

Sussex County Council Public/Media Packet

**MEETING:
September 14, 2021**

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**Sussex County Council
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COUNTY COUNCIL

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



Sussex County

DELAWARE
sussexcountyde.gov
(302) 855-7743

SUSSEX COUNTY COUNCIL

A G E N D A

SEPTEMBER 14, 2021

10:00 A.M.

Call to Order

Approval of Agenda

Approval of Minutes – August 31, 2021

Reading of Correspondence

Public Comments

Todd Lawson, County Administrator

1. Recognition of former Board of Adjustment members Jeff Hudson and Brent Workman
2. Administrator's Report

Hans Medlarz, County Engineer

1. Sussex County Public Safety Building, Project C19-04
 - A. Revised Change Order 1
2. Davis, Bowen & Friedel – 2019 Miscellaneous Engineering Base Contract
 - A. Amendment 5 – Town of Georgetown Water Interconnection & Wastewater Redirection Additional Funds



John Ashman, Director of Utility Planning & Design Review

1. **Proposed Resolution on the North Georgetown Area of the Sussex County Unified Sanitary Sewer District**

10:30 a.m. Public Hearings

1. **Marlin Cove Expansion of the Sussex County Unified Sanitary Sewer District (Fenwick Island Area)**
2. **Scenic Manor Expansion of the Sussex County Unified Sanitary Sewer District (Mulberry Knoll Area)**

Old Business

1. **“AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM A C-1 GENERAL COMMERCIAL DISTRICT, CR-1 COMMERCIAL RESIDENTIAL DISTRICT AND GR GENERAL RESIDENTIAL DISTRICT TO A GR-RPC GENERAL RESIDENTIAL DISTRICT – RESIDENTIAL PLANNED COMMUNITY FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 64.32 ACRES, MORE OR LESS” (Change of Zone No. 1942) filed on behalf of Bay Developers, LLC (Twin Cedars, LLC) (Tax I.D. No. 533-11.00-42.00) (911 Address: None Available)**

Grant Requests

1. **United Way of Delaware, Inc. (for Sussex County Health Coalition, Inc.) for Delaware Goes Purple substance abuse awareness program**
2. **Laurel Women’s Civic Club for the Wreaths Across America Project**

Introduction of Proposed Zoning Ordinances

Council Members’ Comments

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

Possible action on Executive Session items

Conditional Use No. 2255 filed on behalf of John Sommers

“AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR THE SALE, RENTING, STORAGE, AND REPAIR OF BICYCLES AND RELATED ACCESSORIES TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 2.9 ACRES, MORE OR LESS” (land lying on the northwest side of Roxana Road [Route 17], approximately 0.55 mile southwest of Burbage Road [S.C.R. 353]) (Tax I.D. No.: 134-15.00-95.03) (911 Address: 32650 Roxana Road, Frankford)

Conditional Use No. 2257 filed on behalf of Indian River Volunteer Fire Co., Inc.

“AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A GR GENERAL RESIDENTIAL DISTRICT FOR OUTDOOR BOAT STORAGE AND OVERFLOW PARKING TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 1.006 ACRES, MORE OR LESS” (land lying on the northeast corner of the intersection of Oak Orchard Road [Route 5] and Spruce Street) (Tax I.D. No. 234-34.08-53.00 [part of]) (911 Address: None Available)

Conditional Use No. 2261 filed on behalf of What Is Your Voice, Inc.

“AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR STORAGE UNITS AND OFFICES TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 0.63 ACRES, MORE OR LESS” (land lying on the southeastern side of Shady Road [Route 276], approximately 0.21 mile southwest of Coastal Highway [Route 1]) (Tax I.D. No. 334-6.00-515.00) (911 Address: 17583 Shady Road, Lewes)

Conditional Use No. 2289 filed on behalf of Leah Beach

“AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A C-1 GENERAL COMMERCIAL DISTRICT FOR AN OUTDOOR MARKETPLACE WITH SIMILAR ACTIVITIES AND OFF-SITE PARKING TO BE LOCATED ON CERTAIN PARCELS OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 0.247 ACRES AND 0.327 ACRES, MORE OR LESS” (land lying on the southwestern side of Canal Crossing Road and Central Avenue, approximately 100 feet east of Hebron Road [Route 273] and being on the northeastern corner of Rehoboth Avenue Extended [1A] and Hebron Road [Route 273]) (Tax I.D. Nos. 334-13.20-21.00 & 334-13.19-79.00 [p/o]) (911 Addresses: 19897 Hebron Road & 19826 Central Avenue, Rehoboth Beach)

Conditional Use No. 2278 filed on behalf of Branson James

“AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR AN EVENTS VENUE TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN NANTICOKE HUNDRED, SUSSEX COUNTY, CONTAINING 1.902 ACRES, MORE OR LESS” (land lying on the south side of Dusty Road [S.C.R. 443A], approximately 0.48 mile northwest of East Trap Pond Road [S.C.R. 62]) (Tax I.D. No. 231-22.00-16.00) (911 Address: 17638 Dusty Road, Georgetown)

Adjourn

-MEETING DETAILS-

In accordance with 29 Del.C. §10004(e)(2), this Agenda was posted on September 7, 2021 at 4:20 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://sussexcountye.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://sussexcountye.gov/agendas-minutes/county-council>.

#

SUSSEX COUNTY COUNCIL - GEORGETOWN, DELAWARE, AUGUST 31, 2021

A regularly scheduled meeting of the Sussex County Council was held on Tuesday, August 31, 2021, at 10:00 a.m., in Council Chambers, with the following present:

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

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

**Call to
Order**

Mr. Vincent called the meeting to order.

**M 384 21
Approve
Agenda**

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

Motion Adopted: 5 Yeas.

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

Minutes

The minutes of August 24, 2021 were approved by consent.

**Public
Comments**

Public comments were heard and the following spoke:

William Kinnick, State Advocate for Manufactured Housing and President of the Delaware Manufactured Housing Association, reported on sewer problems in the County and specifically, sewage on the ground in several communities in the County.

**Disposition
of County
Property**

Todd Lawson, County Administrator, presented for Council's consideration the disposition of County owned property that consists of multiple properties in the area of the Delaware Coastal Airport. The disposition is required for the Delaware Department of Transportation's (DelDOT) preferred realignment of Park Avenue around the Airport. There are several properties involved and DelDOT is either acquiring fee simple title or an easement for access. The respective Tax Parcel IDs are: 135-20-31.00, 135-20.00-40.00, 135-20.00-41.00, 135-20.00-51.01, 135-20.00-64.00, 135-20.00-75.00, 135-20.00-75.01, 135-20.00-92.01, and 135-20.00-93.00. The land has been appraised by DelDOT at \$350,000.00 for either the purchase of or access of via easements. Mr. Lawson stated that DelDOT is asking the County to

Disposition of County Property (continued)

donate this land for a minimum price because in Phase 2 of the Park Avenue Project, DelDOT will provide intersection improvements for two entrances to County properties, one at the State Fire Marshal Office's entrance to the Business Park and one at the Baltimore Avenue entrance to the County's Business Park. Mr. Lawson reported that, per the County Property Disposition Policy, County Directors were asked if they had a need for the properties and they do not. The Park Avenue realignment is a joint effort between DelDOT and Sussex County given the mutual benefits each entity will experience from this transportation improvement. The Park Avenue project will improve traffic around Georgetown and will ultimately allow the County to extend Runway 4-22 at the Delaware Coastal Airport. Mr. Lawson noted that, in anticipation of the airport expansion and road realignment, the County began acquiring properties on current Park Avenue as far back as the 1990s.

M 385 21 Approve Disposition of County Property

A Motion was made by Mr. Rieley, seconded by Mr. Hudson, that the Sussex County Council approves the disposition of certain pieces of land located in the area of Park Avenue and the Delaware Coastal Airport identified as Tax Parcel Nos. 135-20-31.00, 135-20.00-40.00, 135-20.00-41.00, 135-20.00-51.01, 135-20.00-64.00, 135-20.00-75.00, 135-20.00-75.01, 135-20.00-92.01, and 135-20.00-93.00; and Be It Further Moved that the Sussex County Council enters into a Purchase Agreement with the State of Delaware Department of Transportation for the acquisition of the same properties for the purpose of constructing Phase 1 of Park Avenue Realignment.

Motion Adopted: 5 Yeas.

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

Administrator's Report

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

1. American Heart Association Mission Lifeline Gold PLUS Award 2021

Sussex County EMS has been awarded the American Heart Association Mission Lifeline Gold PLUS Award. The award recognizes the commitment and success in implementing a higher standard of prehospital care by ensuring that every STEMI patient receives treatment according to nationally accepted recommendations and standards.

Congratulations to Robbie Murray, Director of EMS, and the EMS staff for their efforts in achieving this award (3rd year in a row).

2. Council Meeting and Holiday Schedule

Council will not meet on September 7th. The next regularly scheduled Council meeting will be held on Tuesday, September 14th. In addition,

Report (continued) County offices will be closed Monday, September 6th, for the Labor Day holiday.

On-Call Planning Services RFP Results Jamie Whitehouse, Director of Planning and Zoning, reported on the results of the Request for Proposals (RFP) for On-Call Planning Services for Sussex County. The purpose of the RFP was to seek multiple firms to provide on-call planning services for various projects for a three-year period. The anticipated scope of the services includes but is not limited to: (1) potential text and map amendments to the 2019 Sussex County Comprehensive Plan, (2) updates to existing Ordinances, and (3) miscellaneous planning reports and advice. Mr. Whitehouse reported that four (4) consultant proposals were received. An Evaluation Committee found that all four (4) applicants meet the minimum qualifications to perform the services; thereafter, the Committee, based on the ranking of the four (4) proposals, selected the three highest ranking firms to interview and interviews were held. The Planning and Zoning Department recommends that three-year contracts be awarded to: AECOM Technical Services, Inc., Century Engineering, Inc., and McCormick Taylor, Inc.

In response to questions, Mr. Whitehouse stated that the three firms have a broad expertise across multiple services/subjects. He also stated that the selection of the three firms gives the County access to the strength and expertise of all three of those firms.

M 386 21 Award Agreements/ On-Call Planning Services A Motion was made by Mr. Rieley, seconded by Mr. Hudson, based upon the recommendation of the Planning and Zoning Department, that Sussex County Council awards three-year agreements for On-Call Planning Services to AECOM Technical Services, Inc., Century Engineering, Inc. and McCormick Taylor, Inc.

Motion Adopted: 5 Yeas.

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

EMS 200/ Medic 110 Station/ Change Order and Granting of Final Acceptance Hans Medlarz, County Engineer, presented a Final Balancing Change Order and a request to grant Substantial Completion for the EMS 200/Medic 110 Station, Project C19-08. Mr. Medlarz commented on the encountered difficulties with the generator start-up and the gas feed, and the entrance approval from DelDOT; despite all the encountered difficulties, the Contract did not use all of the contingencies built into the bid. Following a review of the various costs with Whayland, the Engineering Department proposed splitting these expenses and the contingency credit for a net close out Credit Change Order (No. 2) in the amount of (\$6,175.00) bringing the project in under the original contract amount. Additionally, the Engineering Department requests the granting of project final acceptance. Mr. Medlarz noted that everything is finished and an entrance approval has been received and a Certificate of Occupancy has been obtained.

**M 387 21
EMS 200/
Medic 110
Station/
Approve
Change
Order and
Grant
Substantial
Completion**

A Motion was made by Mr. Schaeffer, seconded by Mr. Rieley, based upon the recommendation of the Sussex County Engineering Department, that Change Order No. 2 for Contract C19-08, EMS 200/Medic 110 Station, be approved, decreasing the Contract by \$6,175.00, and that Substantial Completion be granted effective August 17, 2021 with any held retainage released in accordance with the Contract documents.

Motion Adopted: 5 Yeas.

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

**IBRWF
Project
18-19/
Change
Order/
Supple-
mental
Purchase
Order**

Hans Medlarz, County Engineer, discussed the Inland Bays Regional Wastewater Facilities – Biosolids & Septage Facilities Project, Project 18-19. Mr. Medlarz reported that, in early June, the progressive cavity type sludge cake pumps started experiencing operational problems leading to the complete failure of all four units. Investigations revealed foreign matter in the sludge cake had destroyed the stators requiring replacement. In addition, two of the four isolation type pressure sensors were damaged beyond repair. Due to the long lead time, the Engineering and Finance Departments issued an emergency purchase order covering the material purchase as well as the immediate repair of two units using spare parts. In addition, Environmental Services implemented quality control measures to prevent foreign matter from entering the biosolids stream. The Engineering Department is now requesting issuance of a supplemental purchase order to cover the reinstallation of the remaining two pumps and pressure rings in the amount of \$18,222.20.

**M 388 21
Approve
Supple-
mental
Purchase
Order**

A Motion was made by Mr. Hudson, seconded by Mr. Rieley, based upon the recommendation of the Sussex County Engineering Department, that the Sussex County Council approves a Supplemental Purchase Order to Bearing Construction, Inc., in the amount of \$18,222.20 for the reinstallation of repaired pumps and pressure sensors.

Motion Adopted: 5 Yeas.

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

**Herring
Creek
Sewer
District
Area/
WRA
Amend-
ment 4**

Hans Medlarz, County Engineer, discussed the Herring Creek Sanitary Sewer District Construction Administration and Project Inspection (Whitman Requardt & Associates [WRA] – Contract Amendment No. 4). Mr. Medlarz reported that the Herring Creek Project has experienced significant delays beyond reasons justified by the ongoing pandemic and that the Engineering Department has officially issued the liquidated damages and invoked the clause in the contract. The contractor will be charged damages and will be paying for the extra contract administration and inspection

(continued) services. Mr. Medlarz explained that this deals with the supplemental funds needed for the pump station component and reimbursement is in place.

M 389 21 A Motion was made by Mr. Rieley, seconded by Mr. Hudson, based upon the
Approve recommendation of the Sussex County Engineering Department, that
Amendment Amendment No. 4 to the EJCDC Base Engineering Contract for the Herring
No. 4 to Creek Sanitary Sewer District with Whitman Requardt and Associates be
the EJCDC approved in the amount not to exceed \$68,852.00 for additional Construction
Base Administration and Inspection Services for Herring Creek Gravity Sewer
Engineering Construction, Contract 1, contingent upon USDA concurrence.
Contract

for the
Herring
Creek
SSD

Motion Adopted: 5 Yeas.

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

Public
Safety
Building
Project/
C/O

Hans Medlarz, County Engineer, presented a Change Orders for the Sussex County Public Safety Building Project (Project No. C19-04). This Change Order is due to structural steel and lightweight steel price increases.

M 390 21
Approve
Change
Order/
Public
Safety
Building
Project

A Motion was made by Mr. Schaeffer, seconded by Mr. Rieley, based upon the recommendation of the Sussex County Engineering Department, that Change Order No. 1 for Contract C19-04, Sussex County Public Safety Building, be approved, increasing the Contract by the not to exceed amount of \$40,000.00.

Motion Adopted: 5 Yeas.

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

M 391 21
Approve
Change
Order/
Public
Safety
Building
Project

A Motion was made by Mr. Schaeffer, seconded by Mr. Rieley, based upon the recommendation of the Sussex County Engineering Department, that Change Order No. 2 for Contract C19-04, Sussex County Public Safety Building, be approved, increasing the Contract by \$8,800.00 for material price increases in light gauge steel.

Motion Adopted: 5 Yeas.

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

Grant
Request

Mrs. Jennings presented a grant request for the Council's consideration.

M 392 21 Councilmanic Grant **A Motion was made by Mrs. Green, seconded by Mr. Rieley, to give \$2,000.00 (\$1,000.00 each from Mrs. Green’s and Mr. Vincent’s Councilmanic Grant Accounts) to Pop Warner Little Scholars for the Woodbridge Youth Football Association’s equipment and uniform expenses.**

Motion Adopted: 4 Yeas, 1 Absent.

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

Public Hearing/ Chappell Farm Annexation SCUSSD West Rehoboth Area **A Public Hearing was held to consider expanding the boundary of the West Rehoboth Area of the Sussex County Unified Sanitary Sewer District to include a property known as Chappell Farm, LLC (Parcel 235-23.00-1.02). The Engineering Department received a request from Becker Morgan Group, Inc. on behalf of their client, Chappell Farm, LLC, the owners/developers of the project. The project will be responsible for System Connection Charges of \$6,600.00 per EDU based on current rates and an Infrastructure Use Agreement will be required.**

There were no public comments.

The Public Hearing and public record were closed.

M 393 21 Adopt R 019 21 **A Motion was made by Mr. Schaeffer, seconded by Mr. Hudson, to Adopt Resolution No. R 019 21 entitled “A RESOLUTION TO EXTEND THE BOUNDARY OF THE SUSSEX COUNTY UNIFIED SANITARY SEWER DISTRICT (SCUSSD), TO INCLUDE PARCEL 235-23.00-1.02 ON THE WEST SIDE OF COASTAL HIGHWAY. THE PARCEL IS LOCATED IN THE BROADKILL HUNDRED, SUSSEX COUNTY, DELAWARE AND RECORDED IN THE OFFICE OF THE RECORDER OF DEEDS, IN AND FOR SUSSEX COUNTY, DELAWARE”.**

Motion Adopted: 5 Yeas.

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

Introduction of Proposed Ordinances **Mr. Schaeffer introduced the Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR PROFESSIONAL OFFICES TO BE LOCATED ON A CERTAIN PARCELS OF LAND LYING AND BEING IN LEWES & REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 0.68 ACRES, MORE OR LESS” (Conditional Use No. 2264) filed on behalf of Laudan Investments, LLC (Tax I.D. No. 335-8.18-15.00 & 335-8.18-16.00) (911 Addresses: 1302 & 1304 Savannah Road, Lewes).**

**Introduction
of Proposed
Ordinances
(continued)**

Mr. Schaeffer introduced the Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR OUTDOOR EQUIPMENT AND MATERIAL STORAGE AND A DUMPSTER RENTAL BUSINESS TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 5.53 ACRES, MORE OR LESS” (Conditional Use No. 2266) filed on behalf of MDO Dreamlands, LLC (Tax I.D. No. 234-10.00-1.01) (911 Address: 28751 Reid Lane, Harbeson).

Mr. Schaeffer introduced the Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A CATERING BUSINESS TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN CEDAR CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 6.12 ACRES, MORE OR LESS” (Conditional Use No. 2267) filed on behalf of Cynthia Gibbs (Tax I.D. No. 230-20.00-9.10) (911 Address: 11420 Hollytree Road, Lincoln).

Mr. Rieley introduced the Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO AMEND CONDITIONAL USE NO. 1920 (ORDINANCE NO. 2240) TO ALLOW FOR OFFICE SPACE TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 1.35 ACRES, MORE OR LESS” (Conditional Use No. 2271) filed on behalf of Chris Brasure (Tax I.D. No. 533-18.00-25.00) (911 Address: 33095 and 33113 Lighthouse Road, Selbyville).

Mr. Hudson introduced the Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A BOAT SHRINK WRAPPING BUSINESS TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 3.97 ACRES, MORE OR LESS” (Conditional Use No. 2268) filed on behalf of Staci C. and Winfield S. Walls, Jr. (Tax I.D. No. 234-33.00-44.00) (911 Address: 30600 and 30606 Gull Point Road, Millsboro).

Mr. Vincent introduced the Proposed Ordinance entitled “AN ORDINANCE TO AMEND THE FUTURE LAND USE MAP OF THE COMPREHENSIVE PLAN IN RELATION TO TAX PARCEL NO. 234-23.00-270.00”.

The Proposed Ordinances will be advertised for Public Hearing.

**Council
Member
Comments**

Council Member Comments

Mr. Vincent referenced the Buffer and Wetlands Working Group that met several years ago and he stated that an end product was never submitted and

(continued) that he would like to see an overview of those efforts after which Council can discuss how to proceed.

Public Comments It was noted that a member of the public who was present during the entire morning session missed the opportunity to speak under public comments due to a misunderstanding of the County's process.

M 394 21 A Motion was made by Mr. Rieley, seconded by Mr. Hudson, to revert back to Public Comments on the Agenda.

Revert Back to Public Comments Motion Adopted: 5 Yeas.

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

Public Comments Public Comments

Claire Noble spoke regarding development, and specifically developers coming to the Planning and Zoning Commission and to the Sussex County Council, and everyone opposes it, and they get approved for a certain number of buildings after which they come back and ask for more.

M 395 21 At 10:38 a.m., a Motion was made by Mr. Rieley, seconded by Mr. Hudson, to recess the Regular Session and go into Executive Session for the purpose of discussing matters relating to pending/potential litigation and personnel.

Go Into Executive Session Motion Adopted: 5 Yeas.

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

Executive Session At 10:45 a.m., an Executive Session of the Sussex County Council was held in the Basement Caucus Room for the purpose of discussing matters relating to pending/potential litigation and personnel. The Executive Session concluded at 12:21 p.m.

M 396 21 At 12:26 p.m., a Motion was made by Mr. Rieley, seconded by Mr. Schaeffer, to come out of Executive Session and reconvene the Regular Session.

Reconvene Regular Session Motion Adopted: 4 Yeas, 1 Absent.

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

E/S Action There was no action on Executive Session matters.

M 397 21 **A Motion was made by Mr. Rieley, seconded by Mr. Hudson, to recess until**
Recess **1:30 p.m.**

Motion Adopted: 4 Yeas, 1 Absent.

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

M 398 21 **A Motion was made by Mr. Rieley, seconded by Mr. Hudson, to reconvene at**
Reconvene **1:30 p.m.**

Motion Adopted: 5 Yeas.

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

Rules **Mr. Moore read the rules of procedure for Public Hearings.**

Public **A Public Hearing was held on the Proposed Ordinance entitled “AN**
Hearing/ **ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1**
CU 2253 **AGRICULTURAL RESIDENTIAL DISTRICT FOR AN EVENTS VENUE TO BE**
LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN
BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 6.0 ACRES,
MORE OR LESS” (Conditional Use No. 2253) filed on behalf of Chester V.
Townsend IV and Shirley D. Townsend (Tax I.D. No. 134-11.00-2.02 & 134-11.00-
3.00) (911 Address: 32859 & 32805 Vines Creek Road, Dagsboro).

The Planning and Zoning Commission held a Public Hearing on this application on
July 22, 2021 at which time action was deferred. On August 12, 2021, the
Commission recommended approval of the application with conditions.

(See the minutes of the Planning and Zoning Commission dated July 22 and August
12, 2021.)

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

The Council found that Veronica Townsend was present on behalf of the Townsend
family’s application. She stated that they propose to hold very small events on their
property located off of Route 26, including small weddings, bridal and baby
showers, birthday parties, etc.; and that the use will be for “carry in and carry out”
events, i.e. tables and chairs, tents, portable restrooms, etc.; that Fishkiller’s Lobster
Shack was previously located on the property; and that sufficient parking exists.

There were no public comments.

The Public Hearing and public record were closed.

**M 399 21
Adopt
Ordinance
No. 2795/
CU 2253**

A Motion was made by Mr. Hudson, seconded by Mr. Schaeffer, to Adopt Ordinance No. 2795 entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR AN EVENTS VENUE TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 6.0 ACRES, MORE OR LESS” (Conditional Use No. 2253) filed on behalf of Chester V. Townsend IV and Shirley D. Townsend, with the following conditions:

- a. Food and beverage service and music or similar entertainment is permitted. As stated by the Applicant, food and beverage service shall be provided by catering services, as there will not be any kitchen facilities on-site.**
- b. All parking areas shall be shown on the Final Site Plan. No parking shall be permitted on any nearby County roads.**
- c. All entrance locations shall be subject to the review and approval of DelDOT.**
- d. All events shall conclude prior to 10:00 at night.**
- e. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning and Zoning Commission.**

Motion Adopted: 5 Yeas.

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

**Public
Hearing
CU 2256**

A Public Hearing was held on the Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR HARDSCAPING, OUTDOOR LIVING CONSTRUCTION AND A COMMERCIAL BUSINESS TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 6.65 ACRES, MORE OR LESS” (Conditional Use No. 2256) filed on behalf of Jerry Meiklejohn, LLC (Tax I.D. No. 533-5.00-86.00) (911 Address: 32252 Frankford School Road, Frankford).

The Planning and Zoning Commission held a Public Hearing on this application on July 22, 2021 at which time action was deferred. On August 12, 2021, the Commission recommended approval of the application with conditions.

(See the minutes of the Planning and Zoning Commission dated July 22 and August 12, 2021.)

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

The Council found that Mackenzie Peet, Esq., was present with Jerry Meiklejohn, member and owner of Jerry Meiklejohn, LLC. Ms. Peet stated that the Applicant is requesting a Conditional Use to allow him to operate his hardscaping and outdoor living construction business; that his business has been in operation for the past nine years in Sussex County; that when the

**Public
Hearing
CU 2256
(continued)**

application was made, the property was advertised as being 6.6 acres, more or less as a result of a subdivision of land on the other side of the ditch that runs across the property; that the proposed use will occupy 1.5 acres of the remaining 5 acre parcel; however, there was a portion of that property that was subdivided off making it an approximate 5 acre parcel; that the Applicant has received three (3) notices of violation related to the operation of this business – one for running his business from the site, one for the installation of a fence without a building permit, and one for having vehicles stored on unimproved property; that the Applicant applied for and received a permit for the fence; and that the Applicant agrees to the conditions recommended by the Planning and Zoning Commission.

There were no public comments.

The Public Hearing and public record were closed.

**M 400 21
Adopt
Ordinance
No. 2796/
CU 2256**

A Motion was made by Mr. Rieley, seconded by Mr. Schaeffer, to Adopt Ordinance No. 2796 entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR HARDSCAPING, OUTDOOR LIVING CONSTRUCTION AND A COMMERCIAL BUSINESS TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 6.65 ACRES, MORE OR LESS” (Conditional Use No. 2256) filed on behalf of Jerry Meiklejohn, LLC, with the following conditions:

- a. The use shall be limited to the hardscaping and outdoor living construction business proposed by the Applicant, and the storage of equipment and materials associated with that use.
- b. No manufacturing shall occur on the site. This prohibition includes the shredding or grinding of any materials and also includes the dyeing of mulch or similar materials.
- c. As stated by the Applicant, there shall not be any retail sales occurring from the site.
- d. The hours of operation shall be limited to 7:00 a.m. through 7:00 p.m., Monday through Saturday. There shall not be any Sunday hours. The Applicant shall be able to operate beyond these hours on an as-needed basis for limited situations such as snow removal, storm damage clean-up, and similar events.
- e. The on-site storage of stone, dirt, pavers, and similar materials associated with the use shall be in bins or enclosures. The location of these storage areas shall be shown on the Final Site Plan.
- f. Any security lighting shall be screened so that it does not shine on neighboring properties or roadways.
- g. The Applicant shall comply with all DelDOT requirements, including any entrance or roadway improvements.
- h. The Final Site Plan shall clearly show all areas for vehicle and equipment storage and parking, and these areas shall be clearly marked on the site

**M 400 21
Adopt
Ordinance
No. 2796/
CU 2256
(continued)**

- itself. There shall not be any parking or storage within the property's setbacks.
- i. One lighted sign shall be permitted. It shall be no larger than 32 square feet on each side.
 - j. The dumpster location shall be shown on the Final Site Plan.
 - k. Before Final Site Plan approval occurs, the Applicant shall clean up the property and remove any inoperable trucks, trailers, or vehicles. No junked, unregistered, or permanently inoperable vehicles, trucks, or trailers shall be stored on the site.
 - l. The Applicant shall install a privacy fence around the 1.5 acre portion of the property. The location and type of fencing shall be shown on the Final Site Plan.
 - m. Failure to comply with any of these conditions shall be grounds for termination of the Conditional Use approval.
 - n. The Final Site Plan shall depict the 1.5 acre area of this approved Conditional Use. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning and Zoning Commission.

Motion Adopted: 5 Years.

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

**Public
Hearing/
CU 2248**

A Public Hearing was held on the Proposed Ordinance entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A GENERAL RESIDENTIAL DISTRICT FOR MULTI-FAMILY (19 UNITS) TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 3.93 ACRES, MORE OR LESS" (Conditional Use No. 2248) filed on behalf of Gulfstream Development, LLC.

The Planning and Zoning Commission held a Public Hearing on this application on the 22nd day of July 2021 at which time action was deferred. On August 12, 2021, the Commission recommended that the application be approved with the following conditions:

- a. The maximum number of residential units shall be 19.
- b. The Developer and then the condominium association shall be responsible for the perpetual maintenance of the development roadway, buffers, stormwater management facilities, erosion and sedimentation control facilities and other common areas.
- c. All entrance, intersection, roadway and multi-modal improvements shall be completed by the Developer in accordance with all DelDOT requirements.
- d. The project shall be served by Sussex County sewer. The Developer shall comply with all Sussex County Engineering Department requirements including any offsite upgrades necessary to provide service to the project.

**Public
Hearing/
CU 2248
(continued)**

- e. **The project shall be served by central water to provide drinking water and fire protection.**
- f. **There shall be a vegetated or forested buffer of at least 20 feet in width along the perimeter of this development. This buffer shall utilize existing forest or similar vegetation if it 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.**
- g. **As stated by the Applicant, the clearing, disturbance or altering of existing vegetation shall be limited as needed to accommodate proposed construction and for the removal of dead and dying trees which pose a threat to public safety on adjacent private property. The Applicant shall submit as part of the Final Site Plan a landscape plan showing the proposed tree and shrub landscape design, including the buffer areas and the forested areas that will be preserved. This landscape plan shall further identify all “Limits of Disturbance” within the site.**
- h. **Construction activities, including site work and deliveries, shall only occur between 7:30 a.m. and 7:00 p.m. Monday through Friday, and between 8:00 a.m. and 2:00 p.m. on Saturdays. There shall be no construction activities at the site on Sundays. A 24 inch by 36 inch “NOTICE” sign in English and Spanish confirming these hours shall be prominently displayed at all entrances to the site during construction.**
- i. **Street naming and addressing shall be subject to the review and approval of the County Mapping and Addressing Department.**
- j. **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.**
- k. **Any streetlights shall be shielded and downward screened so that they do not shine on neighboring properties or roadways.**
- l. **The interior street design shall meet or exceed Sussex County’s street design requirements.**
- m. **If requested by the local school district, a school bus stop shall be provided. The location of the bus stop shall be shown on the Final Site Plan.**
- n. **The Final Site Plan shall include a grading plan for the site. No building permits shall be issued until an individual lot grading plan has been supplied to and approved by Sussex County. No Certificate of Occupancy shall be issued until a grading certificate is submitted to the Building Code Department demonstrating general conformity with the individual site grading plan.**
- o. **Failure to comply with any of these conditions shall be grounds for termination of the Conditional Use approval.**
- p. **The Final Site Plan shall be subject to the review and approval of the Sussex County Planning and Zoning Commission.**

**Public
Hearing/
CU 2248
(continued)**

(See the minutes of the Planning and Zoning Commission dated July 22 and August 12, 2021.)

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

Mr. Whitehouse reported that 13 letters have been received in support of the application and 11 letters have been received in opposition to the application.

The Council found that Jeff Clark of Land Tech Land Planning was present on behalf of the Applicant, Gulfstream Development, LLC; that also present was Robert Harris, the Applicant and Developer, and Ronald Sutton, Professional Engineer. They stated that the project site is the location of a previous application in October 2019, known as Kent Apartments (Change of Zone No. 1895 and Conditional Use No. 2195); that both the Change of Zone and Conditional Use applications were approved; that this application (Conditional Use No. 2248) introduces a totally different land use; that at the prior public hearings, the neighbors made it clear they prefer single family homes to be constructed on this property; that the site, as surveyed, is 3.93 acres and is located at the intersection of Parker House Road and Muddy Neck Road; that the project site is located just outside the municipal limits of the Town of Ocean View; that the entire project site is currently owned by Gulfstream Development, LLC; that the area surrounding the site is a mixture of residential development, including a manufactured home subdivision, a multi-family townhouse community, and neighborhood business uses; that this is an in-fill project; that they propose 19 separate detached single family homes; that the homes would be arranged in groups of 2 and 3 with a 15 foot separation between individual homes; that groups of homes would be separated by the Code required distance of 40 feet; that each home will have four (4) parking spaces plus additional guest parking; that there are no jurisdictional wetlands on the site; that a small ephemeral ditch was identified on the western portion of the site and the ditch is no longer jurisdictional; that an existing 8-inch Sussex County sewer lateral has been extended into the property from Mimosa Street within the adjoining Shady Dell Park Subdivision; that sewer service would be provided by Sussex County; that water would be provided by Tidewater; that there is a single commercial entrance plan off of Muddy Neck Road to align with an existing subdivision street called Butler Blvd. per DelDOT's recommendation; that DelDOT has stated that the proposed plan will generate fewer than 50 vehicle trips in any hour, fewer than 500 trips daily; that DelDOT did not require a Traffic Impact Study; that DelDOT characterized the traffic impact as negligible; that DelDOT will require the Developer to improve both Muddy Neck Road and Parker House Road along the entire site frontage; that the project is located in Investment Levels 3 and 4 according to the Strategies for State Policies and Spending; that no streetlighting is proposed and all exterior lighting will be on the homes themselves and will be directed downward; that the property is located in the Coastal Area; that drainage flow is from west to east ending in the Assawoman Canal; that a new ditch system is proposed to be installed on the edge of the site between Providence and this project; that the new ditch will most likely pool into the project's stormwater management

**Public
Hearing/
CU 2248
(continued)**

system; that the stormwater management system will meet or exceed DNREC's requirements; that they propose to put in a pipe that will run Shady Dell's drainage through this project's site and out to Muddy Neck Road, where it is supposed to go and this should correct stormwater management issues in the Shady Dell Subdivision; that in regards to Providence, the project site does not have any stormwater going towards Providence and there is no stormwater from Providence coming to this project. Mr. Clark stated that they have submitted a revised site plan that addresses the recommendations from the Planning and Zoning Commission, showing the storm pipe, showing the 20 foot buffer, showing a 20 foot drainage easement allowing the storm pipe to direct Shady Dell's water out to be intercepted at a culvert that passes water along Muddy Neck Road and sends it to the drainage ditch and to the Assawoman Canal; that the ditch system and the inlet need to be cleaned out, correcting years of neglect and maintenance that has not taken place; that in comparison to the original site plan, they had to show a 20 foot buffer, eliminated the center pond and made one larger wet pond along Muddy Neck and Parker House Road; that it will be a standard wet pond discharging into the DelDOT drainage system which will require Sussex Conservation District approval as well as DelDOT approval; that the ditch is not a tax ditch and the property will drain into DelDOT's right-of-way; that the ditch is a private ditch; that this project does not discharge to tidal waters; that in regards to work required by DelDOT, both roads will need to be upgraded (12 foot lanes with 8 foot shoulders – their side of the road only); that they have to put a shared use path all along the frontage; that the revised plan does not propose to remove any vegetation that exists in the buffer areas; that the project site is located in a Town Center according to the Comprehensive Plan; and that the proposed project is in accordance with the Comprehensive Plan and the Future Land Use Map.

Mr. Clark stated that the Applicant is in agreement with all of the conditions recommended by the Planning and Zoning Commission with the exception of of Condition 8-1; that they request that Condition 8-1 be stricken since the proposed project is not a subdivision and therefore the stated condition does not really apply.

In reference to Condition 8-o, Mr. Schaeffer noted that the word "shall" was included and that, in a previous conversations on a different application, the word "shall" was amended. Mr. Moore noted that the word "shall" in Condition 8-o is appropriate in the way the condition is worded.

In regard to the Applicant's request to strike Condition 1, Mr. Rieley questioned Mr. Whitehouse. Mr. Whitehouse stated that the purpose of the proposed condition is to address appropriate street width to permit two travel lanes, and that a preliminary design has been submitted and the Condition could be stricken without significantly impairing what the County is trying to achieve. Mr. Whitehouse noted that the Site Plan will still require approval by the Planning and Zoning Commission, so that if the condition is removed it does not prevent the Commission from having that control later on. Mr. Whitehouse suggested that Condition 1 could be amended to read that "The

**Public
Hearing/
CU 2248
(continued)**

driveway design shall include a cross-section drawing to be included in the Preliminary and Final Site Plan.”

Public comments were heard.

There were no public comments in support of the application.

The following spoke in opposition to the application: Ted Schonbrunner, Diana Emlet, and Patrick Emlet. Ted Schonbrunner, resident of Shady Dell, expressed concerns about the quality of the soils; that the quality of the soil is poor for drainage purposes; that it is not going to perk; that the original proposal had two stormwater ponds; that the amended proposal has one stormwater pond; that he questions the capacity of the stormwater ponds, especially the capacity of the pond during a 100-year storm; that the eleven letters received came from Salt Air and they do not live “here”; and that drainage is a major concern. Diana Emlet, resident of Providence, commented on the Applicant’s reference to an ephemeral ditch and stated that she supports the moving and improving of the ditch, as proposed; that the site is very vegetated and wooded which has helped with stormwater; that she questions the density of the parcel and stated a prior application came before the Council two years ago and the Council determined by a 5-0 vote that the maximum number of units on this property would be 16 for the entire property; that she asks the Council to go back to the 16 units instead of the 19 proposed; that flooding and standing water in the area are a concern; that she questions if the 20 foot buffer is to be all around the property or only along Providence; that she questions if the 19 homes will still fit with a 20 foot buffer; that she questions if there will be a 20 foot buffer and a 10 foot setback for the yards; that the Applicant stated they would fence the entire inner perimeter of this property along Shady Dell and Providence; that she questions what type of fence is proposed; that the fence should shadow car lights from shining into everyone’s back yards; and that she questions the proposed easement on Lot 6 and Shady Dell does not want it; and that on the new plan, it does not appear that the 13 extra parking spots are included; and that, if the ditch is going to go to Muddy Neck, there is a ditch that goes all along the Neck, and she questions if that will affect that ditch at all. Patrick Emlet of Providence referenced a 20 foot buffer area and the fence along the property line shared with Providence (It was noted that this was not in the minutes. Mr. Clark stated a silt fence was referenced on the project side of the 20 foot buffer.) Mr. Emlet stated that it was noted that this project would look exactly like the Salt Air project; however, Salt Air has an eight to ten foot fence along two of the back property boundaries, so he questions how the Applicant states it will look like Salt Air; and that he wants the buffer and the fence.

In response to questions, the Applicant stated that there are fewer parking spaces on the revised site plan; that there will be 6 overflow parking spots instead of 16; that 6 parking spots will fit in the driveway and underneath of the houses; and that there is more than ample parking when considering Code requirements.

**Public
Hearing
(continued)**

There were no additional public comments.

The Public Hearing and public record were closed.

**M 401 21
Defer
Action on
CU 2248**

A Motion was made by Mr. Hudson, seconded by Mr. Rieley, to defer action on Conditional Use No. 2248 filed on behalf of Gulfstream Development, LLC.

Motion Adopted: 5 Yeas.

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

**Public
Hearing/
CZ 1931**

A Public Hearing was held on the Proposed Ordinance entitled “AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A MR-RPC MEDIUM DENSITY RESIDENTIAL DISTRICT – RESIDENTIAL PLANNED COMMUNITY AND TO AMEND THE CONDITIONS OF APPROVAL OF CZ 1768 (ORDINANCE 2411) TO INCREASE THE GROSS SITE AREA BY 5.253 ACRES AND TO INCREASE THE NUMBER OF PERMITTED UNITS WITHIN THE RESIDENTIAL PLANNED COMMUNITY FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 56.372 ACRES, MORE OR LESS” (Change of Zone No. 1931) filed on behalf of Lighthipe, LLC (Tax I.D. No. 134-17.00-12.02) (911 Address: None Available).

The Planning and Zoning Commission held a Public Hearing on this application on July 22, 2021 at which time action was deferred. On August 12, 2021, the Commission recommended approval with the following conditions:

- a. This 5.253 acre parcel shall only be developed with single family lots. No townhomes or multi-family homes shall be permitted in this location.**
- b. Condition A of Ordinance No. 2411 is hereby removed and the new Condition A shall be inserted in its place, as follows: “The maximum number of residential units shall not exceed 164 units, which shall consist of 120 single family units and 44 townhouse units, plus the single family lots permitted under Change of Zone No. 1931 on the 5.253 acre parcel that is added to the Residential Planned Community.”**
- c. The Site Plan for this additional 5.253 acres shall be designed so that there is a twenty (20) foot forested buffer set back an additional twenty feet from the perimeter of the site along the common boundary with Ocean Way Estates.**
- d. All roads providing access to the new single family lots shall be designed and oriented to minimize headlights shining into properties within Ocean Way Estates. If necessary, additional landscaping shall be added and**

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Hearing/
CZ 1931
(continued)**

- shown on the RPC Master Plan to screen headlights from the Ocean Way Estates subdivision.
- e. The lots within this additional 5.253 acres shall have access from Muddy Neck Road via the existing streets and roads within the Ocean View Beach Club community.
 - f. All other conditions of the RPC approved as Ordinance No. 2411 and Change of Zone No. 1768 shall remain in effect, and the 5.253 acre parcel that is the subject of this Change of Zone No. 1931 shall be bound by those existing conditions of approval.
 - g. The Developer shall submit a revised Master Plan for the entire RPC, including the single family lots within the additional 5.253 acres, for review and approval by the Sussex County Planning and Zoning Commission.

(See the minutes of the Planning and Zoning Commission dated July 22 and August 12, 2021.)

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

Mr. Whitehouse reported that 55 letters of opposition have been received.

Mr. Whitehouse reported that a revised Exhibit Book was submitted by the Applicant and copies have been distributed to the Council members.

The Council found that David Hutt, Esq., was present with Zac Crouch of Davis Bowen & Friedel, Inc. and Spencer Van Schaack, a representative of Lighthipe, LLC.

Mr. Hutt stated that the application is for the expansion of the Ocean View Beach Club North community; that Lighthipe, LLC is the Applicant and the owner of the property; that this application is for a parcel of land that is just over 5.25 acres located along Muddy Neck Road; that the parcel can best be described as a flag-shaped parcel located between Ocean View Beach Club North and Ocean View Beach Club South; that the "pole" of the flag shape is a narrow strip of land that extends out all the way to Muddy Neck Road; and that the narrow strip of land does not get used for any type of exit or entrance. Mr. Hutt reviewed a brief history of the property and the ownership of the properties by Mary Lighthipe. He stated that Ocean View Beach Club South was annexed into the Town of Ocean View and the project was approved by the Town of Ocean View; that Ocean View Beach Club North was approved by Sussex County Council by Ordinance No. 2411 in 2015; that during the public hearings in 2015, it was indicated that the 5 acres would be retained with the intention of a church location in the future; that no church was placed and the land was sold to Lighthipe, LLC; that the current application is similar to the approval of Ordinance No. 2411; that the 5 acres is zoned AR-1 and the request is to change the zoning to MR and to modify the boundaries of the existing RPC so that the 5 acres are included within that RPC; that with respect to the amendment to the RPC, the request

**Public
Hearing/
CZ 1931
(continued)**

is to adjust the number of units so that there would be a total of 173 units with 132 single family homes and 41 townhome units; that this is different than what was presented to the Planning and Zoning Commission; that what was presented to the Planning and Zoning Commission was for 184 total units; that the Applicant had submitted for 21 townhomes for the 5 acre site and the Planning and Zoning's recommendation was that there not be townhome units there and that there be single family homes instead; and that the proposal for this site consists of 10 single family homes rather than the 21 townhome units that were proposed. Mr. Hutt stated that the property is presently unimproved and is used as a staging area for ongoing construction of the Ocean View Beach Club community; that the site is located in the Investment Level 2 Area according to the Strategies for State Policies and Spending; that the site is located in the Coastal Area which is a growth area; that DelDOT did not require a Traffic Impact Study; and that DelDOT considers the traffic impact to be negligible. Mr. Hutt reviewed the surrounding area and noted that the project is consistent with the surrounding area.

Mr. Hutt explained that, in comparison to the plan presented to the Planning and Zoning Commission, there is a single family home that is eliminated which becomes the entrance into the 5 acres; that a proposal for 21 townhomes was presented to the Planning and Zoning Commission and the Applicant; that after listening to the comments of the residents and neighbors and the discussion of the Commission, a new plan was prepared showing 10 single family homes.

Zac Crouch reviewed the site plan, including the changes made to the site plan in response to concerns and issues raised by the Town of Ocean View and concerns and issues raised by the Planning and Zoning Commission. The changes include the removal of the 21 townhouses and substituting 10 single family lots; sidewalks on both sides; additional buffering in two areas; and additional landscaping. He noted that a cul-de-sac was not provided and that their proposal meets Fire Marshal requirements. Mr. Crouch noted that the new plan has been submitted to the Council and is now a part of the record.

Mr. Hutt stated that the MR zoning classification permits 4 dwelling units per acre as its base density where public water and sewer are available to the site; and that the new plan results in a gross density of just under 2 units per acre. He stated that the 5 acres would be integrated into and become a part of the Ocean View Beach Club community, and become part of the property owners association and also be able to utilize the amenities in the Ocean View Beach Club community. That another reason for using the RPC tool was to increase the open space for the overall project; that the proposed site plan contains approximately 60 percent open space which would be added to the entirety of the Ocean View Beach Club community.

**Public
Hearing/
CZ 1931
(continued)**

Mr. Hutt responded to comments made at the Planning and Zoning Commission's public hearing and correspondence received. He stated that numerous allegations were made that the Applicant misled the individuals who were future purchasers of property in Ocean View Beach Club regarding the future use of this specific 5 acres. He stated that this is incorrect and he provided supporting comments for his statement.

Public comments were heard.

There were no comments in support of the application.

Public comments were heard in opposition to the application.

Kaan Ekiner, Esq., stated that he was speaking on behalf of a group of concerned homeowners in Ocean View Beach Club Homeowners LLC in opposition to the application. He commented on representations made from the builder/developer to his clients in regard to misrepresentations to people buying land; that people paid a premium for lots that are adjacent to the project site; that in Ordinance No. 2411, there is reference made as to what would happen to the property and how it was deeded at the time; that there was a representation made that the land would not be developed; that in regards to the amended plan, the amendment was not reflected on the website and his clients ask that action be deferred on the application so that all parties can look at the amended plan; that in regards to the site plan, the surrounding communities do not have a dead end street and that a cul-de-sac could be provided which would cut back on light pollution.

Elaine Cziraky of Ocean Way Estates spoke in opposition to the application and expressed concerns about property values, the new plan that was submitted for this public hearing and the short notice of the new plan, and the non-jurisdictional property ditch that is vital and needs to be properly maintained. She stated that the ditch is on the County side and is owned by the Developer; that in the original conditions of approval of Ordinance No. 2411, it states that all existing ditches will remain and be cleaned out; that there has been no cleaning of the ditch; that the ditch has been filled in near 3 1/2 homes; that there is standing water in back yards as a result of that ditch being filled in; that she sees vehicles, including construction vehicles, using the "flag pole" portion of the property; that she wants the ditch protected; that she is concerned about the size of the buffer along the ditch, stating that there should be a 50 foot buffer; and that in regard to street orientation, a cul-de-sac would be better than a straight street. She stated that other concerns include lighting, especially with a straight street; that the Planning and Zoning Commission asked the Developer to address lighting concerns and she does not see that the new site plan does that; that trees will not address lighting concerns; that seeing the amended plan for the first time on this date is inadequate and wrong; that traffic and traffic patterns in surrounding communities should be considered; that although they are cutting the plan down to 10 homes, there are some errors: the final site plan for Ordinance No. 2411 for Ocean View Beach Club North has traffic data

**Public
Hearing/
CZ 1931
(continued)**

which indicates that the speed limit on Muddy Neck Road is 45 mph and that plan is incorrect, the speed limit was reduced to 35 mph due to safety concerns, and the speed limit was incorrectly assessed and it was an incorrect assumption on the plan. She stated that their roads are over-burdened now; that they are unable to control traffic through the community, where a cut-through exists; that she asks Council to please review the traffic; that the project will impact existing neighborhoods; that DelDOT has made recommendations and none of that is reflected in the plans; that once the rezoning happens, the public process ends; and that what really happened is that the Developer bought the entire 54 acres all at the same time and in the original ordinance of approval it stated that the Developer had no intention to build on the 5 acres for the reason that it was going to be used by the church; that there is an important distinction on whether that was a separate transaction and a separate sale or whether it all happened up front – and it happened up front, and it was an assumption when he got the original approval that he owned all the land and it was a single purchase and the Developer stated his intention in his original request for approval.

Frankie Schiefer stated her opposition to the application and stated that she paid a premium for her lot.

Jeff Ondo stated that when he purchased his house, paperwork stated that the lot will not be built on and that it would be a church; that he is opposed to the dead-end street; that he has concerns about the buffers, ditches, noise and light pollution; and that this application needs to go back to planning. Mr. Ondo referenced the 55 letters of opposition.

There were no additional public comments.

Mr. Ekiner stated a misrepresentation/correction – that it was not a May 2015 meeting, it was an October 2020 HOA meeting when his clients asked representatives of the Developer whether plans would be submitted to develop that property and the response from the Developer's representative was "no", but about a month before, plans had already been submitted.

Mr. Hutt stated that this is not the forum if someone has a complaint (regarding the dispute of fact) and that he does not think there is a misrepresentation. Mr. Hutt stated that the plans went through the PLUS process; that the application was pending at the County; that the Final Site Plan approval by the Sussex County Planning and Zoning Commission was in 2017; that when the owner of this property closed on the property, they did close on the entire property at one time, but they did not have permission to seek approval of all of the acreage at one time because the church anticipated at that time having a church on the 5 acres; that when the application went through, his client did not have the authority to zone that 5 acres because the church had an intention for it; that there is an easement agreement for the church to drive through Ocean View Beach Club; that this is what was intended when the application was processed in 2015; that when they closed on the property three to four years later, the church had decided

**Public
Hearing/
CZ 1931
(continued)**

not to do that and his client ended up having to purchase the entire property at once with 49.5 acres zoned one way and 5.5 acres zoned another way.

The Public Hearing and public record were closed.

**M 402 21
Defer
Action on
CZ 1931**

A Motion was made by Mr. Hudson, seconded by Mr. Rieley, to defer action on Change of Zone No. 1931 filed on behalf of Lighthipe, LLC.

Motion Adopted: 5 Yeas.

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

**M 403 21
Adjourn**

A Motion was made by Mr. Rieley, seconded by Mr. Schaeffer, to adjourn at 4:46 p.m.

Motion Adopted: 5 Yeas.

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

Respectfully submitted,

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

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

ENGINEERING DEPARTMENT

HANS M. MEDLARZ
COUNTY ENGINEER

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

hans.medlarz@sussexcountyde.gov



Sussex County

DELAWARE
sussexcountyde.gov

Memorandum

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

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

RE: *EMS Public Safety Building – Project C19-04*
A. Revised Change Order No. 1

DATE: September 14, 2021

The single Public Safety Building concept was first introduced in the FY 2019 Budget Ordinance. The building's purpose is to consolidate all EMS training, administration, and logistics functions in one facility replacing the current locations. 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. At this stage in process, the anticipated overall project expenses are well within budget.

The programming and design effort required professional services and, following a publicly advertised request for proposal 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 to be billed in accordance with GMB's audited hourly rates.

The State's fire prevention code 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. To avoid unnecessary mark-up expenses Council authorized a \$31,720.00 stand-alone purchase order to RMF Engineering for these specialty design services.



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 several breakout specialty scopes for procurement under Cooperative Purchasing Agreements. This increased the project design complexity and on March 23, 2021 Council approved 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.

On June 4, 2021, invitations to bid for the Sussex County Public Safety Building, Project C19-04 were publicly advertised, forwarded directly to contractors and made available on the County website. Twenty-four (24) plan holders attended the pre-bid and on July 14, 2021, eight (8), tightly spaced, bids were received. Bancroft Construction Company of Wilmington, Delaware submitted the lowest, responsive base bid of \$8,282,169.00.

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, Council approved change order No. 1 on August 31, 2021 in the not to exceed amount of \$40,000 and change order No. 2 in the amount of \$8,800 for 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" to their subcontractor Iron Works, Inc. on August 30th they in turn issued material purchase orders. However, the material suppliers responded that material quotations are only binding for one week due to supply chain impact as a result of the volatile steel market associated with the pandemic. In consultation with the County Leadership the Engineering Department authorized Bancroft to lock in at the August 30th material costs triggering a revision to change order no. 1. The Engineering Department now requests County Council's approval of a change order no. 1 revision to a fixed amount of \$62,829.00.

The Department is also working on a County initiated proposed change order no.3 for filtration system safety upgrades paid for through relief funds as well as proposed changed order no. 4 for a Fire Marshall required secondary mezzanine exit. These will be presented in the near future when design and cost implications are finalized.



**SUSSEX COUNTY
CHANGE ORDER REQUEST**

A. ADMINISTRATIVE:

1. Project Name: **SUSSEX COUNTY PUBLIC SAFETY BUILDING**
2. Sussex County Project No. C19-04
3. **Revised** Change Order No. 1
4. Date Change Order Initiated - 9/10/21
5.
 - a. Original Contract Sum \$8,282,169.00
 - b. Net Change by Previous Change Orders \$ 0
 - c. Contract Sum Prior to Change Order \$8,282,169.00
 - d. Requested Change Not To Exceed \$ 62,829.00
 - e. Net Change (No. of days)
 - f. New Contract Amount \$8,344,998.00
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:
Structural steel supply increase per item.

D. JUSTIFICATION FOR CHANGE ORDER INCLUDED?

Yes No

E. APPROVALS

1. Bancroft Construction Company, Contractor

Michael F. Kalafut 9/10/21
Signature Date

MICHAEL F. KALAFUT
Representative's Name in Block Letters

2. Sussex County Engineer

Signature Date

3. Sussex County Council President

Signature Date



IRON WORKS INC

Structural and Miscellaneous Steel Fabrication & Erection

14726 Gravel Hill Rd. • Milton, DE 19968 • (302) 684.1887 phone • (302) 684.1980 fax

Michael Kalafut

08/31/2021

Bancroft Construction Company
1300 North Grant Avenue, Suite 101
Wilmington, DE 19806

RE: Sussex County Public Safety Building.

Michael,

I am sure you are aware that structural steel, joist, and decking has been going through continuous price increases since Covid-19 pandemic has begun.

We are sending you this notice to inform you that the steel, joists, and decking included in our revised bid dated **8-12-2021** cost from the steel suppliers (Durrett Sheppard, Infra-Metals and Triad Metals) and Canam Steel Corporation of a combined total amount of **\$560,431.00** has increased.

Our proposal has been revised with the current material prices from the above-mentioned suppliers (as of **8-31-2021**) showing the cost increase to **\$583,260.00**, an increase of **\$22,829.00**.

We have revised our proposal to show this increase and noted the price is good for seven days and then subject to possible steel increases.

We are also requiring the project owner to agree to paying for stored material net 30 days after purchase to help lock in pricing.

Thank you,

Bob Chille

Bob Chille

Estimator

IRON WORKS, INC.

14298 Isaacs Road

Milton, DE 19968

PH: (302) 684 – 1887

bobchille@ironworksde.com

Steel Material Price Increase

	<u>8 – 12 - 21</u>	<u>8 – 31 - 21</u>	<u>Increased Amount</u>
<u>Durrett Sheppard</u> -	<u>26,865.00</u>	<u>29,169.00</u>	<u>2,304.00</u>
<u>Infra – Metals</u> -	<u>24,115.00</u>	<u>27,244.00</u>	<u>3,129.00</u>
<u>Triad Metals</u> -	<u>105,341.00</u>	<u>109,572.00</u>	<u>4,231.00</u>
<u>SUBTOTAL</u> -	<u>156,321.00</u>	<u>165,985.00</u>	<u>9,664.00</u>
<u>Canam Steel Corp.</u> -	<u>396,750.00</u>	<u>417,275.00</u>	<u>20,525.00</u>
<u>GRAND TOTAL</u> -	<u>553,071.00</u>	<u>583,260.00</u>	<u>30,189.00</u>

Current increase amount \$30,189.00 minus \$7,360.00 from previous anticipated increase to arrive at \$22,829.00 that will make our current Bid amount of \$832,829.00.

ENGINEERING DEPARTMENT

HANS M. MEDLARZ
COUNTY ENGINEER

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Sussex County

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Memorandum

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

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

RE: *Davis, Bowen & Friedel – 2019 Miscellaneous Engineering Base Contract A. Amendment No. 5 – Town of Georgetown Water Interconnection & Wastewater Redirection Additional Funds*

DATE: September 14, 2021

The Delaware Coastal Business Park receives potable water services as well as separate fire protection services through the County while the entities located at the Coastal Airport along Rudder Lane, receive integrated water services from the Town of Georgetown. The potable County system and the Town's integrated water system are not interconnected despite only being separated by the main airport runway. On September 25, 2019 the Town Council of Georgetown approved the design and construction of an interconnection under a cost share basis in addition to the ability to buy or sell water at the established in Town rate. On October 8, 2019 County Council granted approval in principle of the draft Water Interconnection Agreement. Since then the Town requested some minor modifications most notable a \$50,000 cap on the cost share. The Engineering Department believes this to be a reasonable cap and recommends granting final agreement approval.

The Delaware Coastal Business Park, as well as the entities located at the Coastal Airport along Rudder Lane, receive wastewater treatment services from the Town of Georgetown under the April 23rd, 2008 Agreement last amended by addendum on August 14, 2018.

Given the limited availability of municipal sewer capacity, the Agreement allows for the surrender of capacity under Article VIII by redirecting it to alternate wastewater service providers. It currently reads: "Contract User has the option to surrender capacity below the Base Flow Volume with twelve (12) months prior written notice. If Contract User surrenders 100% of the capacity, Owner has the option to request flow reversal from Owner to Contract User up to 200% of said capacity." This option allows the Town to regain capacity beyond the



County flows without initial capital contribution, while allowing the County to recuperate all capital funds over the life of the investment.

The Finance and Engineering Departments had recommended approval of the capacity surrender as outlined in the Agreement and on October 8, 2019 Council concurred. On June 24, 2020 Town Council voted to accept the County's surrender notice as per Article VIII of the 2008 Agreement as amended and in return exercised the Town's option to request inclusion of 200% of the surrendered capacity in the design and construction of the interconnection.

On May 14, 2019, County Council awarded a five (5) year base contract for miscellaneous engineering services to Davis, Bowen & Friedel, Inc. On June 30, 2020 County Council approved Scope Amendment No. 3 covering limited topographic survey and preparation of the construction documents for the water interconnection as well as the sewer extension to the handshake point with Artesian Wastewater Management, Inc. on Park Avenue on an hourly basis with rates approved under the base contract in the not to exceed amount of \$50,000.00.

Permitting of the sewer force main alignment along the DelDOT controlled railroad right-of-way proved to be challenging. In addition, the location of the ESNG high pressure gas main required additional survey and design considerations. The final alignment will encompass all of the issues and an additional easement on private property. Davis, Bowen & Friedel, Inc. proposed to perform the additional scope at a not to exceed cost, based on the originally awarded hourly rates of \$25,000.00. The Engineering Department recommends approval of Scope Amendment No. 5 in said not to exceed amount.

This is **EXHIBIT K**, consisting of **[6]** pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated 08/13/2019.

**AMENDMENT TO OWNER-ENGINEER AGREEMENT
Amendment No. 5**

The Effective Date of this Amendment is: July 13, 2021

Background Data

Effective Date of Owner-Engineer Agreement: 08/13/2019

Owner: Sussex County

Engineer: Davis, Bowen & Friedel, Inc.

**Project: Town of Georgetown Water Interconnection & Wastewater
Redirection Additional Funds**

Nature of Amendment:

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

Description of Modifications:

This Amendment includes modifications to Exhibit A – Engineer’s Services, to include work per DBF Proposal dated September 9, 2021, and the selection and use of Exhibit C, Compensation Packet AS-1, for Standard Hourly Rates.

Agreement Summary:

Original Agreement Amount:	\$ <u>0</u>
Net Change for prior amendments:	<u>\$107,000.00</u>
This amendment amount:	<u>\$ 25,000.00</u>
Adjusted Agreement amount:	<u>\$132,000.00</u>

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

OWNER:

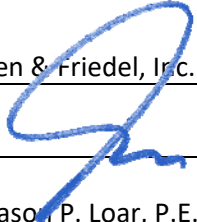
By: _____
Print name: _____

Title: _____

Date Signed: _____

ENGINEER:

Davis, Bowen & Friedel, Inc. _____

By:  _____
Print name: Jason P. Loar, P.E. _____

Title: Principal _____

Date Signed: September 10, 2021 _____

PREVIOUSLY APPROVED FORM

ATTEST:

Ms. Robin Griffith
Clerk of the County

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

September 9, 2021

Sussex County Engineering
Sussex County Administrative Office
2 The Circle
P.O. Box 589
Georgetown, Delaware 19947

Attn: Mr. Hans Medlarz
County Engineer

RE: Amendment No. 5 – Engineering Base Contract
Professional Engineering Services
Sussex County – Town of Georgetown
Wastewater Redirection
Sussex County, Delaware
DBF #P1897B21.039

Dear Mr. Medlarz:

Davis, Bowen & Friedel, Inc., (DBF) is pleased to submit this amendment to the Engineering Base Contract for providing Survey, Design, and Permitting Phase services for the above-referenced project. In coordination with Artesian Wastewater Services, DelDOT, and Maryland and Delaware Railroad a change in the scope of work is required for the force main and pump station from the Airport to the connection point with Artesian.

A description of our proposed scope of services and associated fees for each portion of the work is as follows.

A. DESIGN AND PERMITTING

Utilizing the survey information obtained in Amendment 3 along with information provided by the County and Town including, but not limited to, available plans from past projects, flows, etc., our office will revise the previous force main layout and pump station prepared in Amendment 3 to complete the project construction documents and obtain construction permits for the project as described in the introductory section of this proposal. This work shall include:

- Preparation of plans and details for the proposed wastewater redirection. Work will include, but not limited to, station along with upgrades to the Stevenson Lane facility including new pumps, electrical, yard piping, valving, forcemains, required

connections, and ancillary items. The existing pump station within the Airport will be converted to a manhole and a new pump station will be constructed and the force main will be extended to the new connection point and updated to meet the requirements of DelDOT and the Railroad. All work will be in accordance with the latest Sussex County and/or State standards.

- Preparation of pre-final design documents consisting of construction drawings, contract documents and specifications, including a meeting with the County and Town to review prior to sending out for construction permitting.
- Preparation of submittals to Sussex County, Sussex Conservation District, Delaware Department of Natural Resources and Environmental Control (DNREC), Delaware Health and Social Services (DHSS) Division of Public Health, Office of Engineering and other agencies as necessary to obtain construction permits. *(Please note the County will be responsible for any fees associated with agency submittals.)*
- Address agency comments and resubmit for obtaining final plan approval and approval.

B. FEES

We propose to complete the proposed scope of services as described above for the following estimated fees:

Wastewater Redirection Estimate Fee: \$25,000.00

C. EXCLUDED SERVICES

Excluded from our above scope of services is work associated with the following services. If required, this work can be performed on a unit price basis or under a separate proposal to the County.

- Wetlands Delineation and Permitting
- Archaeological Surveys and Permitting
- Phase 1 or 2 Environmental Assessments or Permitting
- Easement Acquisition Services and Coordination and Preparation of Easement Plats
- Bid Phase Services
- Construction Administration/Inspection Services
- Construction Survey Services
- As-Built Surveys
- Application and Permit Fees
- Financial Administration Services
- Reimbursable Expenses

Proposal: Sussex County Engineering
Amendment No. 5 Engineering Base Contract
September 9, 2021
Page 3

We propose to complete the proposed scope of services as described for the fees identified above. Billing of lump sum fees will be based upon percentage of work completed during the previous month. Hourly or estimated fees, additional services, and direct or reimbursable expenses will be provided on an hourly and unit price basis and invoiced for work completed during the previous month in accordance with the enclosed Schedule of Rates. We will not exceed the estimated fees without first notifying you and receiving written authorization to continue.

Should you find this proposal acceptable, please execute below and return one (1) copy to us and retain one (1) copy for your files. Receipt of the signed copy will be considered our authorization to proceed.

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

Sincerely,
DAVIS, BOWEN & FRIEDEL, INC.



Ring W. Lardner, P.E.
Principal

Attachment

\\Proposal\....Co Proposals\Sussex\Sussex County\2021\P1897B21.039 County-Georgetown Water-Wastewater Amendment5

ACCEPTED BY:

Signature

Date

Printed Name

DAVIS, BOWEN & FRIEDEL, INC. ("DBF")
SCHEDULE OF RATES AND GENERAL CONDITIONS
SUSSEX COUNTY ON-CALL SERVICES
 Effective June 11, 2019

CLASSIFICATION

HOURLY RATE

Principal	\$190.00
Senior Architect	\$170.00
Architect	\$130.00
Senior Landscape Architect	\$170.00
Landscape Architect	\$130.00
Senior Engineer	\$170.00
Engineer	\$130.00
Construction Administrator	\$130.00
Senior Traffic Engineer	\$170.00
Traffic Engineer	\$130.00
GIS Specialist	\$105.00
Senior Surveyor	\$170.00
Surveyor	\$130.00
Senior Designer	\$115.00
Designer	\$100.00
CADD I	\$90.00
CADD II	\$80.00
2 Man Field Crew	\$140.00
3 Man Field Crew	\$175.00
GPS Unit (1 Man)	\$110.00
GPS Unit (2 Man Crew)	\$150.00
GPS Unit (3 Man Crew)	\$200.00
Resident Project Representative	\$90.00
Computer Graphics Designer	\$85.00
Computer Administrator	\$100.00
Clerical	\$60.00
Travel	\$0.58
Direct Expense	Cost
Prints	\$2.50/sheet
Overtime	(1.5 x Above Hourly Rate)

North Georgetown Area
Fact Sheet

- Permission to Prepare and Post granted April 27, 2021.
- Public Hearing on the Boundary June 1, 2021, a revision to the boundary was required.
- The Engineering Department presented the revised boundary to County Council of July 15, 2021.
- County Council approved the Final Boundary on July 15, 2021.
- Referendum held August 10, 2021 with all property owners returning ballots and the vote being unanimous (3) property owners in favor and none opposed.

RESOLUTION NO. R _____

NORTH GEORGETOWN AREA OF THE SUSSEX COUNTY UNIFIED SANITARY SEWER DISTRICT DECLARED UNDER THE PROVISIONS OF TITLE 9, CHAPTER 65 OF THE DELAWARE CODE

WHEREAS, the eligible voters of the proposed North Georgetown Area approved the creation of the sewer area by a vote of **3** to **0** in an election held on August 10, 2021; and

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

NOW, THEREFORE,

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

Exhibit "A"

Description of the North Georgetown Area of the Sussex County Unified Sanitary Sewer District

Beginning at a point, said point being on the northeasterly Right-of-Way (ROW) of DuPont Blvd (Rt. 113), said point also being the southernmost property corner of lands Now-or-Formerly (N/F) of Tier One Investments LLC, said point further being the westernmost property corner of lands N/F of Roblero Trust; thence proceeding by and with said ROW in a northwesterly direction a distance of 552.40 feet to a point, said point being the westernmost property corner of land N/F MDC Global LLC, said point also being the southernmost property corner of lands N/F of Kimley M. Thibault Trustee; thence leaving said ROW and proceeding by and with said Thibault lands in a northeasterly and northwesterly direction respectively a total distance of 486.7 feet to a point, said point being the northernmost property of Thibault lands, said point also being the easternmost property corner of lands N/F of Betty A. Warrington; thence leaving said Thibault lands and following said Warrington lands in a northwesterly and southwesterly direction respectively a total distance of 350 feet to a point, said point being on the northeasterly ROW of DuPont Blvd. (Rt. 113); thence proceeding by and with said ROW in a northwesterly direction a distance of 600'± to a point, said point being the intersection of the easterly ROW of DuPont Blvd. (Rt. 113) and the northerly ROW of East Redden Road (SCR 565), thence leaving said DuPont Blvd. ROW and proceeding by and with said East Redden Road ROW a distance of 868'± to a point, said point being on the northerly ROW of East Redden Road; thence leaving said ROW and proceeding in a southeasterly direction crossing East Redden Road a distance of 50'± to a point, said point being on the southerly ROW of East Redden Road (SCR 565), said point also being the northernmost property corner of lands N/F of ECO Properties, LLC; thence leaving said ROW and proceeding by and with said ECO lands in a southeasterly, northeasterly, southeasterly, southwesterly and southeasterly direction respectively a total distance of 1,926'± to a point, said point being the northernmost property corner of lands N/F of MDC Global, LLC, said point also being on the southerly property line of lands N/F of State of Delaware; thence leaving said ECO properties and continuing by and with said State lands in a southeasterly direction a distance of 684.35' to a point, said point being the easternmost property corner of lands N/F of Tier One Investments LLC; thence leaving said State land and proceeding by

and with said Tier One lands in a southwesterly direction a distance of 684.83' to a point, said point being the place of **Beginning**.

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

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

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

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

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

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

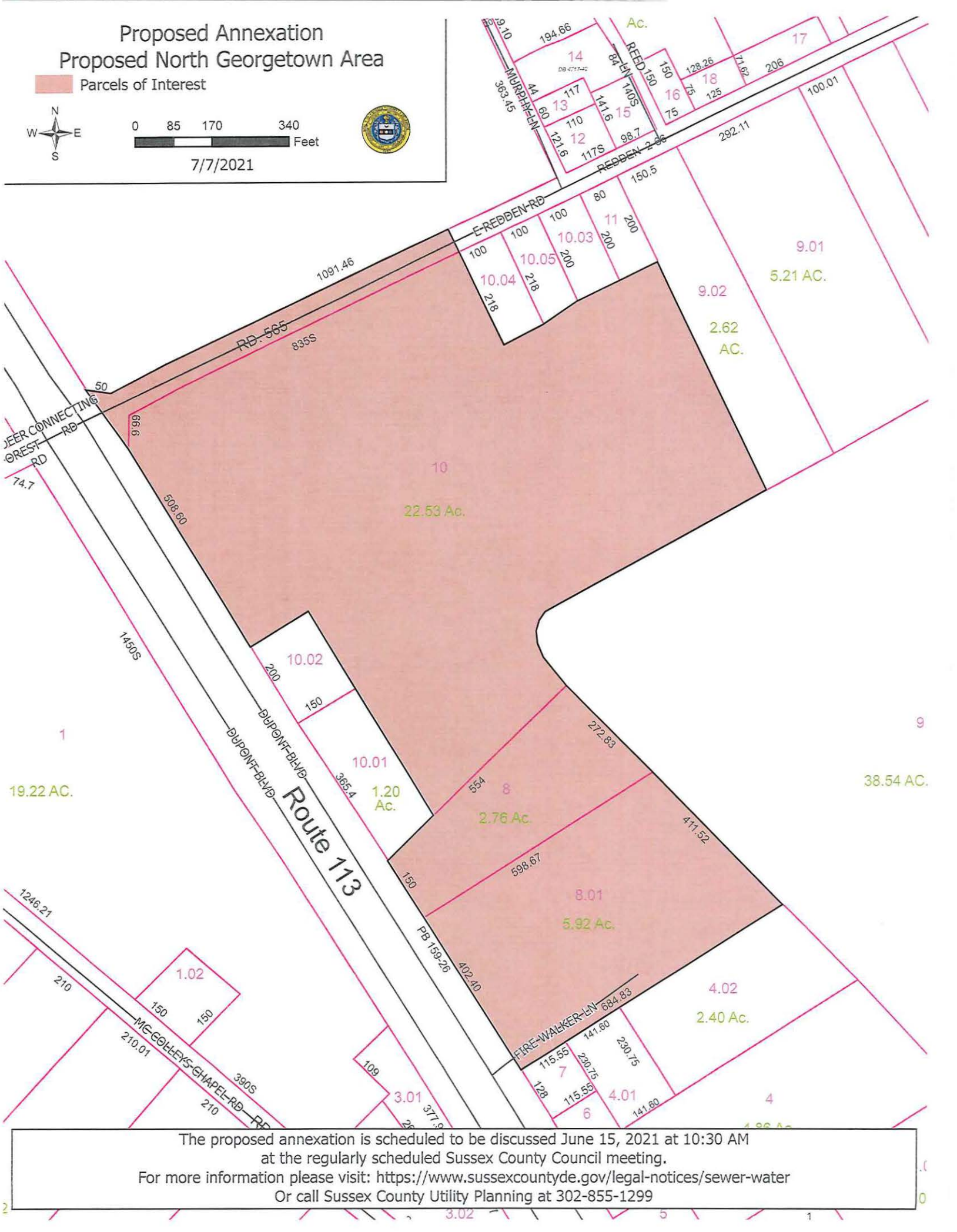
Proposed Annexation Proposed North Georgetown Area

Parcels of Interest



0 85 170 340 Feet

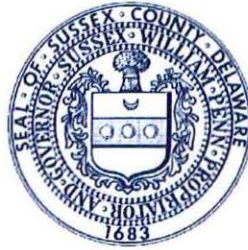
7/7/2021



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

ENGINEERING DEPARTMENT

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



Sussex County

DELAWARE
sussexcountyde.gov

HANS M. MEDLARZ, P.E.
COUNTY ENGINEER

JOHN J. ASHMAN
DIRECTOR OF UTILITY PLANNING

Proposed Marlin Cove Expansion of the Sussex County Unified Sanitary Sewer District

PUBLIC HEARING FACT SHEET

- The Engineering Department had received a request from Vista Design, Inc. on behalf of their client Atlantic Building Associates, Inc. the owners/developers of a project to be known as Marlin Cove.
- The project is proposed at 49 units.
- (2) of the (3) parcels are already in the sewer district this request is to include parcel 533-19.00-8.01.
- Permission to Prepare and Post notices for the public hearing for an Expansion of the Sussex County Unified Sanitary Sewer District (Fenwick Island Area) was granted on July 27, 2021.
- The project will be responsible for System Connection Charges of \$6,600.00 per EDU based on current rates and an Infrastructure Use Agreement will be required.
- The Engineering Department posted the property and the surrounding area on August 16, 2021.
- The notice was also placed on the County website.
- To date we have no responses to this annexation either in support or opposition.



PUBLIC NOTICE

EXPANSION OF THE SUSSEX COUNTY UNIFIED SANITARY SEWER DISTRICT
MARLIN COVE EXPANSION – FENWICK ISLAND AREA
FILE NUMBER: OM 4.17

NOTICE IS HEREBY GIVEN that the Sussex County Council voted on **July 27, 2021**, to consider expanding the boundary of the Fenwick Island Area of the Sussex County Unified Sanitary Sewer District (SCUSSD) to include a property situated on the west side of New Road. The parcel is located in the Baltimore Hundred, Sussex County, Delaware and recorded in the Office of the Recorder of Deeds, in and for Sussex County, Delaware.

BEGINNING at a point, said point being on the westerly Right-Of-Way (ROW) of New Road (SCR 391), said point also being on the SCUSSD boundary, said point further being the southeasternmost property corner of lands Now-Or-Formerly (N/F) of MDP Partners LLC; thence leaving said ROW and proceeding by and with said sewer boundary and MDP lands in a westerly and northerly direction respectively a distance of 1,385'± to a point, said point being the northeasternmost property corner of lands N/F of Jeanette M. Griffin; thence leaving said SCUSSD boundary and continuing with said MDP lands in a northeasterly direction a distance of 765'± to a point, said point being on the westerly ROW of New Road (SCR 391); thence continuing with said MDP lands and ROW in a southeasterly direction a distance of 585.66' to a point, said point being that of the **BEGINNING**.

The proposed expansion of the SCUSSD is within these boundaries and said to contain 10.13 acres more or less. The boundary description has been prepared using Sussex County tax map numbers 533-19.00.

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

The public hearing will be held on this issue at **10:30 am on September 14, 2021** in the Sussex County Council Chambers. All interested persons, officials, residents, voters, taxpayers, property owners, or corporations in any way affected by this boundary extension are welcome to attend. There will be an opportunity for questions and answers. The Sussex County Council following the hearing, at one of their regularly scheduled meetings, will make the final decision on the boundary extension.

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

Hans M. Medlarz, P.E.
County Engineer

Proposed Annexation Parcel 533-19.00-8.01

Parcel 533-19.00-8.01 Existing SSD



0 85 170 340 Feet



7/20/2021

Revised P.D. 11-155

9
36.95 Ac.

8.01
10.13 Ac.

8
3.84 Ac.
Parcel A

8.02
2.35 Ac.
Parcel B

8.03
2.55 Ac.
Parcel C

13.05
8.37 Ac.
A

7
15.70 Ac.S

33.03
21.58 Ac.
PARCEL A

13.04
1.70 Ac

The proposed annexation is scheduled to be discussed September 14, 2021 at 10:30 AM
at the Sussex County Council Chambers, 2 The Circle, Georgetown, DE 19947.
For more information please visit: <https://www.sussexcountyde.gov/legal-notice/notice-sewer-water>
Or call Sussex County Utility Planning at 302-855-1299

RESOLUTION

A RESOLUTION TO EXTEND THE BOUNDARY OF THE SUSSEX COUNTY UNIFIED SANITARY SEWER DISTRICT (SCUSSD) FENWICK ISLAND AREA, TO INCLUDE THE PROPOSED MARLIN COVE SUBDIVISION PROJECT LOCATED IN THE BALTIMORE HUNDRED, SUSSEX COUNTY, DELAWARE AND RECORDED IN THE OFFICE OF THE RECORDER OF DEEDS, IN AND FOR SUSSEX COUNTY, DELAWARE.

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

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

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

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

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

NOW, THEREFORE,

BE IT RESOLVED the Sussex County Council hereby revises the boundary of the SCUSSD to encompass the lands mentioned above in the Marlin Cove project and further described as follows:

BEGINNING at a point, said point being on the westerly Right-Of-Way (ROW) of New Road (SCR 391), said point also being on the SCUSSD boundary, said point further being the southeasternmost property corner of lands Now-Or-Formerly (N/F) of MDP Partners LLC; thence leaving said ROW and proceeding by and with said sewer boundary and MDP lands in a westerly and northerly direction respectively a distance of 1,385'± to a point, said point being the northeasternmost property corner of lands N/F of Jeanette M. Griffin; thence leaving said SCUSSD boundary and continuing with said MDP lands in a northeasterly direction a distance of 765'± to a point, said point being on the westerly ROW of New Road (SCR 391); thence continuing with said MDP lands and ROW in a southeasterly direction a distance of 585.66' to a point, said point being that of the **BEGINNING**.

NOTE: The above description has been prepared using Sussex County Tax Map 533-19.00 and Sussex County property assessment records.

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

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

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

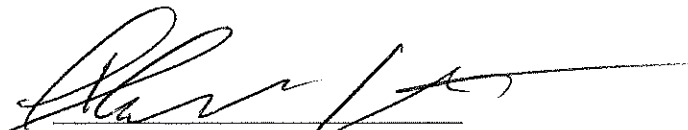
SUSSEX COUNTY UNIFIED SANITARY SEWER DISTRICT
MARLIN COVE ANNEXATION
AFFIDAVIT FOR PUBLIC HEARING

STATE OF DELAWARE)(

COUNTY OF SUSSEX)(

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

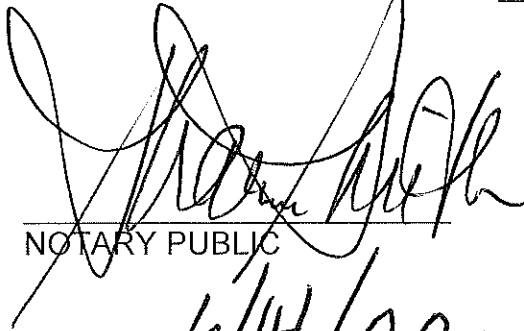
- A. On August 16, 2021 he was a Utility Planner for the Sussex County Engineering Department, Sussex County, State of Delaware; and
- B. On August 16, 2021 he did post the attached "Public Notice," prepared by the Sussex County Engineering Department, at the following locations:
 - 1. On a post in front of a stop sign in the westerly Right-Of-Way (ROW) of New Road (SCR 391) at the intersection with Lighthouse Road (Rt. 54),
 - 2. On a post in the westerly ROW of New Road (SCR 391) 1,070'± northwest of Lighthouse Rd. (Rt.54),
 - 3. On a post in the westerly ROW of New Road (SCR 391) 1,133'± northwest of Lighthouse Road (Rt. 54),
 - 4. On a post in the westerly ROW of New Road (SCR 391) 1,286'± northwest of Lighthouse Road (Rt. 54),
 - 5. On a post in the westerly ROW of New Road (SCR 391) 1,556'± northwest of Lighthouse Road (Rt. 54),
 - 6. On a post in the northerly ROW of Fenwick Circle, 1,043'± southeast of Zion Church Road (Rt. 20),
 - 7. On a post in the easterly ROW of New Road (SCR 391) at the intersection with Zion Church Road (Rt. 20),
 - 8. On a post in the northwesterly ROW of Bayard Road (SCR384) at the intersection with Zion Church Road (Rt. 20).



PHILLIP C. CALIO

SWORN TO AND SUBSCRIBED before me on this
A.D., 2021

19th day of Aug.



NOTARY PUBLIC

My Commission Expires

6/14/22

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

ENGINEERING DEPARTMENT

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



Sussex County

DELAWARE

sussexcountype.gov

HANS M. MEDLARZ, P.E.
COUNTY ENGINEER

JOHN J. ASHMAN
DIRECTOR OF UTILITY PLANNING

Proposed Scenic Manor Expansion of the Sussex County Unified Sanitary Sewer District

PUBLIC HEARING FACT SHEET

- The Engineering Department had received a request from Morris & Ritchie Associates, Inc. on behalf of their client MKR Land Investment, LLC the owners/developers of a project known as Scenic Manor on parcel 334-18.00-43.00.
- The project is proposed at 319 units.
- County Council granted permission to prepare and post notices for an Expansion of the Sussex County Unified Sanitary Sewer District (Mulberry Knoll Area) for Scenic manor.
- The project will be responsible for System Connection Charges of \$6,600.00 per EDU based on current rates; an Infrastructure Use Agreement based contribution; and yet to be determined infrastructure upgrades commensurate with the units requested.
- The Engineering Department posted the parcel and surrounding area on August 16, 2021. The public hearing was also advertised on the weeks of August 30th and September 6th.
- The notice was also placed on the county website.
- To date we have received one inquiry and one response in opposition.



PUBLIC NOTICE

EXPANSION OF THE SUSSEX COUNTY UNIFIED SANITARY SEWER DISTRICT
SCENIC MANOR EXPANSION – MULBERRY KNOLL AREA
FILE NUMBER: MK-6.01

NOTICE IS HEREBY GIVEN that the Sussex County Council voted on **July 27, 2021**, to consider expanding the boundary of the Mulberry Knoll Area of the Sussex County Unified Sanitary Sewer District (SCUSSD) to include a property situated on both sides of Mulberry Knoll Road. The parcel is located in the Lewes and Rehoboth Hundred, Sussex County, Delaware and recorded in the Office of the Recorder of Deeds, in and for Sussex County, Delaware.

BEGINNING at a point, situate at the intersection of the easterly right of way (ROW) of Mulberry Knoll Road (SCR 284), said point also being on the SCUSSD boundary; thence leaving said ROW and proceeding by and with said SCUSSD boundary in a generally southeasterly direction a distance of 2102'± to a point, said point being the southernmost property corner of lands Now Or Formerly (N/F) of J. G. Townsend Jr., Co., said point also being on the bank of Arnell Creek; thence leaving said SCUSSD boundary and proceeding by and with said Arnell Creek in a southeasterly direction a distance of 4,819'± to a point, said point being the northernmost property corner of lands N/F of State of Delaware; thence leaving said Arnell Creek and proceeding by and with said State lands in a southwesterly direction a distance of 373'±, said point being a corner of Mulberry Knoll PB 8-707, Revised PB 74-92, said point also being on the SCUSSD boundary; thence leaving said State lands and proceeding by and with said Mulberry Knoll lands and SCUSSD boundary in a northwesterly and southwesterly direction respectively a total distance of 2,515'± to a point, said point being on the easterly ROW of Mulberry Knoll Road; thence continuing in a northwesterly direction 300'± to a point; thence leaving said ROW and continuing with said SCUSSD boundary in a southwesterly direction across Mulberry Knoll Road a distance of 50'± to a point, said point being on the westerly ROW of Mulberry Knoll Road, said point also being on the northerly ROW of Stardust Drive; thence continuing with said SCUSSD boundary in a southwesterly direction a distance of 1,332'± to a point, said point being the southwesternmost property corner of lands N/F of Thomas Best & Sons, Inc.; thence leaving said SCUSSD boundary and continuing with said Best lands in a generally northerly direction a distance of 2,181'± to a point, said point being on the westerly ROW of Mulberry Knoll Road; thence leaving said Best lands and ROW and proceeding across Mulberry Knoll Road a distance of 50'± to a point, said point being on the easterly ROW of Mulberry Knoll Road; thence proceeding by and with said ROW in a northerly direction a distance of 2,059'± to a point, said point being that of the **BEGINNING**.

The proposed expansion of the SCUSSD is within these boundaries and said to contain 170.00 acres more or less. The boundary description has been prepared using Sussex County tax map numbers 334-18.00.

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

The public hearing will be held on this issue at **10:30 am on September 14, 2021** in the Sussex County Council Chambers. All interested persons, officials, residents, voters, taxpayers, property owners, or corporations in any way affected by this boundary extension are welcome to attend. There will be an opportunity for questions and answers. The Sussex County Council following the hearing, at one of their regularly scheduled meetings, will make the final decision on the boundary extension.

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

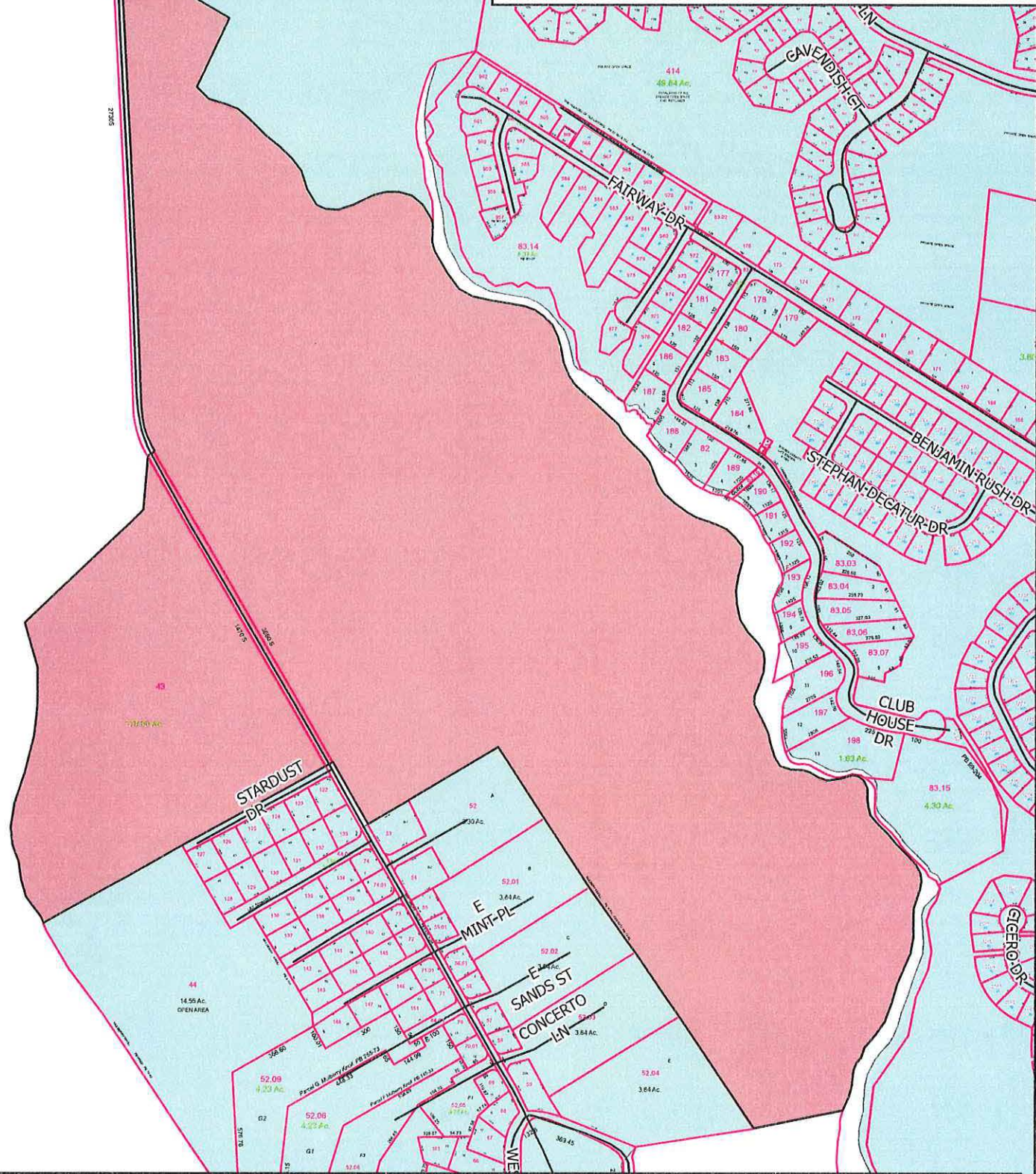
Hans M. Medlarz, P.E.
County Engineer

Proposed Annexation Scenic Manor 334-18.00-43.00

Area of Interest Existing SSD



6/28/2021



The proposed annexation is scheduled to be discussed 10:30 AM on September 14, 2021 at the
Sussex County Council Chambers, 2 The Circle, Georgetown, DE 19947
For more information please visit: <https://www.sussexcountyde.gov/legal-notice/ sewer-water>
Or call Sussex County Utility Planning at 302-855-8384

RESOLUTION

A RESOLUTION TO EXTEND THE BOUNDARY OF THE SUSSEX COUNTY UNIFIED SANITARY SEWER DISTRICT (SCUSSD) MULBERRY KNOLL AREA, TO INCLUDE THE PROPOSED SCENIC MANOR SUBDIVISION PROJECT LOCATED IN THE LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, DELAWARE AND RECORDED IN THE OFFICE OF THE RECORDER OF DEEDS, IN AND FOR SUSSEX COUNTY, DELAWARE.

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

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

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

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

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

NOW, THEREFORE,

BE IT RESOLVED the Sussex County Council hereby revises the boundary of the SCUSSD to encompass the lands mentioned above in the Scenic Manor project and further described as follows:

BEGINNING at a point, situate at the intersection of the easterly right of way (ROW) of Mulberry Knoll Road (SCR 284), said point also being on the SCUSSD boundary; thence leaving said ROW and proceeding by and with said SCUSSD boundary in a generally southeasterly direction a distance of 2102'± to a point, said point being the southernmost property corner of lands Now Or Formerly (N/F) of J. G. Townsend Jr., Co., said point also being on the bank of Arnell Creek; thence leaving said SCUSSD boundary and proceeding by and with said Arnell Creek in a southeasterly direction a distance of 4,819'± to a point, said point being the northernmost property corner of lands N/F of State of Delaware; thence leaving said Arnell Creek and proceeding by and with said State lands in a southwesterly direction a distance of 373'±, said point being a corner of Mulberry Knoll PB 8-707, Revised PB 74-92, said point also being on the SCUSSD boundary; thence leaving said State lands and proceeding by and with said Mulberry Knoll lands and SCUSSD boundary in a northwesterly and southwesterly

direction respectively a total distance of 2,515'± to a point, said point being on the easterly ROW of Mulberry Knoll Road; thence continuing in a northwesterly direction 300'± to a point; thence leaving said ROW and continuing with said SCUSSD boundary in a southwesterly direction across Mulberry Knoll Road a distance of 50'± to a point, said point being on the westerly ROW of Mulberry Knoll Road, said point also being on the northerly ROW of Stardust Drive; thence continuing with said SCUSSD boundary in a southwesterly direction a distance of 1,332'± to a point, said point being the southwesternmost property corner of lands N/F of Thomas Best & Sons, Inc.; thence leaving said SCUSSD boundary and continuing with said Best lands in a generally northerly direction a distance of 2,181'± to a point, said point being on the westerly ROW of Mulberry Knoll Road; thence leaving said Best lands and ROW and proceeding across Mulberry Knoll Road a distance of 50'± to a point, said point being on the easterly ROW of Mulberry Knoll Road; thence proceeding by and with said ROW in a northerly direction a distance of 2,059'± to a point, said point being that of the **BEGINNING.**

NOTE: The above description has been prepared using Sussex County Tax Map 334-18.00 and Sussex County property assessment records.

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

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

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

SUSSEX COUNTY UNIFIED SANITARY SEWER DISTRICT
SCENIC MANOR EXPANSION
AFFIDAVIT FOR PUBLIC HEARING

STATE OF DELAWARE)(

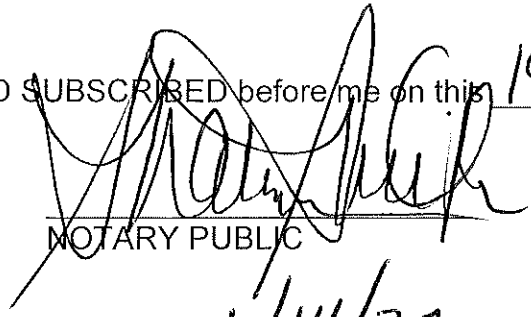
COUNTY OF SUSSEX)(

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

- A. On August 16, 2021 he was a Utility Planner for the Sussex County Engineering Department, Sussex County, State of Delaware; and
- B. On August 16, 2021 he did post the attached "Public Notice," prepared by the Sussex County Engineering Department, at the following locations:
 - 1. On a post in front of stop sign in the southerly Right-of-Way (ROW) of Stardust Drive at the intersection with Mulberry Knoll Road;
 - 2. On a post in front of stop sign in the westerly ROW of Mulberry Knoll Road at the intersection with Stardust Drive;
 - 3. On a post in the northerly ROW of East Lane, 395'± southeast of Mulberry Knoll Road;
 - 4. On a post in front of SPEED LIMIT 25 sign in the southeasterly ROW of Mulberry Knoll Road 577'± northwest of Stardust Drive;
 - 5. On a post in front of stop sign in the northrly ROW of West Lane at the intersection with Mulberry Knoll Road;
 - 6. On a post in the northwesterly ROW of Mulberry Knoll Road 90'± northwest of Rivera Drive;
 - 7. On a post in front of stop sign in the northwesterly ROW of Mulberry Lane across from Stardust Drive;
 - 8. On a post in front of a End 25 MPH sign in the northeasterly ROW of Mulberry Knoll Road 577'± northwest of Stardust Drive


PHILLIP C. CALIO

SWORN TO AND SUBSCRIBED before me on this 19th day of Aug, A.D., 2021



NOTARY PUBLIC

My Commission Expires 6/14/22

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

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: September 10, 2021

RE: County Council Report for C/Z 1942 filed on behalf of Bay Developers, LLC (Twin Cedars, LLC)

The Planning and Zoning Department received an application (C/Z 1942 filed on behalf of Bay Developers, LLC (Twin Cedars, LLC)) to amend the Comprehensive Zoning Map of Sussex County from a C-1 General Commercial District, CR-1 Commercial Residential District and GR General Residential District to a GR-RPC General Residential District – Residential Planned Community for a property located on the south side of Zion Church Road, approximately 0.55-mile northwest of Bayard Road. The change of zone is for 64.32 acres, more or less.

The Planning and Zoning Commission held a public hearing on May 13, 2021. At the meeting of June 10, 2021, the Commission recommended approval of the application for the 10 reasons and subject to the 17 recommended conditions as outlined within the motion (included below).

The County Council held a public hearing on June 29, 2021. At the conclusion of the public hearing, action on the application was deferred for further consideration.

Below are the approved minutes from the Planning & Zoning Commission meeting of May 13, 2021 and the draft minutes of the Planning & Zoning Commission meeting of May 27, 2021, and the draft minutes of the Planning & Zoning Commission meeting of June 10, 2021.

[Minutes of the May 13, 2021 Planning & Zoning Commission Meeting](#)

C/Z 1942 – Bay Developers, LLC (Twin Cedars, LLC)

An Ordinance to amend the Comprehensive Zoning Map of Sussex County from a C-1 General Commercial District, CR-1 Commercial Residential District and GR General Residential District to a GR-RPC General Residential District - Residential Planned Community for a certain parcel



of land lying and being in Baltimore Hundred, Sussex County, containing 64.32 acres, more or less. The property is lying on the south side of Zion Church Road (Rt. 20), approximately 0.55-mile northwest of Bayard Road. 911 Address: N/A. Tax Parcel: 533-11.00-42.00.

Mr. Whitehouse advised the Commission that submitted into the record is a copy of the Staff Analysis, a copy of the Applicant's exhibit booklet, a copy of comments received from PLUS review, a copy of the TIS review letter from DelDOT, a copy of the Applicant's TIS, a copy of the DelDOT Service Level Evaluation response, a copy of comments from the Sussex County Engineering Department Utility Planning Division, and one written response which was included in the packet.

The Commission found that Mr. David Hutt, Esq. was present on behalf of the Applicant, Bay Developers, LLC; that also present are Mr. Henry Mast, Principal of Bay Developers, LLC, Mr. Chris Flathers, P.E. – Morris & Ritchie Associates, Inc., Mr. Greg Sauter, P. E. - Geo-Technology Associates, and Mr. Joe Caloggero, P.E. – The Traffic Group, Inc.; that this property was the subject of prior approvals of the Commission and County Council; that this Application is a redesign of a previously approved RPC and commercial project; that in 2010 County Council approved a Change of Zone Applications 1668 and 1669 for this property; that C/Z 1669 was an application seeking to change an area consisting of 5.79 acres of land from General Commercial (C-1) and General Residential (GR) to Commercial Residential (CR-1); that this application was approved; that C/Z 1668 was an application for an Resident Planned Community (RPC) overlay for the balance of the property and was also approved; that the application known as Twin Cedars for 199 residential units consisting of 120 apartments or condos, 45 townhomes and 34 duplexes; that the project was not built and the RPC lapsed; that a new application was filed under C/Z 1909 and was scheduled for a public hearing approximately two months ago; that because the CR-1 portion of the property was not shown on the Zoning Map, the application was terminated which allowed the County to update the Zoning Map and allowed the Applicant to submit a new application listing all the zoning classifications; that the current application is exactly the same as the terminated application C/Z 1909 except that the new application references the 5.79 acres of CR-1 zoning on the property; that the property consists of 64.32 acres situated along Zion Church Road east of the intersection of Zion Church Road and Deer Run Road; that the property is presently unimproved; that there were previously three apartment buildings on this property; that there are similar residential communities in the area such as Hampton Park, Sweet Bay, Ashton Oaks, Fox Haven and many others; that the property is currently zone C-1, GR and CR-1, that the majority of zoning on Zion Church Road is GR and Medium Residential (MR) with some C-1; that this application seeks to rezone the entire property to GR with an RPC overlay; that the Applicant proposes to leave most of the forested area undisturbed and designate it as open space; that the RPC tool was chosen to maximize the preservation of woods; that the redesign allowed for all the residential areas to be clustered so that each lot would back up to open space or amenities; that this will be a walkable community with centrally located amenities with all homes being within 700 ft. of the amenities; that the entrance to this community would be off Zion Church Road; that 254 units are being proposed comprising of 168 apartments within 7 buildings, 44 townhomes across 11 buildings and 42 single-family lots; that the apartments would be toward the front of the property and the single-family lots toward the rear with the townhomes between both; that the gross density would be 3.95 units per acre and the net density would be 4.31 units per acre; that this density is consistent with the GR district; that the Future Land Use Map shows that this property is located in the Coastal Area which is a growth area; that this property is in the Level 3 area on the State Strategies

Map; that the proposed design complements the existing character of the site by keeping the open space and clustering it at the rear of the property; that 28.5 acres will remain forested and undisturbed; that where an existing buffer does not exist, the Developer will install a landscaped buffer to conform with County Code; that sidewalks will be installed on both sides of the street; that amenities proposed include a pool, patio area, a clubhouse, a tot lot area and a walking trail; that the County Code requires 508 parking spaces; that the Applicant is proposing 563 parking spaces; that the Developer will work with the Indian River School District regarding the location of a bus stop; that public utilities are available for the site; that the property is not within a Wellhead Protection Area or within a Groundwater Recharge Area; that there are no known historical sites located on the property; that there are no threatened or endangered species on the property; that the property is not within a flood plain or flood zone; that there will be a Property Owners Association created to manage and govern the common areas within the Community; that DelDOT required a Traffic Impact Study (TIS); that the TIS review letter required that an entrance access from Zion Church Road align with the Bayside Storage entrance across the road; that the entrance be designed and constructed with current DelDOT standards; that the Developer contribute towards a traffic signal at the intersection of Zion Church Road and Bayard Road and Johnson Road; that the Developer include bicycle and pedestrian improvements along the property frontage on Zion Church Road; that a neighboring resident raised concerns that notice be given to future residents regarding the RV park to the rear of this site and that there are hunting and shooting activities in the area; that the same concern was raised in 2010 and the RPC approval contained a requirement that notice be given to all future residents similar to the Agricultural Protection notice; that the Developer has proffered this as part of the proposed conditions and findings; that the purpose of the RPC tool is to encourage large-scale developments as a means of creating a superior living environment through unified developments, and to provide for the application of design ingenuity while protecting existing and future developments and achieving the goals of the Comprehensive Plan; that the RPC overlay is appropriate for this project but is also superior to the design that was approved in 2010; that this design meets the requirements of the Comprehensive Plan in the Zoning Code; that for all these reasons the Applicant requests recommendation of approval for this Change of Zone application to County Council.

Ms. Wingate asked if the hunting is taking place on the Lost Lands RV Park property.

Mr. Hutt stated that he assumes the hunting takes place during the season when the RV's are not occupied; that the current design retaining the forested area allows for a much greater distance from the RV park to the proposed dwellings on the subject property; and that all future residents will be given notice of hunting activities on adjoining property.

Ms. Wingate asked for clarification regarding the numbers on the TIS.

Mr. Joe Caloggero stated that the TIS was prepared for 44 single-family homes, 44 townhomes and, 168 apartments and that's what the numbers are based on.

Ms. Wingate commented that she will expect to see the landscape buffer/berm along Route 20 when the site plan is submitted.

Ms. Stevenson asked for confirmation that the berm is being proposed.

Mr. Hutt stated that Mr. Flathers will address the berm but noted that the nearest residence is a good distance from Route 20 because of the stormwater management systems to the front of the property.

Mr. Chris Flathers stated that the intent is to utilize berms when possible for screening, but it is not always possible with drainage issues and that on the west side of the property the nearest residence is 44 ft. from the property line.

Ms. Stevenson asked the Applicant to address the soils on the property especially, subaqueous soils.

Mr. Greg Sauter stated that the soils at this site are suitable for the proposed development; that hydric soils would not prevent building; that the existence of hydric soils would not prevent the building of an environmentally sensitive development; that the stormwater management facilities proposed for this site will improve the overall stormwater run-off in the area; that subaqueous soils are related to the wetland aspect and that this property has been farmed for many years, therefore, those soils would not be subaqueous; and that there are no wetlands on this site.

Ms. Stevenson commented that the road within the community should have a sign stating that it is for connectivity to future developments.

Mr. Hutt stated that a sign could be placed without the expense of extending a road for something that may never happen.

Ms. Stevenson asked for an explanation of the full-movement access traffic entrance.

Mr. Caloggero stated that it is a full movement of left, right and, straight through so the access to this site will be designed to cross the street from Bayside Storage.

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

Mr. Whitehouse confirmed that the County Council hearing date for this Application will be June 29, 2021, at 1:30 pm in County Council Chambers and not at Del Tech.

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

Prior to the recess, the Commission discussed Application C/Z 1942 – Bay Developers, LLC (Twin Cedars, LLC). Motion by Ms. Wingate to defer action for further consideration, seconded by Ms. Stevenson, and carried unanimously. Motion carried 5-0.

Minutes of the May 27, 2021 Planning & Zoning Commission Meeting

Ms. Wingate stated that she was not prepared to make a motion; that she feels that there is overcrowding

on the front of this property; that the previous apartments on this property totaled 48 units and this Application is for 168 apartments, 44 townhomes and 44 single-family lots; that berms are shown on the conceptual site plan but when questioned the Applicant said they may not have sufficient room to install said berms; and that the open space is not usable open space.

The Commission discussed the Application.

Motion by Ms. Wingate to defer action on Application C/Z 1942 – Bay Developers, LLC (Twin Cedars, LLC) for further consideration, seconded by Mr. Mears and carried unanimously. Motion carried 4-0.

Minutes of the June 10, 2021 Planning & Zoning Commission Meeting

The Commission discussed this application which has been deferred since May 27, 2021.

Ms. Wingate moved that the Commission recommend approval of C/Z 1942 regarding BAY DEVELOPERS, LLC (TWIN CEDARS, LLC) for a change in zone from C-1, CR-1, and GR to GR-RPC based upon the record made during the public hearing and for the following reasons:

1. The property is currently zoned C-1 General Commercial, CR-1 Commercial Residential and GR – General Residential.
2. The property is presently used for agricultural purposes and it was previously developed as an apartment complex consisting of 50 units in 3 buildings. All of the apartment buildings have been removed from the property.
3. This site was previously approved under CZ # 1668 for a GR-RPC and CZ # 1669 for a change in zone to CR-1. The Master Site Plan from those two approvals showed 199 residential units comprising of 120 multi-family units, 45 townhomes and 34 duplexes along with 38,175 square feet of commercial space on this property. Those projects were never built and this application deletes the commercial uses from this site.
4. The proposed development will have no more than 254 dwelling units consisting of 168 apartments, 44 townhomes and 42 single family units on 64.32 acres. The net density is 3.95 units per acre which is less than the maximum density permitted under the existing C-1, CR-1 and GR zoning. This density is also similar to other nearby developments.
5. The County Engineering Department has indicated that adequate wastewater capacity is available for the site. Central water will also be provided.
6. DelDOT has issued a Traffic Impact Study Review Letter for this project requiring off-site improvements, which the developer will be required to comply with. These improvements will improve traffic in the area and mitigate the impact of traffic from this development.
7. 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 also maintain approximately 42 acres of the site as open space. This includes extensive woodlands on the southwest portion of the site that will remain undisturbed.
8. The project will not adversely affect the neighborhood or surrounding community. There are existing developments in the immediate area with similar characteristics.
9. According to the County's current Comprehensive Plan, the project is in the Coastal Area. Development such as this GR-RPC is appropriate in this Area according to the Plan.

10. The Applicant has favorably addressed the items set forth in Section 99-9C of the Subdivision Code.
11. This recommendation is subject to the following conditions:
 - a. There shall be no more than 254 dwelling units consisting of 168 apartments, 44 townhomes and 42 single family units.
 - b. A homeowners association shall be formed to provide for the perpetual maintenance, repair and replacement of buffers, stormwater management facilities, streets, amenities and other common areas.
 - c. All entrances, intersections, roadways and multi-modal improvements required by DelDOT shall be completed in accordance with DelDOT's requirements.
 - d. The RPC shall be served by Sussex County sewer. The Developer shall comply with all requirements and specifications of the County Engineering Department.
 - e. The RPC shall be served by central water for drinking water and fire protection.
 - f. Stormwater management and erosion and sedimentation control facilities shall be constructed in accordance with all applicable State and County requirements. These facilities shall be operated in a manner that is consistent with Best Management Practices.
 - g. Interior street design shall meet or exceed Sussex County's street design requirements. There shall also be street lighting and sidewalks on both sides of the streets within the RPC.
 - h. The development shall be served by its own on-site amenities including a clubhouse, pool, walking paths along the wooded open space and a tot-lot. All amenities shall be completed and open for use prior to the issuance of a building permit for the 100th unit on the site or the building containing the 100th unit on the site.
 - i. A 20-foot wide vegetated or forested buffer shall be established along the perimeter of the site. This buffer shall utilize existing forest or similar vegetation if it 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.
 - j. If requested by the local school district, a school bus stop shall be provided by the entrance to the development, with the location and any related parking to be approved by the school district's transportation supervisor. The location of the bus stop area shall be shown on the Final Site Plan.
 - k. Road naming and addressing shall be subject to the review and approval of Sussex County Mapping and Addressing Departments.
 - l. The Final Site Plan shall contain the approval of the Sussex Conservation District for the design and location of all stormwater management areas and erosion and sedimentation control facilities.
 - m. The Final Site Plan shall include a landscape plan confirming all landscaping to be provided, the preservation of all buffer areas and the forested areas that will be preserved. The landscape plan shall also identify all "Limits of Disturbance" within the site. This landscape plan shall also provide enhanced screening and landscape berms along the front entrance as well as the sides of the property (excluding the rear open space) as presented during the public hearing and described at pages 15, 16 and 17 of the Applicant's project notebook.
 - n. The Final Site Plan shall include a grading plan that shall be submitted to County Staff for review and approval.

- o. Construction, site work, grading, and deliveries of construction materials shall only occur from Monday through Saturday and only between the hours of 7:00 a.m. and 6:00 p.m. A 24 inch by 36 inch “NOTICE” sign in English and Spanish confirming these hours shall be prominently displayed at all entrances to the site during construction.
- p. The Final Site Plan and the recorded governing documents for this development shall include the Agricultural Use Preservation Notice. These documents shall also include similar notices that there is a camping/RV park adjacent to the site and that hunting activities occur in the vicinity of this site.
- q. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning & Zoning Commission.

Motion by Ms. Stevenson, seconded by Mr. Mears and carried unanimously to recommend approval of C/Z 1942 Bay Developers, LLC (Twin Cedars, LLC) for the reasons and conditions stated in the motion. Motion carried 4 – 0.

PLANNING & ZONING COMMISSION

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



Sussex County

DELAWARE
sussexcountyde.gov
302-855-7878 T
302-854-5079 F
JAMIE WHITEHOUSE, AICP
DIRECTOR

PLANNING AND ZONING AND COUNTY COUNCIL INFORMATION SHEET
Planning Commission Public Hearing Date May 13, 2021

Application: CZ 1942 Bay Developers, LLC (Twin Cedars, LLC)

Applicant: Bay Developers, LLC
200 Weston Drive
Dover, DE 19904

Owner: Twin Cedars, LLC (Attention: Mr. James T. Gordon)
5427 York Lane
Bethesda, MD 20814

Site Location: The parcel is lying on the south side of Zion Church Road (Route 20), approximately 0.55-mile northwest of Bayard Road (S.C.R. 384).

Current Zoning: Split-zoned General Commercial (C-1) Zoning District, Commercial Residential (CR-1) District & General Residential (GR) Zoning District

Proposed Zoning: General Commercial (C-1) Zoning District & General Residential, Residential Planned Community (GR-RPC)

Proposed Use: 168 Apartments, 44 Townhomes, 42 Single-Family Detached Dwellings (254 dwelling units total)

Comprehensive Land Use Plan Reference: Coastal Area

Councilmanic District: Mr. Rieley

School District: Indian River School District

Fire District: Roxana Fire District

Sewer: Sussex County Sewer District

Water: Artesian

Site Area: 64.32 +/- acres

Tax Map ID.: 533-11.00-42.00



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



Sussex County

DELAWARE
sussexcountyde.gov

Memorandum

To: Sussex County Planning Commission Members
From: Nick Torrance, Planner I
CC: Vince Robertson, Assistant County Attorney and applicant
Date: May 6th, 2021
RE: Staff Analysis for CZ 1942 Bay Developers, LLC (Twin Cedars, LLC)

This memo is to provide background and analysis for the Planning Commission to consider as a part of application CZ 1942 Bay Developers, LLC (Twin Cedars, LLC) to be reviewed during the May 13, 2021, Planning Commission Meeting. This analysis should be included in the record of this application and is subject to comments and information that may be presented during the public hearing.

The request is for a Change of Zone for Tax Parcel 533-11.00-42.00 to allow for a change of zone from a General Commercial (C-1) Zoning District, Commercial Residential (CR-1) Zoning District, and a General Residential (GR) Zoning District to a General Residential Zoning District, Residential Planned Community (GR-RPC). The parcel is located on the south side of Zion Church Road (Route 20), approximately 0.55-mile northwest of Bayard Road (S.C.R. 384). The parcel to be rezoned contains 64.32 acres +/-.

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

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

The property is tri-zoned with the property being zoned General Commercial (C-1) Zoning District and Commercial Residential (CR-1) Zoning District along the road frontage of the parcel and with the remaining majority of the parcel being zoned General Residential (GR) Zoning District. The adjacent parcels to the east and west of the subject property are zoned General Residential (GR). The two properties to the north and west of the property located along Zion Church Road are zoned General Commercial (C-1). The properties to the north of the parcel on the opposite side of Zion Church Road are zoned Agricultural Residential (AR-1), Commercial Residential (CR-1), Business Research (B-3) and General Commercial (C-1).



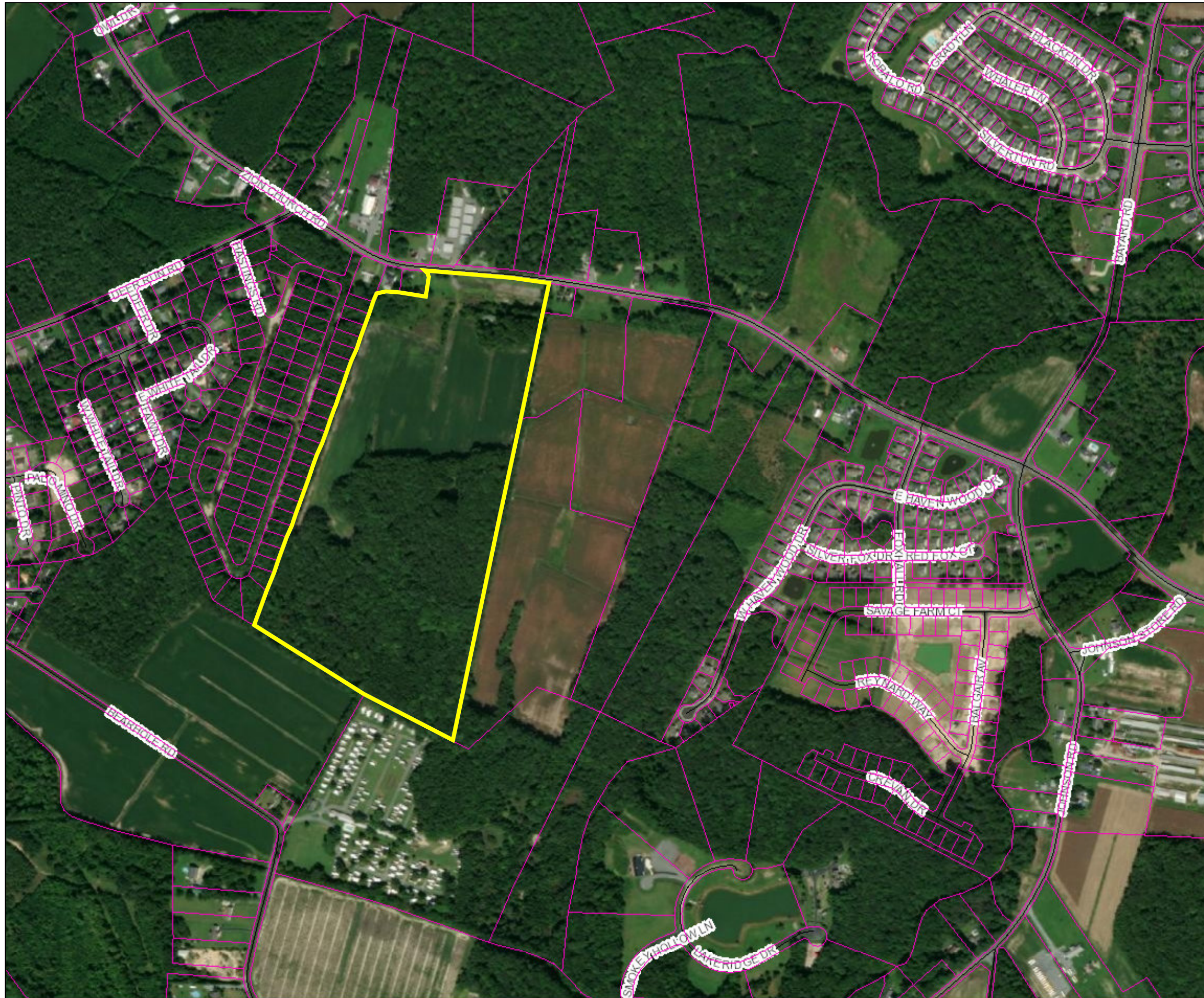
The 2018 Sussex County Comprehensive Plan outlines Zoning Districts by their applicability to each Future Land Use category. Under Table 4.5-2 “Zoning Districts Applicable to Future Land Use Categories,” the General Residential (GR) Zoning District is listed as an applicable zoning district in the “Coastal Area.” Although not featured within the Future Land Use Table as an applicable zoning district, the General Commercial (C-1) Zoning is a permitted zoning district within the Coastal Area as these zoning may be located within any of the land use designations.

Since 2011, there have been three (3) Change of Zone applications within a 2-mile radius of the application site. The first application is for Change of Zone No. 1715 for a change of zone from an Agricultural Residential (AR-1) Zoning District to a Commercial Residential (CR-1) Zoning District. The application was approved by the Sussex County Council on May 15, 2012 and the change was adopted through Ordinance No. 2257. The second application is for Change of Zone No. 1858 for a change of zone from an Agricultural Residential (AR-1) Zoning District to a High Density Residential, Residential Planned Community (HR-1-RPC). The application was approved by the Sussex County Council on December 11, 2018 and adopted through Ordinance No. 2621. The last application is for Change of Zone No. 1842 for a change of zone from an Agricultural Residential (AR-1) Zoning District to a Neighborhood Business (B-1) Zoning District. The application was approved by the Sussex County Council on January 30, 2018 and adopted through Ordinance No. 2545.




Based on the analysis of the land use, surrounding zoning and uses, a Change of Zone from a General Commercial (C-1) Zoning District, Commercial Residential (CR-1) Zoning District, and a General Residential (GR) Zoning District to a General Residential Zoning District, Residential Planned Community (GR-RPC) could be considered as being consistent with the land use, area zoning and surrounding uses.



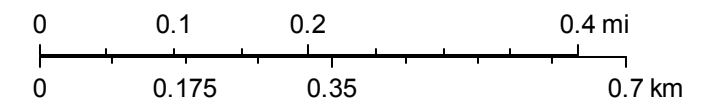
Sussex County



PIN:	533-11.00-42.00
Owner Name	TWIN CEDARS LLC
Book	3395
Mailing Address	5427 YORK LN
City	BETHESDA
State	MD
Description	S/RT 382
Description 2	750'E/RT 388
Description 3	N/A
Land Code	

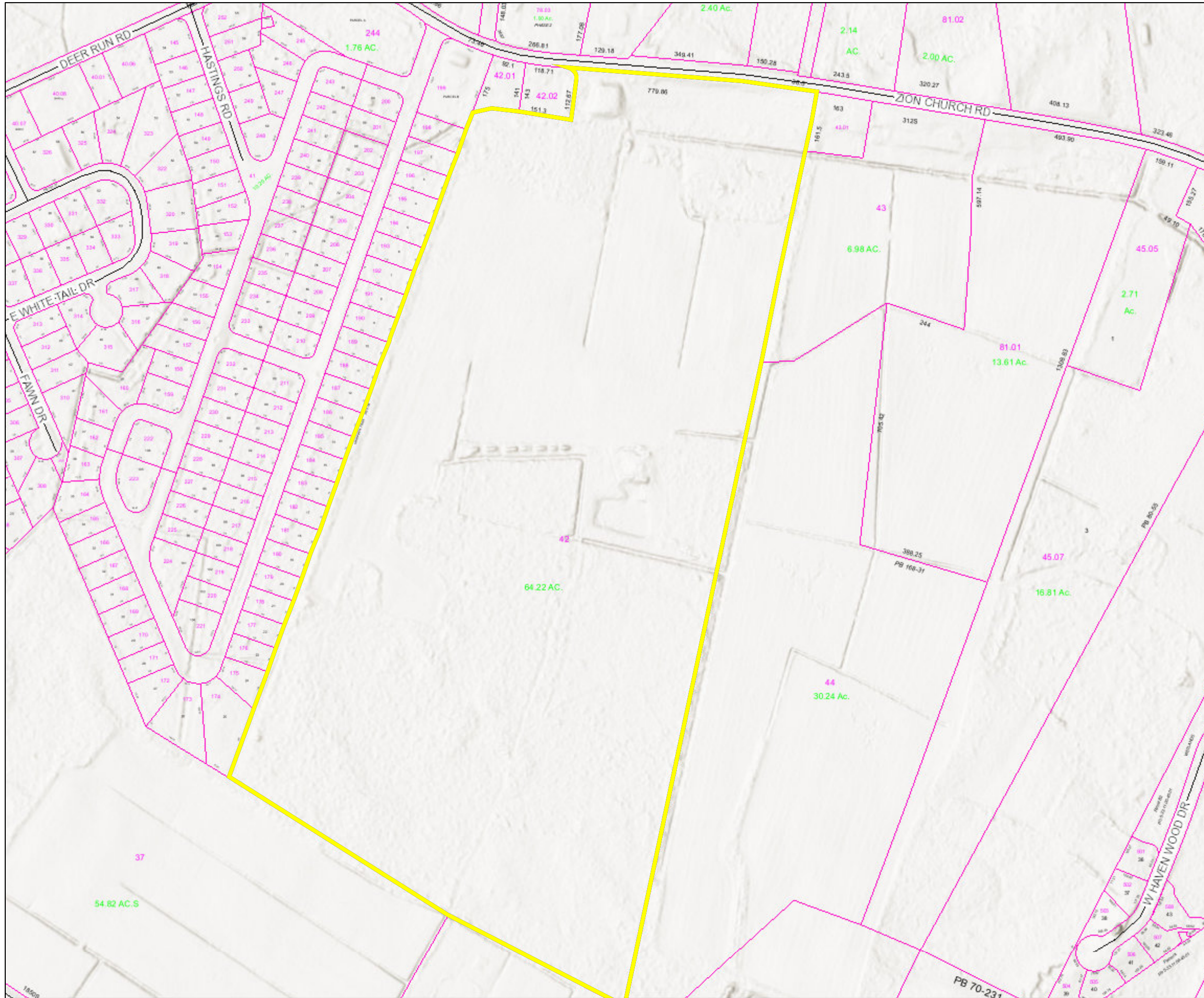
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- Override 1
- polygonLayer**
- Override 1
-  Tax Parcels
-  Streets
-  County Boundaries

1:9,028





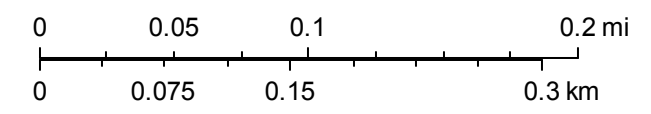
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Description 3	N/A
Land Code	

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

1:4,514



Introduced 03/23/21

**Council District 5: Rieley
Tax I.D. No. 533-11.00-42.00
911 Address: None Available**

ORDINANCE NO. ____

AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM A C-1 GENERAL COMMERCIAL DISTRICT, CR-1 COMMERCIAL RESIDENTIAL DISTRICT AND GR GENERAL RESIDENTIAL DISTRICT TO A GR-RPC GENERAL RESIDENTIAL DISTRICT – RESIDENTIAL PLANNED COMMUNITY FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 64.32 ACRES, MORE OR LESS

WHEREAS, on the 12th day of March 2021, a zoning application, denominated Change of Zone No. 1942 was filed on behalf of Bay Developers, LLC (Twin Cedars, LLC); and

WHEREAS, on the ____ day of _____ 2021, a public hearing was held, after notice, before the Planning and Zoning Commission of Sussex County and said Planning and Zoning Commission recommended that Change of Zone No. 1942 be _____; and

WHEREAS, on the ____ day of _____ 2021, a public hearing was held, after notice, before the County Council of Sussex County and the County Council of Sussex County has determined, based on the findings of facts, that said change of zone is in accordance with the Comprehensive Development Plan and promotes the health, safety, morals, convenience, order, prosperity and welfare of the present and future inhabitants of Sussex County,

NOW, THEREFORE, THE COUNTY OF SUSSEX HEREBY ORDAINS:

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

Section 2. The subject property is described as follows:

ALL that certain tract, piece or parcel of land lying and being situate in Baltimore Hundred, Sussex County, Delaware, and lying on the south side of Zion Church Road, approximately 0.55 miles northwest of Bayard Road and being more particularly described in the attached legal description prepared by Young Conaway Stargatt & Taylor, LLP., said parcel containing 64.32 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.

Council Grant Form

United Way of Delaware Inc.

Legal Name of Agency/Organization

Sussex County Health Coalition, Inc.

Project Name

Delaware Goes Purple

Federal Tax ID

51-0073399 ✓

Non-Profit

Yes

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

No

Organization's Mission

SCHC Mission

The Sussex County Health Coalition exists to engage the entire community in collaborative family-focused effort to improve the health of children, youth and families in Sussex County.

SCHC Vision

We envision a community in which our citizens and institutions (public, private, and not-for-profit) are actively engaged in community health promotion as a shared community good, and working together to create a cultural and physical environment which supports healthy lifestyles for our children and their families.

SCHC Goals

Our Coalition will be viewed by our community as a respected source of knowledge and action for community health promotion, with an organizational culture that is inclusive, welcoming, respectful, trustworthy, non-partisan, listening, responsive, action-oriented, and accountable.

Core Strategies

Our Coalition will employ ten core strategies to advance our mission and vision for Sussex County:

WE EXIST TO BUILD PARTNER CAPACITY, AND THIS IS HOW WE DO IT:

Monitor Community Health Status

Raise community awareness of community health issues.

Give voice to community concerns and ideas.

Expand and publicize the knowledge base on community health promotion.

Proactively engage people and organizations from all sectors (not-for-profit, public, private) in community health promotion.

Facilitate development of child and family health promotion strategies.

Develop and mobilize community resources for community health promotion.

Build community capacity for policy and program development.

Support collaborative efforts to improve community policies, programs, and practices.

Evaluate and report on the impact of our actions.

Targeted Areas of Focus:

Babies born healthy

Developmental milestones

Children entering school ready to learn

Third grade reading levels

Reduction of overdose deaths

Increased support for families affected by substance use disorder

Increased access to physical and mental health services for children and families

Increased program support for children age 12 to 18

Addressing intergenerational poverty

Addressing chronic health concern

Address	21133 Sterling Square Ave. Suite#12
Address 2	Suite 12
City	Georgetown
State	DE
Zip Code	19947
Contact Person	Crystal Dawn Timmons-Bryant
Contact Title	
Contact Phone Number	13024802020
Contact Email Address	ctunderwood@pmgconsulting.net
Total Funding Request	5000.00
Has your organization received other grant funds from Sussex County Government in the last year?	No
If YES, how much was received in the last 12 months?	N/A
Are you seeking other sources of funding other than Sussex County Council?	No

If YES, approximately what percentage of the project's funding does the Council grant represent?	N/A
Program Category (choose all that apply)	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	150000
Scope	<p>Delaware Goes Purple is a month-long program to bring awareness to substance abuse to engage our community and youth to stand up against substance abuse. Nearly every day, someone in Delaware loses their battle with heroin, prescription painkillers, or other addictive drugs.</p> <p>Drug-Involved Overdose Deaths In the U.S., there were 67,367 drug overdose deaths reported in 2018, The age-adjusted rate declined by 4.6% to 20.7 per 100,000 standard population.1 The decline follows an increasing trend in the rate from 6.1 in 1999 to 21.7 in 2017.</p> <p>♣ Opioids were involved in 46,802 (a rate of 14.6) overdose deaths in 2018—nearly 70% of all overdose deaths.</p>

♣ Deaths involving synthetic opioids other than methadone (including fentanyl and fentanyl analogs) continued to rise with more than 28,400 (a rate of 9.9) overdose deaths in 2018.

♣ The number of deaths involving prescription opioids declined to 14,975 (a rate of 4.6) in 2018 and those involving heroin dropped to 14,996 (a rate of 4.7).²

In Delaware, 88% of the 401 reported drug overdose deaths involved opioids in 2018—a total of 355 fatalities (and a rate of 39.3) (Figure 1).

In 2018, Delaware providers wrote 60.6 opioid prescriptions for every 100 persons compared to the greatest challenges for people seeking help from addiction is the stigma surrounding their addiction.

Youth drug abuse is a high-profile public health concern, with at least 1-in-8 teenagers abusing an illicit substance in the last year.

- Drug use among 8th graders increased 61% between 2016 and 2020.

- By 12th grade, 62% of teenagers have abused alcohol.

- 50% of teenagers have misused a drug at least once.

- 43% of college students use illicit drugs.

- 86% of teenagers know someone who smokes, drinks, or uses drugs during the school day.

Teenagers in Delaware are 20.71% more likely to have used drugs in the last month than the average American teen.

- 7,000 or 10.06% of 12- to 17-year-olds report using drugs in the last month.

- Among them, 85.71% report using marijuana in the last month.

- 14.36% of all 12- to 17-year-olds report using marijuana in the last year.

- Up to 0.72% report using cocaine in the last year (data is limited).

- Up to 0.72% report using methamphetamines.

- Up to 0.72% used heroin.

- 2.87% report misusing pain relievers.

- 10.06% of all 12- to 17-year-olds used alcohol in the last month.

- They're 9.89% more likely to use alcohol than the average

American in their age group.

- 38,000 18- to 25-year-olds used drugs in the last month.
- 18- to 25-year-olds in Delaware are 5.88% more likely to use drugs than the average American in the same age group.
- 6.22% 12- to 17-year-olds met the criteria for IDUD in the last year.
- 3.11% 12- to 17-year-olds met the criteria for AUD in the last year.

Those struggling should know that their disease is not one that they should be ashamed of or keep hidden. Delaware Goes Purple empowers the community to stand up to erase the stigma and to support youth and families who need it the most.

Religious Components

Please enter the current support your organization receives for this project (not entire organization revenue if not applicable to request)	143,500.00
--	------------

Description	Salaries
--------------------	----------

Amount	30,000.00
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Description	Supplies
--------------------	----------

Amount	4,000.00
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Description	Rockin into Recovery event
--------------------	----------------------------

Amount	45,000.00
---------------	-----------

Description	Marketing/Messaging
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Amount	30,000.00
Description	Community intervention strategies support family mini grant for events Family education series and local events
Amount	21,500.00
Description	indirect cost
Amount	13,000.00
Description	Youth pop up event
Amount	5,000.00
Description	
Amount	
TOTAL EXPENDITURES	148,500.00
TOTAL DEFICIT FOR PROJECT OR ORGANIZATION	-5,000.00
Name of Organization	Sussex County Health Coalition, Inc.
Applicant/Authorized Official	Crystal Timmons- Bryant
Date	08/23/2021
Affidavit Acknowledgement	Yes

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

Council Grant Form

Legal Name of Agency/Organization	Laurel Women's Civic Club
Project Name	Wreaths Across America Project
Federal Tax ID	84-4544354
Non-Profit	Yes
Does your organization or its parent organization have a religious affiliation? (If yes, fill out Section 3B.)	No
Organization's Mission	To provide assistance to our local community. All funds raised go directly back into the community.
Address	P. O. Box 105
Address 2	
City	Laurel
State	DE
Zip Code	19956
Contact Person	Leeann Wells
Contact Title	President
Contact Phone Number	3022285800

Contact Email Address	<u>leeannw2007@yahoo.com</u>
Total Funding Request	\$250.00
Has your organization received other grant funds from Sussex County Government in the last year?	No
If YES, how much was received in the last 12 months?	N/A
Are you seeking other sources of funding other than Sussex County Council?	No
If YES, approximately what percentage of the project's funding does the Council grant represent?	N/A
Program Category (choose all that apply)	Cultural, Educational
Program Category Other	
Primary Beneficiary Category	Other
Beneficiary Category Other	general population

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

1000

Scope

Wreaths across America is a national project which was started with the goal to remember, honor, and teach people about veterans and the sacrifices they made for their country. LWCC is proud to be the sponsor of the Oddfellows Cemetery in Laurel. With the exception of the Veteran's Cemetery, we are the only cemetery in Sussex County currently in WAA. Last year, we were able to hold the ceremonial wreath laying ceremony at the cemetery. We had local media there as well as dignitaries such as Senator Bryant Richardson, Rep. Tim Dukes, and Mayor John Shwed speaking. This year, we hope to do the same as well as lay as many wreaths as we have donated. Our group is entirely volunteer, so all labor would be done by our members. This is a combined service/fundraising project as a portion of the proceeds from the wreaths will come back to the LWCC. All of the money received will go directly back into the community. In the past year we have given monies to families in need, as well as donations to several organizations such as Good Samaritan, Tidal Health, and KSI to name a few. We also support the local library and the local schools. We appreciate your time considering our application
Thank you

Religious Components

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

0.00

Description purchasing wreaths

Amount 750.00

Description

Amount

Description

Amount

Description

Amount

Description

Amount

Description

Amount

Description

Amount

Description

Amount

TOTAL 750.00

EXPENDITURES

TOTAL DEFICIT FOR PROJECT OR ORGANIZATION	-750.00
Name of Organization	Laurel Women's Civic Club
Applicant/Authorized Official	Leeann Wells
Date	08/25/2021
Affidavit Acknowledgement	Yes

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

To Be Introduced 09/14/21

Council District: Mr. Hudson
Tax I.D. Nos. 234-30.00-1.00 thru 430.00
911 Address: N/A

ORDINANCE NO. ____

AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM A MR-RPC MEDIUM DENSITY RESIDENTIAL DISTRICT – RESIDENTIAL PLANNED COMMUNITY TO A MR-RPC MEDIUM DENSITY RESIDENTIAL DISTRICT- RESIDENTIAL PLANNED COMMUNITY TO AMEND CONDITIONS OF APPROVAL OF CHANGE OF ZONE NO. 1883 (ORDINANCE NO. 2690) AND CHANGE OF ZONE NO. 1475 (ORDINANCE NO. 1573) RELATING TO THE MAXIMUM NUMBER AND TYPES OF HOUSING PERMITTED FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 778.39 ACRES, MORE OR LESS

WHEREAS, on the 30th day of August 2021, a zoning application, denominated Change of Zone No. 1936 was filed on behalf of OA-BP Marina Bay-Lakeside, LLC; and

WHEREAS, on the ____ day of _____ 2021, a public hearing was held, after notice, before the Planning and Zoning Commission of Sussex County and said Planning and Zoning Commission recommended that Change of Zone No. 1936 be _____; and

WHEREAS, on the ____ day of _____ 2021, a public hearing was held, after notice, before the County Council of Sussex County and the County Council of Sussex County has determined, based on the findings of facts, that said change of zone is in accordance with the Comprehensive Development Plan and promotes the health, safety, morals, convenience, order, prosperity and welfare of the present and future inhabitants of Sussex County,

NOW, THEREFORE, THE COUNTY OF SUSSEX HEREBY ORDAINS:

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

Section 2. The subject property is described as follows:

ALL that certain tract, piece or parcel of land lying and being situate in Indian River Hundred, Sussex County, Delaware, and lying on the south end of Bay Farm Road (S.C.R. 299) and the south side of Trinity Road (S.C.R. 299A), and being more particularly described in the attached legal description prepared by McCrone, Inc., said parcel containing 778.39 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 09/14/21

Council District: Mrs. Green

Tax I.D. Nos. 133-6.00-50.00 & p/o 50.02

911 Addresses: 25116, 25076 & 25136 DuPont Boulevard, Georgetown

ORDINANCE NO. ____

AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM A C-1 GENERAL COMMERCIAL DISTRICT AND AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A C-3 HEAVY COMMERCIAL DISTRICT FOR CERTAIN PARCELS OF LAND LYING AND BEING IN DAGSBORO HUNDRED, SUSSEX COUNTY, CONTAINING 4.33 ACRES AND 0.08 ACRE, MORE OR LESS

WHEREAS, on the 16th day of July 2021, a zoning application, denominated Change of Zone No. 1947 was filed on behalf of Kenneth P. Adams; and

WHEREAS, on the ____ day of _____ 2021, a public hearing was held, after notice, before the Planning and Zoning Commission of Sussex County and said Planning and Zoning Commission recommended that Change of Zone No. 1947 be _____; and

WHEREAS, on the ____ day of _____ 2021, a public hearing was held, after notice, before the County Council of Sussex County and the County Council of Sussex County has determined, based on the findings of facts, that said change of zone is in accordance with the Comprehensive Development Plan and promotes the health, safety, morals, convenience, order, prosperity and welfare of the present and future inhabitants of Sussex County,

NOW, THEREFORE, THE COUNTY OF SUSSEX HEREBY ORDAINS:

Section 1. That Chapter 115, Article II, Subsection 115-7, Code of Sussex County, be amended by deleting from the Comprehensive Zoning Map of Sussex County the zoning classification of C-1 General Commercial District and AR-1 Agricultural Residential District and adding in lieu thereof the designation of C-3 Heavy Commercial District as it applies to the properties 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 the southwest side of DuPont Boulevard (Route 113) approximately 351 feet northwest of Governor Stockley Road (S.C.R. 432) and being more particularly described in the attached legal descriptions prepared by Pennoni Associates, Inc. and entitled "Rezoning Site Plan" dated May 14, 2021, said parcels containing 4.33 acres and 0.08 acre, 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 09/14/21

Council District Mr. Hudson
Tax I.D. No. 334-13.00-334.00, 1448.00 through 1750.00
911 Address: N/A

ORDINANCE NO. ____

AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN MR-RPC MEDIUM-DENSITY RESIDENTIAL DISTRICT, RESIDENTIAL PLANNED COMMUNITY TO AN MR-RPC MEDIUM-DENSITY RESIDENTIAL DISTRICT, RESIDENTIAL PLANNED COMMUNITY TO AMEND CONDITIONS OF APPROVAL NUMBER 15 OF C/Z 1538 (ORDINANCE NO. 1700) AND C/Z 1926 (ORDINANCE NO. 2786) IN RELATION TO PIERS, DOCKS, BOAT RAMPS AND OTHER WATER RELATED RECREATIONAL FACILITIES FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES & REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 180.60 ACRES, MORE OR LESS

WHEREAS, on the 20th day of July 2021, a zoning application, denominated Change of Zone No. 1948 was filed on behalf of The Grande at Canal Point Maintenance Corporation; and

WHEREAS, on the ____ day of _____ 2021, a public hearing was held, after notice, before the Planning and Zoning Commission of Sussex County and said Planning and Zoning Commission recommended that Change of Zone No. 1948 be _____; and

WHEREAS, on the ____ day of _____ 2021, a public hearing was held, after notice, before the County Council of Sussex County and the County Council of Sussex County has determined, based on the findings of facts, that said change of zone is in accordance with the Comprehensive Development Plan and promotes the health, safety, morals, convenience, order, prosperity and welfare of the present and future inhabitants of Sussex County,

NOW, THEREFORE, THE COUNTY OF SUSSEX HEREBY ORDAINS:

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

Section 2. The subject property is described as follows:

ALL that certain tract, piece or parcel of land lying and being situate in Lewes & Rehoboth Hundred, Sussex County, Delaware, and lying on the east side of Hebron Road approximately 0.19 miles south of the intersection of Hebron Road and Holland Glade Road (S.C. R. 271), and being more particularly described in the attached legal description prepared by Canal Point, LLC, said parcel containing 180.60 acres, more or less.

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

To Be Introduced – 09/14/21

Council District: Mrs. Green
Tax I.D. No.: 135-9.00-26.00
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 GEORGETOWN HUNDRED, SUSSEX COUNTY, CONTAINING 22.60 ACRES, MORE OR LESS

WHEREAS, on the 17th day of June 2021, a zoning application, denominated Change of Zone No. 1952 was filed on behalf of Samantha Broadhurst; and

WHEREAS, on the ____ day of _____ 2021, a public hearing was held, after notice, before the Planning and Zoning Commission of Sussex County and said Planning and Zoning Commission recommended that Change of Zone No. 1952 be _____; and

WHEREAS, on the ____ day of _____ 2021, a public hearing was held, after notice, before the County Council of Sussex County and the County Council of Sussex County has determined, based on the findings of facts, that said change of zone is in accordance with the Comprehensive Development Plan and promotes the health, safety, morals, convenience, order, prosperity and welfare of the present and future inhabitants of Sussex County,

NOW, THEREFORE, THE COUNTY OF SUSSEX HEREBY ORDAINS:

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

Section 2. The subject property is described as follows:

ALL that certain tract, piece or parcel of land lying and being situate in Georgetown Hundred, Sussex County, Delaware, and lying on the west side of DuPont Boulevard (Route 113), approximately 0.33 mile north of Wilson Hill Road (S.C.R. 244) and being more particularly described in the attached legal description prepared by Hudson, Jones, Jaywork & Fisher, said parcel containing 22.60 acres, more or less.

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

JAMIE WHITEHOUSE, AICP
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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: September 10, 2021

RE: County Council Report for CU 2255 filed on behalf of John Sommers

The Planning and Zoning Department received an application (CU 2255 filed on behalf of John Sommers) for a Conditional Use for parcel 134-15.00-95.03 for the sale, renting, storage, and repair of bicycles and related accessories. The address is 32650 Roxana Road, Frankford. The property is within the Agricultural Residential (AR-1) Zoning District. The parcel size is 2.9 acres +/-.

The Planning and Zoning Commission held a public hearing on August 12, 2021. At the meeting of August 26, 2021, the Commission recommended that the application be approved for the 5 reasons and subject to the 11 recommended conditions as outlined in the motion.

Below are the draft minutes from the Planning & Zoning Commission meeting of August 12, 2021, and the draft minutes from the Planning & Zoning Commission meeting of August 26, 2021.

Draft Minutes of the August 12, 2021, Planning & Zoning Commission Meeting

C/U 2255 John Sommers

An Ordinance to grant a Conditional Use of land in an AR-1 Agricultural Residential District for the sale, renting, storage, and repair of bicycles and related accessories to be located on a certain parcel of land lying and being in Baltimore Hundred, Sussex County, containing 2.9 acres, more or less. The property is lying on the northwest side of Roxana Road (Rt. 17), approximately 0.55 mile southwest of Burbage Road (S.C.R. 353). 911 Address: 32650 Roxana Road. Tax Parcel: 134-15.00-95.03.

Mr. Whitehouse advised the Commission that submitted into the record is a copy of the DelDOT Service Level Evaluation Response, a copy of the staff analysis, a copy of a letter received from the Sussex County Engineering Department Utility Planning Division, and one letter of opposition.



The Commission found that Mr. John Sommers was present on behalf of the Applicant, John Sommers; that he is the owner of the Fenwick Island Bicycle Shop and Ocean Cycles of Bethany Beach; that he purchased the proposed property in 2017 for his family for the purpose of gardening and recreational use; that as the market for beach homes has expanded outward from the beach, he noticed his demand for rental bikes increased; that the need for rental bikes often came from the subdivisions of Bear Trap Dunes, Bishops Landing and Millville By the Sea, along with others; that he has noticed an increase in road and casual bicycle traffic on nearly every road in the area; that due to the increase of homes and bicycle traffic it has led him to believe the proposed location would be beneficial to expand his business with another bicycle shop; that by doing so he will create jobs and support a healthy recreational sport and service the needs of an area of expanding population; that there is currently 2,885 homes in Millville By the Sea proposed and/or built; that there is 834 homes in Bishops Landing proposed and/or built and there are 76 homes built in Coventry; that the majority of these subdivision are connected or will be connected by multi-use pathways; that if current trend continues and as additional phases of Millville By the Sea are built, a multi-use path will most likely be built directly across the street from the proposed property; this will allow for safe interconnected bicycle traffic in the area; that the property is listed as being in the Coastal Area within the Comprehensive Plan; that the proposed type of small scale business growth is permitted and promoted in the area; that the proposed property is screened by trees from surrounding properties; that it is located 0.1 mile from Beebe's South Coastal Emergency Department and located directly across from Millville By the Sea's original commercial development that is currently occupied by a credit card processing company; that an adjacent property has a conditional use for offices and warehouses; that 0.6-mile north of the intersection of Burbage Rd. and Rt. 17 there is C-1 Commercial Residential Zoning and Conditional Uses for mini-storage, self-storage and professional offices; that commercial uses and zoning continue to creep south along Rt. 17 and away from Rt. 26 as residential development continues to expand; that as the area grows, business services must continue to grow with the area; that he feels by expanding his business in the proposed location will promote the health, wellness, and financial growth of the county and he is looking forward to creating jobs and expanding a healthy recreation in the area.

Ms. Wingate mentions the letter of opposition received; that the letter proposes placing a buffer of trees along the boundary line between the parcels due to concern of owning farm animals and she questions if the Applicant will be utilizing all of the property, or only the front portion of the proposed property; that she mentions concerns in the letter regarding existing wellheads for field hydrants; that she questions where bike storage will be and if it will be in a contained space and she questions what hours of operation will be.

Mr. Sommers stated his proposed bicycle business would only be run from the front portion of the property and no one would be to the back of the property at all; that there is a current tree line down a part of the back part of the parcel; that in the front they have no trees but do have a fence placed on the north side of the property; that he would be willing to place trees if it is required; that he only uses the field hydrants to water his garden; that the watering only takes place to the front of his property, which should create no runoff onto the adjacent property; that when he bought the property there was a field hydrant that he was not aware of that he will need to disconnect and he will have bike storage in a 30 x 30 pole barn on the property; that all bikes will be stored inside not outside other than a few bikes outside of the storage area for display, and hours of operation are proposed to be 8:00 am to 8:00 pm every day of the week.

Mr. Mears questioned if Mr. Sommers would like a sign.

Mr. Sommers states he would like to have a sign displayed.

Ms. Stevenson questioned that the Application was for bicycle repair, maintenance, and sales; that she questions the amount of traffic the Applicant normally receives, how many employees the Applicant will have and how many parking spaces will be needed; that she questions if the Application will affect any nearby schools or area roadways.

Mr. Sommers confirmed that he would perform repairs, maintenance, and sales on the property; that his other two businesses are in a very condensed area and he stays very busy; that a lot of his business is by foot traffic and not so much with vehicles; that he intends to have 13 employees total, with only three to five employees at the proposed location; that he feels 10 vehicles could park easily without using the back of the property; and he feels the Application will not negatively affect nearby schools or roadways.

Chairman Wheatley questioned if the Applicant sells or performs maintenance on any motorized bicycles.

Mr. Sommers stated he does not sell nor does he perform maintenance on any motorized bicycles and all his bicycles are foot-pedal power only.

The Commission found Mr. Alexander Andrews spoke in opposition to the Application by teleconference requesting a barrier of trees and pedestrian barrier, concerns regarding the well, located on the Applicant's property, that at times runs off onto his adjacent property, and requests more information regarding lighting.

Mr. Sommers stated that he does have security lighting on the pole barn currently; that the lighting is located on the opposite side of the building facing his property; that he does not propose placing any additional lighting other than possibly for a sign which will be located to the front of the property and with the placement of the requested buffer of trees, they should act as an additional shield to any residual light pollution.

Upon there being no further questions, Chairman Wheatley closed the Public Hearing.

At the conclusion of the Public Hearing, the Commission discussed the Application.

In relation to Application C/U 2255 John Sommers, Motion by Ms. Wingate to defer action for further consideration, seconded by Ms. Stevenson, and carried unanimously. Motion carried 4-0.

Draft Minutes of the August 26, 2021 Planning & Zoning Commission Meeting

The Commission discussed this application which has been deferred since August 12, 2021.

Ms. Wingate moved that the Commission recommend approval of Conditional Use # 2255 for JOHN SOMMERS for the sale, renting, storage, and repair of bicycles and related accessories based on the record made during the public hearing and for the following reasons:

1. The property is a 2.9 acre parcel that is zoned AR-1 Agricultural Residential.
2. The site is in the Coastal Area according to the Sussex County Comprehensive Plan. Small business uses such as this are appropriate in this Area according to the Plan.
3. The site is an area of Sussex County that has developed with other small businesses. This business will be compatible with those existing uses.
4. This small business will provide a service to Sussex County residents and visitors. The use of bicycles has expanded beyond the beach areas where most of these types of businesses are currently located, and this location is an area that is developing with many homes. This intended use has a public or semi-public character that will benefit the residents and visitors of Sussex County.
5. The use will only occur on the front half of the property nearest Roxanna Road.
6. This recommendation is subject to the following conditions:
 - a. This use shall be limited to the business of selling, renting, and repairing bicycles and related accessories. No other business shall be conducted from the site.
 - b. One lighted sign shall be permitted. It shall be no larger than 32 square feet per side.
 - c. The hours of operation for the business shall be from 8:00 a.m. until 8:00 p.m.
 - d. Any security lighting shall be shielded and downward screened so that it does not shine on neighboring properties and roadways.
 - e. There was testimony during the hearing about a water valve on the neighbor's property that is served and controlled from this property. The Applicant shall disconnect any plumbing or water service that crosses from his property onto the neighboring property.
 - f. There shall be a row of tree planting along the northern boundary of this site to sufficiently screen it from the view of the adjacent property. The nature, type, and location of the plantings shall be shown on the Final Site Plan.
 - g. The Final Site Plan shall depict the area of the Conditional Use as being between the frontage along Roxanna Road and the Ditch that bisects the property. There shall also be "No Trespassing" signs placed along the northern boundary to deter anyone from disturbing the farm animals next door.
 - h. The applicant shall comply with all DelDOT requirements, including any entrance or roadway improvements.
 - i. The Final Site Plan shall clearly show all areas for parking, and these areas shall be clearly marked on the site itself. There shall not be any parking within the property's setbacks.
 - j. Failure to comply with any of these conditions may be grounds for termination of the Conditional Use approval.
 - k. The Final Site Plan shall be subject to review and approval of the Sussex County Planning and Zoning Commission.

Motion by Ms. Wingate, seconded by Mr. Mears and carried unanimously to recommend approval of Conditional Use # 2255 for John Sommers for the reasons and conditions stated in the motion. Motion carried 4 – 0.

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

PLANNING AND ZONING AND COUNTY COUNCIL INFORMATION SHEET
Planning Commission Public Hearing Date August 12, 2021.

Application: CU 2255 John Sommers

Applicant: John Sommers
101-3 Coastal Highway
Fenwick Island, DE 19944

Owner: John Sommers
101-3 Coastal Highway
Fenwick Island, DE 19944

Site Location: Northwest side of Roxana Road (Rt. 17), approximately 0.55 of a mile southwest of Burbage Road (S.C.R. 353)

Current Zoning: Agricultural Residential (AR-1)

Proposed Use: Bicycle shop – sales, renting, repair, and storage

Comprehensive Land Use Plan Reference: Coastal Area

Councilmanic District: Mr. Rieley

School District: Indian River School District

Fire District: Millville Fire District

Sewer: On-site septic system

Water: On-site well

Site Area: 2.9 acres +/-

Tax Map ID.: 134-15.00-95.03



JAMIE WHITEHOUSE, AICP MRTPI
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(302) 855-7878 T
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Memorandum

To: Sussex County Planning Commission Members
From: Chase Phillips, Planner I
CC: Vince Robertson, Assistant County Attorney and applicant
Date: August 2nd, 2021
RE: Staff Analysis for CU 2255 John Sommers

This memo provides a background and an analysis for the Planning Commission to consider as a part of the Conditional Use Application for John Sommers (CU 2255) to be reviewed during the August 3rd, 2021, Planning Commission Meeting. This analysis should be included in the record of this application and is subject to comments and information that may be presented during the public hearing.

The request is for a Conditional Use (C/U 2255) to allow for a bicycle repair shop to be located on the northwest side of Roxana Road (Rt. 17), approximately 0.55 mile southwest of Burbage Road (S.C.R. 353). The subject property is Tax Parcel 134-15.00-95.03, and the total area of the site is 2.9 acres +/-.

The 2018 Sussex County 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 the ways in which land uses should change over time. The Future Land Use map in the plan indicates that the subject property has a land use designation of "Coastal Area." The properties to the north, south and west of the subject property also have the land use designation of "Coastal Area." The parcels on the opposite side of Roxana Road (Rt. 17) are within the jurisdiction of the Town of Millville.

As outlined in the 2018 Sussex County Comprehensive Plan, Coastal Areas are expected to accommodate residential and economic growth and protect and preserve environmentally sensitive areas. Specifically, the Comprehensive Plan states that a range of housing types, including townhomes and multi-family units, be permitted. Housing is permitted at a density of 2 units to the acre and medium densities (4-12 units per acre) may be appropriate in certain areas. It is envisioned that Coastal Areas encourage retail and offices uses; however, larger shopping centers and office parks could be confined to select locations. Lastly, the Coastal Area designation encourages the expansion of central water and sewer facilities as it is feasible.

The subject property is within an Agricultural Residential (AR-1) Zoning District. The properties to the north, south, east, and west are all within the AR-1 Zoning District. As mentioned above, the parcels on the opposite side of Roxana Road are within the Town of Millville; therefore, there is no zoning designation.

Since 1971, there has been one (1) Conditional Use application filed with the Planning and Zoning Department within a one-mile radius from the subject site. Conditional Use No. 174, to allow for a wood working shop, was initially heard by the Sussex County Council on December 11th, 1973,



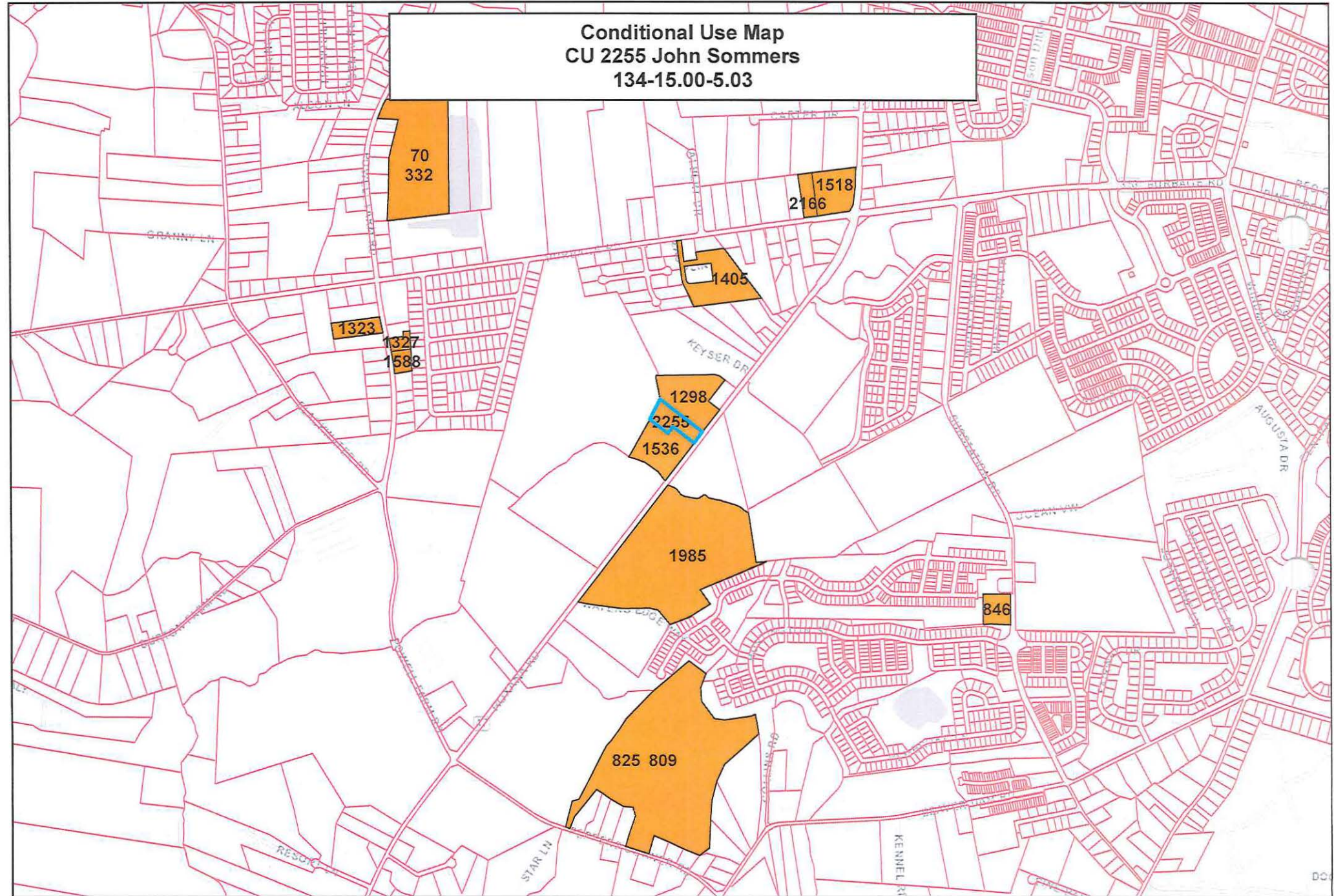
and two were withdrawn. The attached table summarizes the location, use, and decision of each application. Furthermore, attached is a map that represents the locations of each of these uses.

Based on the analysis provided, this Conditional Use request for a bicycle sales and repair shop, subject to considerations of scale and impact, could be determined to be consistent with the surrounding land uses, zoning, and environment.



Sussex County

Conditional Use Map
CU 2255 John Sommers
134-15.00-5.03



CU #	Tax Parcel ID	APPLICANT	Zoning	Proposed Use	P&Z Recommendation	P&Z Recommendation Date	CC Decision	CC Decision Date
2255	134-15.00-95.03	John Sommers	AR-1	Bicycle sales, repair, storage		<Null>		<Null>
2166	134-11.00-226.01	Deborah Townsend	AR-1	Professional office and business services with residence	Recommended Approval	4/11/2019	Approved	4/30/2019
1985	134-15.00-118.00	Eugenia Athan	AR-1/MR	Storage Facility	Recommended Approval	4/10/2014	Approved	5/20/2014
1969	134-11.00-207.00	Melvin L. Joseph Construction Co.	AR-1	Borrow Pit	Recommended Approval	10/10/2013	Approved	10/15/2013
1900	134-11.00-207.00	Doris D. Turner	AR-1	Borrow Pit	Withdrawn	6/2/2011	Withdrawn	6/2/2011
1588	134-15.00-24.00	Leroy & JoAnn Marvel	AR-1	small engine repair	Recommended Approval	2/10/2005	Approved	3/15/2005
1536	134-15.00-95.02	Mr. Natural Bottled Water	AR-1	office/warehouse	Recommended Approval	4/29/2004	Approved	5/18/2004
1518	134-11.00-227.00	Atlantic Auction Co., Inc.	AR-1	self storage & professional office	Recommended Approval	1/22/2004	Approved	1/27/2004
1405	134-11.00-808.02	Michael G. McCarthy	AR-1	offices & woodshop	Recommended Denial	5/17/2001	Approved	6/19/2001
1327	134-15.00-23.00	Frank Cochran	AR-1	lawn mower repair & boat storage	Recommended Denial	2/24/2000	Approved	3/21/2000
1323	134-15.00-9.04	Theodore B. Simpler	AR-1	office for surveying firm	Recommended Approval	1/12/2000	Approved	2/1/2000
1298	134-15.00-95.00	Lawrence & Susan Kelly	AR-1	nursery/landscaping/garden center	Recommended Approval	7/22/1999	Approved	8/10/1999
846	134-16.00-1.00	Delaware Electric Cooperative	AR-1	public utility electric substation	Recommended Approval	12/26/1985	Approved	1/14/1986
825	134-15.00-122.00	Morris E. Justice	AR-1	borrow pit	Recommended Denial	5/23/1985	Approved	7/23/1985
809	134-15.00-122.00	Morris E. Justice	AR-1	Borrow Pit	Withdrawn	<Null>	Withdrawn	<Null>
332	134-11.00-216.00	Hogsten	AR-1	campground	N/A	<Null>	Denied	<Null>
70	134-11.00-216.00	James & Marie Hogsten	AR-1	Camping Area	N/A	<Null>	Approved	8/29/1972



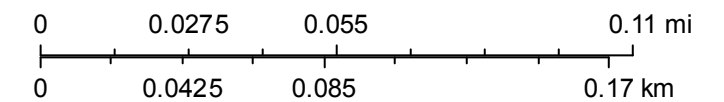
Sussex County



PIN:	134-15.00-95.03
Owner Name	SOMMERS JOHN J
Book	4648
Mailing Address	101-3 COASTAL HIGHWAY
City	FENWICK ISLAND
State	DE
Description	NW/RT 17
Description 2	LOT B
Description 3	N/A
Land Code	

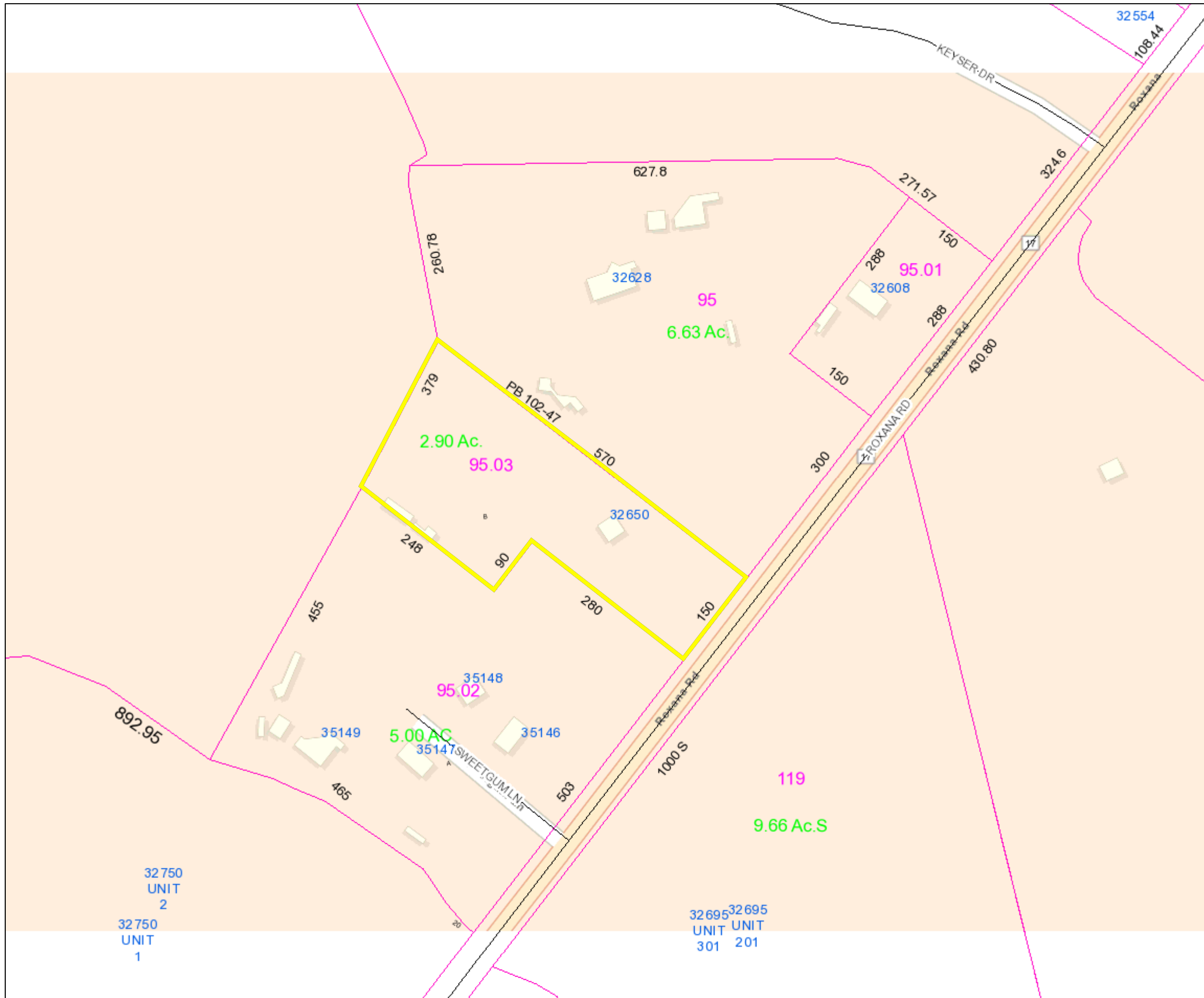
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- polygonLayer**
- Override 1
- Tax Parcels
- 911 Address
- Streets

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Sussex County



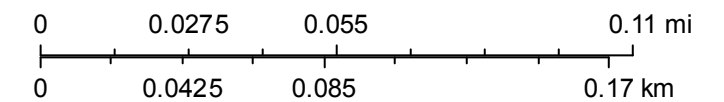
PIN:	134-15.00-95.03
Owner Name	SOMMERS JOHN J
Book	4648
Mailing Address	101-3 COASTAL HIGHWAY
City	FENWICK ISLAND
State	DE
Description	NW/RT 17
Description 2	LOT B
Description 3	N/A
Land Code	

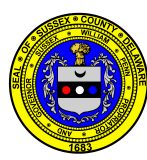
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 - Override 1
- polygonLayer**

 - Override 1
- ⋯ Tax Parcels
- 911 Address
- Streets

1:2,257





Sussex County



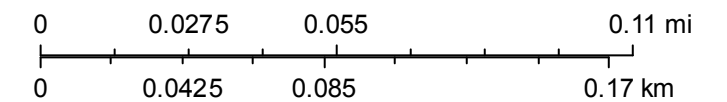
PIN:	134-15.00-95.03
Owner Name	SOMMERS JOHN J
Book	4648
Mailing Address	101-3 COASTAL HIGHWAY
City	FENWICK ISLAND
State	DE
Description	NW/RT 17
Description 2	LOT B
Description 3	N/A
Land Code	

- polygonLayer**

 - Override 1
- polygonLayer**

 - Override 1
 - Tax Parcels
 - 911 Address
 - Streets

1:2,257



To Be Introduced 03/23/21

**Council District 5: Rieley
Tax I.D. No. 134-15.00-95.03
911 Address: 32650 Roxana Road, Frankford**

ORDINANCE NO. ____

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR THE SALE, RENTING, STORAGE, AND REPAIR OF BICYCLES AND RELATED ACCESSORIES TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 2.9 ACRES, MORE OR LESS.

WHEREAS, on the 15th day of December 2020, a conditional use application, denominated Conditional Use No. 2255 was filed on behalf of John Sommers, 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. 2255 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 IV, Subsections 115-22, of the Code of Sussex County, be amended by adding the designation of Conditional Use No. 2255 as it applies to the property hereinafter described.

Section 2. The subject property is described as follows:

ALL that certain tract, piece or parcel of land, lying and being situate in Baltimore Hundred, Sussex County, Delaware, and lying on the northwest side of Roxana Road (Rt. 17), approximately 0.55 mile southwest of Burbage Road (S.C.R. 353), and being more particularly described in the attached deed prepared by D. Stephen Parsons, P.A., said parcel containing 2.9 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.

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DIRECTOR OF PLANNING & ZONING
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Sussex County

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Memorandum

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

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

CC: Everett Moore, County Attorney

Date: September 10, 2021

RE: County Council Report for CU 2257 filed on behalf of Indian River Volunteer Fire Co., Inc

The Planning and Zoning Department received an application (CU 2257 filed on behalf of Indian River Volunteer Fire Co., Inc. for a Conditional Use for parcel 234-34.08-53.00 (part of) for outdoor boat storage and overflow parking on land lying on the northeast corner of the intersection of Oak Orchard Road (Rt. 5) and Spruce Street. The property is within the General Residential (GR) Zoning District. The parcel size is 1.006 acres +/-.

The Planning and Zoning Commission held a public hearing on August 12, 2021. At the meeting of August 26, 2021, the Commission recommended that the application be approved for the 7 reasons and subject to the 12 recommended conditions as outlined in the motion.

Below are the draft minutes from the Planning & Zoning Commission meeting of August 12, 2021, and the draft minutes from the Planning & Zoning Commission meeting of August 26, 2021.

Draft Minutes of the August 12, 2021, Planning & Zoning Commission Meeting

C/U 2257 Indian River Volunteer Fire Co., Inc.

An Ordinance to grant a Conditional Use of land in a GR General Residential District for outdoor boat storage and overflow parking to be located on a certain parcel of land lying and being in Indian River Hundred, Sussex County, containing 1.006 acres, more or less. The property is lying on the northeast corner of the intersection of Oak Orchard Road (Route 5) and Spruce Street. 911 Address: N/A. Tax Parcel: 234-34.08-53.00 (p/o).

Mr. Whitehouse advised the Commission that submitted into the record is a copy of a letter from the Applicant, a copy of the staff analysis, a copy of the Applicant's survey plan, a copy of the letter from DelDOT's Service Level Evaluation Response, a letter from Sussex County Engineering Department



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Utility Planning Division, and two letters of support.

The Commission found that Mr. Patrick Miller spoke on behalf of the Applicant, Indian River Volunteer Fire Co., Inc.; that he is the President of the Indian River Volunteer Fire Company; that Indian River Volunteer Fire Company has owned both parcels since 1966; that it was originally purchased to build a firehouse as the Fire Company already had a facility across the street; that the proposed piece of property has never been utilized for anything other than community gatherings and overflow parking for the nearby church; that the Fire Company was not aware a variance was needed for those reasons in the past; that the parcel has remained vacant and the Fire Company has maintained the parcel over the years; that a few years ago the Fire Company did sell a section of the parcel to Sussex County to utilize as a pumping station; that across the street, next to WMF Watercraft, there is property also owned by the Indian River Volunteer Fire Company; that the Fire Company has complied with all fencing and lighting requirements; that they are expanding on the opposite side of Old Orchard Rd., where they have purchased the old convenience store; that the proposed property is located between the convenience store and the community church; that WMF Watercraft has approached the Indian River Volunteer Fire Company to see if they would be willing to rent them some facilities to store boats as the boats are arriving to be serviced; that they will not be storing boats for seasons, as they already have a property for this purpose located on John J. Williams Hwy.; that the anticipation is only for storage of the boats waiting to be serviced; that the Indian River Volunteer Fire Company has partnered with the community church, who is not in opposition; that the community church plans to submit a letter of support; that the community church requests to still utilize the proposed parcel for their overflow parking; that the boat storage for WMF Watercraft does not anticipate to use the entire 1.06 acres; that the Indian River Volunteer Fire Company has worked out an arrangement with the community church to transition the ownership of Oak St. from the community church to the Indian River Volunteer Fire Company; that this process has not been finalized due to the death of the attorney who was handling the process; that the Indian River Volunteer Fire Company has made it clear to WMF Watercraft that they would have to comply with any conditions given by the Commission; that WMF Watercraft is already familiar with the fencing, lighting and business hour conditions that are already in place and the business hours are Monday through Friday 8:00 am to 5:00 pm, Saturdays 8:00 am to 3:00 pm and no business hours on Sundays; that these are the current working hours that were already granted to WMF Watercraft previously.

Ms. Wingate questioned if anyone would be working on the boats on the proposed property, or if it was for storage of the boats only.

Mr. Miller stated the proposed property is for boat storage only; that it is listed as a stipulation in WMF Watercraft's lease on the other parcels as well and that they must only do work and maintenance of the boats within their facilities on their property.

Ms. Stevenson questioned if there will be any black-top placed on the proposed property and if lighting will be needed on the property.

Mr. Miller stated no, he does not see any reason to need a black-top on the property; that lighting would be a stipulation of the agreement; that due to security concerns lighting has been advantageous at the existing facilities for the Fire Company and WMF Watercraft businesses to better utilize the exterior cameras to monitor activity, and there has been undesirable activity on the property in the past.

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

Upon there being no further questions, Chairman Wheatley closed the Public Hearing.

At the conclusion of the Public Hearing, the Commission discussed the Application.

In relation to Application C/U 2257 Indian River Volunteer Fire Company, Motion by Mr. Mears to defer action for further consideration, seconded by Ms. Wingate, and carried unanimously. Motion carried 4-0.

Draft Minutes of the August 26, 2021 Planning & Zoning Commission Meeting

The Commission discussed this application which has been deferred since August 12, 2021.

Mr. Mears moved that the Commission recommend approval of Conditional Use # 2257 for INDIAN RIVER VOLUNTEER FIRE CO., INC. for a boat storage facility and overflow parking within the GR District based on the record made during the public hearing and for the following reasons:

1. The Applicant seeks approval for a boat storage and overflow parking facility on approximately 1 acre of land.
2. The proposed Conditional Use is located in the Oak Orchard area, which is an appropriate location for this type of use. This will be an expansion of the existing boat facility across the road.
3. There is a need for the use proposed by the Applicant in this area of Sussex County.
4. This use is limited in nature and will not involve any new buildings.
5. The project, with the conditions and stipulations imposed upon it, will not have an adverse impact upon the neighboring properties or community.
6. The use is of a public or semi-public character and is desirable for the general convenience and welfare of residents in this area of Sussex County.
7. No parties appeared in opposition to this Application.
8. This recommendation for approval is subject to the following conditions:
 - A. The use shall be limited to the storage of boats and overflow parking. No other storage of vehicles or equipment shall occur on the site.
 - B. The facility shall only be accessible from 8:00 a.m. until dusk.
 - C. The perimeter of the site shall be fenced with a 6-foot-high fence that screens the property from neighboring and adjacent properties and roadways.
 - D. No sales or maintenance of boats shall occur on the site.
 - E. All security lighting shall be shielded and downward screened so that it does not shine on neighboring properties or roadways.
 - F. The storage area shall be covered with a pervious stabilizing material. The location and type of this material shall be shown on the final site plan.
 - G. The use shall be subject to all DelDOT requirements regarding the entrance and roadway improvements necessary to provide access to the site.

- H. No hazardous materials or fuel shall be stored on the property other than what may be in the tanks of boats located on the site.
- I. One lighted sign shall be permitted on the site. It shall not exceed 32 square feet in size.
- J. No junked or unregistered boats or boat trailers shall be stored on the site.
- K. The failure to abide to these conditions of approval may result in the revocation of this Conditional Use.
- L. The final site plan shall be subject to the review and approval of the Sussex County Planning & Zoning Commission.

Motion by Mr. Mears, seconded by Ms. Hoey Stevenson and carried unanimously to recommend approval of Conditional Use # 2257 for the Indian River Volunteer Fire Co., Inc. for the reasons and conditions stated in the motion. Motion carried 4 – 0.

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

PLANNING AND ZONING AND COUNTY COUNCIL INFORMATION SHEET
Planning Commission Public Hearing Date August 12, 2021.

Application: CU 2257 (Indian River Volunteer Fire Company, Inc.)

Applicant: Indian River Volunteer Fire Company, Inc.
32628 Oak Orchard Road
Millsboro, DE 19966

Owner: Indian River Volunteer Fire Company, Inc.
32628 Oak Orchard Road
Millsboro, DE 19966

Site Location: Northeast corner of Oak Orchard Road and Spruce Street, Oak Orchard,
Millsboro

Current Zoning: General Residential (GR), also split with General Commercial (C-1)

Proposed Use: Boat storage

Comprehensive Land
Use Plan Reference: Coastal Area

Councilmanic
District: Mr. Hudson

School District: Indian River School District

Fire District: Indian River Fire District

Sewer: Sussex County Sewer District

Water: Private Provider

Site Area: 1.006 acres +/- (area for boat storage)

Tax Map ID.: 234-34.08-53.00



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Sussex County

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Memorandum

To: Sussex County Planning Commission Members
From: Chase Phillips, Planner I
CC: Vince Robertson, Assistant County Attorney and applicant
Date: August 2nd, 2021
RE: Staff Analysis for CU 2257 (Indian River Volunteer Fire Company)

This memo provides a background and an analysis for the Planning Commission to consider as a part of the Conditional Use application for the Indian River Volunteer Fire Company (CU 2257) to be reviewed during the August 12th, 2021, Planning Commission Meeting. This analysis should be included in the record of this application and is subject to comments and information that may be presented during the public hearing.

This Conditional Use application requests an outdoor boat storage yard to be located on the northeast corner of Oak Orchard Road and Spruce Street in Oak Orchard, Millsboro. The property consists of Tax Parcel 234-34.08-53.00 which contains 1.425 acres +/- 1.006 acres (+/-) is proposed to be utilized for the boat storage itself. The remaining portion of Tax Parcel 234-34.08-53.00 is not included in this request.

The 2018 Sussex County 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 the ways in which land uses should change over time. The Future Land Use map in the plan indicates that the subject property has a land use designation of "Coastal Area." The properties to the north, south and west of the subject property also have the land use designation of "Coastal Area."

As outlined in the 2018 Sussex County Comprehensive Plan, Coastal Areas are expected to accommodate residential and economic growth and protect and preserve environmentally sensitive areas. Specifically, the Comprehensive Plan states that a range of housing types, including townhomes and multi-family units, be permitted. Housing is permitted at a density of 2 units to the acre and medium densities (4-12 units per acre) may be appropriate in certain areas. It is envisioned that Coastal Areas encourage retail and offices uses; however, larger shopping centers and office parks could be confined to select locations. Lastly, the Coastal Area designation encourages the expansion of central water and sewer facilities as it is feasible.

The total parcel (TMP: 234-34.08-53.00) is split between the General Commercial (C-1) and General Residential (GR) Zoning District. The site intended for the outdoor boat storage is only located within the GR Zoning District. The properties to the northwest and south east are also split between the C-1 and GR Zoning Districts. The parcels to the north and south (i.e. across the roadway) are with the GR Zoning District. The parcels to the rear of the subject site are technically a part of the Oak Orchard (Orchard Manor subdivision).

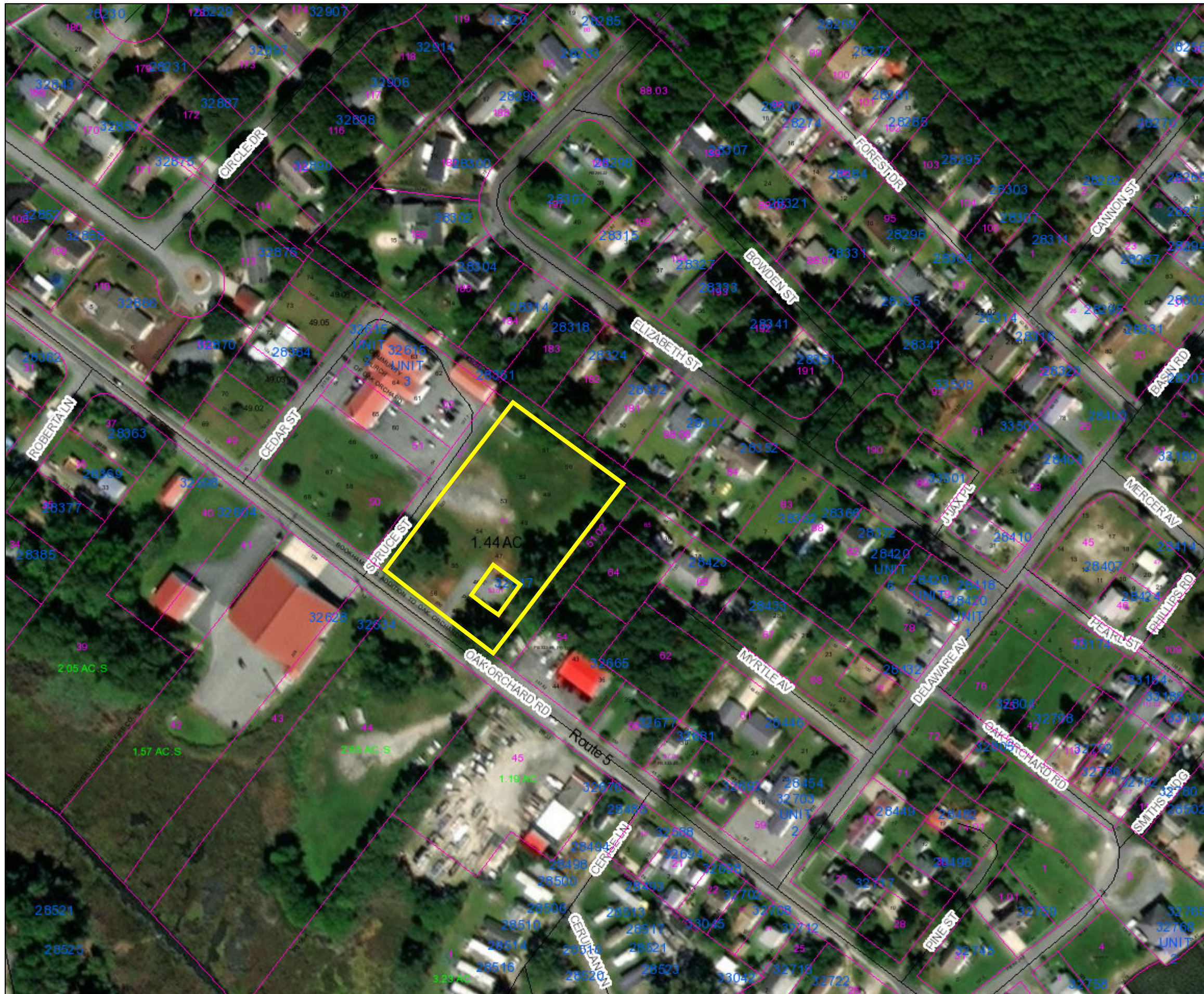


Since 1971, there have been 13 Conditional Use applications within a one-mile radius of CU 2257. 9 applications have been approved. 2 applications have been denied. 2 applications have been withdrawn. Attached is a table that summarizes all of these historic applications.

Based on the analysis provided, Conditional Use No. 2257 (Indian River Volunteer Fire Company), subject to considerations of scale and impact, could be considered as consistent with the surrounding land uses, zoning, and environment.



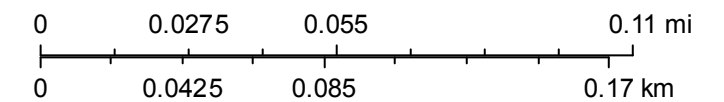
Sussex County



PIN:	234-34.08-53.00	
Owner Name	INDIAN RIVER	VOLUNTEER FIRE CO
Book	799	
Mailing Address	RR 4 BOX 175	
City	MILLSBORO	
State	DE	
Description	OAK ORCHARD	
Description 2	NE/RT 5	
Description 3	7100	
Land Code		

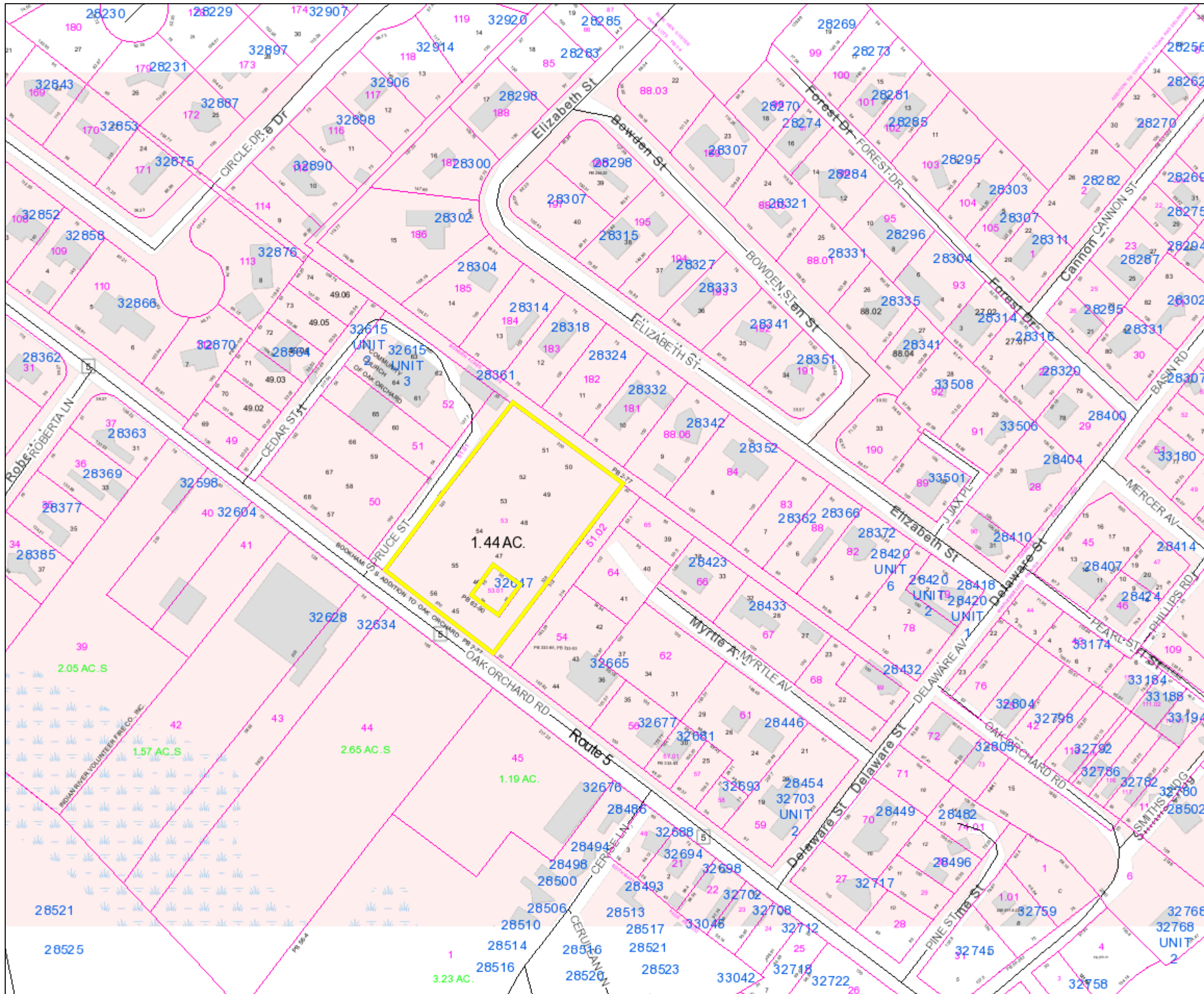
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- Tax Parcels
- 911 Address
- Streets
- County Boundaries

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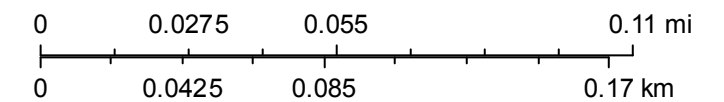
Sussex County



PIN:	234-34.08-53.00	
Owner Name	INDIAN RIVER	VOLUNTEER FIRE CO
Book	799	
Mailing Address	RR 4 BOX 175	
City	MILLSBORO	
State	DE	
Description	OAK ORCHARD	
Description 2	NE/RT 5	
Description 3	7100	
Land Code		

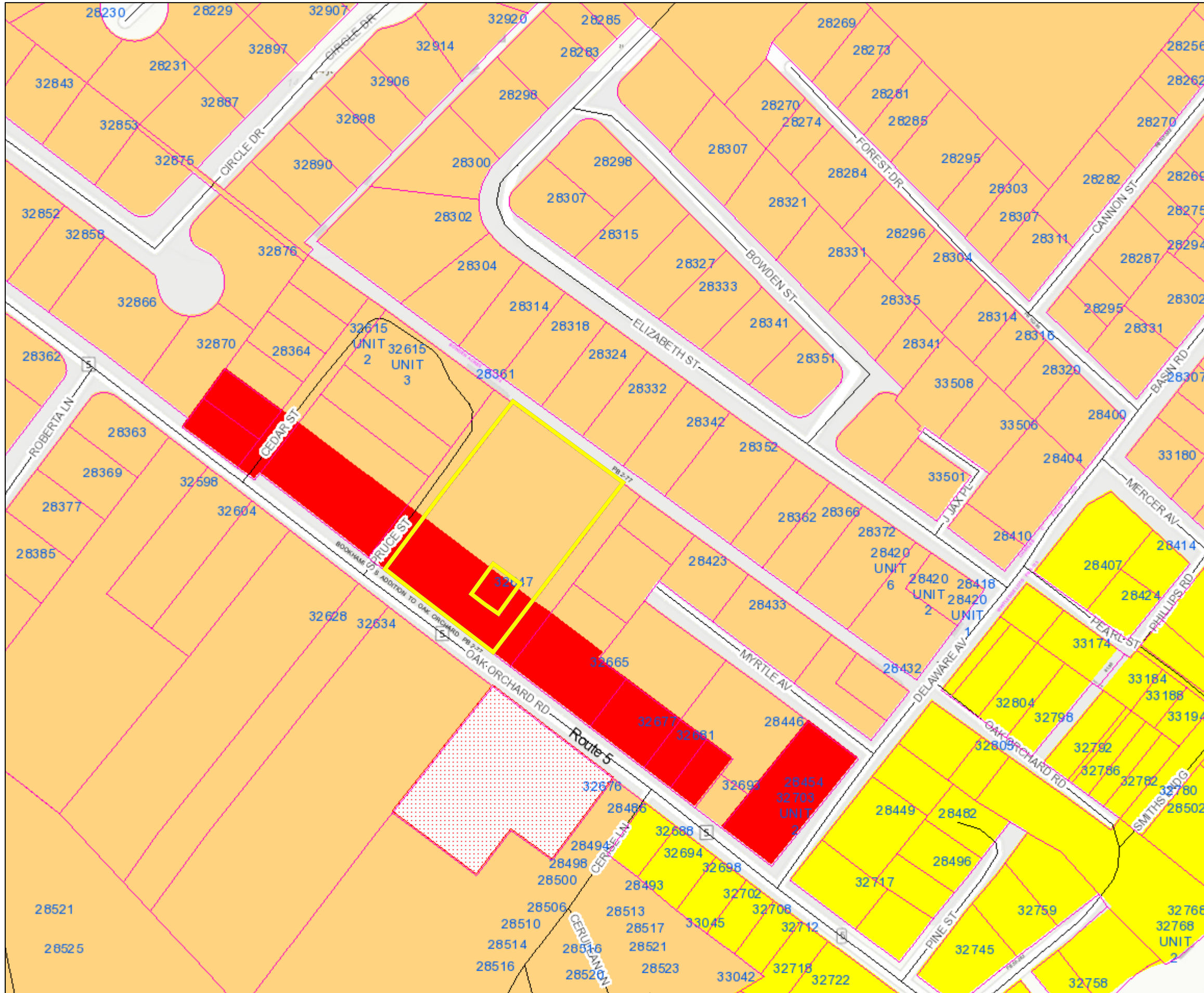
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- Override 1
- Tax Parcels
- 911 Address
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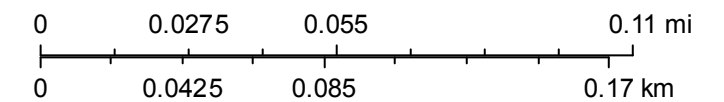
Sussex County



PIN:	234-34.08-53.00
Owner Name	INDIAN RIVER VOLUNTEER FIRE CO
Book	799
Mailing Address	RR 4 BOX 175
City	MILLSBORO
State	DE
Description	OAK ORCHARD
Description 2	NE/RT 5
Description 3	7100
Land Code	

- polygonLayer**
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- polygonLayer**
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- 911 Address**
- Streets**

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To Be Introduced 07/27/21

**Council District 4 - Hudson
Tax I.D. No. 234-34.08-53.00 (part of)
911 Address: None Available**

ORDINANCE NO. ____

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A GR GENERAL RESIDENTIAL DISTRICT FOR OUTDOOR BOAT STORAGE AND OVERFLOW PARKING TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 1.006 ACRES, MORE OR LESS

WHEREAS, on the 21st day of December 2020, a conditional use application, denominated Conditional Use No. 2257 was filed on behalf of Indian River Volunteer Fire Co. Inc, 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. 2257 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 IV, Subsections 115-39, of the Code of Sussex County, be amended by adding the designation of Conditional Use No. 2257 as it applies to the property hereinafter described.

Section 2. The subject property is described as follows:

ALL that certain tract, piece or parcel of land, lying and being situate in Indian River Hundred, Sussex County, Delaware, and lying on the northeast corner of the intersection of Oak Orchard Road (Route 5) and Spruce Street and being more particularly described in the attached legal description prepared by Karins and Associates, said parcel containing 1.006 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: September 10, 2021

RE: County Council Report for CU 2261 filed on behalf of What is Your Voice, Inc.

The Planning and Zoning Department received an application (CU 2261 filed on behalf of What is Your Voice, Inc. for a Conditional Use for parcel 334-6.00-515.00 for storage units and offices at 17583 Shady Road, Lewes. The property is within the Agricultural Residential (AR-1) Zoning District. The parcel size is 0.63 acres +/-.

The Planning and Zoning Commission held a public hearing on August 12, 2021. At the meeting of August 26, 2021, the Commission recommended that the application be approved for the 8 reasons and subject to the 11 recommended conditions as outlined in the motion.

Below are the draft minutes from the Planning & Zoning Commission meeting of August 12, 2021, and the draft minutes from the Planning & Zoning Commission meeting of August 26, 2021.

Draft Minutes of the August 12, 2021, Planning & Zoning Commission Meeting

C/U 2261 What Is Your Voice, Inc.

An Ordinance to grant a Conditional Use of land in an AR-1 Agricultural Residential District for storage units and offices to be located on a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, containing 0.63 acres, more or less. The property is lying on the southeastern side of Shady Road (Rt. 276), approximately 0.21 mile southwest of Coastal Highway (Route 1). 911 Address: 17583 Shady Road, Lewes. Tax Parcel: 334-6.00-515.00

Mr. Whitehouse advised the Commission that submitted into the record is a copy of the DelDOT Service Level Evaluation Response, a copy of the staff analysis, a letter from Sussex County Engineering Utility Planning Division, one letter of support, one letter of opposition, and five mail returns.



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The Commission found that Ms. Shannon Carmean Burton, Esq. was present on behalf of the Applicant, What Is Your Voice, Inc.; that the Applicant requests a Conditional Use in the AR-1 Agricultural Residential District for maintaining an office in the existing garage and four rental storage units in the existing one-story pole building; that the request is in connection to the Applicant's non-profit organization; that in addition to the proposed uses the Applicant intends to use the existing dwelling on the property for residential purposes as permitted under the Zoning Code under the AR-1 Agricultural Residential District; that Ms. Jacqueline Sterbach is the President and Founder of What Is Your Voice, Inc.; that she is unable to attend the Public Hearing, as she is waiting to undergo emergency surgery; that in her place, her husband, Mr. Walter Sterbach, is present; that Mr. Sterbach is also the Vice President of What Is Your Voice, Inc.; that there are also other Board members in attendance; that exhibit booklets were submitted; that included is a written summary of the Application's compliance with the Sussex County Zoning Code and Comprehensive Plan, as well as proposed Findings of Fact conditions; that What Is Your Voice, Inc. is an established and well respected non-profit 501(c)(3) organization; that it was established in 2013 to combat domestic violence, family violence and teen violence; that it has been recognized as a trailblazer; that the mission is to stop the cycle of violence against women and children within Sussex County and the entire state of Delaware; that the purpose of the requested Conditional Use is to enhance the Applicant's ability to efficiently provide critically needed services to the vulnerable and expanding population of Sussex County; that the proposed property is located at 17583 Shady Rd. Lewes, Delaware; that the property does consist of 0.63 acres; that the Applicant rented the property for a year and a half from the former owner, Point Crossing, LLC, before purchasing the property in May 2019 with all of the existing improvements; that the former landlord previously rented the pole barn to third parties for storage purposes; that as a result the Applicant was unaware that use was not permitted without a Conditional Use permit; that the Applicant did receive a Notice of Violation from the Sussex County Constable in September 2019; that the Applicant subsequently filed a Conditional Use application to bring the property in compliance with the Zoning Code; that the surrounding properties are mostly zoned CR-1 Commercial Residential or AR-1 Agricultural Residential; that the property is in close proximity to Delaware Rt.1; that the general area is a mixed-used area, which includes residential and commercial uses; that the Conditional Uses allowed within the AR-1 Zoning District include residential, business, commercial, and industrial uses when the purposes of the chapter are fully met by issuing a Conditional Use permit; that upon information and belief there have been more than 20 Conditional Uses within a 0.5 mile radius of the proposed property; that these Conditional Uses range from medical offices and sales centers to auto and boat storage and repair; that the proposed uses for an office and storage units on the property as Conditional Uses are permitted under the Zoning Code and are consistent with the purposes and goals of the Comprehensive Plan; that the property is located within the Coastal Area according to the Comprehensive Plan; that the Coastal Area includes areas around Rehoboth Bay, Indian River Bay and Little Assawoman Bay; that the proposed area is a growth area; that additional consideration should be taken into account in this growth area that may not apply in other growth areas per the Comprehensive Plan; that in addition to residential uses, retail and office uses are appropriate uses within the Coastal Area and mixed-use development should also be allowed; that the Comprehensive Plan also provides that careful mixtures of homes with light commercial office and institutional uses can be appropriate to provide convenient services to allow people to work close to home; that the proposed office and storage uses are appropriate uses within the Coastal Area; that due to the nature of the critical services that are provided by What Is Your Voice, Inc. that the uses are of a public or semi-public character that will benefit the residents of Sussex County; that the proposed uses will not cause any detrimental impact on the surrounding properties or neighborhoods; that the Applicant had received letters of support from neighboring property owners; that there is

currently a landscape buffer located around the majority of the perimeter of the property; that there is a privacy fence to the rear of the property to limit any potential impact that the proposed uses could have on the adjoining properties; that there are also audio and video cameras on the property to monitor any activity; that there is security lighting which points downward to lessen the impact to neighboring properties; that there is an existing gravel driveway and a parking area to access the office and storage buildings; that What Is Your Voice, Inc. currently has three employees; that only one employee is located onsite and manages daily operations; that the proposed office will not be open to the public; that business hours are currently 9:00 am to 4:00 pm Monday through Thursday; that most appointments with clients are conducted by online Zoom meetings; however, the Peer Support Advocates may meet with clients only during those business hours; that there will be no signs on the property advertising the uses of the property; that DelDOT has determined the traffic impact for the Application as negligible and therefore did not require a Traffic Impact Study (TIS); that sewer services are provided by Sussex County; that central water services are currently not available; that the property is currently served by a private well; that there are no wetlands on the property and the proposed Conditional Use will help facilitate the ability of What Is Your Voice, Inc. to continue to operate their established non-profit corporation on the property and provided these critically needed services to the residents of Sussex County.

Ms. Stevenson questioned if there will be set business hours for the rented storage units.

Ms. Carmean Burton stated she did not believe there were any set hours proposed for the four rented storage units in the case that the tenants of the storage units would need to access their personal belongings at various hours and only the office use would have set business hours.

Mr. Robertson questioned if there would be any additional outside storage other than the rental storage facility.

Ms. Carmean Burton stated there would be no additional storage.

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

Upon there being no further questions, Chairman Wheatley closed the Public Hearing.

At the conclusion of the Public Hearing, the Commission discussed the Application.

In relation to Application C/U 2261 What Is Your Voice, Inc., Motion by Ms. Stevenson to defer action for further consideration, seconded by Ms. Wingate, and carried unanimously. Motion carried 4-0.

Draft Minutes of the August 26, 2021 Planning & Zoning Commission Meeting

The Commission discussed this application which has been deferred since August 12, 2021.

Ms. Hoey Stevenson moved that the Commission recommend approval of Conditional Use # 2261 for WHAT IS YOUR VOICE, INC. for offices with storage units based on the record made during the public hearing and for the following reasons:

1. The Applicant is a 501(c)(3) non-profit corporation which provides essential services to clients to combat domestic violence, family violence, and teen violence. It is recognized for its mission to stop the cycle of violence against women and children within Sussex County and the entire State.
2. The use is situated on a 0.63 acre parcel of land located along Shady Road and close to Route One. There is C-1 General Commercial Zoning and many large and small businesses nearby. It is also across from the new DelDOT transit center. This is an appropriate location for this Conditional Use.
3. With the conditions and stipulations of approval, the use will not have a negative impact on the neighboring properties or roadways.
4. This site is located in the Coastal Area according to the Sussex County Comprehensive Plan. Small business-type uses such as this one are appropriate in the Coastal Area according to the Plan.
5. The use provides a service and benefit to residents of Sussex County.
6. The site is served by central sewer provided by Sussex County.
7. DelDOT has commented that the traffic impact of the use will be negligible, and that no Traffic Impact Study is required.
8. There is a natural forested buffer along most of the sides and rear of the property, which will remain in place to screen the use from neighboring properties.
9. This recommendation is subject to the following conditions:
 - a. The use shall be limited to an office and 4 storage units within the existing structures on the site.
 - b. There shall not be any outside storage of any materials or equipment.
 - c. All lighting on the site shall be shielded and downward screened so that it does not shine on neighboring properties or roadways.
 - d. Any dumpsters on the site shall be screened from the view of neighboring properties and roadways.
 - e. The applicant shall comply with all DelDOT requirements for entrance and roadway improvements.
 - f. As stated by the Applicant, no signs shall be located on the site.
 - g. The parking shall comply with the County Parking Requirements. All vehicle parking areas shall be shown on the Final Site Plan and clearly marked on the site itself. All vehicles must only be parked within the designated areas.
 - h. The existing vegetation on the sides and rear of the site shall remain in place to act as a screen from neighboring properties. The Final Site Plan shall confirm the existence and location of this vegetation.
 - i. The applicant shall comply with all requirements of the Sussex Conservation District regarding stormwater management on the site.
 - j. Failure to comply with any of these conditions may be grounds for termination of the Conditional Use approval.

- k. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning and Zoning Commission.

Motion by Ms. Hoey Stevenson, seconded by Ms. Wingate and carried unanimously to recommend approval of Conditional Use # 2261 What is Your Voice, Inc. for the reasons and conditions stated in the motion. Motion carried 4 – 0.

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

PLANNING AND ZONING AND COUNTY COUNCIL INFORMATION SHEET
Planning Commission Public Hearing Date August 12, 2021.

Application: CU 2261 (What Is Your Voice, Inc.)

Applicant: What Is Your Voice, Inc.
17583 Shady Road, Lewes

Owner: What Is Your Voice, Inc.
17583 Shady Road, Lewes

Site Location: Southeast of Shady Road (Rt. 276), approximately 1,000 feet south of Coastal Highway (Rt. 1)

Current Zoning: Agricultural Residential (AR-1)

Proposed Use: Storage units and offices

Comprehensive Land Use Plan Reference: Coastal Area

Councilmanic District: Mr. Schaeffer

School District: Cape Henlopen School District

Fire District: Lewes Fire District

Sewer: Sussex County Sewer District

Water: Private Provider

Site Area: 0.63 acre +/-

Tax Map ID.: 334-6.00-515.00



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Sussex County

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Memorandum

To: Sussex County Planning Commission Members
From: Chase Phillips, Planner I
CC: Vince Robertson, Assistant County Attorney and applicant
Date: August 2nd, 2021
RE: Staff Analysis for CU 2261 (What Is Your Voice, Inc.)

This memo provides a background and an analysis for the Planning Commission to consider as a part of Conditional Use No. 2261 (What Is Your Voice, Inc.) to be reviewed during the August 12th, 2021, Planning Commission Meeting. This analysis should be included in the record of this application and is subject to comments and information that may be presented during the public hearing.

The Conditional Use application (CU 2261), requests storage units and offices to be located on the southeastern side of Shady Road (S.C.R. Rt. 276), approximately 0.21 mile southwest of Coastal Highway (Route 1). The property consists of Tax Parcel 334-6.00-515.00, which contains 0.63 acres +/-.

The 2018 Sussex County 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 the ways in which land uses should change over time. The Future Land Use map in the plan indicates that the subject property has a land use designation of "Coastal Area." The properties to the north, south and east of the subject property also have the land use designation of "Coastal Area." The properties, which exist on the opposite side of Shady Road, are designated to be a Commercial Area.

As outlined in the 2018 Sussex County Comprehensive Plan, Coastal Areas are expected to accommodate residential and economic growth and protect and preserve environmentally sensitive areas. Specifically, the Comprehensive Plan states that a range of housing types, including townhomes and multi-family units, be permitted. Housing is permitted at a density of 2 units to the acre and medium densities (4-12 units per acre) may be appropriate in certain areas. It is envisioned that Coastal Areas encourage retail and offices uses; however, larger shopping centers and office parks could be confined to select locations. Lastly, the Coastal Area designation encourages the expansion of central water and sewer facilities as it is feasible.

The property is zoned Agricultural Residential (AR-1). The properties to the north, south, and east are all within the AR-1 Zoning District. All parcels to the west (i.e. southwest, west, and northwest) on the opposite side of Shady Road are within the C-1 Zoning District. The subject property is adjacent to the Eagle Point residential community (townhomes); and additionally, the Somerset Green residential community (townhomes) is on the opposite side of Shady Road near the site.

Since 1971, there have been 88 Conditional Use applications within a one-mile radius of CU 2261. Included within this analysis are each of the applications that are within 0.5 of a mile. Attached is



a table of the applications within 0.5 of a mile as a well a map that represents their corresponding location.

Based on the analysis provided, this Conditional Use application (CU 2261), to allow for offices and storage units, could be considered to be consistent with the surrounding land uses, zoning, and environment.

All Conditional Uses within 0.5 of a mile of CU 2261 (What Is Your Voice, Inc.)



0 0.07 0.15 0.3 Miles



All orange polygons represent Conditional Use applications. All green polygons represent subdivisions. This map may not contain all necessary elements and principles and should be utilized for general reference only.

Chase Phillips, Planner I

CU #	Tax Parcel #	APPLICANT	Zoning	Proposed Use	P&Z Decision	CC Decision Date	CC Decision	Ordinance
1150	335-12.05-7.00	John E. Spiekar, M.D.	AR-1	medical offices	Recommended Approval	4/16/1996	Approved	1085
1759	334-5.00-222.02	Bridle Ridge Properties LLC (AR-1)	AR-1	Multi-Family	Recommended Approval	8/5/2008	Approved	1989
1830	335-12.05-12.00	J & T Properties, LLC	AR-1	out-patient clinic	Recommended Approval	6/8/2010	Approved	2123
1243	335-12.05-5.00	H.L.M.M., LLC	AR-1	Amendment to CU 1028	Recommended Approval	6/2/1998	Approved	1238
152	334-6.00-503.02	William Thompson	AR-1	beauty shop	N/A	<Null>	Approved	<Null>
2261	334-6.00-515.00	What Is Your Voice, Inc.	AR-1	Subject Application 08/12/2021	<Null>	<Null>	<Null>	<Null>
1736	334-6.00-550.02	Matthew Weidman & Karen	AR-1	Towing Services & Vehicle/Boat Storage	Recommended Approval	12/2/2008	Approved	2009
1511	334-6.00-550.00	Anthony I. Freeman	AR-1	produce sales	Recommended Approval	12/16/2003	Approved	1649
1868	335-12.00-1.10	Old Towne Pointe, L.L.C.	AR-1	pharmacy/community service	Recommended Denial	5/24/2011	Approved	2196
1758	334-5.00-222.00	Bridle Ridge Properties LLC (MR)	MR	Multi-Family Dwelling	Recommended Approval	7/28/2008	Denied	<Null>
1680	334-6.00-511.06	Samir Ghabar	AR-1	business park	Recommended Denial	6/5/2007	Denied	<Null>
1490	334-6.00-526.00	Tidewater Utilites, Inc.	AR-1	elevated water storage tank	Recommended Approval	4/29/2003	Approved	1602
1820	334-6.00-511.01	Rheumatology Consultants of DE, PA	AR-1	professional offices	Recommended Approval	7/2/2010	Approved	2136
101	334-6.00-32.00	Joseph Weemstein	C-1	auto body repair shop	N/A	<Null>	Approved	<Null>
2034	334-5.00-215.00	Beachfire Brewery Co., LLC	AR-1	Restaurant and Brewery	Recommended Approval	3/8/2016	Approved	2438
1845	334-6.00-504.02	Rick Banning - Coastal Tide	MR	Multi-family	Recommended Approval	2/23/2010	Approved	2106
499	334-6.00-39.00	Charles West	AR-1	mobile home park	<Null>	<Null>	Withdrawn	<Null>
1428	334-6.00-687.01	Kyle W. Welsh	C-1	sales cart program	Recommended Approval	1/8/2002	Approved	1515
1434	334-6.00-523.00	Grady, Inc.	AR-1	multi-family	Recommended Approval	4/9/2002	Approved	1531
2190	334-5.00-212.00	Steven & Helene Falcone	AR-1	Office	Recommended Approval	1/7/2020	Approved	2699
2106	334-6.00-511.00	MDI Investment Group, LLC	MR	multi-family (52 townhouses)	Recommended Approval	3/20/2018	Approved	2566
	335-12.05-5.00	Dr. Harry J. Anagnostakos		Medical Offices				
1028			AR-1		Recommended Denial	4/27/1993	Approved	888
	334-6.00-550.02	Robert E. Mitchell		mechanics shop for auto & boat repair				
1068			AR-1		Recommended Approval	3/15/1994	Approved	957
	334-6.00-526.00	Rehoboth Home Builders, Inc.		multi-family				
1489			AR-1		Recommended Approval	6/24/2003	Approved	1619
472	335-12.05-12.00	Lydia Rawlings	AR-1	Garage sale	N/A	5/30/1978	Approved	<Null>
1100	335-12.05-7.00	Gordon Berl	AR-1	Multi-Family	Recommended Denial	<Null>	Withdrawn	<Null>
1522	334-6.00-504.02	SSEW LLC.	AR-1	Multi-Family	Recommended Approval	3/30/2004	Approved	1671
2281	334-12.00-7.00	Susan Riter	AR-1	Borrow Pit	Withdrawn	6/8/2021	Withdrawn	<Null>



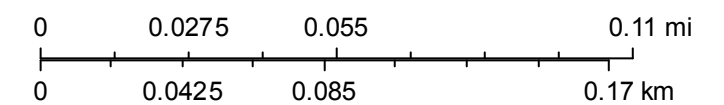
Sussex County



PIN:	334-6.00-515.00
Owner Name	WHAT IS YOUR VOICE INC
Book	5087
Mailing Address	30428 E BARRIER REEF BL
City	LEWES
State	DE
Description	RD 276
Description 2	
Description 3	
Land Code	

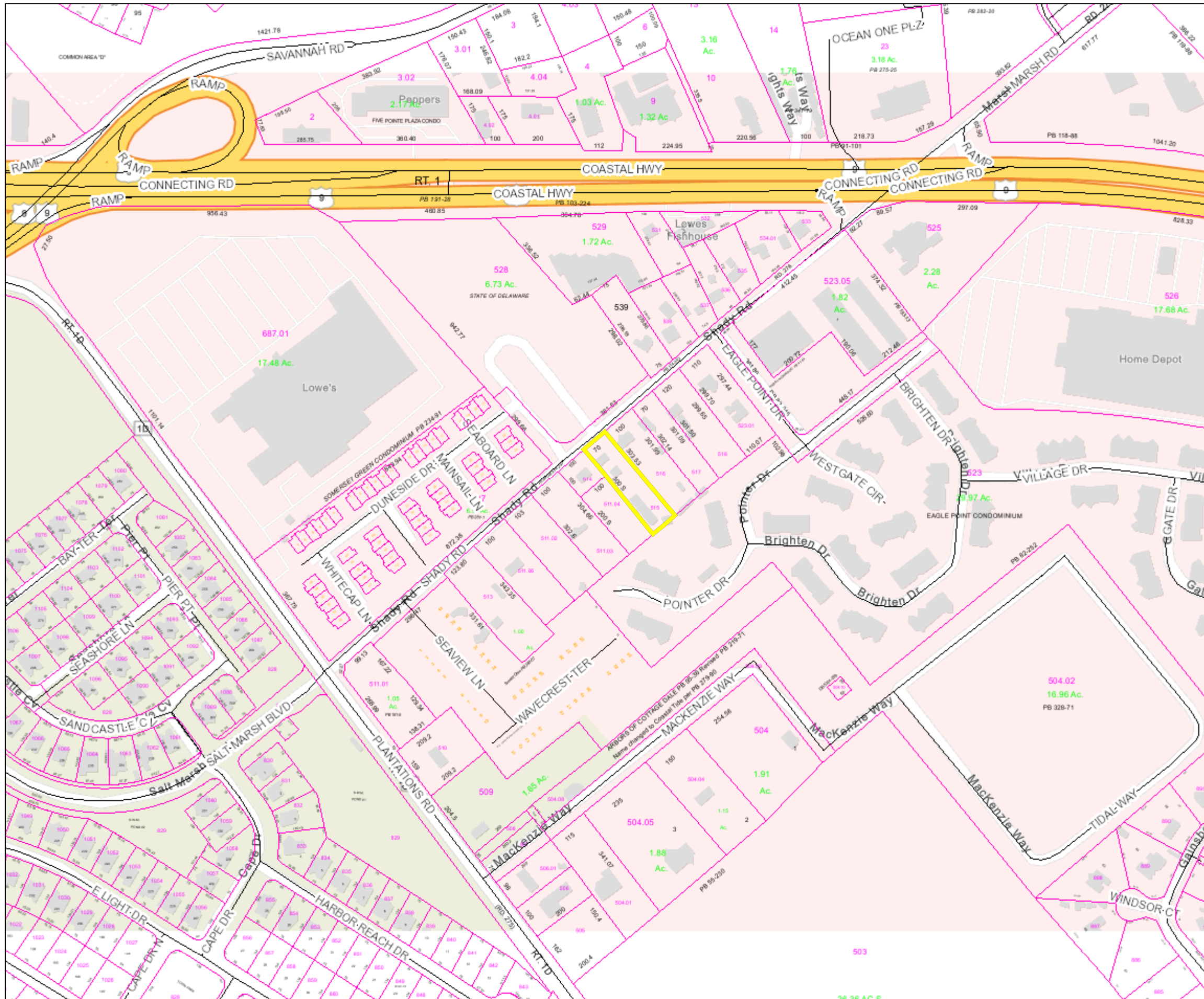
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- 911 Address
- Streets
- County Boundaries

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Sussex County



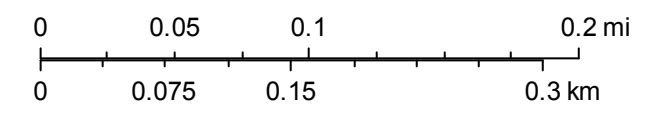
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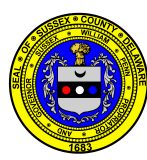
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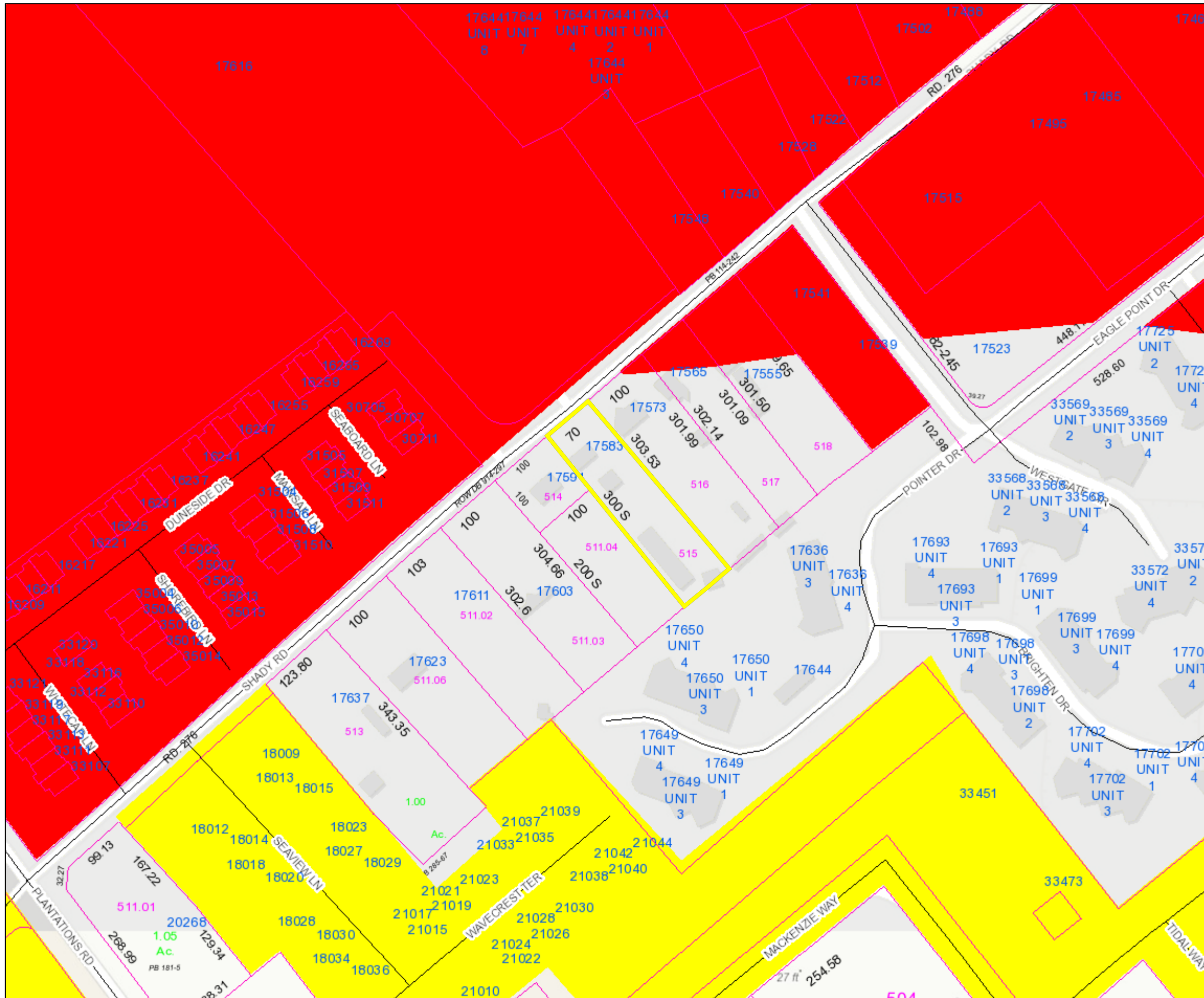
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- Tax Parcels
- Streets
- County Boundaries

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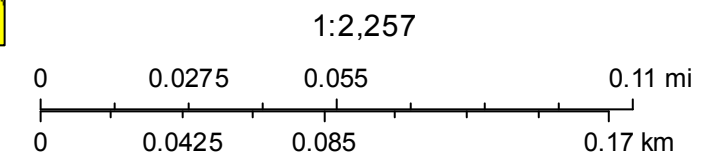


Sussex County



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Land Code	

- polygonLayer
 Override 1
- polygonLayer
 Override 1
- Tax Parcels
- 911 Address
- Streets



To Be Introduced 07/27/21

**Council District 3 - Schaeffer
Tax I.D. No. 334-6.00-515.00
911 Addresses: 17583 Shady Road, Lewes**

ORDINANCE NO. ____

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR STORAGE UNITS AND OFFICES TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 0.63 ACRES, MORE OR LESS

WHEREAS, on the 8th of January 2021, a conditional use application, denominated Conditional Use No. 2261 was filed on behalf of What Is Your Voice, Inc.; 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. 2261 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 115-22, Code of Sussex County, be amended by adding the designation of Conditional Use No. 2261 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 southeastern side of Shady Road (Rt. 276), approximately .21 mile southwest of Coastal Highway (Route 1), and more particularly described in the attached deed prepared by Wolfe & Associates, LLC containing 0.63 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.

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DIRECTOR OF PLANNING & ZONING
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jamie.whitehouse@sussexcountyde.gov



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: September 10, 2021

RE: County Council Report for CU 2289 filed on behalf of Leah Beach

The Planning and Zoning Department received an application (CU 2289 filed on behalf of Leah Beach) for a Conditional Use for parcels 334-13.20-21.00 and 334-13.19-79.00 [p/o] for an outdoor marketplace with similar activities and off-site parking. The address of the parcels are 19897 Hebron Road and 19826 Central Avenue, Rehoboth Beach. The properties are within a General Commercial (C-1) Zoning District. The parcel size are 0.247 acres and 0.327 acres +/-.

The Planning and Zoning Commission held a public hearing on August 12, 2021. At the meeting of August 26, 2021, the Commission recommended that the application be approved for the 10 reasons and subject to the 10 recommended conditions as outlined in the motion.

Below are the draft minutes from the Planning & Zoning Commission meeting of August 12, 2021, and the draft minutes from the Planning & Zoning Commission meeting of August 26, 2021.

Draft Minutes of the August 12, 2021, Planning & Zoning Commission Meeting

C/U 2289 Leah Beach

An Ordinance to grant a Conditional Use of land in a C-1 General Commercial District for an outdoor marketplace with similar activities and off-site parking to be located on certain parcels of land lying and being in Lewes and Rehoboth Hundred, Sussex County, containing 0.247 acres and 0.327 acres, more or less. The property is located on the southwestern side of Canal Crossing Road and Central Avenue, approximately 100 feet east of Hebron Road (Rt. 273) and being on the northeastern corner of Rehoboth Avenue Extended (1A) and Hebron Road (Rt. 273). 911 Addresses: 19897 Hebron Road & 19826 Central Avenue, Rehoboth Beach. Tax Parcels: 334-13.20-21.00 & 334-13.19-79.00 (p/o)

Mr. Whitehouse advised the Commission that submitted into the record is a copy of the staff analysis,



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2 THE CIRCLE | PO BOX 417
GEORGETOWN, DELAWARE

a copy of the Applicant's exhibits and photographs, a copy of videos that have been received, a copy of the DeIDOT Service Level Evaluation, a letter from Sussex County Engineering Utility Planning Division, and two letters of support.

The Commission found that Ms. Leah Beach was present on behalf of the Applicant, Leah Beach; that she is the Executive Director and Founder of The Developing Artist Collaboration; that The Developing Artist Collaboration is an artist development organization; that the mission of the organization is to support the careers of artists with resources, creation space, peer connection and innovative presentation opportunities; that Creative Market began in 2020 as a response to the pandemic; that this event was held in downtown Rehoboth as a way to allow the public to access the artist in a safe open-air environment to promote culture and commerce; that the organization headquarters is located in west Rehoboth, just outside of downtown Rehoboth; that the organization has committed itself to dedicate as much programming as possible to take place in west Rehoboth; that this is due to the location of the organization's facilities and the priority to honor the culture and rich history of the historic community of color; that Creative Market is located on a lot that is owned by the landlord of another one of the organization's buildings, that the organization has invested its resources and energy into creating a weekly innovative and modern market place that features local and regional artists and handmade business; that the Creative Market also includes live music, food trucks and responsible alcohol service to create a cultural experience for the community while promoting tourism; that public safety and crowd management is a priority of the organization; that the organization has safely maintained 100 local community events since 2015; that the market has roughly 20 artists, two food truck options, 10 staff members, and between 50 to 75 guests at any given time on the lot; that guests are encouraged to park at the Quillen's parking lot and are shuttled in on a small bus that runs during the duration of the event; the Revelation Brewery allows the Creative Market guests to use their restroom facilities; that the live music is offered as only a one-man acoustic set with a very small public address system; that the event ends very promptly at 9:00 pm; that there are no parking signs located outside of Park Shore and Canal Corkran as a respect to the neighbors; that she would like to share a video that illustrates the vibe of the Creative Market, allowing for a better understanding of the market's atmosphere.

Mr. Mears questioned the business hours and days of the week the Creative Market would take place.

Ms. Beach stated the Creative Market only takes place on Monday evenings from 5:30 pm to 9:00 pm.

Ms. Robertson questioned if this was previously issued as a Special Event.

Mr. Whitehouse confirmed that Creative Market originally came into Sussex County through the Special Event process; that there is a limited number of events that can be approved per Sussex County Code on any given parcel in any given year; that Sussex County was able to approve the first three events, with the plan that it would be followed up with a Conditional Use application and the Applicant has been very cooperative with him and the Planning and Zoning staff.

Ms. Wingate questioned if there were any issues with past events and mentioned she likes the idea of posted no parking signs and the shuttle to transport market guests.

Mr. Whitehouse stated there have been no negative comments received.

Ms. Beach stated she feels that ending by 9:00 pm has been very good for the community; that they

have had a lot of dialogue with the Homeowners Associations and making sure the market was accessible and so far has been working out great.

Ms. Stevenson requested confirmation to the location of the no parking signs; that she questioned if there is a written agreement with Quillen's for parking purposes and Revelation Brewery for the use of their portable restrooms; if the organization has obtained a liquor license; and if the Creative Market is only limited to the summer season.

Ms. Beach stated that no parking signs are placed on the corners of Corkran Blvd. and Canal Crossing Rd., as well as a sign at the intersection of Canal Crossing Rd. and Hebron Rd. directing traffic to the designated parking area; that there is also signage located on Central Ave. and Hebron Rd. directing traffic down to the designated Quillen's parking lot and there are four large signs at both entrances of Quillen's parking lot stating "event parking here"; that the shuttle runs throughout the duration of the event, regardless of whether guests are on it or not, so that guests may see; that the shuttle also includes a sign that states it is a free shuttle to free parking; that there is a written agreement with Quillen's to utilize their lot for event parking and also with Revelation Brewery for the use of their portable restrooms; that the organization has obtained a gathering license; that a submission is required for every event held due to being a non-profit organization; that the organization has a very strict policy with no alcohol leaving the front entrance; that all alcohol is kept within the perimeter; that the artist tables and food trucks create a buffer for only one way in and one way out allowing for better monitoring; that the organization works with Revelation in keeping alcohol on the site it is provided; that she requests approval for another year while continuing the market throughout the fall; that they would like to have a holiday market; that in the past the organization had an event called Dewey Sip & Shop, which was an open-air shopping experience during Black Friday weekend; that she feels this experience is important with the pandemic and requests to continue the market into December and days of operation would be the first, second and third Saturday and Sunday in December from 11:00 am until 4:00 pm (weather permitted).

Ms. Stevenson states her biggest concerns with the Application are for the people living on Central Ave. dealing with increased traffic, debris in their yards and parking, as well as people parking on Central Ave. and the pedestrians that do not wait for a shuttle and decide to walk down Hebron Rd.

Ms. Beach states she understands Ms. Stevenson's concerns; that the organization has a facility located on Central Ave and Malloy St.; that she has not seen the parking issues along Central Ave.; that she states a lot of guests are parking at one of the two sites Revelation has, as well as the Quillen's parking lot; that the organization was recently offered another parcel of land on Hebron Rd., but have not obtained a lease yet; that this additional parcel potentially could be submitted as an additional parking option; that she plans to have a civil engineer come out, designate the property for parking, no longer use Quillen's parking lot and have a crossing guard and volunteers to make sure pedestrians are not walking up and down the street.

Mr. Chase Phillips questioned Mr. Robertson if, while the food vendor trucks fall under the approval of the Conditional Use, would the food vendors still be subject to the permits that the Planning & Zoning Department administratively issues?

Mr. Robertson stated he believes that if the food vendors are approved under the conditions of the Conditional Use and a site plan is submitted showing where the food vendors will be stationed, that additional permits will not be needed, and he will further research and circle back with an answer.

The Commission found that Ms. Brenda Milbourne spoke in support of the Application; that she is the Executive Director of West Side New Beginnings Children and Youth program; that she supports the Creative Art Market; that Ms. Beach has a partnership with the children; that the children will be constructing a legacy mural with Ms. Beach which will represent the past and the future; that she feels the Creative Market application is a good thing; that she attends the events, encouraging friends to come and that the market has been a positive addition to the community.

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

Upon there being no further questions, Chairman Wheatley closed the Public Hearing.

At the conclusion of the Public Hearing, the Commission discussed the Application.

In relation to Application C/U 2289 Leah Beach, Motion by Mr. Mears to defer action for further consideration, seconded by Ms. Stevenson, and carried unanimously. Motion carried 4-0.

Draft Minutes of the August 26, 2021 Planning & Zoning Commission Meeting

The Commission discussed this application which has been deferred since August 12, 2021.

Mr. Mears moved that the recommend approval of Conditional Use # 2289 for LEAH BEACH for an outdoor marketplace with similar activities and off-site parking based on the record made during the public hearing and for the following reasons:

1. This property is currently zoned C-1 General Commercial, which permits a wide variety of commercial uses. This conditional use for an outdoor market is compatible with the permitted uses that could occur on this site.
2. There are a variety of other commercial and small business uses in this area. This use will be compatible with those other uses.
3. The use started out small under the County's limited approvals for events. It has become so successful that a more permanent conditional use approval is necessary and appropriate.
4. The use is a benefit to the entire community, providing an outlet for local artisans, musicians, and other small businesses.
5. With the conditions imposed by the County, the use will not adversely affect neighboring properties, roadways or traffic.
6. The use has a public or semi-public character that is a benefit to residents of nearby communities and Sussex County.
7. As part of this use, food service in the form of food trucks or similar temporary stands shall be permitted. Also, the service of alcoholic beverages shall be permitted, subject to the receipt of all required approvals from the Delaware Alcoholic Beverage Control Commission.
8. There shall be off-site parking with shuttle service provided from what is commonly known as the "Quillen's Hardware" property identified as Parcel 3-34-13.19-79.00.
9. Although the Applicant has stated that this use will likely be limited to Mondays during the summer, with the possibility of future hours in the fall and holiday season, it is likely given

past success that it may expand. It is appropriate to allow the use to occur on Thursdays through Mondays, to allow some flexibility in scheduling as needs arise.

10. No parties appeared in opposition to this Application, and a representative of West Side New Beginnings appeared in support of this application.
11. This recommendation is subject to the following conditions:
 - A. This use shall be limited to an outdoor marketplace, which may include food and beverage service and live music.
 - B. One lighted sign shall be permitted. It shall not exceed 32 square feet per side.
 - C. The hours of operation shall be limited to 11:00 am through 9:00 pm, Thursday through Monday of each week.
 - D. Any security lighting shall be downward screened so that it does not shine on neighboring properties or roadways.
 - E. The applicant shall comply with all DeDOT requirements, including any entrance or roadway improvements.
 - F. There shall not be any dumping on the site. Also, no junk or unsold items shall accumulate outdoors on the site.
 - G. Any dumpsters associated with the use shall be screened from view from neighboring properties or roadways.
 - H. The Final Site Plan shall clearly show all parking areas, stage locations and other structures associated with the use as well as the areas set aside for the outdoor sales. It shall also clearly show the location for the sale of alcoholic beverages, and the fencing or similar enclosures required by the Delaware Alcoholic Beverage Control Commission for such sales.
 - I. Failure to comply with any of these conditions may be grounds for termination of the Conditional Use approval.
 - J. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning and Zoning Commission.

Motion by Mr. Mears, seconded by Ms. Hoey Stevenson and carried unanimously to recommend approval of Conditional Use # 2289 Leah Beach. for the reasons and conditions stated in the motion. Motion carried 4 – 0.

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: August 12th, 2021

Application: CU 2289 Leah Beach

Applicant: Leah Beach
8A Saulsbury Street
Dewey Beach, DE 19971

Owner: James Chaconas
387 County Road 304
Floresville, TX 78114

Site Location: Marketplace – Southwest corner of Canal Crossing Road and Central Avenue
Off-site Parking – Northeast corner of Hebron Road (Rt. 273) and Rehoboth Avenue Extended

Current Zoning: General Commercial (C-1) Zoning District

Proposed Use: Outdoor Marketplace

Comprehensive Land Use Plan Reference: Coastal Area

Councilmanic District: Mr. Hudson

School District: Cape Henlopen School District

Fire District: Rehoboth Beach Fire Company

Sewer: Sussex County – Central Sewer

Water: City – Rehoboth Beach

Site Area: Marketplace site – Approximately 10,800 square feet
Off-site parking – P/o 1.98 acres

Tax Map ID.: 334-13.20-21.00 (marketplace) & 334-13.19-79.00 (p/o for off-site parking)



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Sussex County

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sussexcountyde.gov

Memorandum

To: Sussex County Planning Commission Members
From: Chase Phillips, Planner I
CC: Vince Robertson, Assistant County Attorney and applicant
Date: August 2nd, 2021
RE: Staff Analysis for CU 2289 Leah Beach

This memo provides a background and analysis for the Planning Commission to consider as a part of application Conditional Use No. 2289 (Leah Beach) to be reviewed during the August 2nd, 2021 Planning Commission Meeting. This analysis should be included in the record of this application and is subject to comments and information that may be presented during the public hearing.

This Conditional Use request is for Tax Parcels 334-13.20-21.00 and 334-13.19-79.00 to allow for an outdoor marketplace and off-site parking to be located in a General Commercial (C-1) Zoning District. Tax Parcel 334-13.20-21.00 (Parcel A) is located on the southwest corner of Canal Crossing Road and Central Avenue, approximately 300 feet east of Hebron Road (Rt. 273). Parcel A is approximately 10,800 square feet which is equivalent to 0.247 acres +/- . Tax Parcel 334-13.19-79.00, Parcel B, is located on the northeast corner of Rehoboth Avenue Extended and Hebron Road. Parcel B is 0.327 acres +/- . Parcel A serves as the subject property for the outdoor marketplace and vendors while a portion of Parcel B is intended to be utilized as off-site parking from which a shuttle will transport attendees to the subject site.

The 2018 Sussex County Comprehensive Plan provides a framework for how land could be developed. As part of the Comprehensive Plan, a Future Land Use Map is included to help determine how land should be zoned to ensure responsible development. The Future Land Use map in the plan indicates that the property has the land use designation of the "Commercial." All neighboring properties are also designated as Commercial.

Vicinities designated to be within the Commercial Area are generally concentrations of retail and services uses along arterial roadways and highways. These areas include commercial corridors, shopping centers, and other medium and large commercial vicinities geared toward vehicular traffic. The Commercial Area designation does not include many medium or large-scale commercial uses that are larger in scale and higher in intensity. The Comprehensive Plan notes that mixed use development may be appropriate in these areas.

Both parcels are within a General Commercial (C-1) Zoning District. Additionally, each adjacent parcel (including the opposite side of the roadway) is within a C-1 Zoning District. Canal Corkran, which mainly exists within the Medium Density and High Density Residential Zoning Districts is located along Canal Crossing Road. Other nearby communities include Park Shore (C-1) and a residential area along Norwood and Dunbar Streets which exists in a General Residential (GR) Zoning District.

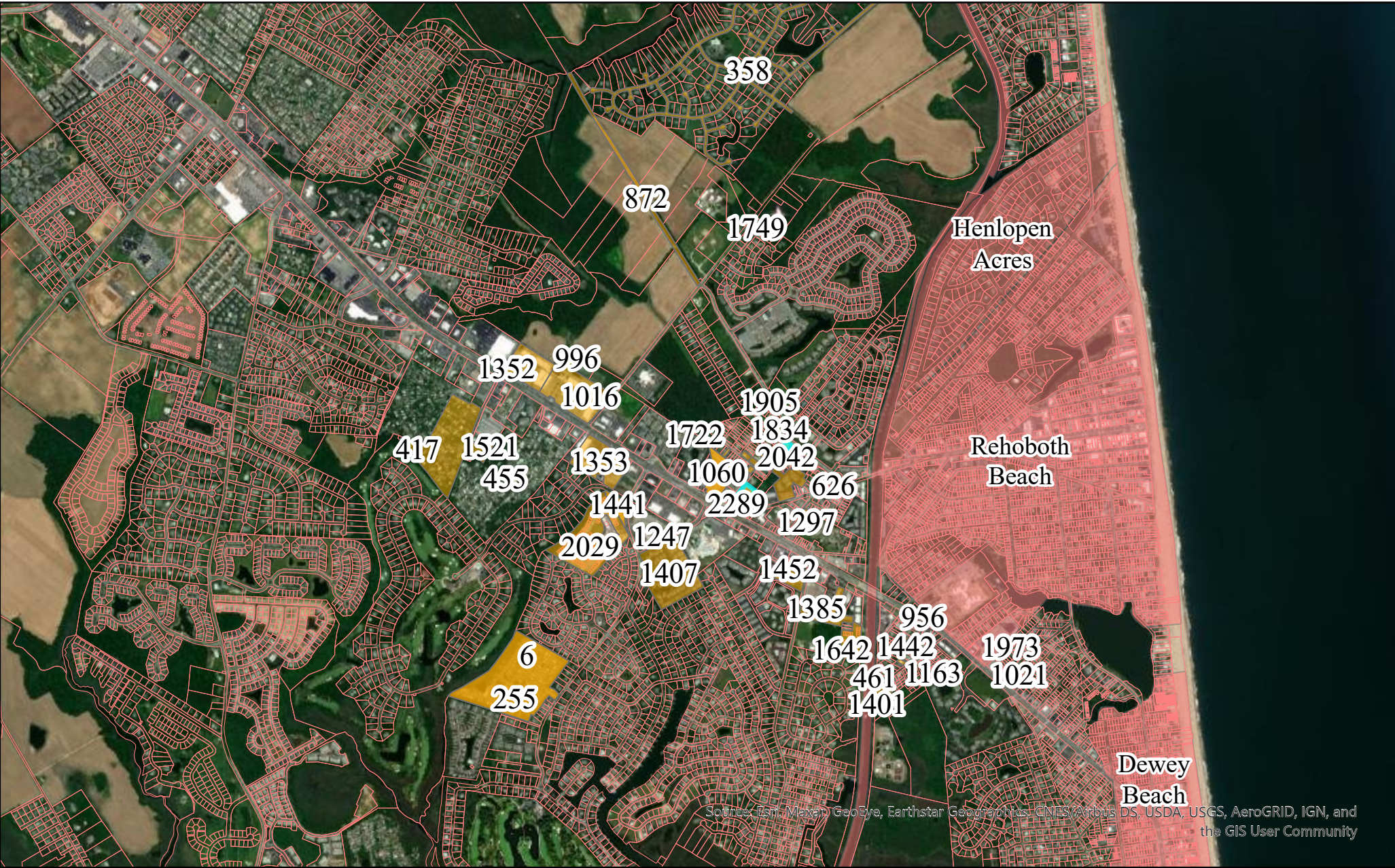
Aside from the subject application, there have been 40 Conditional Uses within a one-mile radius of the subject property since 1971. 30 have been approved. Six applications have been denied.



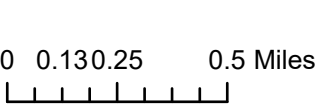
Three applications were withdrawn. Attached to this memo is a table that provides a summary of each application and a map that depicts the locations of each Conditional Use.

Based on the analysis provided, the Conditional Use to allow for an outdoor marketplace and other similar activities, subject to considerations of scale and impact, could be considered as consistent with the surrounding land uses, zoning, and environment.

All Conditional Uses within One Mile of CU 2289 (Leah Beach)



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



This map may not contain all necessary elements or principles and is suggested to be utilized for general reference only.

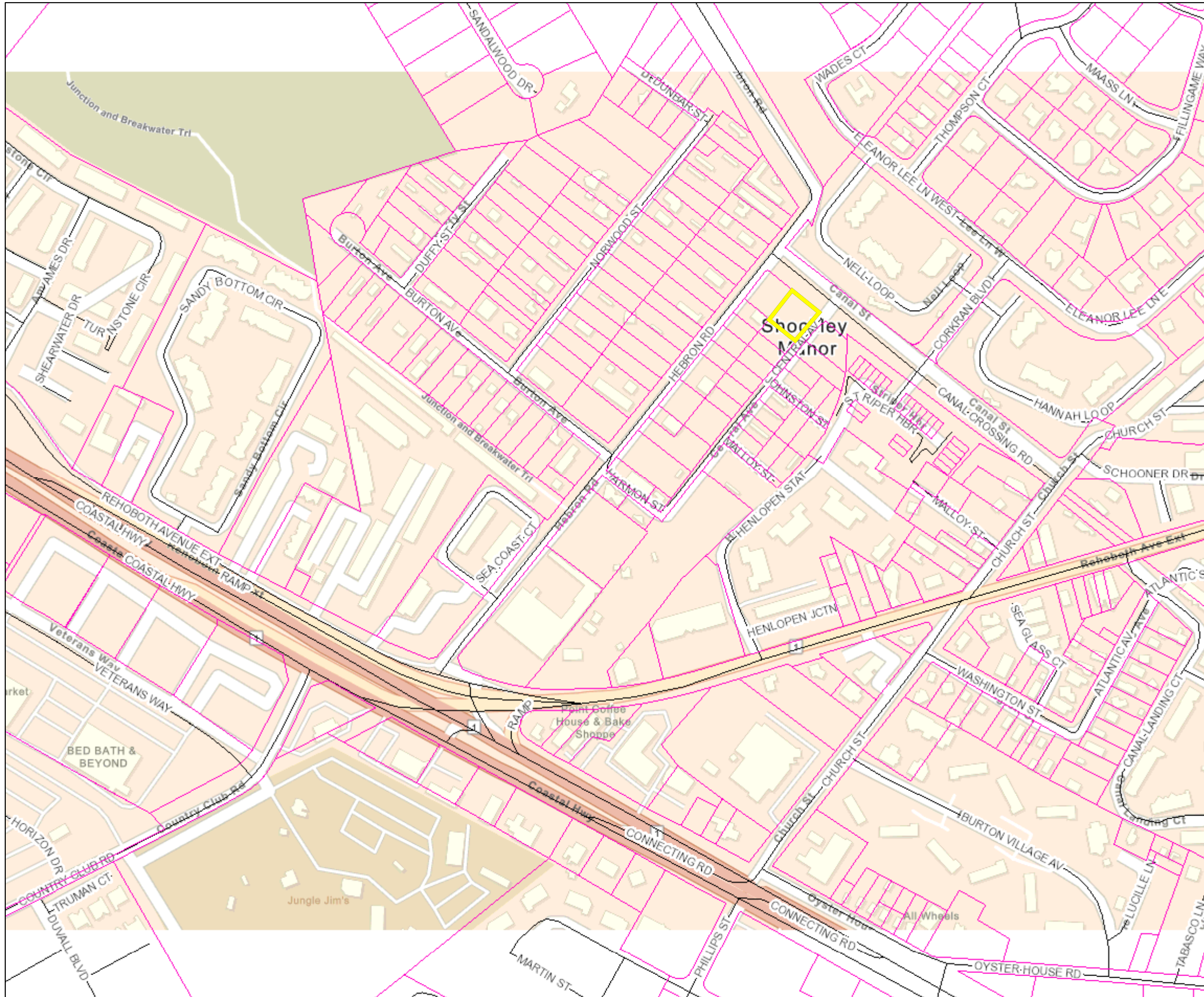
Conditional Use data is sourced from Sussex County's Conditional Use layer.

Chase Phillips, Planner I

CU #	Tax Parcel #	APPLICANT	Current Zoning	Proposed Use	P&Z Decision	CC Decision Date	CC Decision	Ordinance No.
1834	334-13.20-8.01	Richard F. Lynman	GR	storage of umbrella stands	Recommended Approval	10/5/2010	Approved	2150
358	334-7.00-34.00	Ocean Wave Hall Inc	AR-1	private lodge	N/A	<Null>	Approved	<Null>
1905	334-13.15-2.00	West Rehoboth Community Land Trust	GR	Multi-Family Duplex	Recommended Approval	1/3/2012	Denied	<Null>
1352	334-13.00-325.16	Rehoboth Outlets Center 3	C-1	sales of soft/hard goods off carts	Recommended Approval	5/1/2001	Approved	1450
872	334-13.00-361.00	Ocean Wave Hall, Inc.	AR-1	private club	Recommended Approval	9/29/1987	Approved	455
280	334-13.19-65.00	King Solomon Lodge	GR	private club	N/A	<Null>	Withdrawn	<Null>
626	334-13.20-33.00	Chicken Pot, Inc.	C-1	Flea Market	<Null>	<Null>	Approved	<Null>
1297	334-13.20-59.00	J. David Lynam	C-1	outdoor retail sales	<Null>	8/10/1999	Denied	<Null>
1452	334-19.00-163.09	Lutheran Church of Our Savior	C-1	pre-school	Recommended Approval	5/14/2002	Approved	1543
1521	334-13.00-311.00	Storage Equity Partners LP II	AR-1	self storage	Recommended Approval	3/9/2004	Approved	1663
255	334-19.00-13.00	Truitt Family	AR-1	extend manufactured home park	N/A	<Null>	Approved	<Null>
455	334-13.00-311.01	Sea Air Properties Inc	AR-1	addition to existing manufactured home park	N/A	<Null>	Approved	<Null>
417	334-13.00-308.00	Camelot Moible Home Park	AR-1/C-1	addition to existing manufactured home park	N/A	<Null>	Approved	<Null>
1070	334-13.19-63.00	West Side New Beginnings, Inc.	GR	private club/community activity center	Recommended Approval	4/12/1994	Approved	961
1223	334-13.19-61.00	West Side New Beginnings	GR	Private Club & Community Activity Center	Recommended Approval	2/10/1998	Approved	1213
956	334-19.08-165.00	Richard C. Miller	GR	multi-family	Recommended Denial	1/29/1991	Denied	<Null>
1407	334-19.00-154.01	Marsh Harbor L.L.C.	MR	multi-family	Recommended Denial	10/9/2001	Approved	1493
2042	334-13.20-24.00	Beachfire Brewing	C-1	Microbrewery	Recommended Approval	6/7/2016	Approved	2451
2214	334-13.20-25.00	Anthony Crivella & Harold Dukes Jr.	C-1	operate a food truck for a period exceeding three days	Recommended Approval	8/25/2020	Approved	2734
1722	334-13.19-10.00	West Rehoboth Community Land Trust	GR	Multi-Family Dwelling	Recommended Approval	1/30/2007	Approved	1891
1596	334-13.19-2.00	Carole A. Levitsky & Sara Tammany	GR	office bldg	Recommended Approval	11/9/2004	Approved	1725
1973	334-20.09-12.00	Sandhill Homes LLC	MR	Multi-family Dwelling Structure	Withdrawn	<Null>	Withdrawn	<Null>
844	334-20.09-11.00	James W. Tello	MR	multi-family	Recommended Denial	2/4/1986	Denied	<Null>
1021	334-20.09-9.00	Beebe Medical Center, Inc.	MR	60 or Older activities Center	Recommended Approval	10/13/1992	Approved	860
1345	334-13.00-359.00	Glenwood Aviation L.L.C.	C-1	helistop/heliport	Recommended Denial	8/3/2000	Withdrawn	<Null>
1749	334-13.00-337.00	Robin Erthal & Lynda Lake	AR-1	Multi-Family Dwelling	Recommended Denial	10/28/2008	Denied	<Null>
461	334-19.12-21.00	Hayward W Robinson	GR	ticket booth, apartment & related facilities, excursion boat	N/A	<Null>	Approved	<Null>
1442	334-19.12-16.00	Jayant Goyle	GR	multi-family	Withdrawn	2/19/2002	Withdrawn	<Null>
1163	334-19.12-38.02	James J. Doney & Jeffrey Mohr	GR	multi-family	Recommended Approval	10/1/1996	Approved	1106
1401	334-19.12-67.00	Randy Burton	GR	multi-family	Recommended Denial	7/31/2001	Approved	1482
1385	334-19.00-168.00	Bayside Development Group Inc.	AR-1	multi-family	Recommended Approval	5/15/2001	Approved	1457
1642	334-19.08-42.00	Sunrise Ventures L.L.C.	AR-1	multi-family	Recommended Approval	3/28/2006	Approved	1835
1441	334-13.00-325.07	Curtis Ricketts	MR	multi-family	Recommended Approval	3/12/2002	Approved	1525
2029	334-19.00-3.00	Truitt Homestead, LLC	MR	29 Multi-family dwellings	Recommended Approval	11/17/2015	Approved	2426
1353	334-13.00-325.20	Rehoboth Outlets Center 2	C-1	sales of soft/hard goods off carts	Recommended Approval	5/1/2001	Approved	1451
1016	334-13.00-325.06	Jefferson Learning Foundation	C-1	Independent Elementary School	Recommended Approval	9/1/1992	Approved	854
996	334-13.00-325.36	Ronald E. Lankford	AR-1	Family Amusement Park	Recommended Approval	3/21/1992	Denied	<Null>
1060	334-13.00-359.00	Gulf Stream Design Group	C-1	cinema & ice skating rink	Recommended Approval	12/14/1993	Approved	944
1247	334-13.00-325.07	Kings Creek Associates, Inc.	MR	16 Unit Multifamily Dwelling	Recommended Approval	7/21/1998	Approved	1251
6	334-19.00-13.00	J Dorman Johnson	AR-1	manufactured home park	N/A	4/13/1971	Approved	<Null>
2289	334-13.20-21.00	Leah Beach	C-1	Outdoor Special Events	<Null>	<Null>	<Null>	<Null>



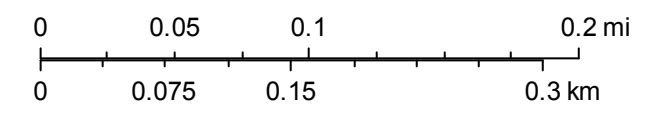
Sussex County



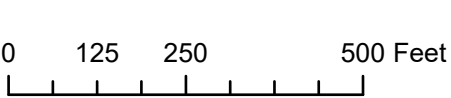
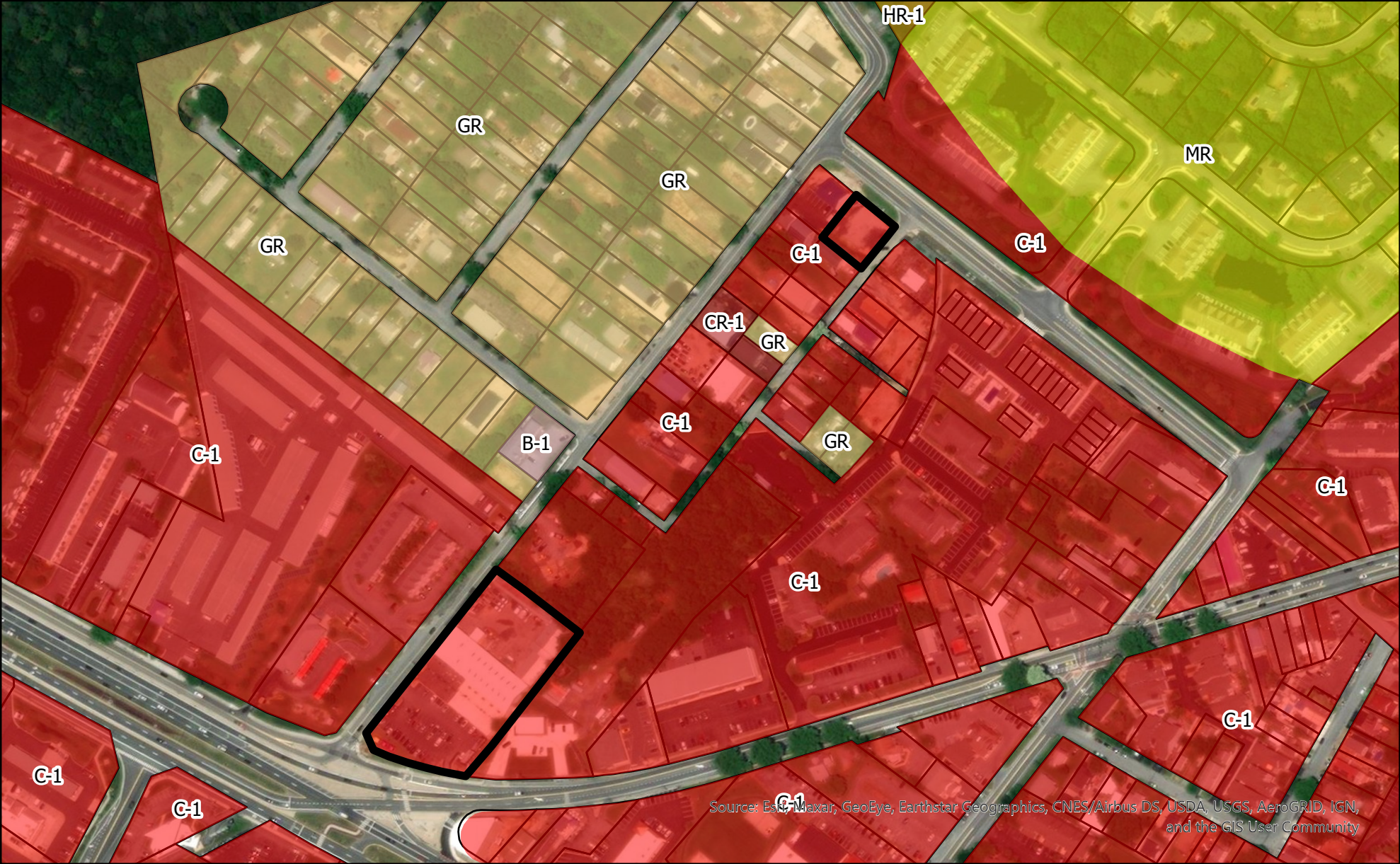
PIN:	334-13.20-21.00
Owner Name	CHACONAS JAMES N
Book	4119
Mailing Address	387 COUNTY ROAD #304
City	FLORESVILLE
State	TX
Description	SHOCKLEY SUBD
Description 2	LOTS 17 18
Description 3	
Land Code	

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

1:4,514



Zoning Map CU 2289 (Leah Beach)



The purpose of this map is to show the zoning classification for TMP:
334-13.20-21.00 & 334-13.19-79.00 and surrounding parcels. The subject parcels are
in bold.

To Be Introduced 07/13/21

Council District 4 - Hudson

Tax I.D. Nos. 334-13.20-21.00 & 334-13.19-79.00 (p/o)

911 Addresses: 19897 Hebron Rd. & 19826 Central Ave., Rehoboth Beach

ORDINANCE NO. ____

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A C-1 GENERAL COMMERCIAL DISTRICT FOR AN OUTDOOR MARKETPLACE WITH SIMILAR ACTIVITIES AND OFF-SITE PARKING TO BE LOCATED ON CERTAIN PARCELS OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 0.247 ACRES AND 0.327 ACRES, MORE OR LESS

WHEREAS, on the 18th of May 2021, a conditional use application, denominated Conditional Use No. 2289 was filed on behalf of Leah Beach; 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. 2289 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 115-79, Code of Sussex County, be amended by adding the designation of Conditional Use No. 2289 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 southwestern side of Canal Crossing Road and Central Avenue, approximately 100 feet east of Hebron Road (Rt. 273), and being more particularly described in the attached survey by Coast Survey Inc., dated July 25, 2006, said parcel containing 0.248 acre, more or less; and also, a portion of a certain tract, piece or parcel of land, lying and being situate in Lewes and Rehoboth Hundred,

Sussex County, Delaware, and lying on the northeastern corner of Rehoboth Avenue Extended (Rt. 1A) and Hebron Road (Rt. 273), and being more particularly described in the attached deed prepared by Wilson, Halbrook, Bayard, Bunting & Marshall, containing 1.98 acres, more or less.

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

PROPOSED

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: September 10, 2021

RE: County Council Report for CU 2278 filed on behalf of Branson James

The Planning and Zoning Department received an application (CU 2278 filed on behalf of Branson James) for a Conditional Use for parcel 231-22.00-16.00 for an events venue. The address of the parcel is 17638 Dusty Road, Georgetown. The properties are within the Agricultural Residential (AR-1) Zoning District. The parcel size is 1.902 acres +/-.

The Planning and Zoning Commission held a public hearing on August 12, 2021. At the meeting of August 26, 2021, the Commission recommended that the application be denied for the 8 reasons outlined in the motion.

Below are the draft minutes from the Planning & Zoning Commission meeting of August 12, 2021, and the draft minutes from the Planning & Zoning Commission meeting of August 26, 2021.

Draft Minutes of the August 12, 2021, Planning & Zoning Commission Meeting

C/U 2278 Branson James

An Ordinance to grant a Conditional Use of land in an AR-1 Agricultural Residential District for an events venue to be located on a certain parcel of land lying and being in Nanticoke Hundred, Sussex County, containing 1.902 acres, more or less. The property is lying on the south side of Dusty Road (S.C.R. 443A), approximately 0.48 mile northwest of East Trap Pond Road (S.C.R. 62). 911 Address: 17638 Dusty Road, Georgetown. Tax Parcel: 231-22.00-16.00

Mr. Whitehouse advised the Commission that submitted into the record is a copy of the Applicant's conceptual site plan, a copy of the DelDOT Service Level Evaluation Response, a letter from the Sussex County Engineering Department Utility Planning Division, a copy of the staff analysis, one letter in opposition, one petition in opposition containing 21 signatures, and no mail returns.



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

The Commission found that Mr. Branson James, was present on behalf of the Applicant, Branson James; that he requests a Conditional Use permit for an outdoor event venue; that he would like this not only for music events, but potentially for a wedding venue or outdoor movies; that he feels these types of outdoor venues are lacking in the Georgetown area; that when the pandemic hit he would have small gatherings at his home as a way to bring entertainment during a time of isolation; that he always followed the CDC guidelines in regards to the maximum number of people allowed at a gathering; that he worked hard to provide a space that was safe for friends and family in the outdoor open air; that due to the gatherings, popularity, the events began to grow; that the events were held on his private property and he was not aware he needed a Conditional Use permit to have the gatherings; that once he was made aware of the Conditional Use requirement he began making steps to apply; that recently he held an event under all of the conditions given by Sussex County and Mr. Whitehouse; that these conditions addressed time limits and decibel limits; that they requested signage from DelDOT informing motor traffic that vehicles may be slowing speed to turn and park; that to his knowledge there were no complaints; that there was no police involvement; that there were no issues throughout the evening and the event ended at the designated time; that his wife is an artist; that he is interested in hosting possible art and craft shows; that the proposed Application would provide the area of Georgetown entertainment that it is currently lacking; that there is a strong community that loves him and his wife, and love what they offer; that in less than 24 hours he received 235 signatures in favor of the Application, which he requested to forward by e-mail to Mr. Whitehouse for the record; that the majority of the community in support of the Application come from out-of-state; that because of this he feels his events bring in business to Georgetown in the area of hotels, grocery stores and gas stations; that he is interested in getting more of the local community involved; that he has begun to work with a non-profit organization for the gather license; that the non-profit organization he works with currently supports homeless animals; that the events are located acres away from neighbors; that he does have letters of support from his neighbors, the non-profit organization and the medical staff volunteers that are onsite for the events; that they have performed decibel test and have passed; that the events have been 65 decibels before 10:00 pm and 55 decibels after 10:00 pm; that there have been issues in the past with parking; that he has been working on a way to keep pedestrians off the road and contained to the event location; that he has moved trees and bushes to comply with what is required; that in the past when there was an issue, such as a noise complaint, he has always cooperated with the police so as to not create any further issues; that he believes he has hosted three larger events, other than small gatherings and birthday parties; that the police have been called out a total of three times; that his events have never been shut down by the police; that the police requested that he lower the noise volume, and he complied, which remedied the issue; that no nearby neighbors have spoken to him with any opposition and he has not received any letters of objection; that there was a letter of objection stating that he hosted an event until 5:00 am; that he states this statement is true; that it was not an event, it was a small gathering for his birthday and things got out of hand; that he states that he never intends to exceed time limits again and there is no intention to do anything Sussex County would not allow him to do.

Ms. Stevenson questioned what types of outdoor events are proposed, the frequency that the events are being held, and hours of event operation and she requested an example of how loud 55 decibels would be equivalent to.

Mr. James stated he currently hosts music events with disc jockeys; that he wishes to expand to host live music concerts; that in the past he has hosted events up to two times monthly; that this year he has only hosted two events, one of which was operated under the requirements of Sussex County; that there is no set schedule to the proposed events; that the last event hosted was held from 2:00 pm

to 11:30 pm; that at 11:00 pm noise levels were reduced by 20% and noise levels ended at 11:30 pm and according to the application he uses 55 decibels (equivalent to a quiet home).

The Commission found that Ms. Hope James spoke on behalf of the Application; that she stated she has a video of the music being played at its loudest while showing the decibels while inside their home and outside of their home and that she requested to e-mail the video for submission into the record.

The Commission took a recess to allow the Applicant to submit the online petition signatures and decibel video.

The Commission returned from the recess.

Mr. Whitehouse stated that received into the record is a copy of the online petition and video.

Mr. James stated he would like to submit a copy of his noise management plan; that this plan was followed at the last event held and he had pictures of the property, showing designated parking areas.

Ms. Stevenson questioned if using the property for camping could be included in the proposed Conditional Use, or if it required a separate Conditional Use.

Mr. Robertson stated camping on the property would require a separate Conditional Use and a campground is specifically called out in the Zoning Code requiring specific regulations for campsites and campgrounds.

Ms. Wingate requested clarification on the proposed site plan and parking area and states she is concerned that live bands in open-air would be loud enough to create a disturbance.

Mr. James stated the area listed "to be used for events" is the area designated for a stage; that the stage area is a deck; that the deck is located to the far side of the property; that is located the farthest away from adjacent properties and this designated area is open-air.

Ms. James stated parking is located on the grass; that the vehicles are parked in double lanes while allowing space for vehicles to back up and another parking lane is started and the area can hold eight to 10 rows of vehicles, which is approximately 100 cars, in the designated parking area.

Chairman Wheatley questioned how many people normally attend the events and questioned if the events are held for a profit-making venture.

Ms. James stated 100 people attended the last two events; that she feels the proposed property could easily fit 250 to 300 people; that they would not exceed over 300 people in attendance; that the events began with taking monetary donations; that admission tickets were sold for the past two events; that the admission charge was to help pay for the disc jockeys and flights.

Mr. James stated another reason for tickets rather than donations is to create the ability to manage the number of people attending the event.

Mr. Mears requested more information on the noise complaint involving the police; that he questioned how the parking issues on the street were rectified; that he stated signage needs to be placed on the

street stating no parking on the roadway; that he stated the hours and frequency of the events needs to be established and he requested to know how many of the petition signatures in support are local residents.

Ms. James stated the police were called out for two different events; that one police officer stated he could not hear the music around the bend and he was uncertain why he was called out; that the second incident the police officer had commented how nice the venue was and took photos of the venue; that the last event the police were called out for was on Halloween; that the police were called out twice during that event; that the first call was for noise disturbance and they complied by turning the volume down; that the disc jockey later increased the volume and the police were called out again and shut the event down; that the police requested the hours for the event be readjusted for the second day and they complied; that there were no complaints on the second day; that in June 2021 they hosted an event under the Special Use Permit and there were no complaints of noise; that during that event they had corrected the parking issue and reduced the hours of the event to no later than 11:30 pm; that they placed a sign on the property stating when the event would be occurring; that she states the noise issue is confusing to her and her husband as the neighbors adjacent to the event stated they cannot hear the music and noise is not an issue; that they rectified the parking issue by clearing more land, allowing more room for rows of parking; that the proposed frequency would be one to two events per month; that typically the events are held on Saturday evenings; that other than the neighbor adjacent and the non-profit organization, none of the on-line signatures in support are from the Georgetown area; that she researched the noise ordinance for the State of Delaware; that the ordinance states that between 10:00 pm and 7:00 am the decibels must be below 55 outside.

Mr. Robertson questioned what was being used for sewer purposes and for how many events was a gathering license obtained.

Ms. James stated they rent portable restrooms and only the last event was held under a gather license.

The Commission found that Mr. Ian Herbert spoke in support of the Application; that he lives about five to seven minutes from the property; that he feels there is not a lot of options for entertainment in the local area; that he feels like most entertainment is geared toward 21 years of age and older or located at the beaches; that there are locals who support the Application and enjoy the music; that a lot of local supporters did not realize how important letters of support would be to the Application; that he does support the Application; that the disc jockeys and staff are always very nice and supportive; that he has never had a bad experience at any of the Applicant's events; that he has never seen underage consumption of alcohol and he has seen the event staff check identifications.

The Commission found that Ms. Candi Hill spoke in support of the Application; that she is the mother of Mr. James; that the music played at the events may not be liked by everyone, but the atmosphere is loving and much like a family; that she attends every event; that the events have provided a resource of comfort and an outlet for her; that the Applicant has worked hard; that they have experienced growing pains and the Applicant has spent a lot of effort and money trying to rectify everything necessary to do things the correct way.

The Commission found that Ms. Robin Parker spoke in opposition of the Application; that she lives 0.25 mile down the road from the Applicant's property; that the road they live on was one of the last roads in Sussex County to be paved; that it used to be a dirt road; that the surrounding area is beautiful, quiet farmland, with some houses; that she does not feel the Applicant's property is a good place for

the proposed uses; that she has written down the dates and times in which the Applicant held events; that she believes the events began in July 2020; that the Applicant hosted "A Knight In Wonderland" that lasted until 3:00 am; that on August 29, 2020 the Applicant held an event called "The Abyss" that lasted until 3:00 am; on October 3, 2020 the Applicant hosted his birthday celebration that lasted until 5:00 am; that on October 31, 2020 the Applicant held a two-night event that went into late hours of the night; that May 2021 the Applicant held an event that last until 1:00 am; that the last event held a permit was obtained and it was shut down at 11:30 pm as stated; that she has brought copies of the event advertisements from the Applicant's Facebook page; that the Applicant's Facebook page is a way of notifying people of the event and offers a way to pay for admission from the Facebook page; that the advertised price is \$45-\$65.00 if an attendee camps; that the Facebook page was accessed from a public view; that the Applicant's event page is called, "Into The Knight"; that despite what the decibel monitor stated, the noise at her home is so loud it affects her sleep; that the bass in EDM music is very loud; that she explains her home is similar to being next to a vehicle with the bass all the way up; that the petition signed in opposition has signatures from people up to one mile down the road who state they can hear the music; that she has lived at her residence since 1983 and has no intention of leaving; that she has a video of people using profanity and screaming for the music to be louder; that attendees will not want to pay \$45 to not hear the music the way they want to; that she feels that past behavior is the best predictor of future behavior; that the Applicant's past behavior is horrible; that she disagrees with the statement that the police have only been out a total of three times; that she has called the police several times and Ms. Short has called the police several times; that she has spoken to a single mother with a 16 year old son who lives on Lot 20; that she has stated they both cannot sleep; that the mother has expressed that she is very scared; that the attendees come from Philadelphia and Baltimore and camp out in the yard; that there is alcohol served; that the event advertisements state "BYOB"; that she feels the Applicant did try to comply at the last event, but she feels this is due to the Applicant knowing he was being watched; that she has a petition of 21 signatures in opposition; that she requests to play an audio clip taken from the previous event at Halloween that references the type of music and proof of the residents using profanity while yelling to turn the music up; that this audio clip was not from the event in which the Applicant complied with; that the stage faces her property and home; that the events begin around 2:00 pm; that her grandchildren cannot come over and play outside on the days of the events; and that there was a total of six events, one event was a total of two nights.

The Commission found that Mr. Jerry Dukes spoke in opposition of the Application; that he is the owner of the properties surrounding the Applicant's property; that he feels he will not be able to sell his property in the future if the Application is approved and he feels the approval of the Application will devalue his property.

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 Hearing.

At the conclusion of the Public Hearing, the Commission discussed the Application.

In relation to Application C/U 2278 Branson James, Motion by Ms. Hopkins to defer action for further consideration, seconded by Ms. Wingate, and carried unanimously. Motion carried 4-0.

Draft Minutes of the August 26, 2021 Planning & Zoning Commission Meeting

The Commission discussed this application which has been deferred since August 12, 2021.

Ms. Wingate moved that the Commission recommend a denial of Conditional Use # 2278 for BRANSON JAMES for an Events Venue based on the record made during the public hearing and for the following reasons:

1. The Applicant is proposing an Event Venue within a 1.902 acre site that is surrounded by homes and land that is actively farmed.
2. There is evidence in the record that the Applicant has already been using the site as an Event Venue. There was also testimony that these prior events were loud, crowded, late at night and generated unreasonable traffic and parking problems. There is no basis for approving this conditional use in light of the evidence of problems associated with the past events on this site.
3. The proposed use is not consistent with the uses of the surrounding properties. There was testimony in the record that the proposed use, which is in very close proximity to adjacent homes, will adversely affect the use and enjoyment of those homes as a result of the noise, crowds, activities (including food and alcohol service, live music, entertainment, etc.) and increased traffic associated with the use.
4. This site is located along Dusty Road, a small two-lane road. Dusty Road is not suitable for the traffic generated by this proposed use.
5. The proposed use is not compatible with the active farming operations on adjacent farmland. Unlike other events venues that have been approved which are used in conjunction with the farmland and farming operations as “agri-tourism” facilities, this one has no connection with the adjacent farming operations. There was testimony in the record from the adjacent farmer about how this proposed use would adversely affect his farming operations and his ability to sell lots for residential use near the Applicant’s property.
6. The Applicant testified that approximately 100 cars can be expected to park on this property in addition to the existing house and the proposed event area. It does not appear that there is adequate space on the site to safely accommodate the parking required by patrons of the proposed events. This will lead to overcrowding on the site and unsafe parking on Dusty Road.
7. Although the Applicant stated that the intended project will be regulated by conditions placed upon it through the Conditional Use process, there are other locations that may be more appropriate for a use such as this.
8. The application, if approved, would be detrimental to the health, safety, and general welfare of neighboring property owners and farmers in the area.
9. For all of these reasons, this Conditional Use application should be denied.

Motion by Ms. Wingate, seconded by Mr. Mears and carried unanimously to recommend denial of Conditional Use # 2278 for Branson James for the reasons and conditions stated in the motion. Motion carried 4 – 0.

PLANNING & ZONING COMMISSION

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



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JAMIE WHITEHOUSE, AICP, MRTPI
DIRECTOR

PLANNING AND ZONING AND COUNTY COUNCIL INFORMATION SHEET
Planning Commission Public Hearing Date August 12, 2021.

Application: CU 2278 (Branson James)

Applicant: Branson James
17638 Dusty Road
Georgetown, DE 19947

Owner: Branson James
17638 Dusty Road
Georgetown, DE 19947

Site Location: South side of Dusty Road (S.C.R. 443A), northwest of East Trap Pond Road (S.C.R. 62)

Current Zoning: Agricultural Residential (AR-1)

Proposed Use: Events Venue

Comprehensive Land Use Plan Reference: Low Density

Councilmanic District: Mr. Vincent

School District: Indian River School District

Fire District: Georgetown Fire District

Sewer: On-site septic system

Water: On-site well

Site Area: 1.9 acres +/-

Tax Map ID.: 231-22.00-16.00



JAMIE WHITEHOUSE, AICP MRTPI
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(302) 855-7878 T
(302) 854-5079 F
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Sussex County

DELAWARE
sussexcountyde.gov

Memorandum

To: Sussex County Planning Commission Members
From: Chase Phillips, Planner I
CC: Vince Robertson, Assistant County Attorney and applicant
Date: August 2nd, 2021
RE: Staff Analysis for CU 2278 Branson James

This memo provides a background and an analysis for the Planning Commission to consider as a part of the Conditional Use Application for Branson James (CU 2278) to be reviewed during the August 3rd, 2021, Planning Commission Meeting. This analysis should be included in the record of this application and is subject to comments and information that may be presented during the public hearing.

The request is for a Conditional Use (C/U 2278) to allow for an events venue to be located on the south side of Dusty Road (S.C.R. 443A), approximately 0.48 mile northwest of East Trap Pond Road (S.C.R. 62). The subject property is Tax Parcel 231-22.00-16.00, and the total area of the site is 2.00 acres +/-.

The 2018 Sussex County 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 the ways in which land uses should change over time. The Future Land Use map in the plan indicates that the subject property has a land use designation of "Low Density." The properties to the north, south, east, and west of the subject property also have the land use designation of "Low Density."

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

The subject property is within an Agricultural Residential (AR-1) Zoning District. The properties to the north, south, east, and west are all within the AR-1 Zoning District. Staff note the parcels to the west, northwest, and north (3) are within an agricultural easement with the State of Delaware. This easement is titled "Jerry C. Dukes Farm District." No subdivisions exist in relative proximity to the site.

Since 1971, there has been one (1) Conditional Use application filed with the Planning and Zoning Department within a one-mile radius from the subject site. Conditional Use No. 174, to allow for a wood working shop, was initially heard by the Sussex County Council on December 11th, 1973,



and approved. The Ordinance number is currently unknown. Attached is a map that represents both the subject application and C/U 174.

Based on the analysis provided, this Conditional Use request for an events venue, subject to considerations of scale and impact, could be determined to be consistent with the surrounding land uses, zoning, and environment.

All Conditional Uses within One Mile of CU 2278



0 0.13 0.25 0.5 Miles



Orange polygons represent Conditional Use Applications.
Green polygons represent subdivisions.

This map may not contain all necessary elements and principles and should be used for general reference only.

Chase Phillips, Planner I



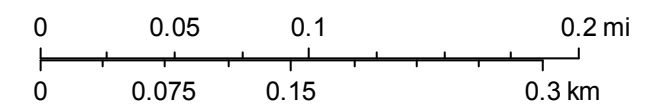
Sussex County



PIN:	231-22.00-16.00
Owner Name	JAMES BRANSON CHRISTOPHER
Book	4903
Mailing Address	17638 DUSTY RD
City	GEORGETOWN
State	DE
Description	S/DUSTY RD
Description 2	2286' NW/E TRAP POND
Description 3	RD
Land Code	

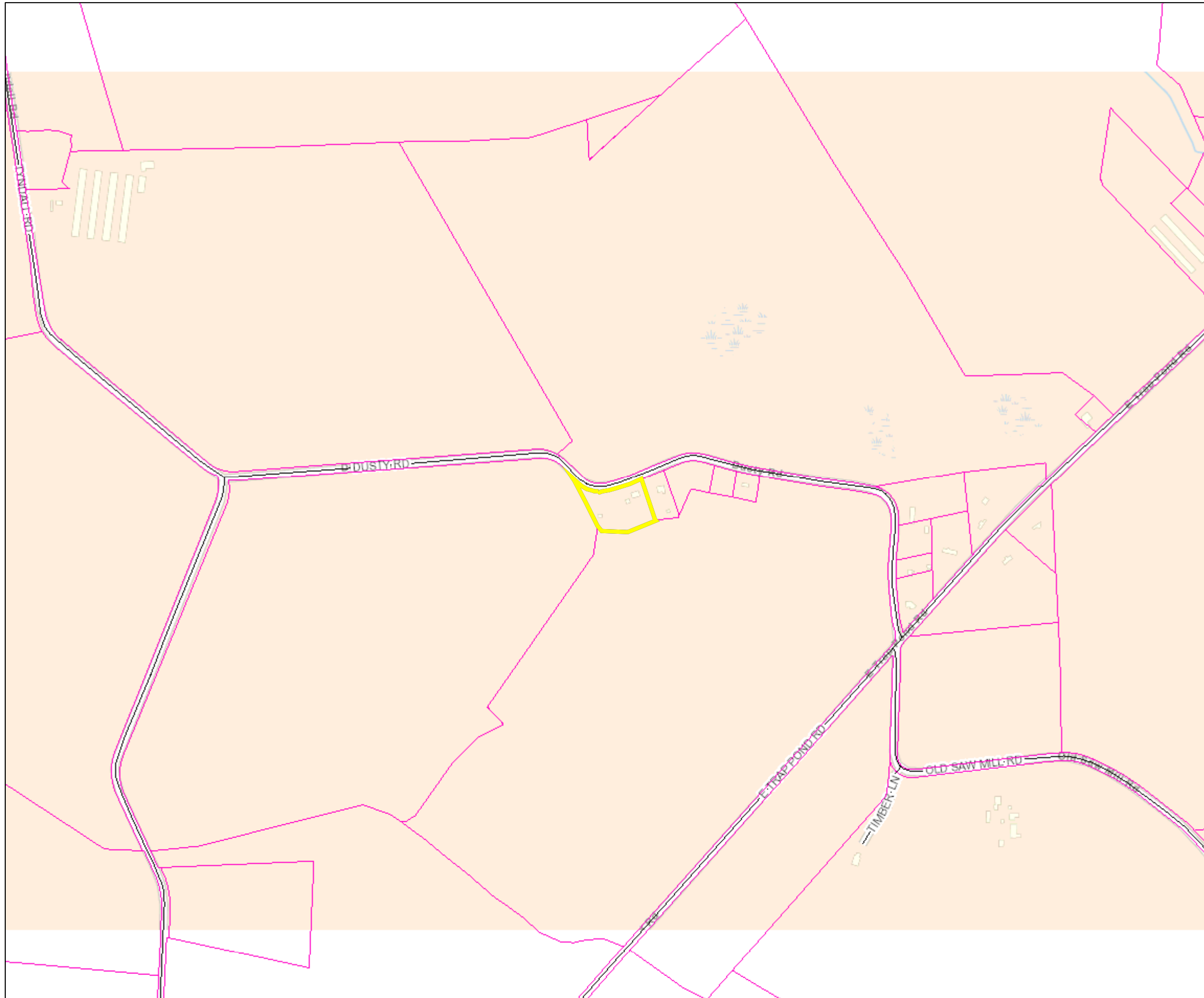
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- Streets**

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Sussex County



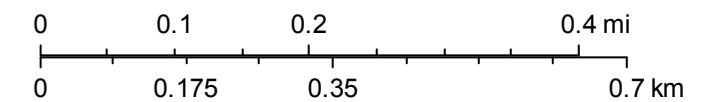
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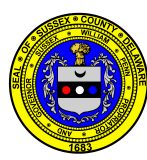
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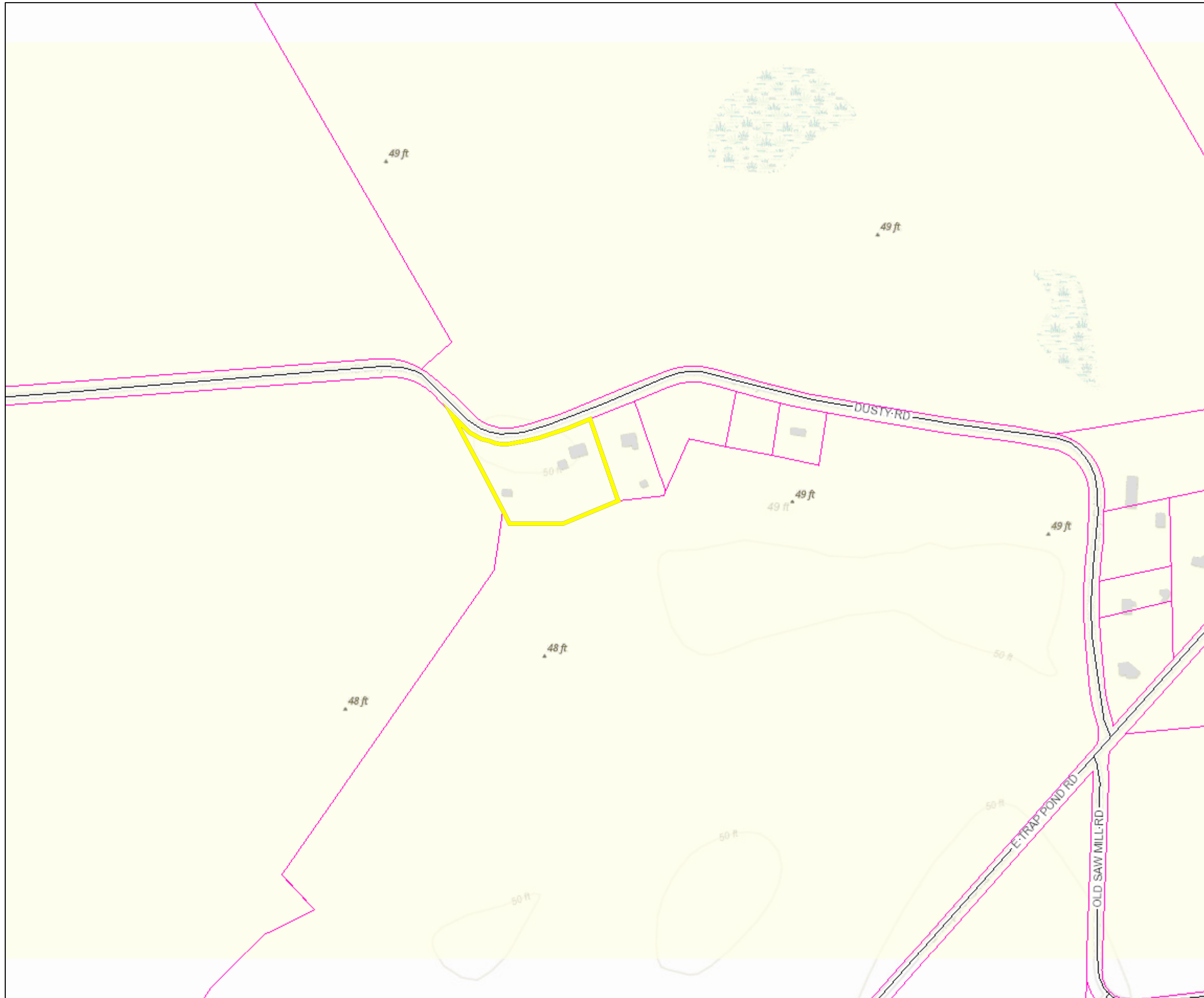
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- Streets
- County Boundaries

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Sussex County



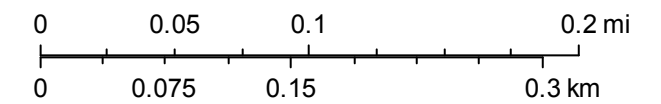
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- polygonLayer**

 - Override 1
- polygonLayer**

 - Override 1
- ⋯ Tax Parcels
- Streets

1:4,514



To Be Introduced 07/27/21

**Council District 1 - Vincent
Tax I.D. No. 231-22.00-16.00
911 Address: 17638 Dusty Road, Georgetown**

ORDINANCE NO. ____

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR AN EVENTS VENUE TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN NANTICOKE HUNDRED, SUSSEX COUNTY, CONTAINING 1.902 ACRES, MORE OR LESS

WHEREAS, on the 6th day of April 2021, a conditional use application, denominated Conditional Use No. 2278 was filed on behalf of Branson James; 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. 2278 be _____; and

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

NOW, THEREFORE, THE COUNTY OF SUSSEX HEREBY ORDAINS:

Section 1. That Chapter 115, Article 115, Subsections 115-22, Code of Sussex County, be amended by adding the designation of Conditional Use No. 2278 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 Nanticoke Hundred, Sussex County, Delaware, and lying on the south side of Dusty Road (S.C.R. 443A), approximately 0.48 mile northwest of East Trap Pond Road (S.C.R. 62), and being more particularly described in the attached deed prepared by Baird Mandalas Brockstedt, LLC, said parcel containing 1.902 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.