



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

**MEETING:  
July 26, 2022**

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**Sussex County Council  
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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

JULY 26, 2022

10:00 A.M.

#### Call to Order

#### Approval of Agenda

#### Approval of Minutes – July 12, 2022

#### Reading of Correspondence

#### Public Comments

#### Todd Lawson, County Administrator

1. General Assembly Legislative wrap up
2. Administrator's Report

#### 10:15 a.m. Public Hearings

1. "AN ORDINANCE TO AMEND CHAPTER 52, § 52-1 OF THE CODE OF SUSSEX COUNTY TO ADOPT THE BUILDING CONSTRUCTION STANDARDS IN THE INTERNATIONAL BUILDING CODE 2021 EDITION AND THE INTERNATIONAL RESIDENTIAL CODE 2021 EDITION"
2. Proposed New Road Estates Pavement Improvements Assessment Roll

#### Hans Medlarz, County Engineer

1. Chapter 96 Sussex Community Improvements Program
  - A. New Road Estates Pavement Improvements, Project T21-08



2. **EMS Public Safety Building, Project C19-04**
  - A. **Change Order No. 15**
3. **Bulk Delivery of Magnesium Hydroxide, Project M21-12**
  - A. **Contract Escalation**
4. **Sussex County Landfills Site Maintenance**
  - A. **Change Order 1 – FY 23**

### **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. **Kody’s Kids, Inc. for activity supplies**
2. **The Nemours Foundation for Vaccine and Medication Barcoding**

## Introduction of Proposed Zoning Ordinances

### Council Members' Comments

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

##### Possible action on Executive Session items

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

“AN ORDINANCE TO AMEND THE FUTURE LAND USE MAP ELEMENT OF THE COMPREHENSIVE PLAN IN RELATION TO TAX PARCEL NO. 334-12.00-16.04” (property lying on the west side of John J. Williams Highway (Route 24), approximately 0.25 mile southwest of Mulberry Knoll Road (S.C.R. 284) (911 Address: N/A) (Tax Parcel: 334-12.00-16.04)

##### Change of Zone No. 1949 filed on behalf of J.G. Townsend Jr. & Co.

“AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A MR MEDIUM DENSITY RESIDENTIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 21.62 ACRES, MORE OR LESS” (property lying on the west side of John J. Williams Highway [Route 24], approximately 0.25 mile southwest of Mulberry Knoll Road [S.C.R. 284]) (911 Address: N/A) (Tax Parcel: 334-12.00-16.04)

##### Conditional Use No. 2304 filed on behalf of J.G. Townsend Jr. & Co.

“AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A MR MEDIUM DENSITY RESIDENTIAL DISTRICT FOR MULTI-FAMILY (84 UNITS) TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 21.62 ACRES, MORE OR LESS” (property lying on the west side of John J. Williams Highway [Route 24], approximately 0.25 mile southwest of Mulberry Knoll Road [S.C.R. 284]) (911 Address: N/A) (Tax Parcel: 334-12.00-16.04)

##### Adjourn



**-MEETING DETAILS-**

In accordance with 29 Del.C. §10004(e)(2), this Agenda was posted on July 19, 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, JULY 12, 2022**

**A regularly scheduled meeting of the Sussex County Council was held on Tuesday, July 12, 2022, at 1:15 p.m., in Council Chambers, with the following present:**

<b>Michael H. Vincent</b>	<b>President</b>
<b>Cynthia C. Green</b>	<b>Councilwoman</b>
<b>John L. Rieley</b>	<b>Councilman</b>
<b>Mark G. Schaeffer</b>	<b>Councilman</b>
<b>Gina A. Jennings</b>	<b>Finance Director</b>
<b>Vince Robertson</b>	<b>Assistant County Attorney</b>

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

**Call to  
Order**

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

**M 315 22  
Approve  
Agenda**

**Mrs. Jennings recommended the removal of Item #3 under Grant Requests, a request from New Coverdale Outreach Mission, Inc for a new HVAC system. A Motion was made by Mr. Schaeffer, seconded by Mrs. Green, to approve the Agenda as amended.**

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

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

**Minutes**

**The minutes of the June 28, 2022 meeting were approved by consensus.**

**Corres-  
pondence**

**There was no correspondence.**

**Public comments were heard.**

**Public  
Comments**

**Mr. William Kinnick discussed stewardship, water and sewer issues in Sussex County.**

**Mr. Leonard Sears spoke about sewage problems within Sussex County and communication issues with DNREC.**

**M 316 22  
Approve  
Consent  
Agenda  
Items**

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

- 1. Use of Existing Sewer Infrastructure Agreement, IUA CU2207  
OA Marlin Chase, Cedar Neck Area**

2. **Use of Existing Sewer Infrastructure Agreement, IUA 1159  
Gulfstream Development, Johnson's Corner Area**
3. **Use of Existing Sewer Infrastructure Agreement, IUA 439-2  
Baylis Estates Investments, LLC, Oak Orchard Area**

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

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

**Adminis-  
trator's  
Report**

**Mrs. Jennings read the following information for the Administrator's Report:**

**1. Advisory Committee on Aging & Adults with Physical Disabilities for Sussex County**

**The Advisory Committee on Aging & Adults with Physical Disabilities for Sussex County will meet July 18<sup>th</sup> at 10:00 a.m. at the Sussex County Administrative Offices West Complex, 22215 North DuPont Boulevard, in Georgetown. A copy of the agenda is attached.**

**2. Council Meeting Schedule**

**A reminder that Council will not meet on Tuesday, July 19<sup>th</sup>. The next regularly scheduled Council meeting will be held on Tuesday, July 26<sup>th</sup> at 10:00 a.m.**

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

**Second  
Quarter  
Employee  
Recognition  
Awards**

**Karen Brewington, Human Resources Director, announced the Second Quarter recipients of the Shining Star Employee Recognition Program. Second Quarter recipients are Andrew Knestaut, Library Assistant from the Greenwood Library, David Rittenhouse, GIS Specialist in the Geographic Information Department and Deborah Shields, Senior Exemption Coordinator in the Finance Department. Mrs. Brewington noted that these individuals were selected out of 63 submissions.**

**WS  
Contract  
5/Segment  
D/CO No.  
1 & 2**

**Hans Medlarz, County Engineer presented Change Orders 1 & 2 for Segment D for the Western Sussex Contract 5, Project S19-29 for Council's consideration.**

**Mr. Medlarz explained that for Segment D, the first Change Order**

consists of additional unit rate costs for camera work beyond the main for lateral locates. The second Change Order is a request for contingent unit rate approval for heavy cleaning services prior to camera work, in certain circumstances of heavy debris.

**M 317 22**  
**Approve CO**  
**No. 1/**  
**Segment D**

A Motion was made by Mr. Schaeffer, seconded by Mr. Rieley that based upon the recommendation of the Sussex County Engineering Department, that Change Order No. 1 for contract S19-29, Western Sussex Transmission Facilities Segment D, be approved, for an increase to the contract of \$52,500.

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

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

**M 318 22**  
**Approve CO**  
**No. 2/**  
**Segment D**

A Motion was made by Mr. Schaeffer, seconded by Mr. Rieley that based upon the recommendation of the Sussex County Engineering Department, that Change Order No. 2 for contract S19-29, Western Sussex Transmission Facilities Segment D, be approved, for an increase to the contract not to exceed \$33,900.

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

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

**WS**  
**Contract/**  
**Segment A**

Mr. Medlarz reported that for Segment A, Change Order No. 1, there was a small amount of additional chemicals that were not part of the original inventory sheets. For Change Order No. 2, removal of residual liquids, solids, and sludger resulted in a surplus. In addition, substantial completion is being requested effective June 23, 2022.

**M 319 22**  
**Approve CO**  
**No. 1/**  
**Segment A**

A Motion was made by Mr. Schaeffer, seconded by Mr. Rieley that based upon the recommendation of the Sussex County Engineering Department, that Change Order No. 1 for contract S19-29, Western Sussex Transmission Facilities Segment A, be approved, for an increase to the contract of \$2,628.88.

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

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

**M 320 22**

A Motion was made by Mr. Schaeffer, seconded by Mr. Rieley that based

**Approve CO No.2/ Segment A/ Substantial Completion** upon the recommendation of the Sussex County Engineering Department, that balancing Change Order No. 2 for contract S19-29, Western Sussex Transmission Facilities Segment A, be approved, for a decrease of \$216,097.35 and the substantial completion be granted effective June 23, 2022, with any held retainage released in accordance with the contract documents.

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

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

**WS Contract/ Segment B CO** Mr. Medlarz presented Change Order No. 1 for Segment B for Council's consideration. He further explained that during the process of demolition, it was found that the existing pipeline would not be sustainable in its current location and condition.

**M 321 22 Approve CO No. 1/ Segment B** A Motion was made by Mr. Schaeffer, seconded by Mr. Rieley that based upon the recommendation of the Sussex County Engineering Department, that Change Order No. 1 for contract S19-29, Western Sussex Transmission Facilities Segment B, be approved, for an increase to the contract of \$27,743.89.

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

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

**Runway 4-22 Pavement Assessment** Mark Parker, Assistant County Engineer presented an assessment of runway 4-22 pavement for Council's consideration. Mr. Parker explained the history of the pavement and the concerns of what was observed last year. In addition, an assessment is being recommended to be completed by our Aeronautical Design Consultant, Delta Airport Consultants, Inc.

**M 322 22 Approve Runway 4-22 Pavement Assessment** A Motion was made by Mr. Schaeffer, seconded by Mr. Rieley that based upon the recommendation of the Sussex County Engineering Department and Delaware Coastal Airport Manager, that concurrence for approval be provided for Delta Airport Consultants, Inc. to perform a full runway 4-22 pavement assessment in the amount not to exceed \$125,000.

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

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

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

**Public  
Hearing/  
CU2295**

**A Public Hearing was held on a Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR INDOOR AND OUTDOOR STORAGE OF HEATING AND COOLING EQUIPMENT TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN SEAFORD HUNDRED, SUSSEX COUNTY, CONTAINING 4.03 ACRES, MORE OR LESS” (property lying on the east side of Conrail Road [S.C.R. 546], approximately 606 feet south of the intersection of Hearn's Pond Rd. [S.C.R. 544]) (911 Address: 22135 Conrail Road, Seaford) (Tax Parcel: 331-3.00-129.07)**

**The Planning and Zoning Commission held a Public Hearing on this application on June 9, 2022, and on June 23, 2022, the Commission recommended approval of the application for the seven reasons stated and subject to the nine recommended conditions.**

**(See the minutes of the Planning and Zoning Commission dated June 9, and June 23, 2022.)**

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

**The Council found that Mrs. Tiffany Bone and Mr. Carl Bone were present on behalf of their Application; that they approve of the recommended conditions given by the Planning and Zoning Commission.**

**There were no public comments.**

**The Public Hearing and Public Record was closed.**

**M 323 22  
Adopt  
Ordinance  
No. 2870  
/CU2295**

**A Motion was made by Mr. Schaeffer, seconded by Mr. Rieley to Adopt Ordinance No. 2870 entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR INDOOR AND OUTDOOR STORAGE OF HEATING AND COOLING EQUIPMENT TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN SEAFORD HUNDRED, SUSSEX COUNTY, CONTAINING 4.03 ACRES, MORE OR LESS” for the reasons given by Planning and Zoning numbered 1-7 with conditions 8 A-I as follows:**

- 1. The applicant operates an HVAC repair business on the site. It evolved from a home occupation to the point where a Conditional Use is now required. This Conditional Use will bring the use into compliance with the zoning code.**
- 2. As part of the HVAC repair business, the Applicant keeps damaged, replaced, and worn-out HVAC equipment on the site to recycle the various metal parts contained in them.**
- 3. The use will not have an adverse impact upon neighboring properties or area roadways.**

**M 323 22  
Adopt  
Ordinance  
No. 2870  
/CU2295  
(continued)**

- 4. Traffic generated by the proposed use will be minimal and will not have a negative impact on the neighboring properties or roadways.**
- 5. The use is of a public or semi-public character that is desirable for the general convenience and welfare of the area and the County.**
- 6. The Applicant has stated that they reside at the property and will continue to do so as part of this Conditional Use.**
- 7. No parties appeared in opposition to the application.**
- 8. This recommendation is subject to the following conditions:**
  - A. The property shall be used for a HVAC repair business in addition to the Applicant’s residence. As part of that Business, the temporary storage of used HVAC equipment shall be allowed so that it can be recycled.**
  - B. There shall be no retail sales of HVAC equipment from the property.**
  - C. The site shall not be permitted to become a junkyard, which requires separate zoning and other approvals. The used HVAC equipment shall be kept within a fenced and screened area, and none of it shall be permanently stored. The Applicant shall only store HVAC equipment it obtains as part of its repair and installation business. No HVAC equipment shall be brought to the site by other contractors, businesses, or individuals other than the Applicant and its employees.**
  - D. No more than 1,600 square feet on the site shall be set aside for this temporary storage area. This area shall be shown on the Final Site Plan.**
  - E. Any outdoor lighting on the site shall be downward screened so that it does not shine on neighboring properties or roadways.**
  - F. Any dumpsters on the site shall be screened from the view of neighboring properties and roadways. The dumpster location shall be shown on the Final Site Plan.**
  - G. The Applicant shall comply with any DelDOT requirements for entrance and roadway improvements.**
  - H. Any violation of these conditions of approval may result in the termination of this Conditional Use.**
  - I. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning and Zoning Commission.**

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

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

**Public  
Hearing/  
CU2296**

**A Public Hearing was held on a Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A TOWING BUSINESS TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BROAD CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 3.078 ACRES, MORE OR LESS” (property**

**Public  
Hearing/  
CU2296  
(continued)**

**lying on the east side of Jestice Farm Road [S.C.R. 449A] approximately 0.31 mile south of Johnson Road [S.C.R. 447]) (911 Address: 31531 Jestice Farm Road, Laurel) (Tax Parcel: 232-19.00-12.02)**

**The Planning and Zoning Commission held a Public Hearing on this application on June 9, 2022, and on June 23, 2022, the Commission recommended approval of the application for the five reasons stated and subject to the eleven recommended conditions.**

**(See the minutes of the Planning and Zoning Commission dated June 9, 2022, and June 23, 2022.)**

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

**The Council found that Mr. Michael Milligan was present on behalf of his Application; that he agreed with the conditions placed by the Planning and Zoning Commission.**

**There were no public comments.**

**The Public Hearing and Public Record were closed.**

**M 324 22  
Adopt  
Ordinance  
No. 2871/  
CU2296**

**A Motion was made by Mr. Rieley, seconded by Mr. Schaeffer to Adopt Ordinance No. 2871 entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A TOWING BUSINESS TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BROAD CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 3.078 ACRES, MORE OR LESS” for the reasons given by Planning and Zoning Commission numbered 1-5 with conditions 6 A-K as follows:**

- 1. Although characterized as a towing business, the Applicant operates an impound yard on this property. As a result, it does not generate customer traffic in the way that a typical towing operation would. Cars are brought in, stored for a short time, and then hauled out. No maintenance or repairs occur onsite.**
- 2. The towing business is small, and with the conditions and stipulations placed upon it, it will not have an adverse impact on the neighboring properties or nearby roadways.**
- 3. The Applicant resides on the property and the impound yard is screened from view. The Applicant intends to keep this primarily residential appearance.**
- 4. The use as a towing business and impound yard is of a public or semi-public character and it is a service that is relied upon by banks, financing companies, and other businesses that require the towing and impounding of vehicles.**
- 5. No parties appeared in opposition to this application.**
- 6. This recommendation for approval is subject to the following**

**M 324 22**



**Adopt  
Ordinance  
No. 2871/  
CU2296**

**conditions and stipulations:**

- A. The Applicant has stated that no sign is required or needed.**
- B. Security lighting shall be downward screened and shall be directed away from neighboring properties and roadways.**
- C. Any dumpsters shall be screened from the view of neighbors and roadways. The dumpster locations shall be shown on the Final Site Plan.**
- D. No repairs shall be performed on the site.**
- E. No junked, unregistered, or permanently inoperable vehicles or trailers shall be stored on the site.**
- F. There shall not be any parking in the front yard setback.**
- G. The impound and parking areas shall be shown on the Final Site Plan and marked on the site itself. Vehicles shall only be parked within these designated areas.**
- H. The perimeter of the impound area shall be screened from the view of neighboring properties with a fence or vegetation. This screening shall be shown on the Final Site Plan.**
- I. No cars shall be sold from the property.**
- J. Any violation of these conditions may be grounds for termination of this Conditional Use.**
- K. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.**

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

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

**Public  
Hearing/  
CZ1957**

**A Public Hearing was held on a Proposed Ordinance entitled “AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM A B-1 NEIGHBORHOOD BUSINESS DISTRICT TO AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN CEDAR CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 0.28 ACRES, MORE OR LESS” (property lying on the east side of Front Street [S.C.R. 38B] approximately 200 feet south of Washington St. [S.C.R. 225C]) (911 Address: 8465 Front Street, Lincoln) (Tax Parcel: 230-6.17-19.00)**

**The Planning and Zoning Commission held a Public Hearing on this application on June 9, 2022 and the Commission recommended approval of the application for the seven reasons stated.**

**(See the minutes of the Planning and Zoning Commission dated June 9, 2022.)**

**Public**

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

**Hearing/  
CZ1957  
(continued)**

The Council found that Ronicca Payton was present on behalf of her Application; that she lives at the subject property and operates a hair salon from this building; that she wants to be a good steward for the neighborhood; that it is an old general store and old Post Office of Lincoln.

There were no public comments.

The Public Hearing and Public Record were closed.

**M 325 22  
Adopt  
Ordinance  
No. 2872/  
CZ1957**

A Motion was made by Mrs. Green, seconded by Mr. Schaeffer to Adopt Ordinance No. 2872 entitled "AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM A B-1 NEIGHBORHOOD BUSINESS DISTRICT TO AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN CEDAR CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 0.28 ACRES, MORE OR LESS" for the reasons given by Planning and Zoning numbered 1-7 as follows:

1. This property currently is located at the corner of Front Street and Butler Avenue in Lincoln. It is zoned B-1. There are no other properties around it that are zoned B-1. All of the properties on this block and the east side of Front Street in the vicinity of this property are zoned AR-1.
2. This rezoning as requested by the Applicant will make this property consistent with the zoning of all the other properties around it.
3. Downzoning this property to AR-1 is consistent with the Sussex County Comprehensive Plan and its Future Land Use Map.
4. The Applicant does not conduct any business from this property and has no plans to do so.
5. The property is currently used for residential purposes, which actually makes it nonconforming under the existing B-1 Zoning. Rezoning this property to AR-1 will bring the use of the property into conformity with the requirements of the Sussex County Zoning Code.
6. There were several letters in support of this downzoning to AR-1. There was no opposition to it.
7. For all of these reasons, the rezoning of this property from B-1 to AR-1 is appropriate.

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

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

Mr. Robertson noted that he recused himself from the next application during the Planning and Zoning Commission meeting due to a conflict. For today's meeting, he will only participate in procedural matters due to Mr.

**Moore's absence.**

**Public  
Hearing/  
CZ1958**

**A Public Hearing was held for a Proposed Ordinance entitled “AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM A GR GENERAL RESIDENTIAL DISTRICT TO A GR-RPC GENERAL RESIDENTIAL DISTRICT – RESIDENTIAL PLANNED COMMUNITY FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 21.32 ACRES, MORE OR LESS” (property lying on the north and northeast side of Banks Road [S.C.R. 298], approximately 0.49 mile southeast of John J. Williams Highway [Rt. 24]) (911 Address: N/A) (Tax Parcel: 234-17.00-165.00)**

**The Planning and Zoning Commission held a Public Hearing on this application on June 9, 2022 and on June 23, 2022, the Commission recommended approval of the application for the nine reasons stated and subject to the seventeen recommended conditions.**

**(See the minutes of the Planning and Zoning Commission dated June 9, and 23, 2022.)**

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

**The Council found that Mr. Ken Christenbury, Axiom Engineering was present on behalf of the Application; that this Application was before the Council four years ago; that a question was raised from a neighbor if a Bald Eagle's nest was located on the property; that their environmental scientist agreed to meet with the DNREC Forrest Biologist; that they walked the site about a week ago and did not find any evidences of a Bald Eagle's nest; that a hard copy of the letter was distributed with that information; that Change of Zone No. 1844 was unanimously approved four years ago; that the project consists of 54 single-family lots with detached homes on approximately 21.32 acres with a density of 2.54 dwelling units per acre; that there is no change in density from the prior approval; that there is no changes in amenities or buffers; that the old request has expired while waiting for the County to bring sewer to the property and Tidewater Utilities to bring central water to the property; that the purpose of the application is to reestablish the RPC overlay zone on the current GR zoning to decrease front yard setbacks to 25', decrease side yard setbacks to 8' and decrease minimum lot size to 7,500 sf.; that the project includes nine acres of open space with only one acre being wet and six acres forested; that public utilities are underway for the area and sewer will be available by the time needed prior to pulling building permits and public water by the fall of 2023; that the property is now located in a Coastal Area; that the State Strategies Map was updated in 2020 and showing the property in a Level III area which is suitable for this type of development; that DelDOT Service Level Evaluation Request (SLER) was resubmitted and a Traffic Impact Study (TIS) is not required; that the Wetlands scientist verified that the**

**Public**

**Hearing/  
CZ1958**

information submitted five years ago has not changed; and that the proposed Findings of Fact have been updated; that the property is zoned GR which did not expire.

There were no public comments.

The Public Hearing and Public Record were closed.

**M 326 22  
Adopt  
Ordinance  
No. 2873  
/CZ1958**

A Motion was made by Mr. Schaeffer, seconded by Mr. Rieley Ordinance No. 2873 entitled "AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM A GR GENERAL RESIDENTIAL DISTRICT TO A GR-RPC GENERAL RESIDENTIAL DISTRICT-RESIDENTIAL PLANNED COMMUNITY FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 21.32 ACRES, MORE OR LESS" for the reasons given by Planning and Zoning numbered 1-9 with conditions 10 A-Q as follows:

1. The property is currently zoned GR. This would simply apply the RPC zoning overlay to the plan.
2. GR-RPC Zoning is also consistent with the adjoining Dogwood Lane development, which has a density of 9.32 units per acre.
3. The County Engineering Department has indicated that adequate wastewater capacity is available for the project as a GR-RPC. Central water will also be provided.
4. With the conditions and stipulations placed upon it, the RPC designation is appropriate since it allows the creation of a superior environment through design ingenuity while protecting existing and future uses. This project will maintain 43% open space, which includes 6.5 acres of existing forest. It also includes large, wooded buffers on both sides of the site. There will also be amenities along the water available to the entire community.
5. The project will not adversely affect the neighborhood or surrounding community. There are existing developments in the immediate area with similar characteristics. This is basically infill development, with a density similar to what exists in the immediate area.
6. The proposed development will have a density of 2.54 units per acre, which is less than the 2.67 units per acre to the north, and the 9.32 units per acre to the south.
7. According to the County's current Comprehensive Plan, the project is in a Developing Area.
8. The Applicant has favorably addressed the items set forth in Section 99-9C of the Subdivision Code.
9. No parties appeared in opposition to the application.
10. This recommendation is subject to the following conditions:
  - A. The maximum number of lots shall not exceed 54 single family lots.
  - B. A Homeowners Association shall be formed to provide for the

**M 326 22**

**Adopt  
Ordinance  
No. 2873  
/CZ1958  
(continued)**

- perpetual maintenance, repair and replacement of buffers, stormwater management facilities, streets, amenities, and other common areas.
- C. All entrances, intersections, interconnections, roadways and multi-modal improvements required by DelDOT shall be completed in accordance with DelDOT's requirements.**
  - D. The RPC shall be served as part of a Sussex County Sanitary Sewer District. The Developer shall comply with all requirements and specifications of the County Engineering Department.**
  - E. The RPC shall be served by central water.**
  - F. The stormwater management system shall meet or exceed the requirements of the State and County. 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.**
  - G. Interior street design shall meet or exceed Sussex County's Street design requirements. There shall also be sidewalks on both sides of all streets within the RPC.**
  - H. No wetlands shall be included within any individual lots. Any wetland buffers required by Section 115-93(B) shall be shown on the Final Site Plan. There shall be minimum disturbance of trees and other vegetation within these buffer areas. Required silt fencing shall be installed upland of these buffer areas (using the edge of the buffer nearest the interior development) to avoid disturbance. Construction activities within the buffer area shall be minimum. Any disturbance in the buffer area shall be indicated on the Final Site Plan and the "Limits of Disturbance" shall be indicated on the Final Site Plan.**
  - I. As stated by the Applicant in the previously approved RPC for this property that was the same as this application, all amenities shall be completed prior to the issuance of the 27<sup>th</sup> Building Permit.**
  - J. A 20-foot-wide vegetated buffer shall be established along the perimeter of the site. This buffer shall utilize existing forest or similar vegetation that exists in the buffer area. Where trees currently exist in the buffer area, stump removal or construction activities that disturb the existing grade of the area within the buffer shall be prohibited. All silt fencing shall be located along the interior limit of the buffer area (the edge of the buffer nearest the interior development) and the Final Site Plan shall identify the "Limit of Disturbance" to prevent disturbance of the buffer area.**
  - K. If requested by the local school district, a school bus stop shall be provided. The location of the bus stop area shall be shown on the Final Site Plan.**
  - L. Road naming and addressing shall be subject to the review and approval of Sussex County Geographic Information Office (F.K.A. Mapping and Addressing Department).**
  - M. The Final Site Plan shall include a Landscape Plan depicting all landscaping to be provided or preserved in all the buffer areas. The Landscape Plan shall also clearly show all forested areas that will be**

**Adopt  
Ordinance  
No. 2873  
/CZ1958  
(continued)**

preserved. The Landscape Plan shall also identify all “Limits of Disturbance” within the site.

- N. The Final Site Plan shall include a Grading Plan for the site. No building permit shall be issued for individual lots until an individual lot grading plan has been supplied to and approved by Sussex County. No certificate of occupancy shall be issued until a Lot Grading Certificate is submitted to the Building Code Department demonstrating general conformity with the individual site grading plan.**
- O. 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 Saturday. No 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.**
- P. A revised Preliminary Site Plan either depicting or noting these conditions must be submitted to the Office of Planning and Zoning.**
- Q. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.**

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

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

**Grant  
Requests**

**Mrs. Jennings presented grant requests for Council’s consideration.**

**M 327 22  
Boomerang  
Community  
Outreach**

**A Motion was made by Mr. Rieley, seconded by Mr. Schaeffer to give \$500 (\$500 from Mr. Vincent’s Councilmanic Grant Account) to Boomerang Community Outreach for Summer Youth Camp.**

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

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

**M 328 22  
Girls Scouts  
of the  
Chesapeake  
Bay Council**

**A Motion was made by Mr. Schaeffer, seconded by Mr. Rieley to give \$1,500 (\$1,500 from Countywide Youth Grant account) to Girls Scouts of the Chesapeake Bay Council for Summer Camp.**

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

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

**M 329 22  
Big Brothers**

**A Motion was made by Mr. Schaeffer, seconded by Mrs. Green to give \$2,000 (\$2,00 from Countywide Youth Grant Account) to Big Brothers Big**

**Big Sisters  
of DE**

**Sisters of Delaware Inc. for Summer Youth Mentoring Program.**

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

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

**M 330 22  
La  
Esperanza**

**A Motion was made by Mr. Rieley, seconded by Mr. Schaeffer to give \$1,000 (\$500 from Mr. Rieley's Councilmanic Grant Account and \$500 from Mr. Schaeffer's Councilmanic Grant Account) to La Esperanza Inc. for Emergency Housing Services.**

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

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

**M 331 22  
Primeros  
Pasos Inc.**

**A Motion was made by Mr. Rieley, seconded by Mr. Schaeffer to give \$1,000 (\$500 from Mr. Rieley's Councilmanic Grant Account and \$500 from Mr. Schaeffer's Councilmanic Grant Account) to Primeros Pasos Inc. for Educational Field Trips and Early Learning.**

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

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

**M 332 22  
American  
Legion Post  
8 Inc.**

**A Motion was made by Mr. Rieley, seconded by Mr. Schaeffer to give \$2,000 (\$2,000 from Mr. Rieley's Councilmanic Grant Account) to American Legion Post 8 Inc. for Ballistic Vests.**

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

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

**M 333 22  
Make-A-  
Wish  
Foundation**

**A Motion was made by Mr. Schaeffer, seconded by Mr. Rieley to give \$8,000 (\$2,000 from Mr. Rieley's Councilmanic Grant Account, \$2,000 from Mr. Schaeffer's Councilmanic Grant Account, \$1,000 from Countywide Youth Grant Account, \$2,000 from Mr. Vincent's Councilmanic Grant Account and \$1,000 from Mrs. Green's Councilmanic Grant Account) to Make-A-Wish Foundation of Philadelphia, Delaware & Susquehanna Valley for wishes for children with critical illnesses.**

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

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

**Introduction  
of Proposed  
Ordinances**

**Mr. Schaeffer introduced a Proposed Ordinance entitled “AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM A MR-RPC MEDIUM DENSITY RESIDENTIAL DISTRICT – RESIDENTIAL PLANNED COMMUNITY TO A MR-RPC MEDIUM DENSITY RESIDENTIAL DISTRICT – RESIDENTIAL PLANNED COMMUNITY TO AMEND CHANGE OF ZONE NO. 1759 (ORDINANCE NO. 2475) TO INCLUDE A 1.85 ACRE MARINA & RESTAURANT AMENITY AREA FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 126.8795 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 A REAL ESTATE OFFICE TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BROAD KILL HUNDRED, SUSSEX COUNTY, CONTAINING 1.38 ACRES, MORE OR LESS”**

**Mr. Schaeffer introduced a Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A C-1 GENERAL COMMERCIAL DISTRICT FOR A FOOD TRUCK TO OPERATE FOR A PERIOD EXCEEDING THREE DAYS TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES & REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 0.115 ACRES, MORE OR LESS”**

**Mr. Rieley introduced a Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR AMENDMENTS TO CONDITIONAL USE NO. 1334 (ORDINANCE NO. 1383) TO ALLOW FOR AN ADDITIONAL COMMERCIAL BUILDING FOR STORAGE AND OPERATIONS OF A CONSTRUCTION BUSINESS TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 3.93 ACRES, MORE OR LESS”**

**Mrs. Green 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 CERTAIN PARCEL OF LAND LYING AND BEING IN CEDAR CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 1.22 ACRES, MORE OR LESS”**



**The Proposed Ordinances will be advertised for Public Hearings.**

**Council  
Member  
Comments'**

**There were no Council members comments.**

**M 334 22  
Adjourn**

**A Motion was made by Mr. Schaeffer, seconded by Mr. Rieley to adjourn at 2:25 p.m.**

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

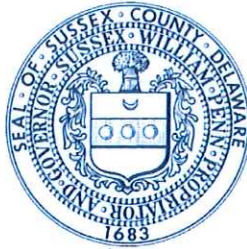
**Vote by Roll Call: Mrs. Green, Yea; Mr. Schaeffer, Yea;  
Mr. Hudson, Absent; Mr. Rieley, Yea;  
Mr. Vincent, Yea**

**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@sussexcountype.gov



**Sussex County**  
DELAWARE  
sussexcountype.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: **GENERAL ASSEMBLY SESSION WRAP UP**

DATE: July 22, 2022

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During Tuesday's meeting, I will provide a summary of the results of the recent legislative session of the 151<sup>st</sup> General Assembly.

The discussion will review legislation allowing the expanded use of Realty Transfer Tax (RTT) (HB 426); legislation requiring public comment at all public meetings (HB 293); and the County's agreement with the State to fund additional Delaware State Troopers in Sussex County (HB 250).

Should you have questions about other legislation, please let me know.



ANDY WRIGHT  
CHIEF OF BUILDING CODE  
  
(302) 855-7860 T  
(302) 855-7821 F  
awright@sussexcountyde.gov



**Sussex County**  
DELAWARE  
sussexcountyde.gov

## Memorandum

TO: Sussex County Council

FROM: Andy Wright, *AW*  
Chief of Building Code

DATE: July 20, 2022

RE: Establishing Effective Date for Ordinance 2851

---

During Tuesday's Council meeting, a public hearing is scheduled to establish an effective date for Ordinance no. 2851 adopted on May 17, 2022.

I inadvertently overlooked to seek an effective date of January 1, 2023. Our attorney advised us to establish this date by scheduling a new public hearing at a future Council meeting.

I am requesting a January 1, 2023 date to allow designers time to verify code compliance on any upcoming projects to the 2021 codes.



**ORDINANCE NO. 2851**

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**AN ORDINANCE TO AMEND CHAPTER 52, § 52-1 OF THE CODE OF SUSSEX COUNTY TO ADOPT THE BUILDING CONSTRUCTION STANDARDS IN THE INTERNATIONAL BUILDING CODE 2021 EDITION AND THE INTERNATIONAL RESIDENTIAL CODE 2021 EDITION.**

WHEREAS, with certain exemptions, Sussex County previously adopted the International Building Code 2012 Edition, Chapters 1-26 and 35, which governs the construction of commercial buildings; and

WHEREAS, International Building Code 2012 Edition has been updated, most recently by the International Building Code 2021 Edition; and

WHEREAS, with certain exemptions, Sussex County previously adopted the International Residential Code 2012 Edition, Chapters 1-10, which governs the construction of residential buildings; and

WHEREAS, International Residential Code 2012 Edition has been updated, most recently by the International Residential Code 2021 Edition; and

WHEREAS, Sussex County desires to update the building standards for both commercial and residential construction by adopting the International Building Code 2021 Edition, Chapters 1-26, and the International Residential Code 2021 Edition, Chapters 1-10, subject to certain exemptions.

28 **NOW, THEREFORE, THE COUNTY OF SUSSEX HEREBY**  
29 **ORDAINS:**

30

31 **Section 1. The Code of Sussex County, Chapter 52, Article I, § 52-1,**  
32 **Adoption of standards; exemptions, is hereby amended by deleting**  
33 **the language in brackets and inserting the italicized and underlined**  
34 **language as follows:**

34

35 **§ 52-1, Adoption of standards; exemptions.**

36

37 **A.** The International Building Code (hereinafter “IBC”), Chapters 1  
38 through 26,[ and Chapter 35, 2012] 2021 Edition[ and future  
39 editions], as promulgated, after 60 days subsequent to the  
40 nonchallenged publication of the edition, is hereby adopted as the  
41 building standard for construction in Sussex County as it relates to  
42 the following structures: multifamily residential dwellings,  
43 assembly occupancy, business occupancy, educational occupancy,  
44 hazardous occupancy, factory industrial occupancy, institutional  
45 occupancy, mercantile occupancy and storage occupancy.

46

47 **B. IBC Exemptions.**

48 (1) "Farm buildings," defined as any nonresidential structures, that  
49 are located on a farm and are used in the farming operation  
50 (barns, sheds, poultry houses, swine houses, etc.), are exempt  
51 from the provisions of the IBC as regards construction,  
52 alteration or repair. Any reference to "farm buildings" in any  
53 chapter, section, paragraph, appendix or table in the IBC shall  
54 not be applicable.

55 (2) Land used for agricultural purposes shall be exempt from the  
56 provisions of the IBC as regards construction, alteration or  
57 repair. Land shall be deemed to be in agricultural use when

58 devoted to the production for sale of plants and animals useful  
59 to man, including but not limited to forages and sod  
crops;grains and feed crops; dairy animals and dairy products;  
poultry  
60 and poultry products; livestock, including beef cattle, sheep,  
61 swine, horses, ponies, mules or goats, including the breeding  
62 and grazing of any or all of such animals; bees and apiary  
63 products; fur animals; trees and forest products; or, when  
64 devoted to and meeting the requirements and qualifications for  
65 payments or other compensation pursuant to a soil-  
66 conservation program under an agreement with an agency of  
67 the federal government

68 (3) The obtaining of building permits for assessment purposes  
69 continues to remain in effect.

70 (4) Where the provisions of the IBC and the provisions of the  
71 Sussex County Code conflict, the provisions contained in the  
72 Sussex County Code shall control.

74

75 **C.** The provisions and regulations of the International Residential  
76 Code, Chapters 1 through 10, [2012]2021 Edition[ and future  
77 editions], (hereinafter “IRC”), as promulgated after 60 days  
78 subsequent to the nonchallenged publication of the edition, as they  
79 relate to one- and two-family dwellings, are hereby adopted as the  
80 building standards for construction in Sussex County.

81

82 **D. IRC Exemptions**

83 (1) Carports. Carports less than 400 square feet in size are  
84 excluded from inspections.

85 (2) [Landings. A landing is not required on the exterior of a  
86 sliding door.

- 87 (3) Riser height.
- 88 (a) Maximum riser height is 8 1/4 inches.
- 89 (b) The greatest riser height within any flight of stairs
- 90 shall not exceed the smallest by more than 3/8
- 91 inches, excluding the first and last step of interior
- 92 stairs, which may have a difference of 5/8 inches.
- 93 (4) Tread depth. Minimum tread depth shall be nine inches,
- 94 including winders.
- 95 (5) Foundation anchorage. No anchor bolts will be required at the
- 96 end of each plate section, excluding corners.
- 97 (6) Automatic fire sprinkler systems, IRC § R313. Automatic fire
- 98 sprinkler systems shall be exempted from one- and two-
- 99 family dwellings and townhouses.
- 100 ([7]3) Where the provisions of IRC and the provisions of the
- 101 Sussex County Code conflict, the provisions contained in the
- 102 Sussex County Code shall control.

103

104 **Section 4. Effective Date. This Ordinance shall become effective on**

105 **\_\_\_\_\_ , 2022.**

106

107

### Synopsis

108

109 **This Ordinance amends Chapter 52, § 52-1 by adopting the**

110 **International Building Code (“IBC”) 2021 Edition, Chapters 1-26,**

111 **and the International Residential Code (“IRC”) 2021 Edition,**

112 **Chapters 1-10, subject to the exemptions set forth in Chapter 52, §**

113 **52-1B. and §52-1D., respectively.**

114

115 Deleted text is in brackets. Additional text is italicized and  
116 underlined.

**I DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE  
AND CORRECT COPY OF ORDINANCE NO. 2851 ADOPTED  
BY THE SUSSEX COUNTY COUNCIL ON THE 17<sup>TH</sup> DAY OF  
MAY 2022.**

---

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





## **NOTICE OF PUBLIC HEARING**

### **NEW ROAD ESTATES PAVING IMPROVEMENTS**

#### **CHAPTER 96 - SUSSEX COMMUNITY IMPROVEMENT (SCI) PROJECT T21-08**

**NOTICE IS HEREBY GIVEN** a Public Hearing will be held at 10:15 a.m. on Tuesday, July 26, 2022 in Sussex County Council Chambers, at 2 The Circle, Georgetown, Delaware, as per Chapter 96 of Sussex County Code.

An Assessment Roll providing the Annual Assessment for every assessable property within the Project boundary was completed, based on final costs of **The New Road Estates Paving Improvements Project T21-08**. The Assessment Roll will be mailed to every assessable property and may also be examined by interested parties at the Sussex County Engineering Department, 2 The Circle, Georgetown, Delaware, during regular business hours and days until the published date and time of the Public Hearing.

The Public Hearing is held to provide an opportunity for real property owners of the community to make comments on the rates determined for the Assessment Roll. Affected property owners in the New Road Estates project boundary are represented on Sussex County Tax Map 335-8.00, Parcels 589 – 597. Sussex County Council will hear and consider any comments or objections made to the Assessment Roll. Following the hearing, Sussex County Council will make the final decision on adoption of the Assessment Roll.

For questions or further information on the Project, Public Hearing or Assessment Roll, please contact the Sussex County Engineering Department, Patrick Brown, P.E., Project Engineer III at (302) 855-7815.

BY: Hans Medlarz, P.E.  
Sussex County Engineer

## 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) 853-5881



# Sussex County

DELAWARE  
sussexcountyde.gov

HANS M. MEDLARZ, P.E.  
COUNTY ENGINEER

## Memorandum

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

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

RE: ***CHAPTER 96 SUSSEX COMMUNITY IMPROVEMENTS PROGRAM  
NEW ROAD ESTATES PAVEMENT IMPROVEMENTS, PROJECT T21-08  
  
PUBLIC HEARING – PROPOSED ASSESSMENT ROLL***

DATE: July 26, 2022

New Road Estates is a small subdivision of nine (9) residential parcels located along New Lane, a private street and cul-de-sac owned and maintained by the community Homeowners Association (HOA). In July of 2019, the Community requested assistance from the County to repair and resurface their approximate 685 LF existing road through the Sussex Community Improvement Program as provided under Chapter 96 of Sussex County Code.

On March 17, 2020, Council authorized Resolution R 006 20 accepting the subdivision into the Chapter 96 program and establishing an Election for the New Road Estates property owners to vote on the estimated project cost. Election results for the proposed project were presented to Council on December 15, 2020. Based on affirmative Election results and Engineering Department recommendation, Council adopted Resolution No. R 019 20 authorizing the Department to perform improvements and for the County Engineer and Finance Director to determine a uniform rate for billing after substantial completion of the New Road Estates Pavement Improvements project.

The Engineering Department advertised Sussex County Project T21-08 on February 26, 2021. Three (3) bids were received, publicly opened and read aloud on Monday, March 15, 2021. On March 23, 2021, Council awarded Project T21-08 to Jerry's Inc. of Milford, DE, in a contract amount of \$38,191.87. Notice to Proceed was issued to the Contractor effective April 19, 2021. Work was completed during the month of May and the project close out began. The Final Balancing Change Order No. 2 was presented and approved by Council on July 27, 2021 with Substantial Completion granted as of July 1, 2021.



The Engineering Department has developed an Assessment Roll with the Finance Director based on all final project costs including construction costs, the County administration fee, and funding provided by the HOA to reduce the balance due. The County Departments have determined the final project balance owed to be \$38,904.88. The Assessment Roll identifies an equal sharing of the balance by the nine (9) parcels affected by the Project and allows for a 10-year repayment option with 3.75% fixed interest rate. Proposed assessments are \$4,322.76 and \$526.35 for lump sum and annual financed amounts, respectively, with assessment values being less than the estimates voted on in the Project Election.

In accordance with Chapter 96 Code, a Public Hearing is scheduled for July 26, 2022 at 10:15 AM to receive comments on the proposed Assessment Roll. This Hearing was properly advertised in a general circulation newspaper during each of the two weeks preceding the week of the Hearing, and a direct mailing to each affected parcel was made to distribute the Public Hearing Advertisement and proposed Assessment Roll with a summary letter.

Upon conclusion of the Public Hearing, the Engineering Department will offer Council a Resolution to adopt the Assessment Roll with authorization for the Finance Director to proceed with billing each affected parcel. Additionally, by the Resolution, the Assessment Roll will be recorded in Sussex County with the Board of Assessments directed to place the words “special community lien” in the description field of all affected parcels. This serves as a discoverable during any title search to provide notification that special costs may exist on a property within a Chapter 96 Sussex Community Improvement project area.

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

**A RESOLUTION ADOPTING THE UNIFORM ASSESSMENT ROLL FOR THE PURPOSE OF BILLING FINAL COSTS OF THE NEW ROAD ESTATES PAVEMENT IMPROVEMENTS CHAPTER 96 SUSSEX COMMUNITY IMPROVEMENT PROJECT T21-08.**

**WHEREAS**, Sussex County Council authorized the Sussex County Engineering Department to proceed with an Election for the subdivision of New Road Estates on March 17, 2020 by Resolution No. R 006 20; and

**WHEREAS**, the Sussex County Engineering Department held an Election for a New Road Estates Chapter 96 project in accordance with Sussex County Code, Chapter 96 on November 18, 2020 from 10:00 am until 3:00 pm. and presented certified results of the Election to Council as being favorable in proceeding with the Project; and

**WHEREAS**, following the requirements of Sussex County Code, § 96-6(B), Sussex County Council authorized the Engineering Department to proceed with the design and construction of the specified improvements for New Road Estates Chapter 96 Sussex Community Improvement project on December 15, 2020 by Resolution No. 019 20, further resolving the Sussex County Engineer and Sussex County Finance Director to complete the improvements and to compile final cost accounting to determine a uniform rate of assessment for each of the assessable properties within the New Road Estates Chapter 96 project, upon substantial completion of the project; and

**WHEREAS**, Project T21-08, New Road Estates Pavement Improvements was publicly advertised, bid and awarded by Council on March 23, 2021 to Jerry's Inc., who completed all improvements and received Substantial Completion, effective July 1, 2021, by Council motion on July 27, 2021; and

**WHEREAS**, an Assessment Roll based on final cost accounting was compiled by the Engineering Department and Finance Director, defining a uniform rate for the nine (9) affected parcels in the amount of \$ 526.35 annually for a ten (10) year time period, with the option to make a one-time lump sum payment of \$ 4,322.76, and presented at a properly advertised Public Hearing on July 26, 2022 allowing review and comment in accordance with § 96-11 of the Code; and

**NOW THEREFORE,**

**BE IT RESOLVED**, that Sussex County Council adopts the Assessment Roll for New Road Estates Pavement Improvements, Project T21-08 and authorizes the Finance Director to proceed with billing each of the nine (9) affected parcels in the amount of \$ 526.35 annually for a ten (10) year time period, with the option to make a one-time lump sum payment of \$ 4,322.76 according to Chapter 96 Code; and

**BE IT FURTHER RESOLVED**, that Sussex County Council directs the Assessment Roll to be recorded in Sussex County and the Board of Assessment to cause the words "special community lien" to be placed beside the name of each freeholder in the suburban community in order that persons such as prospective buyers of, or attorneys making title searches upon, the properties making inquiry at the office of the Board of Assessment concerning County taxes may be informed that special liens exist against the properties.

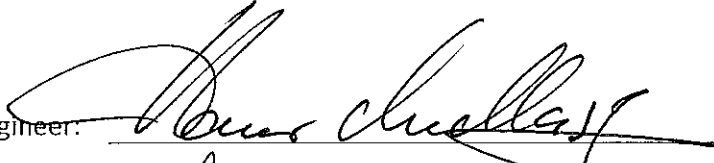
Patrick J. Brown, P.E.  
Project Engineer III


Presented July 26, 2022

**NEW ROAD ESTATES PAVEMENT IMPROVEMENTS (T21-08)  
CHAPTER 96 PROJECT - ASSESSABLE PROPERTIES  
PROPOSED ASSESSMENT ROLL**

TAX MAP	PARCEL NO.	LOT NO.	OWNER	LUMP SUM ASSESSMENT	FINANCED ASSESSMENT
335-8.00	589.00	1	Ronald and Marian Bowersock	\$4,322.76	\$526.35
335-8.00	590.00	2	Jason and Irene Cusimano	\$4,322.76	\$526.35
335-8.00	591.00	3	Sean and Michelle Merlonghi	\$4,322.76	\$526.35
335-8.00	592.00	4	John and Katherine Malloy	\$4,322.76	\$526.35
335-8.00	593.00	5	Cynthia S Albright Trustee	\$4,322.76	\$526.35
335-8.00	594.00	6	Cynthia S Albright Trustee	\$4,322.76	\$526.35
335-8.00	595.00	7	Amanda Armstrong	\$4,322.76	\$526.35
335-8.00	596.00	8	William and Natalie Cizek	\$4,322.76	\$526.35
335-8.00	597.00	9	Deborah Clements	\$4,322.76	\$526.35

NOTES: Nine (9) Assessable Parcels as per Project Election & Resolution  
 Total Project Cost (after fees & contributions) : \$38,904.88  
 3.75% Fixed Rate of 10-year Financing

Approved by County Engineer:  Date: 6/28/22

Approved by Finance Director:  Date: 6/29/22

## ENGINEERING DEPARTMENT

HANS M. MEDLARZ  
COUNTY ENGINEER

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

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



# Sussex County

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

## Memorandum

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

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

RE: ***EMS Public Safety Building – Project C19-04***  
***A. Change Order No. 15***

DATE: July 26, 2022

The single Public Safety Building concept was first introduced in the FY 2019 Budget Ordinance consolidating all EMS training, administration, and logistics functions in one facility. The scope and cost were updated in accordance with a space allocation programming effort in the FY 2020 Budget Ordinance and further refined based on design stages in the FY 2021 & FY 2022 Budget Ordinances reflecting a total project expense of \$12.00 million. The anticipated overall project expenses are still well within budget.

Following a publicly advertised process, Council awarded the EMS Department's - Architectural Consulting Services base contract to the George, Miles and Buhr, Inc. The subsequent Public Safety Building Project C19-04 base agreement covered professional services for an initial not to exceed amount of \$300,000.00.

The State's fire prevention regulations required a single-entry point necessitating a full sprinkler distribution system design and due to the critical nature of the facility, a secondary air conditioning backup in the form of a cooling tower was desired. Council authorized a \$31,720.00 stand-alone purchase order to RMF Engineering for these specialty designs.

In October of 2020, the Departments presented the 60% design review to County Council followed by a 75% design presentation in March of 2021. Based on the County's request, GMB was asked to create fiber optic cabling, audio/visual, security/alarm and fit out specialty scopes for procurement under Cooperative Purchasing Agreements, increasing the project design complexity. Hence, Council approved on March 23, 2021, GMB's Amendment No.1 increasing the not to exceed threshold by \$61,500.00.

Following the March Council presentation, the scope still evolved considerably due to design revisions and added design features. Consequently, GMB and its subconsultants exceeded the



previously approved allocations bringing the project to bid. GMB offered a discounted fee of \$75,000.00 to cover these services. In addition, they proposed a construction services fee of \$244,500.00. Overall, the professional services were well below 10% of construction, comparing favorably with industry standards and on August 10, 2021, County Council authorized issuance of GMB's Amendments No. 2 & 3 increasing the overall not to exceed amount to \$681,000.00.

In June the Public Safety Building, Project C19-04 was publicly advertised. On July 14, 2021, eight (8) bids were received and on August 10, 2021, Council awarded the project to Bancroft Construction Company in the amount of \$8,282,169.00.

The documents as bid included provisions to recover pandemic related price increases between *bid and award* for structural and light weight steel material costs. Therefore, on August 31, 2021, Council approved Change Order No. 1 in the not to exceed amount of \$40,000 for structural and Change Order No. 2 in the amount of \$8,800 for light weight steel material price increases.

The structural steel material change order no.1 was based on August 12, 2021, pricing. When Bancroft transmitted the "letter of intent to award", their subcontractor Iron Works, Inc. on August 30<sup>th</sup> in turn issued material purchase orders. However, the material suppliers responded that material quotations are only binding for one week due to supply chain impacts and volatile steel markets. In consultation with County Leadership, the Engineering Department authorized Bancroft to lock in at the August 30<sup>th</sup> material costs triggering a \$22,829.00 revision to change order no. 1 approved by Council on September 14, 2021.

When the project bid, the Fire Marshall site permit had been issued but the associated building permit was still under review. When it was finalized two issues had to be addressed (i) fire protection details in the plenum and (ii) a secondary emergency egress from the mezzanine.

The plenum needed to be either sprinkled or all materials had to be fire rated. The only material not meeting the rating was the water piping. The County requested the PVC piping for ease of maintenance and the mechanical subcontractor suggested to add fire rated insulation but switch the valving to PVC under a partial credit for a net Change Order No. 3 cost of \$13,554.94. In addition, the County EMS team had initiated a proposed Change Order No. 4 for air filtration system safety upgrades, paid for through American Rescue Plan Act funds in the amount of \$4,740.28. On November 20, 2021, County Council approved both change orders.

The Department and the contractor concluded the change order scope associated with the emergency mezzanine exit required a permit. The work was complex requiring scope modifications for eight (8) trades. The electrical trade also included some minor changes to the outlet configurations to accommodate the selected A/V equipment for a total \$58,245.80 which County Council approved under Change Order No. 5 on January 11, 2022.

The existing EOC allegedly had dual primary electric power feeds based on original design drawings, staff recollection as well as DP&L records. Upon examination of the actual EOC transformer by DP&L, it was determined that the facility had only one feed. Prior to that, the electrical sub-contractor had initiated some limited conduit installations, Council issued a reimbursement Change Order No. 6 in the amount of \$1,905.85.

However, for the project to proceed, DP&L and the County's General Labor & Equipment contractor had to extend primary power to the existing transformer from the opposite side of Rudder Lane. In addition, the transformer and generator location for the building was revised, as

well as vehicle charging circuits added. These changes were priced out and approved by Council on March 1, 2022, under Change Order No. 9 in the amount of \$56,830.98.

In December 2021, following a detailed Miss Utility locate, the Team recognized that there were conflicts between the proposed gravity storm drainage pipe and the existing high voltage lines off site. The stormwater management design had the stormwater pipe system crossing the intersection of Airport Road and Aviation Avenue. Close examination revealed that this crossing was not plausible as the stormwater pipe intersected approximately eight other utilities primarily high voltage electric lines and sewer force mains at different elevations.

While investigating stormwater options, two existing roof drainage pipe conflicts came to light. The combination of both these impacts required a re-work of the entire grading plan, along with the redirection of the storm drainage piping along Airport Road. The Department and the contractor agreed on the scope and pricing, including the required fill and on March 1, 2022, Council issued the associated Change Order No. 7 in the amount of \$62,924.75.

In the filling process of “Lake Thomas”, unsuitable soils were encountered. The site work contractor undercut these areas and restored them with suitable materials. This work was performed on a time and materials basis under Change Order No. 11. Also covered under this request is an adjustment to a drop ceiling and bulkhead location in the corridor leading to the northside of the existing EOC building. On March 22, 2022, Council accepted Change Order No. 11 in the amount of \$5,427.58.

Bancroft had submitted RFI#44 seeking clarification regarding the EOC kitchen renovations due to a lack of existing condition documentation on the mechanical drawings and insufficient detailing of connections. GMB’s plan envisioned an open ceiling concept with cabinet & countertop which was unable to incorporate the two roof drains in the existing exercise room and kitchen. With an acceptable resolution plan needed, the Department worked with Bancroft and developed the attached “Owner Resolution Plan No.3 addressing the existing conditions and on March 22, 2022, Council accepted credit Change Order No. 12 in the amount of (\$15,118.52).

The heating and hot water systems were designed based on availability of natural gas. Chesapeake Utilities’ service extension project from the Coastal Business Park to Rudder Lane is delayed and may not be ready at the time of building commissioning. The utility directed us to seek an interim solution using their subsidiary, Sharp Energy, which already supplies propane to the Joint Maintenance Facility under this arrangement. The Engineering & Finance Departments developed a purchase order, and the line is installed.

Due to a conflict in the existing lobby, the stud wall had to be extended alongside the existing beam, allowing the proposed wall to bypass the structural steel. Bancroft submitted PCO #013 to modify said exterior stud wall framing and to extend the drywall and batt insulation to the structure in the rooms. Team EMS had made this request for sound attenuation based on sensitive medical discussions. For the extension of the drywall and batt insulation, the price per unit is \$11.57/sf of wall in the event more rooms are added. On May 17, 2022, County Council approved Change Order No. 13 in the amount of \$16,711.84 and the unit of \$11.57/sf.

The EOC staff has made the Engineering Department aware of issues with the State Police IT equipment server room. The room is overheating frequently because equipment has been added over time. This room is the only server room w/o a dedicated source of cooling.



J.T. Richardson is the mechanical subcontractor for Bancroft working on the Public Safety Building. They were working for the County directly with the concurrence of Bancroft and in March 2022 when we issued an on-call mechanical PO for urgent repairs at the Complex. We advised Council on May 17, 2022, that we would follow this same approach in this case based on the same hourly rates and agreed upon mark-ups.

On June 21, 2022, County Council approved Change Order No. 14 in the aggregate amount of \$26,371.68 addressing the modifications listed below:

1. Special floor tile color selection.
2. Separation of the decorative architectural wall from one to two location.
3. Back-up cooling tower protection by bollards.
4. Structural modifications to the he primary cooling tower support.
5. Roof membrane boots to cover penetrations in six (6) locations.
6. Additional epoxy coating.
7. Lobby storefront modifications.

The Department is now presenting Change Order No.15 for Council’s consideration. It is the result of RFI-60 and a field change for the gutter support in the mechanical well of the sloped roof system. The latter was needed to build out the wall section around the well to allow the installation of the gutter system. RFI-60 exposed an issue related to the door jams of the overhead door in the logistics warehouse. The original approach left an exposed brick veneer edge which was addressed by adding a secondary steel channel on each jam. Therefore, the Department request Council’s approval of Change Order No. 15 in the aggregate amount of \$11,357.87.



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

**C. BRIEF DESCRIPTION OF CHANGE ORDER:**

Structural metal framing changes and additional warehouse blocking.

**D. JUSTIFICATION FOR CHANGE ORDER INCLUDED?**

Yes  No

**E. APPROVALS**

- 1. Bancroft Construction Company, Contractor

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Representative's Name in Block Letters

- 2. Sussex County Engineer

\_\_\_\_\_  
Signature Date

- 3. Sussex County Council President

\_\_\_\_\_  
Signature Date



Bancroft Construction
1300 N Grant Ave Ste 101
Wilmington, Delaware 19806
Phone: 302 655 3434

Project: CSED0001 - Public Safety Bldg. Addition
21911 Rudder Lane
Georgetown, Delaware 19947

DRAFT

Prime Contract Potential Change Order #015: CE #045 - Steel Changes From R

Table with 4 columns: Field Name, Value, Field Name, Value. Includes fields like TO, FROM, PCO NUMBER/REVISION, CONTRACT, REQUEST RECEIVED FROM, CREATED BY, STATUS, CREATED DATE, REFERENCE, PRIME CONTRACT CHANGE ORDER, FIELD CHANGE, LOCATION, ACCOUNTING METHOD, SCHEDULE IMPACT, PAID IN FULL, and TOTAL AMOUNT.

POTENTIAL CHANGE ORDER TITLE: CE #045 - Steel Changes From R

CHANGE REASON: No Change Reason

POTENTIAL CHANGE ORDER DESCRIPTION: (The Contract Is Changed As Follows)
CE #045 - Steel Changes From RFI 60

CE #056 - Additional Warehouse Blocking

ATTACHMENTS:
Change Order 9.doc IW CO #02.pdf

Table with 5 columns: #, Cost Code, Description, Type, Amount. Lists items like Structural Metal Framing and Gypsum Board, along with summary rows for BCC GCs, Bond, Profit, and Grand Total.

Morgan Helfrich (George, Miles & Buhr, LLC)
400 High Street
Seaford Delaware 19973

Sussex County Delaware
2 The Circle P.O. Box 589
Georgetown Delaware 19947

Bancroft Construction Company
1300 N. Grant Avenue Suite 101
Wilmington Delaware 19806

Handwritten signature of James Chedler dated 7/20/22

Michael Kalafut 7/20/22

SIGNATURE DATE SIGNATURE DATE SIGNATURE DATE



**Bancroft Construction**  
 1300 N Grant Ave Ste 101  
 Wilmington , Delaware 19806  
 P: 302 655 3434

**Project: CSED0001 - Public Safety Bldg. Addition**  
 21911 Rudder Lane  
 Georgetown , Delaware 19947

## CHANGE EVENT #045 - Steel Changes From RFI 60

**Origin:** RFI #60: Coiling Door Detail Masonry Level

**Date Created:** 6/6/2022      **Created By:** Tyler Lewis

**Status:** Pending      **Scope:** Out of Scope

**Type:** Owner Contingency      **Change Reason:** Owner Directive

**Description:**

**Attachments:** [IW CO #02.pdf](#)

### CHANGE EVENT LINE ITEMS

Budget Code	Vendor / Contract	Revenue			Cost				Over/ Under	Budget Mod.
		ROM	Prime PCO	Latest Price	ROM	RFQ	Commit.	Latest Cost		
05-100.06 Structural Metal Framing.Subcontract	Iron Works DE CSED0001-009	\$6,330.00	\$6,330.00	\$6,330.00	\$6,330.00		\$6,330.00	\$6,330.00	\$0.00	
1-511.02 Sr. Project Manager.Regular Labor		\$316.50	\$316.50	\$316.50				\$0.00	\$316.50	
90-999.10 Fee.Fee & Field Cost		\$402.11	\$402.11	\$402.11				\$0.00	\$402.11	
<b>Grand Totals</b>		<b>\$7,048.61</b>	<b>\$7,048.61</b>	<b>\$7,048.61</b>	<b>\$6,330.00</b>	<b>\$0.00</b>	<b>\$6,330.00</b>	<b>\$6,330.00</b>	<b>\$718.61</b>	<b>\$0.00</b>

**IRON WORKS, INC.**

14726 Gravel Hill Road

Milton, DE 19968

ph 302-684-1887

fax 302-684-1980

**Change Order Request**

**Change Order No:** IW CO #02

**Project:** Sussex County Public Safety Building

**Project No:** 2154

**To:** Bancroft Construction

**Date:** 6/20/2022

**Change to work description:**

**Amount:**

Per request from Bancroft Const. and RFI-60, added channel and bent plate to coiling overhead door jambs per sketch RFI-60 and information from Bancroft Construction.

**Excludes** - The installation of 1/8" bent plate.

<b>Includes - Installation of steel channels</b>	Material =	\$1,910.00
	Shop Labor - 16 hrs X 60.00 =	\$960.00
	Field Labor - 2 men X 10 hrs = 20 hrs X 95.00 =	\$1,900.00
	Weld Truck - 16 hrs X 35.00 =	\$560.00
	5,000 LB Forklift - 1 day =	\$650.00
	19 Foot Scissors Lift =	\$350.00
	<b>Total -</b>	<b>\$6,330.00</b>

**Amount Requested for this Change:** 6,330.00

**Time Extension:** 0 days

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

*Bob Chille* (Bob Chille) \_\_\_\_\_

Iron Works, Inc.



**Bancroft Construction**  
 1300 N Grant Ave Ste 101  
 Wilmington , Delaware 19806  
 P: 302 655 3434

**Project: CSED0001 - Public Safety Bldg. Addition**  
 21911 Rudder Lane  
 Georgetown , Delaware 19947

## CHANGE EVENT #056 - Additional Warehouse Blocking

**Origin:**

**Date Created:** 7/15/2022      **Created By:** Tyler Lewis  
**Status:** Open      **Scope:** Out of Scope  
**Type:** Owner Contingency      **Change Reason:** Construction Change

**Description:**

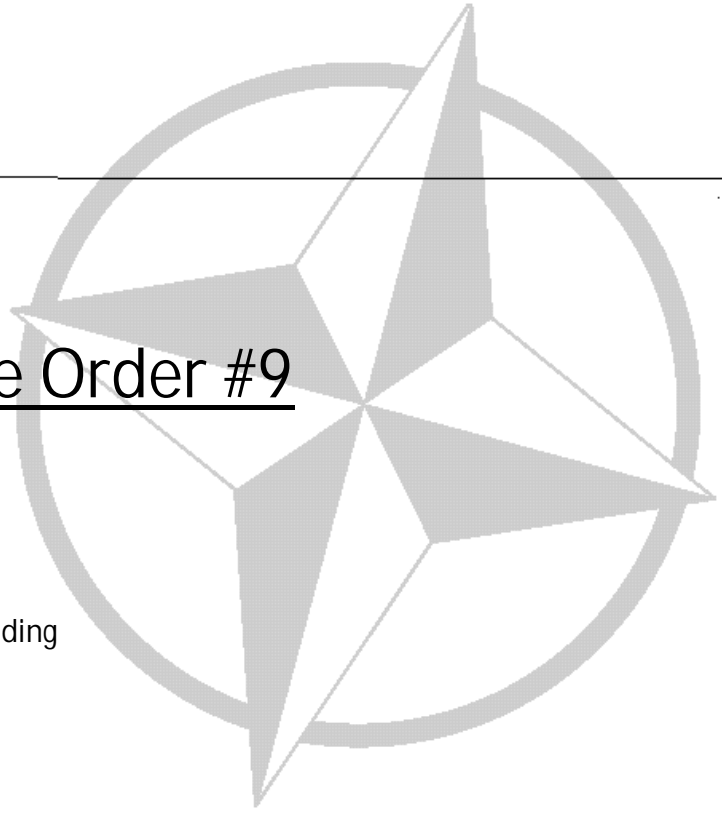
**Attachments:** [Change Order 9.doc](#)

### CHANGE EVENT LINE ITEMS

Budget Code	Vendor / Contract	Revenue			Cost				Over/ Under	Budget Mod.
		ROM	Prime PCO	Latest Price	ROM	RFQ	Commit.	Latest Cost		
09-250.06 Gypsum Board.Subcontract	North East Contractors, Inc. CSED0001-017	\$3,869.92	\$3,869.92	\$3,869.92	\$3,869.92			\$3,869.92	\$0.00	
1-511.02 Sr. Project Manager.Regular Labor		\$193.50	\$193.50	\$193.50				\$0.00	\$193.50	
90-999.10 Fee.Fee & Field Cost		\$245.84	\$245.84	\$245.84				\$0.00	\$245.84	
<b>Grand Totals</b>		<b>\$4,309.25</b>	<b>\$4,309.25</b>	<b>\$4,309.25</b>	<b>\$3,869.92</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$3,869.92</b>	<b>\$439.33</b>	<b>\$0.00</b>

# NEC

NORTH EAST CONTRACTORS, INC.  
 Commercial • Residential • General Contracting



## Change Order #9

Bancroft  
 Attn: Michael Kalafut  
 Date: July 14, 2022

Project: Sussex County Public Safety Building  
 Drawings by: George, Miles & Buhr  
 Dated: 5/28/21

Reference:

2x blocking for fascia warehouse

Scope of Work	length	height	pcs	\$/unit	material \$	hours	rate	labor \$	subtotal
blocking 2x12x12	0	0	30	42.51	\$ 1,275.30	16	83.35	\$ 1,333.60	\$ 2,608.90
1 box framing nails 31/4"	0	0	1	90	\$ 90.00	8	78.21	\$ 625.68	\$ 715.68
paslode framing fuel cartridges	0	0	2	13	\$ 26.00	0	0	\$ -	\$ 26.00
subtotal									\$ 3,350.58
								subtotal	\$ 3,350.58
								10% overhead	\$ 335.06
								5% profit	\$ 184.28
								<b>TOTAL</b>	<b>\$ 3,869.92</b>

87 Blue Hen Drive • Newark, DE 19713  
 Phone (302)286-NECI(6324) • Fax (302)286-0566



## ENGINEERING DEPARTMENT

HANS M. MEDLARZ  
COUNTY ENGINEER

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

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



# Sussex County

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

## Memorandum

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

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

RE: ***Bulk Delivery of Magnesium Hydroxide  
Project NO. M21-12  
A. Contract Escalation***

DATE: July 26, 2022

Sussex County now utilizes magnesium hydroxide at South Coastal and Inland Bays Facilities in the wastewater treatment process to provide alkalinity in the wastewater treatment process.

Invitations to bid were advertised in two (2) newspapers, viewable on the Sussex County website, and directly sent to businesses on our supplier list. On May 27, 2021, two (2) bids were received for the Bulk Delivery of Magnesium Hydroxide.

On June 8, 2021, Council approved award of the base bid for bulk delivery of magnesium hydroxide to Premier Magnesia for their low bid of \$2.74 per gallon. The contract allows a one-year extension at the discretion of the Engineering Department.

Prior to the one-year extension period, Premier Magnesia notified the Department they could not hold the price and requested an increase to \$3.10 per gallon due to current economic conditions.

Since the only other bid provided in 2021 was higher at \$3.26 per gallon, the Engineering Department determined an increase to the final contract year to be more advantageous than to re-bid the procurement at this time. We confirmed with Premier Magnesia that the original bid price will be honored until a new contract can be established. Therefore, the Department requests Council's concurrence to the \$0.36 per gallon unit cost increase.



## ENGINEERING DEPARTMENT

HANS M. MEDLARZ  
COUNTY ENGINEER

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

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



# Sussex County

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

## Memorandum

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

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

RE: ***Sussex County Landfills Site Maintenance Contract 17-13  
Change Order No. 1 – FY 23***

DATE: July 26, 2022

A request for proposals for a five (5) year landfill maintenance agreement covering all County owned legacy landfills was approved by Council on March 7, 2017. The selected contractor was William F. Betts II, with a base bid of \$18,900.00 for 2017 work, which decreased to \$18,200.00 for the subsequent years. An alternate bid for the provision of crusher run, topping stone and filter fabric, as necessary was also awarded.

On August 10, 2021, Council approved modification of the Landfill Maintenance Contract to a performance based, year over year, continual contract with consumer price index adjustments starting 2022.

In 2021 Council approved a land exchange and afforestation project on County owned land off Lighthouse Road. One area had been completed and two additional phases of afforestation remain. To assure a clear path to the different areas we requested a mowing quote from Mr. Betts. The Sussex County Engineering Department requests approval of Change Order No. 1 in the amount of \$1,500.00, for the twice a year path maintenance at the County owned property located off Lighthouse Road.





**SUSSEX COUNTY  
CHANGE ORDER REQUEST**

**A. ADMINISTRATIVE:**

1. Project Name: **Sussex County Landfill Maintenance**
2. Sussex County Project No. 17-04
3. Change Order No. 1 - FY 23
4. Date Change Order Initiated - 7/26/22
5.
  - a. Original Contract Sum \$ 19,401.20
  - b. Net Change by Previous Change Orders \$ 0
  - c. Contract Sum Prior to Change Order \$ 19,401.20
  - d. Requested Change \$ 1,500.00
  - e. Net Change (No. of days) \_\_\_\_\_
  - f. New Contract Amount \$ 20,901.20
6. Contact Person: Hans Medlarz, P.E.  
Telephone No. (302) 855-7718

**B. REASON FOR CHANGE ORDER (CHECK ONE)**

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

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

**C. BRIEF DESCRIPTION OF CHANGE ORDER:**

Additional mowing at County property on Burbage Road twice yearly.

**D. JUSTIFICATION FOR CHANGE ORDER INCLUDED?**

Yes  No

**E. APPROVALS**

1. William F. Betts, II

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Representative's Name in Block Letters

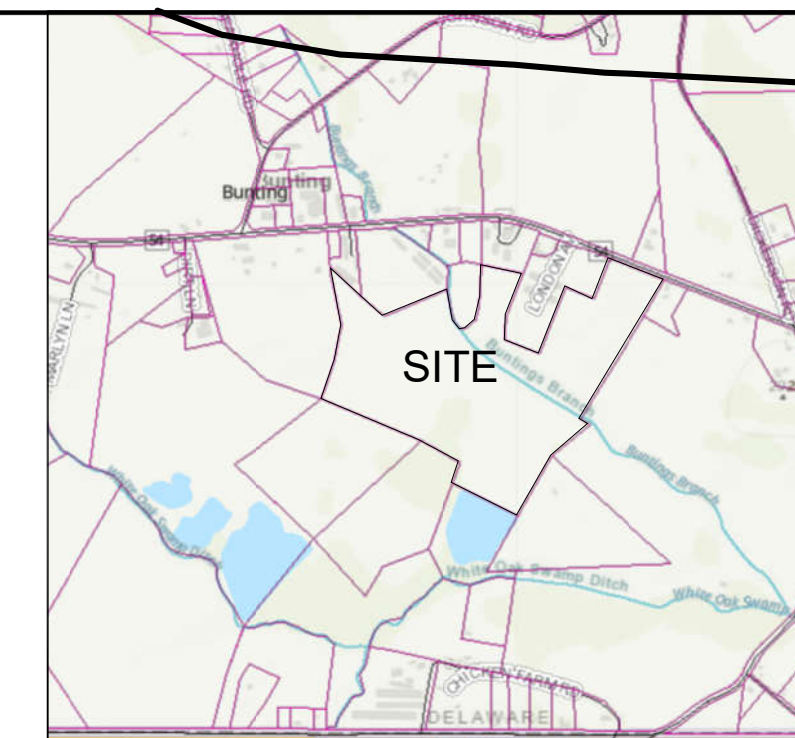
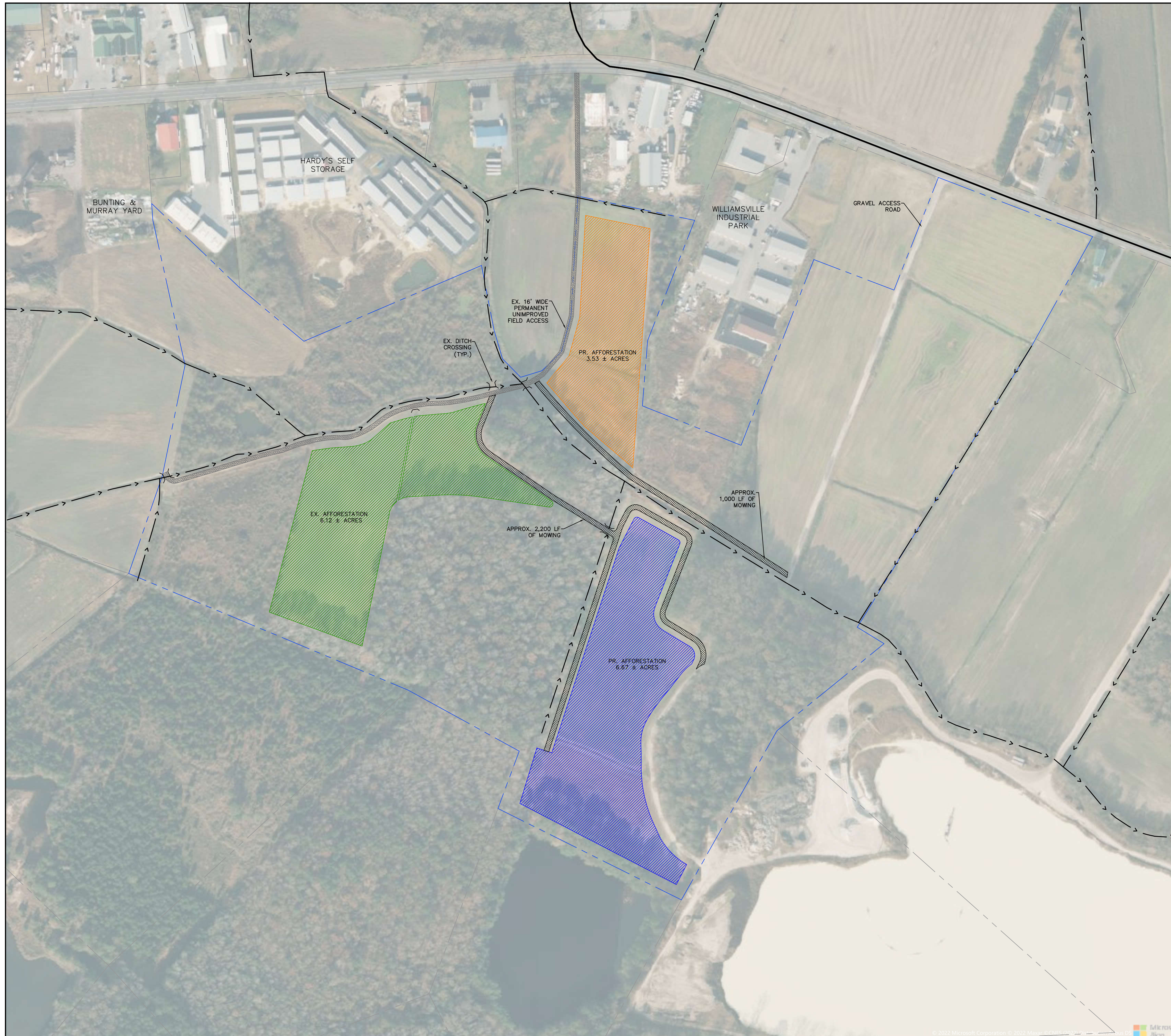
2. Sussex County Engineer

\_\_\_\_\_  
Signature Date

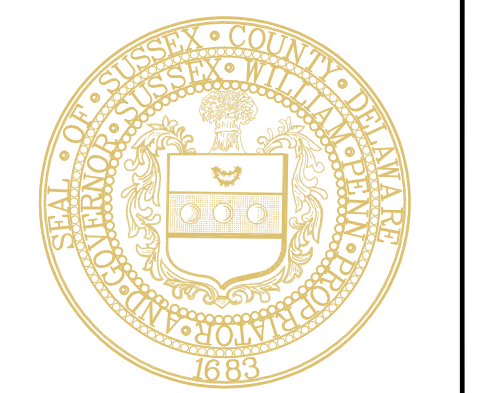
3. Sussex County Council President

\_\_\_\_\_  
Signature Date





LOCATION MAP: N.T.S.



**Sussex County  
Engineering Department**  
2 The Circle, P.O. Box 589  
Georgetown, DE 19947  
Ph: 302-855-7718  
Fax: 302-855-7799

**Project Data**

Date: May 26, 2022  
 Owner/Developer/Designer: Sussex County  
 c/o Hans Medlarz, PE  
 Sussex County Engineer  
 2 The Circle, P.O. Box 589  
 Georgetown, DE 19947  
 Ph: (302) 855-7728  
 email: hans.medlarz@sussexcountype.gov

Tax Map #: 533-18.00-61.00  
 PLUS #: N/A  
 Site Address: Near Williamsville, Selbyville, DE 19975  
 Lat/Long: 38.458086, -75.147353  
 Existing Site Area: 77.98 AC  
 Proposed Site Area: 6.60 AC  
 Existing Wetland Area: N/A  
 Proposed Condition: Afforestation  
 Proposed Discharge Location: Buntings Branch Tax Ditch  
 Total LOD per Discharge Location: 6.60  
 Total LOD: 6.60 AC  
 Vertical Datum: NAVD 88  
 Horizontal Datum: NAD 83

**LEGEND**

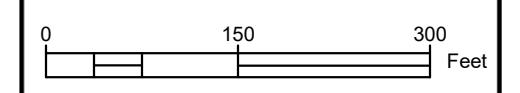
- EX. TAX DITCH CHANNEL
- PROPOSED 16' WIDE MOWING AREA
- PH 1 AFFORESTATION AREA, PLANTED
- PH 2 AFFORESTATION AREA, PROPOSED
- PH 3 AFFORESTATION AREA, PROPOSED

**Mowing Plan**

Rev1	Rev2	Rev3	Rev4
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**Lighthouse Rd  
Afforestation/Mowing Plan**  
Tax Map # 533-18.00-61.00  
Baltimore Hundred, Sussex County, DE

Professional Seal



Drawn By:	Date:
VT	07/20/2022
Project No:	Scale:
G22-31	1" : 150'
Sheet:	



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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: July 20, 2022

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

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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 6<sup>th</sup> 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 20<sup>th</sup> 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. At the meeting of June 28, 2022, the County Council discussed the Application and deferred action 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](#)

[Sussex County Council Minutes for Meeting of June 28, 2022](#)



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

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

**C/Z 1967 Henlopen Properties, LLC**

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

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

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

impact of the project; that stated within the Supplemental TIS Review Letter, the Applications being heard are a trip generation reduction of almost 50% from the initial Applications; the subject property is located across the street from the Cape Henlopen High School; that next to the Cape Henlopen School is the Jack Lingo Real Estate office; that currently under construction is the Lewes Medical Campus, which is proposed to be an assisted living facility; that west of Gills Neck Rd. is the future location of the Village Center; that located on the same side as the subject property, at the corner of Gills Neck Rd. and Kings Hwy. is the Cape Henlopen Medical Center; that the Mitchell Family filed a previous Conditional Use Application (C/U 2112) in 2018 for the Cape Henlopen Medical Center; that C/U 2112 was for medical professional offices in a 39,000 sq. ft. building; that the Cape Henlopen Medical Center is a good demonstration of the need for professional services within Sussex County as it serves many residents within the immediate area; that continuing down Kings Hwy, on the same side as the subject property, toward the City of Lewes, are the offices of Lane Builders; that the next property is the Big Oyster Brewery; that on the northern boundary of the property is Jefferson Apartments and Bay Breeze Estates, both of which are located within the City of Lewes; that on the eastern side of the subject property is The Moorings, formally known as Cadbury at Lewes; that the most detailed history of the project can be found within the Cultural Resource Assessment, prepared by Dr. Otter; that the majority of the mentioned culturally significant resources are found closer to Pot Hook Creek than the subject site; that the historical item mentioned is the existing farmhouse located on the subject property; that

the farmhouse is still occupied by Mr. Jerry Mitchell; that Dr. Otter's report mentioned the farmhouse, outbuilding and additional structures require documentation before being removed from the property; that a condition proposed by the Applicant states the property and structures would be properly documented before removal; that the Applicant plans to have Dr. Otter perform the documentation before the removal of the farmhouse; that the subject property has been with the Mitchell Family since the late 1800's; that the first Mitchell family member was a Robinson; that if one looks at the George Robinson ownership in the late 1800's, that is when the Mitchell Family ownership began; that most recently Mr. Mitchell and his family have owned the 58-acre farm; that from 1998 until 2013 the property was located with the Agricultural Preservation; that with the development around the subject property, the farmland was becoming very difficult to farm, which resulted in the decision to sell the property; that as the Mitchell Family was working toward selling, they were approached by adjacent property owners; that several portions of the 58-acre parcel was sold to adjacent neighbors; that the portion to the rear of the property was sold to The Moorings, which was the subject of a recent Application Change of Zoning to Medium-Density Residential and to request an Residential Planned Community (RPC); that there was a portion sold to The Big Oyster, which was the subject of an application for rezoning from AR-1 to C-3; that the parcel, located on the corner of Kings Hwy. and Gills Neck Rd. was the subject of C/U 2112 for the Cape Henlopen Medical Center; that property most recently sold again sold to The Big Oyster Brewery for additional expansion; that the recently sold property will be the subject of a Change of Zone application, requesting rezoning from AR-1 to C-3, at the Planning & Zoning meeting on April 14, 2022; that after the pieces of lands were sold off, the property currently consists of 47-acres; that the current Applications request a Change of Zone, for approximately three acres, next to the site of the Cape Henlopen Medical Center; that the Change of Zone Application seeks to change the zoning designation from AR-1 to C-2 Medium Commercial; that an additional Change of Zone Application request to change the zoning classification of approximately 44-acres of the property



from AR-1 to MR (Medium-Density Residential); that there is also a Conditional Use Application seeking approval for a multi-family use of the property, for 267 units, on the MR zoned portion of the property; that the final Application is a Subdivision application, which was necessary to create all the various component parts of the project; that currently the property is completely zoned AR-1; that immediately south of the proposed site is B-1 Neighborhood Business Zoning, which is the location of the Village Center Project; that moving closer toward Rt. 1, there is existing C-1 and B-1 properties at the corner of Clay Rd. and Kings Hwy.; that more toward the City of Lewes, the Big Oyster property is zoned C-1, with C-3 property immediately behind it; that across the street from the subject site are two properties, located within the City of Lewes, zoned as General Commercial; that immediately behind that property is R-5 Zoning, which is the City of Lewes' mixed residential zoning; that adjacent to those properties is the City of Lewes', CFHC Zoning, which is Community Facilities Health Care Zoning; that this is the site of the Lewes Senior Campus; that located closer to the City of Lewes is more General Commercial properties; that to the north side of the property is R-5, Mixed Residential for the City of Lewes; that also located near the subject property is R-2, Residential Low Density Zoning with the City of Lewes; that nearby, The Moorings, Breakwater and Admirals Chase, are located within the MR (Medium-Residential Zoning) with Sussex County; that the project is located within the Coastal Area according to the Future Land Use Map; that surrounding areas to the project are also located within the Coastal Area or a commercial area; that the Coastal Area is designated as one of the Sussex County's seven growth areas; that Chapter 4 of the Comprehensive Plan includes Table 4.5-2, which compares zoning districts applicable to Future Land Use categories; that both the C-2 (Medium Commercial District) and the MR Medium-Density Residential District are applicable zoning districts within the Coastal Area; that the County Code describes the purpose of the C-2 (Medium Commercial Zoning District) as a district which supports retail sales and performance of consumer services, permitting a variety of retail, professional and services businesses; that the district should be primarily located near arterial and collector streets; that the district accommodates community commercial users who do not have outside storage or sales; that the County Codes description of the C-2 Medium Commercial District exactly describes the purpose the Applicant desires with the proposed project; that the project proposes to provide additional professional and business services in an area where the services are needed; that this need is demonstrated best by the success of the Cape Henlopen Medical Center; that the previously approved Conditional Use for the Cape Henlopen Medical Center mirrors the purpose proposed for the property; that the developer hired an architect to design a building for the site; that the architect studied the architecture in the area; that the architect provided a letter explaining the proposed building, as shown on the rendering; that there are comments on record regarding the architecture along Kings Hwy. and how the proposed building does not match; that the architect described the architecture along Kings Hwy. as numerous architectural motifs in the context which may be evoked to rationalize any architectural style; that do to the various architectural styles along Kings Hwy. it is difficult to match any one of those; that the developer requested the architect consider the nearest architectural style and blend the building to those nearest to the property; that features from the Cape Henlopen Medical Center and Cape Henlopen High School, compliment those features while performing the same idea for the proposed townhomes along Kings Hwy.; that once the site plan was established, the Applicant requested Mr. Mark Davidson, Land Planner with Pennoni, to review the land plan; that the peer review provided by Mr. Davidson is included in the record; that the developer determined the square footage of all buildings in the surrounding area; that some of the buildings considered were Cape Henlopen High School at 367,000 sq. ft., Lewes

Senior Living Campus at 223,000 sq. ft., The Moorings at 117,000 sq. ft., the future Village Center at 75,000 sq. ft. and Cape Henlopen Medical Center at 39,000 sq. ft.; that the building proposed for the project is smaller than almost all other studied buildings, being just slightly bigger than the Cape Henlopen Medical Center; that the proposed building is an appropriate size and scale for the area; that the County Code states commercial properties should be located along arterial and collector streets; that Kings Hwy. is a perfect match for this proposed use as it is considered a major arterial by Sussex County; that the same process and considerations were made regarding the proposed rezoning of 44-acres to be MR Medium-Density Residential; that according to the Sussex County Code, the MR District is to provide for medium-density residential development in 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**

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## 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

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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.





### 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

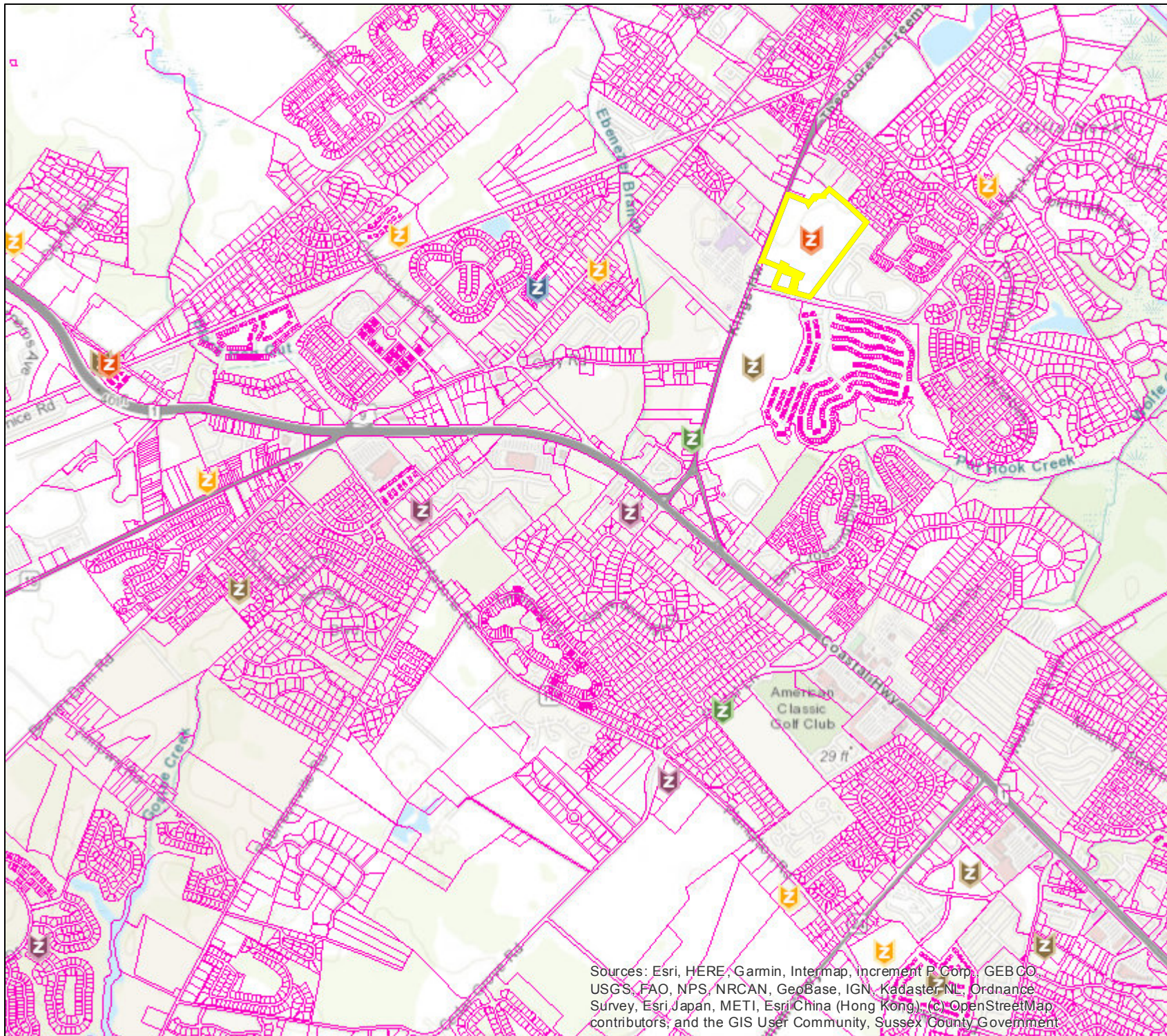
VE

Public Protected Lands

Municipalities

Communities

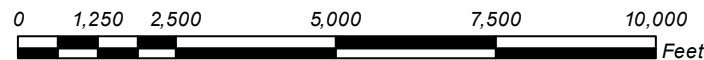
Boundaries State County



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







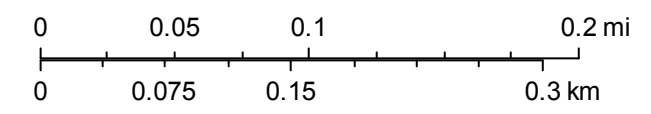
# Sussex County



<b>PIN:</b>	335-8.00-37.00
<b>Owner Name</b>	JEFF-KAT LLC
<b>Book</b>	5613
<b>Mailing Address</b>	1007 KINGS HWY
<b>City</b>	LEWES
<b>State</b>	DE
<b>Description</b>	SE/KINGS HWY
<b>Description 2</b>	RESIDUAL LANDS
<b>Description 3</b>	N/A
<b>Land Code</b>	

- 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

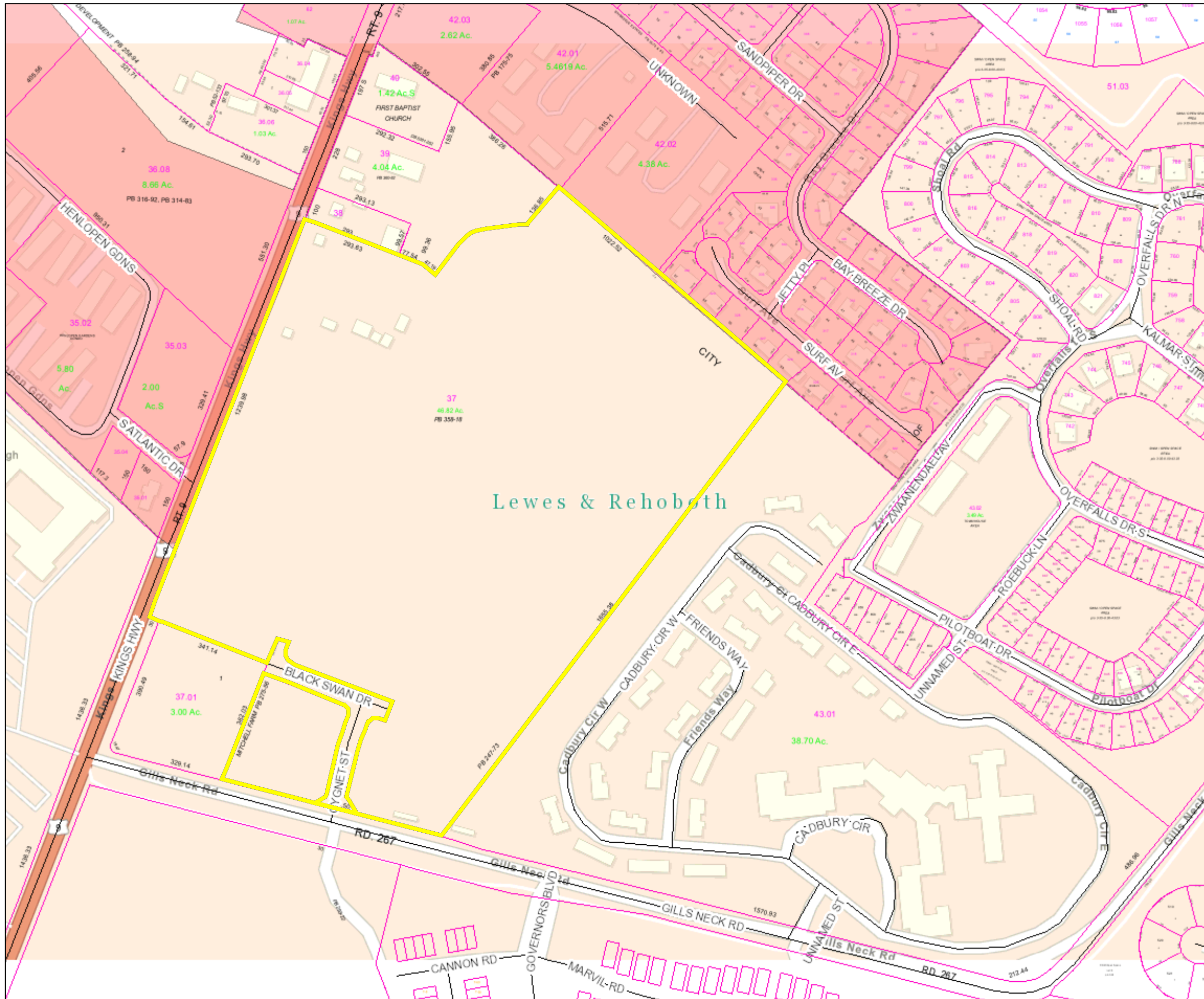
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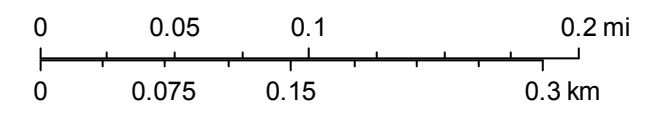
# Sussex County



<b>PIN:</b>	335-8.00-37.00
<b>Owner Name</b>	JEFF-KAT LLC
<b>Book</b>	5613
<b>Mailing Address</b>	1007 KINGS HWY
<b>City</b>	LEWES
<b>State</b>	DE
<b>Description</b>	SE/KINGS HWY
<b>Description 2</b>	RESIDUAL LANDS
<b>Description 3</b>	N/A
<b>Land Code</b>	

- 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

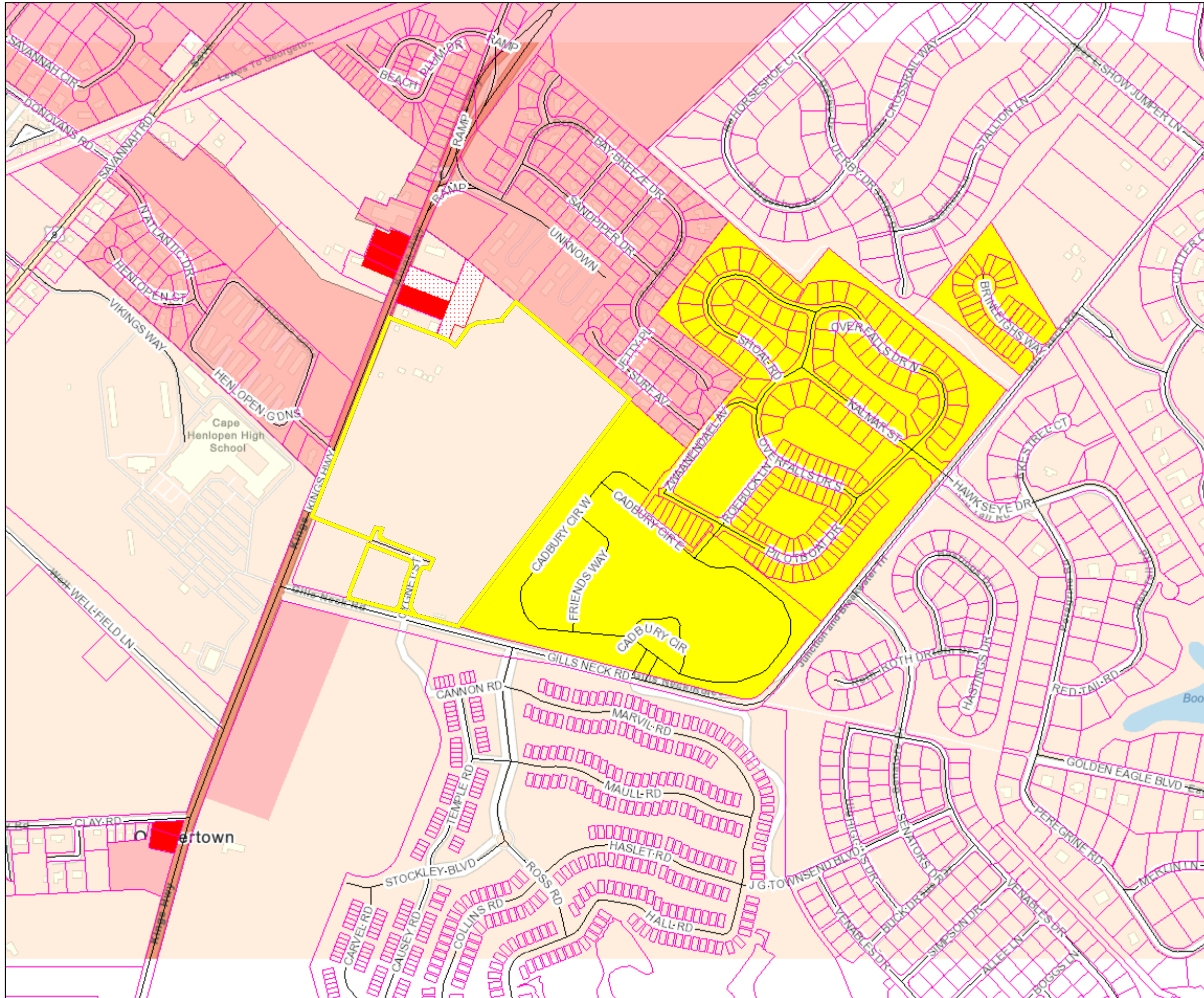
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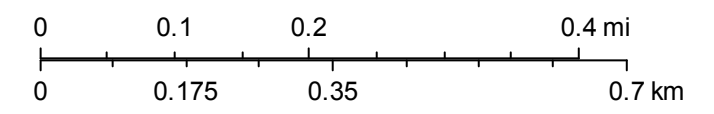
# Sussex County



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- 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 5<sup>th</sup> day of January 2022, a zoning application, denominated Change of Zone No. 1967 was filed on behalf of Henlopen Properties, LLC; and

WHEREAS, on the \_\_\_\_ day of \_\_\_\_\_ 2022, a public hearing was held, after notice, before the Planning and Zoning Commission of Sussex County and said Planning and Zoning Commission recommended that Change of Zone No. 1967 be \_\_\_\_\_; and

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

**NOW, THEREFORE, THE COUNTY OF SUSSEX HEREBY ORDAINS:**

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

**Section 2.** The subject property is described as follows:

ALL that certain tract, piece or parcel of land lying and being situate in Lewes & Rehoboth Hundred, Sussex County, Delaware, and lying on the southeast side of Kings Highway (Rt. 9) approximately 390 feet northeast of Gills Neck Road (S.C.R. 267) and on the north side of Gills Neck Road (S.C.R. 267) approximately 329 feet southeast of Kings Highway (Rt. 9) and being more particularly described in the attached legal description prepared by Davis, Bowen & Friedel, Inc., said parcel containing 43.777 ac., more or less.

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

JAMIE WHITEHOUSE, AICP  
DIRECTOR OF PLANNING & ZONING  
(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: July 20, 2022

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

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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 6<sup>th</sup> 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 20<sup>th</sup> 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. At the meeting of June 28, 2022, the County Council discussed the Application and deferred action 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](#)

[Sussex County Council Minutes for Meeting of June 28, 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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## 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

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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.





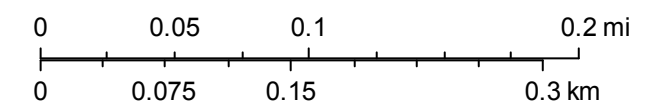
# Sussex County



<b>PIN:</b>	335-8.00-37.00
<b>Owner Name</b>	JEFF-KAT LLC
<b>Book</b>	5613
<b>Mailing Address</b>	1007 KINGS HWY
<b>City</b>	LEWES
<b>State</b>	DE
<b>Description</b>	SE/KINGS HWY
<b>Description 2</b>	RESIDUAL LANDS
<b>Description 3</b>	N/A
<b>Land Code</b>	

- 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

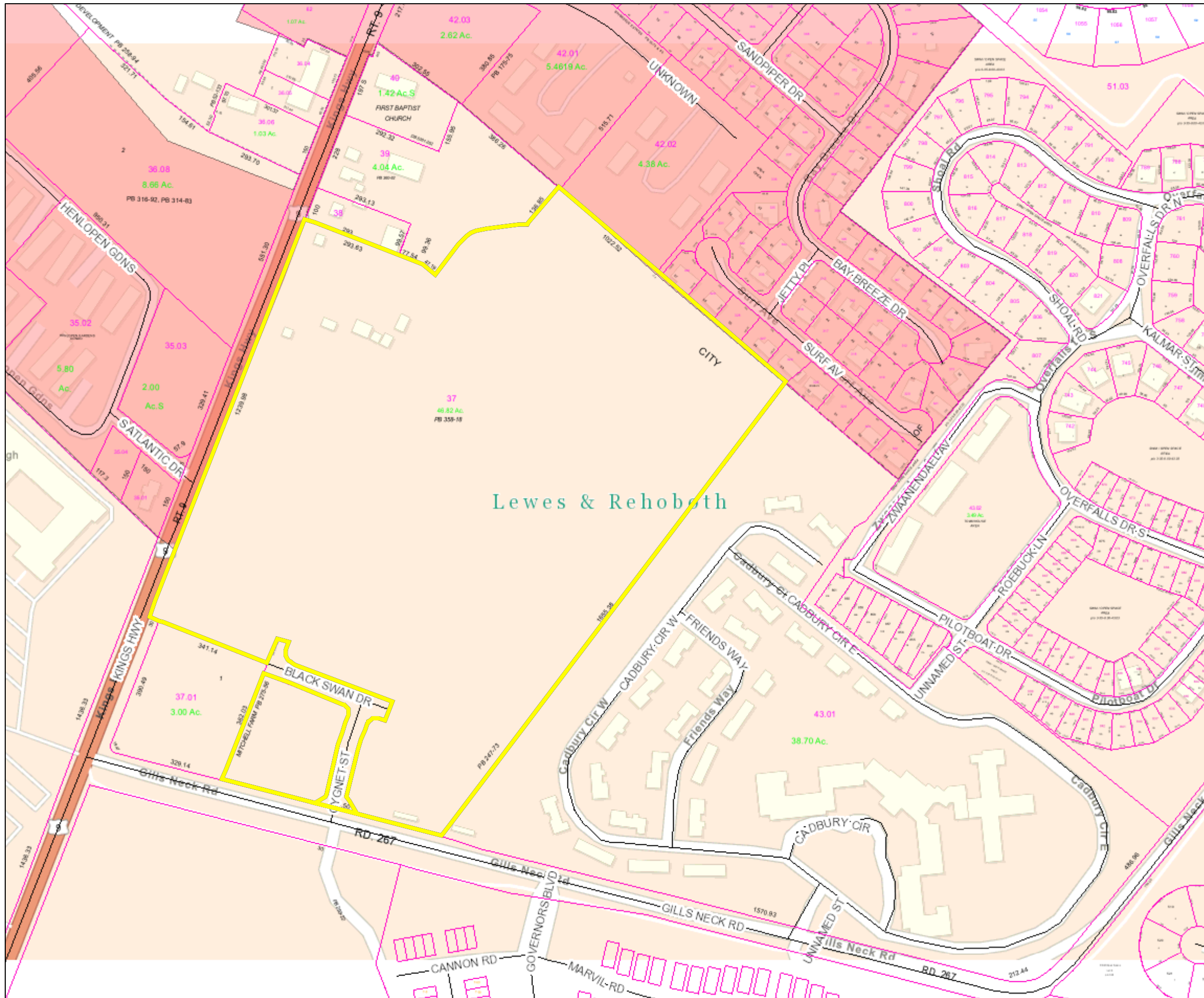
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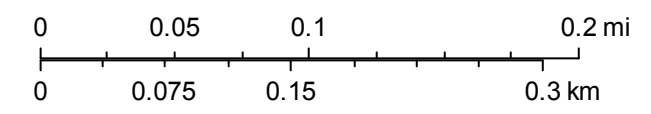
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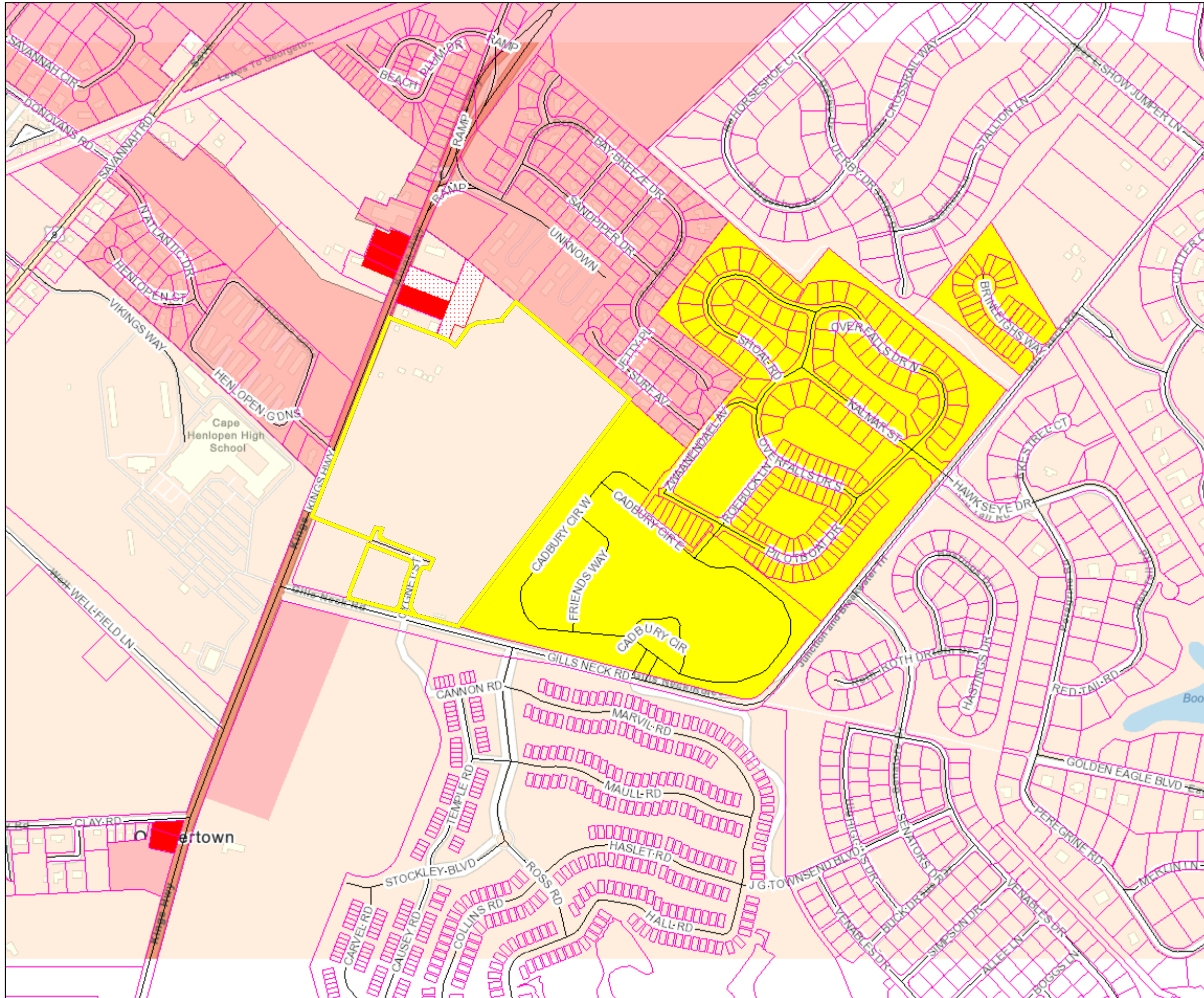
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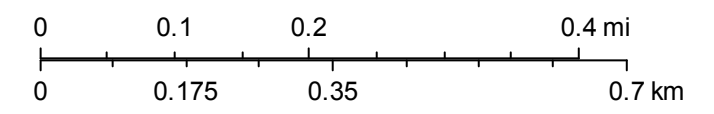
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<b>Description 3</b>	N/A
<b>Land Code</b>	

- 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 5<sup>th</sup> 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  
(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: July 20, 2022

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

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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 6<sup>th</sup> 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 20<sup>th</sup> 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. At the meeting of June 28, 2022, the County Council discussed the Application and deferred action 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](#)

[Sussex County Council Minutes for Meeting of June 28, 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 area which are, or expected to become, generally urban in character and where sanitary sewer and water supplies may or may not be available at the time of construction; that a permitted Conditional Use is for multi-family dwelling structures, which created the need for the Conditional Use application, which accompanies the Change of Zone application; that the purpose of a Conditional Use is to provide uses which are generally public or semi-public in character, being essential and desirable for the convenience and welfare; that because of the nature of the use, the importance to the relationship of the Comprehensive Plan and possible impact on neighboring properties and Sussex County, create the requirement for extra planning judgement on location and site plan; that housing is considered public or semi-public in character; that housing is desirable, particularly within the Coastal Area; that the purpose of the presented Applications are to provide for medium residential development, in areas which are becoming more urbanized; that there are townhomes and duplexes located within Governors, Admirals Chase, Breakwater, The Moorings and The Lewes Senior Living Campus; that within the City of Lewes, multifamily housing is offered at Jefferson Apartments, Dutchman's Harvest and Henlopen Gardens; that Bay Breeze Estates is a single-family use, located within the R-2 zoning classification with the City of Lewes, that the density within Bay Breeze Estates is still three units to an acre; that Jefferson Apartments, Dutchman's Harvest and Henlopen Gardens, within the City of Lewes, are all zoned R-5; that R-5 Zoning is the City of Lewes' multifamily residential district, where the purpose is to provide a mix of housing types to include multifamily and affordable housing alternatives; that multifamily is located adjacent to the subject property, as well as across the street from the property; that in correspondence in the file, there is reference to the density for the project; that include in the project book, are the densities for the surrounding communities; that Dutchman's Harvest is 17 units to the acre; that Jefferson Apartments is 9.8 units to the acre; that The Moorings is 6.4 units to the acre; that Henlopen Gardens is 5.5 units to the acre; that Bay Breeze Estates is 3 units to the acre; when considering the Future Land Use Map and the densities of surrounding areas, the proposed density of 6.1 units to acre is consistent to the surrounding area; that the more intense uses should be located closer to the highway, decreasing in intensity moving further away from the highway; that this is accomplished by placing the townhomes and commercial area along Kings Hwy.; that moving closer to Bay Breeze Estates and The Moorings the uses become duplexes, which are a less intense use; that the Comprehensive Plan states lands within the Coastal Area should be able to accommodate both commercial and residential provided special environmental concerns are addressed; that medium to higher densities, between 4 to 12 units to the acre, can be appropriate in certain locations; that an appropriate location for this is where there is central water and sewer, when near a significant number of commercial uses and employment centers, when keeping with the character of the area, when situated along a main road or near a major intersection and where there is adequate level of service; that the project meets all of those characteristics; that the TIS Review Letter did state there are several intersections without adequate levels of service within the area; that the final solution to

the issue is the dualization of Kings Hwy.; that waiting on the improvements would not be beneficial to the community or the project; that due to this, the developer and DelDOT agreed upon interim improvements, to allow traffic to be improved for the time period it takes for DelDOT to complete the dualization project; that the proposed interim improvements are more than what is required within the Memorandum of Understanding between Sussex County and DelDOT; that the Memorandum of Understanding seeks to have a Level of Service D at intersections; that the most recent Memorandum of Understanding recognizes the Level of Service D is not always obtainable and this requirement may create an undue burden on a property owner looking to develop a property, given the prior development which has occurred in an area contributing to the existing level of service; that a level of service cannot be degraded by a project; that with the proposed interim improvements, there will be no degrading by the proposed project; that the improvements will provide and upgrading of service until DelDOT provides the final solution with the dualization of Kings Hwy.; that it would be unfair to request the last individual developing a property to fix all the issues; that in 2009 the need for the dualization of Kings Hwy. was recognized; that the improvements along Gills Neck Rd. have been accomplished; that during the February 23, 2022 workshop with DelDOT, it was said the estimate for the construction improvements was \$23,000,000.00; that it would be an undue burden to require the last property owner to dualize Kings Hwy.; that although the Applicant cannot provide the dualization of Kings Hwy., they did desire to provide some temporary relief, which will be afforded through the interim improvements; that the developer did meet with the Lewes Byways Committee; that the developer agreed upon, as a Condition of Approval for the proposed project, the developer would maintain permanent easement areas and multi-modal path; that DelDOT is pushing the vast majority of the improvements onto the project side of Kings Hwy.; that the property is located within the Level 1 Investment area according to the State Strategies Map; that PLUS had no objection to the proposed project; that Investment Level 1 reflect areas which are already developed in an urban or suburban fashion, infrastructure is available and where future redevelopment or infill projects are expected; that State Strategies Map, Comprehensive Plan and the Zoning Code were all guideposts for the project's design and layout and he submitted proposed Findings and Conditions for the Application and a Willing and Able Letter from Tidewater Utilities.

The Commission found that Mr. Ring Lardner spoke on behalf of the Application; that he is a professional engineer with Davis, Bowen & Friedel, Inc.; that the property is a total of 46.81-acres; that the portion of land requesting C-2 Zoning is located along Kings Hwy., adjacent to the Cape Henlopen Medical Center; that per DelDOT, Kings Hwy. is classified as an Other Principal Arterial, and furthermore identified as a major arterial roadway per No. 7 of the definition found in 115-4 of the County Code; that the remaining portion of land is approximately 43.77-acres and subject to the other three applications; that this portion of land also has frontage along Kings Hwy. and along Gills Neck Rd.; that Gills Neck Rd. is classified as a local road per DelDOT Functional Classification Map; that the layout of the site first began with a 20-ft. forested buffer along The Moorings, Bay Breeze and Jefferson Apartments; that this provides some additional open area to help establish the rear lot lines and allow for drainage; that this was how the lot lines were established for the townhomes and the duplexes; that they looked at the existing entrance, which is currently being utilized for Cape Henlopen Medical Center; that the developer desired to do more residential and move away from the grid street which currently exist; that they designed an arch entrance, which allows the service road to access both commercial properties; that this allows them to avoid redesigning the entrance and roadway;

that in doing this, it allowed the proposed area for a stormwater pond to serve the project; that they looked at how to best connect with the adjacent Big Oyster property; that Mr. Mitchell, the developer and Big Oyster have worked together on various land acquisitions and interconnectivity; that their goal was to separate the commercial traffic from Big Oyster from interacting with the residential traffic; that the same intent was to keep the commercial traffic from traveling through the residential area; that this was their motive for providing the direct connection to Gills Neck Rd.; that commercial traffic is heavier than residential traffic on a normal day; that they designed a mini round-about; that the round-about will be designed allowing vehicles of all types to navigate the circle; that the round-about will be reviewed by both the Fire Marshal and Sussex County Engineering; that once those spots were created, they then focused on a plan which offered a mixture of duplexes, 28-ft. wide and 24-ft. wide townhomes; that there are various prototypes offered within the proposed community; that the roads will be designed to Sussex County standards; that the right-of-way has been narrowed to 40-ft., which is allowable per County Code; that this allows them to bring the houses closer to the roadway, providing at least 20-ft between the sidewalk and the house; that this prevents vehicles from blocking the sidewalk; that No Parking signs will be added to prevent on street parking; that on street parking is always a concern of the Fire Marshal; that No Parking signs will allow enforcement to be occurred within the community if needed; that all lots were designed so no lots were backed up against each other; that all lots have some type of open space between them; that this will help facilitate drainage and landscaping; that sidewalks will be located on both sides of the road for all roadways within the community, with the exception of Road C; that the reasoning is the shared-use path is adjacent to the roadway; that it would not make sense to have a shared-use path and sidewalk next to each other; that active amenities will include a dog park, two mailcenters, a community center, a playground and sports courts for the community to use; that they have added some additional walking paths to promote pedestrian connectivity and walkability within the community; that stormwater management will be provided by infiltration through grass swales, which are located in the open area, to the rear of the lots, perforated pipes and an infiltration basin with the primary and secondary basins being located along Gills Neck Rd.; that higher volume storms, like the 10-yr. and 100-yr. storm events, will discharge via storm pipe through the lands of JG Townsend, which will discharge into a tidal discharge; that the plan was previously approved by Sussex Conservation District for the previous Application; that the pipe will still be able to be used for the current project; that the project does not contain any wetlands; that the project is not located within a flood plain; that the State Housing Preservation Office provided information regarding a known archeological site and some known prehistorical sites with high potential resources due to the known historic structures; that they hired Dr. Edward Otter to complete the Cultural Resource Assessment; that the Resource Assessment can be found in Appendix R of the Exhibit Booklet; that the existing buildings are proposed to be demolished; that Dr. Otter has confirmed he will perform the documentation for the existing buildings, should the Application receive approval; that about 6.34-acres of the project is located within the Wellhead Protection Area and must comply with Chapter 89 of the Sussex County Code; that Verdantas was hired to provide an Environmental Assessment Report; that there was a typo in the some calculations submitted into the record; that Post-Development calculations for Total Area is 9.34-acres and the Recharge Volume is 58-in.; that the total Post-Development, Recharge Volume for Stormwater Basin should have read 135,771 gallons; that with those correct numbers, the calculation remains the same as reported, which is 1,574,948 gallons; that the proposed impervious area with the 6.34-acres is approximately 2.75-acres based on the current preliminary plan provided; that this equates to 44% of impervious coverage; that they always agreed to provide stormwater



management for the Cape Henlopen Medical Center; that when they add in the Cape Henlopen Medical Center property the total impervious coverage becomes approximately 52%; that in accordance with Chapter 89 a Water Climatic Budget is required due to the project coverage being greater than 5% but less than 60%; that the Water Budget report can be found in Exhibit S of the Exhibit Booklet; that the budget shows there is a deficit of 2,646-sq. ft. of rooftop to balance the budget; that there is approximately 450,000-sq. ft. of rooftop available outside of the recharge area to balance the budget; that the project proposes to recharge more groundwater than what currently exists; that a pre-chamber system will be installed for debris and potential petroleum releases to help protect the ground water; that the pre-chamber will filter out the hydrocarbons; that the water quality will also be improved by converting the farm from its use of chemical applications to the proposed project; that Verdantas stated in their report, that the property as proposed can be constructed without adversely impacting the Lewes supply wells; that the property is located within the Sussex County Unified Sewer District; that the property will be served by a gravity sewer system, which will discharge to the Governors pump station; that the property may be served by both the City of Lewes Board of Public Works and Delaware Electric Cooperative as the parcel is split by both providers based on the map for electric territories; that water can be provided to the project by the City of Lewes Public Works or Tidewater Utilities; that both utilities have waterlines along the property frontage; that a CPCN will be required for either utilities; that Tidewater Utilities did provide a Willing & Able Letter to serve the project; that natural gas is available from Chesapeake Utilities, as they have a gas main along Gills Neck Rd.; that a Traffic Impact Study was prepared in 2019; that an addendum was prepared in April 2020 for the previous withdrawn Application; that the withdrawn Application consisted of 206,500 sq. ft. of medical office buildings, 60 single-family homes and 150 multi-family homes; that the TIS Review Letter was prepared on October 7, 2021; that the improvements included within that letter were right-of-way dedication, interim improvements and build-out improvements; that subsequent to the review letter, a new plan, which is currently being proposed was submitted to DelDOT and Sussex County; that as part of the submission the developer stated to DelDOT that despite the reduction of traffic of approximately 50%, they would abide by the recommendations from the original study; that after review of the request in the reduction of traffic, DelDOT did not require a new TIS; that DelDOT provided an amended study and a letter; that during the same time, DelDOT had sped up the design of the DelDOT US Rt 9., Kings Hwy., Dartmouth Dr. to Freeman Hwy., DelDOT Contract T202212901 or also known as the dualization of Kings Hwy.; that the dualization of Kings Hwy. was first identified in 2009 as part of a larger agreement involving projects which have all completed their construction and their portions of overall improvements; that those projects include Senators, Governors, Showfield and Whites Pond Meadow who will construct their portion in summer to fall of 2022; that the last remaining piece is the dualization of Kings Hwy.; that DelDOT held a public workshop on February 23, 2022, on their improvement project; that the developer was agreeable with the interim improvements; that the developer began working on various projects for the current public hearing before the information from the DelDOT workshop was available and before final interim improvements were negotiated; that the rendering submitted was constructed before they received information regarding how the dualization of Kings Hwy. would occur with the landscape guidelines and shared-use path; that the rendering does provide an idea how the project would look from an aerial view; that they must create a corridor effect with landscaping and shared-use path meandering through and integrate the project with the dualization of Kings Hwy. to create a corridor the byways would be pleased with; that they recognize it is a byway and the gateway into the City of Lewes; that a second through lane was added

in the southbound direction; that after discussion of the project, the time of the dualization and the reduction in traffic, DelDOT did not support the interim improvements; that after further discussion and the developers willingness and desire to provide some temporary relief, DelDOT has agreed to interim improvements; that the improvements are slightly different from what was originally required in the October 7, 2021 letter; that DelDOT proposed additional requirements; that DelDOT's first requirement is the developer will mill an overlay approximately 3,500 linear feet of Kings Hwy.; that DelDOT's second requirement is to construct a rights-in and rights-out entrance on Kings Hwy.; that this will be located across from the Lewes property; that the entrances will align across from each other; that at that location DelDOT has proposed to make a round-about for the two entrances as part of the overall project; that the round-about is the reason the developer is agreeable to the rights-in and rights-out entrance during the interim condition; that the third DelDOT requirement was to maintain the entrance on Gills Neck Rd.; that no changes are required for this, as the entrance is designed for proposed amount of traffic for the project; that the developer is to improve Kings Hwy., Gills Neck Rd. and Cape Henlopen High School; that they will convert the through lane from Gills Neck Rd. onto Kings Hwy. into a dedicated left turn lane; that this will create two left turn lanes from Gills Neck Rd. onto Kings Hwy.; that the right turn lane will be converted to a through right turn lane; that this will allow traffic to go through to Cape Henlopen High School or turn right in the intersection; that they will be adding a second through lane in the southbound direction; that a separate right turn lane will remain; that they will be shifting the intersections roadway approximately 10-ft. into the site to accomplish the improvement; that there will be two through lanes in the southbound direction and a dedicated left turn lane going onto Gills Neck Rd.; that the dual through lane will continue south; that there will be a lane drop where the right hand through lane will become a dedicated right turn lane onto Clay Rd. in the interim condition; that a separate bicycle lane will be provided through the intersection; that they will also install a shared-use path from Cape Henlopen High School to Clay Rd. to complete pedestrian connectivity to Clay Rd.; that the developer will enter into an agreement to provide an equitable contribution to the dualization project; that the developer will dedicate 50-ft. of right of way from the center line of the road; that the developer will reserve an additional 30-ft. of right of way parallel to Kings Hwy. for the dualization of the project; that a 30-ft. dedication will occur along Gills Neck Rd.; that in addition to the reservation and dedicated right of way, a 15-ft. permanent easement will be provided for a shared-use path; that a shared-use path will be provided, wrap around and connect to the Big Oyster; that the developer will enter into an agreement to provide an equitable contribution to the Clay Rd. and Marsh Rd. intersection as part of the overall realignment project; that they will provide connections and cross-access easements between the onsite lots; that there is interconnectivity provided to the Cape Henlopen Medical Center and Big Oyster; that there will also be an interconnection into Lane Builders once the roundabout is installed; that they will provide bicycle, pedestrian and transit improvements to include the shared-use paths; that they will provide a Type 2 bus stop; that the developer had a meeting with select individuals of the Lewes Byway Committee; that the meeting was held prior to the release of the dualization plan; that during the meeting the developer committed to working with the committee on the shared use path, landscaping and fencing; that after the release of the dualization plan, the developer reached out to the Lewes Byway Committee to reconfirm their commitment; that DelDOT is equally supportive of the development of the 10-ft shared-use path, landscaping and maintenance within the permanent easement; that the project was reviewed by PLUS on December 15, 2021; that the PLUS comments and responses can be found in Exhibit M; that the PLUS comments provided were general in nature and will comply with all regulatory requirements;

that Davis, Bowen & Friedel, Inc. (DBF) prepared an Environmental Assessment and Public Facility Evaluation Report in accordance of County Code, Chapter 115-194.3; that the written responses can be located within Exhibit K; that they have analyzed all of the respected items; that all mitigation measures are consistent with the Comprehensive Plan; that DBF prepared a written response to items listed in Chapter 99-9C; that the responses can be located within Exhibit J; that the project is integrated into existing terrain and surrounding landscape; that the project does not contain wetlands or flood plains; that the project provides buffers to screen objectionable features; that the project prevents pollution of surface and groundwater; that the plan provides for vehicular and pedestrian movement; that the plan mitigates the effect on area roadways and public transportation and the project is compatible with other land areas.

Ms. Stevenson questioned if the Applicant will be using the recommendations and plans of the Lewes Byway Commission, if the Applicant is agreeable to the proposals made in the TIS Review Letter, if swales would be placed along Kings Hwy. or a closed stormwater system, if she could see a rendering of the interim highway is proposed to look like, if there will be shoulders on the roadways once the improvements are built; that shoulders are a big concern for her since Kings Hwy. is a major roadway for ambulances; that she questions what the Applicant is doing to create more pervious surfaces and questioned extra parking possibilities; that she mentioned the adjacent multi-family housing offers a lot of additional parking; that since the Applicant is offering multi-family housing, her hope is the units would be workforce housing; that she believes younger families, who work in the area, would live there and more than likely will have family and friends who visit; that with no parking on the street, additional parking will be needed; that she questioned the interconnectivity to the property; that she questioned the reasoning for not promoting access from Kings Hwy; that Gills Neck Rd. is much smaller than Kings Hwy.; that she fears the plan will encourage 400 to 500 additional people to utilize Gills Neck Rd. to enter Lewes; that she questioned if the entrance from Gills Neck Rd. could be a right-in and right-out, prohibiting traffic to turn left onto Gills Neck Rd.; that she feels until improvements are made, people will attempt to take the back way of Gills Neck Rd. into Lewes and she questioned if the Applicant has had any discussions with the school district.

Mr. Hutt stated he is unsure if there is a defined plan, especially with the new plan of the roundabout; that the Applicant intends to work with the Byway Commission as the dualization process moves forward; that the Byway Commission was excited with the Applicant's proposal shown in the rendering; that the Byway Commission did want trees and boulevards; that the Applicant hopes to accomplish as much as they can within the remaining area; that the Applicant is agreeable to the proposals made in the TIS Review Letter; that DelDOT will regulate if there should be open or closed drainage system along Kings Hwy.; that they are learning what the proposed plans are for the dualization of Kings Hwy.; that he cannot speculate on what will be required and the Sussex County Engineering Department verified the calculations to ensure there is a balanced budget on what is proposed.

Mr. Bryan Behrens spoke on behalf of the Application, that he is the group engineer for DelDOT's project development for the south section; that he is in charge of the design of the Kings Hwy. dualization project; that proposed currently is open drainage, which will be swales adjacent to the roadway; that they did reach out to the Lewes Byways Commission ahead of the DelDOT public workshop to present their proposal; that he believes Lewes Byways Commission was similarly as enthusiastic about the proposal as DelDOT was; that they are proposing a shared-use path and

landscaping, which is the same proposal as the Applicant, providing room for collaboration and he does not have a rendering of the highway during the interim improvements.

Mr. Lardner stated they only have a drawing to show what the proposed travel lanes will look like; that he does not have a rendering of what the improvements will look like; that he has a drawing showing where the travel lanes will be once the roadway is shifted; that all details will be worked out with Mr. McCabe and his staff as part of the review process; that there is still a lot more collaboration to go through of how the final lanes will look; that there will be two lanes heading southbound out of the City of Lewes, heading toward Dartmouth Dr.; that there will be shoulders on both sides the roadways, in the interim condition, and upon final construction; that the driveway material has not been finalized, as the homeowners need to be part of the conversation when discussing long-term maintenance; that there will be infiltration in all rear yard swales; that this will allow the back half of roof run off to drain into the rear yard swales with infiltration in them; that the roadways will have perforated piping; that this will allow the roadways to infiltrate as soon as the drainage hits the system; that drainage will infiltrate through the roadbed; that any runoff which still makes it to the infiltration ponds, will further infiltrate within the pond; that the pond will have a pre-treatment system on it; that this will further protect the wellheads; that their intent is to infiltrate at the source; that they will balance the budget to ensure they comply completely with the Wellhead Protection requirements; that they have proposed two parking spaces per unit; that there is a parking area by the clubhouse; that during non-business hours the parking lot of the Cape Henlopen Medical Center could be used; that he believes there are other opportunities for overflow parking elsewhere, however those areas are not reflected on the current site plan; that they do have an exit from the property to Big Oyster; that he can speak to Big Oyster's plan, as they have worked very closely with Mr. Hammer and the Big Oyster staff to ensure Big Oyster's and the Applicant's needs are both met; that the stub shown on the site plan is the interconnection to Big Oyster's proposed plans in the back; that they would have access to Big Oyster, through the roundabout, both in and out; that once the improvements are completed along Kings Hwy. they will have access to the dualized roundabout; that this will provide interconnectivity to Big Oyster; that collaborations will be ongoing as the Applicant and Mr. Hammer have been partners for a long time; that traffic accessing the project from Kings Hwy. would be required to cut through the residential section, in trying to keep the peaceful nature of the neighborhood; that they were attempting to separate the medical office commercial traffic, by only using the Gills Neck intersection; that commercial traffic can be heavy at times; that Gills Neck Rd. is not much smaller in the particular section being referred to; that traffic coming down Gills Neck Rd. toward Kings Hwy. would access the medical center by turning right, before reaching Kings Hwy; that the frontage of Gills Neck Rd. is adequately sized to handle the traffic when using the intersection, where as a subdivision street at 24-ft. wide is not designed for the commercial use; that he does not feel residents from the proposed community would take Gills Neck Rd. to access Lewes, as they will have access to Kings Hwy. as well as the Gills Neck Rd. intersection; that the potential for a right-in and right-out only would be regulated by DelDOT; that DelDOT granted the access as a full access and entrance; that DelDOT prefers the access to be on the lower classification roadway rather than the high classification roadway; that this causes competing interests regarding the entrance; that it would be quicker for residents to take a right onto Kings Hwy. into Lewes than to take the back way through Gills Neck Rd.; that he does not understand how eliminating the left onto Gills Neck Rd. will achieve Ms. Stevenson's goal; that he reached out to the Superintendent and Director of Operations; that they did not want to provide a letter in support or opposition; that the

school district was sent a letter with the plans; that they currently are and will continue coordinating with the school district regarding school bus stops.

Mr. Thomas Brockenbrough spoke on behalf of DelDOT in relation to the Application; that it is physically possible to create a no left turn onto Gills Neck Rd. from the project by widening Gills Neck Rd. and providing a median; that the construction of this will not be easy; that it will be costly, and it may be out of character with the Lewes Byway.

Ms. Wingate stated people wanting to make the left onto Gills Neck Rd. will most likely cause a lengthy wait, as there will not be a light at the location, causing people to avoid turning left and she would also like to see additional parking provided within the community.

Mr. Mears stated he also agrees with the need for additional parking; that he questioned if every proposed unit would have a garage and a garage will help with the parking issues.

Mr. Lardner stated every unit is proposed to have a garage. The Commission found that Mr. Tom Panetta spoke in opposition to the Application; that he is speaking on behalf of Lewes Board of Public Works; that he also lives in Lewes; that Lewes Board of Public Works opposes the Change of Zone request; that the five wells providing for the City of Lewes are located directly across the street from the project; that the proposed project along with the existing medical office complex building, the Village Center, the Village Center Cottages, along with 37 additional acres, sit directly over the Wellhead Protection Area; that this creates grave concern for them; that the Lewes Board of Public Works presented in front of the Planning & Zoning Commission before; that all of the water for Lewes and the service territories comes from the five wells; that the wells were replaced in the late 1950's to early 1960's; that DNREC has mentioned the placement of the wells is the most ideal locations for the Aquaphor; that they have been searching for redundant sites, but have been unsuccessful in finding a more suitable location; that the last study on the Wellhead Protection Area was performed in 2003; that since the study they have seen an increase in the pumping rate of 25%, from 400 to 500 million gallons per year; that the pumping is currently still within the permits; that Lewes has increased their pumping, but the surrounding wells have also increased pumping; that they have been in discussions with Geotech and DNREC questioning if the Wellhead Protection Area is currently sufficient as is; that the subject property and other properties mentioned, cover a third to a quarter of the Wellhead Protection Area; that the five wells drawn from 85-ft. to 100-ft. deep; that they are not very deep; that placing stormwater infiltration ponds directly within the Wellhead Protection Area, adjacent to the wells, does not allow much time to recover if something were to spill; that all of the nutrients from landscaping and surface contamination from the roads are going to be sent to the stormwater ponds; that he finds it hard to believe the site will be 44% of impervious coverage, given the density, roads, walkway, tennis courts and pool; that he had also spoke at the PLUS meeting; that the PLUS report submitted to Sussex County stated the pavement should be pervious; that the plan shows the pavement as conventional hot mix; that the use of pervious pavement would greatly reduce the amount of water to be sent to the stormwater ponds; that the PLUS report also mentioned using rain gardens, filter strips and other best practices; that he did not see these proposed in the plans; that Sussex County, the City of Lewes and the Lewes Board of Public Works have already purchased the Jones Farm due to the concern for protecting the Wellheads; that collectively \$6,000,000.00 was spent to accomplish this; that with this project the remaining portion of the Wellhead Protection Area is in danger of being developed; that this is a cumulative issue, not being just the proposed project; that this



issue needs to be looked at holistically; that the Lewes Board of Public Works has not issued a Readiness to Serve, for the electric for the project; that without a master plan, a holistic overview of all the lands along Kings Hwy., the wellhead will suffer a death by a thousand cuts and this will jeopardize everyone in Lewes, and all of the service territory.

Chairman Wheatley questioned if the property is located within the service area of Lewes Board of Public Works.

Ms. Stevenson questioned if Mr. Panetta had any suggestions as to how the project could make things better regarding the Wellhead Protection Area.

Mr. Robertson questioned if the Wellhead Protection Area is important to Lewes, what was the reasoning for Lewes not annexing the surrounding areas.

Mr. Panetta stated half of the property is located within the CPCN of Lewes Board of Public Works and the other half of the property is not; that the City of Lewes must agree to any service outside of the city limits; that he stated the City of Lewes wanted to attend the public hearing, but they had a Mayor and City Council meeting going on concurrently, which included all staff; that they intend to submit a formal letter to Planning and Zoning; that moving the stormwater pond out of the Wellhead Protection Area would help; that the stormwater pond is located within the worst possible area on the property; that the Wellhead Protection Area is located within the lower corner for the property; that the soils on the entire property are part of the recharge area; that they are having additional studies performed to confirm the true impact on the wells, as well as the private wells in the area; that the Village Center Cottages is located completely in the Wellhead Protection Area; that without looking at these projects holistically, decisions will be difficult to make and the City of Lewes does not have the right to annex properties without the owner applying for annexation first.

Mr. Robertson stated the public hearing will be closed for the Planning & Zoning Commission unless the Commission chose to hold the record open, however, public comments can be submitted for the public hearing before the County Council.

Chairman Wheatley questioned what the County Code states regarding the Wellhead Protection Area; that he questioned if there was a prior situation where the existence or location of the stormwater ponds caused adverse issues for a municipal water system and if the land was currently being tilled with chemicals.

Mr. Whitehouse stated Chapter 89 of the County Code focuses more on the site plan review rather than the use; that in any Wellhead Protection Area, with less than 35% impervious cover, there is no requirement; that there is a requirement an Environmental Assessment be submitted when 35% to 60% of impervious cover is proposed; that the Environmental Assessment must include an appropriate level of detail of how the area should be managed and development within the area is not prohibited within the 35% to 60% range, however, does require supporting technical analysis.

Mr. Panetta stated if the Commission performs a search they will find examples, such as a dry cleaning business contaminating wells with trichloroethylene; that there are issues with contaminants on roadways, such as hydraulic fluid and gasoline being washed into the stormwater ponds; that farmers apply fertilizer as required to meet the soil requirements; that this is different than a homeowner who applies fertilizer twice a year; the difference is a business operation versus residential use; that the

Chesapeake and Coral Gables, Florida are controlling the amount of fertilizer being used for residential use and he feels this should be considered with the proposed project.

The Commission found Mr. Jay Tomlinson spoke by teleconference with questions regarding a potential construction date for the interim improvements for the proposed project, as the previous TIS referenced the former project; that he questioned if it was intended to have commercial businesses along the first floor and the possibility of leaving the record open.

Mr. Hutt stated he believes Mr. Tomlinson's concern originated from the statement within the TIS regarding the separation between retail business and professional office space.

Mr. Lardner stated the milestone for the proposed interim improvements is immediate, that the interim improvements are required to be installed and accepted before the first Certificate of Occupancy is granted for the project; that there will not be businesses along the first floor of the proposed professional office building; that the office building will be strictly for professional, dental and/or medical offices; that there will be no intent for retail or convenient stores; that with the original study they had proposed a 6,500 sq. ft. commercial shopping center; that this intent is where the initial 117,500 threshold originates from and the proposed project generates less traffic than the 117,500 trips, which is why they have agreed to perform the interim improvements immediately before the first Certificate of Occupancy. Ms. Wingate questioned the potential to move the location of the stormwater management pond. Ms. Stevenson questioned which direction the runoff would naturally run.

Mr. Lardner stated there is an opportunity to relocate the stormwater management pond; that it would require a redesign of the site, with a potential loss of units; that they have proposed recharge in excellent areas and Wellhead Protection Areas; that there have been conversations regarding impervious surfaces; that there are stormwater management practices within the Wellhead Protection Areas; that these are different practices to achieve the same result; that the Applicant has proffered for pretreatment of the system, should there be a leaking vehicle or a similar situation; that the runoff naturally runs away from the Wellhead Protection Area and this is stated within the report prepared by Mr. Cahill.

The Commission found there was no one present in the room or by teleconference who wished to speak in support or opposition to Applications, 2022-01, C/Z 1967, C/Z 1968, and C/U 2334 for Henlopen Properties, LLC.

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

In relation to Application 2022-01 Henlopen Properties, LLC. Motion by Ms. Stevenson to defer action for further consideration, seconded by Mr. Hopkins, and carried unanimously. Motion carried 5-0.

In relation to Application C/Z 1967 Henlopen Properties, LLC. Motion by Ms. Stevenson to defer action for further consideration, seconded by Ms. Wingate, and carried unanimously. Motion carried 5-0.

In relation to Application C/Z 1968 Henlopen Properties, LLC. Motion by Ms. Stevenson to defer action for further consideration, seconded by Mr. Hopkins, and carried unanimously. Motion carried 5-0.

In relation to Application C/U 2334 Henlopen Properties, LLC. Motion by Ms. Stevenson to defer action for further consideration, seconded by Ms. Hopkins, and carried unanimously. Motion carried 5-0.

Minutes of the April 14, 2022 Planning & Zoning Commission Meeting

The Commission discussed the application which has been deferred since March 10, 2022.

Ms. Wingate moved that the Commission recommend approval of C/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 125<sup>th</sup> Building Permit; and
    - ii. The dog park shall be completed on or before the 150<sup>th</sup> 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

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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.





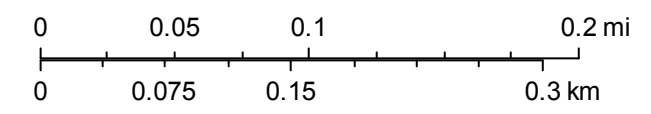
# Sussex County



<b>PIN:</b>	335-8.00-37.00
<b>Owner Name</b>	JEFF-KAT LLC
<b>Book</b>	5613
<b>Mailing Address</b>	1007 KINGS HWY
<b>City</b>	LEWES
<b>State</b>	DE
<b>Description</b>	SE/KINGS HWY
<b>Description 2</b>	RESIDUAL LANDS
<b>Description 3</b>	N/A
<b>Land Code</b>	

- 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

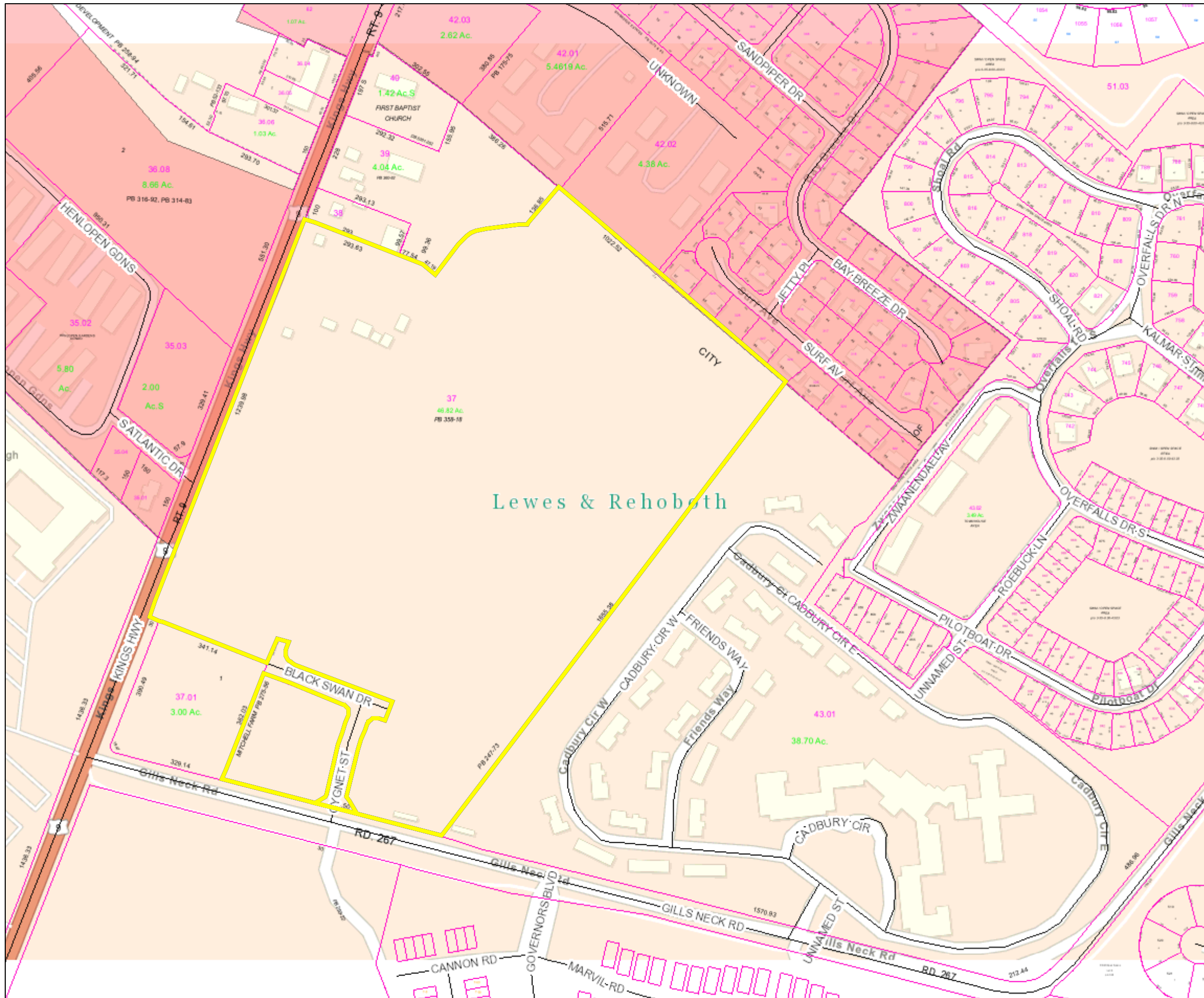
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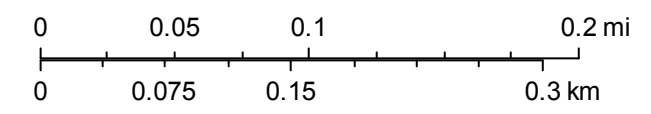
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<b>State</b>	DE
<b>Description</b>	SE/KINGS HWY
<b>Description 2</b>	RESIDUAL LANDS
<b>Description 3</b>	N/A
<b>Land Code</b>	

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  - Override 1
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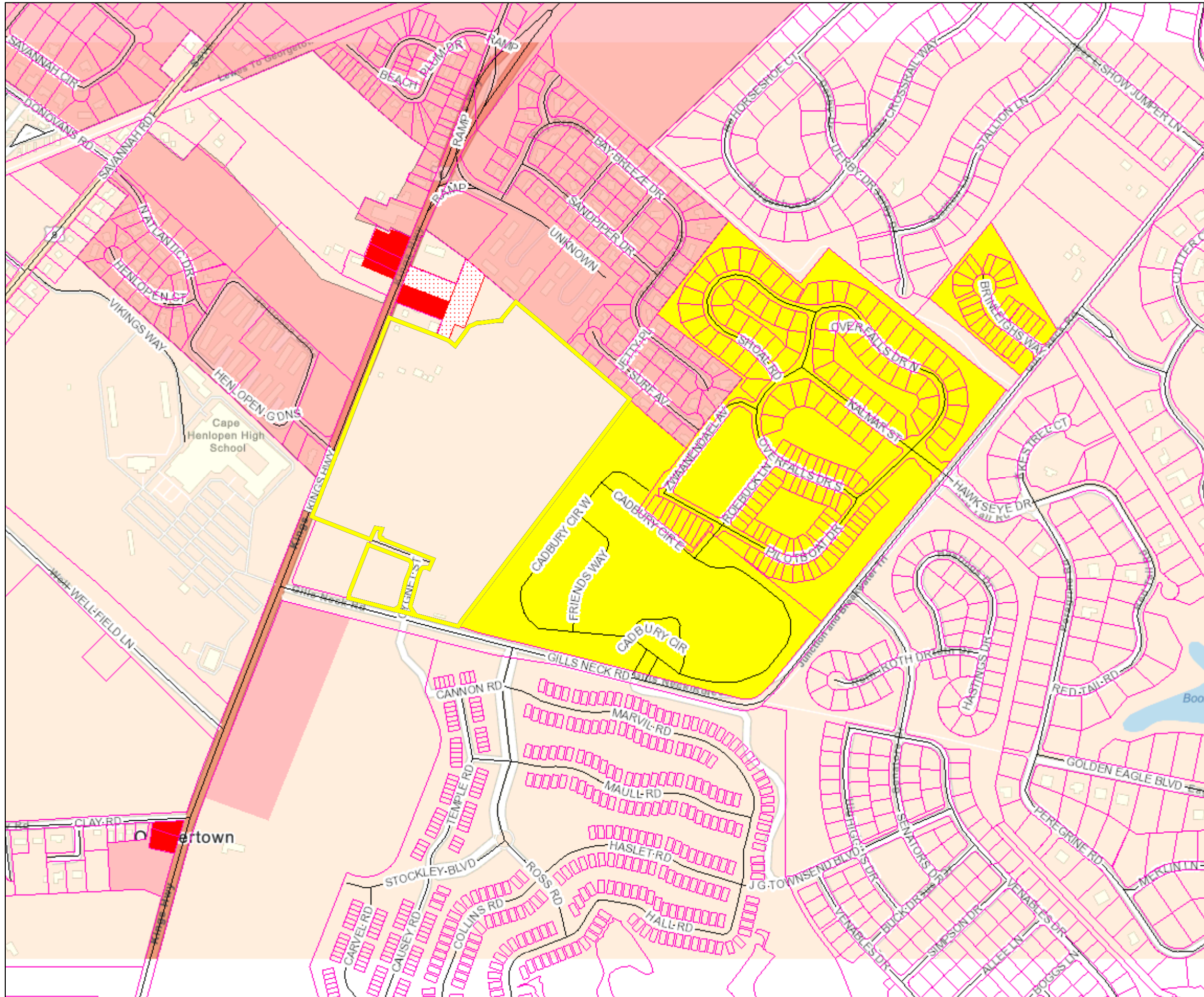
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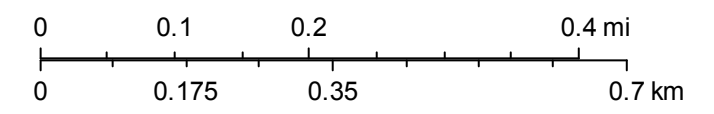
# Sussex County



<b>PIN:</b>	335-8.00-37.00
<b>Owner Name</b>	JEFF-KAT LLC
<b>Book</b>	5613
<b>Mailing Address</b>	1007 KINGS HWY
<b>City</b>	LEWES
<b>State</b>	DE
<b>Description</b>	SE/KINGS HWY
<b>Description 2</b>	RESIDUAL LANDS
<b>Description 3</b>	N/A
<b>Land Code</b>	

- polygonLayer  
   Override 1
- 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 5<sup>th</sup> 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.



# SUSSEX COUNTY GOVERNMENT

## GRANT APPLICATION

HUDSON  
Rieley  
↓  
wait.  
YES, 6.14

### SECTION 1 APPLICANT INFORMATION

ORGANIZATION NAME: *Kody's Kids, Inc.* ✓

PROJECT NAME: *Early learning Program*

FEDERAL TAX ID: *51-0408296* ✓ NON-PROFIT:  YES  NO

DOES YOUR ORGANIZATION OR ITS PARENT ORGANIZATION HAVE A RELIGIOUS AFFILIATION?  
 YES  NO \*IF YES, FILL OUT SECTION 3B.

ORGANIZATION'S MISSION: *Making a Positive Difference by inspiring kids of all abilities, to read and practice healthy habits*

ADDRESS: *116 Front St. #647*

*beves* (CITY) *DE* (STATE) *19958* (ZIP)

CONTACT PERSON: *Philip Brown*

TITLE: *President*

PHONE: *302-858-0884* EMAIL: *kodyskids.org@gmail.com*

TOTAL FUNDING REQUEST: *1,000* <sup>OH</sup>

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

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

If you are asking for funding for building or building improvements, do you own the building in which the funding will be used for? *N/A* YES  NO

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

If YES, approximately what percentage of the project's funding does the Council grant represent? *50%*

## SECTION 2: PROGRAM DESCRIPTION

### PROGRAM CATEGORY (choose all that apply)

Fair Housing  
Infrastructure<sup>1</sup>

Health and Human Services  
Other \_\_\_\_\_

Cultural  
 Educational

### BENEFICIARY CATEGORY

Disability & Special Needs  
Elderly Persons  
Minority

Victims of Domestic Violence  
 Low to Moderate Income<sup>2</sup>  
Other

Homeless  
 Youth

### BENEFICIARY NUMBER

Approximately the total number of Sussex County Beneficiaries served annually by this program:

200

## SECTION 3: PROGRAM SCOPE

A. Briefly describe the program for which funds are being requested. The narrative should include the need or problem to be addressed in relation to the population to be served or the area to benefit.

The Early Learning Outreach Program is comprised of Volunteer Teachers who take our class to schools, libraries and other early learning locations with the objective to encourage Reading and Healthy Habits to students of all abilities.

We purchase books for our program that help young students develop a passion for learning and developing a healthy lifestyle. Activity supplies enhance the books we use for our reading classes. The activity supplies we purchase depends on the abilities of the students we will be working with. Supplies for our online classroom benefit students that are homebound, due to disability or illness. Some of the locations we have classes are, Howard T. Ennis School, Georgetown Library, Primeros Pasos and Oak Orchard Boy & Girls Club, Longneck.  
[www.RodysKids.org](http://www.RodysKids.org)

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

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

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

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

N/A



### SECTION 4: BUDGET

<b>REVENUE</b>		
Please enter the current support your organization receives for this project (not entire organization revenue if not applicable to request)		
<b>TOTAL REVENUES</b>	\$1000-	
<b>EXPENDITURES</b>		
Please enter the total projected budget for the project (not entire organization expense if not applicable to request). Example of expenditure items: PERSONNEL-one lump sum that would include benefits, OPERATING COSTS-supplies, equipment, rent/lease, insurance, printing telephone, CONSTRUCTION/ACQUISITION-acquisition, development, rehab hard cost, physical inspections, architectural engineering, permits and fees, insurance, appraisal. <b>(Put amounts in as a negative)</b>		
Supplies: Books, Activity Items, paper, printing > Educational software, video equipment	-\$2000-	
<b>TOTAL EXPENDITURES</b>	\$2000-	\$ 0.00
<b>TOTAL DEFICIT FOR PROJECT OR ORGANIZATION</b>	-\$1000-	\$ 0.00

### SECTION 5: STATEMENT OF ASSURANCES


If this grant application is awarded funding, the Kody's Kids, Inc. agrees that:

(Name of Organization)

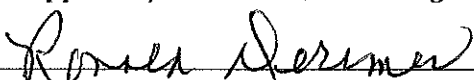
- 1) For non-religious organizations, all expenditures must have adequate documentation and must be expended within one (1) year of receipt of award funds. The funding awarded to the organization must be used in substantial conformity with the anticipated expenditures set forth in the submitted application. All accounting records and supporting documentation shall be available for inspection by Sussex County within thirty (30) days after the organization's expenditure of the awarded funding, or within one year after the receipt of the awarded funds, whichever first occurs.
- 2) For religious organizations, all accounting records and supporting documentation shall be provided for inspection by Sussex County after the award has been made by County Council but before the funding is released.
- 3) No person, on the basis of race, color, or national origin, should be excluded from participation in, be denied the benefit of, or be otherwise subjected to discrimination under the program or activity funded in whole or in part by these Grant funds.

**SECTION 5: STATEMENT OF ASSURANCES (continued)**

- 4) All information and statements in this application are accurate and complete to the best of my information and belief.
- 5) All funding will benefit only Sussex County residents.
- 6) All documents submitted by the applicant are defined as public documents and available for review under the Freedom of Information Act of the State of Delaware.
- 7) All funding will be used exclusively for secular purposes, i.e., non-religious purposes and shall not be used to advance or inhibit religious purposes.
- 8) **In the event that the awarded funding is used in violation of the requirements of this grant, the awarded funding shall be reimbursed to Sussex County within a timeframe designated by Sussex County by written notice.**

  
\_\_\_\_\_  
Applicant/Authorized Official Signature

6-3-22  
Date

  
\_\_\_\_\_  
Witness Signature

6-3-22  
Date

Completed application can be submitted by:

Email: gjennings@sussexcountyde.gov

Mail: Sussex County Government  
Attention: Gina Jennings  
PO Box 589  
Georgetown, DE 19947

**SUSSEX COUNTY COUNCIL NON-PROFIT GRANT PROGRAM**  
**GUIDELINES FOR SUBMITTAL AND AFFIDAVIT OF UNDERSTANDING**

The Sussex County Council makes available a limited amount of funding to non-profit organizations that serve the citizens of Sussex County. Each application for funding shall be evaluated by Sussex County administrative staff and shall be subject to final approval from Sussex County Council.

In the attached application, each organization must outline its intended uses for the awarded funding and provide a detailed breakdown of the expenses and costs for such uses. Any funding awarded to the organization must be used in substantial conformity with anticipated expenditures of the submitted application.

All expenditures must have adequate documentation and must be expended within one (1) year of award of funds.

For non-religious organizations, all accounting records and supporting documentation shall be available for inspection by Sussex County within thirty (30) days after the organization's expenditure of the awarded funding, or within one year after the receipt of the awarded funds, whichever first occurs.

For religious organizations, all accounting records and supporting documentation shall be provided for inspection by Sussex County after the award has been made by County Council but before funding is released. Grant is relinquished if supporting documentation is not provided within one year of County Council award.

Certain programs are not eligible for funding pursuant to United States Constitution and State of Delaware Constitution. Those constitutional principles prohibit the use of funding to advance or inhibit religious activities. By signing below, the organization acknowledges that the funding shall be used exclusively for secular purposes, i.e., non-religious purposes and shall not be used to advance or inhibit religious activities.

In the event that such funding is used in violation of the requirements and assurances contained in this grant application, the awarded funding shall be reimbursed to Sussex County within a timeframe designated by Sussex County by written notice.

I acknowledge and represent on behalf of the applicant organization that I have read and understand the above statements.

*Philip Brown*  
Applicant/Authorized Official Signature

*President*  
Title

*Rosea Derriner*  
Witness Signature

*6.30.22*  
Date

**Council Grant Form**

<b>Legal Name of Agency/Organization</b>	<del>Nemours Children's Health, Milford</del> The Nemours Foundation. ✓
<b>Project Name</b>	Vaccine and Medication Barcoding during an Ambulatory Visit
<b>Federal Tax ID</b>	590634433 ✓
<b>Non-Profit</b>	Yes
<b>Does your organization or its parent organization have a religious affiliation? (If yes, fill out Section 3B.)</b>	No
<b>Organization's Mission</b>	"To provide leadership, institutions and services to restore and improve the health of children through care and programs not readily available, with one high standard of quality and distinction, regardless of the recipient's financial status."
<b>Address</b>	101 Wellness Way
<b>Address 2</b>	
<b>City</b>	Milford
<b>State</b>	Delaware
<b>Zip Code</b>	19963
<b>Contact Person</b>	Lindsay Stephens



<b>Contact Title</b>	Nurse Manager
<b>Contact Phone Number</b>	302-396-4746
<b>Contact Email Address</b>	<a href="mailto:lindsay.stephens@nemours.org">lindsay.stephens@nemours.org</a>
<b>Total Funding Request</b>	<del>15,000</del> 1,500 <sup>gr</sup>
<b>Has your organization received other grant funds from Sussex County Government in the last year?</b>	No
<b>If YES, how much was received in the last 12 months?</b>	N/A
<b>Are you seeking other sources of funding other than Sussex County Council?</b>	No
<b>If YES, approximately what percentage of the project's funding does the Council grant represent?</b>	N/A
<b>Program Category (choose all that apply)</b>	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** 5000

**Scope**

**Aim:**

1. Reduce vaccine related safety events \*\*this has become even more important now that we administer three different doses of the COVID vaccine based on age\*\*
2. Improve vaccination rates
3. Reduce time spent doing manual documentation in the electronic medical record (EMR) \*\*time consuming and risk for error\*\*

**Purpose:**

The increasing demands on the healthcare staff requires us to look at ways to be more efficient and improve our processes. By implementing vaccine and medication barcode scanning in our primary and specialty care offices in Sussex County we expect to reduce errors, improve vaccination rates and be more efficient for staff.

**Population:**

Primary and Specialty Care Children 0-21 in Sussex County, Delaware

In the past, we have also vaccinated adults/community patients when we were helping the state with COVID vaccines

If this pilot is successful in our Milford practices, then we will expand this process to all ambulatory sites in Delaware and Pennsylvania. This will be planned in the Nemours Children's Health future budget of capitol expenses. Ultimately, this pilot could benefit all ambulatory care patients at Nemours Children's Health! Nemours Children's Health is committed to serving the patients and families of the Delaware Valley. Quality and safety are a top priority for us.

**Religious Components**

n/a

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

0.00

**Description**

Barcode Scanner

**Amount**

6,500.00

**Description**

Hand Held USB Cable

**Amount**

1,500.00

**Description**

Desktop Wall Mount Holder

**Amount**

1,000.00

**Description** Training and Staff Time

**Amount** 4,000.00

**Description** Data Collection and Analysis

**Amount** 2,000.00

**Description**

**Amount**

**Description**

**Amount**

**Description**

**Amount**

**TOTAL EXPENDITURES** 15,000.00

**TOTAL DEFICIT FOR  
PROJECT OR  
ORGANIZATION** -15,000.00

**Name of Organization** Nemours Children's Health, Milford

**Applicant/Authorized  
Official** Lindsay Stephens

**Date** 06/20/2022

**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](mailto:info@d3forms.com) with any questions.

To Be Introduced: 07/26/22

Council District 2: Mrs. Green  
Tax I.D. No. 235-21.00-5.00  
911 Address: 16394 Sam Lucas Road, Milton

ORDINANCE NO. \_\_\_\_

AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A GR GENERAL RESIDENTIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN BROADKILL HUNDRED, SUSSEX COUNTY, CONTAINING 0.296 ACRES, MORE OR LESS

WHEREAS, on the 30<sup>th</sup> day of March 2022, a zoning application, denominated Change of Zone No. 1981 was filed on behalf of Luke Neiswander; and

WHEREAS, on the \_\_\_\_ day of \_\_\_\_\_ 2023, a public hearing was held, after notice, before the Planning and Zoning Commission of Sussex County and said Planning and Zoning Commission recommended that Change of Zone No. 1981 be \_\_\_\_\_; and

WHEREAS, on the \_\_\_\_ day of \_\_\_\_\_ 2023, a public hearing was held, after notice, before the County Council of Sussex County and the County Council of Sussex County has determined, based on the findings of facts, that said change of zone is in accordance with the Comprehensive Development Plan and promotes the health, safety, morals, convenience, order, prosperity and welfare of the present and future inhabitants of Sussex County,

NOW, THEREFORE, THE COUNTY OF SUSSEX HEREBY ORDAINS:

Section 1. That Chapter 115, Article II, Subsection 115-7, Code of Sussex County, be amended by deleting from the Comprehensive Zoning Map of Sussex County the zoning classification of [Agricultural Residential District] and adding in lieu thereof the designation General 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 Broadkill Hundred, Sussex County, Delaware, and lying on the southwest side of Sam Lucas Road (S.C.R. 256), approximately 0.55 mile north of Harbeson Road (Rt. 5), and being more particularly described in the attached legal description prepared by Sergovic, Carmean, Weidman, McCartney & Owens, P.A., said parcel containing 0.296 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: 07/26/22

Council District 3: Mr. Schaeffer  
Tax I.D. No. 334-11.00-6.00  
911 Address 18968 Robinsonville Road, Lewes

ORDINANCE NO. \_\_\_\_

**AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A TREE SERVICE BUSINESS TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES & REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 3.83 ACRES, MORE OR LESS**

WHEREAS, on the 26<sup>th</sup> day of August 2021, a conditional use application, denominated Conditional Use No. 2311 was filed on behalf of Phillip Jackson; 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. 2311 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. 2311 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 northwest side of Robinsonville Road (S.C.R. 277) approximately 960 feet south of Cedar Grove Road (S.C.R. 283) and being more particularly described in the attached survey prepared by Vernon Walch, P.L.S., said parcel containing 3.83 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: 07/26/22

Council District 4: Mr. Hudson  
Tax I.D. No.: 433-6.00-18.00, 20.00, & 26.00  
911 Address: N/A

ORDINANCE NO. \_\_\_\_

**AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A SOLAR FARM TO BE LOCATED ON A 14.64 ACRE PORTION OF A CERTAIN PARCEL OF LAND LYING AND BEING IN DAGSBORO HUNDRED, SUSSEX COUNTY, CONTAINING 28.09 ACRES, MORE OR LESS**

WHEREAS, on the 23rd day of February 2022, a conditional use application, denominated Conditional Use No. 2353 was filed on behalf of Sussex CSG 2, LLC; and

WHEREAS, on the \_\_\_\_ day of \_\_\_\_\_ 2023, a public hearing was held, after notice, before the Planning and Zoning Commission of Sussex County and said Planning and Zoning Commission recommended that Conditional Use No. 2353 be \_\_\_\_\_; and

WHEREAS, on the \_\_\_\_ day of \_\_\_\_\_ 2023, a public hearing was held, after notice, before the County Council of Sussex County and the County Council of Sussex County 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. 2353 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 Dagsboro Hundred, Sussex County, Delaware, and lying on south side of Gum Tree Road (S.C.R. 405), to the west side of DuPont Boulevard (Rt. 113), and the north side of Blueberry Lane (S.C.R. 402), and being more particularly described in the attached legal description prepared by Pennoni Associates Inc., said parcel containing 28.09 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: 07/26/22

Council District 5: Mr. Rieley  
Tax I.D. No.: 235-30.00-6.00  
911 Address: N/A

ORDINANCE NO. \_\_\_\_

**AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A BUSINESS PARK TO INCLUDE WAREHOUSES AND OFFICE BUILDINGS TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BROADKILL HUNDRED, SUSSEX COUNTY, CONTAINING 22.29 ACRES, MORE OR LESS.**

WHEREAS, on the 12<sup>th</sup> day of May 2022, a conditional use application, denominated Conditional Use No. 2371 was filed on behalf of Georgetown Business Plaza, 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. 2371 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. 2371 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 Broad Kill Hundred, Sussex County, Delaware, and lying on the north side of Lewes Georgetown Highway (Route 9), approximately 0.39 miles south of Prettyman Road (S.C.R. 254), and being more particularly described in the attached legal description and site plans prepared by Jamie Sechler P.E., said parcel containing 22.29 acres, more or less.

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



JAMIE WHITEHOUSE, AICP  
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**Sussex County**

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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: July 19, 2022

RE: County Council Report for Ord. 22-05 – Future Land Use Map Element of the Comprehensive Plan

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On June 7, 2022 an Ordinance was introduced by the County Council to amend the Comprehensive Zoning Map element of the Comprehensive Plan in relation to Tax Parcel No. 334-12.00-16.04. The property is lying on the west side of John J. Williams Highway (Route 24), approximately 0.25 mile southwest of Mulberry Knoll Road (S.C.R. 284). 911 Address: N/A. The amendment to the Comprehensive Plan is to change the area designation of parcel from the Commercial Area (shaded red on the Future Land Use Map) to the Coastal Area (Shaded yellow on the Future Land Use Map).

The Planning and Zoning Department has also received applications relating to the parcels (C/Z 1949 filed on behalf of J.G. Townsend Jr. & Co. and C/U 2304 filed on behalf of J.G. Townsend Jr. & Co.)

The Planning and Zoning Commission held a public hearing on June 23, 2022. At the meeting of July 14, 2022, the Commission recommended approval of the Ordinance for the 4 reasons as outlined within the motion (included below).

Below are the minutes from the Planning & Zoning Commission meetings of June 23, 2022 and July 14, 2022.

### Draft Minutes of the June 23, 2022 Planning & Zoning Commission Meeting

Chairman Wheatley stated the applicant had requested to combine the presentations for the Ordinance, C/Z 1949, and C/U 2304 as they are all related Applications of J.G. Townsend Jr. & Co. and he stated the motions for the three applications would be made separately.



**AN ORDINANCE TO AMEND THE FUTURE LAND USE MAP ELEMENT OF THE COMPREHENSIVE PLAN IN RELATION TO TAX PARCEL NO. 334-12.00-16.04.** The property is lying on the west side of John J. Williams Highway (Route 24), approximately 0.25 mile southwest of Mulberry Knoll Road (S.C.R. 284). 911 Address: N/A. Tax Parcel: 334-12.00-16.04.

Mr. Whitehouse advised the Commission that submitted into the record was the Exhibit Booklet, Conceptual Site Plan, Environmental Assessment, Public Facility Evaluation Report, Staff Analysis, Traffic Impact Study, DelDOT's response to the Traffic Impact Study, a letter from Sussex County Engineering Department Utility Planning Division, 20 letters in opposition and a written petition of 156 signatures.

The Commission found that Mr. David Hutt, Esq. spoke on behalf of the Application; that he is an attorney with Morris James; that he is representing the owner of the property and Applicant, J.G. Townsend Jr. & Co.; that also present were Mr. Paul Townsend, a shareholder in J.G. Townsend Jr. & Co., Mr. Doug Motley, a representative of the development group, Mr. Ring Lardner, Engineer with Davis, Bowen and Friedel, and Mr. Edward Launay, Wetland Scientist with Environmental Resources, Inc.; that he requested to make a correction for the records in respect to C/Z 1949 and C/U 2304; that it was indicated the Traffic Impact Study was undertaken by the Applicant; that the Applicant did not undertake a Traffic Impact Study; that DelDOT included a recent Traffic Impact Study in their response to the Service Level Evaluation Request; that the provided Traffic Impact Study was previously performed to the Belle Terre Community; that the site is known as the "Howeth Property"; that this name was provided after J.G. Townsend Jr. & Co. purchased the land from Howeth Family; that historically the Howeth Farm was much larger than it currently is; that in 2014 the Howeth Farm was as more than 70 acres; that approximately a decade ago, J.G. Townsend Jr. & Co. were approached by various institutions and bodies which included the Cape Henlopen School District, the State of Delaware on behalf of the Delaware State Police, and Sussex County; that these agencies were looking for a location along that particular section of Rt. 24 to place various facilities; that the results of those discussions was a minor subdivision plan; that the minor subdivision was recorded in 2014; that Parcel A1 of the minor subdivision was conveyed to the Cape Henlopen School District in 2015; that it has now become the home of the Love Creek Elementary School; that Parcel B was conveyed to the State of Delaware; that it is now the home of Troop 7; that the history is important as it answers many questions regarding the property; that located to the north is the Love Creek Elementary School; that located to the south is the Saddle Ridge Community; that Rt. 24 runs along the frontage of the property; that the Beacon Middle School is located across from Love Creek Elementary; the property is located in close proximity to the Beebe Medical Campus, Seaglass Apartments, The Residence Inn Hotel, Hearts Landing Community, Love Creek Manufactured Home Community, The Residences at Rehoboth Bay Condominium and Marina, as well as the various commercial businesses located along Rt. 1; that on the 2020 Delaware State Strategies Map it shows almost the entire area as being within Investment Level 2; that there is a small area located on the property which is located within Investment Level 3; that the area located within Investment Level 3 is an isolated area of wetlands; that within the 2045 Future Land Use Map within Sussex County's Comprehensive Plan shows many parcels within the Commercial Area along Rt. 24; that the other surrounding area is located within the Coastal Area; that the Coastal Area is one of the seven Growth Areas for Sussex County; that one of the requests is to change the Future Land Use Map designation for a portion of the property; that 2/3 of the property is shown as Commercial; that 1/3 of the property is shown in the Coastal Area; that the Applicant's intention is to have the entire property

located within the Coastal Area; that the Coastal Area is a designation which would allow uses other than only commercial uses; that Saddle Ridge, Love Creek Elementary School, Beacon Middle School and the site across from Beacon Middle School is shown as being in the Commercial Area on the Future Land Use Map; that there is a mixture of zoning classifications along that corridor of Rt. 24; that there is a mixture of C-1 (General Commercial), CR-1 (Commercial Residential), I-1 (Institutional), B-1 (Neighborhood Business) and MR (Medium-Density Residential); that the Change of Zone Application is seeking to change the zoning from AR-1 (Agricultural Residential) to MR (Medium-Density Residential); that there was three Applications being presented in relation to the same property; that the first request is to amend the Future Land Use Map creating one designation to the Coastal Area for the property; that the second request is for a Change of Zone from AR-1 (Agricultural Residential) to MR (Medium-Density Residential); that the third Application is a Conditional Use request to allow 84 townhomes; that each set of townhomes contains six units; that 14 townhomes are proposed across the site; that the project was reviewed during the PLUS process; that in Summer 2021 the Future Land Use Amendment request was reviewed by the Office of State Planning Coordination through the PLUS process; that the comments of no objection made by the Office of State Planning Coordination was included as part of the record; that Investment Level 2 areas are described as an area where the State anticipates growth for an area in the near future; that the Office of State Planning Coordination stated in their comments “ *in Investment Level 2 areas, like Investment Level 1 areas, State investments and policies should support and encourage a wide range of uses and densities*” and “*Investments should encourage departure from the typical single-family dwelling development and promote a broader mix of housing types and commercial sites encouraging compact mixed-use development where applicable*”, which ensure the State encourages a departure from typical single-family homes, offering a broader mix of housing options; that Section 8.2 of the County Code states “*while the County allows for multi-family (duplexes, townhouses and apartments etc.) the primary housing type is detached single-family (stick-built, modular and manufactured homes)*”; that in 2016, Sussex County issued 1,778 building permits; that of those building permits, 1,615 building permits were for single-family homes, equaling to 90.8%; that less than 10% of the issued building permits were for multi-family structures; that in 2017, 2,068 building permits issued; that 1,961 building permits, or 94.8%, were for single-family homes; that in 2018, 1,057 building permits were issued before the cut off for the Comprehensive Plan; that of those building permits, 992 building permits, or 93.8%, were issued for single-family homes; that within Chapter 8 of the Comprehensive Plan, it stated the County should consider the ability to establish other housing types or reduce the need for a Conditional Use for multi-family development; that the proposed Application does help address the mentioned needs; that within Chapter 4 of the Comprehensive Plan, the Coastal Area is described as one of the fastest growing areas within Sussex County; that the Comprehensive Plan does recognize the environmental concerns which may arise in the Coastal Area; that there is a buffer provided to the isolated wetlands, which proposed some environmental concern; that the proposed buffer to the wetlands exceeds Sussex County’s recently adopted Buffer Ordinance requirements; that within the County Code, it states permitted uses and densities within each of the Growth Areas; that within the permitted use section for the Coastal Area, the Comprehensive Plan states *that a range of housing types should be permitted, including single-family homes, townhouses and multi-family units*; that the next Section it states *that medium and higher densities (4 to 12 units per acre) can be appropriate in certain locations and medium and higher densities could be supported in areas where there is central water and sewer, near sufficient commercial uses and employment centers, where it is in keeping with the character for the area, where it is along a main road, being located at or near a major intersection, where there is adequate level of service, or where other considerations exist that are relevant to the requested project and density*; that the density for the proposed project is 3.9 units to the acre; that the medium and higher density requirements are all met by the proposed project; that Tidewater Utilities will provide water services; that central sewer is available through Sussex County; that the property is located in an area where there are commercial uses and

employment centers; that the project is located along RT. 24, which is a major collector road; that the project is located at a signalized intersection on Rt. 24; that Rt. 24 does have DART transportation, with a Rehoboth, Longneck and Millsboro DART connection; that because the project is located within the TID, a fee per unit is required as part of the project's contribution to DelDOT; that although some adjacent properties are listed as AR-1 (Agriculture Residential), the Love Creek Elementary School is not an agricultural use; that the Love Creek Elementary School is over 89,000 sq. ft., which was granted by a Conditional Use approval; that located across the street is Beacon Middle School, being over 77,000 sq. ft. and was granted a Conditional Use Approval; that the County recently considered an application for the V&M site, which received approval for a 5,000 sq. ft. convenience store and fueling stations; that a 12,000 sq. ft. office building will also be located on the V&M property; that there were multiple other Conditional Use approvals mentioned within the submitted material; that the requested zoning classification for the property is MR (Medium-Density Residential), as it is an appropriate zoning district for the proposed use; that townhomes is a Conditional Use within the MR (Medium-Density Residential) Zoning District; that Conditional Uses are generally of a public or semi-public character and our essential for the general convenience and welfare of the County; that Conditional Uses to require some Planning judgement; that the purpose of the MR Zoning District is to provide for medium density residential development in areas which are expected to become generally urban in character, which is a good description of Rt. 24; that the Future Land Use Map for the property shows the commercial designation; that by allowing the area to be rezoned the area would avoid concentrations of retail and service uses, as well as hotels, motels, carwashes, auto dealerships, as well as other medium and large scale uses not primarily targeted to immediately adjacent residents and areas; that institutional and industrial uses may also be appropriate in the Commercial Zoning District; that the current Application proposes a far less intensive use than the potential permitted uses under Commercial Zoning; that traffic was a main theme within the comments made in opposition; that the use of the entryway was always anticipated; that there was a Service Level Evaluation Request sent to DelDOT as part of the Application; that within DelDOT's response indicated that the traffic impact for the project would be minor; that in having a minor impact the project became eligible for to participate in the Area Wide Study Fee Program; that however, the property is located within the Henlopen Transportation Improvement District (TID); that due to this the Area Wide Study Fee does not apply; that the fee per unit does apply; that another concern mentioned in opposition was the appropriateness of multi-family units being located adjacent to a school; that the concern is in contrary to many school which currently exist in Sussex County; that Cape Henlopen High School, HOB Brittingham School, Mariner Middle School, East Millsboro Elementary School, Rehoboth Elementary School are all located immediately adjacent to or nearby multi-family residential communities; that Chapter 8 of the Comprehensive Plan indicates the proposed area is appropriate for the proposed zoning and for the proposed Conditional Use for townhomes; that the Applicant requested approval to amend the Future Land Use Map, allowing the property to be located completely within the Coastal Area, changing the County's Zoning Map from AR-1 to MR Zoning and an approval for the Conditional Use permitted 84 townhomes; that he did submit proposed Findings of Fact and Conditions of Approval for the Change of Zone Application and the Conditional Use Application; that one of the proposed requirements is that there must be a Property Owners Association to care for amenities; that it is proposed that the amenities would be constructed by the seventh building permit and each building will receive a building permit for all six units within it; that in reality, the amenities would be completed by the 42nd building permit when considering per units.

The Commission found that Mr. Ring Lardner spoke on behalf of the Application; that he is an engineer for Davis, Bowen and Friedel; that the site is located along John J. Williams Hwy., which is



classified as a major collector road per the DelDOT Functional Classification Map; that the project is located within the Henlopen Transportation Improvement District (Henlopen TID); that the TID was a group effort between DelDOT and Sussex County; that the agreement was approved on October 30, 2020; that DelDOT noted the traffic for the proposed project was consistent with the TID; that the project was eligible to pay the TID fee, rather than performing a Traffic Impact Study (TIS); that a TID fee based on a per lot basis on January 31, 2020 was \$341,796.00; that the fee does increase annually on January 31<sup>st</sup>; that the fee is due at the time of building permit issuance; that the fee will continue to increase until the building permits are released; that the TID fees help fund the various project within the Transportation Improvement District to help improve the TID area; that the assumed land use was underestimated as it was assigned 37 single-family homes; that for the current Application they were able to stay within the perimeters for traffic; that the vehicle trips generated by townhouses is less than those generated by single-family homes; that this is the reasoning DelDOT considered the project consistent with the TID; that the project is not located within the Well Head Protection Area or Excellent Recharge Area; that the project is located outside of the 100 Year Flood Plain; that there is a small pocket of wetlands located on the site; that the wetlands were delineated by Environmental Resources Inc.; that the wetlands are located along the common boundary line of the site and the Saddle Ridge Community; that an approved Jurisdictional Determination was completed by the U.S. Army Corp of Engineers; that Mr. Edward Launay, with Environmental Resources did prepare an Environmental Review for wildlife habitat considerations; that Mr. Launay's review does contain a consultation with the U.S. Fish and Wildlife Service; that there are no records of federally listed threatened or endangered species being located on site; that the Monarch Butterfly was located onsite; that the site does not have the proper vegetation to support the Monarch Butterfly, therefore it was assumed that the site was not the home for the Monarch Butterfly; that within DNREC's Fish and Wildlife comments from the PLUS review mention three State rare species; that all three species are located within the Hetty Fisher Pond, which is located over 740-ft. from the site; that it was Mr. Launay's opinion that the development of the Howeth Property, now known as School Lane, will not adversely impact the amphibious species of State concern; that the layout of the site first began at the intersection of John J. Williams Hwy. as it is the combined entrance for the Love Creek Elementary School, Troop 7 and the proposed project; that when the Love Creek Elementary School was approved, traffic for the proposed project was already preassigned for the intersection; that the intersection was designed for the proposed project traffic; that as part of the improvement and approval for Love Creek Elementary School the stub was connect to the parcel; that this allowed for interconnectivity, providing one access onto Rt. 24; that they did design a 20-ft. landscape buffer along the property border of Love Creek Elementary School, Belle Terre and Saddle Ridge Communities; that the communities for Belle Terre and Saddle Ridge also have buffers on their property; that this has created two sets of buffers adjacent to each other; that they established a 50-ft wetland buffer to the isolated wetlands on site; that the Application was submitted prior to the adoption of the recent Buffer Ordinance; that the proposed buffer exceeds the requirement of the recently adopted Buffer Ordinance; that the townhouses will be fee simple lots, meaning the lots will be owner occupied; that no lots will be located back to back; that the stormwater pond is proposed to be centrally located on the site; that the proposed stormwater pond location will minimize grading changes to the site; that active amenities are proposed along the other side of Road A, to ensure amenities would not be located in the rear yard of the lots; that they attempted to minimize dead-end streets; that currently there are two dead-ends proposed on Road B and Road C on the Site Plan; that they did provide overflow parking areas throughout the site for guests; that the internal roads will meet and/or exceed the requirements of Sussex County Road Standards; that the roads will be privately maintained; that Sussex County Geographic Information Office (GIO) (F.K.A. Mapping and Addressing Department) has approved the subdivision name of "School Lane" as well as the road



names; that proposed amenities are a pool house, pool, centralized mailbox and a sports field area; that the proposed open space for the project is 11.42-acres, or 52% of the project site; that the project will be served by Tidewater Utilities, Inc. for water services; that Sussex County will provide sanitary sewer services; that they have received Willing and Able to Serve letters from Tidewater Utilities, Inc., Chesapeake Utilities, Delaware Electric Coop, and a Sewer Service Concept Evaluation from Sussex County Engineering; that the project was reviewed by PLUS on December 16, 2020; that the PLUS comments and the Applicant's response can be found in the submitted Exhibit Booklet; that the comments provided were general in nature; that the Applicant will comply with all regulatory requirements; that his office prepared an Environmental Assessment and Public Facilities Evaluation Report and the project complies with the Comprehensive Plan.

Ms. Stevenson questioned how parking is proposed for the project and if additional parking could be added to Road A on the west side.

Mr. Lardner stated each lot will have two parking spaces per unit, via the driveway or the garage; that they have provided overflow parking throughout the project; that they have exceeded the two-unit per lot requirement, and he stated they could consider additional options to add parking to the area Ms. Stevenson mentioned.

Chairman Wheatley advised the Commission that Mr. Bill Brockenbrough, County Coordinator with DelDOT was present for questioning via teleconference; that he requested Mr. Brockenbrough explain how the entrance came to be and why it was constructed the way it was.

Mr. Brockenbrough stated when the property was acquired for Love Creek Elementary School, J.G. Townsend Jr. & Co., the seller of the property retained access through the existing driveway with the intention to utilize the driveway for access to the subject property; that the construction of the entranceway is desirable by DelDOT; that he did not recall the specific history of when the school was developed; that the entranceway is consistent with the preferred construction from DelDOT's view, to minimize the number of access points; that in minimizing fewer access points, it allows fewer decision points for a driver and it opens the possibility for signalized access for the development, which would help manage left-hand turns.

Ms. Stevenson questioned if the pool house is proposed to only hold supplies for the pool, or if the pool house was proposed to be larger and utilized by residents and requested the Applicant consider making the pool house a meeting spot for residents.

Mr. Hutt stated a better description of the pool house would be a bathhouse; that it would not be proposed as a clubhouse with exercise equipment and that the pool house is proposed to be a changing area and restroom area.

Mr. Robertson stated the Applications are for a Change of Zone and a Conditional Use and the Commission does have the authority to apply discretion.

Chairman Wheatley stated property owners do have a right to subdivide their land and property owners do not have the right to Change the Zoning for their property; that the Change of Zone is purely discretionary, and the Commission has the authority to make that discretion.

The Commission found Mr. Steve Kittka spoke in opposition to the Application; that he lives within the Saddle Ridge Community; that he opposes the project as it is currently proposed; that it was said the townhomes would generate less traffic; that the proposed townhomes are larger than almost any home located within the Saddle Ridge Community; that the townhomes are 4,600 sq. ft.; that he did not invest in his property with any idea that the adjacent zoning would be changed; that he feels the proposed development will cause an enormous amount of traffic; that he understood there was not a Traffic Impact Study performed for the proposed project specifically; that a lot has changed since previous traffic analysis; that one of the reasons for this is COVID-19 which has led to an increase in traffic to Love Creek Elementary School; that with the traffic currently on Rt. 24, there are frequent accidents and near accidents all the time; that within the last three weeks there have been three accidents within a mile of the proposed development; that two of the accidents were at the intersection of Rt. 24 and Warrington Rd.; that those two accidents caused Rt. 24 to shut down; that the third accident was between Saddle Ridge and Harts Landing; that he has no objection to the Applicant developing the property; that he objects to the proposal of medium density; that he is also concerned with the disturbance to the wildlife and he objects to the Change of Zoning request.

Chairman Wheatley stated that if a Traffic Impact Study (TIS) was performed for a nearby development, DelDOT does not require an additional TIS as the information remains remotely the same.

Mr. Robertson stated DelDOT and Sussex County established the Transportation Improvement District (TID) that the project is part of; that DelDOT has performed the analysis for all the roadway improvements within the entire TID area; that they had to design all road improvements based on the anticipated development within the TID; that then, based on the improvements, a cost is assigned as to what it cost to construct the road improvements; that then a required fee is calculated for each developer to develop the road improvements and the Applicant did not perform a Traffic Impact Study as it is already included in the greater TID.

Mr. Robertson questioned the status of the dualization of Rt. 24.

Mr. Mears requested Mr. Brockenbrough's opinion on townhomes generated vehicle traffic versus residential communities generated traffic.

Mr. Brockenbrough stated the construction began in March 2022 for the dualization of Rt. 24; that it was proposed to be completed in 2023; that he believed completion will be in 2024; that the improvements are proposed to widen to two lanes each way; that sidewalks are proposed on both sides of the road; that DelDOT relies on Transportation Engineers Trip Generation Manual, which provides National-level data on various land uses, including single-family detached houses and townhouses; that generally single-family detached houses generate the most traffic; that townhouses, apartments and various types of multi-family development generate less per dwelling unit and regarding the comment of the size of the townhomes, DelDOT would not have data to support or dispute the fact.

Chairman Wheatley questioned if anyone could provide a comment on the proposed size of the units.

Mr. Ring Lardner stated that they do not know the exact size of the townhouses currently; that the lot widths are 20-ft. wide with a depth of 115-ft.; that the widest lot could be 28-ft.; that after including setback requirements, it would be 20'x75'; that the proposed units are two-story with a first-floor

master; that at the largest, an approximate average is 3,000 sq. ft.; that the average size will be 2,000 sq. ft. to 2,500 sq. ft.; that confirmation of size cannot be determined until they find a builder and the proposed size is much less than the size testified by Mr. Kittka.

The Commission found that Ms. Nancy Guerin spoke in opposition to the Application; that she lives in Hart's Landing; that she has concerns about the Love Creek Bridge; that the bridge is not proposed to be expanded; that this will cause a traffic bottleneck, as the traffic will go from four lanes down to two lanes; that currently, she has difficulty exiting her development onto Rt. 24; that she feels after hearing Mr. Hutt explain all the types of development located along Rt. 24, she does not believe another development is needed; that she questioned if any of the mentioned schools and the developments they are adjacent to share a road as is proposed in the current Application; that due to COVID-19, there has been increased traffic to the schools; that this has created a back up of traffic on Rt. 24 down to Mulberry Rd. and she does not feel the Traffic Impact Study for Belle Terre, and the time in which it was performed, took in to account the additional traffic she sees currently.

The Commission found that Mr. Kenny Delmar spoke in opposition to the Application; that he lives in Hart's Landing; that he has a background in real estate, with many decades of experience; that in his experience the last thing a person should want to do is build a development next to a slaughter house, a factory making toxic chemicals or an elementary school; that it would be a kiss of death; that he assured the Commission that the developer, owner and attorneys have not had a discussion with a real estate broker to question what would be coming down the road; that he felt two weeks ago a ceiling was hit; that from here on out it will become more difficult to make a profit with a residential development; that a smart choice to make, would be not to build your development next to an elementary school, while sharing the same entrance with the school; that it would not be a smart choice; that the choice would not be considered good business; that he questioned if any of the attorneys, engineers or developer have children in Love Creek Elementary; that he questioned what will happen with construction traffic caused by the development; that it will be another years lost to a child who is attempting to get an education; that because of the construction, there will be noise from 7:00 am until 4:00 pm for at least a year; that the children who are in school trying to learn, will have to listen to construction noise for at least a year and the future residents will not want to deal with the noise generated by an elementary school on a normal school day.

The Commission found that Mr. Shunli Zhang spoke in opposition to the Application; that he lives in Saddle Ridge Development; that he agrees with all the previously mentioned concerns; that he is concerned about the approximate six acres of forest located on the property; that on one side of the forest is a natural pond; that on the other side of the forest are wetlands; that the current forest is full of life; that the forest life includes bald eagles and he requested the Commission reconsider approving the project, or request a modification to the plan, to help protect the forest, wildlife and natural beauty of the forest.

The Commission found that Mr. Laymen Grant spoke in opposition to the Application; that he is a resident of Belle Terre; that it was his understanding that a signalized light will be placed at the intersection of Rt. 24 and Mulberry Knoll Rd.; that the current traffic attempting to get onto Rt. 24 is ugly; that with the proposed 84 townhouses; that he would estimate one and a half vehicles per unit; that most families have at least two cars; that there will be 120 additional vehicles with the proposed development, which will be required to merge onto Rt. 24; that occasionally the children at Love Creek Elementary School play outside in the adjacent field; that Beacon Middle School has athletic fields; that he feels placing the development without the red light would be a disaster; that there will be an

accident; that he has only lived in Sussex County a year; that there are times he cannot figure out how to cross Rt. 24; that people will take a chance, shooting out onto Rt. 24; that he feels there would be a chance they head into the field, where children may be at play; that in the evening hours, there is limited lighting in the area; that he does not have an issue with the development of the property but he does have an issue with the traffic.

Mr. Brockenbrough stated he believed the plan was to place a signalized red light at the intersection of Mulberry Knoll Rd. and Rt. 24.

The Commission found that Mr. Maureen Burns spoke in opposition to the Application; that she lives within Belle Terre directly behind the proposed project; that she questioned if the Commission approves the Change of Zone request, could the Applicant change their proposed plans; that the elevation of the proposed site is higher than her property; that she is concerned she will receive all of the water run off when it would rain; that she questioned if there are proposed balconies for the townhouses and she is concerned about her privacy and the ability of future residents to look through her windows.

Mr. Robertson stated the Commission would make a recommendation to County Council; that County Council would approve or deny the Change of Zone request; that if the Change of Zone were to be approved, the Applicant could potentially propose a subdivision; that a subdivision would require another public hearing; that the maximum building height would be 42-ft.; that if the Change of Zone were approved, the Applicant would be permitted to do anything permitted within MR (Medium-Density Residential) Zoning District.

Chairman Wheatley stated the stormwater regulations are regulated and enforced by the Sussex Conservation District; that Sussex Conservation District regulations stated the Applicant must contain the property's stormwater on-site; that the Applicant must dispose of the water runoff either on the property site or through a properly regulated design outfall and the Applicant would not be permitted to allow any runoff onto Ms. Burns property.

Mr. Ring Lardner stated they cannot speak to the design of the townhomes; that there is a 20-ft. landscape buffer proposed on the property site; that there is a 50-ft. landscape buffer on the Belle Terre property and that the buffers would allow for a 70-ft landscape buffer between the homes.

Mr. Robertson questioned what the rear setback requirements for the proposed units were.

Mr. Whitehouse stated that each unit must have an agricultural buffer; that the Applicant can split the buffer, however, the plan would be required to be seen before the Commission for site plan review; that it is required to be a minimum of 40-ft. spread front and back; that the buildings can be no closer than 40-ft. from each other; that the minimum landscape buffer required is 20-ft. or the Applicant would be required to obtain a variance; that there is 40-ft. between the buildings and the property lines; that within the 40-ft. setback there is a 20-ft. landscape buffer and any setback and landscaping located on the Belle Terre property.

The Commission found that Ms. Patricia Hutchinson spoke in opposition to the Application; that she lives with Belle Terre; that she has concerns with the wild life, the removal of the existing woods and transportation issues; that she is a retired educator; that she knows what happens on an elementary school property; that she knows the amount of traffic comes and goes from the property; that she

knows the amount of children that play outside; that she does have concerns with the construction and the issues it will cause for the children; that she is concerned children will not be able to go outside for recess, which the children just experienced during the COVID-19 pandemic; that she is concerned about the additional traffic coming and going from the site; that she would appreciate a signalized red light; that she is concerned about other permitted building that would be permitted with an approval to the Change in Zone request; that she is concerned about the possibilities of a transient population or rental population being placed next to an elementary school and a community for the 55+ year community; that she has concern regarding the water runoff; that she was told that Belle Terre previously proposed mixed development, which included townhomes; that the townhouses were denied at that time; that she feels the townhouses would not be similar to surrounding communities; that she does understand if the zoning is changed the Applicant is permitted to construct anything permitted within that zoning and the neighbors would get no say in what the Applicant were to propose.

The Commission found that Mr. Thomas Negran spoke in opposition to the Application; that he is a resident of Belle Terre; that the lovely 21-acre cornfield will be removed; that 84 multi-family units are proposed for the area; that only single-family homes and an elementary school border the property; that a major concern is the increased traffic; that the proposed development will share the entrance with Love Creek Elementary school; that according to the documentation there will be 598 additional vehicles daily; that the area is already congested; that the increased traffic may pose a threat to the safety of the Love Creek Elementary children; that according to the Site Plan, the backyards of 18 units will directly face the school property; that the water runoff from the 14 units roofs will flow into the direction of Belle Terre residents back yards; that he saw no proposed retention ponds in the area bordering Belle Terre; that four acres of woodlands will be destroyed; that 7.9 acres of impervious material will replace the field; that according to the report from DNREC, there are several rare and/or endangered species in the project area; that multi-family units sell for a lower price point than single-family homes; that the lower price point often leads to investors purchasing units for rental; that transient neighbors may not be the most desirable neighbors, especially to school-aged children; that the Land Elevation Map, located on page 72, of the Paperless Packet indicates a natural slope downward to 25-ft. above sea level at the rear of the property; that the elevation drops to 21-ft. above sea level on Decatur Street in Belle Terre; that the runoff could become detrimental to the Belle Terre community with the removal of the trees; that he questioned if the Applicant plans to sell the property to a developer, to develop themselves, to receive subsidies for low-income housing and what the expected selling price is for the proposed townhomes; that he commends Sussex County for purchasing land in efforts to preserve land; that he requested Sussex County purchase the subject property to be preserved and/or utilized as a park or recreational area and he stated the revenue to Sussex County will receive, from the 1.5% transfer tax from Belle Terre alone will amount to at least \$2,000,000.00 and could be put to good use for the residents of Sussex County.

Mr. Robertson stated the Commission does not discriminate at all based on income levels, housing type, type of owner, or type of tenant; that the question is inappropriate and will not be required by the Commission.

Ms. Stevenson stated Mr. Ring Lardner serves on the Sussex County Land Trust; that the Sussex County Land Trust is a non-profit organization that purchased land to preserve; that she recommends people contact him to discuss donating.



The Commission found that Ms. Martha Eisenhower spoke in opposition to the Application; that she lives on Retz Lane; that her property back up to the Love Creek Elementary School property; that she was happy to hear when a school was being proposed behind her property; that she would rather a school than a convenience store; that she is opposed to the Change of Zone request; that currently, the Applicant knows two units to the acre is permitted within the AR-1 Zoning District; that this would allow for 43 homes; that the Applicant would place 43 homes on the property while preserving the woodlands; that she has lived on her property for 43 years; that within the last year she has noticed an influx of wildlife in her yard and the only thing she can attribute it to, is the fact that we are destroying the woodlands, creating nowhere else for the wildlife to go.

The Commission found that Mr. Victor Mantarro spoke in opposition to the Application; that he lives within the Saddle Ridge Community; that he had a concern about the proposed stormwater drainage; that his backyard faces the wetland area; that one year, there was an extraordinary amount of rain, which caused the wetland area to fill quickly; that the overflow of water ran into the existing woods; that the woods help maintain the 15 inches of water from the back of his house and his neighbor's house; that the project will be adding additional runoff; that he is not convinced that the Applicant will be able to control the runoff flowing into the wetlands and he is concerned if the Applicant cannot control the runoff it will cause runoff onto his property.

The Commission found that Ms. Susan Armato spoke in opposition to the Application; that she is a resident of Belle Terre; that she supports development; that she is opposed to the Change of Zone request; that she believes the owner has the right to the permitted use within the AR-1 Zoning District; that proposing 84 units would be a disservice to all nearby residents; that approval will set the precedence for anyone with AR-1 Zoning to request rezoning as well.

The Commission found that Mr. Paul Paolini spoke in opposition of the Application; that he has been a resident within Saddle Ridge Community for a year; that he has been in real estate for 25 years; that he is a landscape architect by degree and practice; that he agrees with Mr. Delmar, who stated a property adjacent to a school is a challenge due to the unknowns of school traffic and noise of the children; that he previously sold a home between a men's prison and a women's prison; that he believes selling that home between two prisons would be easier than selling a home next to a school; that he played recordings of emergency sirens for the Commission; that he stated the sirens are sometimes heard up to five times a day along this corridor of Rt. 24; that the representative of the Applicant did a good job identifying what is along the Rt. 24 corridor; that soon the residents of Saddle Ridge will be required to cross two lanes to make a left turn onto Rt. 24; that the whole corridor has a high level of activity and that is the reasoning for his opposition to the zoning change of the parcel.

The Commission found that Ms. Bettina Peronti spoke in opposition to the Application; that she is a resident of Belle Terre; that she had concerns about sharing the entranceway with the elementary school, being located adjacent to the elementary school, that she feels the Traffic Impact Study was based on the Applicant putting in 37 single-family homes, with two vehicles a home; that with 37 single-family homes the total vehicles would be 74 vehicles; that when placing 84 townhomes, at one vehicle is 84 vehicles; that she would like clarification put on record stating that the multi-family units will not cause more traffic than single-family homes; that she is opposed to the rezoning; that the representative to the Applicant did a good job describing development within the area; that she feels the Applicant can develop the property under the existing AR-1 Zoning; that she questioned if there is a percentage the County is requiring or identified as a target as a percentage of permits to single-family homes as opposed to multi-family units; that she questioned if we are meeting the target or

percentage as a community; that the Commission needs to take into consideration the location, impact and use of the land and not only considering the number of permits provided to single-family or multi-family homes approved over the last three years.

The Commission found that Ms. Judy Seibert spoke in opposition to the Application; that she is a resident of the Saddle Ridge Community; that she is opposed to both the Change of Zone and Conditional Use Applications; that as a local resident, she believed there will be an adverse effect on adjacent neighborhoods; that left turns onto Rt. 24 is a challenge; that adding 84 townhomes will exacerbate the issue; that she believes the project will have an adverse effect on Love Creek Elementary School; that she understood DelDOT accepted the Belle Terre Traffic Impact Study from 2016; that Love Creek Elementary School was not built until 2017; that she does understand the property is located within the Henlopen TID; that her opinion is a current Traffic Impact Study at the discretion of the Commission; that a TIS should be required because of the additional traffic cause by the COVID-19 pandemic and the change in school districts for children; that the dualization of Rt. 24 will narrow down to one lane, west bound, in front of the Saddle Ridge Community; that this will cause increased congestion at their intersection; that one lane will turn into a right lane only turning into the Saddle Ridge Development; that there is a possibility of the townhomes being used as rentals; that the townhomes would be ideal for the use of rentals; that the units are large in size, being from 3,080 sq. ft. to 4,600 sq. ft; that if the townhomes were used for rentals it could increase the vehicle traffic dramatically; that she appreciated Mr. Robertson’s comments that the public comments can be taken into account when considering Change of Zone requests and she requested the Commission use their discretion, not recommending approval for the Change of Zone request.

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

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

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

In relation to the Ordinance for Tax Parcel No. 334-12.00-16.04. Motion by Mr. Mears, seconded by Ms. Stevenson and carried unanimously to defer for further consideration. Motion carried 5-0.

#### Draft Minutes of the July 14, 2022 Planning & Zoning Commission Meeting

The Commission discussed the Ordinance which had been deferred since June 23, 2022.

Mr. Mears moved that the Commission recommend approval of Ordinance No. 22-05 to amend the Future Land Use Map in the current Sussex County Comprehensive Plan for a portion of Parcel 334-12.00-16.04 from a Commercial Area Designation to a Coastal Area Designation based on the record made during the public hearing and for the following reasons:

1. The parcel is 21.62 acres of land. A portion of it is designated as the “Commercial Area” according to the Future Land Use Map. The rest of it is designated as “Coastal Area”. This results in the property having two different designations according to the Map. Given the differing rules for the Commercial Area and the Coastal Area, it is appropriate for this property to have one classification on the Future Land Use Map.

2. With the exception of the Saddle Ridge development to the west of this site (which is developed as an MR Medium-Density residential subdivision that is itself inconsistent with its own “Commercial Area” designation), all of the properties that are in the area and that have developed residentially have the “Coastal Area” designation. It is appropriate to bring this entire site under the single “Coastal Area” designation.
3. This revision to the Future Land Use Map will not adversely affect neighboring properties, area roadways, or future land-use planning in the area.
4. This revision of the Future Land Use Map is appropriate given the particular circumstances involved, including the fact that the property has two different Area designations according to the current Future Land Use Map and the fact that the property is in the vicinity of other Coastal Areas that have developed residentially according to the Future Land Use Map. When several factors like this exist, the consideration and approval of an amendment to the Future Land Use Map is appropriate.

Motion by Mr. Mears, seconded by Ms. Wingate and carried unanimously to recommend approval of Ordinance No. 22-05, in relation of a portion of 334-12.00-16.04 for the reasons stated in the motion. Motion carried 4-0.

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

**PLANNING & ZONING COMMISSION**

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



**Sussex County**

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JAMIE WHITEHOUSE, AICP, MRTPI  
DIRECTOR OF PLANNING & ZONING

**PLANNING AND ZONING AND COUNTY COUNCIL INFORMATION SHEET**  
Planning Commission Public Hearing Date: June 23<sup>rd</sup>, 2022

Application: Ord. 22-05 Howeth Property

Applicant: J.G. Townsend Jr. & Co.  
P.O. Box 430  
Georgetown, DE 19947

Owner: J.G. Townsend Jr. & Co.  
P.O. Box 430  
Georgetown, DE 19947

Site Location: Lying on the west side of John J. Williams Highway (Route 24), approximately 0.25 mile southwest of Mulberry Knoll Road (S.C.R. 284).

Current Zoning: Agricultural Residential (AR-1) District

Proposed Use: 84 Multifamily Units and other associated site improvements

Comprehensive Land Use Plan Reference: Commercial Area & Coastal Area (subject to FLUM Amendment to change portion designated as Commercial Area to Coastal Area.)

Councilmanic District: Mr. Schaeffer

School District: Cape Henlopen School District

Fire District: Lewes Fire Department

Sewer: Sussex County

Water: Tidewater Utilities

Site Area: 21.62 acres +/-

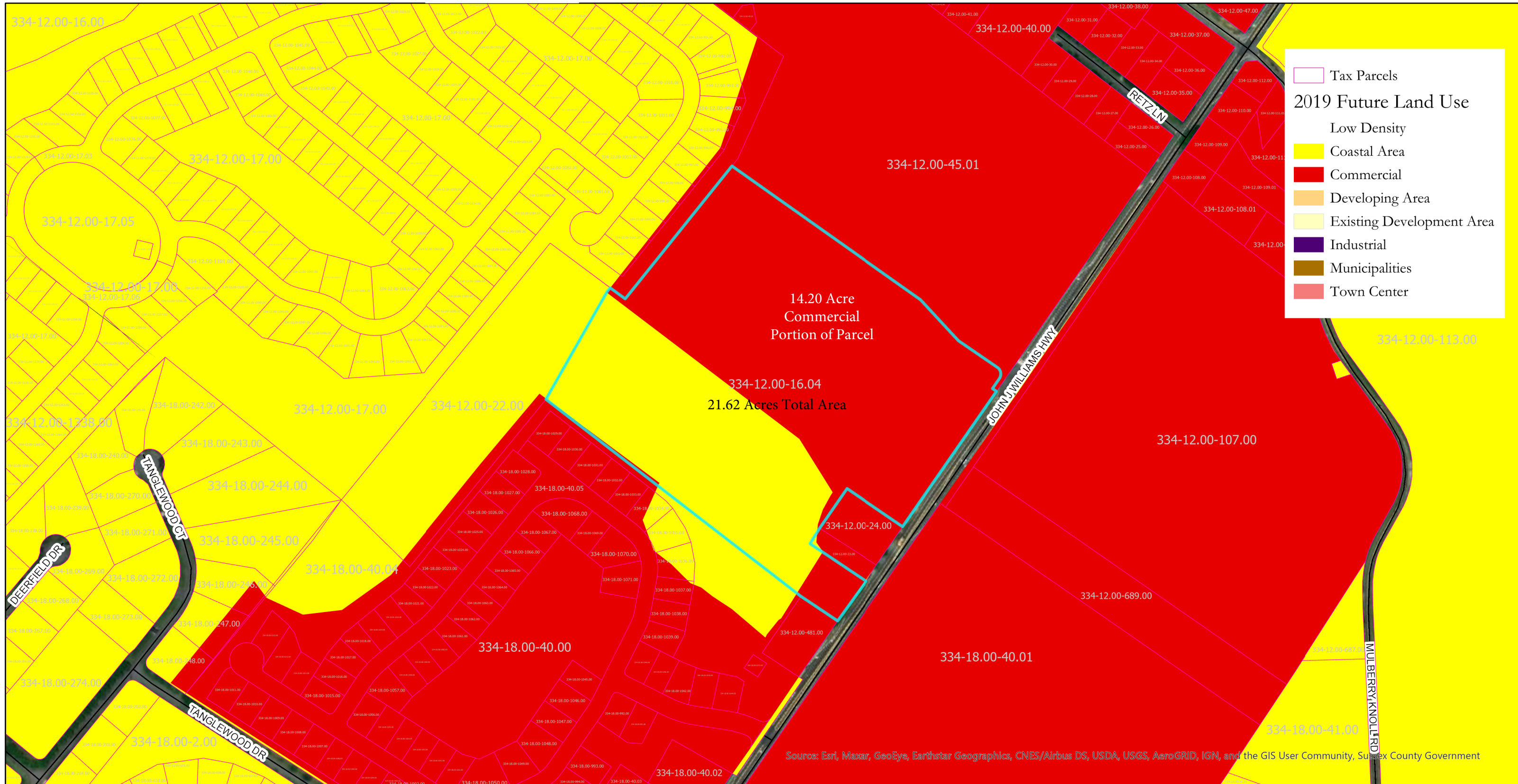
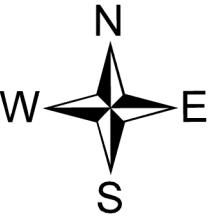
Tax Map IDs.: 334-12.00-16.04







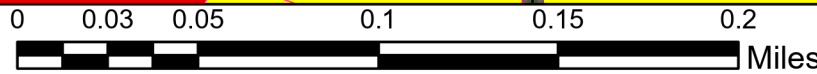
# Sussex County



**2019 Future Land Use**

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

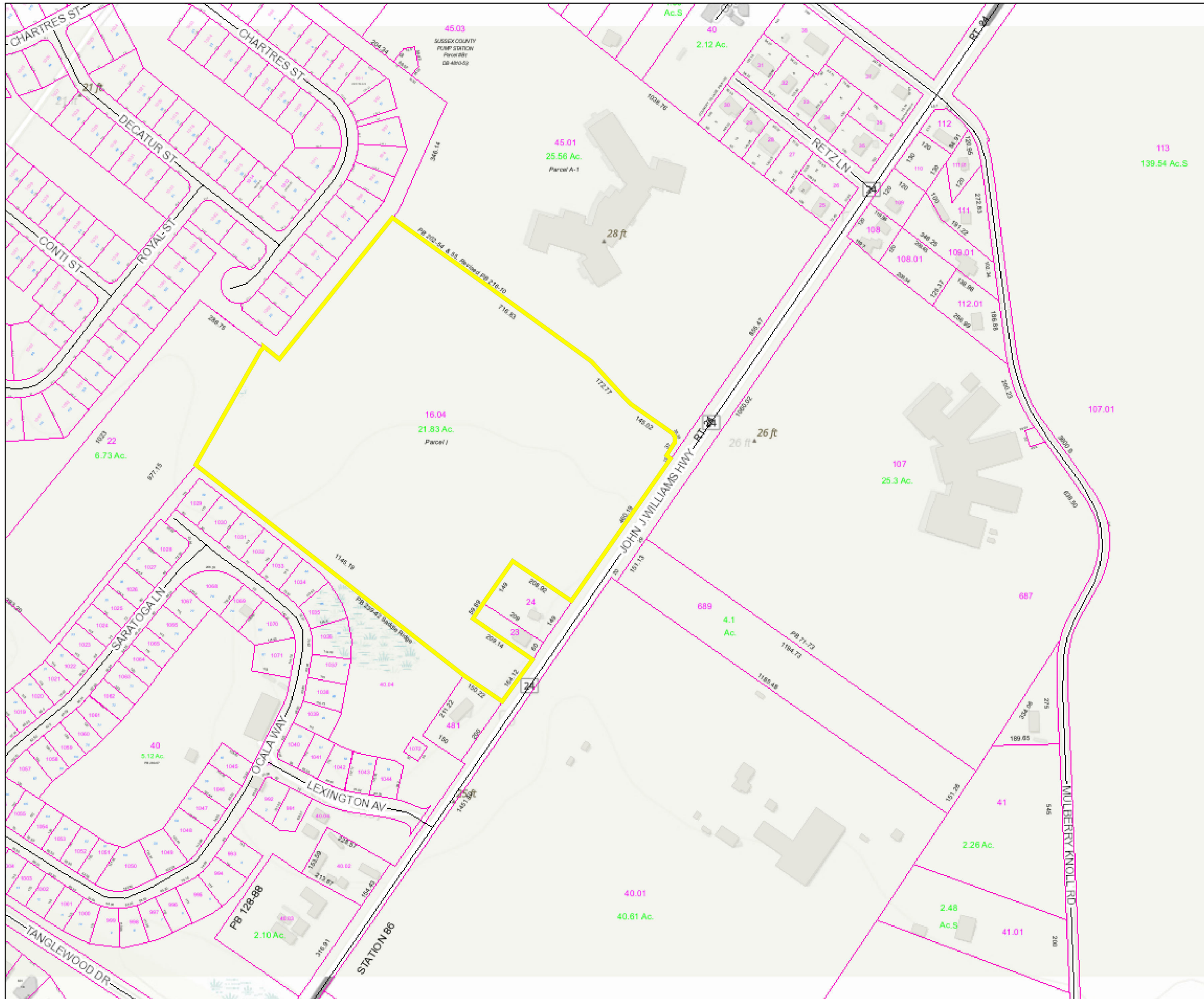
Source: Esri, Maxar, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community, Sussex County Government







# Sussex County



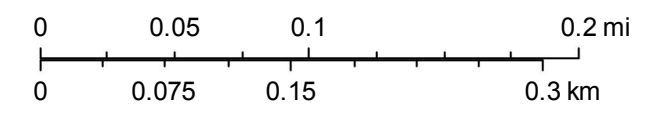
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<b>Book</b>	0
<b>Mailing Address</b>	PO BOX 430
<b>City</b>	GEORGETOWN
<b>State</b>	DE
<b>Description</b>	NW/RT 24
<b>Description 2</b>	SW/RT 284
<b>Description 3</b>	PARCEL 1
<b>Land Code</b>	

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- polygonLayer**

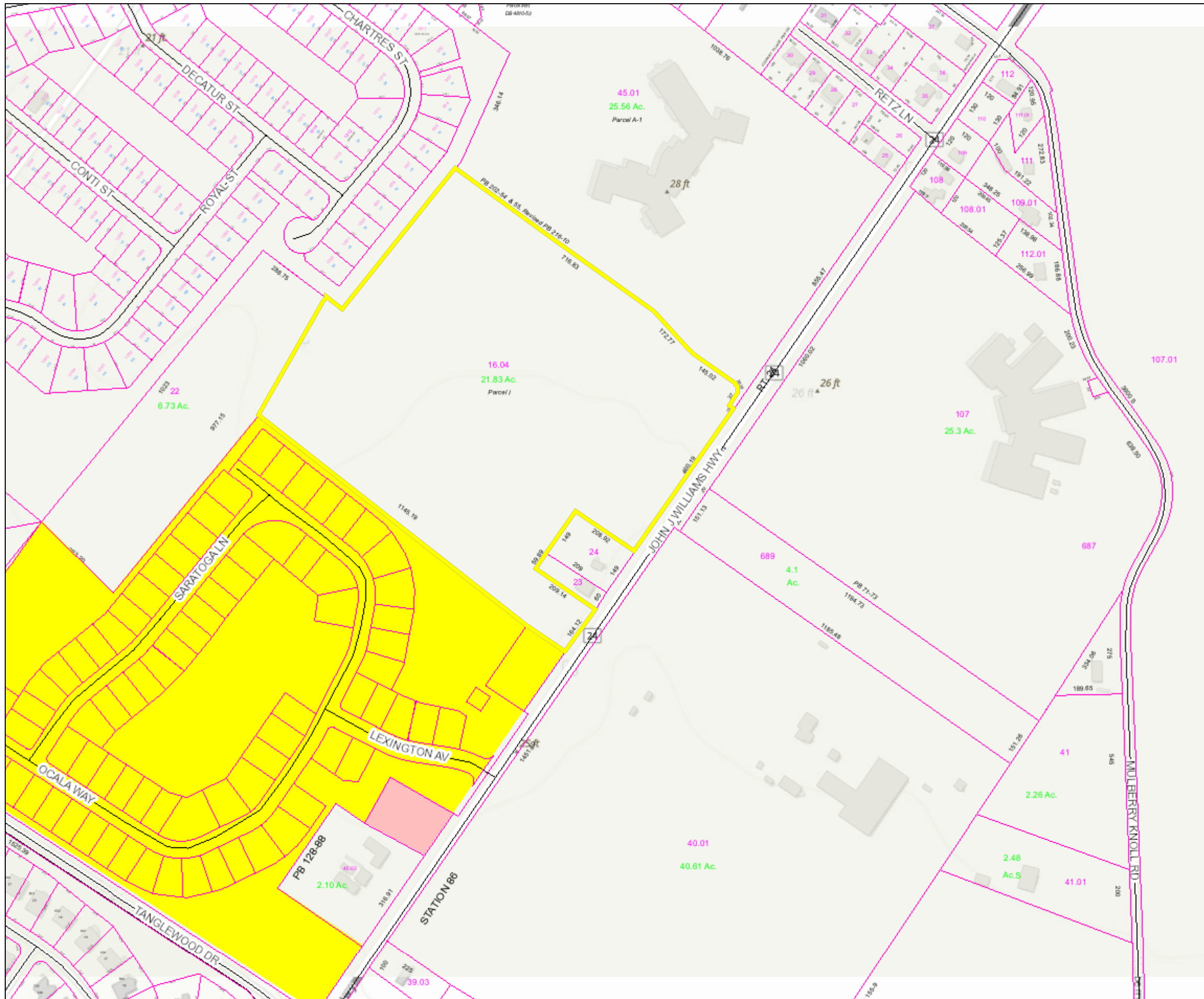
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  - Tax Parcels
  - Streets
  - County Boundaries

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# Sussex County



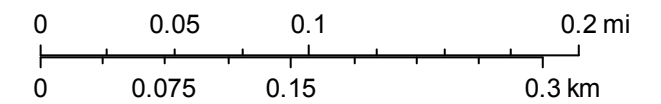
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<b>Mailing Address</b>	PO BOX 430
<b>City</b>	GEORGETOWN
<b>State</b>	DE
<b>Description</b>	NW/RT 24
<b>Description 2</b>	SW/RT 284
<b>Description 3</b>	PARCEL 1
<b>Land Code</b>	

- polygonLayer**

  - Override 1
- polygonLayer**

  - Override 1
  - Tax Parcels
  - Streets

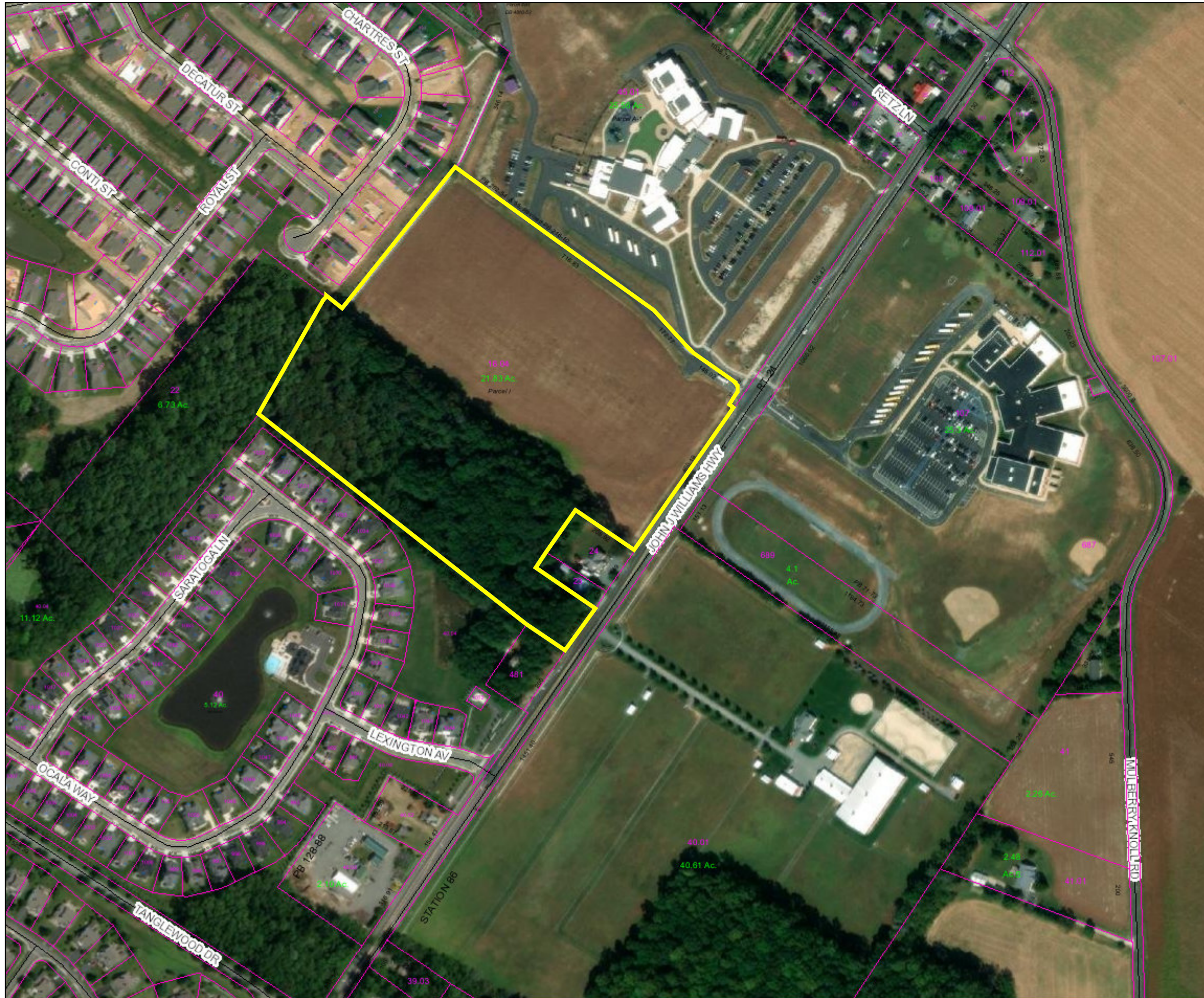
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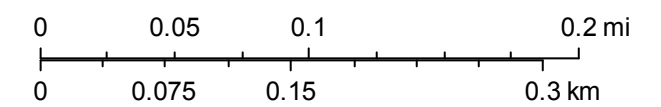
# Sussex County



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<b>Land Code</b>	

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

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ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE TO AMEND THE FUTURE LAND USE MAP OF THE COMPREHENSIVE PLAN IN RELATION TO TAX PARCEL NO. 334-12.00-16.04**

WHEREAS, on May 21<sup>st</sup>, 2021, the Sussex County Planning and Zoning Office received an application for a Comprehensive Plan Amendment Request to amend the Future Land Use Map element of the Comprehensive Plan to change the Area designation of a portion of Sussex County Parcel No. 334-12.00-16.04 from a Commercial Area to the Coastal Area.

WHEREAS, the Parcel comprises 21.62 +/- acres of land, lying and being within Lewes & Rehoboth Hundred, and located on the west side of John J. Williams Highway (Route 24), approximately 0.25 mile southwest of Mulberry Knoll Road (S.C.R. 284). (“The Property”)

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

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

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

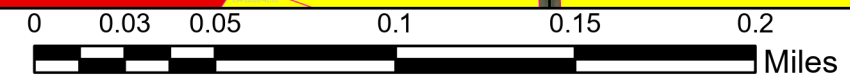
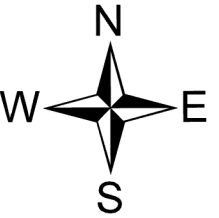
**NOW, THEREFORE, THE COUNTY OF SUSSEX HEREBY ORDAINS:**

**Section 1.** The Future Land Use Map identified as Figure 4.5-1 of the Sussex County Comprehensive Plan is hereby amended to change a portion of the parcel currently classified as Commercial Area designation of Sussex County Parcel No. 334-12.00-16.04 from the Commercial Area to the Coastal Area. The portion of Sussex County Parcel No. 334-12.00-16.04 so changed is identified in Exhibit A, attached hereto and incorporated herein.

**Section 2.** This Ordinance shall also take effect following its adoption by majority vote of all members of the County Council of Sussex County, Delaware, and upon certification by the State of Delaware.



# Sussex County





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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: July 19, 2022

RE: County Council Report for C/Z 1949 filed on behalf of J.G Townsend Jr. & Co.

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The Planning and Zoning Department received an application (C/Z 1949 filed on behalf of J.G. Townsend Jr. & Co.) to amend the Comprehensive Zoning Map of Sussex County from an AR-1 Agricultural Residential District to a MR Medium Density Residential District. The property is located on the west side of John J. Williams Highway (Rt. 24), approximately 0.25 mile southwest of Mulberry Knoll Road (S.C.R 284). The change of zone is for 21.62 acres, more or less.

The Planning and Zoning Commission held a public hearing on June 23, 2022. At the meeting of July 14, 2022, the Commission recommended approval of the application for the 7 reasons as outlined within the motion (included below).

Below are the minutes from the Planning & Zoning Commission meetings of June 23, 2022 and July 14, 2022.

### Draft Minutes of the June 23, 2022 Planning & Zoning Commission Meeting

Chairman Wheatley stated the applicant had requested to combine the presentations for the Ordinance, C/Z 1949, and C/U 2304 as they are all related Applications of J.G. Townsend Jr. & Co. and he stated the motions for the three applications would be made separately.

### C/Z 1949 J.G. Townsend Jr. & Co.

**AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A MR MEDIUM DENSITY RESIDENTIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 21.62 ACRES, MORE OR LESS.** The property is lying on the west side of John



J. Williams Highway (Route 24), approximately 0.25 mile southwest of Mulberry Knoll Road (S.C.R. 284). 911 Address: N/A. Tax Parcel: 334-12.00-16.04.

Mr. Whitehouse advised the Commission that submitted into the record was the Exhibit Booklet, Conceptual Site Plan, Environmental Assessment, Public Facility Evaluation Report, Staff Analysis, Traffic Impact Study, DelDOT's response to the Traffic Impact Study, a letter from Sussex County Engineering Department Utility Planning Division, 20 letters in opposition and a written petition of 156 signatures.

The Commission found that Mr. David Hutt, Esq. spoke on behalf of the Application; that he is an attorney with Morris James; that he is representing the owner of the property and Applicant, J.G. Townsend Jr. & Co.; that also present were Mr. Paul Townsend, a shareholder in J.G. Townsend Jr. & Co., Mr. Doug Motley, a representative of the development group, Mr. Ring Lardner, Engineer with Davis, Bowen and Friedel, and Mr. Edward Launay, Wetland Scientist with Environmental Resources, Inc.; that he requested to make a correction for the records in respect to C/Z 1949 and C/U 2304; that it was indicated the Traffic Impact Study was undertaken by the Applicant; that the Applicant did not undertake a Traffic Impact Study; that DelDOT included a recent Traffic Impact Study in their response to the Service Level Evaluation Request; that the provided Traffic Impact Study was previously performed to the Belle Terre Community; that the site is known as the "Howeth Property"; that this name was provided after J.G. Townsend Jr. & Co. purchased the land from Howeth Family; that historically the Howeth Farm was much larger than it currently is; that in 2014 the Howeth Farm was as more than 70 acres; that approximately a decade ago, J.G. Townsend Jr. & Co. were approached by various institutions and bodies which included the Cape Henlopen School District, the State of Delaware on behalf of the Delaware State Police, and Sussex County; that these agencies were looking for a location along that particular section of Rt. 24 to place various facilities; that the results of those discussions was a minor subdivision plan; that the minor subdivision was recorded in 2014; that Parcel A1 of the minor subdivision was conveyed to the Cape Henlopen School District in 2015; that it has now become the home of the Love Creek Elementary School; that Parcel B was conveyed to the State of Delaware; that it is now the home of Troop 7; that the history is important as it answers many questions regarding the property; that located to the north is the Love Creek Elementary School; that located to the south is the Saddle Ridge Community; that Rt. 24 runs along the frontage of the property; that the Beacon Middle School is located across from Love Creek Elementary; the property is located in close proximity to the Beebe Medical Campus, Seaglass Apartments, The Residence Inn Hotel, Hearts Landing Community, Love Creek Manufactured Home Community, The Residences at Rehoboth Bay Condominium and Marina, as well as the various commercial businesses located along Rt. 1; that on the 2020 Delaware State Strategies Map it shows almost the entire area as being within Investment Level 2; that there is a small area located on the property which is located within Investment Level 3; that the area located within Investment Level 3 is an isolated area of wetlands; that within the 2045 Future Land Use Map within Sussex County's Comprehensive Plan shows many parcels within the Commercial Area along Rt. 24; that the other surrounding area is located within the Coastal Area; that the Coastal Area is one of the seven Growth Areas for Sussex County; that one of the requests is to change the Future Land Use Map designation for a portion of the property; that 2/3 of the property is shown as Commercial; that 1/3 of the property is shown in the Coastal Area; that the Applicant's intention is to have the entire property located within the Coastal Area; that the Coastal Area is a designation which would allow uses other than only commercial uses; that Saddle Ridge, Love Creek Elementary School, Beacon Middle School and the site across from Beacon Middle School is shown as being in the Commercial Area on the Future Land Use Map; that there is a mixture of zoning classifications along that corridor of Rt. 24;

that there is a mixture of C-1 (General Commercial), CR-1 (Commercial Residential), I-1 (Institutional), B-1 (Neighborhood Business) and MR (Medium-Density Residential); that the Change of Zone Application is seeking to change the zoning from AR-1 (Agricultural Residential) to MR (Medium-Density Residential); that there was three Applications being presented in relation to the same property; that the first request is to amend the Future Land Use Map creating one designation to the Coastal Area for the property; that the second request is for a Change of Zone from AR-1 (Agricultural Residential) to MR (Medium-Density Residential); that the third Application is a Conditional Use request to allow 84 townhomes; that each set of townhomes contains six units; that 14 townhomes are proposed across the site; that the project was reviewed during the PLUS process; that in Summer 2021 the Future Land Use Amendment request was reviewed by the Office of State Planning Coordination through the PLUS process; that the comments of no objection made by the Office of State Planning Coordination was included as part of the record; that Investment Level 2 areas are described as an area where the State anticipates growth for an area in the near future; that the Office of State Planning Coordination stated in their comments “ *in Investment Level 2 areas, like Investment Level 1 areas, State investments and policies should support and encourage a wide range of uses and densities*” and “*Investments should encourage departure from the typical single-family dwelling development and promote a broader mix of housing types and commercial sites encouraging compact mixed-use development where applicable*”, which ensure the State encourages a departure from typical single-family homes, offering a broader mix of housing options; that Section 8.2 of the County Code states “*while the County allows for multi-family (duplexes, townhouses and apartments etc.) the primary housing type is detached single-family (stick-built, modular and manufactured homes)*”; that in 2016, Sussex County issued 1,778 building permits; that of those building permits, 1,615 building permits were for single-family homes, equaling to 90.8%; that less than 10% of the issued building permits were for multi-family structures; that in 2017, 2,068 building permits issued; that 1,961 building permits, or 94.8%, were for single-family homes; that in 2018, 1,057 building permits were issued before the cut off for the Comprehensive Plan; that of those building permits, 992 building permits, or 93.8%, were issued for single-family homes; that within Chapter 8 of the Comprehensive Plan, it stated the County should consider the ability to establish other housing types or reduce the need for a Conditional Use for multi-family development; that the proposed Application does help address the mentioned needs; that within Chapter 4 of the Comprehensive Plan, the Coastal Area is described as one of the fastest growing areas within Sussex County; that the Comprehensive Plan does recognize the environmental concerns which may arise in the Coastal Area; that there is a buffer provided to the isolated wetlands, which proposed some environmental concern; that the proposed buffer to the wetlands exceeds Sussex County’s recently adopted Buffer Ordinance requirements; that within the County Code, it states permitted uses and densities within each of the Growth Areas; that within the permitted use section for the Coastal Area, the Comprehensive Plan states *that a range of housing types should be permitted, including single-family homes, townhouses and multi-family units*; that the next Section it states *that medium and higher densities (4 to 12 units per acre) can be appropriate in certain locations and medium and higher densities could be supported in areas where there is central water and sewer, near sufficient commercial uses and employment centers, where it is in keeping with the character for the area, where it is along a main road, being located at or near a major intersection, where there is adequate level of service, or where other considerations exist that are relevant to the requested project and density*; that the density for the proposed project is 3.9 units to the acre; that the medium and higher density requirements are all met by the proposed project; that Tidewater Utilities will provide water services; that central sewer is available through Sussex County; that the property is located in an area where there are commercial uses and employment centers; that the project is located along RT. 24, which is a major collector road; that the project is located at a signalized intersection on Rt. 24; that Rt. 24 does have DART transportation, with a Rehoboth, Longneck and Millsboro DART connection; that because the project is located within the TID, a fee per unit is required as part of the project’s contribution to DelDOT; that

although some adjacent properties are listed as AR-1 (Agriculture Residential), the Love Creek Elementary School is not an agricultural use; that the Love Creek Elementary School is over 89,000 sq. ft., which was granted by a Conditional Use approval; that located across the street is Beacon Middle School, being over 77,000 sq. ft. and was granted a Conditional Use Approval; that the County recently considered an application for the V&M site, which received approval for a 5,000 sq. ft. convenience store and fueling stations; that a 12,000 sq. ft. office building will also be located on the V&M property; that there were multiple other Conditional Use approvals mentioned within the submitted material; that the requested zoning classification for the property is MR (Medium-Density Residential), as it is an appropriate zoning district for the proposed use; that townhomes is a Conditional Use within the MR (Medium-Density Residential) Zoning District; that Conditional Uses are generally of a public or semi-public character and our essential for the general convenience and welfare of the County; that Conditional Uses to require some Planning judgement; that the purpose of the MR Zoning District is to provide for medium density residential development in areas which are expected to become generally urban in character, which is a good description of Rt. 24; that the Future Land Use Map for the property shows the commercial designation; that by allowing the area to be rezoned the area would avoid concentrations of retail and service uses, as well as hotels, motels, carwashes, auto dealerships, as well as other medium and large scale uses not primarily targeted to immediately adjacent residents and areas; that institutional and industrial uses may also be appropriate in the Commercial Zoning District; that the current Application proposes a far less intensive use than the potential permitted uses under Commercial Zoning; that traffic was a main theme within the comments made in opposition; that the use of the entryway was always anticipated; that there was a Service Level Evaluation Request sent to DelDOT as part of the Application; that within DelDOT's response indicated that the traffic impact for the project would be minor; that in having a minor impact the project became eligible for to participate in the Area Wide Study Fee Program; that however, the property is located within the Henlopen Transportation Improvement District (TID); that due to this the Area Wide Study Fee does not apply; that the fee per unit does apply; that another concern mentioned in opposition was the appropriateness of multi-family units being located adjacent to a school; that the concern is in contrary to many school which currently exist in Sussex County; that Cape Henlopen High School, HOB Brittingham School, Mariner Middle School, East Millsboro Elementary School, Rehoboth Elementary School are all located immediately adjacent to or nearby multi-family residential communities; that Chapter 8 of the Comprehensive Plan indicates the proposed area is appropriate for the proposed zoning and for the proposed Conditional Use for townhomes; that the Applicant requested approval to amend the Future Land Use Map, allowing the property to be located completely within the Coastal Area, changing the County's Zoning Map from AR-1 to MR Zoning and an approval for the Conditional Use permitted 84 townhomes; that he did submit proposed Findings of Fact and Conditions of Approval for the Change of Zone Application and the Conditional Use Application; that one of the proposed requirements is that there must be a Property Owners Association to care for amenities; that it is proposed that the amenities would be constructed by the seventh building permit and each building will receive a building permit for all six units within it; that in reality, the amenities would be completed by the 42nd building permit when considering per units.

The Commission found that Mr. Ring Lardner spoke on behalf of the Application; that he is an engineer for Davis, Bowen and Friedel; that the site is located along John J. Williams Hwy., which is classified as a major collector road per the DelDOT Functional Classification Map; that the project is located within the Henlopen Transportation Improvement District (Henlopen TID); that the TID was a group effort between DelDOT and Sussex County; that the agreement was approved on October 30, 2020; that DelDOT noted the traffic for the proposed project was consistent with the



TID; that the project was eligible to pay the TID fee, rather than performing a Traffic Impact Study (TIS); that a TID fee based on a per lot basis on January 31, 2020 was \$341,796.00; that the fee does increase annually on January 31<sup>st</sup>; that the fee is due at the time of building permit issuance; that the fee will continue to increase until the building permits are released; that the TID fees help fund the various project within the Transportation Improvement District to help improve the TID area; that the assumed land use was underestimated as it was assigned 37 single-family homes; that for the current Application they were able to stay within the perimeters for traffic; that the vehicle trips generated by townhouses is less than those generated by single-family homes; that this is the reasoning DelDOT considered the project consistent with the TID; that the project is not located within the Well Head Protection Area or Excellent Recharge Area; that the project is located outside of the 100 Year Flood Plain; that there is a small pocket of wetlands located on the site; that the wetlands were delineated by Environmental Resources Inc.; that the wetlands are located along the common boundary line of the site and the Saddle Ridge Community; that an approved Jurisdictional Determination was completed by the U.S. Army Corp of Engineers; that Mr. Edward Launay, with Environmental Resources did prepare an Environmental Review for wildlife habitat considerations; that Mr. Launay's review does contain a consultation with the U.S. Fish and Wildlife Service; that there are no records of federally listed threatened or endangered species being located on site; that the Monarch Butterfly was located onsite; that the site does not have the proper vegetation to support the Monarch Butterfly, therefore it was assumed that the site was not the home for the Monarch Butterfly; that within DNREC's Fish and Wildlife comments from the PLUS review mention three State rare species; that all three species are located within the Hetty Fisher Pond, which is located over 740-ft. from the site; that it was Mr. Launay's opinion that the development of the Howeth Property, now known as School Lane, will not adversely impact the amphibious species of State concern; that the layout of the site first began at the intersection of John J. Williams Hwy. as it is the combined entrance for the Love Creek Elementary School, Troop 7 and the proposed project; that when the Love Creek Elementary School was approved, traffic for the proposed project was already preassigned for the intersection; that the intersection was designed for the proposed project traffic; that as part of the improvement and approval for Love Creek Elementary School the stub was connect to the parcel; that this allowed for interconnectivity, providing one access onto Rt. 24; that they did design a 20-ft. landscape buffer along the property border of Love Creek Elementary School, Belle Terre and Saddle Ridge Communities; that the communities for Belle Terre and Saddle Ridge also have buffers on their property; that this has created two sets of buffers adjacent to each other; that they established a 50-ft wetland buffer to the isolated wetlands on site; that the Application was submitted prior to the adoption of the recent Buffer Ordinance; that the proposed buffer exceeds the requirement of the recently adopted Buffer Ordinance; that the townhouses will be fee simple lots, meaning the lots will be owner occupied; that no lots will be located back to back; that the stormwater pond is proposed to be centrally located on the site; that the proposed stormwater pond location will minimize grading changes to the site; that active amenities are proposed along the other side of Road A, to ensure amenities would not be located in the rear yard of the lots; that they attempted to minimize dead-end streets; that currently there are two dead-ends proposed on Road B and Road C on the Site Plan; that they did provide overflow parking areas throughout the site for guests; that the internal roads will meet and/or exceed the requirements of Sussex County Road Standards; that the roads will be privately maintained; that Sussex County Geographic Information Office (GIO) (F.K.A. Mapping and Addressing Department) has approved the subdivision name of "School Lane" as well as the road names; that proposed amenities are a pool house, pool, centralized mailbox and a sports field area; that the proposed open space for the project is 11.42-acres, or 52% of the project site; that the project will be served by Tidewater Utilities, Inc. for water services; that Sussex County will provide sanitary sewer services; that they have received Willing and Able to Serve letters from Tidewater Utilities, Inc.,

Chesapeake Utilities, Delaware Electric Coop, and a Sewer Service Concept Evaluation from Sussex County Engineering; that the project was reviewed by PLUS on December 16, 2020; that the PLUS comments and the Applicant's response can be found in the submitted Exhibit Booklet; that the comments provided were general in nature; that the Applicant will comply with all regulatory requirements; that his office prepared an Environmental Assessment and Public Facilities Evaluation Report and the project complies with the Comprehensive Plan.

Ms. Stevenson questioned how parking is proposed for the project and if additional parking could be added to Road A on the west side.

Mr. Lardner stated each lot will have two parking spaces per unit, via the driveway or the garage; that they have provided overflow parking throughout the project; that they have exceeded the two-unit per lot requirement, and he stated they could consider additional options to add parking to the area Ms. Stevenson mentioned.

Chairman Wheatley advised the Commission that Mr. Bill Brockenbrough, County Coordinator with DelDOT was present for questioning via teleconference; that he requested Mr. Brockenbrough explain how the entrance came to be and why it was constructed the way it was.

Mr. Brockenbrough stated when the property was acquired for Love Creek Elementary School, J.G. Townsend Jr. & Co., the seller of the property retained access through the existing driveway with the intention to utilize the driveway for access to the subject property; that the construction of the entranceway is desirable by DelDOT; that he did not recall the specific history of when the school was developed; that the entranceway is consistent with the preferred construction from DelDOT's view, to minimize the number of access points; that in minimizing fewer access points, it allows fewer decision points for a driver and it opens the possibility for signalized access for the development, which would help manage left-hand turns.

Ms. Stevenson questioned if the pool house is proposed to only hold supplies for the pool, or if the pool house was proposed to be larger and utilized by residents and requested the Applicant consider making the pool house a meeting spot for residents.

Mr. Hutt stated a better description of the pool house would be a bathhouse; that it would not be proposed as a clubhouse with exercise equipment and that the pool house is proposed to be a changing area and restroom area.

Mr. Robertson stated the Applications are for a Change of Zone and a Conditional Use and the Commission does have the authority to apply discretion.

Chairman Wheatley stated property owners do have a right to subdivide their land and property owners do not have the right to Change the Zoning for their property; that the Change of Zone is purely discretionary, and the Commission has the authority to make that discretion.

The Commission found Mr. Steve Kittka spoke in opposition to the Application; that he lives within the Saddle Ridge Community; that he opposes the project as it is currently proposed; that it was said the townhomes would generate less traffic; that the proposed townhomes are larger than almost any home located within the Saddle Ridge Community; that the townhomes are 4,600 sq. ft.; that he did not invest in his property with any idea that the adjacent zoning would be changed; that he feels the

proposed development will cause an enormous amount of traffic; that he understood there was not a Traffic Impact Study performed for the proposed project specifically; that a lot has changed since previous traffic analysis; that one of the reasons for this is COVID-19 which has led to an increase in traffic to Love Creek Elementary School; that with the traffic currently on Rt. 24, there are frequent accidents and near accidents all the time; that within the last three weeks there have been three accidents within a mile of the proposed development; that two of the accidents were at the intersection of Rt. 24 and Warrington Rd.; that those two accidents caused Rt. 24 to shut down; that the third accident was between Saddle Ridge and Harts Landing; that he has no objection to the Applicant developing the property; that he objects to the proposal of medium density; that he is also concerned with the disturbance to the wildlife and he objects to the Change of Zoning request.

Chairman Wheatley stated that if a Traffic Impact Study (TIS) was performed for a nearby development, DelDOT does not require an additional TIS as the information remains remotely the same.

Mr. Robertson stated DelDOT and Sussex County established the Transportation Improvement District (TID) that the project is part of; that DelDOT has performed the analysis for all the roadway improvements within the entire TID area; that they had to design all road improvements based on the anticipated development within the TID; that then, based on the improvements, a cost is assigned as to what it cost to construct the road improvements; that then a required fee is calculated for each developer to develop the road improvements and the Applicant did not perform a Traffic Impact Study as it is already included in the greater TID.

Mr. Robertson questioned the status of the dualization of Rt. 24.

Mr. Mears requested Mr. Brockenbrough's opinion on townhomes generated vehicle traffic versus residential communities generated traffic.

Mr. Brockenbrough stated the construction began in March 2022 for the dualization of Rt. 24; that it was proposed to be completed in 2023; that he believed completion will be in 2024; that the improvements are proposed to widen to two lanes each way; that sidewalks are proposed on both sides of the road; that DelDOT relies on Transportation Engineers Trip Generation Manual, which provides National-level data on various land uses, including single-family detached houses and townhouses; that generally single-family detached houses generate the most traffic; that townhouses, apartments and various types of multi-family development generate less per dwelling unit and regarding the comment of the size of the townhomes, DelDOT would not have data to support or dispute the fact.

Chairman Wheatley questioned if anyone could provide a comment on the proposed size of the units.

Mr. Ring Lardner stated that they do not know the exact size of the townhouses currently; that the lot widths are 20-ft. wide with a depth of 115-ft.; that the widest lot could be 28-ft.; that after including setback requirements, it would be 20'x75'; that the proposed units are two-story with a first-floor master; that at the largest, an approximate average is 3,000 sq. ft.; that the average size will be 2,000 sq. ft. to 2,500 sq. ft.; that confirmation of size cannot be determined until they find a builder and the proposed size is much less than the size testified by Mr. Kittka.

The Commission found that Ms. Nancy Guerin spoke in opposition to the Application; that she lives in Hart's Landing; that she has concerns about the Love Creek Bridge; that the bridge is not proposed to be expanded; that this will cause a traffic bottleneck, as the traffic will go from four lanes down to two lanes; that currently, she has difficulty exiting her development onto Rt. 24; that she feels after hearing Mr. Hutt explain all the types of development located along Rt. 24, she does not believe another development is needed; that she questioned if any of the mentioned schools and the developments they are adjacent to share a road as is proposed in the current Application; that due to COVID-19, there has been increased traffic to the schools; that this has created a back up of traffic on Rt. 24 down to Mulberry Rd. and she does not feel the Traffic Impact Study for Belle Terre, and the time in which it was performed, took in to account the additional traffic she sees currently.

The Commission found that Mr. Kenny Delmar spoke in opposition to the Application; that he lives in Hart's Landing; that he has a background in real estate, with many decades of experience; that in his experience the last thing a person should want to do is build a development next to a slaughter house, a factory making toxic chemicals or an elementary school; that it would be a kiss of death; that he assured the Commission that the developer, owner and attorneys have not had a discussion with a real estate broker to question what would be coming down the road; that he felt two weeks ago a ceiling was hit; that from here on out it will become more difficult to make a profit with a residential development; that a smart choice to make, would be not to build your development next to an elementary school, while sharing the same entrance with the school; that it would not be a smart choice; that the choice would not be considered good business; that he questioned if any of the attorneys, engineers or developer have children in Love Creek Elementary; that he questioned what will happen with construction traffic caused by the development; that it will be another years lost to a child who is attempting to get an education; that because of the construction, there will be noise from 7:00 am until 4:00 pm for at least a year; that the children who are in school trying to learn, will have to listen to construction noise for at least a year and the future residents will not want to deal with the noise generated by an elementary school on a normal school day.

The Commission found that Mr. Shunli Zhang spoke in opposition to the Application; that he lives in Saddle Ridge Development; that he agrees with all the previously mentioned concerns; that he is concerned about the approximate six acres of forest located on the property; that on one side of the forest is a natural pond; that on the other side of the forest are wetlands; that the current forest is full of life; that the forest life includes bald eagles and he requested the Commission reconsider approving the project, or request a modification to the plan, to help protect the forest, wildlife and natural beauty of the forest.

The Commission found that Mr. Laymen Grant spoke in opposition to the Application; that he is a resident of Belle Terre; that it was his understanding that a signalized light will be placed at the intersection of Rt. 24 and Mulberry Knoll Rd.; that the current traffic attempting to get onto Rt. 24 is ugly; that with the proposed 84 townhouses; that he would estimate one and a half vehicles per unit; that most families have at least two cars; that there will be 120 additional vehicles with the proposed development, which will be required to merge onto Rt. 24; that occasionally the children at Love Creek Elementary School play outside in the adjacent field; that Beacon Middle School has athletic fields; that he feels placing the development without the red light would be a disaster; that there will be an accident; that he has only lived in Sussex County a year; that there are times he cannot figure out how to cross Rt. 24; that people will take a chance, shooting out onto Rt. 24; that he feels there would be a chance they head into the field, where children may be at play; that in the evening hours, there is



limited lighting in the area; that he does not have an issue with the development of the property but he does have an issue with the traffic.

Mr. Brockenbrough stated he believed the plan was to place a signalized red light at the intersection of Mulberry Knoll Rd. and Rt. 24.

The Commission found that Mr. Maureen Burns spoke in opposition to the Application; that she lives within Belle Terre directly behind the proposed project; that she questioned if the Commission approves the Change of Zone request, could the Applicant change their proposed plans; that the elevation of the proposed site is higher than her property; that she is concerned she will receive all of the water run off when it would rain; that she questioned if there are proposed balconies for the townhouses and she is concerned about her privacy and the ability of future residents to look through her windows.

Mr. Robertson stated the Commission would make a recommendation to County Council; that County Council would approve or deny the Change of Zone request; that if the Change of Zone were to be approved, the Applicant could potentially propose a subdivision; that a subdivision would require another public hearing; that the maximum building height would be 42-ft.; that if the Change of Zone were approved, the Applicant would be permitted to do anything permitted within MR (Medium-Density Residential) Zoning District.

Chairman Wheatley stated the stormwater regulations are regulated and enforced by the Sussex Conservation District; that Sussex Conservation District regulations stated the Applicant must contain the property's stormwater on-site; that the Applicant must dispose of the water runoff either on the property site or through a properly regulated design outfall and the Applicant would not be permitted to allow any runoff onto Ms. Burns property.

Mr. Ring Lardner stated they cannot speak to the design of the townhomes; that there is a 20-ft. landscape buffer proposed on the property site; that there is a 50-ft. landscape buffer on the Belle Terre property and that the buffers would allow for a 70-ft landscape buffer between the homes.

Mr. Robertson questioned what the rear setback requirements for the proposed units were.

Mr. Whitehouse stated that each unit must have an agricultural buffer; that the Applicant can split the buffer, however, the plan would be required to be seen before the Commission for site plan review; that it is required to be a minimum of 40-ft. spread front and back; that the buildings can be no closer than 40-ft. from each other; that the minimum landscape buffer required is 20-ft. or the Applicant would be required to obtain a variance; that there is 40-ft. between the buildings and the property lines; that within the 40-ft. setback there is a 20-ft. landscape buffer and any setback and landscaping located on the Belle Terre property.

The Commission found that Ms. Patricia Hutchinson spoke in opposition to the Application; that she lives with Belle Terre; that she has concerns with the wild life, the removal of the existing woods and transportation issues; that she is a retired educator; that she knows what happens on an elementary school property; that she knows the amount of traffic comes and goes from the property; that she knows the amount of children that play outside; that she does have concerns with the construction and the issues it will cause for the children; that she is concerned children will not be able to go outside for recess, which the children just experienced during the COVID-19 pandemic; that she is concerned

about the additional traffic coming and going from the site; that she would appreciate a signalized red light; that she is concerned about other permitted building that would be permitted with an approval to the Change in Zone request; that she is concerned about the possibilities of a transient population or rental population being placed next to an elementary school and a community for the 55+ year community; that she has concern regarding the water runoff; that she was told that Belle Terre previously proposed mixed development, which included townhomes; that the townhouses were denied at that time; that she feels the townhouses would not be similar to surrounding communities; that she does understand if the zoning is changed the Applicant is permitted to construct anything permitted within that zoning and the neighbors would get no say in what the Applicant were to propose.

The Commission found that Mr. Thomas Negran spoke in opposition to the Application; that he is a resident of Belle Terre; that the lovely 21-acre cornfield will be removed; that 84 multi-family units are proposed for the area; that only single-family homes and an elementary school border the property; that a major concern is the increased traffic; that the proposed development will share the entrance with Love Creek Elementary school; that according to the documentation there will be 598 additional vehicles daily; that the area is already congested; that the increased traffic may pose a threat to the safety of the Love Creek Elementary children; that according to the Site Plan, the backyards of 18 units will directly face the school property; that the water runoff from the 14 units roofs will flow into the direction of Belle Terre residents back yards; that he saw no proposed retention ponds in the area bordering Belle Terre; that four acres of woodlands will be destroyed; that 7.9 acres of impervious material will replace the field; that according to the report from DNREC, there are several rare and/or endangered species in the project area; that multi-family units sell for a lower price point than single-family homes; that the lower price point often leads to investors purchasing units for rental; that transient neighbors may not be the most desirable neighbors, especially to school-aged children; that the Land Elevation Map, located on page 72, of the Paperless Packet indicates a natural slope downward to 25-ft. above sea level at the rear of the property; that the elevation drops to 21-ft. above sea level on Decatur Street in Belle Terre; that the runoff could become detrimental to the Belle Terre community with the removal of the trees; that he questioned if the Applicant plans to sell the property to a developer, to develop themselves, to receive subsidies for low-income housing and what the expected selling price is for the proposed townhomes; that he commends Sussex County for purchasing land in efforts to preserve land; that he requested Sussex County purchase the subject property to be preserved and/or utilized as a park or recreational area and he stated the revenue to Sussex County will receive, from the 1.5% transfer tax from Belle Terre alone will amount to at least \$2,000,000.00 and could be put to good use for the residents of Sussex County.

Mr. Robertson stated the Commission does not discriminate at all based on income levels, housing type, type of owner, or type of tenant; that the question is inappropriate and will not be required by the Commission.

Ms. Stevenson stated Mr. Ring Lardner serves on the Sussex County Land Trust; that the Sussex County Land Trust is a non-profit organization that purchased land to preserve; that she recommends people contact him to discuss donating.

The Commission found that Ms. Martha Eisenhower spoke in opposition to the Application; that she lives on Retz Lane; that her property back up to the Love Creek Elementary School property; that she was happy to hear when a school was being proposed behind her property; that she would rather a school than a convenience store; that she is opposed to the Change of Zone request; that currently,

the Applicant knows two units to the acre is permitted within the AR-1 Zoning District; that this would allow for 43 homes; that the Applicant would place 43 homes on the property while preserving the woodlands; that she has lived on her property for 43 years; that within the last year she has noticed an influx of wildlife in her yard and the only thing she can attribute it to, is the fact that we are destroying the woodlands, creating nowhere else for the wildlife to go.

The Commission found that Mr. Victor Mantarro spoke in opposition to the Application; that he lives within the Saddle Ridge Community; that he had a concern about the proposed stormwater drainage; that his backyard faces the wetland area; that one year, there was an extraordinary amount of rain, which caused the wetland area to fill quickly; that the overflow of water ran into the existing woods; that the woods help maintain the 15 inches of water from the back of his house and his neighbor's house; that the project will be adding additional runoff; that he is not convinced that the Applicant will be able to control the runoff flowing into the wetlands and he is concerned if the Applicant cannot control the runoff it will cause runoff onto his property.

The Commission found that Ms. Susan Armato spoke in opposition to the Application; that she is a resident of Belle Terre; that she supports development; that she is opposed to the Change of Zone request; that she believes the owner has the right to the permitted use within the AR-1 Zoning District; that proposing 84 units would be a disservice to all nearby residents; that approval will set the precedence for anyone with AR-1 Zoning to request rezoning as well.

The Commission found that Mr. Paul Paolini spoke in opposition of the Application; that he has been a resident within Saddle Ridge Community for a year; that he has been in real estate for 25 years; that he is a landscape architect by degree and practice; that he agrees with Mr. Delmar, who stated a property adjacent to a school is a challenge due to the unknowns of school traffic and noise of the children; that he previously sold a home between a men's prison and a women's prison; that he believes selling that home between two prisons would be easier than selling a home next to a school; that he played recordings of emergency sirens for the Commission; that he stated the sirens are sometimes heard up to five times a day along this corridor of Rt. 24; that the representative of the Applicant did a good job identifying what is along the Rt. 24 corridor; that soon the residents of Saddle Ridge will be required to cross two lanes to make a left turn onto Rt. 24; that the whole corridor has a high level of activity and that is the reasoning for his opposition to the zoning change of the parcel.

The Commission found that Ms. Bettina Peronti spoke in opposition to the Application; that she is a resident of Belle Terre; that she had concerns about sharing the entranceway with the elementary school, being located adjacent to the elementary school, that she feels the Traffic Impact Study was based on the Applicant putting in 37 single-family homes, with two vehicles a home; that with 37 single-family homes the total vehicles would be 74 vehicles; that when placing 84 townhomes, at one vehicle is 84 vehicles; that she would like clarification put on record stating that the multi-family units will not cause more traffic than single-family homes; that she is opposed to the rezoning; that the representative to the Applicant did a good job describing development within the area; that she feels the Applicant can develop the property under the existing AR-1 Zoning; that she questioned if there is a percentage the County is requiring or identified as a target as a percentage of permits to single-family homes as opposed to multi-family units; that she questioned if we are meeting the target or percentage as a community; that the Commission needs to take into consideration the location, impact and use of the land and not only considering the number of permits provided to single-family or multi-family homes approved over the last three years.

The Commission found that Ms. Judy Seibert spoke in opposition to the Application; that she is a resident of the Saddle Ridge Community; that she is opposed to both the Change of Zone and Conditional Use Applications; that as a local resident, she believed there will be an adverse effect on adjacent neighborhoods; that left turns onto Rt. 24 is a challenge; that adding 84 townhomes will exacerbate the issue; that she believes the project will have an adverse effect on Love Creek Elementary School; that she understood DelDOT accepted the Belle Terre Traffic Impact Study from 2016; that Love Creek Elementary School was not built until 2017; that she does understand the property is located within the Henlopen TID; that her opinion is a current Traffic Impact Study at the discretion of the Commission; that a TIS should be required because of the additional traffic cause by the COVID-19 pandemic and the change in school districts for children; that the dualization of Rt. 24 will narrow down to one lane, west bound, in front of the Saddle Ridge Community; that this will cause increased congestion at their intersection; that one lane will turn into a right lane only turning into the Saddle Ridge Development; that there is a possibility of the townhomes being used as rentals; that the townhomes would be ideal for the use of rentals; that the units are large in size, being from 3,080 sq. ft. to 4,600 sq. ft; that if the townhomes were used for rentals it could increase the vehicle traffic dramatically; that she appreciated Mr. Robertson's comments that the public comments can be taken into account when considering Change of Zone requests and she requested the Commission use their discretion, not recommending approval for the Change of Zone request.

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

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

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

In relation to the Application C/Z 1949 J.G. Townsend Jr. & Co. Motion by Mr. Mears, seconded by Ms. Stevenson and carried unanimously to defer for further consideration. Motion carried 5-0.

#### Draft Minutes of the July 14, 2022 Planning & Zoning Commission Meeting

The Commission discussed the Application which had been deferred since June 23, 2022.

Mr. Mears move that the Commission recommend approval of C/Z 1949 J.G. Townsend, Jr. & Co., 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. This application satisfies the stated purpose of the MR District.
2. Both central water and central sewer will be available on this site.
3. This site is the location of Route 24 at a lighted intersection. DelDOT is planning to widen and improve this section of Route 24 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 adjacent to the Saddle Ridge development that was developed as an MR residential development. The site is also adjacent to the Love Creek Elementary campus. There



are other C-1, CR-1, and B-1 zoning districts along this area of the Route 24 corridor as well. 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 Commercial Area and the Coastal Area according to the Future Land Use Map in the Sussex County Comprehensive Plan. Both of these are “Growth Areas” according to this Plan. By separate motion, this Commission has recommended that the Map be amended so that the entire parcel is designated as being within the Coastal Area. 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 Mr. Mears, seconded by Ms. Wingate and carried unanimously to recommend approval of C/Z 1949 J.G. Townsend, Jr. & Co., for the reasons stated in the motion. Motion carried 4-0.

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

**PLANNING & ZONING COMMISSION**

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



**Sussex County**

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JAMIE WHITEHOUSE, MRTPI, AICP  
DIRECTOR OF PLANNING & ZONING

**PLANNING AND ZONING AND COUNTY COUNCIL INFORMATION SHEET**

Planning Commission Public Hearing Date: June 23<sup>rd</sup>, 2022

Application: CZ 1949 J.G. Townsend Jr. & Co.

Applicant: J.G. Townsend Jr. & Co.  
P.O. Box 430  
Georgetown, DE 19947

Owner: J.G. Townsend Jr. & Co.  
P.O. Box 430  
Georgetown, DE 19947

Site Location: The property is lying on the west side of John J. Williams Highway (Route 24), approximately 0.25 mile southwest of Mulberry Knoll Road (S.C.R. 284).

Current Zoning: AR-1 – Agricultural Residential District

Proposed Zoning: MR – Medium Density Residential District

Comprehensive Land Use Plan Reference: Commercial Area & Coastal Area (FLUM Amendment proposal to change the Commercial Area portion to Coastal Area.)

Councilmanic District: Mr. Schaeffer

School District: Cape Henlopen School District

Fire District: Lewes Fire Company

Sewer: Sussex County

Water: Tidewater Utilities

Site Area: 21.62 acres +/-

Tax Map ID.: 334-12.00-16.04



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**Sussex County**

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## Memorandum

To: Sussex County Planning Commission Members  
From: Ms. Lauren DeVore, Planner III  
CC: Mr. Vince Robertson, Assistant County Attorney and applicant  
Date: May 23, 2022  
RE: Staff Analysis for C/Z 1949 J.G. Townsend Jr. & Co.

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This memo is to provide background and analysis for the Planning Commission to consider as a part of application C/Z 1949 Route 54 Limited Partnership to be reviewed during the June 23, 2022, Planning Commission Meeting. This analysis should be included in the record of this application and is subject to comments and information that may be presented during the public hearing.

The request is for a Change of Zone for Tax Parcel 334-12.00-16.04 to allow for a change of zone from an Agricultural Residential (AR-1) District to a Medium Density Residential (MR) District. The property is lying on the west side of John J. Williams Highway (Route 24), approximately 0.25 mile southwest of Mulberry Knoll Road (S.C.R. 284). The parcel consists of 21.62 acres +/-.

### Further Site Considerations

Per County records, there do not appear to be any Tax Ditches or related Tax Ditch rights-of-way (ROW) on the subject property. The property is located within the "X" Flood Zone "Areas determined to be outside of the 100-year floodplain."

The property is located within the Henlopen Transportation Improvement District (TID) and shall be subject to all requirements as provided for as part of any subsequent Transportation Improvement District Agreement including payment of any required fees and related improvements as may be deemed necessary by the County and DeDOT.

### Comprehensive Plan Analysis

The 2018 Sussex County Comprehensive Plan Update (Comprehensive Plan) provides a framework of how land is to be developed. As part of the Comprehensive Plan, a Future Land Use Map is included to help determine how land should be zoned to ensure responsible development. The Future Land Use map in the plan indicates that the subject property has land use designation of "Commercial Area" and "Coastal Area." The properties to the south (including on the opposite side of Route 24 (John J. Williams Highway), the properties to the southwest (to include the entire Saddle Ridge Subdivision) and the properties to the northeast along Route 24 all have a land use designation of "Commercial Area." The properties to the southeast and to the northwest to include the adjacent lands of the Four Seasons at Belle Terre Subdivision also contain the land use designation of "Coastal Area."



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

Conversely, Commercial Areas include concentrations of retail and service uses that are mainly located along arterials, and highways. As opposed to small, traditional downtown areas that are often historic and pedestrian-friendly, Commercial Areas include commercial corridors, shopping centers, and other medium and large commercial vicinities geared towards vehicular traffic. In addition to primary shopping destinations, this area would also be the appropriate place to locate hotels, motels, car washes, auto dealerships, and other medium and larger scale commercial uses not primarily targeted to the residents of immediately adjacent residential areas. These more intense uses should be located along main roads or near major intersections. Institutional and commercial uses may be appropriate depending on surrounding uses. Mixed-use buildings may also be appropriate for these areas (Sussex County Comprehensive Plan, 4-17).

### Zoning Information

The 2018 Sussex County Comprehensive Plan outlines Zoning Districts by their applicability to each Future Land Use category. Under Table 4.5-2 “Zoning Districts Applicable to Future Land Use Categories”, the Medium Density Residential (MR) District is listed as an Applicable Zoning District within the “Coastal Area.” (Sussex County Comprehensive Plan, 4-25). However, the Medium Density Residential (MR) District is not listed as an Applicable Zoning District within the “Commercial Area.”

However, it should be noted that there is a related Application to amend the Future Land Use Map which has been submitted in conjunction with this application (Ordinance No. 21-13) to amend the Commercial portion of the property to the Coastal Area.

The property is zoned Agricultural Residential (AR-1) District. The adjacent parcels to the north, northeast and south of the subject property are zoned Agricultural Residential (AR-1) District. The properties located to the southwest of the subject site are zoned Medium Density Residential (MR) District. There is also a single parcel to the southwest that is zoned Neighborhood Business (B-1) District.

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

Since 2011, there have been four (4) Change of Zone applications within a 0.25-mile radius of the application site. The first application is for Change of Zone No. 1737 Robert & Julie Norwood for a change of zone from an Agricultural Residential (AR-1) Zoning District to a Commercial Residential (CR-1) District. The application was recommended denial by the Planning and Zoning Commission at their meeting of Thursday, November 14, 2013, and the Application was



subsequently withdrawn. The second application is for Change of Zone No. 1742 Seaside Communities, RDC, LLC for a change of zone from an Agricultural Residential (AR-1) District to a Medium Density Residential, Residential Planned Community (MR-RPC). The application was approved by the Sussex County Council at their meeting of Tuesday, September 30, 2014, and the change was adopted through Ordinance No. 2366. The third application is for Change of Zone No. 1800 Sussex Real Estate Partners, LLC for a change of zone from an Agricultural Residential (AR-1) District to a Medium Density Residential, Residential Planned Community (MR-RPC). The application was recommended denial by the Planning and Zoning Commission at their meeting of Thursday, August 25, 2016, and the Application was subsequently withdrawn. The last application was for Change of Zone No. 1901 Mary and Victor Rico for a change of zone from an Agricultural Residential (AR-1) District to a Medium Density Residential (MR) District. The Sussex County Council denied this proposal at their meeting of Tuesday, February 18, 2020.

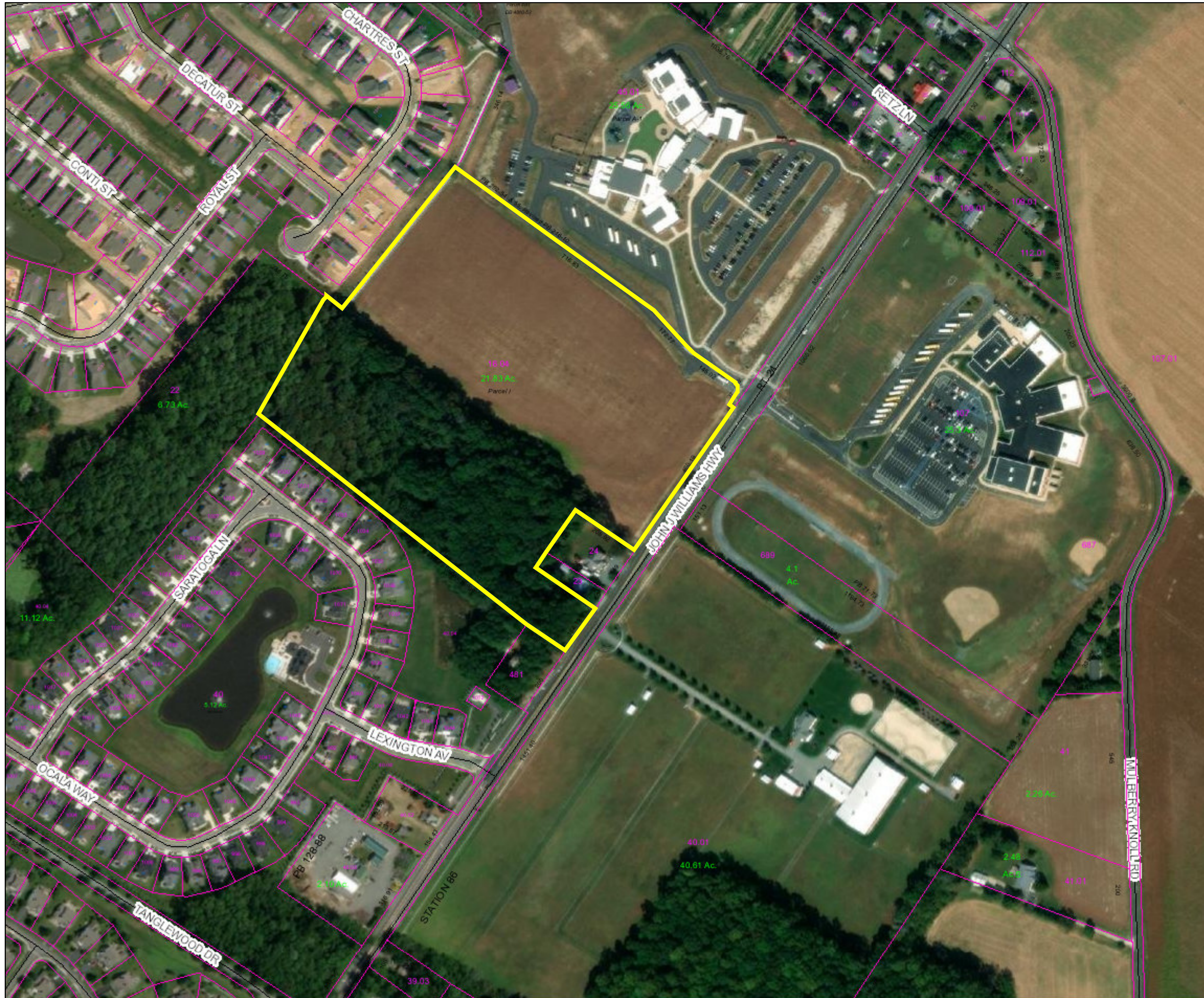
Based on the analysis of the land use, surrounding zoning and uses, a Change of Zone from an Agricultural Residential (AR-1) District to a Medium Density Residential (MR) District could be considered as being consistent with the land use, area zoning and surrounding uses.

<b>Change of Zone Applications (w/in a 0.25 mile radius of the subject site)*</b>								
<b>Application Number</b>	<b>Application Name</b>	<b>Current Zoning</b>	<b>Proposed Zoning</b>	<b>P&amp;Z Decision</b>	<b>P&amp;Z Decision Date</b>	<b>CC Decision</b>	<b>CC Decision Date</b>	<b>Ordinance Number</b>
CZ 1737	Robert & Julie Norwood	AR-1	CR-1	Recommended Denial	11/14/2013	Withdrawn on 3/25/14	N/A	N/A
CZ 1742	Seaside Communities, RDC, LLC	AR-1	MR-RPC	Recommended Approval	5/22/2014	Approved	9/30/2014	2366
CZ 1800	Sussex Real Estate Partners, LLC	AR-1	MR-RPC	Recommended Denial	8/25/2016	Withdrawn on 9/1/16	N/A	N/A
CZ 1901	Mary and Victor Rico	AR-1	MR	Recommended Denial	1/9/2020	Denied	2/18/2020	N/A





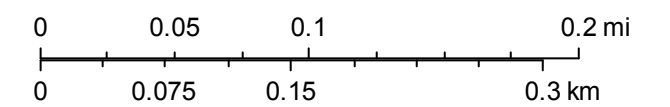
# Sussex County



<b>PIN:</b>	334-12.00-16.04
<b>Owner Name</b>	TOWNSEND J G JR CO
<b>Book</b>	0
<b>Mailing Address</b>	PO BOX 430
<b>City</b>	GEORGETOWN
<b>State</b>	DE
<b>Description</b>	NW/RT 24
<b>Description 2</b>	SW/RT 284
<b>Description 3</b>	PARCEL 1
<b>Land Code</b>	

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

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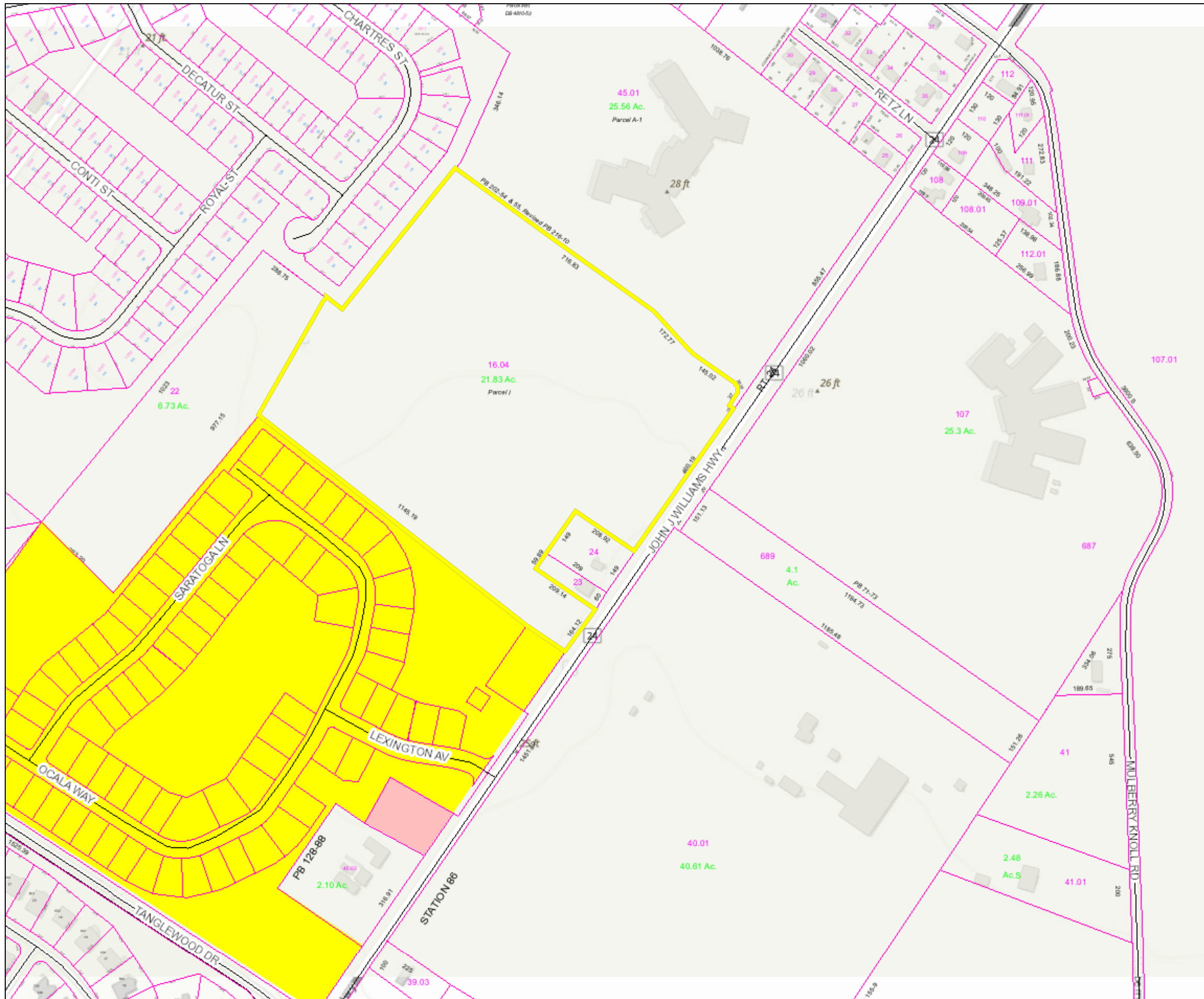








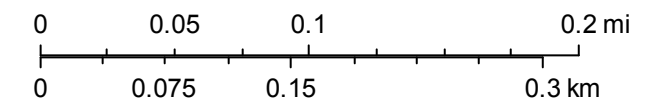
# Sussex County



<b>PIN:</b>	334-12.00-16.04
<b>Owner Name</b>	TOWNSEND J G JR CO
<b>Book</b>	0
<b>Mailing Address</b>	PO BOX 430
<b>City</b>	GEORGETOWN
<b>State</b>	DE
<b>Description</b>	NW/RT 24
<b>Description 2</b>	SW/RT 284
<b>Description 3</b>	PARCEL 1
<b>Land Code</b>	

- polygonLayer  
     Override 1
- polygonLayer  
     Override 1
- Tax Parcels
- Streets

1:4,514





**Introduced 11/09/21**

**Council District 3 – Schaeffer  
Tax I.D. No. 334-12.00-16.04  
911 Address: None Available**

**ORDINANCE NO. \_\_\_\_**

**AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A MR MEDIUM DENSITY RESIDENTIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 21.62 ACRES, MORE OR LESS**

**WHEREAS, on the 30<sup>th</sup> day of July 2021, a zoning application, denominated Change of Zone No. 1949 was filed on behalf of J.G. Townsend Jr. & Co.; 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. 1949 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 Density 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 and Rehoboth Hundred, Sussex County, Delaware, and lying on the west side of John J. Williams Highway (Route 24) approximately 0.25 mile southwest of Mulberry Knoll Road (S.C.R 284) and being more particularly described in the attached legal description prepared by Davis, Bowen & Friedel, Inc., said parcel containing 21.62 acres, more or less.**

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

JAMIE WHITEHOUSE, AICP  
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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: July 20, 2022

RE: County Council Report for C/U 2304 filed on behalf of J.G. Townsend Jr. & Co.

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The Planning and Zoning Department received an application (C/U 2304 filed on behalf of J.G. Townsend Jr. & Co.) for a Conditional Use for parcel 334-12.00-16.04 for multi-family dwellings (84 units). The property is located on the west side of John J. Williams Highway (Rt.24), approximately 0.25 mile southwest of Mulberry Knoll Road (SCR 284). The parcel size is 21.62 acres +/-.

The Planning & Zoning Commission held a Public Hearing on the application on June 23, 2022. At the meeting of July 14, 2022, the Planning & Zoning Commission recommended approval of the application subject to 10 reasons stated and subject to 16 recommended conditions as outlined within the motion (copied below).

Below are the minutes from the Planning & Zoning Commission meetings of June 23, 2022, and July 14, 2022.

### Draft Minutes of the June 23, 2022 Planning & Zoning Commission Meeting

Chairman Wheatley stated the applicant had requested to combine the presentations for the Ordinance, C/Z 1949, and C/U 2304 as they are all related Applications of J.G. Townsend Jr. & Co. and he stated the motions for the three applications would be made separately.

### C/U 2304 J.G. Townsend Jr. & Co.

**AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A MR MEDIUM DENSITY RESIDENTIAL DISTRICT FOR MULTIFAMILY (84 UNITS) TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 21.62 ACRES, MORE OR LESS.** The property is lying on the west side of John J. Williams Highway (Route 24), approximately



0.25 mile southwest of Mulberry Knoll Road (S.C.R. 284). 911 Address: N/A. Tax Parcel: 334-12.00-16.04.

Mr. Whitehouse advised the Commission that submitted into the record was the Exhibit Booklet, Conceptual Site Plan, Environmental Assessment, Public Facility Evaluation Report, Staff Analysis, Traffic Impact Study, DelDOT's response to the Traffic Impact Study, a letter from Sussex County Engineering Department Utility Planning Division, PLUS comments, the Applicant's response to the PLUS comments, 20 letters in opposition; that the 156 signature petition did not specifically refer to both Applications and was submitted under the other record.

The Commission found that Mr. David Hutt, Esq. spoke on behalf of the Application; that he is an attorney with Morris James; that he is representing the owner of the property and Applicant, J.G. Townsend Jr. & Co.; that also present were Mr. Paul Townsend, a shareholder in J.G. Townsend Jr. & Co., Mr. Doug Motley, a representative of the development group, Mr. Ring Lardner, Engineer with Davis, Bowen and Friedel, and Mr. Edward Launay, Wetland Scientist with Environmental Resources, Inc.; that he requested to make a correction for the records in respect to C/Z 1949 and C/U 2304; that it was indicated the Traffic Impact Study was undertaken by the Applicant; that the Applicant did not undertake a Traffic Impact Study; that DelDOT included a recent Traffic Impact Study in their response to the Service Level Evaluation Request; that the provided Traffic Impact Study was previously performed to the Belle Terre Community; that the site is known as the "Howeth Property"; that this name was provided after J.G. Townsend Jr. & Co. purchased the land from Howeth Family; that historically the Howeth Farm was much larger than it currently is; that in 2014 the Howeth Farm was as more than 70 acres; that approximately a decade ago, J.G. Townsend Jr. & Co. were approached by various institutions and bodies which included the Cape Henlopen School District, the State of Delaware on behalf of the Delaware State Police, and Sussex County; that these agencies were looking for a location along that particular section of Rt. 24 to place various facilities; that the results of those discussions was a minor subdivision plan; that the minor subdivision was recorded in 2014; that Parcel A1 of the minor subdivision was conveyed to the Cape Henlopen School District in 2015; that it has now become the home of the Love Creek Elementary School; that Parcel B was conveyed to the State of Delaware; that it is now the home of Troop 7; that the history is important as it answers many questions regarding the property; that located to the north is the Love Creek Elementary School; that located to the south is the Saddle Ridge Community; that Rt. 24 runs along the frontage of the property; that the Beacon Middle School is located across from Love Creek Elementary; the property is located in close proximity to the Beebe Medical Campus, Seaglass Apartments, The Residence Inn Hotel, Hearts Landing Community, Love Creek Manufactured Home Community, The Residences at Rehoboth Bay Condominium and Marina, as well as the various commercial businesses located along Rt. 1; that on the 2020 Delaware State Strategies Map it shows almost the entire area as being within Investment Level 2; that there is a small area located on the property which is located within Investment Level 3; that the area located within Investment Level 3 is an isolated area of wetlands; that within the 2045 Future Land Use Map within Sussex County's Comprehensive Plan shows many parcels within the Commercial Area along Rt. 24; that the other surrounding area is located within the Coastal Area; that the Coastal Area is one of the seven Growth Areas for Sussex County; that one of the requests is to change the Future Land Use Map designation for a portion of the property; that 2/3 of the property is shown as Commercial; that 1/3 of the property is shown in the Coastal Area; that the Applicant's intention is to have the entire property located within the Coastal Area; that the Coastal Area is a designation which would allow uses other than only commercial uses; that Saddle Ridge, Love Creek Elementary School, Beacon Middle School and the site across from Beacon Middle School is shown as being in the Commercial Area on the

Future Land Use Map; that there is a mixture of zoning classifications along that corridor of Rt. 24; that there is a mixture of C-1 (General Commercial), CR-1 (Commercial Residential), I-1 (Institutional), B-1 (Neighborhood Business) and MR (Medium-Density Residential); that the Change of Zone Application is seeking to change the zoning from AR-1 (Agricultural Residential) to MR (Medium-Density Residential); that there was three Applications being presented in relation to the same property; that the first request is to amend the Future Land Use Map creating one designation to the Coastal Area for the property; that the second request is for a Change of Zone from AR-1 (Agricultural Residential) to MR (Medium-Density Residential); that the third Application is a Conditional Use request to allow 84 townhomes; that each set of townhomes contains six units; that 14 townhomes are proposed across the site; that the project was reviewed during the PLUS process; that in Summer 2021 the Future Land Use Amendment request was reviewed by the Office of State Planning Coordination through the PLUS process; that the comments of no objection made by the Office of State Planning Coordination was included as part of the record; that Investment Level 2 areas are described as an area where the State anticipates growth for an area in the near future; that the Office of State Planning Coordination stated in their comments “ *in Investment Level 2 areas, like Investment Level 1 areas, State investments and policies should support and encourage a wide range of uses and densities*” and “*Investments should encourage departure from the typical single-family dwelling development and promote a broader mix of housing types and commercial sites encouraging compact mixed-use development where applicable*”, which ensure the State encourages a departure from typical single-family homes, offering a broader mix of housing options; that Section 8.2 of the County Code states “*while the County allows for multi-family (duplexes, townhouses and apartments etc.) the primary housing type is detached single-family (stick-built, modular and manufactured homes)*”; that in 2016, Sussex County issued 1,778 building permits; that of those building permits, 1,615 building permits were for single-family homes, equaling to 90.8%; that less than 10% of the issued building permits were for multi-family structures; that in 2017, 2,068 building permits issued; that 1,961 building permits, or 94.8%, were for single-family homes; that in 2018, 1,057 building permits were issued before the cut off for the Comprehensive Plan; that of those building permits, 992 building permits, or 93.8%, were issued for single-family homes; that within Chapter 8 of the Comprehensive Plan, it stated the County should consider the ability to establish other housing types or reduce the need for a Conditional Use for multi-family development; that the proposed Application does help address the mentioned needs; that within Chapter 4 of the Comprehensive Plan, the Coastal Area is described as one of the fastest growing areas within Sussex County; that the Comprehensive Plan does recognize the environmental concerns which may arise in the Coastal Area; that there is a buffer provided to the isolated wetlands, which proposed some environmental concern; that the proposed buffer to the wetlands exceeds Sussex County’s recently adopted Buffer Ordinance requirements; that within the County Code, it states permitted uses and densities within each of the Growth Areas; that within the permitted use section for the Coastal Area, the Comprehensive Plan states *that a range of housing types should be permitted, including single-family homes, townhouses and multi-family units*; that the next Section it states *that medium and higher densities (4 to 12 units per acre) can be appropriate in certain locations and medium and higher densities could be supported in areas where there is central water and sewer, near sufficient commercial uses and employment centers, where it is in keeping with the character for the area, where it is along a main road, being located at or near a major intersection, where there is adequate level of service, or where other considerations exist that are relevant to the requested project and density*; that the density for the proposed project is 3.9 units to the acre; that the medium and higher density requirements are all met by the proposed project; that Tidewater Utilities will provide water services; that central sewer is available through Sussex County; that the property is located in an area where there are commercial uses and employment centers; that the project is located along RT. 24, which is a major collector road; that the project is located at a signalized intersection on Rt. 24; that Rt. 24 does have DART transportation, with a Rehoboth, Longneck and Millsboro DART connection; that because the project is located



within the TID, a fee per unit is required as part of the project's contribution to DelDOT; that although some adjacent properties are listed as AR-1 (Agriculture Residential), the Love Creek Elementary School is not an agricultural use; that the Love Creek Elementary School is over 89,000 sq. ft., which was granted by a Conditional Use approval; that located across the street is Beacon Middle School, being over 77,000 sq. ft. and was granted a Conditional Use Approval; that the County recently considered an application for the V&M site, which received approval for a 5,000 sq. ft. convenience store and fueling stations; that a 12,000 sq. ft. office building will also be located on the V&M property; that there were multiple other Conditional Use approvals mentioned within the submitted material; that the requested zoning classification for the property is MR (Medium-Density Residential), as it is an appropriate zoning district for the proposed use; that townhomes is a Conditional Use within the MR (Medium-Density Residential) Zoning District; that Conditional Uses are generally of a public or semi-public character and our essential for the general convenience and welfare of the County; that Conditional Uses to require some Planning judgement; that the purpose of the MR Zoning District is to provide for medium density residential development in areas which are expected to become generally urban in character, which is a good description of Rt. 24; that the Future Land Use Map for the property shows the commercial designation; that by allowing the area to be rezoned the area would avoid concentrations of retail and service uses, as well as hotels, motels, carwashes, auto dealerships, as well as other medium and large scale uses not primarily targeted to immediately adjacent residents and areas; that institutional and industrial uses may also be appropriate in the Commercial Zoning District; that the current Application proposes a far less intensive use than the potential permitted uses under Commercial Zoning; that traffic was a main theme within the comments made in opposition; that the use of the entryway was always anticipated; that there was a Service Level Evaluation Request sent to DelDOT as part of the Application; that within DelDOT's response indicated that the traffic impact for the project would be minor; that in having a minor impact the project became eligible for to participate in the Area Wide Study Fee Program; that however, the property is located within the Henlopen Transportation Improvement District (TID); that due to this the Area Wide Study Fee does not apply; that the fee per unit does apply; that another concern mentioned in opposition was the appropriateness of multi-family units being located adjacent to a school; that the concern is in contrary to many school which currently exist in Sussex County; that Cape Henlopen High School, HOB Brittingham School, Mariner Middle School, East Millsboro Elementary School, Rehoboth Elementary School are all located immediately adjacent to or nearby multi-family residential communities; that Chapter 8 of the Comprehensive Plan indicates the proposed area is appropriate for the proposed zoning and for the proposed Conditional Use for townhomes; that the Applicant requested approval to amend the Future Land Use Map, allowing the property to be located completely within the Coastal Area, changing the County's Zoning Map from AR-1 to MR Zoning and an approval for the Conditional Use permitted 84 townhomes; that he did submit proposed Findings of Fact and Conditions of Approval for the Change of Zone Application and the Conditional Use Application; that one of the proposed requirements is that there must be a Property Owners Association to care for amenities; that it is proposed that the amenities would be constructed by the seventh building permit and each building will receive a building permit for all six units within it; that in reality, the amenities would be completed by the 42nd building permit when considering per units.

The Commission found that Mr. Ring Lardner spoke on behalf of the Application; that he is an engineer for Davis, Bowen and Friedel; that the site is located along John J. Williams Hwy., which is classified as a major collector road per the DelDOT Functional Classification Map; that the project is located within the Henlopen Transportation Improvement District (Henlopen TID); that the TID was a group effort between DelDOT and Sussex County; that the agreement was approved on

October 30, 2020; that DelDOT noted the traffic for the proposed project was consistent with the TID; that the project was eligible to pay the TID fee, rather than performing a Traffic Impact Study (TIS); that a TID fee based on a per lot basis on January 31, 2020 was \$341,796.00; that the fee does increase annually on January 31<sup>st</sup>; that the fee is due at the time of building permit issuance; that the fee will continue to increase until the building permits are released; that the TID fees help fund the various project within the Transportation Improvement District to help improve the TID area; that the assumed land use was underestimated as it was assigned 37 single-family homes; that for the current Application they were able to stay within the perimeters for traffic; that the vehicle trips generated by townhouses is less than those generated by single-family homes; that this is the reasoning DelDOT considered the project consistent with the TID; that the project is not located within the Well Head Protection Area or Excellent Recharge Area; that the project is located outside of the 100 Year Flood Plain; that there is a small pocket of wetlands located on the site; that the wetlands were delineated by Environmental Resources Inc.; that the wetlands are located along the common boundary line of the site and the Saddle Ridge Community; that an approved Jurisdictional Determination was completed by the U.S. Army Corp of Engineers; that Mr. Edward Launay, with Environmental Resources did prepare an Environmental Review for wildlife habitat considerations; that Mr. Launay's review does contain a consultation with the U.S. Fish and Wildlife Service; that there are no records of federally listed threatened or endangered species being located on site; that the Monarch Butterfly was located onsite; that the site does not have the proper vegetation to support the Monarch Butterfly, therefore it was assumed that the site was not the home for the Monarch Butterfly; that within DNREC's Fish and Wildlife comments from the PLUS review mention three State rare species; that all three species are located within the Hetty Fisher Pond, which is located over 740-ft. from the site; that it was Mr. Launay's opinion that the development of the Howeth Property, now known as School Lane, will not adversely impact the amphibious species of State concern; that the layout of the site first began at the intersection of John J. Williams Hwy. as it is the combined entrance for the Love Creek Elementary School, Troop 7 and the proposed project; that when the Love Creek Elementary School was approved, traffic for the proposed project was already preassigned for the intersection; that the intersection was designed for the proposed project traffic; that as part of the improvement and approval for Love Creek Elementary School the stub was connect to the parcel; that this allowed for interconnectivity, providing one access onto Rt. 24; that they did design a 20-ft. landscape buffer along the property border of Love Creek Elementary School, Belle Terre and Saddle Ridge Communities; that the communities for Belle Terre and Saddle Ridge also have buffers on their property; that this has created two sets of buffers adjacent to each other; that they established a 50-ft wetland buffer to the isolated wetlands on site; that the Application was submitted prior to the adoption of the recent Buffer Ordinance; that the proposed buffer exceeds the requirement of the recently adopted Buffer Ordinance; that the townhouses will be fee simple lots, meaning the lots will be owner occupied; that no lots will be located back to back; that the stormwater pond is proposed to be centrally located on the site; that the proposed stormwater pond location will minimize grading changes to the site; that active amenities are proposed along the other side of Road A, to ensure amenities would not be located in the rear yard of the lots; that they attempted to minimize dead-end streets; that currently there are two dead-ends proposed on Road B and Road C on the Site Plan; that they did provide overflow parking areas throughout the site for guests; that the internal roads will meet and/or exceed the requirements of Sussex County Road Standards; that the roads will be privately maintained; that Sussex County Geographic Information Office (GIO) (F.K.A. Mapping and Addressing Department) has approved the subdivision name of "School Lane" as well as the road names; that proposed amenities are a pool house, pool, centralized mailbox and a sports field area; that the proposed open space for the project is 11.42-acres, or 52% of the project site; that the project will be served by Tidewater Utilities, Inc. for water services; that Sussex County will provide sanitary

sewer services; that they have received Willing and Able to Serve letters from Tidewater Utilities, Inc., Chesapeake Utilities, Delaware Electric Coop, and a Sewer Service Concept Evaluation from Sussex County Engineering; that the project was reviewed by PLUS on December 16, 2020; that the PLUS comments and the Applicant's response can be found in the submitted Exhibit Booklet; that the comments provided were general in nature; that the Applicant will comply with all regulatory requirements; that his office prepared an Environmental Assessment and Public Facilities Evaluation Report and the project complies with the Comprehensive Plan.

Ms. Stevenson questioned how parking is proposed for the project and if additional parking could be added to Road A on the west side.

Mr. Lardner stated each lot will have two parking spaces per unit, via the driveway or the garage; that they have provided overflow parking throughout the project; that they have exceeded the two-unit per lot requirement, and he stated they could consider additional options to add parking to the area Ms. Stevenson mentioned.

Chairman Wheatley advised the Commission that Mr. Bill Brockenbrough, County Coordinator with DelDOT was present for questioning via teleconference; that he requested Mr. Brockenbrough explain how the entrance came to be and why it was constructed the way it was.

Mr. Brockenbrough stated when the property was acquired for Love Creek Elementary School, J.G. Townsend Jr. & Co., the seller of the property retained access through the existing driveway with the intention to utilize the driveway for access to the subject property; that the construction of the entranceway is desirable by DelDOT; that he did not recall the specific history of when the school was developed; that the entranceway is consistent with the preferred construction from DelDOT's view, to minimize the number of access points; that in minimizing fewer access points, it allows fewer decision points for a driver and it opens the possibility for signalized access for the development, which would help manage left-hand turns.

Ms. Stevenson questioned if the pool house is proposed to only hold supplies for the pool, or if the pool house was proposed to be larger and utilized by residents and requested the Applicant consider making the pool house a meeting spot for residents.

Mr. Hutt stated a better description of the pool house would be a bathhouse; that it would not be proposed as a clubhouse with exercise equipment and that the pool house is proposed to be a changing area and restroom area.

Mr. Robertson stated the Applications are for a Change of Zone and a Conditional Use and the Commission does have the authority to apply discretion.

Chairman Wheatley stated property owners do have a right to subdivide their land and property owners do not have the right to Change the Zoning for their property; that the Change of Zone is purely discretionary, and the Commission has the authority to make that discretion.

The Commission found Mr. Steve Kittka spoke in opposition to the Application; that he lives within the Saddle Ridge Community; that he opposes the project as it is currently proposed; that it was said the townhomes would generate less traffic; that the proposed townhomes are larger than almost any home located within the Saddle Ridge Community; that the townhomes are 4,600 sq. ft.; that he did

not invest in his property with any idea that the adjacent zoning would be changed; that he feels the proposed development will cause an enormous amount of traffic; that he understood there was not a Traffic Impact Study performed for the proposed project specifically; that a lot has changed since previous traffic analysis; that one of the reasons for this is COVID-19 which has led to an increase in traffic to Love Creek Elementary School; that with the traffic currently on Rt. 24, there are frequent accidents and near accidents all the time; that within the last three weeks there have been three accidents within a mile of the proposed development; that two of the accidents were at the intersection of Rt. 24 and Warrington Rd.; that those two accidents caused Rt. 24 to shut down; that the third accident was between Saddle Ridge and Harts Landing; that he has no objection to the Applicant developing the property; that he objects to the proposal of medium density; that he is also concerned with the disturbance to the wildlife and he objects to the Change of Zoning request.

Chairman Wheatley stated that if a Traffic Impact Study (TIS) was performed for a nearby development, DelDOT does not require an additional TIS as the information remains remotely the same.

Mr. Robertson stated DelDOT and Sussex County established the Transportation Improvement District (TID) that the project is part of; that DelDOT has performed the analysis for all the roadway improvements within the entire TID area; that they had to design all road improvements based on the anticipated development within the TID; that then, based on the improvements, a cost is assigned as to what it cost to construct the road improvements; that then a required fee is calculated for each developer to develop the road improvements and the Applicant did not perform a Traffic Impact Study as it is already included in the greater TID.

Mr. Robertson questioned the status of the dualization of Rt. 24.

Mr. Mears requested Mr. Brockenbrough's opinion on townhomes generated vehicle traffic versus residential communities generated traffic.

Mr. Brockenbrough stated the construction began in March 2022 for the dualization of Rt. 24; that it was proposed to be completed in 2023; that he believed completion will be in 2024; that the improvements are proposed to widen to two lanes each way; that sidewalks are proposed on both sides of the road; that DelDOT relies on Transportation Engineers Trip Generation Manual, which provides National-level data on various land uses, including single-family detached houses and townhouses; that generally single-family detached houses generate the most traffic; that townhouses, apartments and various types of multi-family development generate less per dwelling unit and regarding the comment of the size of the townhomes, DelDOT would not have data to support or dispute the fact.

Chairman Wheatley questioned if anyone could provide a comment on the proposed size of the units.

Mr. Ring Lardner stated that they do not know the exact size of the townhomes currently; that the lot widths are 20-ft. wide with a depth of 115-ft.; that the widest lot could be 28-ft.; that after including setback requirements, it would be 20'x75'; that the proposed units are two-story with a first-floor master; that at the largest, an approximate average is 3,000 sq. ft.; that the average size will be 2,000 sq. ft. to 2,500 sq. ft.; that confirmation of size cannot be determined until they find a builder and the proposed size is much less than the size testified by Mr. Kittka.



The Commission found that Ms. Nancy Guerin spoke in opposition to the Application; that she lives in Hart's Landing; that she has concerns about the Love Creek Bridge; that the bridge is not proposed to be expanded; that this will cause a traffic bottleneck, as the traffic will go from four lanes down to two lanes; that currently, she has difficulty exiting her development onto Rt. 24; that she feels after hearing Mr. Hutt explain all the types of development located along Rt. 24, she does not believe another development is needed; that she questioned if any of the mentioned schools and the developments they are adjacent to share a road as is proposed in the current Application; that due to COVID-19, there has been increased traffic to the schools; that this has created a back up of traffic on Rt. 24 down to Mulberry Rd. and she does not feel the Traffic Impact Study for Belle Terre, and the time in which it was performed, took in to account the additional traffic she sees currently.

The Commission found that Mr. Kenny Delmar spoke in opposition to the Application; that he lives in Hart's Landing; that he has a background in real estate, with many decades of experience; that in his experience the last thing a person should want to do is build a development next to a slaughter house, a factory making toxic chemicals or an elementary school; that it would be a kiss of death; that he assured the Commission that the developer, owner and attorneys have not had a discussion with a real estate broker to question what would be coming down the road; that he felt two weeks ago a ceiling was hit; that from here on out it will become more difficult to make a profit with a residential development; that a smart choice to make, would be not to build your development next to an elementary school, while sharing the same entrance with the school; that it would not be a smart choice; that the choice would not be considered good business; that he questioned if any of the attorneys, engineers or developer have children in Love Creek Elementary; that he questioned what will happen with construction traffic caused by the development; that it will be another years lost to a child who is attempting to get an education; that because of the construction, there will be noise from 7:00 am until 4:00 pm for at least a year; that the children who are in school trying to learn, will have to listen to construction noise for at least a year and the future residents will not want to deal with the noise generated by an elementary school on a normal school day.

The Commission found that Mr. Shunli Zhang spoke in opposition to the Application; that he lives in Saddle Ridge Development; that he agrees with all the previously mentioned concerns; that he is concerned about the approximate six acres of forest located on the property; that on one side of the forest is a natural pond; that on the other side of the forest are wetlands; that the current forest is full of life; that the forest life includes bald eagles and he requested the Commission reconsider approving the project, or request a modification to the plan, to help protect the forest, wildlife and natural beauty of the forest.

The Commission found that Mr. Laymen Grant spoke in opposition to the Application; that he is a resident of Belle Terre; that it was his understanding that a signalized light will be placed at the intersection of Rt. 24 and Mulberry Knoll Rd.; that the current traffic attempting to get onto Rt. 24 is ugly; that with the proposed 84 townhouses; that he would estimate one and a half vehicles per unit; that most families have at least two cars; that there will be 120 additional vehicles with the proposed development, which will be required to merge onto Rt. 24; that occasionally the children at Love Creek Elementary School play outside in the adjacent field; that Beacon Middle School has athletic fields; that he feels placing the development without the red light would be a disaster; that there will be an accident; that he has only lived in Sussex County a year; that there are times he cannot figure out how to cross Rt. 24; that people will take a chance, shooting out onto Rt. 24; that he feels there would be a chance they head into the field, where children may be at play; that in the evening hours, there is

limited lighting in the area; that he does not have an issue with the development of the property but he does have an issue with the traffic.

Mr. Brockenbrough stated he believed the plan was to place a signalized red light at the intersection of Mulberry Knoll Rd. and Rt. 24.

The Commission found that Mr. Maureen Burns spoke in opposition to the Application; that she lives within Belle Terre directly behind the proposed project; that she questioned if the Commission approves the Change of Zone request, could the Applicant change their proposed plans; that the elevation of the proposed site is higher than her property; that she is concerned she will receive all of the water run off when it would rain; that she questioned if there are proposed balconies for the townhouses and she is concerned about her privacy and the ability of future residents to look through her windows.

Mr. Robertson stated the Commission would make a recommendation to County Council; that County Council would approve or deny the Change of Zone request; that if the Change of Zone were to be approved, the Applicant could potentially propose a subdivision; that a subdivision would require another public hearing; that the maximum building height would be 42-ft.; that if the Change of Zone were approved, the Applicant would be permitted to do anything permitted within MR (Medium-Density Residential) Zoning District.

Chairman Wheatley stated the stormwater regulations are regulated and enforced by the Sussex Conservation District; that Sussex Conservation District regulations stated the Applicant must contain the property's stormwater on-site; that the Applicant must dispose of the water runoff either on the property site or through a properly regulated design outfall and the Applicant would not be permitted to allow any runoff onto Ms. Burns property.

Mr. Ring Lardner stated they cannot speak to the design of the townhomes; that there is a 20-ft. landscape buffer proposed on the property site; that there is a 50-ft. landscape buffer on the Belle Terre property and that the buffers would allow for a 70-ft landscape buffer between the homes.

Mr. Robertson questioned what the rear setback requirements for the proposed units were.

Mr. Whitehouse stated that each unit must have an agricultural buffer; that the Applicant can split the buffer, however, the plan would be required to be seen before the Commission for site plan review; that it is required to be a minimum of 40-ft. spread front and back; that the buildings can be no closer than 40-ft. from each other; that the minimum landscape buffer required is 20-ft. or the Applicant would be required to obtain a variance; that there is 40-ft. between the buildings and the property lines; that within the 40-ft. setback there is a 20-ft. landscape buffer and any setback and landscaping located on the Belle Terre property.

The Commission found that Ms. Patricia Hutchinson spoke in opposition to the Application; that she lives with Belle Terre; that she has concerns with the wild life, the removal of the existing woods and transportation issues; that she is a retired educator; that she knows what happens on an elementary school property; that she knows the amount of traffic comes and goes from the property; that she knows the amount of children that play outside; that she does have concerns with the construction and the issues it will cause for the children; that she is concerned children will not be able to go outside for recess, which the children just experienced during the COVID-19 pandemic; that she is concerned

about the additional traffic coming and going from the site; that she would appreciate a signalized red light; that she is concerned about other permitted building that would be permitted with an approval to the Change in Zone request; that she is concerned about the possibilities of a transient population or rental population being placed next to an elementary school and a community for the 55+ year community; that she has concern regarding the water runoff; that she was told that Belle Terre previously proposed mixed development, which included townhomes; that the townhouses were denied at that time; that she feels the townhouses would not be similar to surrounding communities; that she does understand if the zoning is changed the Applicant is permitted to construct anything permitted within that zoning and the neighbors would get no say in what the Applicant were to propose.

The Commission found that Mr. Thomas Negran spoke in opposition to the Application; that he is a resident of Belle Terre; that the lovely 21-acre cornfield will be removed; that 84 multi-family units are proposed for the area; that only single-family homes and an elementary school border the property; that a major concern is the increased traffic; that the proposed development will share the entrance with Love Creek Elementary school; that according to the documentation there will be 598 additional vehicles daily; that the area is already congested; that the increased traffic may pose a threat to the safety of the Love Creek Elementary children; that according to the Site Plan, the backyards of 18 units will directly face the school property; that the water runoff from the 14 units roofs will flow into the direction of Belle Terre residents back yards; that he saw no proposed retention ponds in the area bordering Belle Terre; that four acres of woodlands will be destroyed; that 7.9 acres of impervious material will replace the field; that according to the report from DNREC, there are several rare and/or endangered species in the project area; that multi-family units sell for a lower price point than single-family homes; that the lower price point often leads to investors purchasing units for rental; that transient neighbors may not be the most desirable neighbors, especially to school-aged children; that the Land Elevation Map, located on page 72, of the Paperless Packet indicates a natural slope downward to 25-ft. above sea level at the rear of the property; that the elevation drops to 21-ft. above sea level on Decatur Street in Belle Terre; that the runoff could become detrimental to the Belle Terre community with the removal of the trees; that he questioned if the Applicant plans to sell the property to a developer, to develop themselves, to receive subsidies for low-income housing and what the expected selling price is for the proposed townhomes; that he commends Sussex County for purchasing land in efforts to preserve land; that he requested Sussex County purchase the subject property to be preserved and/or utilized as a park or recreational area and he stated the revenue to Sussex County will receive, from the 1.5% transfer tax from Belle Terre alone will amount to at least \$2,000,000.00 and could be put to good use for the residents of Sussex County.

Mr. Robertson stated the Commission does not discriminate at all based on income levels, housing type, type of owner, or type of tenant; that the question is inappropriate and will not be required by the Commission.

Ms. Stevenson stated Mr. Ring Lardner serves on the Sussex County Land Trust; that the Sussex County Land Trust is a non-profit organization that purchased land to preserve; that she recommends people contact him to discuss donating.

The Commission found that Ms. Martha Eisenhower spoke in opposition to the Application; that she lives on Retz Lane; that her property back up to the Love Creek Elementary School property; that she was happy to hear when a school was being proposed behind her property; that she would rather a school than a convenience store; that she is opposed to the Change of Zone request; that currently,

the Applicant knows two units to the acre is permitted within the AR-1 Zoning District; that this would allow for 43 homes; that the Applicant would place 43 homes on the property while preserving the woodlands; that she has lived on her property for 43 years; that within the last year she has noticed an influx of wildlife in her yard and the only thing she can attribute it to, is the fact that we are destroying the woodlands, creating nowhere else for the wildlife to go.

The Commission found that Mr. Victor Mantarro spoke in opposition to the Application; that he lives within the Saddle Ridge Community; that he had a concern about the proposed stormwater drainage; that his backyard faces the wetland area; that one year, there was an extraordinary amount of rain, which caused the wetland area to fill quickly; that the overflow of water ran into the existing woods; that the woods help maintain the 15 inches of water from the back of his house and his neighbor's house; that the project will be adding additional runoff; that he is not convinced that the Applicant will be able to control the runoff flowing into the wetlands and he is concerned if the Applicant cannot control the runoff it will cause runoff onto his property.

The Commission found that Ms. Susan Armato spoke in opposition to the Application; that she is a resident of Belle Terre; that she supports development; that she is opposed to the Change of Zone request; that she believes the owner has the right to the permitted use within the AR-1 Zoning District; that proposing 84 units would be a disservice to all nearby residents; that approval will set the precedence for anyone with AR-1 Zoning to request rezoning as well.

The Commission found that Mr. Paul Paolini spoke in opposition of the Application; that he has been a resident within Saddle Ridge Community for a year; that he has been in real estate for 25 years; that he is a landscape architect by degree and practice; that he agrees with Mr. Delmar, who stated a property adjacent to a school is a challenge due to the unknowns of school traffic and noise of the children; that he previously sold a home between a men's prison and a women's prison; that he believes selling that home between two prisons would be easier than selling a home next to a school; that he played recordings of emergency sirens for the Commission; that he stated the sirens are sometimes heard up to five times a day along this corridor of Rt. 24; that the representative of the Applicant did a good job identifying what is along the Rt. 24 corridor; that soon the residents of Saddle Ridge will be required to cross two lanes to make a left turn onto Rt. 24; that the whole corridor has a high level of activity and that is the reasoning for his opposition to the zoning change of the parcel.

The Commission found that Ms. Bettina Peronti spoke in opposition to the Application; that she is a resident of Belle Terre; that she had concerns about sharing the entranceway with the elementary school, being located adjacent to the elementary school, that she feels the Traffic Impact Study was based on the Applicant putting in 37 single-family homes, with two vehicles a home; that with 37 single-family homes the total vehicles would be 74 vehicles; that when placing 84 townhomes, at one vehicle is 84 vehicles; that she would like clarification put on record stating that the multi-family units will not cause more traffic than single-family homes; that she is opposed to the rezoning; that the representative to the Applicant did a good job describing development within the area; that she feels the Applicant can develop the property under the existing AR-1 Zoning; that she questioned if there is a percentage the County is requiring or identified as a target as a percentage of permits to single-family homes as opposed to multi-family units; that she questioned if we are meeting the target or percentage as a community; that the Commission needs to take into consideration the location, impact and use of the land and not only considering the number of permits provided to single-family or multi-family homes approved over the last three years.



The Commission found that Ms. Judy Seibert spoke in opposition to the Application; that she is a resident of the Saddle Ridge Community; that she is opposed to both the Change of Zone and Conditional Use Applications; that as a local resident, she believed there will be an adverse effect on adjacent neighborhoods; that left turns onto Rt. 24 is a challenge; that adding 84 townhomes will exacerbate the issue; that she believes the project will have an adverse effect on Love Creek Elementary School; that she understood DelDOT accepted the Belle Terre Traffic Impact Study from 2016; that Love Creek Elementary School was not built until 2017; that she does understand the property is located within the Henlopen TID; that her opinion is a current Traffic Impact Study at the discretion of the Commission; that a TIS should be required because of the additional traffic cause by the COVID-19 pandemic and the change in school districts for children; that the dualization of Rt. 24 will narrow down to one lane, west bound, in front of the Saddle Ridge Community; that this will cause increased congestion at their intersection; that one lane will turn into a right lane only turning into the Saddle Ridge Development; that there is a possibility of the townhomes being used as rentals; that the townhomes would be ideal for the use of rentals; that the units are large in size, being from 3,080 sq. ft. to 4,600 sq. ft; that if the townhomes were used for rentals it could increase the vehicle traffic dramatically; that she appreciated Mr. Robertson's comments that the public comments can be taken into account when considering Change of Zone requests and she requested the Commission use their discretion, not recommending approval for the Change of Zone request.

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

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

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

In relation to the Application C/U 2304 J.G. Townsend Jr. & Co. Motion by Mr. Mears, seconded by Ms. Stevenson and carried unanimously to defer for further consideration. Motion carried 5-0

#### Draft Minutes of the July 14, 2022 Planning & Zoning Commission Meeting

The Commission discussed the Application which had been deferred since June 23, 2022.

Mr. Robertson read the motion into the record as requested Mr. Mears.

Mr. Mears moved that the Commission recommend approval of C/U 2304 J.G. Townsend, Jr. & Co., for 84 Multi-Family Units based upon the record made during the public hearing and for the following reasons:

1. The Commission has recommended that this property be rezoned to MR Medium-Density Residential. 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 along Route 24 at a lighted intersection that was designed by DelDOT to accommodate this project as well as the adjacent school and police barracks. DelDOT is also

planning to improve and widen Route 24 in the near future. Multi-family development is appropriate for this property adjacent to these roadways and this intersection. In addition, although the property is in the Henlopen Transportation Improvement District, or “T.I.D.”, DelDOT has stated that the traffic impact of the development would have a “minimal” impact on area roadways.

4. The site is in the T.I.D. The Developer will be required to pay a set fee into the T.I.D program to cover the cost of off-site roadway improvements throughout the T.I.D Area.
5. The property is in the immediate vicinity of other properties with a variety of residential and institutional uses. The site is next to Love Creek Elementary School and across from Beacon Middle School. It is also near a State Police Barracks. Other residential developments exist nearby along with business and commercial uses along the Route 24 corridor. This conditional use at approximately 4 units per acre is consistent with the mixture of other uses and residential developments in the area.
6. 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.
7. The proposed use is consistent with the County’s Comprehensive Land Use Plan. It is recommended that the entire property be within the Coastal Area according to the Plan, which is a Growth Area. The property is also surrounded by other properties that are designated as being within either the Coastal Area or the Commercial Area according to the Plan. The Plan states that medium and higher densities can be appropriate where, like here, there are features such as central water and sewer and nearby commercial uses and employment centers. The Plan also states that a range of housing types should be permitted in the Coastal Area, including single-family homes, townhouses, and multifamily units.
8. There are limited wetlands on the property, and a buffer of at least 50 feet will be provided from them.
9. Approximately 11.42 acres or 52% of the site will be preserved as open space including a substantial amount of the existing woodlands.
10. In summary, the proposed project creates additional residential housing options at a density of 3.9 units per acre, an appropriate density in an area served by County sewer and central water, which is near a significant number of commercial uses and employment centers, is in keeping with the character of the area, situated along a main road – a Major Collector (John J. Williams Highway), at a signalized entrance, where DelDOT has ongoing projects on the Capital Transportation Improvement Program consistent with the purpose of both the MR (Medium-Density Residential District) and the Coastal Area designation on the Comprehensive Plan.
11. This recommendation is subject to the following conditions:
  - A. There shall be no more than 84 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 participate in the TID program and comply with the requirements of it.
  - C. All recreational amenities shall be completed within the development on or before the issuance of the building permit for the 7<sup>th</sup> residential building to be constructed on the Site. These amenities shall include a pool and bathhouse.
  - D. Central sewer shall be provided to the development by Sussex County. The developer shall comply with all requirements and specifications of the Sussex County Engineering Department.

- E. The development shall be served by a central water system providing adequate drinking water and fire protection as required by applicable regulations.
- F. Stormwater management and erosion and sediment control shall be constructed in accordance with applicable State and County requirements, and the project shall utilize Best Management Practices to construct and maintain these fixtures. The Final Site Plan shall contain the approval of the Sussex Conservation District.
- G. Interior street design shall comply with or exceed Sussex County standards. Sidewalks shall be included on both sides of all streets except “Road A”. The sidewalks shall connect with the multi-modal paths required by DelDOT.
- H. Road naming and addressing shall be subject to the review and approval of the Mapping and Addressing Department (A.K.A. Geographic Information Office (GIO)).
- I. 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.
- J. 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 Saturday. No 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.
- K. A 20-foot-wide forested buffer shall be installed along the northern, eastern, and western perimeters of the development and the two outparcels along Route 24. This buffer area shall comply with the planting requirements for such a buffer as contained in Section 99-5 of the Sussex County Code.
- L. There shall be a buffer that is at least 50 feet wide from all wetlands on the site. There shall be a minimum disturbance of trees and other vegetation within these buffer areas. Required silt fencing shall be installed upland of these buffer areas (using the edge of the buffer nearest the interior development) to avoid disturbance. Construction activities within the buffer area shall be minimum. Any disturbance in the buffer area shall be indicated on the Final Site Plan and the “Limits of Disturbance” shall be indicated on the Final Site Plan.
- 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. A street lighting system that provides lighting in a downward direction with minimal uplighting shall be provided.
- P. 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 Mr. Mears, seconded by Ms. Wingate and carried unanimously to recommend approval of C/U 2304 J.G. Townsend Jr. & Co., for the reasons and conditions stated in the motion. Motion carried 4-0.

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

**PLANNING & ZONING COMMISSION**

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



**Sussex County**

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JAMIE WHITEHOUSE, AICP, MRTPI  
DIRECTOR OF PLANNING & ZONING

**PLANNING AND ZONING AND COUNTY COUNCIL INFORMATION SHEET**  
Planning Commission Public Hearing Date: June 23<sup>rd</sup>, 2022

Application: CU 2304 J.G. Townsend Jr. & Co.

Applicant: J.G. Townsend Jr. & Co.  
P.O. Box 430  
Georgetown, DE 19947

Owner: J.G. Townsend Jr. & Co.  
P.O. Box 430  
Georgetown, DE 19947

Site Location: Lying on the west side of John J. Williams Highway (Route 24), approximately 0.25 mile southwest of Mulberry Knoll Road (S.C.R. 284).

Current Zoning: Agricultural Residential (AR-1) District

Proposed Use: 84 Multifamily Units and other associated site improvements

Comprehensive Land Use Plan Reference: Commercial Area & Coastal Area (subject to FLUM Amendment to change portion designated as Commercial Area to Coastal Area.)

Councilmanic District: Mr. Schaeffer

School District: Cape Henlopen School District

Fire District: Lewes Fire Department

Sewer: Sussex County

Water: Tidewater Utilities

Site Area: 21.62 acres +/-

Tax Map IDs.: 334-12.00-16.04





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**Sussex County**

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## Memorandum

To: Sussex County Planning Commission Members  
From: Ms. Lauren DeVore, Planner III  
CC: Mr. Vince Robertson, Assistant County Attorney and Applicant  
Date: May 23, 2022  
RE: Staff Analysis for C/U 2304 J.G. Townsend Jr. & Co.

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This memo is to provide background and analysis for the Planning Commission to consider as a part of application C/U 2304 J.G. Townsend Jr. & Co. to be reviewed during the June 23, 2022, Planning Commission Meeting. This analysis should be included in the record of this application and is subject to comments and information that may be presented during the public hearing.

The request is for a Conditional Use for Tax Parcel 334-12.00-16.04 to allow for eighty-four (84) multifamily units and other associated site improvements. The property is lying on the west side of John J. Williams Highway (Route 24), approximately 0.25 mile southwest of Mulberry Knoll Road (S.C.R. 284). The parcel consists of 21.62 acres +/-.

### Further Site Considerations

Per County records, there do not appear to be any Tax Ditches or related Tax Ditch rights-of-way (ROW) on the subject property. The property is located within the "X" Flood Zone "Areas determined to be outside of the 100-year floodplain."

The property is located within the Henlopen Transportation Improvement District (TID) and shall be subject to all requirements as provided for as part of any subsequent Transportation Improvement District Agreement including payment of any required fees and related improvements as may be deemed necessary by the County and DelDOT.

### Comprehensive Plan Analysis

The 2018 Sussex County Comprehensive Plan Update (Comprehensive Plan) provides a framework of how land is to be developed. As part of the Comprehensive Plan, a Future Land Use Map is included to help determine how land should be zoned to ensure responsible development. The Future Land Use map in the plan indicates that the subject property has land use designation of "Commercial Area" and "Coastal Area." The properties to the south (including on the opposite side of Route 24 (John J. Williams Highway), the properties to the southwest (to include the entire Saddle Ridge Subdivision) and the properties to the northeast along Route 24 all have a land use designation of "Commercial Area." The properties to the southeast and to the northwest to include the adjacent lands of the Four Seasons at Belle Terre Subdivision also contain the land use designation of "Coastal Area."

As outlined in the 2018 Sussex County Comprehensive Plan, Coastal Areas are areas that can accommodate development provided that special environmental concerns are addressed. A range



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

Conversely, Commercial Areas include concentrations of retail and service uses that are mainly located along arterials, and highways. As opposed to small, traditional downtown areas that are often historic and pedestrian-friendly, Commercial Areas include commercial corridors, shopping centers, and other medium and large commercial vicinities geared towards vehicular traffic. In addition to primary shopping destinations, this area would also be the appropriate place to locate hotels, motels, car washes, auto dealerships, and other medium and larger scale commercial uses not primarily targeted to the residents of immediately adjacent residential areas. These more intense uses should be located along main roads or near major intersections. Institutional and commercial uses may be appropriate depending on surrounding uses. Mixed-use buildings may also be appropriate for these areas (Sussex County Comprehensive Plan, 4-17).

### Zoning Information

The 2018 Sussex County Comprehensive Plan outlines Zoning Districts by their applicability to each Future Land Use category. Under Table 4.5-2 “Zoning Districts Applicable to Future Land Use Categories”, the Medium Density Residential (MR) District is listed as an Applicable Zoning District within the “Coastal Area.” (Sussex County Comprehensive Plan, 4-25). However, the Medium Density Residential (MR) District is not listed as an Applicable Zoning District within the “Commercial Area.”

However, it should be noted that there is a related Application to amend the Future Land Use Map which has been submitted in conjunction with this application (Ordinance No. 21-13) to amend the Commercial portion of the property to the Coastal Area.

The property is zoned Agricultural Residential (AR-1) District. The adjacent parcels to the north, northeast and south of the subject property are zoned Agricultural Residential (AR-1) District. The properties located to the southwest of the subject site are zoned Medium Density Residential (MR) District. There is also a single parcel to the southwest that is zoned Neighborhood Business (B-1) District.

### Existing Conditional Uses within the Vicinity of the Subject Site

Since 1970, there have been six (6) Conditional Use applications within less than a 0.25-mile radius of the application site. The first application is for C/U 392 Gwen Dickerson for the provision of a beauty salon within the Agricultural Residential (AR-1) District. The Application was approved by the Sussex County Council at their meeting of Tuesday, December 2, 1976. The second application is for C/U 2016 Cape Henlopen School District to allow for the establishment of an elementary school to be located within the Agricultural Residential (AR-1) District. The Application was approved by the Sussex County Council at their meeting of Tuesday, June 16, 2015, and the change was adopted through Ordinance No. 2402. The third application is for C/U 2059 Julie Norwood

for the provision of a beauty salon within the Agricultural Residential (AR-1) District. The Application was approved by the Sussex County Council at their meeting of Tuesday, October 25, 2016, and the change was adopted through Ordinance No. 2478. The fourth application is for C/U 2240 Tidewater Utilities Inc. to allow for the construction of an Elevated Storage Tank within the Agricultural Residential (AR-1) District. The Application was subsequently withdrawn. The fifth application is for C/U 2246 Bee Wise, LLC to allow for the creation of a Real Estate Business within the Agricultural Residential (AR-1) District. The Application was approved by the Sussex County Council at their meeting of Tuesday, June 8, 2021, and the change was adopted through Ordinance No. 2275. The sixth application is for C/U 2318 V&M LLC to permit a convenience store and office building within the Agricultural Residential (AR-1) District. The Application was approved by the Sussex County Council at their meeting of Tuesday, May 17, 2022, and the change was adopted.

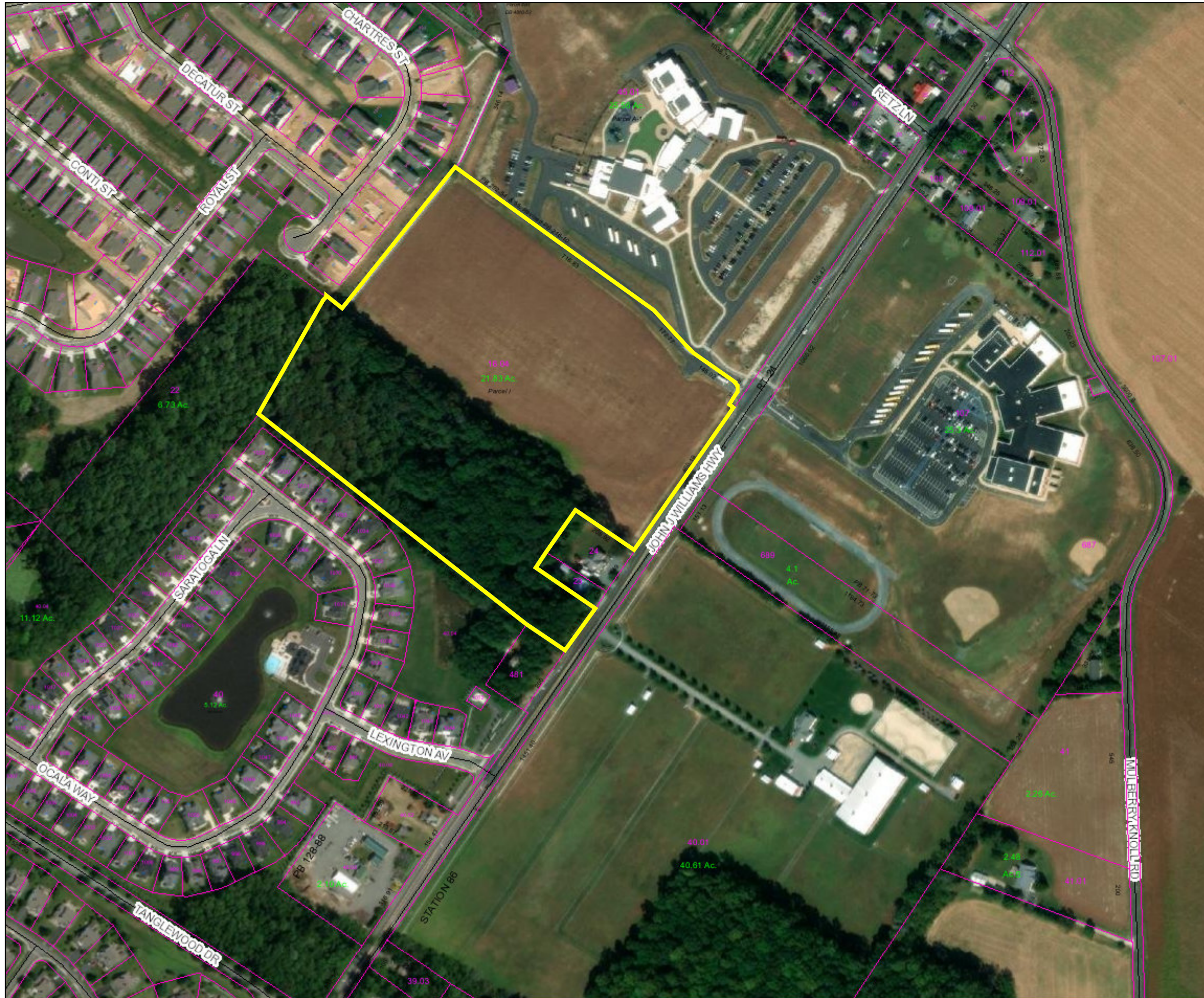
Based on the analysis of the land use, surrounding zoning and uses, the Conditional Use to allow for the construction of eighty-four (84) multifamily units and other ancillary improvements in this location, subject to considerations of scale and impact, could be considered as being consistent with the land use, area zoning and surrounding uses.

<b>Conditional Use Applications (w/in a 0.25 mile radius of the subject site)*</b>								
<b>Application Number</b>	<b>Application Name</b>	<b>Current Zoning</b>	<b>Proposed Use</b>	<b>P&amp;Z Decision</b>	<b>P&amp;Z Decision Date</b>	<b>CC Decision</b>	<b>CC Decision Date</b>	<b>Ordinance Number</b>
C/U 392	Gwen Dickerson	AR-1	Beauty Salon	N/A	N/A	Approved	12/28/1976	N/A
C/U 2016	Cape Henlopen School District	AR-1	Elementary School	Recommended Approval	5/7/2015	Approved	6/16/2015	2402
C/U 2059	Julie Norwood	AR-1	Beauty Salon	Recommended Approval	11/17/2016	Approved	10/25/2016	2478
C/U 2240	Tidewater Utilities, Inc.	AR-1	Elevated Storage Tank	Recommended Approval	10/22/2020	Approved	11/10/2020	2751
C/U 2246	Bee Wise, LLC	AR-1	Real Estate Business	Recommended Approval	4/22/2021	Approved	6/8/2021	2775
C/U 2318	V&M, LLC	AR-1	Convenience store and office building	Recommended Approval	4/28/2022	Approved	5/17/2022	?





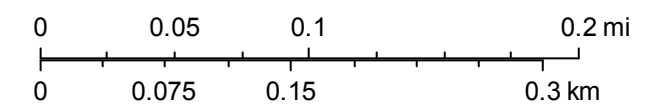
# Sussex County



<b>PIN:</b>	334-12.00-16.04
<b>Owner Name</b>	TOWNSEND J G JR CO
<b>Book</b>	0
<b>Mailing Address</b>	PO BOX 430
<b>City</b>	GEORGETOWN
<b>State</b>	DE
<b>Description</b>	NW/RT 24
<b>Description 2</b>	SW/RT 284
<b>Description 3</b>	PARCEL 1
<b>Land Code</b>	

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

1:4,514



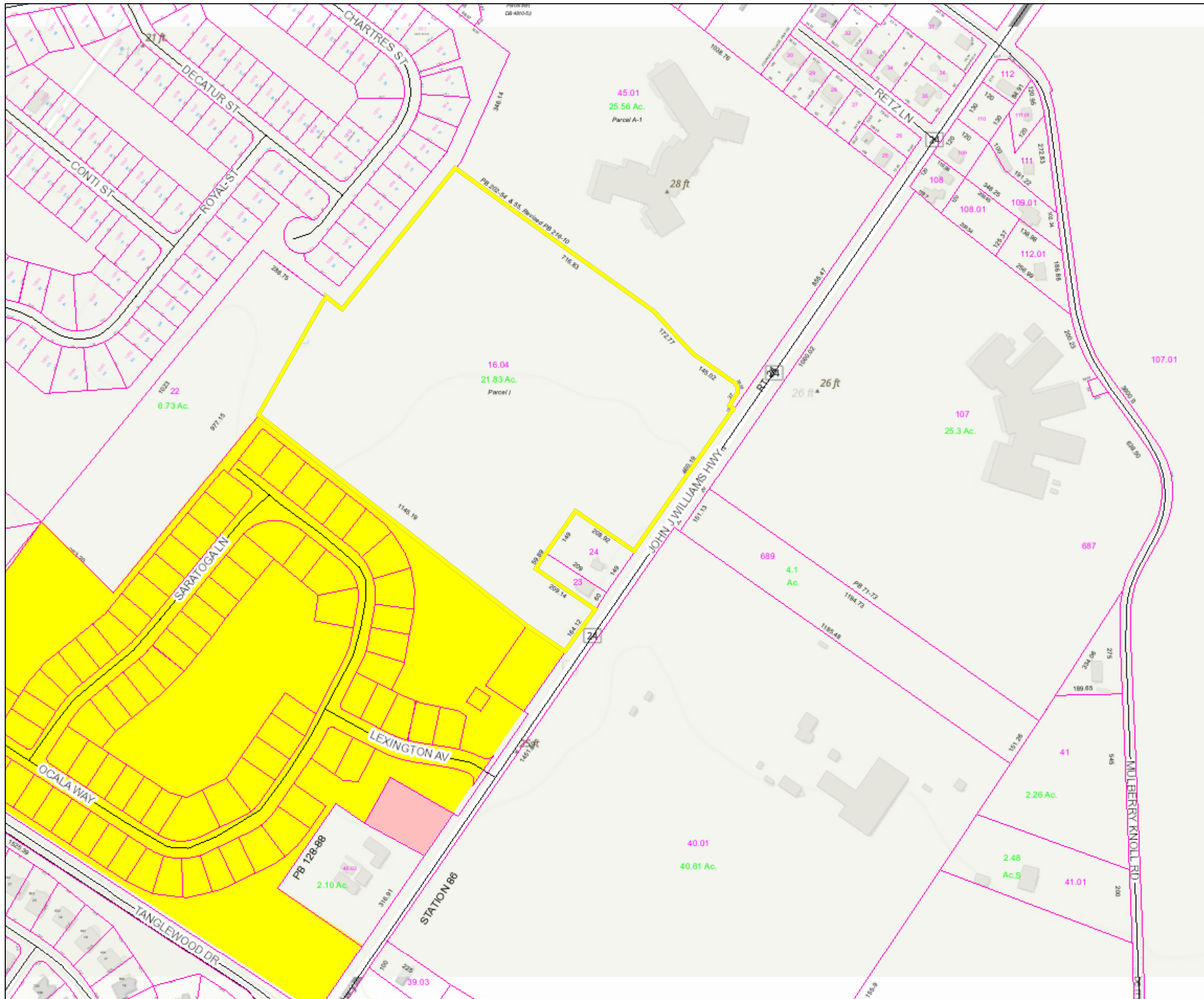








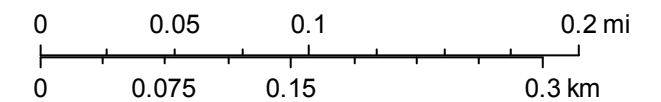
# Sussex County



<b>PIN:</b>	334-12.00-16.04
<b>Owner Name</b>	TOWNSEND J G JR CO
<b>Book</b>	0
<b>Mailing Address</b>	PO BOX 430
<b>City</b>	GEORGETOWN
<b>State</b>	DE
<b>Description</b>	NW/RT 24
<b>Description 2</b>	SW/RT 284
<b>Description 3</b>	PARCEL 1
<b>Land Code</b>	

- polygonLayer  
 Override 1
- polygonLayer  
 Override 1
- Tax Parcels
- Streets

1:4,514



**Introduced 10/26/21**

**Council District 3 - Schaeffer  
Tax I.D. No. 334-12.00-16.04  
911 Address: None Available**

**ORDINANCE NO. \_\_\_\_**

**AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A MR MEDIUM DENSITY RESIDENTIAL DISTRICT FOR MULTI-FAMILY (84 UNITS) TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 21.62 ACRES, MORE OR LESS**

**WHEREAS, on the 30th of July 2021, a conditional use application, denominated Conditional Use No. 2304 was filed on behalf of J.G. Townsend Jr. & Co.; and**

**WHEREAS, on the \_\_\_\_ day of \_\_\_\_\_ 2021, a public hearing was held, after notice, before the Planning and Zoning Commission of Sussex County and said Planning and Zoning Commission recommended that Conditional Use No. 2304 be \_\_\_\_\_; and**

**WHEREAS, on the \_\_\_\_ day of \_\_\_\_\_ 2021, a public hearing was held, after notice, before the County Council of Sussex County and the County Council of Sussex County determined, based on the findings of facts, that said conditional use is in accordance with the Comprehensive Development Plan and promotes the health, safety, morals, convenience, order, prosperity and welfare of the present and future inhabitants of Sussex County, and that the conditional use is for the general convenience and welfare of the inhabitants of Sussex County.**

**NOW, THEREFORE, THE COUNTY OF SUSSEX HEREBY ORDAINS:**

**Section 1. That Chapter 115, Article 115, Subsection 115-31, Code of Sussex County, be amended by adding the designation of Conditional Use No. 2304 as it applies to the property hereinafter described.**

**Section 2. The subject property is described as follows:**

**ALL that certain tract, piece or parcel of land, lying and being situate in Lewes and Rehoboth Hundred, Sussex County, Delaware, and lying on the west side of John J. Williams Highway (Route 24) approximately 0.25 mile southwest of Mulberry Knoll Rd. (S.C.R 284) and being more particularly described in the attached legal description prepared by Davis, Bowen & Friedel, Inc., said parcel containing 21.62 acres, more or less**

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