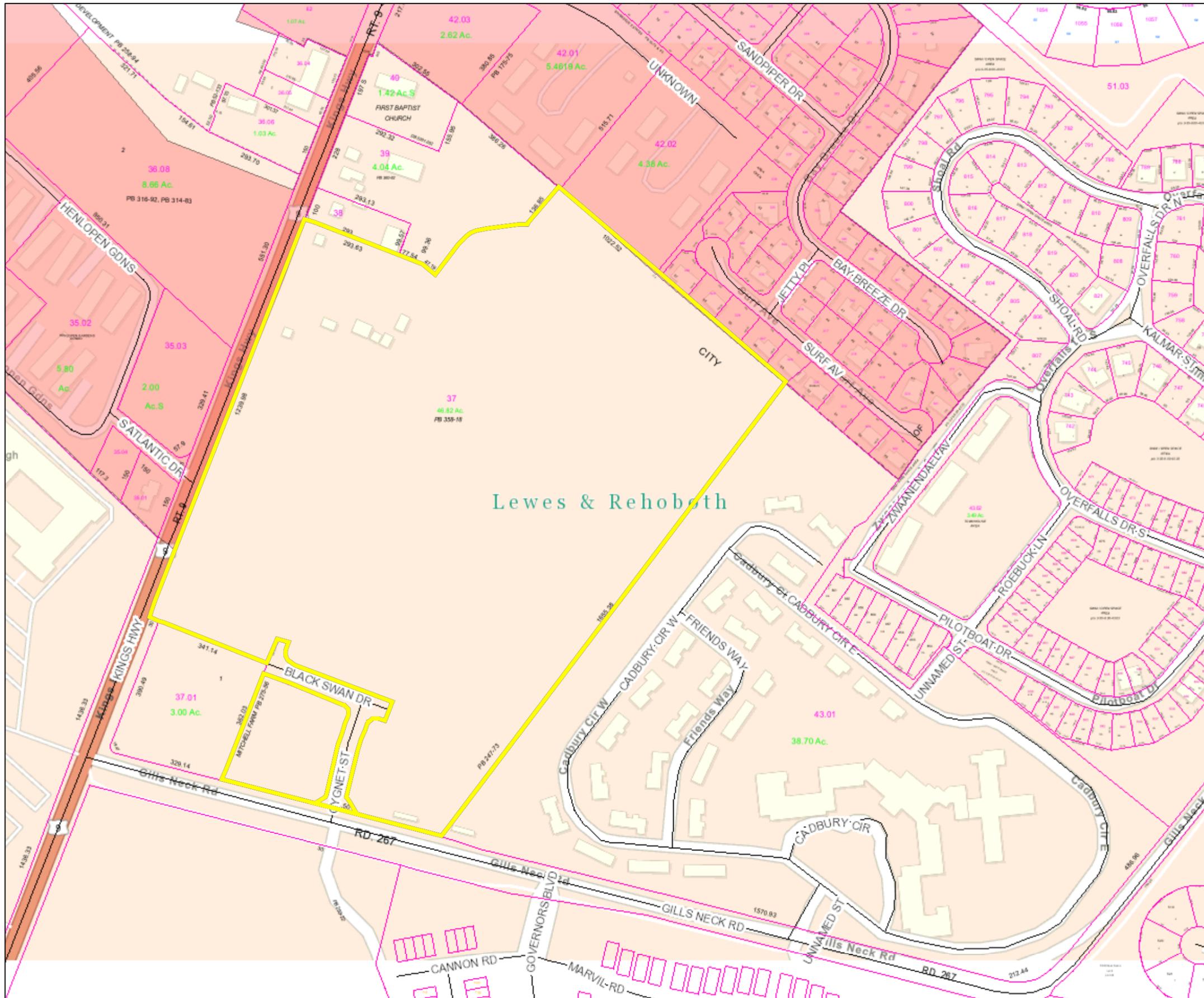


Sussex County Map





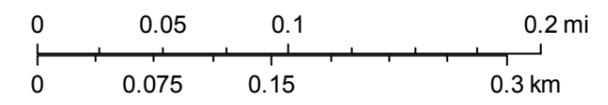
Sussex County



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Description 3	N/A
Land Code	

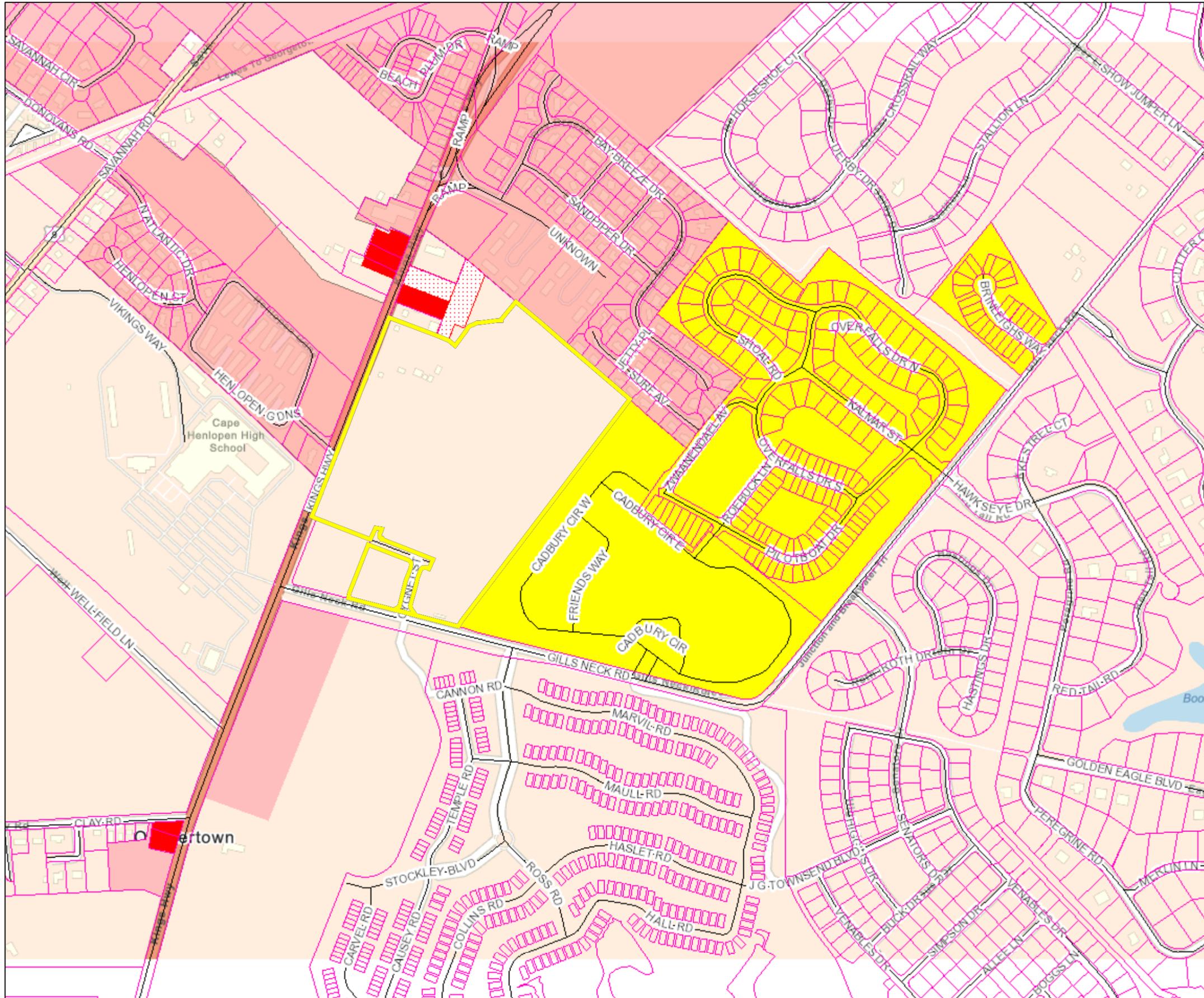
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 - Override 1
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- Tax Parcels
- Streets
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- County Boundaries
- Tax Ditch Segments**
 - Tax Ditch Channel
 - Pond Feature
 - Special Access ROW
 - Extent of Right-of-Way
 - Municipal Boundaries
 - TID

1:4,514





Sussex County



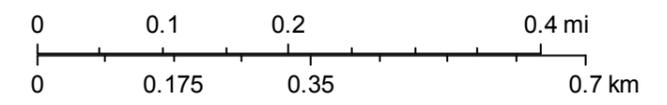
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Description 3	N/A
Land Code	

- polygonLayer**

 - Override 1
- polygonLayer**

 - Override 1
- Tax Parcels
- Streets

1:9,028



Introduced: 2/1/22

ORDINANCE NO. ____

AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A MR MEDIUM RESIDENTIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES & REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 43.777 ACRES, MORE OR LESS

WHEREAS, on the 5th day of January 2022, a zoning application, denominated Change of Zone No. 1967 was filed on behalf of Henlopen Properties, LLC; and

WHEREAS, on the ____ day of _____ 2022, a public hearing was held, after notice, before the Planning and Zoning Commission of Sussex County and said Planning and Zoning Commission recommended that Change of Zone No. 1967 be _____; and

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

NOW, THEREFORE, THE COUNTY OF SUSSEX HEREBY ORDAINS:

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

Section 2. The subject property is described as follows:

ALL that certain tract, piece or parcel of land lying and being situate in Lewes & Rehoboth Hundred, Sussex County, Delaware, and lying on the southeast side of Kings Highway (Rt. 9) approximately 390 feet northeast of Gills Neck Road (S.C.R. 267) and on the north side of Gills Neck Road (S.C.R. 267) approximately 329 feet southeast of Kings Highway (Rt. 9) and being more particularly described in the attached legal description prepared by Davis, Bowen & Friedel, Inc., said parcel containing 43.777 ac., more or less.

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

JAMIE WHITEHOUSE, AICP
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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 24, 2022

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

The Planning and Zoning Department received an application (C/Z 1968 filed on behalf of Henlopen Properties, LLC) to amend the Comprehensive Zoning Map of Sussex County from an AR-1 Agricultural Residential District to a C-2 Medium Commercial District. The property is located on the north side of Gills Neck Road (S.C.R. 267), approximately 329 feet southeast of Kings Highway (Rt. 9). The change of zone is for 3.041 acres, more or less.

The Planning and Zoning Commission held a public hearing on March 10, 2022. At the meeting of April 14, 2022, the Commission recommended approval of the application for the 7 reasons as outlined within the motion (included below).

The County Council held a public hearing on April 26, 2022. A motion was made to defer action on the application for a period of two weeks to May 6th for the Lewes Board of Public Works and any other member of the public to submit their reports on the well head protection issue. Subsequent to that, the Applicant would have an additional period of time until May 20th to submit any response to that. At the meeting of May 24, 2022, the County Council closed the Public Record and deferred action on the application for further consideration.

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

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



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

Minutes of the March 10, 2022 Planning & Zoning Commission Meeting

C/Z 1968 Henlopen Properties, LLC

AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A C-2 MEDIUM COMMERCIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES & REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 3.041 ACRES, MORE OR LESS. The property is lying on the north side of Gills Neck Road (S.C.R. 267) approximately 329 feet southeast of Kings Highway (Rt. 9). 911 Address: N/A. Tax Parcel: 335-8.00-37.00 (portion of).

Mr. Whitehouse advised the Commission that submitted into the record for C/Z 1967, C/Z 1968, and C/U 2334 for Henlopen Properties, LLC is the Applicant's Site Plan, the Applicant's Exhibit Booklet, the Traffic Impact Study (TIS), and the DelDOT response to the TIS, a letter from Sussex County Engineering Department Utility Planning Division, the PLUS Comments, the responses to the PLUS comments, a Cultural Resource Assessment, an Environmental Assessment, three letters of support, two letters of opposition and four mail returns.

The Commission found that Mr. David Hutt, Esq. with Morris James spoke on behalf of Applications 2022-01, C/Z 1967, C/Z 1968 and C/U 2334 for Henlopen Properties, LLC; that he is representing both the owners of the property, Mitchell Family, LLC and the Applicant, Henlopen Properties, LLC; that also present were Mr. Robert Mitchell, a member of the Mitchell Family, LLC, Mr. John Myer and Mr. Jon Hoffman, representatives of Henlopen Properties, LLC., Mr. Ring Lardner and Mr. Cliff Mumford, civil engineers with Davis, Bowen & Friedel, Inc.; Mr. Dennis Hughes, II, the traffic engineer with Davis, Bowen & Friedel, Inc., Mr. Steven Cahill, geologist, Mr. Edward Otter, archeologist and Mr. Mark Davidson, a principal land planner with Pennoni; that the current Applications were not the first Applications to be filed for the project; that the first proposed plan for the property was filed in April 2019; that the name of the project has changed several times; that the project was called "The Mitchell Farm" with the submission of the first Application; that the approved name became Zwaanendael Farm; that the property is currently known as Mitchell's Corner; that a number of things have changed since the Applications were filed; that the world experienced the COVID-19 Pandemic; that there has been a change in the directorship of Sussex County Planning & Zoning, from Ms. Janelle Cornwell to Mr. Jamie Whitehouse; that since the submission of the Application there have been numerous conversations and correspondence regarding the scheduling of the public hearings for the Applications; that in order to have a public hearing on a land use application, pursuant to the memorandum of understanding between DelDOT and Sussex County, a Traffic Impact Study (TIS) Review Letter was required; that the Applicant was awaiting the completion of the TIS Review Letter; that the initial response to the TIS Review Letter occurred October 2021; that the response was to the TIS performed for the initial Application; that the initial proposal had the Cape Henlopen Medical Center on the corner of Kings Hwy and Gills Neck Rd., C-3 Heavy Commercial properties along Kings Hwy., B-2 Business Community District properties located along Gills Neck Rd. and MR Medium-Density Residential located for the rest of the property, where apartments and other housing were proposed with a Conditional Use and Subdivision Application; that initially there was a total of five submitted applications; that since then, the applications have been reduced to four applications; that the current Applications received a Supplemental TIS Review letter; that the currently proposed Applications reduced the commercial

impact of the project; that stated within the Supplemental TIS Review Letter, the Applications being heard are a trip generation reduction of almost 50% from the initial Applications; the subject property is located across the street from the Cape Henlopen High School; that next to the Cape Henlopen School is the Jack Lingo Real Estate office; that currently under construction is the Lewes Medical Campus, which is proposed to be an assisted living facility; that west of Gills Neck Rd. is the future location of the Village Center; that located on the same side as the subject property, at the corner of Gills Neck Rd. and Kings Hwy. is the Cape Henlopen Medical Center; that the Mitchell Family filed a previous Conditional Use Application (C/U 2112) in 2018 for the Cape Henlopen Medical Center; that C/U 2112 was for medical professional offices in a 39,000 sq. ft. building; that the Cape Henlopen Medical Center is a good demonstration of the need for professional services within Sussex County as it serves many residents within the immediate area; that continuing down Kings Hwy, on the same side as the subject property, toward the City of Lewes, are the offices of Lane Builders; that the next property is the Big Oyster Brewery; that on the northern boundary of the property is Jefferson Apartments and Bay Breeze Estates, both of which are located within the City of Lewes; that on the eastern side of the subject property is The Moorings, formally known as Cadbury at Lewes; that the most detailed history of the project can be found within the Cultural Resource Assessment, prepared by Dr. Otter; that the majority of the mentioned culturally significant resources are found closer to Pot Hook Creek than the subject site; that the historical item mentioned is the existing farmhouse located on the subject property; that the farmhouse is still occupied by Mr. Jerry Mitchell; that Dr. Otter's report mentioned the farmhouse, outbuilding and additional structures require documentation before being removed from the property; that a condition proposed by the Applicant states the property and structures would be properly documented before removal; that the Applicant plans to have Dr. Otter perform the documentation before the removal of the farmhouse; that the subject property has been with the Mitchell Family since the late 1800's; that the first Mitchell family member was a Robinson; that if one looks at the George Robinson ownership in the late 1800's, that is when the Mitchell Family ownership began; that most recently Mr. Mitchell and his family have owned the 58-acre farm; that from 1998 until 2013 the property was located with the Agricultural Preservation; that with the development around the subject property, the farmland was becoming very difficult to farm, which resulted in the decision to sell the property; that as the Mitchell Family was working toward selling, they were approached by adjacent property owners; that several portions of the 58-acre parcel was sold to adjacent neighbors; that the portion to the rear of the property was sold to The Moorings, which was the subject of a recent Application Change of Zoning to Medium-Density Residential and to request an Residential Planned Community (RPC); that there was a portion sold to The Big Oyster, which was the subject of an application for rezoning from AR-1 to C-3; that the parcel, located on the corner of Kings Hwy. and Gills Neck Rd. was the subject of C/U 2112 for the Cape Henlopen Medical Center; that property most recently sold again sold to The Big Oyster Brewery for additional expansion; that the recently sold property will be the subject of a Change of Zone application, requesting rezoning from AR-1 to C-3, at the Planning & Zoning meeting on April 14, 2022; that after the pieces of lands were sold off, the property currently consists of 47-acres; that the current Applications request a Change of Zone, for approximately three acres, next to the site of the Cape Henlopen Medical Center; that the Change of Zone Application seeks to change the zoning designation from AR-1 to C-2 Medium Commercial; that an additional Change of Zone Application request to change the zoning classification of approximately 44-acres of the property from AR-1 to MR (Medium-Density Residential); that there is also a Conditional Use Application seeking approval

for a multi-family use of the property, for 267 units, on the MR zoned portion of the property; that the final Application is a Subdivision application, which was necessary to create all the various component parts of the project; that currently the property is completely zoned AR-1; that immediately south of the proposed site is B-1 Neighborhood Business Zoning, which is the location of the Village Center Project; that moving closer toward Rt. 1, there is existing C-1 and B-1 properties at the corner of Clay Rd. and Kings Hwy.; that more toward the City of Lewes, the Big Oyster property is zoned C-1, with C-3 property immediately behind it; that across the street from the subject site are two properties, located within the City of Lewes, zoned as General Commercial; that immediately behind that property is R-5 Zoning, which is the City of Lewes' mixed residential zoning; that adjacent to those properties is the City of Lewes', CFHC Zoning, which is Community Facilities Health Care Zoning; that this is the site of the Lewes Senior Campus; that located closer to the City of Lewes is more General Commercial properties; that to the north side of the property is R-5, Mixed Residential for the City of Lewes; that also located near the subject property is R-2, Residential Low Density Zoning with the City of Lewes; that nearby, The Moorings, Breakwater and Admirals Chase, are located within the MR (Medium-Residential Zoning) with Sussex County; that the project is located within the Coastal Area according to the Future Land Use Map; that surrounding areas to the project are also located within the Coastal Area or a commercial area; that the Coastal Area is designated as one of the Sussex County's seven growth areas; that Chapter 4 of the Comprehensive Plan includes Table 4.5-2, which compares zoning districts applicable to Future Land Use categories; that both the C-2 (Medium Commercial District) and the MR Medium-Density Residential District are applicable zoning districts within the Coastal Area; that the County Code describes the purpose of the C-2 (Medium Commercial Zoning District) as a district which supports retail sales and performance of consumer services, permitting a variety of retail, professional and services businesses; that the district should be primarily located near arterial and collector streets; that the district accommodates community commercial users who do not have outside storage or sales; that the County Codes description of the C-2 Medium Commercial District exactly describes the purpose the Applicant desires with the proposed project; that the project proposes to provide additional professional and business services in an area where the services are needed; that this need is demonstrated best by the success of the Cape Henlopen Medical Center; that the previously approved Conditional Use for the Cape Henlopen Medical Center mirrors the purpose proposed for the property; that the developer hired an architect to design a building for the site; that the architect studied the architecture in the area; that the architect provided a letter explaining the proposed building, as shown on the rendering; that there are comments on record regarding the architecture along Kings Hwy. and how the proposed building does not match; that the architect described the architecture along Kings Hwy. as numerous architectural motifs in the context which may be evoked to rationalize any architectural style; that do to the various architectural styles along Kings Hwy. it is difficult to match any one of those; that the developer requested the architect consider the nearest architectural style and blend the building to those nearest to the property; that features from the Cape Henlopen Medical Center and Cape Henlopen High School, compliment those features while performing the same idea for the proposed townhomes along Kings Hwy.; that once the site plan was established, the Applicant requested Mr. Mark Davidson, Land Planner with Pennoni, to review the land plan; that the peer review provided by Mr. Davidson is included in the record; that the developer determined the square footage of all buildings in the surrounding area; that some of the buildings considered were Cape Henlopen High School at 367,000 sq. ft., Lewes Senior Living Campus at 223,000 sq. ft., The Moorings at 117,000 sq. ft., the future Village Center

at 75,000 sq. ft. and Cape Henlopen Medical Center at 39,000 sq. ft.; that the building proposed for the project is smaller than almost all other studied buildings, being just slightly bigger than the Cape Henlopen Medical Center; that the proposed building is an appropriate size and scale for the area; that the County Code states commercial properties should be located along arterial and collector streets; that Kings Hwy. is a perfect match for this proposed use as it is considered a major arterial by Sussex County; that the same process and considerations were made regarding the proposed rezoning of 44-acres to be MR Medium-Density Residential; that according to the Sussex County Code, the MR District is to provide for medium-density residential development in area which are, or expected to become, generally urban in character and where sanitary sewer and water supplies may or may not be available at the time of construction; that a permitted Conditional Use is for multi-family dwelling structures, which created the need for the Conditional Use application, which accompanies the Change of Zone application; that the purpose of a Conditional Use is to provide uses which are generally public or semi-public in character, being essential and desirable for the convenience and welfare; that because of the nature of the use, the importance to the relationship of the Comprehensive Plan and possible impact on neighboring properties and Sussex County, create the requirement for extra planning judgement on location and site plan; that housing is considered public or semi-public in character; that housing is desirable, particularly within the Coastal Area; that the purpose of the presented Applications are to provide for medium residential development, in areas which are becoming more urbanized; that there are townhomes and duplexes located within Governors, Admirals Chase, Breakwater, The Moorings and The Lewes Senior Living Campus; that within the City of Lewes, multifamily housing is offered at Jefferson Apartments, Dutchman's Harvest and Henlopen Gardens; that Bay Breeze Estates is a single-family use, located within the R-2 zoning classification with the City of Lewes, that the density within Bay Breeze Estates is still three units to an acre; that Jefferson Apartments, Dutchman's Harvest and Henlopen Gardens, within the City of Lewes, are all zoned R-5; that R-5 Zoning is the City of Lewes' multifamily residential district, where the purpose is to provide a mix of housing types to include multifamily and affordable housing alternatives; that multifamily is located adjacent to the subject property, as well as across the street from the property; that in correspondence in the file, there is reference to the density for the project; that include in the project book, are the densities for the surrounding communities; that Dutchman's Harvest is 17 units to the acre; that Jefferson Apartments is 9.8 units to the acre; that The Moorings is 6.4 units to the acre; that Henlopen Gardens is 5.5 units to the acre; that Bay Breeze Estates is 3 units to the acre; when considering the Future Land Use Map and the densities of surrounding areas, the proposed density of 6.1 units to acre is consistent to the surrounding area; that the more intense uses should be located closer to the highway, decreasing in intensity moving further away from the highway; that this is accomplished by placing the townhomes and commercial area along Kings Hwy.; that moving closer to Bay Breeze Estates and The Moorings the uses become duplexes, which are a less intense use; that the Comprehensive Plan states lands within the Coastal Area should be able to accommodate both commercial and residential provided special environmental concerns are addressed; that medium to higher densities, between 4 to 12 units to the acre, can be appropriate in certain locations; that an appropriate location for this is where there is central water and sewer, when near a significant number of commercial uses and employment centers, when keeping with the character of the area, when situated along a main road or near a major intersection and where there is adequate level of service; that the project meets all of those characteristics; that the TIS Review Letter did state there are several intersections without adequate levels of service within the area; that the final solution to

the issue is the dualization of Kings Hwy.; that waiting on the improvements would not be beneficial to the community or the project; that due to this, the developer and DelDOT agreed upon interim improvements, to allow traffic to be improved for the time period it takes for DelDOT to complete the dualization project; that the proposed interim improvements are more than what is required within the Memorandum of Understanding between Sussex County and DelDOT; that the Memorandum of Understanding seeks to have a Level of Service D at intersections; that the most recent Memorandum of Understanding recognizes the Level of Service D is not always obtainable and this requirement may create an undue burden on a property owner looking to develop a property, given the prior development which has occurred in an area contributing to the existing level of service; that a level of service cannot be degraded by a project; that with the proposed interim improvements, there will be no degrading by the proposed project; that the improvements will provide and upgrading of service until DelDOT provides the final solution with the dualization of Kings Hwy.; that it would be unfair to request the last individual developing a property to fix all the issues; that in 2009 the need for the dualization of Kings Hwy. was recognized; that the improvements along Gills Neck Rd. have been accomplished; that during the February 23, 2022 workshop with DelDOT, it was said the estimate for the construction improvements was \$23,000,000.00; that it would be an undue burden to require the last property owner to dualize Kings Hwy.; that although the Applicant cannot provide the dualization of Kings Hwy., they did desire to provide some temporary relief, which will be afforded through the interim improvements; that the developer did meet with the Lewes Byways Committee; that the developer agreed upon, as a Condition of Approval for the proposed project, the developer would maintain permanent easement areas and multi-modal path; that DelDOT is pushing the vast majority of the improvements onto the project side of Kings Hwy.; that the property is located within the Level 1 Investment area according to the State Strategies Map; that PLUS had no objection to the proposed project; that Investment Level 1 reflect areas which are already developed in an urban or suburban fashion, infrastructure is available and where future redevelopment or infill projects are expected; that State Strategies Map, Comprehensive Plan and the Zoning Code were all guideposts for the project's design and layout and he submitted proposed Findings and Conditions for the Application and a Willing and Able Letter from Tidewater Utilities.

The Commission found that Mr. Ring Lardner spoke on behalf of the Application; that he is a professional engineer with Davis, Bowen & Friedel, Inc.; that the property is a total of 46.81-acres; that the portion of land requesting C-2 Zoning is located along Kings Hwy., adjacent to the Cape Henlopen Medical Center; that per DelDOT, Kings Hwy. is classified as an Other Principal Arterial, and furthermore identified as a major arterial roadway per No. 7 of the definition found in 115-4 of the County Code; that the remaining portion of land is approximately 43.77-acres and subject to the other three applications; that this portion of land also has frontage along Kings Hwy. and along Gills Neck Rd.; that Gills Neck Rd. is classified as a local road per DelDOT Functional Classification Map; that the layout of the site first began with a 20-ft. forested buffer along The Moorings, Bay Breeze and Jefferson Apartments; that this provides some additional open area to help establish the rear lot lines and allow for drainage; that this was how the lot lines were established for the townhomes and the duplexes; that they looked at the existing entrance, which is currently being utilized for Cape Henlopen Medical Center; that the developer desired to do more residential and move away from the grid street which currently exist; that they designed an arch entrance, which allows the service road to access both commercial properties; that this allows them to avoid redesigning the entrance and roadway;

that in doing this, it allowed the proposed area for a stormwater pond to serve the project; that they looked at how to best connect with the adjacent Big Oyster property; that Mr. Mitchell, the developer and Big Oyster have worked together on various land acquisitions and interconnectivity; that their goal was to separate the commercial traffic from Big Oyster from interacting with the residential traffic; that the same intent was to keep the commercial traffic from traveling through the residential area; that this was their motive for providing the direct connection to Gills Neck Rd.; that commercial traffic is heavier than residential traffic on a normal day; that they designed a mini round-about; that the round-about will be designed allowing vehicles of all types to navigate the circle; that the round-about will be reviewed by both the Fire Marshal and Sussex County Engineering; that once those spots were created, they then focused on a plan which offered a mixture of duplexes, 28-ft. wide and 24-ft. wide townhomes; that there are various prototypes offered within the proposed community; that the roads will be designed to Sussex County standards; that the right-of-way has been narrowed to 40-ft., which is allowable per County Code; that this allows them to bring the houses closer to the roadway, providing at least 20-ft between the sidewalk and the house; that this prevents vehicles from blocking the sidewalk; that No Parking signs will be added to prevent on street parking; that on street parking is always a concern of the Fire Marshal; that No Parking signs will allow enforcement to be occurred within the community if needed; that all lots were designed so no lots were backed up against each other; that all lots have some type of open space between them; that this will help facilitate drainage and landscaping; that sidewalks will be located on both sides of the road for all roadways within the community, with the exception of Road C; that the reasoning is the shared-use path is adjacent to the roadway; that it would not make sense to have a shared-use path and sidewalk next to each other; that active amenities will include a dog park, two mailcenters, a community center, a playground and sports courts for the community to use; that they have added some additional walking paths to promote pedestrian connectivity and walkability within the community; that stormwater management will be provided by infiltration through grass swales, which are located in the open area, to the rear of the lots, perforated pipes and an infiltration basin with the primary and secondary basins being located along Gills Neck Rd.; that higher volume storms, like the 10-yr. and 100-yr. storm events, will discharge via storm pipe through the lands of JG Townsend, which will discharge into a tidal discharge; that the plan was previously approved by Sussex Conservation District for the previous Application; that the pipe will still be able to be used for the current project; that the project does not contain any wetlands; that the project is not located within a flood plain; that the State Housing Preservation Office provided information regarding a known archeological site and some known prehistorical sites with high potential resources due to the known historic structures; that they hired Dr. Edward Otter to complete the Cultural Resource Assessment; that the Resource Assessment can be found in Appendix R of the Exhibit Booklet; that the existing buildings are proposed to be demolished; that Dr. Otter has confirmed he will perform the documentation for the existing buildings, should the Application receive approval; that about 6.34-acres of the project is located within the Wellhead Protection Area and must comply with Chapter 89 of the Sussex County Code; that Verdantas was hired to provide an Environmental Assessment Report; that there was a typo in the some calculations submitted into the record; that Post-Development calculations for Total Area is 9.34-acres and the Recharge Volume is 58-in.; that the total Post-Development, Recharge Volume for Stormwater Basin should have read 135,771 gallons; that with those correct numbers, the calculation remains the same as reported, which is 1,574,948 gallons; that the proposed impervious area with the 6.34-acres is approximately 2.75-acres based on the current preliminary plan provided; that this equates to 44% of impervious coverage; that they always agreed to provide stormwater

management for the Cape Henlopen Medical Center; that when they add in the Cape Henlopen Medical Center property the total impervious coverage becomes approximately 52%; that in accordance with Chapter 89 a Water Climatic Budget is required due to the project coverage being greater than 5% but less than 60%; that the Water Budget report can be found in Exhibit S of the Exhibit Booklet; that the budget shows there is a deficit of 2,646-sq. ft. of rooftop to balance the budget; that there is approximately 450,000-sq. ft. of rooftop available outside of the recharge area to balance the budget; that the project proposes to recharge more groundwater than what currently exists; that a pre-chamber system will be installed for debris and potential petroleum releases to help protect the ground water; that the pre-chamber will filter out the hydrocarbons; that the water quality will also be improved by converting the farm from its use of chemical applications to the proposed project; that Verdantas stated in their report, that the property as proposed can be constructed without adversely impacting the Lewes supply wells; that the property is located within the Sussex County Unified Sewer District; that the property will be served by a gravity sewer system, which will discharge to the Governors pump station; that the property may be served by both the City of Lewes Board of Public Works and Delaware Electric Cooperative as the parcel is split by both providers based on the map for electric territories; that water can be provided to the project by the City of Lewes Public Works or Tidewater Utilities; that both utilities have waterlines along the property frontage; that a CPCN will be required for either utilities; that Tidewater Utilities did provide a Willing & Able Letter to serve the project; that natural gas is available from Chesapeake Utilities, as they have a gas main along Gills Neck Rd.; that a Traffic Impact Study was prepared in 2019; that an addendum was prepared in April 2020 for the previous withdrawn Application; that the withdrawn Application consisted of 206,500 sq. ft. of medical office buildings, 60 single-family homes and 150 multi-family homes; that the TIS Review Letter was prepared on October 7, 2021; that the improvements included within that letter were right-of-way dedication, interim improvements and build-out improvements; that subsequent to the review letter, a new plan, which is currently being proposed was submitted to DelDOT and Sussex County; that as part of the submission the developer stated to DelDOT that despite the reduction of traffic of approximately 50%, they would abide by the recommendations from the original study; that after review of the request in the reduction of traffic, DelDOT did not require a new TIS; that DelDOT provided an amended study and a letter; that during the same time, DelDOT had sped up the design of the DelDOT US Rt 9., Kings Hwy., Dartmouth Dr. to Freeman Hwy., DelDOT Contract T202212901 or also known as the dualization of Kings Hwy.; that the dualization of Kings Hwy. was first identified in 2009 as part of a larger agreement involving projects which have all completed their construction and their portions of overall improvements; that those projects include Senators, Governors, Showfield and Whites Pond Meadow who will construct their portion in summer to fall of 2022; that the last remaining piece is the dualization of Kings Hwy.; that DelDOT held a public workshop on February 23, 2022, on their improvement project; that the developer was agreeable with the interim improvements; that the developer began working on various projects for the current public hearing before the information from the DelDOT workshop was available and before final interim improvements were negotiated; that the rendering submitted was constructed before they received information regarding how the dualization of Kings Hwy. would occur with the landscape guidelines and shared-use path; that the rendering does provide an idea how the project would look from an aerial view; that they must create a corridor effect with landscaping and shared-use path meandering through and integrate the project with the dualization of Kings Hwy. to create a corridor the byways would be pleased with; that they recognize it is a byway and the gateway into the City of Lewes; that a second through lane was added

in the southbound direction; that after discussion of the project, the time of the dualization and the reduction in traffic, DelDOT did not support the interim improvements; that after further discussion and the developers willingness and desire to provide some temporary relief, DelDOT has agreed to interim improvements; that the improvements are slightly different from what was originally required in the October 7, 2021 letter; that DelDOT proposed additional requirements; that DelDOT's first requirement is the developer will mill an overlay approximately 3,500 linear feet of Kings Hwy.; that DelDOT's second requirement is to construct a rights-in and rights-out entrance on Kings Hwy.; that this will be located across from the Lewes property; that the entrances will align across from each other; that at that location DelDOT has proposed to make a round-about for the two entrances as part of the overall project; that the round-about is the reason the developer is agreeable to the rights-in and rights-out entrance during the interim condition; that the third DelDOT requirement was to maintain the entrance on Gills Neck Rd.; that no changes are required for this, as the entrance is designed for proposed amount of traffic for the project; that the developer is to improve Kings Hwy., Gills Neck Rd. and Cape Henlopen High School; that they will convert the through lane from Gills Neck Rd. onto Kings Hwy. into a dedicated left turn lane; that this will create two left turn lanes from Gills Neck Rd. onto Kings Hwy.; that the right turn lane will be converted to a through right turn lane; that this will allow traffic to go through to Cape Henlopen High School or turn right in the intersection; that they will be adding a second through lane in the southbound direction; that a separate right turn lane will remain; that they will be shifting the intersections roadway approximately 10-ft. into the site to accomplish the improvement; that there will be two through lanes in the southbound direction and a dedicated left turn lane going onto Gills Neck Rd.; that the dual through lane will continue south; that there will be a lane drop where the right hand through lane will become a dedicated right turn lane onto Clay Rd. in the interim condition; that a separate bicycle lane will be provided through the intersection; that they will also install a shared-use path from Cape Henlopen High School to Clay Rd. to complete pedestrian connectivity to Clay Rd.; that the developer will enter into an agreement to provide an equitable contribution to the dualization project; that the developer will dedicate 50-ft. of right of way from the center line of the road; that the developer will reserve an additional 30-ft. of right of way parallel to Kings Hwy. for the dualization of the project; that a 30-ft. dedication will occur along Gills Neck Rd.; that in addition to the reservation and dedicated right of way, a 15-ft. permanent easement will be provided for a shared-use path; that a shared-use path will be provided, wrap around and connect to the Big Oyster; that the developer will enter into an agreement to provide an equitable contribution to the Clay Rd. and Marsh Rd. intersection as part of the overall realignment project; that they will provide connections and cross-access easements between the onsite lots; that there is interconnectivity provided to the Cape Henlopen Medical Center and Big Oyster; that there will also be an interconnection into Lane Builders once the roundabout is installed; that they will provide bicycle, pedestrian and transit improvements to include the shared-use paths; that they will provide a Type 2 bus stop; that the developer had a meeting with select individuals of the Lewes Byway Committee; that the meeting was held prior to the release of the dualization plan; that during the meeting the developer committed to working with the committee on the shared use path, landscaping and fencing; that after the release of the dualization plan, the developer reached out to the Lewes Byway Committee to reconfirm their commitment; that DelDOT is equally supportive of the development of the 10-ft shared-use path, landscaping and maintenance within the permanent easement; that the project was reviewed by PLUS on December 15, 2021; that the PLUS comments and responses can be found in Exhibit M; that the PLUS comments provided were general in nature and will comply with all regulatory requirements;

that Davis, Bowen & Friedel, Inc. (DBF) prepared an Environmental Assessment and Public Facility Evaluation Report in accordance of County Code, Chapter 115-194.3; that the written responses can be located within Exhibit K; that they have analyzed all of the respected items; that all mitigation measures are consistent with the Comprehensive Plan; that DBF prepared a written response to items listed in Chapter 99-9C; that the responses can be located within Exhibit J; that the project is integrated into existing terrain and surrounding landscape; that the project does not contain wetlands or flood plains; that the project provides buffers to screen objectionable features; that the project prevents pollution of surface and groundwater; that the plan provides for vehicular and pedestrian movement; that the plan mitigates the effect on area roadways and public transportation and the project is compatible with otherland areas.

Ms. Stevenson questioned if the Applicant will be using the recommendations and plans of the Lewes Byway Commission, if the Applicant is agreeable to the proposals made in the TIS Review Letter, if swales would be placed along Kings Hwy. or a closed stormwater system, if she could see a rendering of the interim highway is proposed to look like, if there will be shoulders on the roadways once the improvements are built; that shoulders are a big concern for her since Kings Hwy. is a major roadway for ambulances; that she questions what the Applicant is doing to create more pervious surfaces and questioned extra parking possibilities; that she mentioned the adjacent multi-family housing offers a lot of additional parking; that since the Applicant is offering multi-family housing, her hope is the units would be workforce housing; that she believes younger families, who work in the area, would live there and more than likely will have family and friends who visit; that with no parking on the street, additional parking will be needed; that she questioned the interconnectivity to the property; that she questioned the reasoning for not promoting access from Kings Hwy; that Gills Neck Rd. is much smaller than Kings Hwy.; that she fears the plan will encourage 400 to 500 additional people to utilize Gills Neck Rd. to enter Lewes; that she questioned if the entrance from Gills Neck Rd. could be a right-in and right-out, prohibiting traffic to turn left onto Gills Neck Rd.; that she feels until improvements are made, people will attempt to take the back way of Gills Neck Rd. into Lewes and she questioned if the Applicant has had any discussions with the school district.

Mr. Hutt stated he is unsure if there is a defined plan, especially with the new plan of the roundabout; that the Applicant intends to work with the Byway Commission as the dualization process moves forward; that the Byway Commission was excited with the Applicant's proposal shown in the rendering; that the Byway Commission did want trees and boulevards; that the Applicant hopes to accomplish as much as they can within the remaining area; that the Applicant is agreeable to the proposals made in the TIS Review Letter; that DelDOT will regulate if there should be open or closed drainage system along Kings Hwy.; that they are learning what the proposed plans are for the dualization of Kings Hwy.; that he cannot speculate on what will be required and the Sussex County Engineering Department verified the calculations to ensure there is a balanced budget on what is proposed.

Mr. Bryan Behrens spoke on behalf of the Application, that he is the group engineer for DelDOT's project development for the south section; that he is in charge of the design of the Kings Hwy. dualization project; that proposed currently is open drainage, which will be swales adjacent to the roadway; that they did reach out to the Lewes Byways Commission ahead of the DelDOT public workshop to present their proposal; that he believes Lewes Byways Commission was similarly as enthusiastic about the proposal as DelDOT was; that they are proposing a shared-use path and

landscaping, which is the same proposal as the Applicant, providing room for collaboration and he does not have a rendering of the highway during the interim improvements.

Mr. Lardner stated they only have a drawing to show what the proposed travel lanes will look like; that he does not have a rendering of what the improvements will look like; that he has a drawing showing where the travel lanes will be once the roadway is shifted; that all details will be worked out with Mr. McCabe and his staff as part of the review process; that there is still a lot more collaboration to go through of how the final lanes will look; that there will be two lanes heading southbound out of the City of Lewes, heading toward Dartmouth Dr.; that there will be shoulders on both sides the roadways, in the interim condition, and upon final construction; that the driveway material has not been finalized, as the homeowners need to be part of the conversation when discussing long-term maintenance; that there will be infiltration in all rear yard swales; that this will allow the back half of roof run off to drain into the rear yard swales with infiltration in them; that the roadways will have perforated piping; that this will allow the roadways to infiltrate as soon as the drainage hits the system; that drainage will infiltrate through the roadbed; that any runoff which still makes it to the infiltration ponds, will further infiltrate within the pond; that the pond will have a pre-treatment system on it; that this will further protect the wellheads; that their intent is to infiltrate at the source; that they will balance the budget to ensure they comply completely with the Wellhead Protection requirements; that they have proposed two parking spaces per unit; that there is a parking area by the clubhouse; that during non-business hours the parking lot of the Cape Henlopen Medical Center could be used; that he believes there are other opportunities for overflow parking elsewhere, however those areas are not reflected on the current site plan; that they do have an exit from the property to Big Oyster; that he can speak to Big Oyster's plan, as they have worked very closely with Mr. Hammer and the Big Oyster staff to ensure Big Oyster's and the Applicant's needs are both met; that the stub shown on the site plan is the interconnection to Big Oyster's proposed plans in the back; that they would have access to Big Oyster, through the roundabout, both in and out; that once the improvements are completed along Kings Hwy. they will have access to the dualized roundabout; that this will provide interconnectivity to Big Oyster; that collaborations will be ongoing as the Applicant and Mr. Hammer have been partners for a long time; that traffic accessing the project from Kings Hwy. would be required to cut through the residential section, in trying to keep the peaceful nature of the neighborhood; that they were attempting to separate the medical office commercial traffic, by only using the Gills Neck intersection; that commercial traffic can be heavy at times; that Gills Neck Rd. is not much smaller in the particular section being referred to; that traffic coming down Gills Neck Rd. toward Kings Hwy. would access the medical center by turning right, before reaching Kings Hwy; that the frontage of Gills Neck Rd. is adequately sized to handle the traffic when using the intersection, where as a subdivision street at 24-ft. wide is not designed for the commercial use; that he does not feel residents from the proposed community would take Gills Neck Rd. to access Lewes, as they will have access to Kings Hwy. as well as the Gills Neck Rd. intersection; that the potential for a right-in and right-out only would be regulated by DelDOT; that DelDOT granted the access as a full access and entrance; that DelDOT prefers the access to be on the lower classification roadway rather than the high classification roadway; that this causes competing interests regarding the entrance; that it would be quicker for residents to take a right onto Kings Hwy. into Lewes than to take the back way through Gills Neck Rd.; that he does not understand how eliminating the left onto Gills Neck Rd. will achieve Ms. Stevenson's goal; that he reached out to the Superintendent and Director of Operations; that they did not want to provide a letter in support or opposition; that the

school district was sent a letter with the plans; that they currently are and will continue coordinating with the school district regarding school bus stops.

Mr. Thomas Brockenbrough spoke on behalf of DelDOT in relation to the Application; that it is physically possible to create a no left turn onto Gills Neck Rd. from the project by widening Gills Neck Rd. and providing a median; that the construction of this will not be easy; that it will be costly, and it may be out of character with the Lewes Byway.

Ms. Wingate stated people wanting to make the left onto Gills Neck Rd. will most likely cause a lengthy wait, as there will not be a light at the location, causing people to avoid turning left and she would also like to see additional parking provided within the community.

Mr. Mears stated he also agrees with the need for additional parking; that he questioned if every proposed unit would have a garage and a garage will help with the parking issues.

Mr. Lardner stated every unit is proposed to have a garage. The Commission found that Mr. Tom Panetta spoke in opposition to the Application; that he is speaking on behalf of Lewes Board of Public Works; that he also lives in Lewes; that Lewes Board of Public Works opposes the Change of Zone request; that the five wells providing for the City of Lewes are located directly across the street from the project; that the proposed project along with the existing medical office complex building, the Village Center, the Village Center Cottages, along with 37 additional acres, sit directly over the Wellhead Protection Area; that this creates grave concern for them; that the Lewes Board of Public Works presented in front of the Planning & Zoning Commission before; that all of the water for Lewes and the service territories comes from the five wells; that the wells were replaced in the late 1950's to early 1960's; that DNREC has mentioned the placement of the wells is the most ideal locations for the Aquaphor; that they have been searching for redundant sites, but have been unsuccessful in finding a more suitable location; that the last study on the Wellhead Protection Area was performed in 2003; that since the study they have seen an increase in the pumping rate of 25%, from 400 to 500 million gallons per year; that the pumping is currently still within the permits; that Lewes has increased their pumping, but the surrounding wells have also increased pumping; that they have been in discussions with Geotech and DNREC questioning if the Wellhead Protection Area is currently sufficient as is; that the subject property and other properties mentioned, cover a third to a quarter of the Wellhead Protection Area; that the five wells drawn from 85-ft. to 100-ft. deep; that they are not very deep; that placing stormwater infiltration ponds directly within the Wellhead Protection Area, adjacent to the wells, does not allow much time to recover if something were to spill; that all of the nutrients from landscaping and surface contamination from the roads are going to be sent to the stormwater ponds; that he finds it hard to believe the site will be 44% of impervious coverage, given the density, roads, walkway, tennis courts and pool; that he had also spoke at the PLUS meeting; that the PLUS report submitted to Sussex County stated the pavement should be pervious; that the plan shows the pavement as conventional hot mix; that the use of pervious pavement would greatly reduce the amount of water to be sent to the stormwater ponds; that the PLUS report also mentioned using rain gardens, filter strips and other best practices; that he did not see these proposed in the plans; that Sussex County, the City of Lewes and the Lewes Board of Public Works have already purchased the Jones Farm due to the concern for protecting the Wellheads; that collectively \$6,000,000.00 was spent to accomplish this; that with this project the remaining portion of the Wellhead Protection Area is in danger of being developed; that this is a cumulative issue, not being just the proposed project; that this

issue needs to be looked at holistically; that the Lewes Board of Public Works has not issued a Readiness to Serve, for the electric for the project; that without a master plan, a holistic overview of all the lands along Kings Hwy., the wellhead will suffer a death by a thousand cuts and this will jeopardize everyone in Lewes, and all of the service territory.

Chairman Wheatley questioned if the property is located within the service area of Lewes Board of Public Works.

Ms. Stevenson questioned if Mr. Panetta had any suggestions as to how the project could make things better regarding the Wellhead Protection Area.

Mr. Robertson questioned if the Wellhead Protection Area is important to Lewes, what was the reasoning for Lewes not annexing the surrounding areas.

Mr. Panetta stated half of the property is located within the CPCN of Lewes Board of Public Works and the other half of the property is not; that the City of Lewes must agree to any service outside of the city limits; that he stated the City of Lewes wanted to attend the public hearing, but they had a Mayor and City Council meeting going on concurrently, which included all staff; that they intend to submit a formal letter to Planning and Zoning; that moving the stormwater pond out of the Wellhead Protection Area would help; that the stormwater pond is located within the worst possible area on the property; that the Wellhead Protection Area is located within the lower corner for the property; that the soils on the entire property are part of the recharge area; that they are having additional studies performed to confirm the true impact on the wells, as well as the private wells in the area; that the Village Center Cottages is located completely in the Wellhead Protection Area; that without looking at these projects holistically, decisions will be difficult to make and the City of Lewes does not have the right to annex properties without the owner applying for annexation first.

Mr. Robertson stated the public hearing will be closed for the Planning & Zoning Commission unless the Commission chose to hold the record open, however, public comments can be submitted for the public hearing before the County Council.

Chairman Wheatley questioned what the County Code states regarding the Wellhead Protection Area; that he questioned if there was a prior situation where the existence or location of the stormwater ponds caused adverse issues for a municipal water system and if the land was currently being tilled with chemicals.

Mr. Whitehouse stated Chapter 89 of the County Code focuses more on the site plan review rather than the use; that in any Wellhead Protection Area, with less than 35% impervious cover, there is no requirement; that there is a requirement an Environmental Assessment be submitted when 35% to 60% of impervious cover is proposed; that the Environmental Assessment must include an appropriate level of detail of how the area should be managed and development within the area is not prohibited within the 35% to 60% range, however, does require supporting technical analysis.

Mr. Panetta stated if the Commission performs a search they will find examples, such as a dry cleaning business contaminating wells with trichloroethylene; that there are issues with contaminants on roadways, such as hydraulic fluid and gasoline being washed into the stormwater ponds; that farmers apply fertilizer as required to meet the soil requirements; that this is different than a homeowner who applies fertilizer twice a year; the difference is a business operation versus residential use; that the

Chesapeake and Coral Gables, Florida are controlling the amount of fertilizer being used for residential use and he feels this should be considered with the proposed project.

The Commission found Mr. Jay Tomlinson spoke by teleconference with questions regarding a potential construction date for the interim improvements for the proposed project, as the previous TIS referenced the former project; that he questioned if it was intended to have commercial businesses along the first floor and the possibility of leaving the record open.

Mr. Hutt stated he believes Mr. Tomlinson's concern originated from the statement within the TIS regarding the separation between retail business and professional office space.

Mr. Lardner stated the milestone for the proposed interim improvements is immediate, that the interim improvements are required to be installed and accepted before the first Certificate of Occupancy is granted for the project; that there will not be businesses along the first floor of the proposed professional office building; that the office building will be strictly for professional, dental and/or medical offices; that there will be no intent for retail or convenient stores; that with the original study they had proposed a 6,500 sq. ft. commercial shopping center; that this intent is where the initial 117,500 threshold originates from and the proposed project generates less traffic than the 117,500 trips, which is why they have agreed to perform the interim improvements immediately before the first Certificate of Occupancy. Ms. Wingate questioned the potential to move the location of the stormwater management pond. Ms. Stevenson questioned which direction the runoff would naturally run.

Mr. Lardner stated there is an opportunity to relocate the stormwater management pond; that it would require a redesign of the site, with a potential loss of units; that they have proposed recharge in excellent areas and Wellhead Protection Areas; that there have been conversations regarding impervious surfaces; that there are stormwater management practices within the Wellhead Protection Areas; that these are different practices to achieve the same result; that the Applicant has proffered for pretreatment of the system, should there be a leaking vehicle or a similar situation; that the runoff naturally runs away from the Wellhead Protection Area and this is stated within the report prepared by Mr. Cahill.

The Commission found there was no one present in the room or by teleconference who wished to speak in support or opposition to Applications, 2022-01, C/Z 1967, C/Z 1968, and C/U 2334 for Henlopen Properties, LLC.

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

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

In relation to Application 2022-01 Henlopen Properties, LLC. Motion by Ms. Stevenson to defer action for further consideration, seconded by Mr. Hopkins, and carried unanimously. Motion carried 5-0.

In relation to Application C/Z 1967 Henlopen Properties, LLC. Motion by Ms. Stevenson to defer action for further consideration, seconded by Ms. Wingate, and carried unanimously. Motion carried 5-0.

In relation to Application C/Z 1968 Henlopen Properties, LLC. Motion by Ms. Stevenson to defer action for further consideration, seconded by Mr. Hopkins, and carried unanimously. Motion carried 5-0.

In relation to Application C/U 2334 Henlopen Properties, LLC. Motion by Ms. Stevenson to defer action for further consideration, seconded by Ms. Hopkins, and carried unanimously. Motion carried 5-0.

Minutes of the April 14, 2022 Planning & Zoning Commission Meeting

The Commission discussed the application which has been deferred since March 10, 2022.

Ms. Wingate moved that the Commission recommend approval of C/Z 1968 Henlopen Properties, LLC, for a Change in Zone from AR-1 Agricultural-Residential zoning to C-2 “Medium Commercial” zoning based upon the record made during the public hearing and for the following reasons:

1. C-2 Medium Commercial Zoning is designed to support retail sales and the performance of consumer services. It is intended to be located near arterial and collector roads.
2. The Applicant’s property is generally located at the intersection of Gill’s Neck Road and King’s Highway on the outskirts of the City of Lewes. It is next to an existing medical office building, across from Cape Henlopen High School and there are other businesses, commercial and institutional zonings, and uses in the immediate area. This is an appropriate location for C-2 zoning.
3. C-2 Zoning at this location near the intersection of Gill’s Neck Road and King’s Highway will benefit nearby residents of Sussex County by providing a convenient location for retail uses or consumer services.
4. There is no evidence that this rezoning will have an adverse impact on neighboring properties or area roadways.
5. The site is in the “Coastal Area” according to the Sussex County Land Use Plan and Future Land Use Map. This is an appropriate location for C-2 Zoning according to the Plan.
6. The proposed rezoning meets the general purpose of the Zoning Code by promoting the orderly growth, convenience, order prosperity, and welfare of the County.
7. Any future use of the property will be subject to Site Plan review by the Sussex County Planning and Zoning Commission.

Motion by Ms. Wingate, seconded by Ms. Stevenson and carried unanimously to recommend approval of C/Z 1968 Henlopen Properties, LLC, for the reasons and conditions stated in the motion. Motion carried 4-0.

The vote by roll call: Ms. Stevenson – Yea, Mr. Hopkins – Yea, Ms. Wingate – Yea, Chairman Wheatley – Yea

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Sussex County

DELAWARE
sussexcountyde.gov

Memorandum

To: Sussex County Planning Commission Members
From: Christin Scott, Planner I
CC: Vince Robertson, Assistant County Attorney, and applicant
Date: March 2, 2022
RE: Staff Analysis for CZ 1968 Henlopen Properties, LLC

This memo is to provide background and analysis for the Planning Commission to consider as a part of application CZ 1968 Henlopen Properties, LLC to be reviewed during the March 10, 2022, Planning Commission Meeting. This analysis should be included in the record of this application and is subject to comments and information that may be presented during the public hearing.

The request is for a Change of Zone for part of Tax Parcel 335-8.00-37.00 (portion of) to allow for a change of zone from an Agricultural Residential (AR-1) Zoning District to a Medium Commercial (C-2) Zoning District. The property is lying on the southeast side of Kings Highway (Rt. 9), approximately 0.11-mile northeast of the intersection of Kings Highway (Rt. 9) and Gills Neck Road (S.C.R. 267) The portion of the parcel to be rezoned consists of 3.041 acres +/-.

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

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

The portion of this property is zoned Agricultural Residential (AR-1) Zoning District. Adjacent parcels to the north are also zoned Agricultural Residential (AR-1) Zoning District, as well as General Commercial (C-1) and Heavy Commercial (C-3). The properties to the north are zoned Medium Residential (MR) and the properties across Kings Highway and Gills Neck Road to the west and south are zoned Agricultural Residential (AR-1) Zoning District and Neighborhood Business (B-1).



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

Since 2011, there have been nine (9) Change of Zone applications within a 2-mile radius of the application site. The Change of Zone applications approved include Medium Residential (MR), Neighborhood Business (B-1), Heavy Commercial (C-3) and Medium Commercial (C-2) Zoning Districts.

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



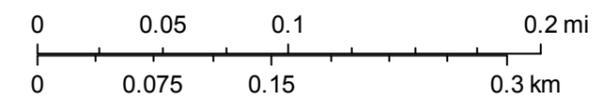
Sussex County



PIN:	335-8.00-37.00
Owner Name	JEFF-KAT LLC
Book	5613
Mailing Address	1007 KINGS HWY
City	LEWES
State	DE
Description	SE/KINGS HWY
Description 2	RESIDUAL LANDS
Description 3	N/A
Land Code	

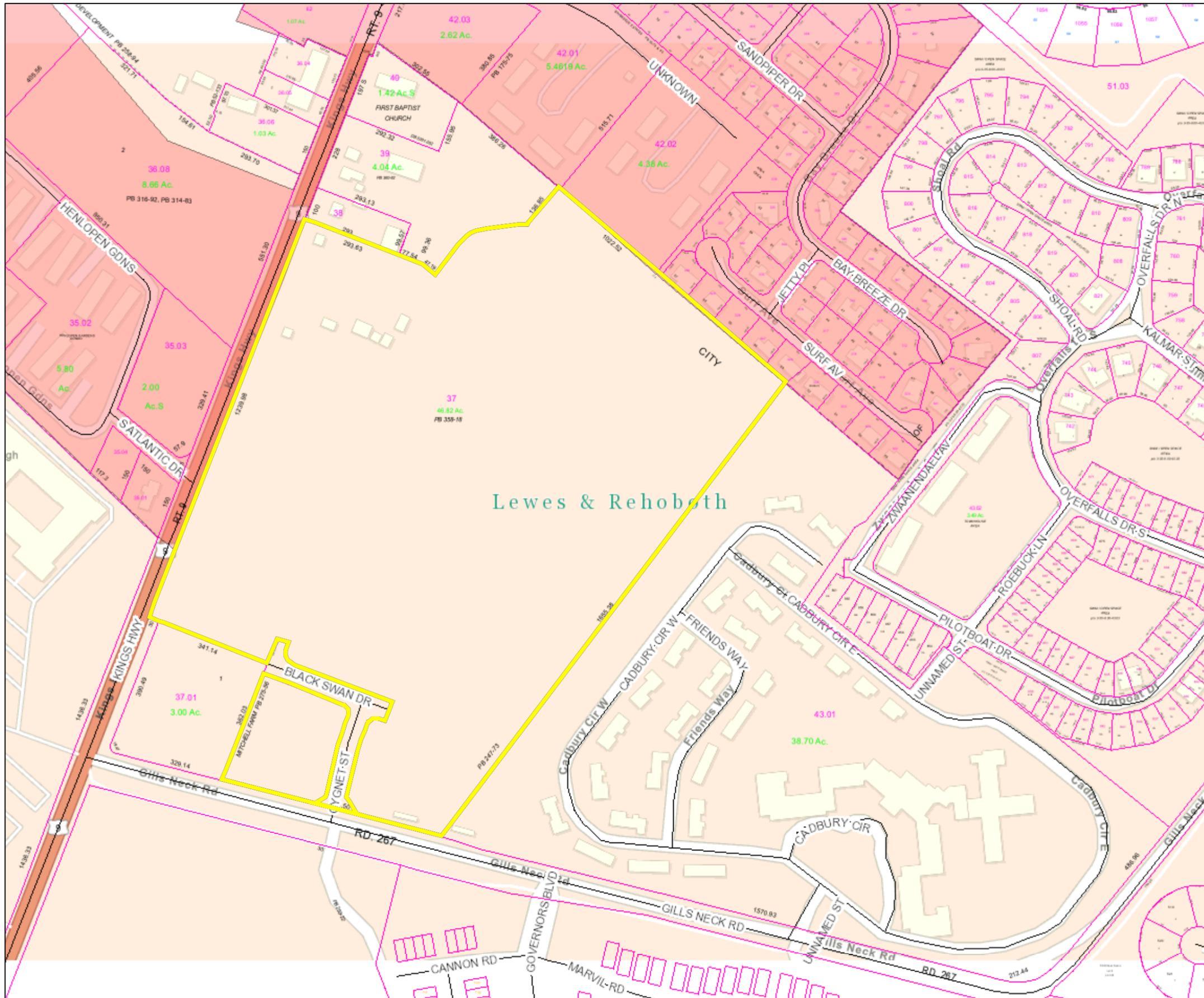
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- Streets
- Hundred Boundaries
- County Boundaries
- Tax Ditch Segments**
- Tax Ditch Channel
- Pond Feature
- Special Access ROW
- Extent of Right-of-Way
- Municipal Boundaries
- TID

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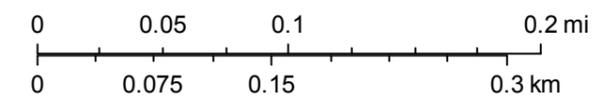
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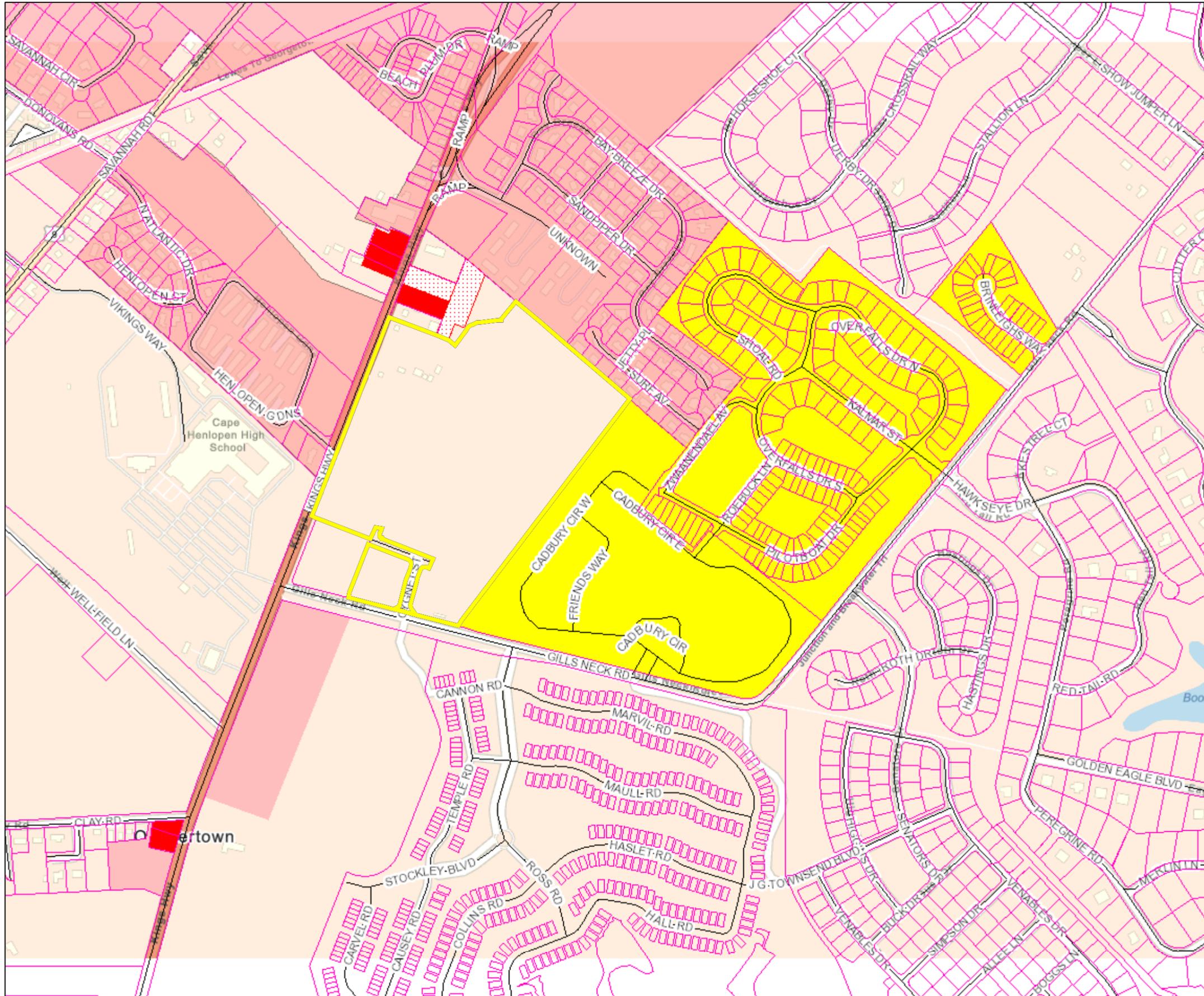
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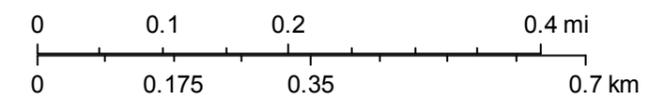
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Land Code	

- polygonLayer
 Override 1
- polygonLayer
 Override 1
- Tax Parcels
- Streets

1:9,028



Re-Introduced: 2/22/22

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

ORDINANCE NO. ____

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

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

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

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

NOW, THEREFORE, THE COUNTY OF SUSSEX HEREBY ORDAINS:

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

Section 2. The subject property is described as follows:

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

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

JAMIE WHITEHOUSE, AICP
DIRECTOR OF PLANNING & ZONING
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Sussex County

DELAWARE
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Memorandum

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

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

CC: Everett Moore, County Attorney

Date: June 24, 2022

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

The Planning and Zoning Department received an application (C/U 2334 filed on behalf of Henlopen Properties, LLC) for a Conditional Use for parcel 335-8.00-37.00 (portion of) for multi-family (267 units). The property is located within the Medium Residential (MR) Zoning District and is located on the southeast side of Kings Highway (Rt. 9) and the north side of Gills Neck Road (S.C.R. 267). The parcel size is 43.77 acres +/-.

The Planning & Zoning Commission held a Public Hearing on the application on March 10, 2022. At the meeting of April 14, 2022, the Planning & Zoning Commission recommended approval of the application subject to 12 reasons stated and subject to 18 recommended conditions as outlined within the motion (copied below).

The County Council held a public hearing on April 26, 2022. A motion was made to defer action on the application for a period of two weeks to May 6th for the Lewes Board of Public Works and any other member of the public to submit their reports on the well head protection issue. Subsequent to that, the Applicant would have an additional period of time until May 20th to submit any response to that. At the meeting of May 24, 2022, the County Council closed the Public Record and deferred action on the application for further consideration.

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

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



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

Minutes of the March 10, 2022 Planning & Zoning Commission Meeting

C/U 2334 Henlopen Properties, LLC

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

Mr. Whitehouse advised the Commission that submitted into the record for C/Z 1967, C/Z 1968, and C/U 2334 for Henlopen Properties, LLC is the Applicant's Site Plan, the Applicant's Exhibit Booklet, the Traffic Impact Study (TIS), and the DelDOT response to the TIS, a letter from Sussex County Engineering Department Utility Planning Division, the PLUS Comments, the responses to the PLUS comments, a Cultural Resource Assessment, an Environmental Assessment, three letters of support, two letters of opposition and four mail returns.

The Commission found that Mr. David Hutt, Esq. with Morris James spoke on behalf of Applications 2022-01, C/Z 1967, C/Z 1968 and C/U 2334 for Henlopen Properties, LLC; that he is representing both the owners of the property, Mitchell Family, LLC and the Applicant, Henlopen Properties, LLC; that also present were Mr. Robert Mitchell, a member of the Mitchell Family, LLC, Mr. John Myer and Mr. Jon Hoffman, representatives of Henlopen Properties, LLC., Mr. Ring Lardner and Mr. Cliff Mumford, civil engineers with Davis, Bowen & Friedel, Inc.; Mr. Dennis Hughes, II, the traffic engineer with Davis, Bowen & Friedel, Inc., Mr. Steven Cahill, geologist, Mr. Edward Otter, archeologist and Mr. Mark Davidson, a principal land planner with Pennoni; that the current Applications were not the first Applications to be filed for the project; that the first proposed plan for the property was filed in April 2019; that the name of the project has changed several times; that the project was called "The Mitchell Farm" with the submission of the first Application; that the approved name became Zwaanendael Farm; that the property is currently known as Mitchell's Corner; that a number of things have changed since the Applications were filed; that the world experienced the COVID-19 Pandemic; that there has been a change in the directorship of Sussex County Planning & Zoning, from Ms. Janelle Cornwell to Mr. Jamie Whitehouse; that since the submission of the Application there have been numerous conversations and correspondence regarding the scheduling of the public hearings for the Applications; that in order to have a public hearing on a land use application, pursuant to the memorandum of understanding between DelDOT and Sussex County, a Traffic Impact Study (TIS) Review Letter was required; that the Applicant was awaiting the completion of the TIS Review Letter; that the initial response to the TIS Review Letter occurred October 2021; that the response was to the TIS performed for the initial Application; that the initial proposal had the Cape Henlopen Medical Center on the corner of Kings Hwy and Gills Neck Rd., C-3 Heavy Commercial properties along Kings Hwy., B-2 Business Community District properties located along Gills Neck Rd. and MR Medium-Density Residential located for the rest of the property, where apartments and other housing were proposed with a Conditional Use and Subdivision Application; that initially there was a total of five submitted applications; that since then, the applications have been reduced to four applications; that the current Applications received a Supplemental TIS Review letter; that the currently proposed Applications reduced the commercial impact of the project; that stated within the Supplemental TIS Review Letter, the Applications being

heard are a trip generation reduction of almost 50% from the initial Applications; the subject property is located across the street from the Cape Henlopen High School; that next to the Cape Henlopen School is the Jack Lingo Real Estate office; that currently under construction is the Lewes Medical Campus, which is proposed to be an assisted living facility; that west of Gills Neck Rd. is the future location of the Village Center; that located on the same side as the subject property, at the corner of Gills Neck Rd. and Kings Hwy. is the Cape Henlopen Medical Center; that the Mitchell Family filed a previous Conditional Use Application (C/U 2112) in 2018 for the Cape Henlopen Medical Center; that C/U 2112 was for medical professional offices in a 39,000 sq. ft. building; that the Cape Henlopen Medical Center is a good demonstration of the need for professional services within Sussex County as it serves many residents within the immediate area; that continuing down Kings Hwy, on the same side as the subject property, toward the City of Lewes, are the offices of Lane Builders; that the next property is the Big Oyster Brewery; that on the northern boundary of the property is Jefferson Apartments and Bay Breeze Estates, both of which are located within the City of Lewes; that on the eastern side of the subject property is The Moorings, formally known as Cadbury at Lewes; that the most detailed history of the project can be found within the Cultural Resource Assessment, prepared by Dr. Otter; that the majority of the mentioned culturally significant resources are found closer to Pot Hook Creek than the subject site; that the historical item mentioned is the existing farmhouse located on the subject property; that the farmhouse is still occupied by Mr. Jerry Mitchell; that Dr. Otter's report mentioned the farmhouse, outbuilding and additional structures require documentation before being removed from the property; that a condition proposed by the Applicant states the property and structures would be properly documented before removal; that the Applicant plans to have Dr. Otter perform the documentation before the removal of the farmhouse; that the subject property has been with the Mitchell Family since the late 1800's; that the first Mitchell family member was a Robinson; that if one looks at the George Robinson ownership in the late 1800's, that is when the Mitchell Family ownership began; that most recently Mr. Mitchell and his family have owned the 58-acre farm; that from 1998 until 2013 the property was located with the Agricultural Preservation; that with the development around the subject property, the farmland was becoming very difficult to farm, which resulted in the decision to sell the property; that as the Mitchell Family was working toward selling, they were approached by adjacent property owners; that several portions of the 58-acre parcel was sold to adjacent neighbors; that the portion to the rear of the property was sold to The Moorings, which was the subject of a recent Application Change of Zoning to Medium-Density Residential and to request an Residential Planned Community (RPC); that there was a portion sold to The Big Oyster, which was the subject of an application for rezoning from AR-1 to C-3; that the parcel, located on the corner of Kings Hwy. and Gills Neck Rd. was the subject of C/U 2112 for the Cape Henlopen Medical Center; that property most recently sold again sold to The Big Oyster Brewery for additional expansion; that the recently sold property will be the subject of a Change of Zone application, requesting rezoning from AR-1 to C-3, at the Planning & Zoning meeting on April 14, 2022; that after the pieces of lands were sold off, the property currently consists of 47-acres; that the current Applications request a Change of Zone, for approximately three acres, next to the site of the Cape Henlopen Medical Center; that the Change of Zone Application seeks to change the zoning designation from AR-1 to C-2 Medium Commercial; that an additional Change of Zone Application request to change the zoning classification of approximately 44-acres of the property from AR-1 to MR (Medium-Density Residential); that there is also a Conditional Use Application seeking approval for a multi-family use of the property, for 267 units, on the MR zoned portion of the property; that

the final Application is a Subdivision application, which was necessary to create all the various component parts of the project; that currently the property is completely zoned AR-1; that immediately south of the proposed site is B-1 Neighborhood Business Zoning, which is the location of the Village Center Project; that moving closer toward Rt. 1, there is existing C-1 and B-1 properties at the corner of Clay Rd. and Kings Hwy.; that more toward the City of Lewes, the Big Oyster property is zoned C-1, with C-3 property immediately behind it; that across the street from the subject site are two properties, located within the City of Lewes, zoned as General Commercial; that immediately behind that property is R-5 Zoning, which is the City of Lewes' mixed residential zoning; that adjacent to those properties is the City of Lewes', CFHC Zoning, which is Community Facilities Health Care Zoning; that this is the site of the Lewes Senior Campus; that located closer to the City of Lewes is more General Commercial properties; that to the north side of the property is R-5, Mixed Residential for the City of Lewes; that also located near the subject property is R-2, Residential Low Density Zoning with the City of Lewes; that nearby, The Moorings, Breakwater and Admirals Chase, are located within the MR (Medium-Residential Zoning) with Sussex County; that the project is located within the Coastal Area according to the Future Land Use Map; that surrounding areas to the project are also located within the Coastal Area or a commercial area; that the Coastal Area is designated as one of the Sussex County's seven growth areas; that Chapter 4 of the Comprehensive Plan includes Table 4.5-2, which compares zoning districts applicable to Future Land Use categories; that both the C-2 (Medium Commercial District) and the MR Medium-Density Residential District are applicable zoning districts within the Coastal Area; that the County Code describes the purpose of the C-2 (Medium Commercial Zoning District) as a district which supports retail sales and performance of consumer services, permitting a variety of retail, professional and services businesses; that the district should be primarily located near arterial and collector streets; that the district accommodates community commercial users who do not have outside storage or sales; that the County Codes description of the C-2 Medium Commercial District exactly describes the purpose the Applicant desires with the proposed project; that the project proposes to provide additional professional and business services in an area where the services are needed; that this need is demonstrated best by the success of the Cape Henlopen Medical Center; that the previously approved Conditional Use for the Cape Henlopen Medical Center mirrors the purpose proposed for the property; that the developer hired an architect to design a building for the site; that the architect studied the architecture in the area; that the architect provided a letter explaining the proposed building, as shown on the rendering; that there are comments on record regarding the architecture along Kings Hwy. and how the proposed building does not match; that the architect described the architecture along Kings Hwy. as numerous architectural motifs in the context which may be evoked to rationalize any architectural style; that do to the various architectural styles along Kings Hwy. it is difficult to match any one of those; that the developer requested the architect consider the nearest architectural style and blend the building to those nearest to the property; that features from the Cape Henlopen Medical Center and Cape Henlopen High School, compliment those features while performing the same idea for the proposed townhomes along Kings Hwy.; that once the site plan was established, the Applicant requested Mr. Mark Davidson, Land Planner with Pennoni, to review the land plan; that the peer review provided by Mr. Davidson is included in the record; that the developer determined the square footage of all buildings in the surrounding area; that some of the buildings considered were Cape Henlopen High School at 367,000 sq. ft., Lewes Senior Living Campus at 223,000 sq. ft., The Moorings at 117,000 sq. ft., the future Village Center at 75,000 sq. ft. and Cape Henlopen Medical Center at 39,000 sq. ft.; that the building proposed for

the project is smaller than almost all other studied buildings, being just slightly bigger than the Cape Henlopen Medical Center; that the proposed building is an appropriate size and scale for the area; that the County Code states commercial properties should be located along arterial and collector streets; that Kings Hwy. is a perfect match for this proposed use as it is considered a major arterial by Sussex County; that the same process and considerations were made regarding the proposed rezoning of 44-acres to be MR Medium-Density Residential; that according to the Sussex County Code, the MR District is to provide for medium-density residential development in areas which are, or expected to become, generally urban in character and where sanitary sewer and water supplies may or may not be available at the time of construction; that a permitted Conditional Use is for multi-family dwelling structures, which created the need for the Conditional Use application, which accompanies the Change of Zone application; that the purpose of a Conditional Use is to provide uses which are generally public or semi-public in character, being essential and desirable for the convenience and welfare; that because of the nature of the use, the importance to the relationship of the Comprehensive Plan and possible impact on neighboring properties and Sussex County, create the requirement for extra planning judgement on location and site plan; that housing is considered public or semi-public in character; that housing is desirable, particularly within the Coastal Area; that the purpose of the presented Applications are to provide for medium residential development, in areas which are becoming more urbanized; that there are townhomes and duplexes located within Governors, Admirals Chase, Breakwater, The Moorings and The Lewes Senior Living Campus; that within the City of Lewes, multifamily housing is offered at Jefferson Apartments, Dutchman's Harvest and Henlopen Gardens; that Bay Breeze Estates is a single-family use, located within the R-2 zoning classification with the City of Lewes, that the density within Bay Breeze Estates is still three units to an acre; that Jefferson Apartments, Dutchman's Harvest and Henlopen Gardens, within the City of Lewes, are all zoned R-5; that R-5 Zoning is the City of Lewes' multifamily residential district, where the purpose is to provide a mix of housing types to include multifamily and affordable housing alternatives; that multifamily is located adjacent to the subject property, as well as across the street from the property; that in correspondence in the file, there is reference to the density for the project; that included in the project book, are the densities for the surrounding communities; that Dutchman's Harvest is 17 units to the acre; that Jefferson Apartments is 9.8 units to the acre; that The Moorings is 6.4 units to the acre; that Henlopen Gardens is 5.5 units to the acre; that Bay Breeze Estates is 3 units to the acre; when considering the Future Land Use Map and the densities of surrounding areas, the proposed density of 6.1 units to acre is consistent to the surrounding area; that the more intense uses should be located closer to the highway, decreasing in intensity moving further away from the highway; that this is accomplished by placing the townhomes and commercial area along Kings Hwy.; that moving closer to Bay Breeze Estates and The Moorings the uses become duplexes, which are a less intense use; that the Comprehensive Plan states lands within the Coastal Area should be able to accommodate both commercial and residential provided special environmental concerns are addressed; that medium to higher densities, between 4 to 12 units to the acre, can be appropriate in certain locations; that an appropriate location for this is where there is central water and sewer, when near a significant number of commercial uses and employment centers, when keeping with the character of the area, when situated along a main road or near a major intersection and where there is adequate level of service; that the project meets all of those characteristics; that the TIS Review Letter did state there are several intersections without adequate levels of service within the area; that the final solution to the issue is the dualization of Kings Hwy.; that waiting on the improvements would not be beneficial

to the community or the project; that due to this, the developer and DelDOT agreed upon interim improvements, to allow traffic to be improved for the time period it takes for DelDOT to complete the dualization project; that the proposed interim improvements are more than what is required within the Memorandum of Understanding between Sussex County and DelDOT; that the Memorandum of Understanding seeks to have a Level of Service D at intersections; that the most recent Memorandum of Understanding recognizes the Level of Service D is not always obtainable and this requirement may create an undue burden on a property owner looking to develop a property, given the prior development which has occurred in an area contributing to the existing level of service; that a level of service cannot be degraded by a project; that with the proposed interim improvements, there will be no degrading by the proposed project; that the improvements will provide and upgrading of service until DelDOT provides the final solution with the dualization of Kings Hwy.; that it would be unfair to request the last individual developing a property to fix all the issues; that in 2009 the need for the dualization of Kings Hwy. was recognized; that the improvements along Gills Neck Rd. have been accomplished; that during the February 23, 2022 workshop with DelDOT, it was said the estimate for the construction improvements was \$23,000,000.00; that it would be an undue burden to require the last property owner to dualize Kings Hwy.; that although the Applicant cannot provide the dualization of Kings Hwy., they did desire to provide some temporary relief, which will be afforded through the interim improvements; that the developer did meet with the Lewes Byways Committee; that the developer agreed upon, as a Condition of Approval for the proposed project, the developer would maintain permanent easement areas and multi-modal path; that DelDOT is pushing the vast majority of the improvements onto the project side of Kings Hwy.; that the property is located within the Level 1 Investment area according to the State Strategies Map; that PLUS had no objection to the proposed project; that Investment Level 1 reflect areas which are already developed in an urban or suburban fashion, infrastructure is available and where future redevelopment or infill projects are expected; that State Strategies Map, Comprehensive Plan and the Zoning Code were all guideposts for the project's design and layout and he submitted proposed Findings and Conditions for the Application and a Willing and Able Letter from Tidewater Utilities.

The Commission found that Mr. Ring Lardner spoke on behalf of the Application; that he is a professional engineer with Davis, Bowen & Friedel, Inc.; that the property is a total of 46.81-acres; that the portion of land requesting C-2 Zoning is located along Kings Hwy., adjacent to the Cape Henlopen Medical Center; that per DelDOT, Kings Hwy. is classified as an Other Principal Arterial, and furthermore identified as a major arterial roadway per No. 7 of the definition found in 115-4 of the County Code; that the remaining portion of land is approximately 43.77-acres and subject to the other three applications; that this portion of land also has frontage along Kings Hwy. and along Gills Neck Rd.; that Gills Neck Rd. is classified as a local road per DelDOT Functional Classification Map; that the layout of the site first began with a 20-ft. forested buffer along The Moorings, Bay Breeze and Jefferson Apartments; that this provides some additional open area to help establish the rear lot lines and allow for drainage; that this was how the lot lines were established for the townhomes and the duplexes; that they looked at the existing entrance, which is currently being utilized for Cape Henlopen Medical Center; that the developer desired to do more residential and move away from the grid street which currently exist; that they designed an arch entrance, which allows the service road to access both commercial properties; that this allows them to avoid redesigning the entrance and roadway; that in doing this, it allowed the proposed area for a stormwater pond to serve the project; that they

looked at how to best connect with the adjacent Big Oyster property; that Mr. Mitchell, the developer and Big Oyster have worked together on various land acquisitions and interconnectivity; that their goal was to separate the commercial traffic from Big Oyster from interacting with the residential traffic; that the same intent was to keep the commercial traffic from traveling through the residential area; that this was their motive for providing the direct connection to Gills Neck Rd.; that commercial traffic is heavier than residential traffic on a normal day; that they designed a mini round-about; that the round-about will be designed allowing vehicles of all types to navigate the circle; that the round-about will be reviewed by both the Fire Marshal and Sussex County Engineering; that once those spots were created, they then focused on a plan which offered a mixture of duplexes, 28-ft. wide and 24-ft. wide townhomes; that there are various prototypes offered within the proposed community; that the roads will be designed to Sussex County standards; that the right-of-way has been narrowed to 40-ft., which is allowable per County Code; that this allows them to bring the houses closer to the roadway, providing at least 20-ft between the sidewalk and the house; that this prevents vehicles from blocking the sidewalk; that No Parking signs will be added to prevent on street parking; that on street parking is always a concern of the Fire Marshal; that No Parking signs will allow enforcement to be occurred within the community if needed; that all lots were designed so no lots were backed up against each other; that all lots have some type of open space between them; that this will help facilitate drainage and landscaping; that sidewalks will be located on both sides of the road for all roadways within the community, with the exception of Road C; that the reasoning is the shared-use path is adjacent to the roadway; that it would not make sense to have a shared-use path and sidewalk next to each other; that active amenities will include a dog park, two mailcenters, a community center, a playground and sports courts for the community to use; that they have added some additional walking paths to promote pedestrian connectivity and walkability within the community; that stormwater management will be provided by infiltration through grass swales, which are located in the open area, to the rear of the lots, perforated pipes and an infiltration basin with the primary and secondary basins being located along Gills Neck Rd.; that higher volume storms, like the 10-yr. and 100-yr. storm events, will discharge via storm pipe through the lands of JG Townsend, which will discharge into a tidal discharge; that the plan was previously approved by Sussex Conservation District for the previous Application; that the pipe will still be able to be used for the current project; that the project does not contain any wetlands; that the project is not located within a flood plain; that the State Housing Preservation Office provided information regarding a known archeological site and some known prehistorical sites with high potential resources due to the known historic structures; that they hired Dr. Edward Otter to complete the Cultural Resource Assessment; that the Resource Assessment can be found in Appendix R of the Exhibit Booklet; that the existing buildings are proposed to be demolished; that Dr. Otter has confirmed he will perform the documentation for the existing buildings, should the Application receive approval; that about 6.34-acres of the project is located within the Wellhead Protection Area and must comply with Chapter 89 of the Sussex County Code; that Verdantas was hired to provide an Environmental Assessment Report; that there was a typo in the some calculations submitted into the record; that Post-Development calculations for Total Area is 9.34-acres and the Recharge Volume is 58-in.; that the total Post-Development, Recharge Volume for Stormwater Basin should have read 135,771 gallons; that with those correct numbers, the calculation remains the same as reported, which is 1,574,948 gallons; that the proposed impervious area with the 6.34-acres is approximately 2.75-acres based on the current preliminary plan provided; that this equates to 44% of impervious coverage; that they always agreed to provide stormwater management for the Cape Henlopen Medical Center; that when they add in the Cape Henlopen

Medical Center property the total impervious coverage becomes approximately 52%; that in accordance with Chapter 89 a Water Climatic Budget is required due to the project coverage being greater than 5% but less than 60%; that the Water Budget report can be found in Exhibit S of the Exhibit Booklet; that the budget shows there is a deficit of 2,646-sq. ft. of rooftop to balance the budget; that there is approximately 450,000-sq. ft. of rooftop available outside of the recharge area to balance the budget; that the project proposes to recharge more groundwater than what currently exists; that a pre-chamber system will be installed for debris and potential petroleum releases to help protect the ground water; that the pre-chamber will filter out the hydrocarbons; that the water quality will also be improved by converting the farm from its use of chemical applications to the proposed project; that Verdantas stated in their report, that the property as proposed can be constructed without adversely impacting the Lewes supply wells; that the property is located within the Sussex County Unified Sewer District; that the property will be served by a gravity sewer system, which will discharge to the Governors pump station; that the property may be served by both the City of Lewes Board of Public Works and Delaware Electric Cooperative as the parcel is split by both providers based on the map for electric territories; that water can be provided to the project by the City of Lewes Public Works or Tidewater Utilities; that both utilities have waterlines along the property frontage; that a CPCN will be required for either utilities; that Tidewater Utilities did provide a Willing & Able Letter to serve the project; that natural gas is available from Chesapeake Utilities, as they have a gas main along Gills Neck Rd.; that a Traffic Impact Study was prepared in 2019; that an addendum was prepared in April 2020 for the previous withdrawn Application; that the withdrawn Application consisted of 206,500 sq. ft. of medical office buildings, 60 single-family homes and 150 multi-family homes; that the TIS Review Letter was prepared on October 7, 2021; that the improvements included within that letter were right-of-way dedication, interim improvements and build-out improvements; that subsequent to the review letter, a new plan, which is currently being proposed was submitted to DelDOT and Sussex County; that as part of the submission the developer stated to DelDOT that despite the reduction of traffic of approximately 50%, they would abide by the recommendations from the original study; that after review of the request in the reduction of traffic, DelDOT did not require a new TIS; that DelDOT provided an amended study and a letter; that during the same time, DelDOT had sped up the design of the DelDOT US Rt 9., Kings Hwy., Dartmouth Dr. to Freeman Hwy., DelDOT Contract T202212901 or also known as the dualization of Kings Hwy.; that the dualization of Kings Hwy. was first identified in 2009 as part of a larger agreement involving projects which have all completed their construction and their portions of overall improvements; that those projects include Senators, Governors, Showfield and Whites Pond Meadow who will construct their portion in summer to fall of 2022; that the last remaining piece is the dualization of Kings Hwy.; that DelDOT held a public workshop on February 23, 2022, on their improvement project; that the developer was agreeable with the interim improvements; that the developer began working on various projects for the current public hearing before the information from the DelDOT workshop was available and before final interim improvements were negotiated; that the rendering submitted was constructed before they received information regarding how the dualization of Kings Hwy. would occur with the landscape guidelines and shared-use path; that the rendering does provide an idea how the project would look from an aerial view; that they must create a corridor effect with landscaping and shared-use path meandering through and integrate the project with the dualization of Kings Hwy. to create a corridor the byways would be pleased with; that they recognize it is a byway and the gateway into the City of Lewes; that a second through lane was added in the southbound direction; that after discussion of the project, the time of the dualization and the

reduction in traffic, DelDOT did not support the interim improvements; that after further discussion and the developers willingness and desire to provide some temporary relief, DelDOT has agreed to interim improvements; that the improvements are slightly different from what was originally required in the October 7, 2021 letter; that DelDOT proposed additional requirements; that DelDOT's first requirement is the developer will mill an overlay approximately 3,500 linear feet of Kings Hwy.; that DelDOT's second requirement is to construct a rights-in and rights-out entrance on Kings Hwy.; that this will be located across from the Lewes property; that the entrances will align across from each other; that at that location DelDOT has proposed to make a round-about for the two entrances as part of the overall project; that the round-about is the reason the developer is agreeable to the rights-in and rights-out entrance during the interim condition; that the third DelDOT requirement was to maintain the entrance on Gills Neck Rd.; that no changes are required for this, as the entrance is designed for proposed amount of traffic for the project; that the developer is to improve Kings Hwy., Gills Neck Rd. and Cape Henlopen High School; that they will convert the through lane from Gills Neck Rd. onto Kings Hwy. into a dedicated left turn lane; that this will create two left turn lanes from Gills Neck Rd. onto Kings Hwy.; that the right turn lane will be converted to a through right turn lane; that this will allow traffic to go through to Cape Henlopen High School or turn right in the intersection; that they will be adding a second through lane in the southbound direction; that a separate right turn lane will remain; that they will be shifting the intersections roadway approximately 10-ft. into the site to accomplish the improvement; that there will be two through lanes in the southbound direction and a dedicated left turn lane going onto Gills Neck Rd.; that the dual through lane will continue south; that there will be a lane drop where the right hand through lane will become a dedicated right turn lane onto Clay Rd. in the interim condition; that a separate bicycle lane will be provided through the intersection; that they will also install a shared-use path from Cape Henlopen High School to Clay Rd. to complete pedestrian connectivity to Clay Rd.; that the developer will enter into an agreement to provide an equitable contribution to the dualization project; that the developer will dedicate 50-ft. of right of way from the center line of the road; that the developer will reserve an additional 30-ft. of right of way parallel to Kings Hwy. for the dualization of the project; that a 30-ft. dedication will occur along Gills Neck Rd.; that in addition to the reservation and dedicated right of way, a 15-ft. permanent easement will be provided for a shared-use path; that a shared-use path will be provided, wrap around and connect to the Big Oyster; that the developer will enter into an agreement to provide an equitable contribution to the Clay Rd. and Marsh Rd. intersection as part of the overall realignment project; that they will provide connections and cross-access easements between the onsite lots; that there is interconnectivity provided to the Cape Henlopen Medical Center and Big Oyster; that there will also be an interconnection into Lane Builders once the roundabout is installed; that they will provide bicycle, pedestrian and transit improvements to include the shared-use paths; that they will provide a Type 2 bus stop; that the developer had a meeting with select individuals of the Lewes Byway Committee; that the meeting was held prior to the release of the dualization plan; that during the meeting the developer committed to working with the committee on the shared use path, landscaping and fencing; that after the release of the dualization plan, the developer reached out to the Lewes Byway Committee to reconfirm their commitment; that DelDOT is equally supportive of the development of the 10-ft shared-use path, landscaping and maintenance within the permanent easement; that the project was reviewed by PLUS on December 15, 2021; that the PLUS comments and responses can be found in Exhibit M; that the PLUS comments provided were general in nature and will comply with all regulatory requirements; that Davis, Bowen & Friedel, Inc. (DBF) prepared an Environmental Assessment and Public Facility

Evaluation Report in accordance of County Code, Chapter 115-194.3; that the written responses can be located within Exhibit K; that they have analyzed all of the respected items; that all mitigation measures are consistent with the Comprehensive Plan; that DBF prepared a written response to items listed in Chapter 99-9C; that the responses can be located within Exhibit J; that the project is integrated into existing terrain and surrounding landscape; that the project does not contain wetlands or flood plains; that the project provides buffers to screen objectionable features; that the project prevents pollution of surface and groundwater; that the plan provides for vehicular and pedestrian movement; that the plan mitigates the effect on area roadways and public transportation and the project is compatible with otherland areas.

Ms. Stevenson questioned if the Applicant will be using the recommendations and plans of the Lewes Byway Commission, if the Applicant is agreeable to the proposals made in the TIS Review Letter, if swales would be placed along Kings Hwy. or a closed stormwater system, if she could see a rendering of the interim highway is proposed to look like, if there will be shoulders on the roadways once the improvements are built; that shoulders are a big concern for her since Kings Hwy. is a major roadway for ambulances; that she questions what the Applicant is doing to create more pervious surfaces and questioned extra parking possibilities; that she mentioned the adjacent multi-family housing offers a lot of additional parking; that since the Applicant is offering multi-family housing, her hope is the units would be workforce housing; that she believes younger families, who work in the area, would live there and more than likely will have family and friends who visit; that with no parking on the street, additional parking will be needed; that she questioned the interconnectivity to the property; that she questioned the reasoning for not promoting access from Kings Hwy; that Gills Neck Rd. is much smaller than Kings Hwy.; that she fears the plan will encourage 400 to 500 additional people to utilize Gills Neck Rd. to enter Lewes; that she questioned if the entrance from Gills Neck Rd. could be a right-in and right-out, prohibiting traffic to turn left onto Gills Neck Rd.; that she feels until improvements are made, people will attempt to take the back way of Gills Neck Rd. into Lewes and she questioned if the Applicant has had any discussions with the school district.

Mr. Hutt stated he is unsure if there is a defined plan, especially with the new plan of the roundabout; that the Applicant intends to work with the Byway Commission as the dualization process moves forward; that the Byway Commission was excited with the Applicant's proposal shown in the rendering; that the Byway Commission did want trees and boulevards; that the Applicant hopes to accomplish as much as they can within the remaining area; that the Applicant is agreeable to the proposals made in the TIS Review Letter; that DelDOT will regulate if there should be open or closed drainage system along Kings Hwy.; that they are learning what the proposed plans are for the dualization of Kings Hwy.; that he cannot speculate on what will be required and the Sussex County Engineering Department verified the calculations to ensure there is a balanced budget on what is proposed.

Mr. Bryan Behrens spoke on behalf of the Application, that he is the group engineer for DelDOT's project development for the south section; that he is in charge of the design of the Kings Hwy. dualization project; that proposed currently is open drainage, which will be swales adjacent to the roadway; that they did reach out to the Lewes Byways Commission ahead of the DelDOT public workshop to present their proposal; that he believes Lewes Byways Commission was similarly as enthusiastic about the proposal as DelDOT was; that they are proposing a shared-use path and

landscaping, which is the same proposal as the Applicant, providing room for collaboration and he does not have a rendering of the highway during the interim improvements.

Mr. Lardner stated they only have a drawing to show what the proposed travel lanes will look like; that he does not have a rendering of what the improvements will look like; that he has a drawing showing where the travel lanes will be once the roadway is shifted; that all details will be worked out with Mr. McCabe and his staff as part of the review process; that there is still a lot more collaboration to go through of how the final lanes will look; that there will be two lanes heading southbound out of the City of Lewes, heading toward Dartmouth Dr.; that there will be shoulders on both sides the roadways, in the interim condition, and upon final construction; that the driveway material has not been finalized, as the homeowners need to be part of the conversation when discussing long-term maintenance; that there will be infiltration in all rear yard swales; that this will allow the back half of roof run off to drain into the rear yard swales with infiltration in them; that the roadways will have perforated piping; that this will allow the roadways to infiltrate as soon as the drainage hits the system; that drainage will infiltrate through the roadbed; that any runoff which still makes it to the infiltration ponds, will further infiltrate within the pond; that the pond will have a pre-treatment system on it; that this will further protect the wellheads; that their intent is to infiltrate at the source; that they will balance the budget to ensure they comply completely with the Wellhead Protection requirements; that they have proposed two parking spaces per unit; that there is a parking area by the clubhouse; that during non-business hours the parking lot of the Cape Henlopen Medical Center could be used; that he believes there are other opportunities for overflow parking elsewhere, however those areas are not reflected on the current site plan; that they do have an exit from the property to Big Oyster; that he can speak to Big Oyster's plan, as they have worked very closely with Mr. Hammer and the Big Oyster staff to ensure Big Oyster's and the Applicant's needs are both met; that the stub shown on the site plan is the interconnection to Big Oyster's proposed plans in the back; that they would have access to Big Oyster, through the roundabout, both in and out; that once the improvements are completed along Kings Hwy. they will have access to the dualized roundabout; that this will provide interconnectivity to Big Oyster; that collaborations will be ongoing as the Applicant and Mr. Hammer have been partners for a long time; that traffic accessing the project from Kings Hwy. would be required to cut through the residential section, in trying to keep the peaceful nature of the neighborhood; that they were attempting to separate the medical office commercial traffic, by only using the Gills Neck intersection; that commercial traffic can be heavy at times; that Gills Neck Rd. is not much smaller in the particular section being referred to; that traffic coming down Gills Neck Rd. toward Kings Hwy. would access the medical center by turning right, before reaching Kings Hwy; that the frontage of Gills Neck Rd. is adequately sized to handle the traffic when using the intersection, where as a subdivision street at 24-ft. wide is not designed for the commercial use; that he does not feel residents from the proposed community would take Gills Neck Rd. to access Lewes, as they will have access to Kings Hwy. as well as the Gills Neck Rd. intersection; that the potential for a right-in and right-out only would be regulated by DelDOT; that DelDOT granted the access as a full access and entrance; that DelDOT prefers the access to be on the lower classification roadway rather than the high classification roadway; that this causes competing interests regarding the entrance; that it would be quicker for residents to take a right onto Kings Hwy. into Lewes than to take the back way through Gills Neck Rd.; that he does not understand how eliminating the left onto Gills Neck Rd. will achieve Ms. Stevenson's goal; that he reached out to the Superintendent and Director of Operations; that they did not want to provide a letter in support or opposition; that the

school district was sent a letter with the plans; that they currently are and will continue coordinating with the school district regarding school bus stops.

Mr. Thomas Brockenbrough spoke on behalf of DelDOT in relation to the Application; that it is physically possible to create a no left turn onto Gills Neck Rd. from the project by widening Gills Neck Rd. and providing a median; that the construction of this will not be easy; that it will be costly, and it may be out of character with the Lewes Byway.

Ms. Wingate stated people wanting to make the left onto Gills Neck Rd. will most likely cause a lengthy wait, as there will not be a light at the location, causing people to avoid turning left and she would also like to see additional parking provided within the community.

Mr. Mears stated he also agrees with the need for additional parking; that he questioned if every proposed unit would have a garage and a garage will help with the parking issues.

Mr. Lardner stated every unit is proposed to have a garage. The Commission found that Mr. Tom Panetta spoke in opposition to the Application; that he is speaking on behalf of Lewes Board of Public Works; that he also lives in Lewes; that Lewes Board of Public Works opposes the Change of Zone request; that the five wells providing for the City of Lewes are located directly across the street from the project; that the proposed project along with the existing medical office complex building, the Village Center, the Village Center Cottages, along with 37 additional acres, sit directly over the Wellhead Protection Area; that this creates grave concern for them; that the Lewes Board of Public Works presented in front of the Planning & Zoning Commission before; that all of the water for Lewes and the service territories comes from the five wells; that the wells were replaced in the late 1950's to early 1960's; that DNREC has mentioned the placement of the wells is the most ideal locations for the Aquaphor; that they have been searching for redundant sites, but have been unsuccessful in finding a more suitable location; that the last study on the Wellhead Protection Area was performed in 2003; that since the study they have seen an increase in the pumping rate of 25%, from 400 to 500 million gallons per year; that the pumping is currently still within the permits; that Lewes has increased their pumping, but the surrounding wells have also increased pumping; that they have been in discussions with Geotech and DNREC questioning if the Wellhead Protection Area is currently sufficient as is; that the subject property and other properties mentioned, cover a third to a quarter of the Wellhead Protection Area; that the five wells drawn from 85-ft. to 100-ft. deep; that they are not very deep; that placing stormwater infiltration ponds directly within the Wellhead Protection Area, adjacent to the wells, does not allow much time to recover if something were to spill; that all of the nutrients from landscaping and surface contamination from the roads are going to be sent to the stormwater ponds; that he finds it hard to believe the site will be 44% of impervious coverage, given the density, roads, walkway, tennis courts and pool; that he had also spoke at the PLUS meeting; that the PLUS report submitted to Sussex County stated the pavement should be pervious; that the plan shows the pavement as conventional hot mix; that the use of pervious pavement would greatly reduce the amount of water to be sent to the stormwater ponds; that the PLUS report also mentioned using rain gardens, filter strips and other best practices; that he did not see these proposed in the plans; that Sussex County, the City of Lewes and the Lewes Board of Public Works have already purchased the Jones Farm due to the concern for protecting the Wellheads; that collectively \$6,000,000.00 was spent to accomplish this; that with this project the remaining portion of the Wellhead Protection Area is in danger of being developed; that this is a cumulative issue, not being just the proposed project; that this

issue needs to be looked at wholistically; that the Lewes Board of Public Works has not issued a Readiness to Serve, for the electricfor the project; that without a master plan, a wholistic overview of all the lands along Kings Hwy., the wellhead will suffer a death by a thousand cuts and this will jeopardize everyone in Lewes, and all of the service territory.

Chairman Wheatley questioned if the property is located within the service area of Lewes Board of Public Works.

Ms. Stevenson questioned if Mr. Panetta had any suggestions as to how the project could make things better regarding the Wellhead Protection Area.

Mr. Robertson questioned if the Wellhead Protection Area is important to Lewes, what was the reasoningfor Lewes not annexing the surrounding areas.

Mr. Panetta stated half of the property is located within the CPCN of Lewes Board of Public Works andthe other half of the property is not; that the City of Lewes must agree to any service outside of the citylimits; that he stated the City of Lewes wanted to attend the public hearing, but they had a Mayor and City Council meeting going on concurrently, which included all staff; that they intend to submit a formalletter to Planning and Zoning; that moving the stormwater pond out of the Wellhead Protection Area would help; that the stormwater pond is located within the worst possible area on the property; that theWellhead Protection Area is located within the lower corner for the property; that the soils on the entireproperty are part of the recharge area; that they are having additional studies performed to confirm the true impact on the wells, as well as the private wells in the area; that the Village Center Cottages is located completely in the Wellhead Protection Area; that without looking at these projects wholistically,decisions will be difficult to make and the City of Lewes does not have the right to annex properties without the owner applying for annexation first.

Mr. Robertson stated the public hearing will be closed for the Planning & Zoning Commission unless the Commission chose to hold the record open, however, public comments can be submitted for the public hearing before the County Council.

Chairman Wheatley questioned what the County Code states regarding the Wellhead Protection Area; that he questioned if there was a prior situation where the existence or location of the stormwater pondscaused adverse issues for a municipal water system and if the land was currently being tilled with chemicals.

Mr. Whitehouse stated Chapter 89 of the County Code focuses more on the site plan review rather than the use; that in any Wellhead Protection Area, with less than 35% impervious cover, there is no requirement; that there is a requirement an Environmental Assessment be submitted when 35% to 60% of impervious cover is proposed; that the Environmental Assessment must include an appropriate levelof detail of how the area should be managed and development within the area is not prohibited within the 35% to 60% range, however, does require supporting technical analysis.

Mr. Panetta stated if the Commission performs a search they will find examples, such as a dry cleaning business contaminating wells with trichloroethylene; that there are issues with contaminates on roadways, such as hydraulic fluid and gasoline being washed into the stormwater ponds; that farmers apply fertilizer as required to meet the soil requirements; that this is different than a homeowner who applies fertilizer twice a year; the difference is a business operation versus residential use; that the

Chesapeake and Coral Gables, Florida are controlling the amount of fertilizer being used for residential use and he feels this should be considered with the proposed project.

The Commission found Mr. Jay Tomlinson spoke by teleconference with questions regarding a potential construction date for the interim improvements for the proposed project, as the previous TIS referenced the former project; that he questioned if it was intended to have commercial businesses along the first floor and the possibility of leaving the record open.

Mr. Hutt stated he believes Mr. Tomlinson's concern originated from the statement within the TIS regarding the separation between retail business and professional office space.

Mr. Lardner stated the milestone for the proposed interim improvements is immediate, that the interim improvements are required to be installed and accepted before the first Certificate of Occupancy is granted for the project; that there will not be businesses along the first floor of the proposed professional office building; that the office building will be strictly for professional, dental and/or medical offices; that there will be no intent for retail or convenient stores; that with the original study they had proposed a 6,500 sq. ft. commercial shopping center; that this intent is where the initial 117,500 threshold originates from and the proposed project generates less traffic than the 117,500 trips, which is why they have agreed to perform the interim improvements immediately before the first Certificate of Occupancy. Ms. Wingate questioned the potential to move the location of the stormwater management pond. Ms. Stevenson questioned which direction the runoff would naturally run.

Mr. Lardner stated there is an opportunity to relocate the stormwater management pond; that it would require a redesign of the site, with a potential loss of units; that they have proposed recharge in excellent areas and Wellhead Protection Areas; that there have been conversations regarding impervious surfaces; that there are stormwater management practices within the Wellhead Protection Areas; that these are different practices to achieve the same result; that the Applicant has proffered for pretreatment of the system, should there be a leaking vehicle or a similar situation; that the runoff naturally runs away from the Wellhead Protection Area and this is stated within the report prepared by Mr. Cahill.

The Commission found there was no one present in the room or by teleconference who wished to speak in support or opposition to Applications, 2022-01, C/Z 1967, C/Z 1968, and C/U 2334 for Henlopen Properties, LLC.

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

In relation to Application 2022-01 Henlopen Properties, LLC. Motion by Ms. Stevenson to defer action for further consideration, seconded by Mr. Hopkins, and carried unanimously. Motion carried 5-0.

In relation to Application C/Z 1967 Henlopen Properties, LLC. Motion by Ms. Stevenson to defer action for further consideration, seconded by Ms. Wingate, and carried unanimously. Motion carried 5-0.

In relation to Application C/Z 1968 Henlopen Properties, LLC. Motion by Ms. Stevenson to defer action for further consideration, seconded by Mr. Hopkins, and carried unanimously. Motion carried 5-0.

In relation to Application C/U 2334 Henlopen Properties, LLC. Motion by Ms. Stevenson to defer action for further consideration, seconded by Ms. Hopkins, and carried unanimously. Motion carried 5-0.

Minutes of the April 14, 2022 Planning & Zoning Commission Meeting

The Commission discussed the application which has been deferred since March 10, 2022.

Ms. Wingate moved that the Commission recommend approval of C/U 2334 Henlopen Properties, LLC, for 267 Multi-Family Units based upon the record made during the public hearing and for the following reasons:

1. The purpose of the MR zone is to provide housing in an area which is expected to become urban in character and where central water and sewer is available. This conditional use application for multi-family units is in compliance with the purposes of the MR Zone.
2. Both central water and central sewer will be available to this site.
3. This site is the location of the Gill's Neck Road and King's Highway lighted intersection. DelDOT is also planning to improve the King's Highway Corridor in the near future. Multi-family development is appropriate for this property adjacent to these roadways and this intersection.
4. The property is in the immediate vicinity of other properties with a variety of business, commercial and institutional uses. The site is across from the Cape Henlopen High School campus. It is adjacent to the City of Lewes with nearby Mixed Residential, General Commercial, and Community Facilities zoning districts within the city. Nearby residential uses include Dutchman's Harvest within the City of Lewes with 17.7 units per acre; Jefferson Apartments within the City of Lewes with 9.8 units per acre; the Moorings at Lewes in Sussex County with 6.4 units per acre; and Henlopen Gardens in the City of Lewes with 5.5 units per acre. This conditional use at approximately 6 units per acre is consistent with other zoning and multi-family developments in the area.
5. There are no wetlands located on the property.
6. A small portion of the property is located within a Wellhead Protection Area. It will comply with the requirements of Chapter 89 of the Sussex County Code.
7. The Applicant commissioned an Environmental Assessment Report prepared by Verdantas that analyzed the geography and groundwater characteristics of the site. That study concluded that the proposed use, as designed and in compliance with Chapter 89 of the Sussex County Code and with the suggested conditions will not have an adverse impact upon the City of Lewes Wellheads that are off-site and across Kings Highway.
8. DelDOT has reviewed the proposed project and has determined under its vehicle trip standards that the development's traffic impact will be Minor. When DelDOT determines that traffic impact will be minor, a project is eligible to pay an Area Wide Study Fee instead of obtaining a Traffic Impact Study. Paying this fee does not eliminate the developer's obligation to construct or pay for offsite road improvements that are required by DelDOT.
9. DelDOT has issued and updated its Traffic Impact Study review letter for the project. That letter requires several offsite roadway improvements including, but not limited to, the

construction of interim improvements to Kings Highway, the dedication of a substantial amount of additional right-of-way to DelDOT; equitable contributions to the US9, Kings Highway, Dartmouth Drive to Freeman Highway Project; and equitable contributions to the realignment of Old Orchard Road/Savannah Road/Westcoats Road Project.

10. The proposed multi-family conditional use meets the purpose of the Zoning Ordinance in that it promotes the orderly growth of the County in an appropriate location.
11. The proposed use is consistent with the County's Comprehensive Land Use Plan. It is in the Coastal Area according to the Plan, which is a Growth Area. The Plan states that medium and higher densities can be appropriate where, like here, there are features such as central water and sewer and nearby commercial uses and employment centers. The Plan also states that a range of housing types should be permitted in the Coastal Area, including single-family homes, townhouses, and multifamily units.
12. There is no evidence that this project will adversely affect the neighboring properties, area roadways, or community facilities.
13. This recommendation is subject to the following conditions:
 - A. There shall be no more than 267 units within the development.
 - B. All entrances, intersections, roadways, and multimodal improvements required by DelDOT shall be completed by the applicant in accordance with DelDOT's determination. The developer shall also coordinate with the Lewes ByWays Committee on the design and landscaping within the ByWay corridor.
 - C. As proffered by the Applicant, the existing Mitchell family buildings shall be documented by an archeological study prior to their removal from the property.
 - D. All recreational amenities shall be completed within the development as follows:
 - i. The Community Center/Clubhouse, pool, and sports courts shall be completed on or before the 125th Building Permit; and
 - ii. The dog park shall be completed on or before the 150th Building Permit.
 - E. Central sewer shall be provided to the development by Sussex County. The developer shall comply with all requirements and specifications of the Sussex County Engineering Department.
 - F. The development shall be served by a central water system providing adequate drinking water and fire protection as required by applicable regulations.
 - G. Stormwater management and erosion and sediment control shall be constructed in accordance with applicable State and County requirements, and the project shall utilize Best Management Practices to construct and maintain these fixtures. The Final Site Plan shall contain the approval of the Sussex Conservation District.
 - H. Interior street design shall comply with or exceed Sussex County standards.
 - I. Road naming and addressing shall be subject to the review and approval of the Sussex County Mapping and Addressing Department.
 - J. The Applicant shall consult with the local school district's transportation manager to determine if a school bus stop is appropriate. The location of such a bus stop shall be shown on the Final Site Plan.
 - K. Construction, site work, and deliveries shall only occur on the site between the hours of 7:00 a.m. through 6:00 p.m., Monday through Friday. No Saturday and Sunday hours are permitted. A 24-inch by 36-inch "NOTICE" sign confirming these hours

in English and Spanish shall be prominently displayed at the site entrance during construction.

- L. A 20-foot-wide forested buffer shall be installed along the perimeter of the development adjacent to Jefferson Apartments, Bay Breeze Estates, and The Moorings. This buffer area shall comply with the planning requirements for such a buffer as contained in Section 99-5 of the Sussex County Code.
- M. The Final Site Plan shall include a landscape plan for the development showing the proposed tree and shrub landscape design, including the buffer areas.
- N. The Applicant shall form a Condominium Association that shall be responsible for the maintenance of all interior roadways and parking areas, buildings, buffers, stormwater management areas, recreational amenities, and open space.
- O. All lighting on the site shall be shielded and downward screened so that it does not shine on neighboring properties or roadways.
- P. The development shall comply with the requirements of Chapter 89 of the Sussex County Code and the recommendations provided by Verdantas on page 9 of its Environmental Assessment Report dated February 2022. These recommendations shall be incorporated into the Final Site Plan, and they shall be restated on the Final Site Plan.
- Q. The Final Site Plan shall contain the approval of the Sussex Conservation District for the design and location of all stormwater management areas and erosion and sedimentation control facilities.
- R. The Final Site Plan shall depict or note these conditions of approval and it shall be subject to the review and approval of the Sussex Planning & Zoning Commission.

Motion by Ms. Wingate, seconded by Mr. Hopkins and carried to recommend approval of C/U 2994 Henlopen Properties, LLC for the reasons and conditions stated in the motion. Motion carried 3-1.

Ms. Stevenson stated she was not opposed to the development; however, she is concerned about the testimony given by the Lewes Board of Public Works about the Wellhead Protection Area and safeguards that the Commission cannot control to protect the residents living on Gills Neck Rd.

The vote by roll call: Ms. Stevenson – Nay, Mr. Hopkins – Yea, Ms. Wingate – Yea, Chairman Wheatley – Yea

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



Sussex County

DELAWARE
sussexcountyde.gov

Memorandum

To: Sussex County Planning Commission Members
From: Mrs. Christin Scott, Planner I
CC: Mr. Vince Robertson, Assistant County Attorney and Applicant
Date: March 3, 2022
RE: Staff Analysis for CU 2334 Henlopen Properties, LLC

This memo is to provide background and analysis for the Planning Commission to consider as a part of application CU 2334 Henlopen Properties, LLC to be reviewed during the March 10, 2022 Planning Commission Meeting. This analysis should be included in the record of this application and is subject to comments and information that may be presented during the public hearing.

The request is for a Conditional Use for a portion of Tax Parcel: 335-8.00-37.00 to allow for a multi-family (267 unit) to be located on the southeast side of Kings Highway (Rt. 9). The property is lying on the southeast side of Kings Highway (Rt. 9) and on the north side of Gills Neck Road (S.C.R. 267). The parcel consists of 43.777 acres +/-.

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

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

The portion of this property is zoned Agricultural Residential (AR-1) Zoning District. Adjacent parcels to the north are also zoned Agricultural Residential (AR-1) Zoning District, as well as General Commercial (C-1) and Heavy Commercial (C-3). The properties to the north are zoned Medium Residential (MR) and the properties across Kings Highway and Gills Neck Road to the west and south are zoned Agricultural Residential (AR-1) Zoning District and Neighborhood Business (B-1).



Since 2011, there have been nineteen (19) Conditional Use applications within a 1-mile radius of the project site. Please see the attached excel spreadsheet for more information regarding the previous Conditional Use Applications.

Based on the analysis of the land use, surrounding zoning and uses, the Conditional use to allow for multi-family (267 units), subject to considerations of scale and impact, could be considered as being consistent with the land use, area zoning and surrounding uses.



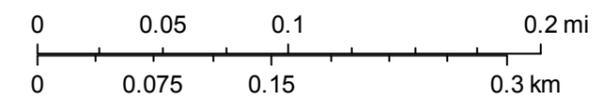
Sussex County



PIN:	335-8.00-37.00
Owner Name	JEFF-KAT LLC
Book	5613
Mailing Address	1007 KINGS HWY
City	LEWES
State	DE
Description	SE/KINGS HWY
Description 2	RESIDUAL LANDS
Description 3	N/A
Land Code	

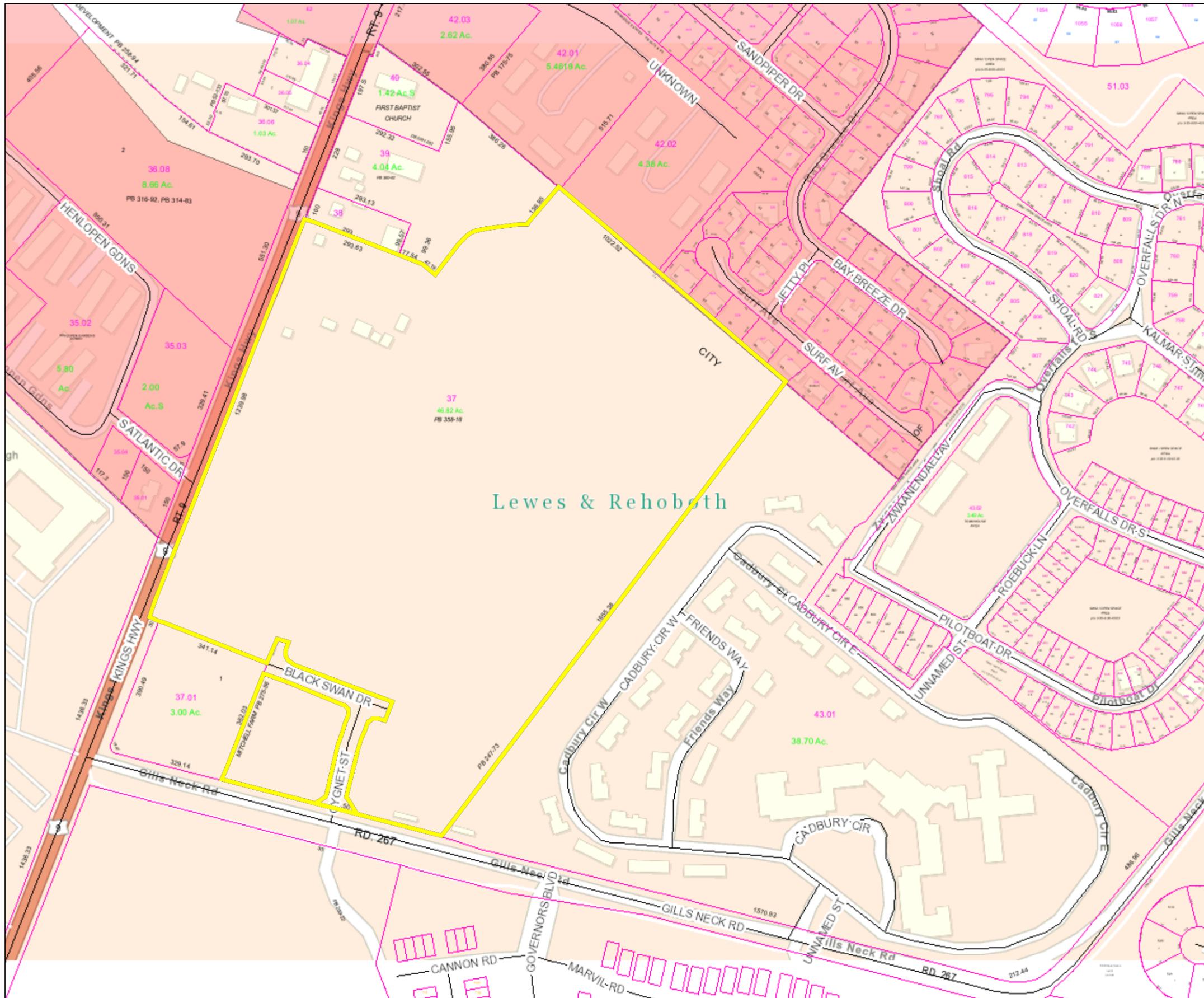
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- Streets
- Hundred Boundaries
- County Boundaries
- Tax Ditch Segments**
- Tax Ditch Channel
- Pond Feature
- Special Access ROW
- Extent of Right-of-Way
- Municipal Boundaries
- TID

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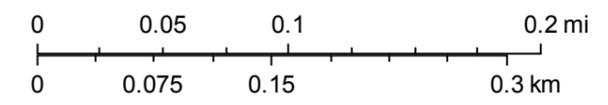
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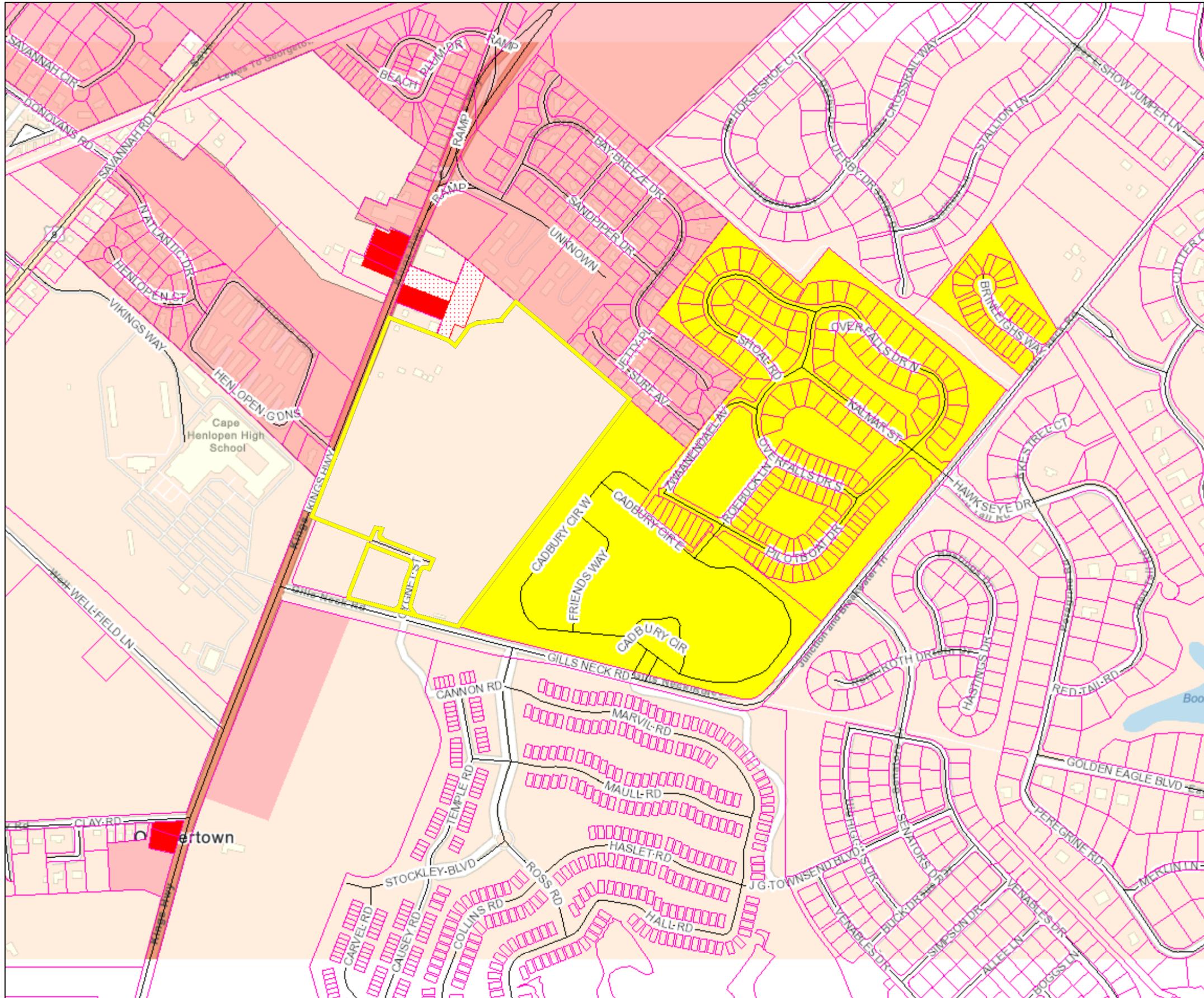
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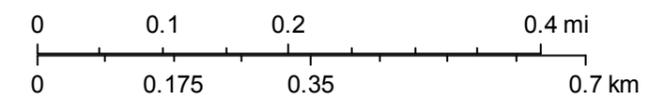
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- polygonLayer
 Override 1
- Tax Parcels
- Streets

1:9,028



Introduced: 2/1/22

ORDINANCE NO. ____

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A MR MEDIUM RESIDENTIAL DISTRICT FOR MULTI-FAMILY (267 UNITS) TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES & REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 43.777 ACRES, MORE OR LESS

WHEREAS, on the 5th day of January 2022, a conditional use application, denominated Conditional Use No. 2334 was filed on behalf of Henlopen Properties, LLC; and

WHEREAS, on the ____ day of _____ 2022, a public hearing was held, after notice, before the Planning and Zoning Commission of Sussex County and said Planning and Zoning Commission recommended that Conditional Use No. 2334 be _____; and

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

NOW, THEREFORE, THE COUNTY OF SUSSEX HEREBY ORDAINS:

Section 1. That Chapter 115, Article V, Subsection 115-39, Code of Sussex County, be amended by adding the designation of Conditional Use No. 2334 as it applies to the property hereinafter described.

Section 2. The subject property is described as follows:

ALL that certain tract, piece or parcel of land, lying and being situate in Lewes & Rehoboth Hundred, Sussex County, Delaware, and lying on the southeast side of Kings Highway (Rt. 9) approximately 390 feet northeast of Gills Neck Road (S.C.R. 267) and on the north side of Gills Neck Road (S.C.R. 267) approximately 329 feet southeast of Kings Highway (Rt. 9) and being more particularly described in the attached legal description prepared by Davis, Bowen & Friedel, Inc., said parcel containing 43.777 acres, more or less.

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

Rieley
-yes

Council Grant Form

Legal Name of Agency/Organization	Town of Georgetown
Project Name	Georgetown Police Department TRIKKE Positron
Federal Tax ID	51-6000120
Non-Profit	Yes
Does your organization or its parent organization have a religious affiliation? (If yes, fill out Section 3B.)	No
Organization's Mission	The Town of Georgetown partners with our community to deliver excellent service, and plans for the future while preserving, protecting, and enhancing the quality of life.
Address	37 The Circle
Address 2	
City	Georgetown
State	US
Zip Code	19947
Contact Person	Gene Dvornick
Contact Title	Town Manager

Contact Phone Number (302) 856-7391

Contact Email Address gdvornick@georgetowndel.com

Total Funding Request 5,000

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

If YES, how much was received in the last 12 months? 2500

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

If YES, approximately what percentage of the project's funding does the Council grant represent? 28

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

Program Category Other Public Safety

Primary Beneficiary Category Youth

Beneficiary Category Other General Public (residents and visitors)

Approximately the total number of Sussex County Beneficiaries served, or expected to be served, annually by this program 10000

Scope The TRIKKE Positron electric scooters will be used to enhance foot patrol capabilities and community interaction with officers during community events and directed patrols. Specialized units are a proven relationship builder with the community especially with our youth. Funds will be directly applied to the purchase of the Posi-tron electric scooters. It is anticipated this equipment will be utilized on regular duty assignments, special overtime patrols, and special events including Return Day.

Religious Components

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

Description TRIKKE Positron electric scooters (2) w/ Spare battery

Amount 17,739.00

Description

Amount

TOTAL EXPENDITURES 17,739.00

**TOTAL DEFICIT FOR
PROJECT OR
ORGANIZATION** -17,739.00

Name of Organization Town of Georgetown

**Applicant/Authorized
Official** Gene Dvornick

Date 06/15/2022

Affidavit Yes

Acknowledgement

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

Vincent
OK - 6.21

Council Grant Form

Legal Name of Agency/Organization	Eastern Shore AFRAM FESTIVAL Inc ✓
Project Name	25th AFRAM FESTIVAL
Federal Tax ID	050595124 ✓
Non-Profit	Yes
Does your organization or its parent organization have a religious affiliation? (If yes, fill out Section 3B.)	No
Organization's Mission	It's the Dream Team's goal to offer quality local Entertainment, Cultural Arts exhibitions, ethnic foods, childrens showcase, historical reenactment, so much more. Your sacrificial contributions will benefit hundreds of enthusiastic communities year after year.
Address	P.O. Box 687
Address 2	721 3rd Street
City	Seaford
State	Delaware
Zip Code	19973
Contact Person	Pat A Jones

Contact Title Executive Director

Contact Phone Number 302-228-5636

Contact Email Address councilwomanpj@comcast.net

Total Funding Request 1,000

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

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

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

If YES, approximately what percentage of the project's funding does the Council grant represent? 10

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

Program Category
Other

Primary Beneficiary Category Minority

Beneficiary Category
Other

Approximately the total number of Sussex County Beneficiaries served, or expected to be served, annually by this program 5000

Scope

✘ AFRAM started running this middle -of-the-year campaign .

This is when we try to raise funds to supplement the need for the current year and anticipate the needs for the next year.

✘ Today, we ask that you consider making a monetary gift , gift cards,, baskets, in-kind donations to this non-profit 501c: Eastern Shore AFRAM Festival, Inc in 2022.

Your donation helps to ensure that the Community Festival has the funding to continue.

Religious Components

Please enter the current support your organization receives for this project (not entire organization) 10,000.00

revenue if not applicable to request)

Description Entertainment

Amount 5,000.00

Description Stage Tent

Amount 2,000.00

Description Sound System

Amount 1,000.00

Description Setup Equipment

Amount 2,000.00

Description Kid's corner

Amount 1,550.00

Description T-shirts staff

Amount 500.00

Description

Amount

Description

Amount

TOTAL EXPENDITURES 12,050.00

**TOTAL DEFICIT FOR
PROJECT OR
ORGANIZATION** -2,050.00

Name of Organization AFRAM FESTIVAL

**Applicant/Authorized
Official** Pat A Jones

Date 06/18/2022

**Affidavit
Acknowledgement** Yes

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

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

Harry K Foundation ✓

Project Name

Desert Oasis Feeding Program

Federal Tax ID

46-2934019 ✓

Non-Profit

Yes

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

No

**Organization's
Mission**

The mission of the Harry K Foundation is to halt hunger and food insecurity among underprivileged children in Delaware. The foundation's objectives are to: 1) Support the Public School Backpack Program, and 2) Establish Food Pantries throughout Delaware public schools and other facilities. The School Backpack program provides under-served children with backpacks full of food to supplement what is available in their households. The food pantry program establishes pantries in public schools across the state so that parents can access nourishing food as needed, helping them to better meet their budgets and adequately feed their children.

Participants are selected by school personnel who are aware that hunger and food insecurity often lead to absenteeism, illness, and poor academic performance. Students come from all cultural backgrounds, predominantly Hispanic and African-American, but it is a culturally diverse population being served. Many of these

families struggle to provide adequate, healthy food for their children on a monthly basis.

Address 313 S. Boardwalk

Address 2

City Rehoboth Beach

State DE

Zip Code 19971

Contact Person Laura Glascoe

Contact Title Executive Director

Contact Phone Number 302-945-3324

Contact Email Address laura3173@gmail.com

Total Funding Request 4000

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

If YES, how much was received in the last 12 months? 3600

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

Yes

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

3

Program Category (choose all that apply)

Health and Human Services

Program Category Other

Primary Beneficiary Category

Youth

Beneficiary Category Other

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

2000

Scope

The Harry K Foundation has three program areas for feeding low-to low-moderate income children who are food insecure. The first two are the food pantry program, which operates 42 pantries in public schools across the State of Delaware, and the food backpack program, which provides

550 backpacks to vulnerable, at-risk children in Delaware every Friday during the school year. In Sussex County alone we have 28 school food pantries.

During the summer months when schools are not in session, the Harry K Foundation, through our partnership with the Delaware Food Bank, delivers food three times weekly to community sites where many of the children live who we support throughout the school year. During the summer months that outreach provides backpacks and food bags to over 300 families weekly.

In addition to the food pantry and backpack programs, the Harry K Foundation is piloting a new program that came about as a result of lessons learned during the COVID-19 pandemic outbreak. At that time, we were forced to close our school food pantries but desperately wanted to reach out and continue to feed hungry, food insecure children, especially in remote areas known as "Food Deserts." Many vulnerable families in these areas were unable to provide even basic food to their children, and without the school breakfast and lunch programs were living in dire circumstances in reference to food and shelter. Every week during the pandemic the Harry K Foundation reached out and supported up to 400 family units per week with help from our volunteers and business partners.

When schools reopened, we knew we could reopen our school pantries and provide weekend backpacks for children but that what we had learned during the pandemic was that we were still missing a lot of children, especially those living in very rural areas of Sussex County. As a result, we are now piloting what we call the Desert Oasis Feeding Program and have identified 3 remote sites in Sussex County that we now support by delivering food bags and backpacks to over 200 children weekly who live in these very remote areas. We hope to expand on that program as we move into the second year.

The Harry K Foundation is requesting a grant of \$4,000 from the Sussex County Council to help us purchase food for the Desert Oasis Feeding Program. The budget below provides details on costs for the program.

**Religious
Components**

Please enter the current support your organization receives for this project (not entire organization revenue if not applicable to request) 121,000.00

Description Purchase of Refrigerated Van

Amount 55,000.00

Description Van Maintenance, Insurance and Gas

Amount 15,000.00

Description Part Time Staff

Amount 15,000.00

Description Purchase of Food

Amount 30,000.00

Description Food Storage

Amount 5,000.00

Description Administrative Support

Amount 5,000.00

Description

Amount

Description

Amount

TOTAL EXPENDITURES 125,000.00

**TOTAL DEFICIT FOR
PROJECT OR
ORGANIZATION** -4,000.00

Name of Organization Harry K Foundation

**Applicant/Authorized
Official** Laura Glascoe

Date 06/19/2022

**Affidavit
Acknowledgement** Yes

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To Be Introduced: 06/28/22

Council District 5: Mr. Rieley
Tax I.D. No. 234-11.00-59.05
911 Address N/A

ORDINANCE NO. ____

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR MULTI-FAMILY DWELLINGS (48 UNITS) TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 7.01 ACRES, MORE OR LESS

WHEREAS, on the 21st day of March 2022, a conditional use application, denominated Conditional Use No. 2358 was filed on behalf of Commonwealth Development Corporation; 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. 2358 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. 2358 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 Indian River Hundred, Sussex County, Delaware, and lying on north side of Dorman Road (S.C.R. 288A) and the west side of John J. Williams Highway (Rt. 24), at the intersection of Dorman Road and John J. Williams Highway, and being more particularly described in the attached legal description prepared by David T. Pryor, Esq., said parcel containing 7.01 acres, more or less.

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

To Be Introduced: 06/28/22

Council District 4: Mr. Hudson
Tax I.D. No.: 134-10.00-62.10
911 Address: 32414 Omar Road, Frankford

ORDINANCE NO. ____

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR STORAGE OF HVAC SUPPLY INVENTORY AND COMPANY VEHICLES AND TRAILERS TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 1.0 ACRES, MORE OR LESS

WHEREAS, on the 29th day of March 2022, a conditional use application, denominated Conditional Use No. 2362 was filed on behalf of Delaware SiteScapes, 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. 2362 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. 2362 as it applies to the property hereinafter described.

Section 2. The subject property is described as follows:

ALL that certain tract, piece or parcel of land, lying and being situate in Baltimore Hundred, Sussex County, Delaware, and lying on the east side of Omar Road (Rt. 54) approximately 726 ft. southwest of Jones Road (S.C.R. 369) and being more particularly described in the attached legal description prepared by Parsons & Robinson, P.A., said parcel containing 1.0 acres, more or less.

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

To Be Reintroduced: 06/28/2022

Council District 3: Mr. Schaeffer
Tax I.D. No.: 235-7.00-18.00
911 Address: 12898 Union Street Ext., Milton

ORDINANCE NO. ____

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A GR GENERAL RESIDENTIAL DISTRICT FOR A FOOD PANTRY TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BROADKILL HUNDRED, SUSSEX COUNTY, CONTAINING 0.966 ACRES, MORE OR LESS

WHEREAS, on the 17th day of August 2021, a conditional use application, denominated Conditional Use No. 2310 was filed on behalf of Milton Community Food Pantry, Inc.; 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. 2310 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 VI, Subsection 115-39, Code of Sussex County, be amended by adding the designation of Conditional Use No. 2310 as it applies to the property hereinafter described.

Section 2. The subject property is described as follows:

ALL that certain tract, piece or parcel of land, lying and being situate in Broadkill Hundred, Sussex County, Delaware, and lying on the west side of Union Street Ext. (Rt. 5), approximately 0.24 mile south of Reynolds Pond Road (S.C.R. 231) and being more particularly described in the attached legal description prepared by Fuqua, Willard, Stevens & Schab, P.A., said parcel containing 0.966 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.