



Sussex County Council Public/Media Packet

**MEETING:
October 8, 2013**

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**Sussex County Council
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Georgetown, DE 19947
(302) 855-7743**

MICHAEL H. VINCENT, PRESIDENT
SAMUEL R. WILSON JR., VICE PRESIDENT
GEORGE B. COLE
JOAN R. DEEVER
VANCE PHILLIPS



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Sussex County Council

AGENDA

OCTOBER 8, 2013

10:00 A.M.

Call to Order

Approval of Agenda

Approval of Minutes

Reading of Correspondence

Todd Lawson, County Administrator

1. County Bond Requirements and Process Improvements
2. Administrator's Report

Vince Robertson, Assistant County Attorney

1. Discussion of Height Regulations in County Code

Michael Izzo, County Engineer

1. North Millville Expansion of the Bethany Beach Sanitary Sewer District
 - A. Approval of Sewer Installation in SR 26 Mainline Project

Old Business – For Discussion and Review and Possible Action

Conditional Use No. 1965
Southern Delaware Botanic Gardens, Inc.



Old Business – For Discussion and Review Only

**Conditional Use No. 1951
Jack Lingo Asset Management LLC**

**Conditional Use No. 1963
Ida C. Faucett, Faucett Heirs, LLC and
Massey’s Landing Park, Inc.**

Grant Requests

- 1. Beebe Medical Foundation for the Annual Beebe Ball to benefit Beebe’s School of Nursing.**
- 2. Overfalls Foundation for vessel maintenance expenses.**
- 3. Delaware Hospice for a golf outing fundraiser.**

Introduction of Proposed Zoning Ordinances

Any Additional Business Brought Before Council

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

Possible Action on Executive Session Items

1:30 p.m. Public Hearing

Conditional Use No. 1969 filed on behalf of Melvin L. Joseph Construction Co., Inc.

“AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR EXCAVATION OF A BORROW PIT TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 7.2 ACRES, MORE OR LESS” (Tax Map I.D. 1-34-11.00-207.00)

Sussex County Council meetings can be monitored on the internet at www.sussexcountyde.gov.

In accordance with 29 Del. C. §10004(e)(2), this Agenda was posted on October 1, 2013 at 4:15 p.m., and at least seven (7) days in advance of the meeting.

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

Agenda items listed may be considered out of sequence.

###

SUSSEX COUNTY COUNCIL - GEORGETOWN, DELAWARE, OCTOBER 1, 2013

A regularly scheduled meeting of the Sussex County Council was held on Tuesday, October 1, 2013, at 10:00 a.m., in the Council Chambers, Sussex County Administrative Office Building, Georgetown, Delaware, with the following present:

Michael H. Vincent	President
Samuel R. Wilson, Jr.	Vice President
George B. Cole	Councilman
Joan R. Deaver	Councilwoman
Vance Phillips	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 454 13
Approve
Agenda**

A Motion was made by Mr. Wilson, seconded by Mr. Phillips, to approve the Agenda, as posted.

Motion Adopted: 5 Yeas.

**Vote by Roll Call: Mrs. Deaver, Yea; Mr. Cole, Yea;
Mr. Phillips, Yea; Mr. Wilson, Yea;
Mr. Vincent, Yea**

Minutes

The minutes of September 17 and 24, 2013 were approved by consent.

**Corre-
spondence**

Mrs. Deaver shared an email she received from Steven Swierzy asking that the Council pass a noise ordinance.

**Delaware
Sports
Commission
/New Slam
Dunk to the
Beach
Basketball
Tournament**

Dr. Matt Robinson, Chairman of the Delaware Sports Commission and a sports management professor at the University of Delaware, announced the Commission's commitment to bring the Slam Dunk to the Beach high school basketball tournament back to Sussex County in 2014. The Tournament has been scheduled for December 27 – 29, 2014 and will be held at the Cape Henlopen High School. The mission of the Delaware Sports Commission (DSC), a non-profit, is to create economic development through sports for the State and Sussex County; the tournament could bring in millions of dollars in added revenue and would drive tourism to Sussex County in the off-season. Dr. Robinson advised that the ultimate goal is that the tournament will be self-sufficient and that the DSC has partnered up with a national sports marketing company, Position Sports, Inc., to help manage the day-to-day operations of the tournament.

Administrator's Report

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

1. Projects Receiving Substantial Completion

Per the attached Engineering Department Fact Sheets, Americana Bayside, Phase 6 and Seagrass Plantation, Revision 2, Phase 4 reached Substantial Completion effective September 24 and 25, respectively.

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

Angola Neck SSD/ Contract 11-11

Michael Izzo, County Engineer, presented a request to grant Substantial Completion effective September 19, 2013 for the Angola Neck Sanitary Sewer District, Angola Beach Road Grinder Pump System and Villages of Herring Creek Improvements Project. The project was funded by the USDA, Rural Utility Service. Mr. Izzo noted that there are punch list items that need to be addressed and that the quantities on the contract will be balanced; a Balancing Change Order will be presented to the Council for approval on a later date.

M 455 13 Grant Substantial Completion/ Angola Neck SSD/ Contract 11-11

A Motion was made by Mrs. Deaver, seconded by Mr. Phillips, based upon the recommendation of the Engineering Consultants and the Engineering Department, that the Sussex County Council grant Substantial Completion effective September 19, 2013, for Sussex County Contract No. 11-11, Angola Neck Sanitary Sewer District, to Harry Caswell, Inc. and that final payment be made and any held retainage be released in accordance with the terms and conditions of the contract documents.

Motion Adopted: 5 Yeas.

Vote by Roll Call: Mrs. Deaver, Yea; Mr. Cole, Yea; Mr. Phillips, Yea; Mr. Wilson, Yea; Mr. Vincent, Yea

Old Business/ C/U No. 1965

Under Old Business, the Council considered Conditional Use No. 1965 filed on behalf of Southern Delaware Botanic Gardens, Inc.

The Planning and Zoning Commission held a Public Hearing on this application on July 11, 2013 at which time action was deferred. On September 12, 2013, the Commission recommended that the application be approved subject to the following conditions:

- 1. The site shall be surrounded by a landscaped berm and heavy vegetation to screen it from neighboring properties. The location of the berm and the type of vegetation on the berm shall be shown on the Final Site Plan.**
- 2. The hours of public access to the operation shall be Monday through Sunday, 8:00 a.m. to dusk, with the exception of 11:00 p.m. closing times as appropriate for special events.**

**Old
Business/
C/U
No. 1965
(continued)**

3. All lighting shall be downward screened so that it does not shine on neighboring properties or roadways.
4. One lighted sign, not to exceed 32 square feet per side, shall be permitted.
5. All entrances, intersections, roadway improvements, etc. as required by DeIDOT shall be completed by the applicant as required by DeIDOT.
6. All parking shall comply with the requirements set forth in the Sussex County Zoning Code with all necessary parking contained completely on the site.
7. Stormwater management and erosion and sediment control shall be constructed in accordance with all applicable State and County requirements and shall be operated using Best Management Practices to provide a positive groundwater recharge. The Final Site Plan shall contain the approval of the Sussex Conservation District.
8. The Applicant stated during its presentation that the use would be funded through Federal, State and County funding sources. As part of any approval, Sussex County Council should consider a statement that the approval of the Conditional Use Ordinance should not be deemed by the Applicant to be a commitment to financial support by the County.
9. Any major change in the use shall require a new public hearing.
10. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning and Zoning Commission.

On August 6, 2013, the County Council held a Public Hearing on this application at which time the Council deferred action and left the record open for the submission of a business plan.

Lawrence Lank, Director of Planning and Zoning, reported that in reference to the requested Business Plan, Delaware Botanic Gardens provided a cover letter and a Business Plan on August 30, 2013. The Business Plan was forwarded to County Administration for distribution to Council members.

Mr. Phillips stated that he has significant concerns regarding the Business Plan; however, he questions if that is something that can be discussed. Mr. Moore responded that the Council has to look at applications based on land use criteria and principles and that the Council cannot get into the position of looking at each store, development, etc. and try to determine whether or not it has a good business plan. Further, Mr. Moore stated that it was appropriate for the Planning and Zoning Commission to place a provision in Condition No. 8 indicating that “the approval of the Conditional Use Ordinance should not be deemed by the Applicant to be a commitment to financial support by the County”.

Mr. Phillips agreed that the Council does not need to micromanage businesses. He stated, however, that this application is unique in that the land that the Applicant is utilizing is land that at one time was purchased by the County, was put in the hands of the Land Trust (under certain

**Old
Business/
C/U
No. 1965
(continued)**

assumptions), and is now being considered for lease at \$1.00 to Southern Delaware Botanic Gardens. He further stated that it would seem that the Council would have a responsibility to the taxpayers that the project succeed.

Mr. Moore responded that the application before the Council is a zoning application and the Council has to use the legal principles for the land use application and that is all the Council can look at.

Mr. Cole stated that it is a lease arrangement and if the operation is not successful and viable, the property will go back to the Land Trust and it will remain in open space.

Mr. Phillips questioned how the land is titled. Mr. Lank responded that the Applicant is Southern Delaware Botanic Gardens, Inc. and the owner of the property is Sussex County Land Trust, Inc. Mr. Phillips stated that the County deeded the land over in fee to the Land Trust.

Mr. Phillips also questioned if the Council can consider the charge of the Land Trust with respect to this land and how that fits with the Botanic Gardens proposal. Mr. Moore stated that the land had already been deeded to the Land Trust; that the Land Trust is entering into a Lease Agreement with Botanic Gardens; and that it is not the County's land now. Mr. Phillips stated that the proposal does not conform to the vision of the Land Trust and how that land was given to them to be used; he questioned if this is a legal reason for voting. Mr. Moore responded that Mr. Phillips could argue that "the use was to be open space and you do not consider this to be open space".

The Council discussed the definition of open space and the deeding of the land to the Land Trust and Mr. Moore was directed to check into the documents, including the Charter of the Land Trust, to determine if there were any conditions placed on the land when it was deeded to the Land Trust.

Mr. Cole stated that two members of the County Council sit on the Land Trust Board and that the Board members, including the two County Council members, agreed to the proposal as it fits the definition of open space. He noted that the proposal is similar to the agreement that the County Council has with the James Farm.

**M 456 13
Defer
Action on
C/U
No. 1965**

A Motion was made by Mr. Phillips, seconded by Mr. Wilson, to defer action for one week on Conditional Use No. 1965 filed on behalf of Southern Delaware Botanic Gardens, Inc. while the County Attorney looks into the charter of the Land Trust and whether the application fits within the Charter's purpose and goals.

Motion Adopted: 4 Yeas, 1 Nay.

**M 456 13
(continued)**

**Vote by Roll Call: Mrs. Deaver, Yea; Mr. Cole, Nay;
Mr. Phillips, Yea; Mr. Wilson, Yea;
Mr. Vincent, Yea**

**Old
Business/
C/U
No. 1967**

Under Old Business, the Council discussed Conditional Use No. 1967 filed on behalf of Tidewater Environmental Services, Inc.

Lawrence Lank, Director of Planning and Zoning, reported that the Planning and Zoning Commission discussed this application under Old Business on September 25, 2013. On that date, Vince Robertson, Assistant County Attorney, advised that an issue has come to the attention of the County as to whether the Applicant had standing to apply for the Conditional Use on the subject property, or stated another way, whether the County has jurisdiction to consider the Applicant's Conditional Use for this property; and that while legal staff continues to review the issue, he asked that the matter be deferred for receipt of a legal opinion on the issue. The Commission has still not voted on this application.

The Council held a Public Hearing on this application on August 20, 2013. During the Public Hearing, Tom Brady, a resident in The Retreat, stated that the people in the development paid for the plant but TESI owns it; that the developer had to construct the infrastructure, which exists on land that TESI does not own – the land is owned by the community under a Sewage Disposal Easement; that this Easement says it is for the operation of the system at The Retreat; that the Easement has not been addressed; that The Retreat is fully built out; and that they propose to connect other homes outside of The Retreat to facilities that the residents of The Retreat have paid for. Mr. Brady submitted the Sewage Disposal Easement into the record. At the conclusion of the Public Hearing, the Council deferred action and left the record open for the County Attorney's comment on the Sewage Disposal Easement.

Mr. Moore reported that there has been a post-record agreement made between the parties and that he has received a copy of the agreement. He noted that the record of the Public Hearing was left open only for the specific purpose of looking at the Easement that was in place at the time of the application.

As a result of the review of the Easement, Mr. Moore stated that he considered whether or not the Applicant had a standing to bring the application before the Commission and Council. He stated that the Easement is limited to the people living in The Retreat and standing is conferred, according to Delaware Law, upon those persons who have some right, title or interest in the land and an easement would give right, title or interest in the land. The Sewage Disposal Agreement that was in play at the time of the Public Hearing does not establish Tidewater's interest or ability to use the property for its proposed Conditional Use of treating off-site waste. For this reason, Mr. Moore stated that he finds that the Easement that was in place when the Public Hearing took place was limited for that

**Old Business/
C/U** **development only, not for any other purposes, and further, that he finds that the Applicant did not have standing.**

**No. 1967
(continued)** **Mr. Moore reported that an agreement has been put in place subsequent to the Public Hearing that would correct the problem if a new application is filed and that with the new agreement, the Applicant would have standing.**

M 457 13 **A Motion was made by Mr. Cole, seconded by Mrs. Deaver, to Adopt the**
Adopt **Proposed Ordinance entitled “AN ORDINANCE TO GRANT A**
Proposed **CONDITIONAL USE OF LAND IN A MR MEDIUM DENSITY**
**Ordinance/
C/U** **RESIDENTIAL DISTRICT FOR A WASTEWATER TREATMENT**
No. 1967 **PLANT TO TREAT OFFSITE WASTE TO BE LOCATED ON A**
DENIED **CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND**
REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 10.26
ACRES, MORE OR LESS (Two Tracts)” (Conditional Use No. 1967) filed
on behalf of Tidewater Environmental Services, Inc.

Motion Denied: 5 Nays.

Vote by Roll Call: Mrs. Deaver, Nay; Mr. Cole, Nay;
Mr. Phillips, Nay; Mr. Wilson, Nay;
Mr. Vincent, Nay

Reason **The application was denied based on the advice of Legal Counsel and for**
for Denial **lack of standing.**

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

M 458 13 **A Motion was made by Mr. Phillips, seconded by Mrs. Deaver, to give**
Council- **\$1,000.00 (\$200.00 from each Councilmanic Grant Account) to the Olde**
manic **Tymers Softball League for operating expenses.**
Grant

Motion Adopted: 5 Yeas.

Vote by Roll Call: Mrs. Deaver, Yea; Mr. Cole, Yea;
Mr. Phillips, Yea; Mr. Wilson, Yea;
Mr. Vincent, Yea

M 459 13 **A Motion was made by Mr. Phillips, seconded by Mr. Cole, to give \$300.00**
Council- **from Mr. Phillips’ Councilmanic Grant Account to Boys to Men for the 100**
manic **Wave Challenge Event.**
Grant

Motion Adopted: 5 Yeas.

Vote by Roll Call: Mrs. Deaver, Yea; Mr. Cole, Yea;
Mr. Phillips, Yea; Mr. Wilson, Yea;
Mr. Vincent, Yea

Human Service Grant Mrs. Jennings stated that the grant request submitted by Good Samaritan Aid Organization will be considered under Human Service Grants.

**Additional Business/
Public
Comments** Under Additional Business, Paul Reiger of Deer Forest in Georgetown discussed concerns regarding activities on a neighboring property. Mr. Reiger previously presented his concerns to the Council on September 24, 2013. Mr. Reiger again asked that the County make sure that the owner of the property has all necessary permits; that all violations are corrected; and that he believes some of the County's zoning restrictions are lacking.

Rocco Lano of Frankford requested that Sussex County enact a dog leash law and he advised of problems in Plantation Park II where one resident refuses to control his dogs. He reported that only New Castle County has a leash law on the books and he distributed a copy of New Castle County's Animal Control Ordinance.

Dan Kramer of Greenwood questioned why tax payments that are being sent in through the mail are not being processed in timely manner and he commented that the County is not enforcing its ordinances.

**Additional Business/
Requests
for Future
Agenda
Items** Mr. Cole requested that the following be placed on a future agenda: the two pending campground applications (for discussion and review only) and a potential loophole permitting buildings 60 feet in height.

Mrs. Deaver requested that the following be placed on a future agenda: the many permitted uses listed under CR-1 zoning and a workshop on Adequate Public Facilities.

**M 460 13
Recess and
Go Into
Executive
Session** At 11:12 a.m., a Motion was made by Mr. Wilson, seconded by Mr. Phillips, to recess and go into Executive Session for the purpose of discussing issues relating to pending/potential litigation.

Motion Adopted: 5 Yeas.

**Vote by Roll Call: Mrs. Deaver, Yea; Mr. Cole, Yea;
Mr. Phillips, Yea; Mr. Wilson, Yea;
Mr. Vincent, Yea**

Executive Session At 11:14 a.m., an Executive Session of the Sussex County Council was held in the Caucus Room of the Council Chambers for the purpose of discussing issues relating to pending/potential litigation. The Executive Session concluded at 11:30 a.m.

**M 461 13
Reconvene** At 11:31 a.m., a Motion was made by Mr. Wilson, seconded by Mrs. Deaver, to come out of Executive Session and to reconvene the Regular Session.

Motion Adopted: 5 Yeas.

**M 461 13
(continued)** **Vote by Roll Call:** **Mrs. Deaver, Yea; Mr. Cole, Yea;
Mr. Phillips, Yea; Mr. Wilson, Yea;
Mr. Vincent, Yea**

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

**M 462 13
Adjourn** **A Motion was made by Mr. Wilson, seconded by Mr. Cole, to adjourn at
11:31 a.m.**

Motion Adopted: **5 Yeas.**

Vote by Roll Call: **Mrs. Deaver, Yea; Mr. Cole, Yea;
Mr. Phillips, Yea; Mr. Wilson, Yea;
Mr. Vincent, Yea**

Respectfully submitted,

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

TODD F. LAWSON
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Sussex County

DELAWARE
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Memorandum

TO: Sussex County Council
The Honorable Michael H. Vincent, President
The Honorable Samuel R. Wilson, Jr., Vice President
The Honorable George B. Cole
The Honorable Joan R. Deaver
The Honorable Vance Phillips

FROM: Todd F. Lawson
County Administrator

RE: **COUNTY BOND REQUIREMENT AND PROCESS IMPROVEMENTS**

DATE: October 1, 2013

As you are aware, County staff has been working on a variety of issues relating to the Sussex County Bonding Requirements and Process for Chapter 99 Improvements. Please allow this memo to provide you an update on the work conducted to date and recommendations for you to consider during a future County Council meeting.

BACKGROUND

Chapter 99 of the County Code requires a Performance Bond or other guaranty, such as a Letter of Credit, for residential development governed by the Chapter. The amount of the guaranty must be no less than 125% of the cost of improvements. The bonding requirements also apply to sediment control and storm water management, which fall under the jurisdiction of the Sussex Conservation District.

I. Requests for the Reduction in Bond Amounts

In recent years, the County has faced requests by developers to reduce the original bond amount based upon work that has been completed. For example, the County requires 125% of the cost of the work to be bonded at the outset of a project (unless a developer chooses a “No Bond” process). When a developer completes some portion of the work on the site, he or she often wants to reduce the bond amount (and therefore the cost to the developer for carrying the bond) to reflect the remaining amount of work.



COUNTY ADMINISTRATIVE OFFICES
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While this would seem to be a simple process for County Engineering to manage, the result is often multiple reduction requests at various stages of the developments underway in the County. In each case, the County Engineering Department is required to verify through site inspections the work that was completed and the work that remained to be done. Then staff must consider the reduction request and make a decision. There was no uniformity to the means for seeking the request or thresholds for approving the request, and each one was considered on an ad hoc basis. This has become cumbersome for County Engineering and has stretched the Department's personnel resources. Likewise, developers have no clear path for seeking a bond reduction either.

To reach a solution, the County convened a group of stakeholders in the process, including developers, engineers, land use attorneys, land planners, and site work contractors. The group met to discuss improving the process. Most, if not all, of the participants agreed that uniformity is needed so that requests can be efficiently acted upon, with developers also understanding the process by which they could make a Bond Reduction request.

Various alternatives were discussed, from the current process where there are no guidelines, through more comprehensive requirements established by urban jurisdictions. Ultimately, a compromise proposal was formulated, which resulted in the County Bonding Protocols (*see attachment 1*).

The attached Protocol establishes that all developments or phases are entitled to a one-time Bond Reduction to not less than 50% of the value of the original bond. A professional engineer associated with the project or phase must sign and seal a takeoff of the work that remains to be completed, multiplying that by unit pricing figures published by Sussex County (*see attachment 2*). In no event would the bond be reduced to less than \$50,000.00. Also, on infrastructure governed by the Public Works Division, there will be no reduction permitted prior to the installation of at least one layer of hot mix on all included roads. When it is obvious to all involved that the remaining work is well below 50% of the original bond value, the detailed takeoff and cost estimate will not be required. Also, as indicated in the attached Protocol, the same type of analysis will be applied if a developer seeks to convert a "No Bond" project to a "Bonded" project to allow sales of the units or lots within the development or phase.

This Protocol was also circulated to the working group for comment or criticism, and no negative responses were received.

The Protocol establishes a reasonable and fair means of dealing with Bonding and Bond Reduction requests. It allows County Engineering to more efficiently deal with the requests, and it provides a uniform set of guidelines applicable to all developers so that there is no uncertainty among the development community as to the manner in which Sussex County will address Bond Reduction requests.

Recommendation: County Administration recommends the County Council consider and approve the County Bonding Protocols to be effective upon approval.

II. Sussex Conservation District Bond Requirements

As previously mentioned, Sussex County Department of Public Works currently serves as an agent for bonds required by the Sussex Conservation District (SCD). While this arrangement has existed for many years, it places the County in a position of assuming an obligation for holding the bonds while having no right or power over the work the bonds guarantee. Through the work and cooperation of the SCD, both entities have agreed to allow SCD to hold and administer its own storm water and sediment control bonds.

During these efforts, the SCD developed its own bonding requirements and policy for the anticipated “hand-over” (*see attachment 3*). On July 18, 2013, the SCD Board unanimously supported the proposal and is prepared to formally adopt the policy in coordination with the Council’s process. The agreed upon date for the hand-over is January 1, 2014.

A memorandum prepared by County Attorney David Rutt provides further detail into the legal liability the current situation places the County (*see attachment 4*). To effectuate the necessary changes, Chapters 90 and 99 of the County Code will need to be amended. A copy of the proposed Ordinance is attached (*see attachment 5*).

Recommendation: County Administration recommends the County Council consider and approve 1) the separation of the SCD’s bonds from that of the County, effective January 1, 2014; and 2) the discussion and possible introduction of an Ordinance amending Chapters 90 and 99 of the County Code to have the SCD assume its bonding responsibility.

III. “No Bond” Requirements

In January 2012, Council approved the “No Bond” process whereby developers could proceed with construction and avoid the cost of posting a bond as long as no residential units or lots were sold to third parties. The intent of this program was to foster the continuation of residential projects in tough economic times. The program, instituted for both Ordinance 38 sewer projects and residential site improvements, has been successfully utilized by many developers to date.

The Ordinance enacted in 2012 automatically sunsets on January 10, 2014, unless Council elects to extend the program.

Recommendation: County Administration recommends the County Council consider the discussion and possible introduction of an Ordinance amending Chapter 99 of the County Code which extends the “No Bond” provision.

Memo to Council – County Bond Requirements

October 1, 2013

Page 4 of 4

CONCLUSION

The efforts outlined in this memo represent a collective effort by County staff, the SCD, and local stakeholders. These recommended changes are put forth to reduce the County's liability while improving our internal systems and protecting our residents. Should you have any questions, please do not hesitate to contact my office.

TFL/sww

Attachments

pc: David N. Rutt, Esquire
Vincent G. Robertson, Esquire
Mr. Michael A. Izzo, P.E.
Mr. Lawrence B. Lank
Mr. David Baird, Sussex Conservation District

I. SUSSEX COUNTY BONDING PROTOCOLS

1. Unless the Developer selects to administer the project using the “No Bond” process (see #4 below), separate securities shall be supplied by the Developer for: 1 – Stormwater Management Facilities administered by the Sussex Conservation District; 2 - Road, sidewalks, drainage, appurtenances and other miscellaneous infrastructure administered by the Sussex County Public Works Division; 3 – Utility infrastructure administered by the Sussex County Utility Engineering Division; and 4 – Amenities administered by the Sussex County Planning and Zoning Department. The security amounts shall be 125% of the value of the executed contract(s) between the Developer and his contractor. In no event shall a provided security ever be less than \$50,000.
2. Where discrepancies exist between the adopted protocols of the Sussex Conservation District and those listed herein, the Sussex Conservation District protocols shall govern.
3. Once the Notice to Proceed is issued, the Developer will be granted a one-time opportunity to reduce the submitted security. The one-time reduction will be limited to providing a revised security amount that totals no less than 50% of the original security. For road infrastructure governed by the Public Works Division, no reduction will be permitted prior to installation of at least one-layer of hot mix on all included roads.
4. To determine the actual amount of the remaining construction, the Developer’s engineer shall prepare a takeoff for the remaining work items. Using the engineer’s takeoff quantities and unit prices published by the Public Works Division, the Developer shall submit a cost estimate for the remaining work and a contractor’s updated schedule for completing said work. The reduced security amount will either be the value calculated in the Developer’s estimate or the 50% value of the original security total, whichever is greater. In a case where it is obvious to all concerned that the value of remaining work items is well below the 50% threshold, a detailed takeoff and estimate shall not be necessary, and a security set at 50% of the original security can be provided. In no event shall a provided security ever be less than \$50,000.
5. If the developer of a “No Bond” project wishes to begin selling lots during the construction period, then the Developer’s engineer shall prepare a takeoff for the remaining work items. Using Engineer’s takeoff quantities and unit prices published by the Public Works Division, the Developer shall submit a cost estimate for the remaining work and a contractor’s updated schedule for completing said work. The security amount shall either be 125% of the value calculated in the Developer’s estimate or \$50,000, whichever is greater. In a case where it is obvious to all concerned that the value of remaining work items is well below the \$50,000 threshold, a detailed takeoff and estimate shall not be necessary, and a security set at the \$50,000 threshold can be provided.
6. The required format for preparing cost estimates is provided as an exhibit.

SUSSEX COUNTY'S SAMPLE COST ESTIMATE

9/30/2013

ITEM NO.	ITEM DESCRIPTION	QTY	UNITS	UNIT COST	TOTAL COST
	Sidewalk 4" Concrete	500	SF	\$ 4.00	\$ 2,000.00
	GABC Type B 4" Included	500	SF	\$ 5.00	\$ 2,500.00
	Sidewalk 6" Concrete	500	SF	\$ 6.00	\$ 3,000.00
	GABC Type B	500	SF	\$ 7.00	\$ 3,500.00
	PCC Curb Type II	500	LF	\$ 20.00	\$ 10,000.00
	GABC Type B 4" Included	500	LF	\$ 22.00	\$ 11,000.00
	Curb Ramps 1, 2,3,4, 5 Domes Included	5	EA	\$ 2,500.00	\$ 12,500.00
	Removal and replace 4" Sidewalk	50	SF	\$ 8.00	\$ 400.00
	Removal and Replace Type II Curb	50	LF	\$ 30.00	\$ 1,500.00
	C Hot Mix	1000	Ton	\$ 85.00	\$ 85,000.00
	B Hot Mix	1000	Ton	\$ 85.00	\$ 85,000.00
	Hot Mix Patching 3"	10	Ton	\$ 100.00	\$ 1,000.00
	Milling Hot Mix (Variable Depth) - Minimum 4,500 SY	2	SY	\$ 2.00	\$ 4.00
	Butt Joints Hot Mix	1	LF	\$ 3.00	\$ 3.00
	Saw Cutting Hot Mix	1	LF	\$ 2.00	\$ 2.00
	Pavement Strip	1	LF	\$ 0.25	\$ 0.25
	Symbols & Legends	1	SF	\$ 5.50	\$ 5.50
	Adjusting & Repair Inlets	1	EA	\$ 1,000.00	\$ 1,000.00
	Adjusting & Repair Manhole	1	EA	\$ 500.00	\$ 500.00
	Adjusting Water Valves	1	EA	\$ 100.00	\$ 100.00
	Top Soiling (on site topsoil)	1	SY	\$ 2.00	\$ 2.00
	Mulch, Subdivision Seed	1	SY	\$ 3.00	\$ 3.00
	Contractor Mobilization Fee (5%)	1	LS		\$ 10,950.99
				Construction Subtotal	\$ 229,970.74
				Contingency (10%)	\$ 22,997.07
				As-Built Survey (Est).	\$ 8,000.00
				Project Subtotal	\$ 260,967.81
				Bond Amount (125%)	\$ 326,209.76

SUSSEX COUNTY UNIT PRICE LIST

9/30/2013

201000	Clearing and Grubbing	AC	\$ 4,000.00
202000	Excavation and Embankment	CY	\$ 15.00
203000	Channel Excavation	CY	\$ 10.00
204000	Muck Excavation	CY	\$ 10.00
207000	Excavation and Backfill for Structures	CY	\$ 10.00
208000	Excavation and Backfill for Pipe Trenches	CY	\$ 4.00
209001	Borrow, Type A	CY	\$ 8.00
209002	Borrow, Type B	CY	\$ 9.00
209003	Borrow, Type C	CY	\$ 10.00
209004	Borrow, Type D	CY	\$ 11.00
209005	Borrow, Type E	CY	\$ 12.00
209006	Borrow, Type F	CY	\$ 13.00
209007	Borrow, Type G	CY	\$ 14.00
212000	Undercut Excavation	CY	\$ 15.00
250000	Sediment Removal	CY	\$ 5.00
251000	Silt Fence	LF	\$ 3.00
252000	Inlet Sediment Control, Drainage Inlet	EACH	\$ 200.00
252001	Inlet Sediment Control, Curb Inlet	EACH	\$ 200.00
254000	Stone Check Dam	TON	\$ 100.00
255000	Sediment Trap	CY	\$ 200.00
256000	Riser Pipe Assembly for Sediment Trap	EACH	\$ 500.00
257000	Riprap Ditch	CY	\$ 50.00
259000	Perimeter Dike/Swale, Type A-1	LF	\$ 10.00
268000	Stabilized Construction Entrance	TON	\$ 1,500.00
302002	Graded Aggregate Base Course, Type B	CY	\$ 20.00
305001	Graded Aggregate for Temporary Roadway Material	TON	\$ 25.00
401002	Hot-Mix, Hot-Laid Bituminous Concrete Pavement, Type B	TON	\$ 85.00
401003	Hot-Mix, Hot-Laid Bituminous Concrete Pavement, Type C	TON	\$ 85.00
401006	Hot-Mix, Hot-Laid Bituminous Concrete Pavement, Type C, Patching	TON	\$ 100.00
401007	Hot-Mix, Hot-Laid Bituminous Concrete Pavement, Type B, Patching	TON	\$ 100.00

401008	Entrance and Driveway Paving		SY	\$	15.00
406000	Hot-Mix Patching		SY-IN	\$	10.00
612001	Reinforced Concrete Pipe, 12", Class III		LF	\$	20.00
612002	Reinforced Concrete Pipe, 15", Class III		LF	\$	25.00
612003	Reinforced Concrete Pipe, 18", Class III		LF	\$	30.00
612004	Reinforced Concrete Pipe, 21", Class III		LF	\$	35.00
612005	Reinforced Concrete Pipe, 24", Class III		LF	\$	40.00
612006	Reinforced Concrete Pipe, 27", Class III		LF	\$	45.00
612007	Reinforced Concrete Pipe, 30", Class III		LF	\$	50.00
612009	Reinforced Concrete Pipe, 36", Class III		LF	\$	60.00
612011	High Density Polyethylene (HDPE) Pipe 12"		LF	\$	18.00
612013	High Density Polyethylene (HDPE) Pipe 15"		LF	\$	21.00
612015	High Density Polyethylene (HDPE) Pipe 18"		LF	\$	24.00
612017	High Density Polyethylene (HDPE) Pipe 21"		LF	\$	27.00
612019	High Density Polyethylene (HDPE) Pipe 24"		LF	\$	30.00
612021	High Density Polyethylene (HDPE) Pipe 27"		LF	\$	33.00
612023	High Density Polyethylene (HDPE) Pipe 30"		LF	\$	36.00
612025	Landscape - Buffer (Includes Seed & Mulch)		AC	\$	10,000.00
612027	Mobilization - 5% of Construction Subtotal			\$	0.05
612029	Pond A Outlets		EA	\$	1,000.00
612031	Jet Box Conv.		EA	\$	700.00
612033	Topsoil Pond		SY	\$	2.00
612035	Removal Outlets		EA	\$	700.00
612037	Flared End		EA	\$	400.00
612039	Stormwater Manholes		EA	\$	1,000.00
612041	Outlet Control Structure		EA	\$	5,000.00



Sussex Conservation District Financial Guarantee Policy for Sediment and Stormwater Improvements

SCD Policy No. 2013-XX

DRAFT—June 5, 2013

1. PURPOSE

It is the intention of the Board of Supervisors that a financial guarantee may be required to ensure that construction of the stormwater management practices is accomplished in accordance with the approved sediment and stormwater management plan.

Previously, the bonding requirement for stormwater management practices was included as a part of Sussex County's requirements. The County has recently announced it will no longer include stormwater as a part of its bonding requirements, and the District will be assuming responsibility for the financial guarantee in accordance with its authority as a Delegated Agency for the Delaware Sediment and Stormwater Regulations.

2. APPLICABILITY

2.1. This policy shall be applicable to any project subject to the Delaware Sediment and Stormwater Regulations (*7 Del. Admin. Code §5101*) located within Sussex County.

2.2. Exemptions—The following uses shall be exempt from the security requirements as contained in this policy:

- i. Agricultural Structures
- ii. Commercial Projects that will not be subdivided where the property owner is the developer, business proprietor, owner of the stormwater facility, and owner of the property upon the development of the property.
- iii. Projects with a total site area less than one acre where in the District Coordinator determines the imposition of the bonding requirement provides no benefit to the general public.
- iv. Projects where the total construction value of the improvements to be bonded by SCD per Section 3.1 of this policy are less than \$10,000.

3. APPLICATION PROCESS

3.1. Amount of the Security—the amount of the security shall be determined in accordance with a detailed cost estimate prepared at the expense of the developer, and approved by the District Coordinator, or their designee. The Security will be set at One Hundred

Fifty Percent (150%) of the cost shown on the cost estimate. The cost estimate shall be provided to the District prior to the pre-construction meeting for the project.

3.2. Agreement—the developer and the District shall enter into an agreement describing the rights and responsibilities of each party related to the construction of the facilities necessary for compliance with the Delaware Sediment and Stormwater Regulations (7 *Del. Admin. Code* § 5101), and as required by the policies of the Department of Natural Resources and Environmental Control and or the Sussex Conservation District.

3.3. Form of Security—The District will accept the following forms of security: Cash Performance Bond, Performance Bond, or a Letter of Credit.

3.4. Fee—The District will charge a \$150.00 annual administrative fee for each security issued. The fee shall not be prorated nor returned at the completion of the project. The developer is subject to additional fees in excess of the annual fee for documented expenses incurred by the District directly related to a specific project.

3.5. Notice-to-Proceed—Upon receipt of the fully executed agreement, a fully executed security, payment of all associated fees, and completion of any conditions identified during the pre-construction meeting, the District will issue a notice to proceed for the project.

4. MODIFICATION/RENEWAL/RELEASE OF SECURITY

4.1. Modification/Renewal—In the event the security documents need to be modified or amended, the developer shall provide a new bond and enter into a new agreement with the District.

4.2. Partial Release of Security—The District may, in its sole discretion, reduce the security, through a separate written agreement signed by all parties, in proportion to the amount of the Developer's actual completion of the Improvements to which the Security rebates up to fifty percent (50%). A new security and agreement recognizing the reduced amount shall be in place prior to the release of the previously held security.

4.3. Full Release of Security—Upon completion of the improvements and other conditions contained in the agreement to the satisfaction of the District (as evidenced by a written statement from the District) the Security shall be released.

5. COORDINATION WITH SUSSEX COUNTY & MUNICIPAL JURISDICTIONS

The District will coordinate the status of its project approval and bonding activities with Sussex County and/or the appropriate municipal jurisdictions throughout Sussex County. It is SCD's position that County and municipal jurisdictions should be in receipt of a "Notice to Proceed" from the District prior to authorizing projects to proceed within their jurisdiction.

Agreement No: _____
Agreement Name: _____

AGREEMENT

THIS AGREEMENT, dated this _____ day of _____, 20____, by and between **The Sussex Conservation District**, a governmental subdivision of the State of Delaware, having a principal business address of 23818 Shortly Rd., Georgetown, DE 19947, its successors or assigns (hereinafter the "District"),

- AND -

_____, having an address of _____
_____ (hereinafter "Developer").

RECITALS

WHEREAS, Developer is the owner of record of certain real property located in Sussex County, Delaware; the same being described as Sussex County tax district, map and parcel number _____, and being further described as _____ (hereinafter the "Property");

WHEREAS, Developer is seeking to have the District issue a _____ permit (hereinafter the "Permit") pertaining to the Property;

WHEREAS, in accordance with Sections 90-8 and 90-32 of the Sussex County Code, 7 *Delaware Code* Chapter 40, and 7 *Del. Admin. Code* § 5101, the District has established requirements for a performance guarantee to be posted prior to the issuance of said Permit;

WHEREFORE

NOW THEREFORE, in consideration of the promises and mutual covenants herein contained, the parties hereto agree as follows:

1. The recitals above are material to the terms of this Agreement and are thus incorporated herein by referenced and made a part of the substantive content hereof.

2. Developer shall within _____ (____) months from the date of execution of this Agreement complete construction or cause construction to be completed of all of the required sediment and erosion control and/or stormwater management improvements (hereinafter referred to collectively as "Improvements"); all as approved by the Sussex Conservation District and as set forth in detail elsewhere herein. All of the design and construction work required for the satisfactory completion of the Improvements shall be the responsibility of the Developer or his designee subject to the approval of the District.

3. The Developer, within five (5) days of the execution of this Agreement, shall file or cause to be filed, with the District a copy of an acceptable construction schedule showing the

Agreement No: _____
Agreement Name: _____

proposed timeframes for the progression of the Improvements to completion. Thereafter, on the same day of each succeeding month, beginning thirty (30) days after execution of this Agreement, Developer shall file with the District a progress report as to the progress actually made and Developer shall advise the District of any action required by the District that may be preventing the progress of the subject project. In the event that the date upon which the progress report is due falls on a weekend or holiday, then Developer shall file the progress report on the next business day thereafter.

4. Not later than Forty-Five (45) days prior to the Improvements completion deadline set forth herein, the Developer may request, in writing, that the time for completion of the Improvements be extended. Any written request for extension must provide, at a minimum, a detailed statement as to the reasons causing delay in the completion of the Improvements, and a revised proposed schedule for completion of the Improvements. Acceptance or denial of any request for extension shall be in the sole discretion of the District.

5. Developer shall construct all Improvements in accordance with the specifications set forth in the approved plans, in accordance with all requirements of the *Delaware Code*; in accordance with all requirements set forth in *7 Del. Admin. Code § 5101*, and as required by the policies of the Department of Natural Resources and Environmental Control and/or the District. Construction of the Improvements shall be subject to inspection and approval by District inspectors.

6. Developer shall proceed with construction of the Improvements in accordance with the inspection procedures specified by the District, and in accordance with the submitted construction schedule.

7. To ensure the full and faithful performance of all covenants and conditions set forth herein, Developer does hereby deposit with the District a(n):

_____	Cash Performance Bond, or	Initials:
_____	Performance Bond, or	Initials:
_____	Letter of Credit,	Initials:

The form of the above-referenced document(s) shall be as approved by the District and its legal counsel, and in the amount of _____ Dollars (\$_____) (hereinafter referred to as the "Security").

8. The amount of the Security has been determined in accordance with a detailed cost estimate prepared at the expense of the Developer, and approved by the District Coordinator or their designee; said cost estimate being attached hereto as Exhibit A and incorporated herein

Agreement No: _____
Agreement Name: _____

by reference. The Security is set at One Hundred Twenty-Five Percent (125%) of the cost shown on the aforementioned cost estimate. The Developer warrants that in the event that errors or omissions are found in the design documents after the Security has been posted, and those errors or omissions result in increased construction costs, then Developer shall promptly bring such errors or omissions to the attention of the District and shall promptly post such additional Security as would be required as a result of the increase in costs.

9. The Security shall be deposited with the District to guarantee satisfactory construction and completion of the Improvements, as more particularly set forth on the drawing and plans identified in Schedule 1 hereto (hereinafter the "Plans"). With the District's approval, Plans may be revised from time to time, provided that adequate security, as determined by the District, is available or provided to cover any increased costs.

10. Developer agrees, upon request, to timely provide the District with complete information regarding the identity of any and all engineers, surveyors, contractors, and other similar professionals providing services relating to the Improvements.

11. If Developer does not complete or cause to be completed all of the Improvements called for hereunder within the time set forth in Paragraph 2 above, the District may, upon written notice to Developer, draw upon all or any part of the Security as necessary for the completion of the Improvements, and may retain any or all excess funds held as Security for the payment of the District's expenses and reasonable attorney's fees. Developer acknowledges and accepts that any default by Developer hereunder shall trigger, at the election of the District, a forfeiture of the Security to the District.

12. The exercise of the District's rights to draw all or any part of the monies held as Security shall not eliminate the Developer's liability for any expenses actually incurred above and beyond the Security amount. Developer shall remain liable to the District for the full and total cost of any and all of the Improvements not completed by the deadline set forth herein.

13. The parties hereto agree that the total of the Security may, in the sole discretion of the District, be reduced, through a separate written agreement signed by all parties, in proportion to the amount of the Developer's actual completion of the Improvements to which the Security relates.

14. Prior to the release of all or any portion of the Security, Developer shall provide to the District as-built drawings showing the Stormwater Management Improvements as actually constructed, and the District shall inspect the completed Improvements to ensure that the Improvements have been constructed according to District specifications.

Agreement No: _____
Agreement Name: _____

15. Any changes to the Plans noted herein must be in writing and must be approved in advance by the District.

16. Upon any breach of the Agreement by Developer, Developer shall be liable to the District for all costs and expenses, including reasonable attorney's fees that the District may incur as a result of said breach. As noted elsewhere herein, the District may retain all or any portion of the balance of any Security for the payment of the expenses incurred.

17. Developer agrees to obtain, at Developer's sole expense, all easements which are reasonably necessary for the construction and maintenance of the Improvements, which easements shall be in a form acceptable to the District.

18. At the completion of the Improvements, the Developer shall obtain from his contractors, all relevant subcontractors, and any others having provided labor and/or materials for the construction of the Improvements that could give rise to a lien in their favor, a standard release of lien document stating that the project has been satisfactorily completed within the terms and conditions of their contract, and that the Property is free and clear of any and all liens, claims, security interests and/or encumbrances in favor of said party. A copy of said release of liens shall be provided to the District.

19. Upon completion of the Improvements to the satisfaction of the District (as evidenced by a written statement from the District) the Security held hereunder shall be released.

20. Developer shall indemnify and hold harmless the District, its officers, employees, agents and representatives from any and all claims, actions, suits and demands, of any nature, arising from or relating to the construction of the Improvements.

21. None of the obligations imposed upon Developer hereunder shall be assignable by Developer, whether by conveyance of a part of all of the property upon which the Improvements are to be constructed or otherwise. The terms of this Agreement shall remain binding upon Developer regardless of whether or not the Developer has a legal interest in the property.

22. The District's policies along with 7 *Del. Admin. Code* § 5101 are incorporated herein by reference, and together with the terms of the Agreement, contain the entire understanding of the parties and may not be modified or amended unless in writing signed by the parties hereto.

23. This Agreement shall be governed by, interpreted and enforced in accordance with the laws of the State of Delaware, and Owner hereby consents to the jurisdiction of the Courts of the State of Delaware, and the venue of Sussex County, Delaware.

Agreement No: _____
Agreement Name: _____

24. This Agreement shall be binding upon and shall inure to the benefit of the parties and their respective heirs, personal representatives, successors and assigns.

25. Time shall be of the essence for this Agreement.

26. The undersigned have all necessary corporate power and authority to execute and deliver this Agreement and to consummate the transaction contemplated hereunder. The Developer warrants that the execution and delivery of this Agreement does not and will not violate the terms or conditions of Developer's formation documents, bylaws, any judicial or administrative order or process, or any agreement or instrument to which Developer is a party or by which it is bound. This Agreement has been duly and effectively authorized by all necessary corporate actions.

IN WITNESS WHEREOF, each of the parties hereto, has caused this Agreement to be executed under Seal on the day and year noted below.

Witness:

The Sussex Conservation District

By: _____

(SEAL)
By: David Baird, District Coordinator

Witness:

(DEVELOPER)

By: _____

(SEAL)
By:

4. The Principal is responsible to complete, in a manner satisfactory to the District, the improvements, as defined by the Agreement between the parties and the submitted plans and specifications.

5. The sight draft must be signed by an authorized representative of the District stating, “ _____ (DEVELOPER) has failed to complete the improvements as defined by the Agreement, plans and specifications to a point of acceptance by the District under Agreement No. _____ covering the materials, construction, construction administration and construction inspection for drainage construction, stormwater construction, and other improvements deemed necessary by the District. Demand is hereby made in the amount of the enclosed draft.”

6. Except as otherwise stated herein, no modifications or revocations may be made by the undersigned to the irrevocable credit created hereby, without the express written approval of the District.

7. Drafts drawn in favor of the District shall not relieve the Principal of any other liability it may have for the satisfactory completion of the improvements called for under the Agreement or otherwise required.

8. Except insofar as otherwise expressly stated, this Credit is to be governed and construed in accordance with Delaware law, and to the extent not inconsistent therewith, the Uniform Customs and Practices for Documentary Credits, 2007 Revision, ICC Publication no. 600.

Very truly yours,

Witness

Bank

[NAME AND ADDRESS OF ISSUER]

ATTN: Sussex Conservation District
23818 Shortly Road
Georgetown, DE 19947

RE: IRREVOCABLE COMMERCIAL LETTER OF CREDIT NO.

AGREEMENT NO. _____

AGREEMENT NAME: _____

To Whom it May Concern:

We hereby establish our Irrevocable Commercial Letter of Credit in favor of The Sussex Conservation District, a governmental subdivision of the State of Delaware (hereinafter "District"), as beneficiary, at the request of _____, of _____ (hereinafter "Principal"), for an amount or amounts not to exceed _____ Dollars (\$ _____), to be accepted by your signed statement that drawing is due to the default or failure to perform by the Principal the following improvements on or before _____ (EXPIRATION DATE UNDER AGREEMENT):

This letter of credit is subject to the following terms and conditions.

1. Effective Date: _____

2. Expiration Date: _____

3. This credit is to be available by sight draft being presented to _____ (BANK) at its main office at _____ . All drafts so drawn must bear the clause "Drawn under _____ (BANK) letter of credit number _____, dated _____ .

Agreement No.: _____
Agreement Name: _____
Bond Amount: _____

PERFORMANCE CASH BOND

Herein set forth is a Performance Cash Bond (hereinafter "Bond") given by _____ (DEVELOPER), of _____ (hereinafter "Developer" or "Principal"), to the Sussex Conservation District, a governmental subdivision of the State of Delaware (hereinafter the "District").

The Principal is bound unto the District, in the sum of _____ Dollars (\$ _____), for the payment of which the Principal hereby binds itself and its successors and assigns.

Whereas, the Principal has, by written Agreement (Agreement No. _____) dated _____ (hereinafter "Agreement"), and through plans and specifications as approved by the District, agreed to provide materials, labor, construction administration and construction inspection necessary for drainage construction, erosion and sedimentation control facilities, and/or other improvements deemed necessary by the District. Said Agreement is incorporated herein by reference.

Now, therefore, the condition of this obligation is such that if the Principal promptly and faithfully performs all the covenants and conditions of the Agreement, then this obligation shall be void, but otherwise this obligation shall remain in full force and the following terms shall apply:

1. This Bond shall remain in full force and effect until such time as all improvements covered by the Bond have been constructed and approved by the District.

2. The amount of the Bond shall, at all relevant times, be sufficient to secure provision of the improvements called for by the Agreement that have not yet been constructed and approved by the District.

3. This Bond shall not be subject to cancellation by the Principal for any reason until such time as all improvements subject to the Bond have been constructed and approved by the District. Written notice of completion of the improvements shall be provided by the District upon full completion and approval thereof.

4. This Bond shall be continuous in form and shall remain in full force and effect until such time as all the improvements subject to the Bond have been constructed and approved by the District. Provided the Principal is not in default of its obligations under the Agreement, upon construction and approval of all improvements by the District, this Bond shall then be released.

Agreement No.: _____
Agreement Name: _____
Bond Amount: _____

5. This District reserves the right, in its sole discretion, to accept a substitute bond in the place hereof, at which point this Bond shall then be released.

6. The District further reserves the right, in its sole discretion, to permit a partial release from this Bond; provided, however, that the remaining portion of the Bond shall at all times be sufficient to secure completion of all remaining improvements subject to the Bond.

7. In the event that the improvements subject to this Bond are not completed within the time allowed under the Agreement or the Principal is otherwise in default under the Agreement, the District may, at its option, upon written notice to the Principal at its last known address, declare the Principal to be in default, and claim payment under this Bond for the cost of completion of the improvements called for under the Agreement along with any and all costs and expenses incurred in doing so, including, but not limited to, reasonable attorney's fees.

8. In the event that this Bond shall, for any reason, cease to be effective prior to the construction and approval of all improvements called for under the Agreement, the District or other governmental authority may then issue a cease and desist order, in which case all work on the subject project shall stop until such time as a replacement guarantee acceptable to the District is put in place.

9. Principal shall indemnify and keep harmless the District as well its officers, employees, agents and representatives thereof, from all costs, damages, and expenses growing out of or by reason of the improvements and completion of the Agreement, and shall well and truly pay all and every person furnishing material or performing labor in and about said Agreement, all and every sum or sums of money due him, them or any of them, for all such labor and materials.

[SIGNATURE PAGE TO FOLLOW]

Agreement No.: _____
Agreement Name: _____
Bond Amount: _____

Sealed with our Seals and dated this ____ day of _____, in the year of our Lord
20_____.

SIGNED, SEALED AND DELIVERED IN THE PRESENCE OF: _____

DEVELOPER
Corporate Seal

ATTEST: _____ (Signature of Developer): _____ (SEAL)

Print Name: _____

Title: _____

Agreement No.: _____
Agreement Name: _____
Bond Amount: _____

PERFORMANCE SURETY BOND

Herein set forth is a Performance Surety Bond (hereinafter "Bond") given by _____ (DEVELOPER), of _____ (hereinafter "Developer" or "Principal"), and _____ (SURETY), a surety licensed in the State of Delaware, of _____ (hereinafter "Surety"), to the Sussex Conservation District, governmental subdivision of the State of Delaware (hereinafter the "District").

The Principal and Surety are bound unto the District, in the sum of _____ Dollars (\$ _____), for the payment of which the Principal and Surety hereby jointly and severally bind themselves, their respective successors and assigns.

Whereas, the Principal has, by written Agreement (Agreement No. _____) dated _____ (hereinafter "Agreement"), and through plans and specifications as approved by the District, agreed to provide materials, labor, construction administration and construction inspection necessary for drainage construction, erosion and sedimentation control facilities, and/or other improvements deemed necessary by the District. Said Agreement is incorporated herein by reference.

Now, therefore, the condition of this obligation is such that if the Principal promptly and faithfully performs all the covenants and conditions of the Agreement, then this obligation shall be void, but otherwise this obligation shall remain in full force and the following terms shall apply:

1. This Bond shall remain in full force and effect until such time as all improvements covered by the Bond have been constructed and approved by the District.

2. The amount of the Bond shall, at all relevant times, be sufficient to secure provision of the improvements called for by the Agreement that have not yet been constructed and approved by the District.

3. This Bond shall not be subject to cancellation either by the Principal or by the Surety for any reason until such time as all improvements subject to the Bond have been constructed and approved by the District. Written notice of completion of the improvements shall be provided by the District upon full completion and approval thereof.

4. This Bond shall be continuous in form and shall remain in full force and effect until such time as all the improvements subject to the Bond have been constructed and approved by the

Agreement No.: _____
Agreement Name: _____
Bond Amount: _____

District. Provided the Principal is not in default of its obligations under the Agreement, upon construction and approval of all improvements by the District, this Bond shall then be released.

5. This District reserves the right, in its sole discretion, to accept a substitute bond in the place hereof, at which point this Bond shall then be released.

6. The District further reserves the right, in its sole discretion, to permit a partial release from this Bond; provided, however, that the remaining portion of the Bond shall at all times be sufficient to secure completion of all remaining improvements subject to the Bond.

7. In the event that the improvements subject to this Bond are not completed within the time allowed under the Agreement or the Principal is otherwise in default under the Agreement, the District may, at its option, upon written notice to the Principal and the Surety at their last known addresses, declare the Principal to be in default, and claim payment under this Bond for the cost of completion of the improvements called for under the Agreement along with any and all costs and expenses incurred in doing so, including, but not limited to, reasonable attorney's fees.

8. In the event that the District and the Principal agree to changes in the scope or work called for under the Agreement, the obligations of the Surety hereunder shall not be released or otherwise affected, noting, however, that the liability of the Surety shall not exceed the face amount of the Bond herein posted.

9. In the event that this Bond shall, for any reason, cease to be effective prior to the construction and approval of all improvements called for under the Agreement, the District or other governmental authority may then issue a cease and desist order, in which case all work on the subject project shall stop until such time as a replacement guarantee acceptable to the District is put in place.

10. Principal and Surety shall indemnify and keep harmless the District as well its officers, employees, agents and representatives thereof, from all costs, damages, and expenses growing out of or by reason of the improvements and completion of the Agreement, and shall well and truly pay all and every person furnishing material or performing labor in and about said Agreement, all and every sum or sums of money due him, them or any of them, for all such labor and materials.

[SIGNATURE PAGE TO FOLLOW]

Agreement No.: _____
Agreement Name: _____
Bond Amount: _____

Sealed with our Seals and dated this ____ day of _____, in the year of our Lord
20_____.

SIGNED, SEALED AND DELIVERED IN THE PRESENCE OF:

DEVELOPER
Corporate Seal

ATTEST: _____ (Signature of Developer): _____ (SEAL)
Print Name: _____
Title: _____

SURETY
Corporate Seal

ATTEST: _____ (Signature of Surety): _____ (SEAL)
Print Name: _____
Title: _____

MOORE & RUTT, P.A.

ATTORNEYS AT LAW

GEORGETOWN OFFICE
P.O. BOX 554
122 W. MARKET STREET
GEORGETOWN, DE 19947
302-856-9568
FAX 302-856-4518

MILFORD OFFICE
P.O. BOX 612
830 SO. DUPONT HWY.
MILFORD, DE. 19963
302-424-2240
FAX 302-424-0468
(Wed. & Thurs. & By Appointment Only)

J. EVERETT MOORE JR.*
DAVID N. RUTT**
JAMES P. SHARP***
DORIAN ROWE KLEINSTUBER
SHANNON R. OWENS

Reply To _____ Georgetown
_____ Milford

* Del. and D.C.
** Del. and Penna.
*** Del. and MD.

MEMORANDUM

TO: TODD LAWSON, COUNTY ADMINISTRATOR
FROM: DAVID N. RUTT, ESQ.
DATE: SEPTEMBER 27, 2013
RE: PROPOSED ORDINANCE AMENDMENT
REGARDING BONDING

Chapters 90 and 99 of the Sussex County Code reference bonds held by Sussex County for stormwater drainage and management facilities under the control of the Sussex Conservation District (SCD). That is, surface drainage and erosion and sediment control facilities outside of the road rights of way. Even though Sussex County has no right or power to review or approve plans or to inspect the work performed for such stormwater facilities, Sussex County assumed the obligation of holding the bonds. Bonds for purposes of this memorandum include letters of credit. This has raised questions regarding the authority to administer the bonds and, in turn, questions of liability.

The bonds have historically been held by the Department of Public Works (DPW) which verified that estimates for the work were submitted and that bonds were obtained in an amount of 125% of the estimate. DPW would physically hold the bonds for SCD, thus acting as SCD's agent. SCD maintained inspection of the work to be performed for stormwater management and would advise DPW of the progress and if bonds needed to be called. The County then would assume the task of calling the bonds on behalf of SCD at no expense to SCD. During the "boom" years this was not an issue, but as the economy slowed, it became evident the County was placed in the middle of any disputes between Developers and SCD regarding the scope of work to be performed or completed, the amount of the bond, and the necessity of calling a bond if SCD determined the Developer was in default. This came to a head in the litigation regarding The Reserves Spa & Resort.

In that action Sussex County called all of the bonds it was holding, including bonds for sewer, roads and drainage in the rights of way, as well as stormwater facilities under the jurisdiction of SCD. Though Sussex County argued it had no control over the stormwater management facilities, SCD was not made a party to the litigation and the

Court deemed Sussex County responsible. Its theory was that Sussex County identified SCD in its Code essentially as its "Agent" for purposes of assuring such work was performed and thus the County was ultimately responsible for all aspects of the project including stormwater management. To reach that conclusion the Court focused on the fact the County held and then called the bonds. In other words, the County had the final authority based on the vote of County Council to call the bonds and in the case of The Reserves did so.

This issue was discussed internally with County staff and then in meetings with SCD. As a result, SCD has agreed that, effective January 1, 2014, it will hold and administer its own bonds. All cost of administration, including any litigation fees, will be SCD's responsibility. SCD and DPW will maintain open lines of communication to coordinate their respective tasks to assure projects proceed as they have in the past. Attached are the agreements generated by SCD and acknowledgment of this acceptance.

Also attached is a proposed amendment to the Sussex County Code. This will amend the Code in two respects. First, Chapter 90 of the Code entitled "Sediment Control and Stormwater Management" is amended by eliminating reference to the bonds the County was holding under Section 99-32 of the Code. The amendment does not affect the obligation of Developers to comply with all stormwater management practices and requirements under the jurisdiction of SCD.

The second amendment is to Chapter 99 entitled "Subdivision of Land" and, in particular, to Section 99-32. That is the specific section of the Code which required the County to obtain and hold bonds for "surface drainage facilities, erosion and sedimentation control facilities." These are all aspects of a project which by State law fall within the jurisdiction of SCD. The amendment removes that language from the County Code and, effective January 1, 2014, the responsibility for bonding will be assumed by SCD.

Attached is the Ordinance amending the Sussex County Code. I am available to answer any questions.

ORDINANCE NO. __

AN ORDINANCE TO AMEND CHAPTER 90 OF THE CODE OF SUSSEX COUNTY, ENTITLED "SEDIMENT CONTROL AND STORMWATER MANAGEMENT" AND CHAPTER 99 OF THE CODE OF SUSSEX COUNTY, ENTITLED "SUBDIVISION OF LAND" IN REGARD TO THE BONDING AND GUARANTIES REQUIRED FOR SURFACE DRAINAGE FACILITIES AND EROSION AND SEDIMENTATION CONTROL FACILITIES UNDER THE JURISDICTION OF THE SUSSEX CONSERVATION DISTRICT.

WHEREAS, Sussex County Code, Chapter 99, Section 99-32 currently requires bonding and guaranties for all surface drainage facilities and erosion and sedimentation control facilities and requires Sussex County to collect such bonding and guaranties; and

WHEREAS, the Sussex Conservation District is the delegated agency in Sussex County for the administration of Delaware's Sediment and Stormwater Regulations and shall require its own bonding for such facilities effective January 1, 2014; and

WHEREAS, the duties of the Sussex Conservation District include approval of sediment and stormwater management plans and inspection of the subject properties for compliance which is a condition for the issuance of building and other permits by Sussex County pursuant to Sussex County Code Chapter 90; and

WHEREAS, Sussex County Council desires to amend the Sussex County Code to remove the requirement of applicants to provide bonds to Sussex County for all surface drainage facilities and erosion and sedimentation control facilities under the jurisdiction of the Sussex Conservation District.

NOW THEREFORE, THE COUNTY OF SUSSEX HEREBY ORDAINS:

Section 1. The Code of Sussex County is hereby amended by deleting the current Section 90-8 in its entirety and as shown in the brackets below:

[§90-8. Performance bonds and guaranties.]

[The performance bond and guaranties required in § 99-32, Article VI, of Chapter 99, Subdivision of Land, of the Sussex County Code includes as a condition the satisfactory completion of the sediment control and stormwater management plan as certified to the County by the Sussex Conservation District.]

Section 2. The Code of Sussex County is hereby amended by deleting the bracketed language in the current Section 99-32 as follows:

§99-32. Bonds and guaranties.

A. As a condition of approval of improvement plans, the County Council shall require the subdivider to post a performance bond or other guaranty for any improvements required by the application of this chapter in an amount sufficient to construct the improvements and in a form acceptable to the County Attorney. The amount of such bond shall be no less than 125% of the cost of improvements. Bonding and guaranties may be required for street and road improvements, [surface drainage facilities, erosion and sedimentation control facilities,] water supply facilities, sanitary sewer facilities, forested and/or landscaped buffer strips, all areas approved as open space as defined in § 99-5 and other improvements deemed necessary by the Commission or required by the Subdivision Ordinance.

Section 3. This Ordinance shall become effective on January 1, 2014.

Synopsis

This Ordinance modifies Sections 90-8 and 99-32 of the Sussex County Code in order to remove the provision that Sussex County will require bonding and guaranties for surface drainage facilities and erosion and sedimentation control facilities required by the Sussex Conservation District.

Deleted text is shown in brackets.

DRAFT

GRIFFIN & HACKETT, P.A.
ATTORNEYS AT LAW

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robertson@griffinhackettllaw.com

MEMORANDUM

TO: Sussex County Council

FROM: Vincent G. Robertson, Esquire
Assistant Sussex County Attorney

RE: Zoning Code Height Limits

DATE: October 3, 2013



I have been asked to provide an explanation of what the County's Code says with regard to height.

As many of you are aware, the individual Zoning Districts in Chapter 115 of the Sussex County Code typically reference a 42 foot height limit. Presumably, that is where most people look to locate the applicable height, and then look no further in the Code.

However, there is an entirely separate section governing height found in the Supplementary Regulations set forth in Chapter XXV of the Zoning Code. Specifically, Section 115-179B of the Code establishes a separate height limit for certain buildings. That section says that except in airport approach zones defined by the FAA, "public and semi-public, or public service buildings, hospitals, institutions or schools, when permitted in a district, may be erected to a height not exceeding 60 feet..." Under that section of the Code, there are several classifications or groupings of buildings that are entitled to utilize the 60 foot limit: public and semi-public buildings; public service buildings; hospitals; institutions or schools. These classifications or groupings are further limited to those types of buildings that are permitted in the specific district where they are intended to be located.

If the 60 foot height limit is applied, Section 115-179B also requires that the side and rear yard setbacks must be increased by one foot for each foot of height over and above the height regulation set forth in the applicable zoning district (again typically 42 feet).

To determine what is meant by a “public and semi-public” building, we must look to Section 115-4 of the Code for the definition of the term “public”. “Public” is simply defined in Section 115-4 as “open to common use-, whether or not public ownership is involved.” This is a very broad definition of the term “public”. Something open to common use could include shopping centers, hotels, restaurants, museums, sports facilities, grocery stores or any number of buildings and uses where the public is invited. Again, it is still subject to the limitation in Section 115-179 regarding whether the proposed use or building is permitted in the specific zoning district.

The definition of “public and semi-public” must also be considered in the context of Conditional Uses. Under the Zoning Code, Conditional Uses must be generally of a “public or semi-public character” and are approved that way by the County all of the time for all sorts of business ventures. So again, the terms are broadly defined and broadly used in the Sussex County Zoning Code.

The question on this subject previously arose with regard to a proposed hotel in the Vineyards. An opinion was issued as to hotels specifically, since that was the proposed use for the Vineyards site which is zoned C-1. The analysis tracked the fact that a hotel is a permitted use in the C-1 District and it is a public or semi-public building under the County’s Zoning Code. Therefore, under Section 115-179B of the Zoning Code, the 60 foot height limitation applied, subject to the increased setbacks described above.

Based upon the explanation set forth herein, as it is currently worded, the Code is clear as to the 60 foot height limit. The 60 foot height limitation is not based upon some stretched interpretation of the Code but is instead based upon the plain wording of the Code. Therefore, a Code change is necessary if Council desires to address the 60 foot limitation.

I will be available at County Council on Tuesday, October 8, 2013 to answer any questions.

Cc: Todd Lawson
J. Everett Moore
Jamie Sharp
Lawrence Lank
Shane Abbott

VGR:ssj

PROJECT FACT SHEET

Project name Millville Sanitary Sewer District
 SR 26 – Phase III Expansion

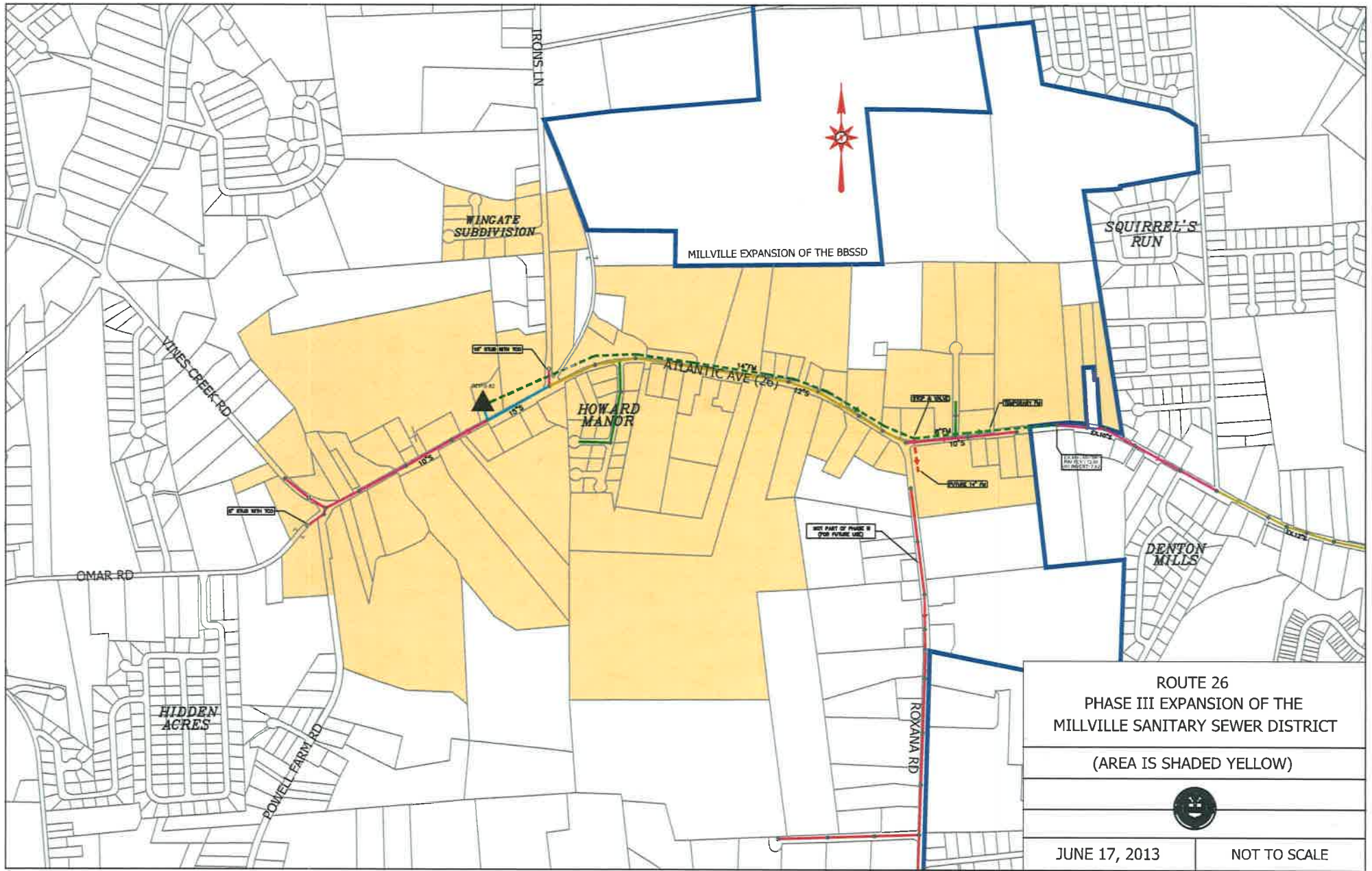
Funded by: USDA Rural Utility Service

DelDOT's SR 26 Portion: Bid opening on 9/24/13, sewr work cost at \$2,128,701.22;
Engineer's Estimate @ \$2,418,185.00. Low bidder is George & Lynch

GENERAL NOTES:

1: \$2,128,701.00 is an estimate because the bid number is \$1,935,183 but there are some traffic management and other shared costs with DelDOT that we have to factor in.

2: There are about \$885K in a second contract that the County will administer to serve properties outside the SR 26 project boundary. This will bring the construction total to just over \$2.9M, still a good number.



ROUTE 26
 PHASE III EXPANSION OF THE
 MILLVILLE SANITARY SEWER DISTRICT

(AREA IS SHADED YELLOW)



JUNE 17, 2013

NOT TO SCALE

ORDINANCE NO. ____

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR BOTANIC GARDENS AND RELATED VISITOR CENTER, CONSERVATORY, THEATER, NATURE CENTER AND PARKING TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN DAGSBORO HUNDRED, SUSSEX COUNTY, CONTAINING 36.99 ACRES, MORE OR LESS (Tax Map I.D. 2-33-6.00-116.10)

WHEREAS, on the 1st day of May 2013, a conditional use application, denominated Conditional Use No. 1965 was filed on behalf of Southern Delaware Botanic Gardens, Inc.; and

WHEREAS, on the ____ day of _____ 2013, 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. 1965 be _____; and

WHEREAS, on the ____ day of _____ 2013, a public hearing was held, after notice, before the County Council of Sussex County and the County Council of Sussex County determined, based on the findings of facts, that said conditional use is in accordance with the Comprehensive Development Plan and promotes the health, safety, morals, convenience, order, prosperity and welfare of the present and future inhabitants of Sussex County, and that the conditional use is for the general convenience and welfare of the inhabitants of Sussex County.

NOW, THEREFORE, THE COUNTY OF SUSSEX HEREBY ORDAINS:

Section 1. That Chapter 115, Article IV, Subsection 115-22, Code of Sussex County, be amended by adding the designation of Conditional Use No. 1965 as it applies to the property hereinafter described.

Section 2. The subject property is described as follows:

ALL that certain tract, piece or parcel of land, lying and being situate in Dagsboro Hundred, Sussex County, Delaware, and lying south of Piney Neck Road (Road 336) 0.5 mile west of Bunting Road (Road 335) and being more particularly described in Deed Book 3336, Page 168 in the Office of the Recorder of Deeds in and for Sussex County, said parcel containing 36.99 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.

OLD BUSINESS
October 8, 2013

This is to certify that on July 11, 2013 the Sussex County Planning and Zoning Commission conducted a public hearing on the below listed application for Conditional Use.. At the conclusion of the public hearing, the Commission moved and passed that the application be forwarded to the Sussex County Council with the recommendations as stated.

Respectfully submitted:

COUNTY PLANNING AND ZONING
COMMISSION OF SUSSEX COUNTY

Lawrence B. Lank
Director of Planning and Zoning

The attached comments relating to the public hearing are findings of the Planning and Zoning Commission based on a summary of comments read into the record, and comments stated by interested parties during the public hearing.

Conditional Use #1965 - Application of **SOUTHERN DELAWARE BOTANIC GARDENS, INC.** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for botanic gardens and related visitor center, conservatory, theater, nature center and parking, to be located on a certain parcel of land lying and being in Dagsboro Hundred, Sussex County, containing 36.99 acres, more or less, lying south of Piney Neck Road (Road 336) 0.5 mile west of Bunting Road (Road 335)(Tax Map I.D. 2-33-6.00-116.10).

Mr. Lank reminded the Commission that they had previously received a copy of the Exhibit Booklet and survey/site plan for the project.

The Commission found that on April 24, 2013 DeIDOT provided a Support Facilities Report which references that a traffic impact study is not recommended, and that the current Level of Service "A" of Piney Neck Road will not change as a result of this application.

The Commission found that on July 9, 2013 the County Engineering Department Utility Planning Division provided a Memorandum which references that the site is located in the Dagsboro Frankford Sanitary Sewer District; that wastewater capacity is available to serve the project; that Ordinance 38 construction will be required; that the location and size of laterals and/or connection points will have to be determined; that connection to the sewer system is mandatory; that the site resides within a recent expansion area and while a sanitary sewer connection point is not currently extended to the parcel, the County is currently working with a developer of a project located east of the site that will construct a regional pumping station and force-main that is scheduled to be completed in the next 12 months; that an opportunity exists for the Applicants to make use of this infrastructure although there may be some costs associated

with said use; that the County Engineering Department will assist with coordinating this effort; and that a concept plan is required.

Mr. Lank advised the Commission that he has received 16 emails in support of this application.

The Commission found that Michael J. Zajic, President of the Board of Directors for Southern Delaware Botanic Gardens, Inc., was present with Mark Davidson, Project Manager, and Carlton Savage, Professional Engineer, of Pennoni Associates, Inc. and stated in their presentation and in response to questions raised by the Commission that they have received a total of 181 signatures in support of the botanic gardens proposal to date; that the land is proposed to be leased from the Sussex County Land Trust; that the site is currently tilled with some woodlands and wetlands; that the site is located within an Environmentally Sensitive Area according to the 2008 Comprehensive Land Use Plan; that the site is located within an Investment Level 2 according to the State Strategies; that the site is approximately one mile from the town limits of the Town of Dagsboro; that they have established a Memorandum of Understanding with the Sussex County Land Trust; that they are scheduled to meet with the Preliminary Land Use Service on July 24, 2013; that they have been working on this project for approximately two years; that they are planning features for all ages; that the design calls for garden parking areas that break up the sight of other parking spaces; that the project includes, but not limited to, a visitor center, a nature center, gardens (vegetable, bog, flower, woodland, vernal pool, and sand), a conservatory, covered walkways with a living roof, trams for accessibility, ponds and meadows, a 0.5 mile canal through the gardens for tours, waterfalls and bridges, a café along Pepper Creek, floating docks for tours out into the Inland Bays estuary, classrooms, greenhouses, and many other features; that the Southern Delaware Botanic Gardens, Inc. is a non-profit corporation organized by local citizens with more than 500 supporters and members and is staffed by volunteers that will be conducting public education programs; that the mission of the corporation is to create inspirational, educational, and sustainable public gardens in southern Delaware for the benefit and enjoyment of the public; that the project is proposed to be installed in phases over a five to eight year period; that the corporation is dedicated to: nature's beauty, native plants and habitats of southern Delaware, colorful garden displays and garden information, public education and enjoyment, and ecological appreciation; that they are proposing a public garden because Delaware has no flagship public garden, an important educational and museum institution; that Phase I is planned to start simple, grow in stages with a horticulturist and volunteers, with grants from County, State, and private donors, and to build berms, deer fences, the entry drive, parking lots, and temporary structures with the help of local contractors; that they will begin planting trees, shrubs, perennials, meadow and other permanent plantings; that they hope to have Phase I completed in several years; that Phase II is planned to build buildings and garden features as underwriting comes in for each feature and includes: beginning existing forest restoration, removing invasive alien plants like Phragmites, restoring the vernal pool, restoring the shoreline with native plants, planting new forest areas, and labeling plants; that Phase III should complete the project and will serve visitors who wish to see the gardens and plants, visiting school children, garden clubs, photographers, and artists, farmers, vegetable gardeners, ornamental gardeners, and everyone through education on our habitats, and plants through plant labels, classes, tours, and research; that the public garden lands will be held by a long term lease; that the design, with minimal infrastructure and temporary buildings will be secured by grants and

gifts; that the garden features shall be designed, engineered, and built by private, business, and public underwriting; that the garden operations shall be self-sustaining by income generating activities; that they are planning to create: a children's adventure garden; an outdoor amphitheater; a modern teaching vegetable garden; a Labyrinth for meditation and exercise; a bog garden, our rarest habitat, will shelter endangered native plants including Sundews, Pitcher Plants, and other plants, accessed by a board walk; a Hummingbird, Butterfly, and pollinators' garden; an arboretum of Delaware's trees; a large meadow garden for grasses, wildflowers and birds; flower gardens for all seasons; special features for wildlife: birdhouses, eagle trees, feeders, Osprey poles, turtle logs, and more; that ecological sustainability will be maintained by integrated pest management, organic fertilizers, and limited irrigation; that the design concept for the garden's buildings shall be compatible with the site, complementary, sustainable, durable, beautiful, and low profile; that Delaware is rich in natural treasures – animals, plants, habitats, all of great beauty, best enjoyed, studied, and preserved in an educational public botanic garden designed for that purpose; that the stormwater design for the site will primarily be contained on-site and a quantity waiver will be requested due to the proximity of the tidal waters of Pepper Creek to mitigate the normal impacts of the development on the natural water balance; that this will be done by turning water that would normally become surface runoff into a resource that waters trees and recharges groundwater; that bio-retention systems, filter strips and rain gardens will improve water quality by removing nutrients; that the engineers will work with the Sussex Conservation District and DNREC to achieve the best management practices for the project; that a nutrient budget will be prepared per DNREC's Nutrient Protocol; that approximately 2,000 new trees, mostly native, will be planted and a landscape buffer around the entire boundary will be furnished; that Tidewater Utilities, Inc. will provide the necessary domestic and fire protection water needed; that agricultural irrigation wells will be used to irrigate gardens, etc.; that the project will be served by central sewer from the Dagsboro Frankford Sanitary Sewer District; that DelDOT did not recommend a traffic impact study; that by comparing this project with similar projects in other states, approximately 83,495 people are expected to visit the site annually once the project is completed; that wetlands will be further delineated through the permitting process with DNREC and the Army Corps. of Engineers; that there is no known presence of any historic or cultural resources on the site; that the plans and application is being submitted through the PLUS process for their review; that in addition to the new trees referenced earlier, they plan to add approximately 8,000 shrubs, 150,000 perennial plants, 600,000 bulbs and tubers, and 100,000 native plants; that the bio-diversity of the site may increase from approximately 150 species to 2,000 species; that the project will fix many more tons of carbon and remove 30 percent more air pollutants than it did as a farm; that the new canal and pond will also fix carbon and add oxygen; that the new bog will protect many species and propagate many highly endangered Delaware native plants; that the restored Vernal Pools will provide habitat for breeding frogs, skinks, and salamanders, all endangered; that the animal population will increase by 10,000 percent; that they anticipate approximately 394 jobs with 110 part-time jobs; that the Exhibit Booklet contains some suggested Findings of Fact and suggested Conditions of Approval for consideration; that they have met with the Town Council of Dagsboro; that they held a public meeting at the Dagsboro Fire Hall; that there will be a gift shop in the visitor center; that they will raise funds with membership drives, fund raisers, etc.; that they estimate a \$33,000,000 benefit to the County and State annually once the project is established; that they requests permission to utilize the B-1 Neighborhood Business regulations for signage; that they may use

mobile home type structures temporarily for offices, classrooms, etc.; that the proposed piers are not intended for public use; that parking shall be subject to site plan review; that the Sussex County Land Trust and the Applicants are working out the lease arrangement and a business plan is being prepared; that the equipment shed is planned to house the tour boats and for assembly areas for garden displays for special feature events; that they have spoken, and will continue to speak to, all State Representatives, Town Councils, most County and State Agencies, and garden clubs, and have not heard any negativity.

Mr. Robertson advised those present that the project, if approved, needs to be substantially underway within three (3) years of receiving approval from the County Council.

Mr. Robertson added that light displays or similar activities may require additional public hearings.

The Commission found that Harry Hayman, a resident of Holly Cove near Dagsboro, was present in support and stated that their plans are nice and that the use is needed in the area.

Several parties raised their hands in support of the application.

There were no parties present in opposition to this application.

At the conclusion of the public hearings, the Commission discussed this application.

On July 11, 2013 there was a motion by Mr. Smith, seconded by Mr. Ross, and carried unanimously to defer action for further consideration, and to leave the record open until receipt of the PLUS comments. Motion carried 5 – 0.

On August 22, 2013 the Commission was provided with a copy of the PLUS comments.

On September 12, 2013 the Commission discussed this application under Old Business.

Mr. Smith stated that he would move that the Commission recommend approval of Conditional Use No. 1965 for Southern Delaware Botanic Gardens, Inc. to operate a Botanic Gardens and related visitor center, conservatory, theater and nature center based on the record made during the public hearing and for the following reasons:

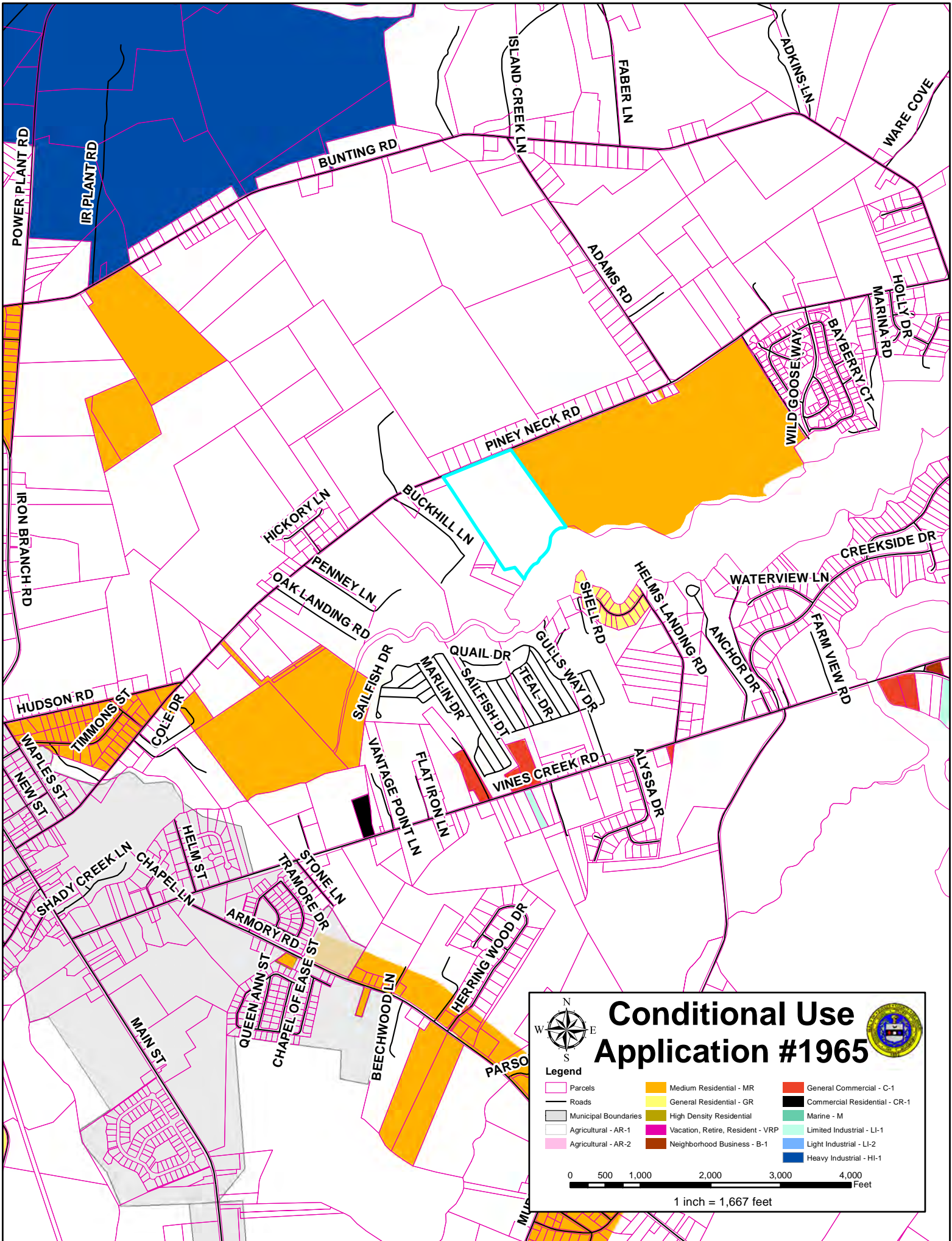
- 1) The site is zoned AR-1 Agricultural Residential. The use as a botanic garden is compatible with the underlying agricultural zoning of the property.
- 2) The site is in the Environmentally Sensitive Developing District Overlay Zone, and the use for public gardens and environmental education is appropriate for this zone.
- 3) The intended use will be served by central sewer as part of the County's Dagsboro/Frankford Sanitary Sewer District.
- 4) The proposed use is an appropriate conditional use since it has a public character; it protects the natural, cultural, agricultural and recreational resources through inspirational, educational, and sustainable public gardens for the benefit and enjoyment of the public.

- 5) The use will have little or no impact on traffic or the nearby roadways. It will also not have an adverse impact on neighboring or adjacent properties.
- 6) The proposed use meets the purpose of the Zoning Code in that it promotes the orderly growth, convenience, order, prosperity and welfare of the County.
- 7) No parties appeared in opposition to this application.
- 8) This recommendation for approval is, however, subject to the following conditions:
 - a. The site shall be surrounded by a landscaped berm and heavy vegetation to screen it from neighboring properties. The location of the berm and the type of vegetation on the berm shall be shown on the Final Site Plan.
 - b. The hours of public access to the operation shall be Monday through Sunday, 8:00 a.m. to dusk, with the exception of 11:00 p.m. closing times as appropriate for special events.
 - c. All lighting shall be downward screened so that it does not shine on neighboring properties or roadways.
 - d. One lighted sign, not to exceed 32 square feet per side, shall be permitted.
 - e. All entrances, intersections, roadway improvements, etc. as required by DeIDOT shall be completed by the applicant as required by DeIDOT.
 - f. All parking shall comply with the requirements set forth in the Sussex County Zoning Code, with all necessary parking contained completely on the site.
 - g. Stormwater management and erosion and sediment control shall be constructed in accordance with all applicable State and County requirements and shall be operated using best management practices to provide a positive groundwater recharge. The Final Site Plan shall contain the approval of the Sussex Conservation District.
 - h. The applicant stated during its presentation that the use would be funded through Federal, State and County funding sources. As part of any approval, Sussex County Council should consider a statement that the approval of the Conditional Use Ordinance should not be deemed by the applicant to be a commitment to financial support by Sussex County.
 - i. Any major change in the use shall require a new public hearing.
 - j. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning and Zoning Commission.


Motion by Mr. Smith, seconded by Mr. Ross, and carried unanimously to forward this application to the Sussex County Council with the recommendation that the application be approved for the reasons and with the conditions stated. Motion carried 5 – 0.

As a reminder of the Sussex County Council actions taken, be advised that on August 6, 2013 the Council deferred action and left the record open for 30 days for the applicants to provide a Business Plan.


In reference to the requested Business Plan, Delaware Botanic Gardens provided a cover letter and a Business Plan on August 30, 2013. The Business Plan was forwarded to the County Administration Office for distribution to the Council.



Conditional Use Application #1965



Legend

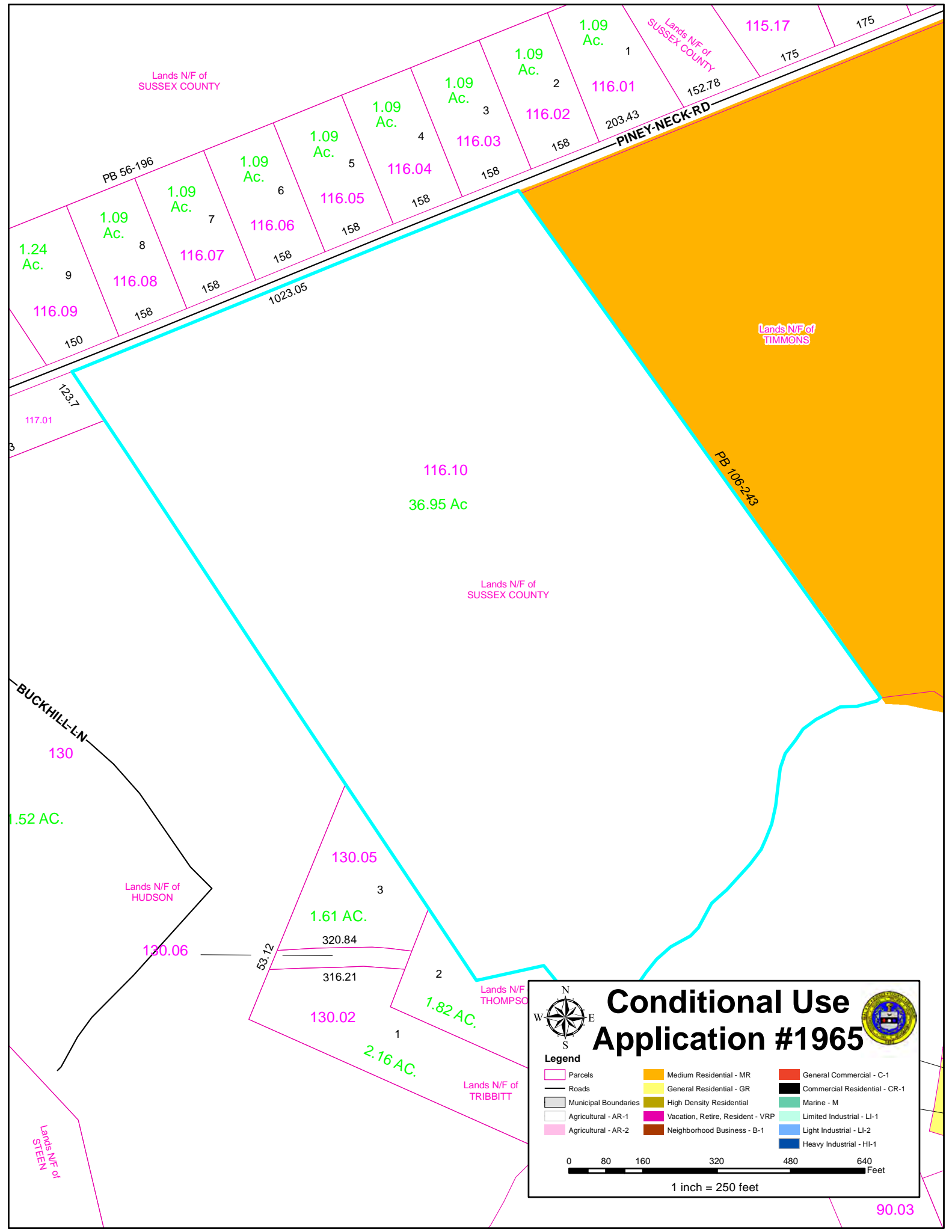


<ul style="list-style-type: none"> Parcels Roads Municipal Boundaries Agricultural - AR-1 Agricultural - AR-2 	<ul style="list-style-type: none"> Medium Residential - MR General Residential - GR High Density Residential Vacation, Retire, Resident - VRP Neighborhood Business - B-1 	<ul style="list-style-type: none"> General Commercial - C-1 Commercial Residential - CR-1 Marine - M Limited Industrial - LI-1 Light Industrial - LI-2 Heavy Industrial - HI-1
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0 500 1,000 2,000 3,000 4,000

Feet

1 inch = 1,667 feet



Lands N/F of SUSSEX COUNTY

Lands N/F of SUSSEX COUNTY

115.17

175

PB 56-196

PINEY-NECK-RD

1.24 Ac.

1.09 Ac.

1.09 Ac.

1.09 Ac.

1.09 Ac.

1.09 Ac.

1.09 Ac.

1.09 Ac.

1.09 Ac.

116.09

116.08

116.07

116.06

116.05

116.04

116.03

116.02

116.01

152.78

158

158

158

158

158

158

1023.05

123.7

117.01

Lands N/F of TIMMONS

116.10

36.95 Ac

Lands N/F of SUSSEX COUNTY

PB 106-243

BUCKHILL-LN

130

1.52 AC.

Lands N/F of HUDSON

130.06

53.72

130.05

1.61 AC.

320.84

316.21

130.02

1.82 AC.

Lands N/F THOMPSON

2.16 AC.

Lands N/F of TRIBBITT

Lands N/F of STEEN

Conditional Use Application #1965

Legend		
 Parcels	 Medium Residential - MR	 General Commercial - C-1
 Roads	 General Residential - GR	 Commercial Residential - CR-1
 Municipal Boundaries	 High Density Residential	 Marine - M
 Agricultural - AR-1	 Vacation, Retire, Resident - VRP	 Limited Industrial - LI-1
 Agricultural - AR-2	 Neighborhood Business - B-1	 Light Industrial - LI-2
		 Heavy Industrial - HI-1

0 80 160 320 480 640 Feet

1 inch = 250 feet

90.03

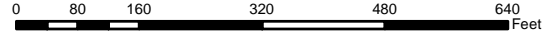


Conditional Use Application #1965



Legend

- Parcels
- Roads
- Municipal Boundaries
- Agricultural - AR-1
- Agricultural - AR-2
- Medium Residential - MR
- General Residential - GR
- High Density Residential
- Vacation, Retire, Resident - VRP
- Neighborhood Business - B-1
- General Commercial - C-1
- Commercial Residential - CR-1
- Marine - M
- Limited Industrial - LI-1
- Light Industrial - LI-2
- Heavy Industrial - HI-1



1 inch = 250 feet

ORDINANCE NO. ____

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A RV RESORT AND CAMPGROUND TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 162.424 ACRES, MORE OR LESS (Tax Map I.D. 3-34-12.00-16.00, Part of)

WHEREAS, on the 24th day of October 2012, a conditional use application, denominated Conditional Use No. 1951 was filed on behalf of Jack Lingo Asset Management, LLC; and

WHEREAS, on the ____ day of _____ 2012, 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. 1951 be _____; and

WHEREAS, on the ____ day of _____ 2012, a public hearing was held, after notice, before the County Council of Sussex County and the County Council of Sussex County determined, based on the findings of facts, that said conditional use is in accordance with the Comprehensive Development Plan and promotes the health, safety, morals, convenience, order, prosperity and welfare of the present and future inhabitants of Sussex County, and that the conditional use is for the general convenience and welfare of the inhabitants of Sussex County.

NOW, THEREFORE, THE COUNTY OF SUSSEX HEREBY ORDAINS:

Section 1. That Chapter 115, Article IV, Subsection 115-22, Code of Sussex County, be amended by adding the designation of Conditional Use No. 1951 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 southeast of Ward Road (Road 283A) and southeast of Cedar Grove Road (Road 283) 2,400 feet southwest of Mulberry Knoll Road (Road 284) and being more particularly described per the attached legal description prepared by Davis, Bowen & Friedel, Inc., said parcel containing 162.424 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.

ORDINANCE NO. ____

AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM A GR GENERAL RESIDENTIAL DISTRICT TO AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 74 ACRES, MORE OR LESS (Tax Map I.D. 3-34-12.00-16.00, Part of)

WHEREAS, on the 24th day of October 2012, a zoning application, denominated Change of Zone No. 1725 was filed on behalf of Jack Lingo Asset Management, LLC; and

WHEREAS, on the ____ day of _____ 2012, 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. 1725 be _____; and

WHEREAS, on the ____ day of _____ 2012, 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 [GR General Residential District] and adding in lieu thereof the designation AR-1 Agricultural Residential District as it applies to the property hereinafter described.

Section 2. The subject property is described as follows:

ALL that certain tract, piece or parcel of land lying and being situate in Lewes and Rehoboth Hundred, Sussex County, Delaware, and lying southeast of Ward Road (Road 283A) and southeast of Cedar Grove Road (Road 283) 2,400 feet southwest of Mulberry Knoll Road (Road 284) and being more particularly described per the attached legal description prepared by Davis, Bowen & Friedel, Inc., said parcel containing 74 acres, more or less.

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

MEMORANDUM

TO: Todd Lawson
County Administrator

FROM: Lawrence Lank
Director of Planning and Zoning

RE: Applications of Jack Lingo Asset Management, LLC
Change of Zone No. 1725
Conditional Use No. 1951
Love Creek RV Resort and Campground

DATE: October 2, 2013

Be advised that on August 22, 2013 the Planning and Zoning Commission recommended approval of Change of Zone No. 1725 and Conditional Use No. 1951 for the establishment of an RV Resort and Campground to be located on the southeasterly side of Cedar Grove Road (Road 283) for the following reasons and with the conditions of approval referenced.

Change of Zone #1725 – Jack Lingo Asset Management, LLC

Application of **JACK LINGO ASSET MANAGEMENT, LLC** to amend the Comprehensive Zoning Map from GR General Residential District to AR-1 Agricultural Residential District, to be located on a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, containing 74 acres, more or less, lying southeast of Ward Road (Road 283A) and southeast of Cedar Grove Road (Road 283), 2,400 feet southwest of Mulberry Knoll Road (Road 284). (Tax Map I.D. 3-34-12.00-16.00, part of).

Conditional Use #1951 – Jack Lingo Asset Management, LLC

Application of **JACK LINGO ASSET MANAGEMENT, LLC** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for a RV Resort and Campground, to be located on a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, containing 162.424 acres, more or less, lying southeast of Ward Road (Road 283A) and southeast of Cedar Grove Road (Road 283), 2,400 feet southwest of Mulberry Knoll Road (Road 284). (Tax Map I.D. 3-34-12.00-16.00, part of).

For the record, these applications have been deferred since January 24, 2013. The close of the record was reported on July 11, 2013.

Mr. Johnson stated that the site is in the area that he represents; that there has been a great public involvement on these applications which created a substantial record from both the Applicants and the opposition; that some of the comments could not be considered since they were received after the close of the record; that he has reviewed all of the comments and documents received in the record; and that he is personally impressed by the voluntary buffering from wetlands proposed by the Applicants.

Mr. Burton stated that he has also reviewed the record and notes that the Supplemental Exhibit Booklet submitted by the Applicants shows their intent to try to comply with the concerns expressed by the Commission and the public.

Mr. Smith complimented the information from both the Applicants and the residents of the area, but does not agree that this site is an appropriate location for this type of use due to the loss of the GR General Residential zoning; and that the RV park may boost the economy, but this is not the appropriate location.

Mr. Ross stated that there seems to be at least some misunderstanding regarding what and how evidence presented to the Commission is used in our decision making process; that it seems that many citizens believe that we make decisions based on popularity similar to a referendum; that this is simply not the case; that any decision must consider the elements required by law supported by substantial evidence; that evidence must be weighed; that expert testimony is generally given more weight than non-expert testimony; that if two credentialed experts disagree it is up to the Commission to decide which has presented the better argument; that this is not to say that a non-credentialed citizen can't provide testimony that may outweigh the experts; that public opinion substantiated with fact must be considered heavily in any decision; that in this particular application, many members of the public offered opinions referenced to County Code and the Comprehensive Land Use Plan; that these substantiated opinions could undermine or compliment expert testimony; that one such example is an email included in the record from Mr. Luke Miller; that while Mr. Miller presented no credentials as an expert, he did reference a variety of Ordinance in support of his argument against the applications; that it is this type of testimony that is most helpful to the Commission in arriving at a decision; that to be more specific to the applications it is important to note that these two separate applications, while separate actions, are part of a single request for Conditional Use of the property; that the fact that these applications were combined into a single public hearing, without objection from anyone, is evidence of this; that representatives for the Applicant stated that the change of zone request, Change of Zone #1725, was specific to the application for Conditional Use #1951; that in fact, Mr. Bayard, the Attorney representing the Applicant, stated that the requested change of zone was specifically to accommodate the conditional use request; that additionally within the Applicants proposed Findings of Facts the Applicant states "This rezoning application is contingent upon approval of Conditional Use application #1951; that Ms. Mary Schrider-Fox, the Attorney representing opposition to the application, argued that "the two applications were inexorably intertwined"; that she argued that a RV park is not a permitted use in AR-1 zoning, but a permissible Conditional Use, therefore the down zoning to AR-1 should be denied; that he agrees with Ms. Schrider-Fox that the two applications are inexorably intertwined, but does not agree that a recommendation for denial is in order simply because the ultimate purpose is for a

conditional use; that one must remember that the Applicant has asked that the zoning change be "...contingent upon approval of the conditional use..."; that the Commission has several options in providing a recommendation to the County Council if it should desire to recommend approval of one or both requests understanding that a recommendation for denial of both is also an option; that the Commission could recommend approval of the down zoning and ignore the Applicants request that the down zoning be contingent upon approval of the conditional use; that the Commission could recommend approval of the down zoning and conditional use with the caveat that if the conditional use is not approved or is abandoned the rezoning will revert back to its present zoning; that the Commission could recommend approval of the down zoning and conditional use understanding that if the conditional use is not approved or, is approved and substantially abandoned, the zoning would be AR-1; that considering that the larger portion of the parcel being considered is already AR-1 the change of zone request appears to be a slam dunk; that he believes that if the application was just for the down zoning, without the conditional use, there would be little to no opposition; that he does not think that approving the down zoning and denying the conditional use is fair to the Applicant; that it could be considered punitive and in his opinion not a reasonable response to a legitimate request of use; that as a practical matter, our decision on the conditional use request should ultimately determine the outcome on the down zoning request; that in reviewing the public objection to the two applications the following arguments against the two requests were made: that it was argued by those opposed that the proposed RV park would diminish property values, however, no data or substantial supportive information was provided to substantiate this position; that the Applicant did provide information indicating the presence of a number of RV campgrounds in the County that have and are peacefully co-existing with other uses; that inadvertently perhaps, some public testimony in opposition actually supported the argument of the Applicant; that it was argued that the application did not satisfy §115-172 H in that the proposed RV park did not meet the requirement that it "shall have access to a road with a width of at least 50 feet"; that Cedar Grove Road is a road with a 50-foot right-of-way and therefore meets this requirement; that also referenced within §115-172 H were a number of site plan related issues; that the cabins depicted on the preliminary site plan are not allowed; that some of the campsites did not meet the 2,000 square foot requirements; that some of the campsites were within the 400 foot setback from dwellings of other ownership; that some campsites were within the 100 foot setback from any public road; and that some campsites did not meet the 40 foot width requirement; that none of these justify a recommendation for denial and the Applicant will have to submit a final site plan that is in conformity with the Code to proceed with the project; that as a footnote on the question of the cabins for informational purposes only, the Commission has approved the placement of cabins in campgrounds on more than one occasion; that the State of Delaware even rents cabins as a compliment to some State owned campgrounds; that this issue is not black and white and we will give it more attention during the site plan review process, if we get that far; that it was argued that the conditional use applied for was subject to §115-194.3 because the proposed RV park was greater than 50 dwelling units; that tents, travel trailers, recreational vehicles and equipment manufactured specifically for camping purposes do not meet the definition of a dwelling, therefore, this application is not subject to §115-194.3; that there were a number of public comments concerning environmental assessment/impact of the proposed park; that one of which was a letter written by the Honorable Colin P. O'Mara, Secretary of the Department of Natural Resources and Environmental Control, dated January 23, 2013; that the Applicant

responded to these concerns with two supplements to the record; that the first included an Environmental Report with design recommendations written by Mr. Edward M. Launay, a professional wetland scientist, and the second a supplement to the record incorporating a number of site plan design changes; that the result is a better plan that far exceeds the legal requirements; that there were also more than a few public comments regarding the transient nature of the RV park clientele; that he does not believe that there is any merit to this concern; that from the Mispillion River to Fenwick Island hundreds of thousands of people visit our resorts each week; questioning the comment that these transients are undesirable; that campers are simply more customers supporting the second largest industry in this County, Tourism; that finally the overwhelming issue for the opposition is traffic; that he understands the public frustration of dealing with the high volumes of traffic that exist, especially during the tourist season; that he also appreciates the anecdotal observations of those living in the area; that, regardless, the State of Delaware Department of Transportation (DelDOT) is the traffic czar; that the Commission held the record open for months waiting for the Traffic Impact Study review letter and the DelDOT response; that the DelDOT response was "DelDOT accepts this review letter and concurs with the recommendations"; that there are six specific off-site improvements in the review letter; that he will not read them to save time, but the entire document is in the record and available to all; that it is interesting to note that funding for the construction for the proposed project is not in the currently proposed DelDOT Capital Program budget; that, however, the recommendation goes on to say "With Federal funding, the State would be responsible for 20% of the total project costs, including any costs related to the right-of-way; that the remaining 80% could come from Delaware's allotment of Federal Highway Funds. That we recommend that the developer be responsible for funding the total State allocation, which would be 20% of the total project cost"; that he believes that the Conditional Use application #1951 should be approved for the following reasons: 1) the site is located in the Environmentally Sensitive Developing Area, a designated growth area; 2) the site is served by central sewer and water; 3) the conditional use is appropriate given the location's proximity to Sussex County's tourism center, where tourism is the targeted economic driver; 4) the conditional use promotes tourist related economic development and is consistent with the character of zoning and development in the area; 5) DelDOT has accepted the Traffic Impact Study review letter and concurs with its recommendations; 6) approval with appropriate conditions will minimize any potential negative impact; and 7) the Applicant has established a record which supports approval of the application; and that in being consistent with the record established during the public hearing and having reached this conclusion regarding the conditional use request, it is also his opinion that the change of zoning request should be approved.

Mr. Johnson asked Mr. Robertson if the GR General Residential zoning can be reinstated if the conditional use were to be voided.

Mr. Robertson responded "NO".

Mr. Wheatley stated that a lot of correspondence has been received regarding these applications, and that the Commission can only consider information that was provided while the record was left open.

In reference to **Change of Zone No. 1725:**

Mr. Johnson stated that he would move that the Commission recommend approval of Change of Zone No. 1725 for Jack Lingo Asset Management, LLC, for a rezoning from GR General Residential to AR-1 Agricultural Residential based on the record made at the public hearing and for the following reasons:

- 1) This is a down-zoning and it will allow the Applicants to obtain approvals to construct an RV campground on the subject property. The property that is the subject of the application is partly AR-1 Agricultural Residential and partly GR General Residential and this will bring the entire parcel under one common zoning classification. The AR-1 zoning is necessary because a conditional use for a campground is not available in the GR General Residential Zoning District.
- 2) AR-1 Agricultural Residential zoning is appropriate for this area under the County's Comprehensive Land Use Plan and the maps contained in the Plan. Under the Plan, it is in an area appropriate for development, the Environmentally Sensitive Developing District.
- 3) The Sussex County Engineering Department has no objection to the rezoning to AR-1 or the proposed use of the property under the pending Conditional Use.
- 4) The site will be served by central water and central sewer.
- 5) DelDOT has not stated any objections to the project or the traffic generated by it on local roadways.
- 6) The proposed use as an RV campground will be subject to the conditions and limitations established by that approval, and also site plan review and approval by the Sussex County Planning and Zoning Commission.

Motion by Mr. Johnson, seconded by Mr. Ross, and carried four votes to one that this application be forwarded to the Sussex County Council with the recommendation that the application be approved for the reasons stated. Motion carried 4 – 1.

The vote by roll call: Mr. Burton – yea, Mr. Johnson – yea, Mr. Ross – yea, Mr. Smith – nay, and Mr. Wheatley – yea.

In reference to **Conditional Use No. 1951:**

Mr. Johnson stated that he would move that the Commission recommend an approval of C/U #1951 for Jack Lingo Asset Management, LLC for an RV Resort and Campground based upon the record made at the public hearings and for the following reasons:

- 1) The development is consistent with the purposes and goals of the Sussex County Comprehensive Land Use Plan Update since it (1) promotes economic development; (2) promotes tourism; and (3) is consistent with the character of the zoning and development in the area.
- 2) The site is an appropriate location for the proposed development. It is located in the vicinity of Route 24, and State Route One and its commercial corridor. It is also in proximity to tourism destinations including the Inland Bays, the Delaware Bay, and the Atlantic Ocean beaches.

- 3) The location is appropriate because there are multiple ways to approach the site using several different roadways, including Cedar Grove Road, Mulberry Knoll Road, Plantations Road, Route 24 and Robinsonville Road.
- 4) While there were concerns expressed about traffic, DelDOT has not objected to the project or the traffic generated by it on area roadways. Instead, the Developer will contribute to road improvements, including Cedar Grove Road, Mulberry Knoll Road, and their respective intersections with Plantations Road and Route 24.
- 5) There will be no negative impact on schools or other similar public facilities since the development will operate only seasonally.
- 6) The project will be served by a Sussex County Sanitary Sewer District, and the County Engineering Department has not objected to it. As a result, there will not be any septic waste disposed of on the site.
- 7) The project will be served by central water.
- 8) County Code requires a 50 foot landscaped or vegetated buffer. As a result, the project will be screened from view of neighboring and adjacent properties. There are also additional buffers from environmental features on the site.
- 9) This recommendation will have several conditions that will eliminate or minimize any potential negative impact upon the area.
- 10) The Applicant has created a sufficient record in support of the Conditional Use application.
- 11) The current underlying GR and AR-1 zoning could permit approximately 513 year-round single family homes, modular homes, and manufactured homes. The proposed seasonal use of 628 RV and campsites is an alternative that would not have a greater impact than the permitted development of the tract with home sites.
- 12) The use of the property as an RV park generates less traffic on this site than development as year-round residential homes.
- 13) The proposed use is beneficial and desirable for the general convenience and welfare of Sussex County and its residents, since it will promote tourism and related services, economic growth in a designated development area, full and part-time employment opportunities, and significant economic benefits to area businesses.
- 14) The revised design elements of additional voluntary buffers in combination with ERI's recommended modifications to the site plan design will provide for a more environmentally sensitive project.
- 15) This recommendation is subject to the following conditions:
 - A. The maximum number of campground/RV sites shall be six hundred twenty-eight (628), to be built in three (3) phases, with major amenities completed during the first two (2) phases.
 - B. All entrance and roadway improvements and any other DelDOT requirements shall be completed as required by DelDOT including improvements to Cedar Grove Road, Mulberry Knoll Road, and their intersections with Plantations Road and Route 24.
 - C. The Applicant shall coordinate with DART for a bus stop on site.
 - D. The project shall be served by a Sussex County Sanitary Sewer District. The Applicant shall comply with all Sussex County Engineering Department requirements regarding connection to, and service by, the District.

- E. The project shall be served water for domestic use and fire protection by a public utility.
- F. Stormwater management and sediment and erosion control facilities shall be constructed in accordance with applicable State and County requirements and maintained using best management practices. The Final Site Plan shall contain the approval of the Sussex Conservation District.
- G. The Applicant shall cooperate and coordinate with the State and County emergency preparedness offices to develop and implement an emergency evacuation plan. There shall be an emergency entrance onto Ward Road for use solely in the event of emergencies or evacuations. The road shall meet fire protection requirements.
- H. The project shall be surrounded by a 50 foot landscape buffer from all property lines and a 100 foot buffer from any public roads. This shall be installed as part of the 1st Phase of the project's construction. There shall also be a 400 foot buffer between any campsites and dwellings of other ownership.
- I. The Applicant has proposed additional buffers and revisions to the Preliminary Site Plan which must be submitted to the Planning and Zoning Commission for review and approval as a revised Preliminary Site Plan. The revisions and buffers must include the design recommendations of ERI in it February 2013 "Environmental Report and Design" which was submitted by the Applicant as part of the record. There revisions and buffers include:
 - 1. A 50 foot forested buffer measured landward from any federally regulated non-tidal wetlands;
 - 2. A 50 foot forested buffer measured from the non-tidal wetlands bordering on Hetty Fisher Glade and its un-named tributary.
 - 3. A 100 foot forested buffer to the south, west and northeast sides of the non-tidal wetlands surrounding Welches Pond;
 - 4. A 150 foot forested buffer to the east side of the non-tidal wetlands surrounding Welches Pond;
 - 5. Remove the road located between Welches Pond and property to the north as originally proposed. This would include the relocation or elimination of the tent camping as originally proposed adjacent to the Coastal Towing and Repair property to the north.
 - 6. Relocate the proposed crossing further to the north to further minimize impacts to Hetty Fisher Glade and its un-named tributary;
 - 7. Relocate the access road crossing of wetlands nearest to Love Creek approximately 1,000 feet north (upstream) of its current proposed location;
 - 8. Stormwater management ponds must be ringed with shoreline and edge plantings of native grasses and emergent vegetation with limited seasonal mowing. Access to the ponds for fishing and recreation should be limited to specifically designated areas;
 - 9. To protect and preserve Welches Pond and its associated wildlife and species, Welches Pond and its surrounding wetlands are not to be used for recreational purposes.
- J. The entire facility may open no earlier than March 15 each year and shall close no later than November 15 of each year. The campground/RV park shall remain vacant

- and no campers or RVs shall be stored on the campsites during the period that the campground is closed.
- K. There shall be no accessory buildings located on individual campsites.
 - L. The Applicant has stated that it intends to preserve as many trees as possible. The Final Site Plan shall include a landscaping plan showing all tree preservation areas.
 - M. All units to be used for the purpose of human habitation on campsites shall be tents, travel trailers, recreation vehicles and equipment manufactured specifically for camping purposes. Any cabins on the site shall be “park model” travel trailers specifically manufactured for camping purposes.
 - N. There shall be no sale of alcoholic beverages in the project.
 - O. The amphitheater/chapel shall be solely for the use of the tenants and their guests of the RV Resort and Campground, and shall not be used between the hours of 10:00 pm and 7:00 am.
 - P. No marina or boat ramps shall be permitted for motorized boats.
 - Q. One sign, not exceeding thirty-two (32) square feet per side with lighting shall be permitted. The lighting for the sign shall not shine on any neighboring properties or roadways.
 - R. All lighting shall be downward screened so that it does not shine on neighboring communities or roadways.
 - S. All wetlands and their accompanying buffers on the site shall be clearly marked on the site to avoid disturbance. The location and type of these markers shall be shown on the Final Site Plan. The Applicant shall also cooperate with DNREC to permanently conserve and manage the forested buffers, significant wetlands and especially Welches Pond and the animal species of these areas.
 - T. All campsites must be 2,000 square feet in size according to the Sussex County Code.
 - U. The Applicant shall provide revised Preliminary Site Plans showing the intended site layout with the required buffers and other revisions and either depicting or noting these conditions of approval on it for review by the Sussex County Planning and Zoning Commission.
 - V. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.

Motion by Mr. Johnson, seconded by Mr. Ross, and carried four votes to one that this application be forwarded to the Sussex County Council with the recommendation that the application be approved for the reasons and with the conditions stated. Motion carried 4 – 1.

The vote by roll call: Mr. Burton – yea, Mr. Johnson – yea, Mr. Ross – yea, Mr. Smith – nay, and Mr. Wheatley – yea.

As a reminder of the Sussex County Council action taken, be advised that on February 19, 2013 the Council deferred action and left the record open for the Traffic Impact Study from DelDOT and for the following additional information: 1) Are cabins permitted per the County’s Land Use Plan and ordinances? 2) Is any part of the applications not in compliance with the County Land Use Plan and ordinances? 3) Ask DelDOT if there is a need for a Traffic Impact Study for Cedar

Grove Road in both directions. 4) What are the tax revenues from other campgrounds. Mr. Vincent announced that the Public Hearing was closed and that the record would remain open for the Traffic Impact Study and for responses to Mr. Cole's questions. Both applications were deferred.

In reference to the above, be advised that the Traffic Impact Study was received on June 6, 2013 with a cover letter which references that DelDOT accepts the review letter from Johnson, Mirmiran & Thompson, Inc., their traffic engineering consultants, and that DelDOT concurs with the recommendations. I forwarded a copy of the Study to you, Vince Robertson, Shane Abbott, and the Planning and Zoning Commission members.

In reference to Question No.1 in the Council's action: "Are cabins permitted per the County's Land Use Plan and ordinances?" Be advised that the Comprehensive Plan Update makes references to campgrounds activities within State Parks, but does not make any specific references to cabins. The Zoning Ordinance, Chapter 115 of the Code of Sussex County makes references to "parks and campground for mobile campers, tents, camp trailers, touring vans, and the like", but does not specifically reference cabins for camping. The references in the Code are referenced as a type of Conditional Use in different sections of the Code, i.e. AR-1, and in the Conditional Use Article of the Code, Article XXIV, and requires certain criteria to qualify as a campground. Camping cabins have been permitted by the Planning and Zoning Commission in several campgrounds since camping cabins are another style or type of camping unit. There are several campgrounds in Sussex County that have cabins used for camping purposes, i.e. Holly Lakes Campground, Big Oaks Campground, Delaware Seashore State Park, etc.

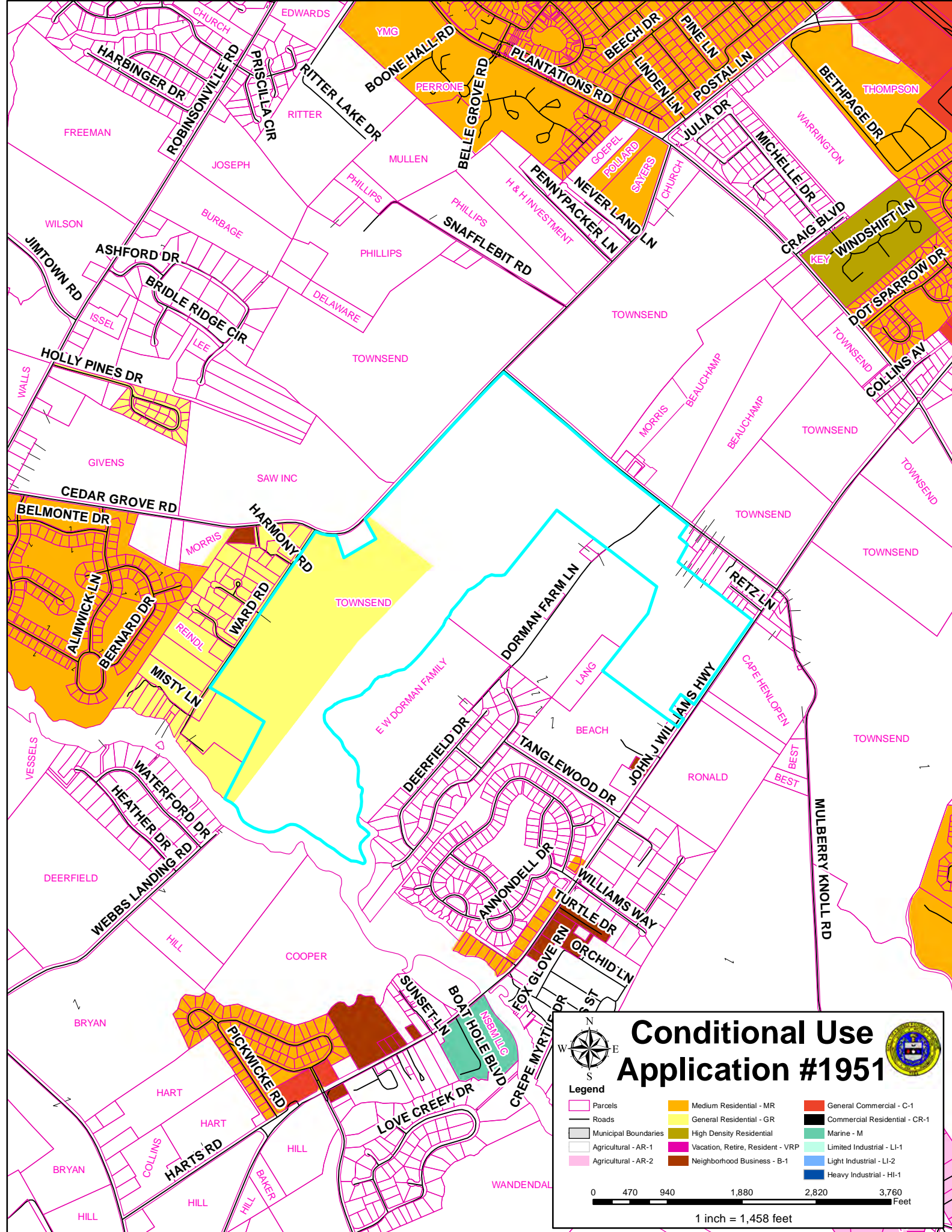
In reference to Question No. 2 in the Council's action: "Is any part of the applications not in compliance with the County Land Use Plan and ordinances?" Be advised that there are some setback issues and lot size issues that were picked up in the review of the site plans by staff and people showing interest in the site plans, i.e. distances from camping sites to dwellings, square footage of some of the campsite lots. Be reminded that these issues came about during the public hearing process. If the Council approves the use, the site plan will then have to be submitted to the Planning and Zoning Commission for review and consideration, and shall be required to include all of the criteria required in the Code and all of the Conditions of Approval depicted or noted on the site plan.

In reference to Question No. 3 in the Council's action: "Ask DelDOT if there is a need for a Traffic Impact Study for Cedar Grove Road in both directions." Be advised that DelDOT had previously established the roadways that needed to be considered as a part of the Traffic Impact Study, i.e. Cedar Grove Road, Ward Road, Plantation Road, Postal Lane, Mulberry Knoll Road, and Route 24 and their related intersections. The Study determined that if the project is approved certain roadway improvements should be required, i.e. full site entrance, westbound site entrance, northbound Cedar Grove Road, southbound Cedar Grove Road; the Developer should enter into agreements with DelDOT to fund 20% of improvements planned for Route 23/Mulberry Knoll Road intersection; that the Developer should be required to identify routes to and from the project that are well-suited for RV traffic; that the Developer should be required to

identify a target number of RVs that would be seasonal, as opposed to short-term, site rentals; and that certain bicycle, pedestrian, and transit improvements should be required.

In reference to Question No. 4 in the Council's action: "What are the tax revenues from other campgrounds?" Be advised that documentation in the file for the project provides an overview between this proposal and the Holly Lake Campground, the largest and closest campground to the site. The Holly Lake Campground has existed for many years and is located on Route 24 and Holly Lake Road. The report indicates that Love Creek Campground and Resort, with an estimated assessed value of \$676,891.00 would generate a total annual revenue of \$85,265.95 for County, library, and school taxes, and sewer service charges, and a total one-time revenue of \$1,192,932.00 for realty transfer taxes, connection fees, plan review and inspection fees, and building permit fees. And that by comparison, the Holly Lake Campground, with an estimated assessed value of \$70,400.00 would generate a total annual revenue of \$2,357.76 for County, library, and school taxes. There were no one-time revenues provided for the Holly Lake Campground.

Should you have any questions, please do not hesitate to contact me at this Department.



Conditional Use Application #1951

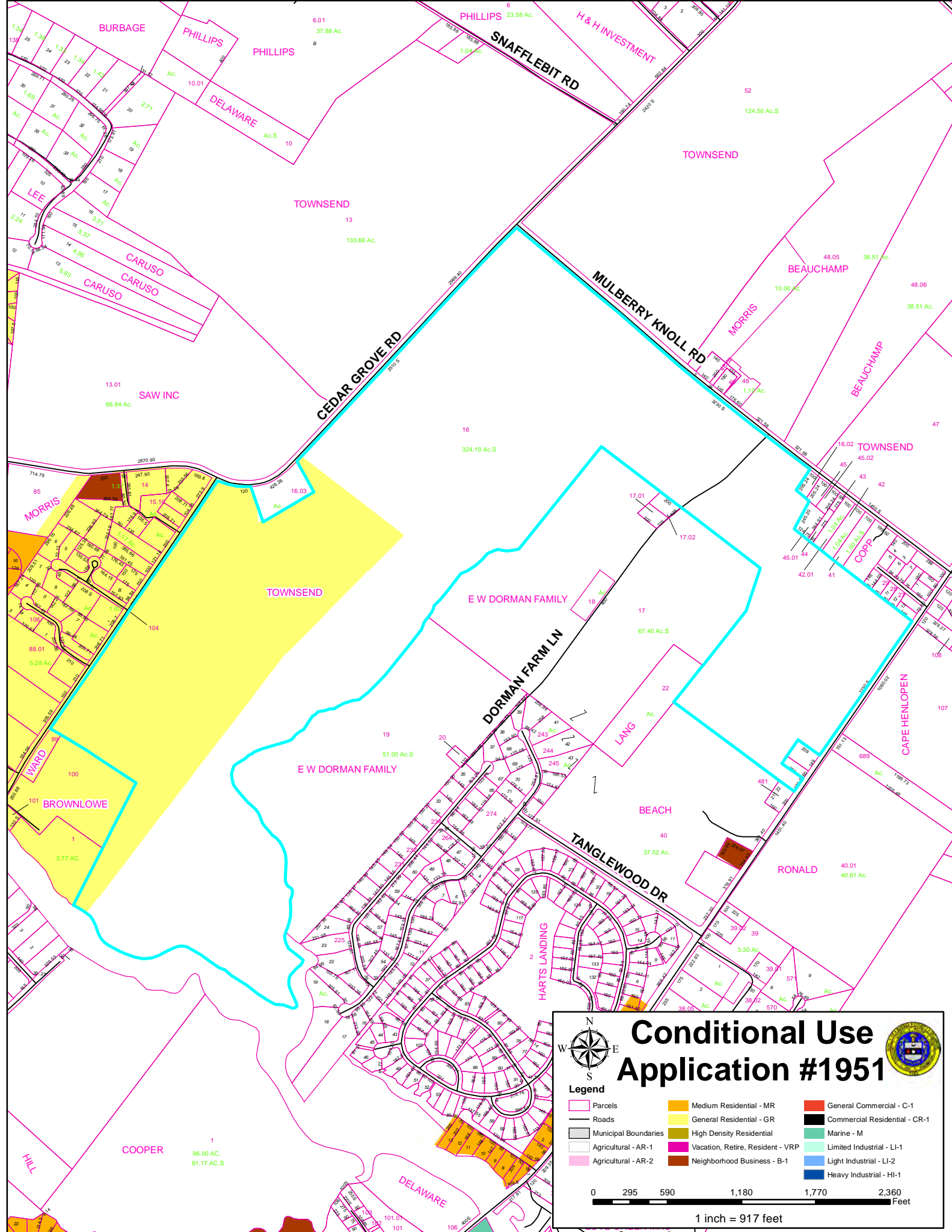



Legend

Parcels	Medium Residential - MR	General Commercial - C-1
Roads	General Residential - GR	Commercial Residential - CR-1
Municipal Boundaries	High Density Residential	Marine - M
Agricultural - AR-1	Vacation, Retire, Resident - VRP	Limited Industrial - LI-1
Agricultural - AR-2	Neighborhood Business - B-1	Light Industrial - LI-2
		Heavy Industrial - HI-1

0 470 940 1,880 2,820 3,760 Feet


1 inch = 1,458 feet





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Conditional Use Application #1951



Legend


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0 295 590 1,180 1,770 2,360 Feet


1 inch = 917 feet



Conditional Use Application #1951

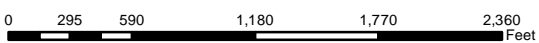


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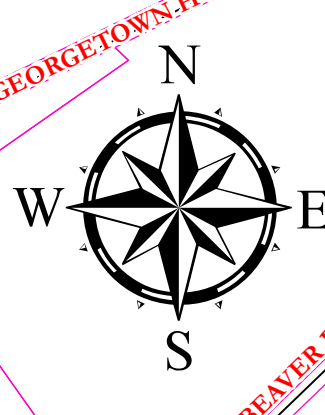
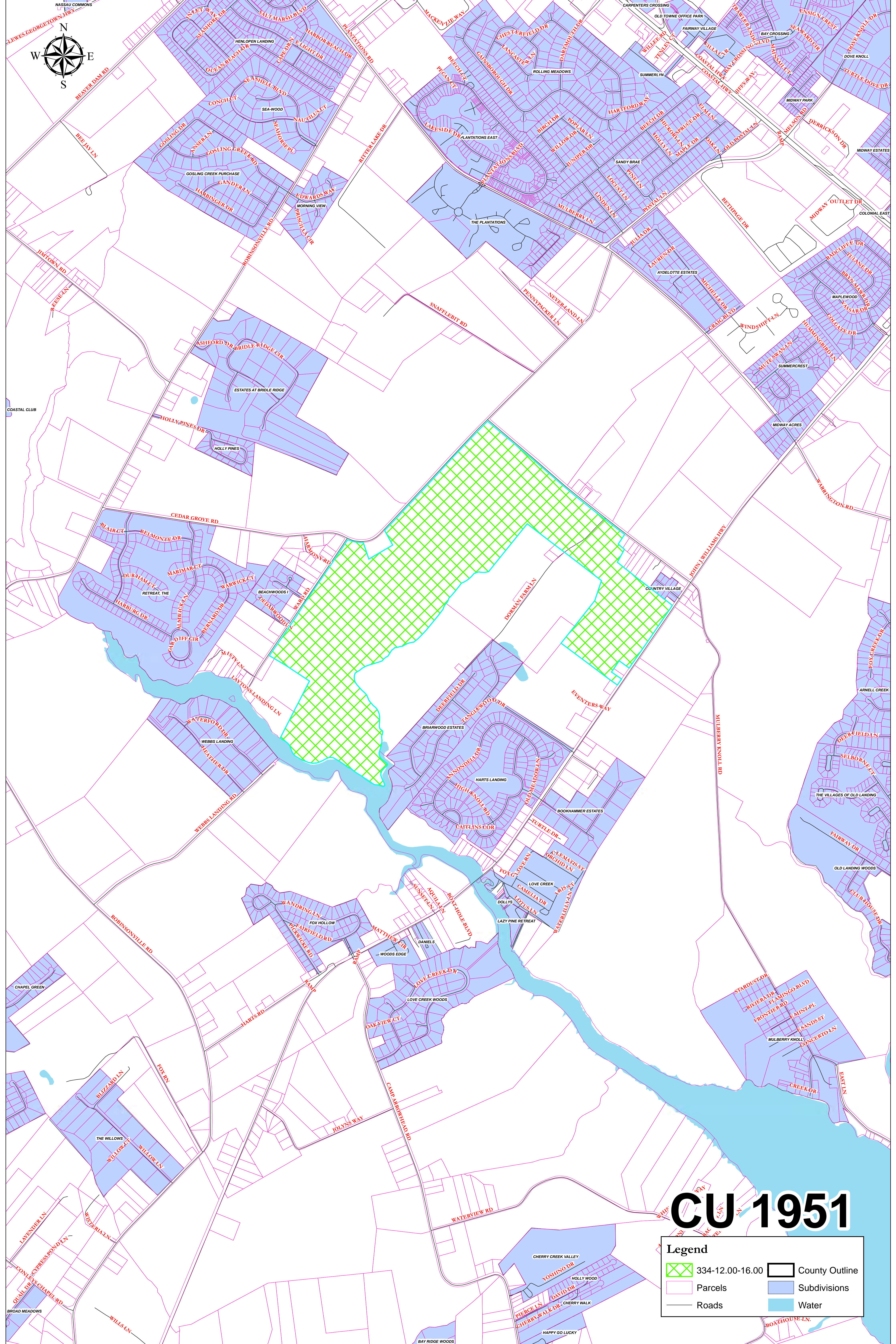
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<ul style="list-style-type: none"> Parcels Roads Municipal Boundaries Agricultural - AR-1 Agricultural - AR-2 	<ul style="list-style-type: none"> Medium Residential - MR General Residential - GR High Density Residential Vacation, Retire, Resident - VRP Neighborhood Business - B-1 	<ul style="list-style-type: none"> General Commercial - C-1 Commercial Residential - CR-1 Marine - M Limited Industrial - LI-1 Light Industrial - LI-2 Heavy Industrial - HI-1
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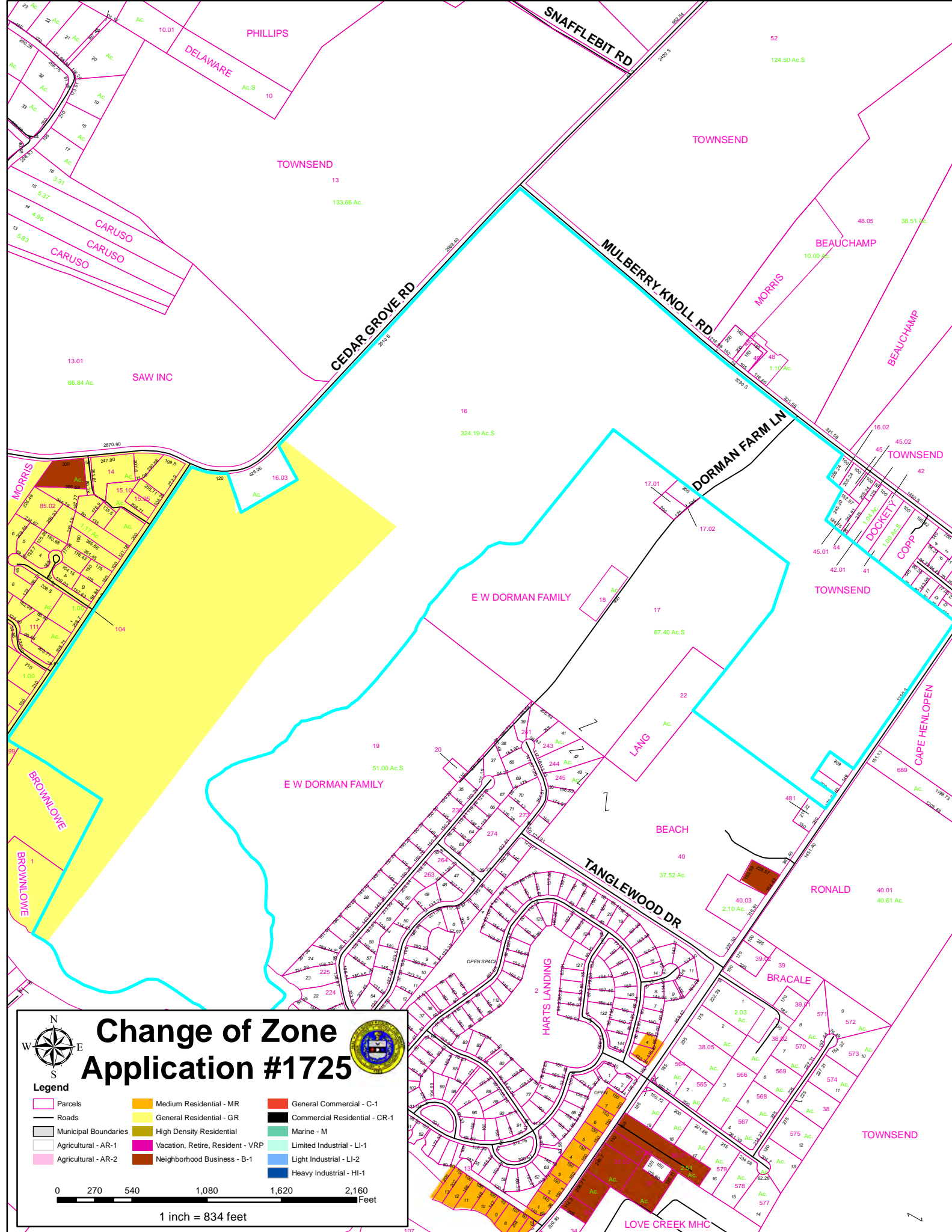
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1 inch = 917 feet



CU 1951

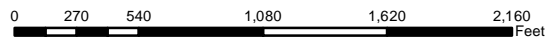
Legend	
	334-12.00-16.00
	Parcels
	Subdivisions
	County Outline
	Water

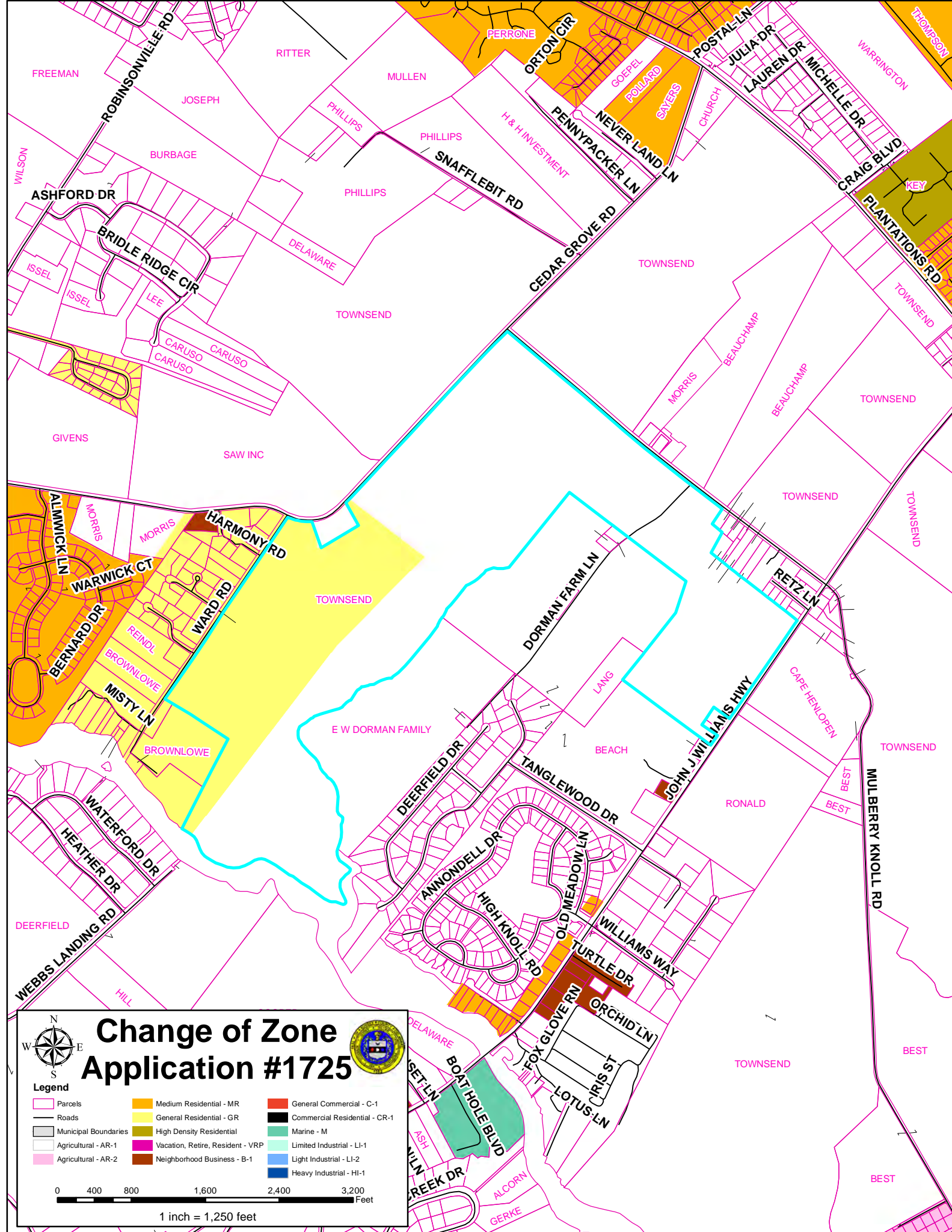


Change of Zone Application #1725



- Legend**
- Parcels
 - Medium Residential - MR
 - General Commercial - C-1
 - Roads
 - General Residential - GR
 - Commercial Residential - CR-1
 - Municipal Boundaries
 - High Density Residential
 - Marine - M
 - Agricultural - AR-1
 - Vacation, Retire, Resident - VRP
 - Limited Industrial - LI-1
 - Agricultural - AR-2
 - Neighborhood Business - B-1
 - Light Industrial - LI-2
 - Heavy Industrial - HI-1



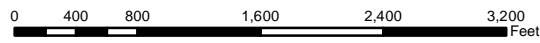


Change of Zone Application #1725

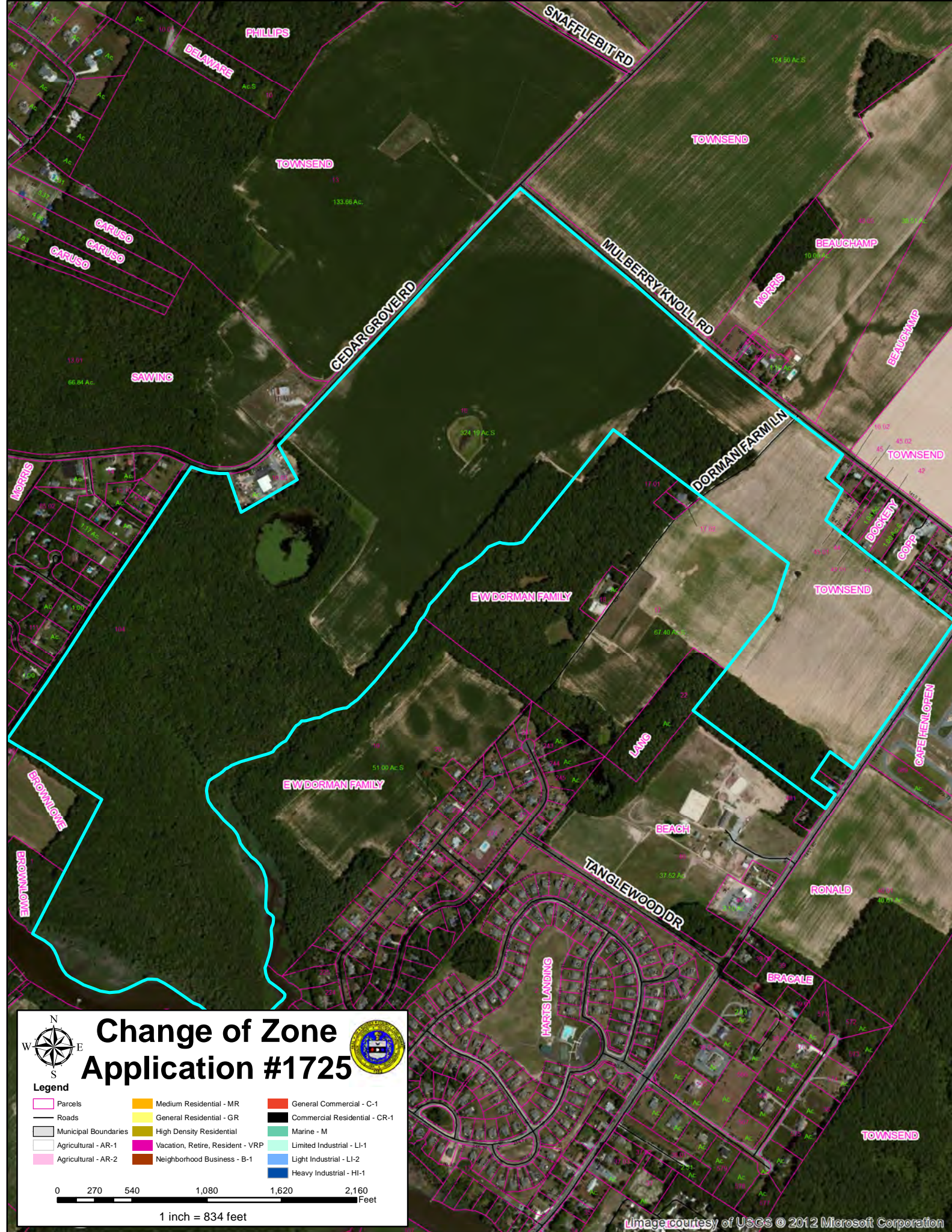


Legend

Parcels	Medium Residential - MR	General Commercial - C-1
Roads	General Residential - GR	Commercial Residential - CR-1
Municipal Boundaries	High Density Residential	Marine - M
Agricultural - AR-1	Vacation, Retire, Resident - VRP	Limited Industrial - LI-1
Agricultural - AR-2	Neighborhood Business - B-1	Light Industrial - LI-2
		Heavy Industrial - HI-1



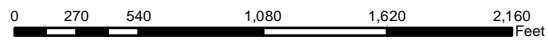
1 inch = 1,250 feet



Change of Zone Application #1725



- Legend**
- Parcels
 - Roads
 - Municipal Boundaries
 - Agricultural - AR-1
 - Agricultural - AR-2
 - Medium Residential - MR
 - General Residential - GR
 - High Density Residential
 - Vacation, Retire, Resident - VRP
 - Neighborhood Business - B-1
 - General Commercial - C-1
 - Commercial Residential - CR-1
 - Marine - M
 - Limited Industrial - LI-1
 - Light Industrial - LI-2
 - Heavy Industrial - HI-1



1 inch = 834 feet

ORDINANCE NO. ____

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A CAMPGROUND TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 50.83 ACRES, MORE OR LESS (Tax Map I.D. 2-34-25.00-31.00, 31.02, 31.04)

WHEREAS, on the 19th day of March 2013, a conditional use application, denominated Conditional Use No. 1963 was filed on behalf of Ida C. Faucett, Faucett Heirs, LLC and Massey's Landing Park, Inc.; and

WHEREAS, on the ____ day of _____ 2013, 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. 1963 be _____; and

WHEREAS, on the ____ day of _____ 2013, a public hearing was held, after notice, before the County Council of Sussex County and the County Council of Sussex County determined, based on the findings of facts, that said conditional use is in accordance with the Comprehensive Development Plan and promotes the health, safety, morals, convenience, order, prosperity and welfare of the present and future inhabitants of Sussex County, and that the conditional use is for the general convenience and welfare of the inhabitants of Sussex County.

NOW, THEREFORE, THE COUNTY OF SUSSEX HEREBY ORDAINS:

Section 1. That Chapter 115, Article IV, Subsection 115-22, Code of Sussex County, be amended by adding the designation of Conditional Use No. 1963 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 both sides of the eastern end of Long Neck Road (State Route 23, a.k.a. Route 22) and being more particularly described in the attached legal descriptions, and containing 50.83 acres, more or less.

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

ORDINANCE NO. ____

AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM A MR MEDIUM DENSITY RESIDENTIAL DISTRICT TO AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 50.83 ACRES, MORE OR LESS (Tax Map I.D. 2-34-25.00-31.01, 31.02 & 31.04)

WHEREAS, on the 19th day of March 2013, a zoning application, denominated Change of Zone No. 1729 was filed on behalf of Ida C. Faucett, Faucett Heirs, LLC and Massey's Landing Park, Inc.; and

WHEREAS, on the ____ day of _____ 2013, 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. 1729 be _____; and

WHEREAS, on the ____ day of _____ 2013, 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 Medium Density Residential_District] and adding in lieu thereof the designation AR-1 Agricultural Residential District as it applies to the property hereinafter described.

Section 2. The subject property is described as follows:

ALL that certain tract, piece or parcel of land lying and being situate in Indian River Hundred, Sussex County, Delaware, and lying on both sides of the eastern end of Long Neck Road (State Route 23, a.k.a. Route 22) and being more particularly described in the attached legal descriptions, and containing 50.83 acres, more or less.

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

LAWRENCE LANK
DIRECTOR OF PLANNING & ZONING

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(302) 854-5079 F
llank@sussexcountyde.gov



Sussex County

DELAWARE
sussexcountyde.gov

MEMORANDUM

TO: Todd Lawson
County Administrator

FROM: Lawrence Lank
Director of Planning and Zoning

REF: Applications of Ida C. Faucett, Faucett Heirs, LLC, and Massey's Landing Park, Inc.
Change of Zone No. 1729
Conditional Use No. 1963
Campground

DATE: September 4, 2013

Be advised that on June 27, 2013 the Planning and Zoning Commission recommended approval of Change of Zone No. 1729 and Conditional Use No. 1963 for the establishment of a campground on both sides of Long Neck Road for the following reasons and with the conditions of approval referenced.

Mr. Johnson stated that the Long Neck area has been a destination location for many years; that there are several campgrounds that exist along Long Neck Road; that the use would be in keeping with the other uses in the area; that DelDOT has granted approval of the entrance location; that the use should blend in with the existing communities; that the Commission has to decide whether this use is appropriate at this location; and that the Commission has to review and consider this application as a land use decision.

Mr. Ross stated that it is important to note that these two separate applications, while separate actions, are part of a single request for Conditional Use of a property; that the fact that these applications were combined into a single public hearing, without objections for anyone, is evidence of this; that representatives for the Applicant stated that the change of zone request, C/Z #1729, was specific to the application for Conditional Use #1963; that, in fact, Mr. Fuqua, the attorney representing the Applicant, stated that the requested change of zone was specifically to accommodate the conditional use application; that Ms. Mary Schrider-Fox, attorney representing opposition to the application, agreed with this conclusion stating in her remarks that any decision on the down zoning request must weigh heavily the appropriateness of the intended use; that it is my opinion that the public record reflects our decision on the conditional use request should ultimately determine the outcome on the down zoning request; that in reviewing the public's objection to the application the following arguments against the two requests were made: 1) General disagreement with the position with DelDOT in regard to traffic and roadway safety; 2)



The RV Park intended is too intense a land use for the area and that a less intrusive use would be more compatible; 3) The RV Park proposed was not in character with surrounding uses and therefore incompatible; 4) Environmental issues were not being adequately addressed; 5) The Conditional Use does not comply with §115-172 H (3) and §115-172 H (4); 6) That some of the proposed amenities for the Conditional Use were not specifically permitted under §115-172 H (6) and therefore should be prohibited; 7) The accumulative effects of these arguments against the applications demonstrate non-compliance with the Comprehensive Land Use Plan; that I will comment on each point starting with traffic and safety: I understand the public frustration of living on a road that is one way in and one way out. Obviously there is no alternative route to alleviate seasonal traffic issues. I also appreciate the anecdotal observations of those living in the area; that regardless, the State of Delaware Department of Transportation comments in the PLUS review of the application, dated December 3, 2012, in part states that “we find that conditions in the study area have not changed substantially since the 2005 study was done and that the development now proposed would be similar in its trip generation. Therefore, our findings and recommendations based on the TIS, contained in a letter, dated November 4, 2005, are applicable to the current development proposal as well, and a new TIS is not necessary”; that it is critical for all to understand the entrance and road safety related issues are the responsibility of the State of Delaware Department of Transportation. It is generally not known that Sussex County does not own any public roads. The Delaware Department of Transportation manages millions of trips per year on roadways throughout the State of Delaware and has the sole authority to approve or deny the entrance permit; that opposition to the proposed use cited different sections of the Comprehensive Plan to support their argument; that appropriately Ms. Mary Schrider-Fox cited §115-172 H (3), §115-172 H (4) and §115-172 H (6) to buttress her argument; that specifically, she argued the campsites were within 400 feet of an existing dwelling on property of other ownership, that some of the campsites in the remote tenting area did not meet the minimum specifications and that the amenities being proposed were not specifically listed under H (6) and therefore should not be allowed; that while I understand the oppositions concerns with H (3), H (4) and H (6), it is important to note that H (3) and H (4) are site plan issues; that I agree with Ms. Schrider-Fox that these sections of Code must be addressed at the appropriate time, if the Conditional Use is approved; that H (6) refers to ancillary uses and provides a non-exclusive list of “...small retail businesses intended primarily for occupants of the park...”, the reliance of H (6) as a basis for denial does not carry the day either; that the Applicant has stated that all of the uses within the campground are for the campground guests; that the Commission can recommend and County Council has the authority to accept or restrict what is being proposed by the Applicant as ancillary uses; that opposition to the application also argued the RV Park was a highly intense use and not appropriate in environmentally sensitive overlay AR-1 zoning district; that Mr. Fuqua argued that campgrounds and mobile home parks dot Long Neck Road and that campgrounds are specifically authorized via a conditional use application which is why this application is before us; that it is my opinion that most people driving down Long Neck Road would agree with Mr. Fuqua; that it is understandable that neighbors to the proposed application find it desirable to ensure the intended use does not negatively impact the environment any more than they already have. A number of safeguards to ensure proper procedures are used to achieve this outcome via both State and Federal permitting processes that exist; that I believe the Conditional Use application #1963 should be approved for the following reasons: 1) The site is located in the environmentally sensitive developing area, a designated growth area; 2) The site is served by central sewer and water; 3) The Conditional Use is appropriate given the location

proximity to Sussex County's tourism center, where tourism is the targeted economic driver; 4) The Conditional Use promotes tourist related economic development and is consistent with the character of zoning and development in the area; 5) DelDOT has indicated there will be no negative impact by the proposed development since the Conditional Use applied for will generate less traffic than the currently approved use of the site; 6) Approval with appropriate conditions will minimize any potential negative impact; 7) The Applicant has established a record which supports approval of the application; that in being consistent with the record established during the public hearing and having reached this conclusion regarding the Conditional Use request, it is also my opinion that the change of zoning request should be approved.

Mr. Johnson added that the accessory uses are appropriate and intended to serve the tenants and guests in the campground.

Mr. Smith stated that he would have liked to see a more recent traffic impact study; that DelDOT is satisfied with previous results; that site plan approval will be required; and that he has some concerns relating to the tent sites.

In reference to Change of Zone #1729:

Mr. Johnson stated that he would move that the Commission recommend approval of C/Z #1729 for Ida C. Faucett, Faucett Heirs, LLC and Massey's Landing Park, Inc. for a re-zoning from MR to AR-1 based upon the record made at the public hearing, and for the following reasons:

- 1) This is a down-zoning and it will allow the Applicants to obtain approvals to construct a RV campground on the subject property. The AR-1 zoning is necessary because a Conditional Use for a campground is not available in the MR zoning district.
- 2) The proposed use as a campground is consistent with other uses in the Long Neck Road and Massey's Landing area, and there are other campgrounds in the area that have been in existence for many years.
- 3) AR-1 zoning is appropriate for this area under the County's Comprehensive Land Use Plan and the maps contained in the Plan. The property is also surrounded by AR-1 zones and AR-1 zoning is consistent with much of the zoning in the Long Neck and Massey's Landing area.
- 4) The Sussex County Engineering Department has no objection to the re-zoning to AR-1 or the proposed use of the property under the pending Conditional Use.
- 5) The site will be served by central water and central sewer.
- 6) DelDOT has not stated any objections to the project or the traffic generated by it on local roadways, and Long Neck Road is considered by DelDOT to be a Major Collector Road, the same as Route 24.
- 7) The property was previously rezoning from AR-1 to MR-RPC in 2007 for a 120 unit residential development. This rezoning will void that approval and return the property to its prior AR-1 zoning.
- 8) The proposed use as a RV campground will be subject to the conditions and limitations established by that approval, and also site plan review by the Sussex County Planning and Zoning Commission.

Motion by Mr. Johnson, seconded by Mr. Burton, and carried unanimously to forward this application to the Sussex County Council with the recommendation that this application be approved for the reasons stated. Motion carried 5 – 0.

In reference to Conditional Use #1963:

Mr. Johnson stated that he would move that the Commission recommend approval of C/U #1963 for Ida C. Faucett, Faucett Heirs, LLC and Massey's Landing Park, LLC for a campground based upon the record made at the public hearing and for the following reasons:

- 1) While there were concerns expressed about traffic, DelDOT has not objected to the project or the traffic generated by it on area roadways. In addition, the State considered Long Neck Road to be a Major Collector Road, which is an appropriate location for this type of use.
- 2) The use as a campground is consistent with the other existing residential uses, campgrounds and manufactured housing communities that currently exist in the Long Neck Road and Massey's Landing areas. Campers and RVs are not something new in this neighborhood, so, there is a reasonable expectation that RV and campground uses could be developed in the vicinity.
- 3) The development is consistent with the purposes and goals of the Sussex County Comprehensive Plan Update since it (1) promotes economic development; (2) promotes tourism; and (3) is consistent with the character of the zoning and development in the area.
- 4) The site is an appropriate location for the proposed development since recreational and commercial uses exist in the Long Neck area.
- 5) There will be no negative impact on schools or other similar public facilities since the development will operate only seasonally.
- 6) The project is located within the Long Neck Sanitary Sewer District, and the County Engineering Department has not objected to it.
- 7) The project will be served by central water and central sewer.
- 8) This recommendation will have several conditions that will eliminate or minimize any potential negative impact upon the neighborhood.
- 9) Under the current County Comprehensive Plan, the site is located in the Environmentally Sensitive Developing Area, which is recognized as a development or growth area on the Future Land Use Map.
- 10) The Applicant has created a sufficient record in support of the Conditional Use application.
- 11) While there were concerns expressed about the definition of "dwelling" for purposes of establishing the Code – required 400 foot buffer from dwellings of other ownership, "manufactured homes" do not create the need for the buffer under the terms of the Code. The existence of "dwellings" as that term is defined under the Code and whether a 400 foot buffer is required will be dealt with as part of the site plan review.
- 12) The use is considered as "in-fill" location, adjacent to developed Manufactured Home Parks on the west and south, and the bay and the State of Delaware boat launch on the north and east.
- 13) The proposed use is beneficial and desirable for the general convenience and welfare of Sussex County and its residents, since it will provide tourism and related services,

economic growth in a designated development area, full and part-time employment opportunities, and significant economic benefits to area businesses.

14) This recommendation is subject to the following conditions:

- A. The maximum number of campground/RV sites shall be three hundred twenty-two (322).
- B. All entrance and roadway improvements and any other DelDOT requirements shall be completed as required by DelDOT. This includes the Developer's agreement to comply with DelDOT's request to enter into an agreement with DelDOT to fund an equitable portion of the installation of a single-lane roundabout at the intersection of Route 23 and Pot-Nets Road, and other similar improvements.
- C. The Development shall be served by the County's Long Neck Sanitary Sewer District. The Applicant shall comply with all Sussex County Engineering Department requirements regarding connection to, and service by, the District.
- D. The Development shall be served water for domestic use and fire protection by the Long Neck Water Company.
- E. Stormwater management and sediment and erosion control facilities shall be constructed in accordance with applicable State and County requirements and maintained using best management practices. The Final Site Plan shall contain the approval of the Sussex Conservation District.
- F. The Applicant shall cooperate and coordinate with the State and County emergency preparedness offices to develop and implement an emergency evacuation plan.
- G. The Development shall be surrounded by a 50 foot landscaped buffer. This shall be installed as part of the 1st phase of the development's construction.
- H. The entire facility may open no earlier than April 1st each year and shall close no later than the first Sunday of November of each year.
- I. The campground/RV park shall remain vacant and no campers or RVs shall be stored on the campsites during the period that the campground is closed.
- J. There shall be no accessory buildings located on individual campsites.
- K. Campground restrictions shall be submitted as part of the site plan review.
- L. All units to be used for the purpose of human habitation on campsites shall be tents, travel trailers, recreational vehicles and equipment manufactured specifically for camping purposes.
- M. The Developer shall plan the entrance design to accommodate a DART bus stop and turnabout in consultation and cooperation with DART.
- N. One sign, not exceeding thirty-two (32) square feet per side with lighting shall be permitted. The lighting for the sign shall not shine on any neighboring properties or roadways.
- O. All lighting shall be downward screened so that it does not shine on neighboring communities or roadways.
- P. All wetlands on the site shall be clearly marked on the site to avoid disturbance. The location and type of these markers shall be shown on the Final Site Plan.
- Q. The Applicant shall determine, after consulting with the County, whether there are any "dwellings" in the vicinity of the property that require a 400 foot buffer pursuant to Section 115-172 H (3) of the Sussex County Code. As part of the Final Site Plan review, the Developer shall include a note on the Plan describing its efforts to make

this determination and show the location of any dwelling that would trigger the application of the 400 foot buffer.

- R. All campsites must be 2,000 square feet in size according to the Sussex County Code. It does not appear that the campsites at the "Remote Tenting Area" shown on the Preliminary Site Plan comply with this size requirement, and this must be corrected on the Final Site Plan along with any other campsites that do not meet the appropriate dimensional requirements.
- S. There shall be a notice at the entrance to the campground stating that it is located within a Flood Prone Area and that certain evacuation and/or relocation procedures are in place and must be followed by all campground visitors in the event of a weather emergency.
- T. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.

Motion by Mr. Johnson, seconded by Mr. Burton, and carried unanimously to forward this application to the Sussex County Council with the recommendation that this application be approved for the reasons and with the conditions stated. Motion carried 5 – 0.

As a reminder of the Sussex County Council actions taken, be advised that on June 18, 2013 the Council deferred action and left the record open for comments from Michael Izzo, County Engineer, regarding the archaeological issue; memos from legal counsel for the Applicant and the Opposition; and a response from DelDOT for clarification of traffic issues.

In reference to Mr. Izzo's comments, Mr. Izzo responded to Everett Moore, Esquire, that the comments submitted by Mr. Dan Parsons regarding the applications were meant to be recommendations for consideration as proposed conditions of approval, and apologized for any confusion that resulted.

In reference to the requested memorandums from legal counsel for the Applicant (James A. Fuqua, Jr., Esquire, and the Opposition (Mary R. Schrider-Fox, Esquire), Everett Moore, Esquire, has advised me that he has talked to both legal counsel and that the legal issue has been resolved, and that there is no longer a necessity to hold the record open for these issues.

In reference to the request for a response from DelDOT for clarification of traffic issues, I wrote to T. William Brockenbrough, Jr., County Coordinator – Development Coordination for DelDOT, on July 23, 2013 and advised Mr. Brockenbrough that the County Council had held a public hearing and received substantial opposition expressing concerns and complaints that the County Council was provided comments from DelDOT which referenced a 2005 Traffic Impact Study Review, dated November 23, 2005, and that it is the oppositions opinion that the traffic impact study should be more recent since this is the year 2013. Included in those parties in opposition was Mr. Stephen A. Raign, Project Engineer for Kercher Engineering, Inc. I attached a copy of Mr. Raign's letter and asked Mr. Brockenbrough if DelDOT feels that a new traffic impact study is necessary, and asked him for clarification on this issue.

Mr. Brockenbrough responded with a letter, dated July 19, 2013, which I have attached for your review, rather than try to summarize since the responses were somewhat lengthy.

I also attached a copy of Mr. Raign's letter for cross-reference purposes.

Should you need any additional information, please do not hesitate to contact me at this Department.



STATE OF DELAWARE
DEPARTMENT OF TRANSPORTATION
800 BAY ROAD
P.O. Box 778
DOVER, DELAWARE 19903

RECEIVED

JUL 25 2013

**PLANNING & ZONING
COMM. OF SUSSEX COUNTY**

July 19, 2013

SHAILEN P. BHATT
SECRETARY

Mr. Lawrence B. Lank
Director of Planning & Zoning
Sussex County
P.O. Box 417
Georgetown, DE 19947

Dear Mr. Lank:

Thank you for your letter of July 3, 2013, regarding the rezoning and conditional use applications (respectively CZ#1729 and C/U#1963) associated with the proposed Castaways at Massey's Landing RV Park/Campground (Tax Parcels 2-34-25.00-31.00, 31.02 and 31.04).

In that letter, you asked whether the Department feels a new Traffic Impact Study (TIS) is necessary for these applications. You also enclosed a letter from Mr. Stephen A. Raign of Kercher Engineering, Inc. recommending that a new TIS be required. Briefly, we do not believe that a new TIS is necessary. Our reasoning is contained in our January 28 to you, a copy of which is enclosed.

Our responses to the points in Mr. Raign's letter are as follows:

- 1) Mr. Raign's use of the Annual Average Daily Traffic (AADT) volumes from our 2004 and 2012 Traffic Summaries suggests a misunderstanding of that resource. A careful reading of the Summaries shows that the 2004 and 2012 volumes cited were based on counts done in 1997 and 2005, respectively. Also, traffic on Long Neck Road increases significantly as one moves from Massey's Landing toward Route 24. Comparing the 1997 and 2005 daily volumes to the 2004 peak hour counts done for the TIS, they are respectively consistent with the counts southeast of Pot-Nets Road and southeast of Banks Road/School Lane. It is not clear from the Traffic Summaries that there was any real increase in traffic.
- 2) Mr. Raign quotes a statement from the minutes of a May 23, 2013, Planning and Zoning Commission hearing "that based on Del DOT's criteria, single-family units generate approximately 10 trips per day and RV Sites have a 20% reduction compared to a single-



family unit.” From there he reasons that the subject plan would generate more than twice the number of trips per day that the recorded development of single-family detached houses would generate. That is not correct. It is not clear whether the quote is Mr. Raign’s error or someone else’s but, unit for unit, RV parks appear to generate 48% to 67% fewer trips per day than developments of single-family detached houses.

Regardless, TIS look at traffic during peak hours, not total traffic throughout the day. Below is a table comparing the peak hour trip generation of the previously approved plan and the proposed development, looking at the peak hour of traffic on the adjacent street.

Use	Unit Count	AM Peak Hour		PM Peak Hour	
		Trips per unit	Trips	Trips per unit	Trips
Single-family houses	120	0.75	90	1.00	120
RV Park	322	0.21	68	0.27	87

- 3) We agree that the buildout year of the proposed RV park is five years beyond the buildout year examined in the 2005 TIS. However, the 2005 TIS was done prior to the 2008 recession. It included 11 committed developments, several of which are still not finished and some of which have not started. The volumes projected then for 2009 are likely still valid for 2014.
- 4) See our response to Comment 3. We are aware of four developments proposed on Long Neck Road since 2005: a golf cart business, an office building associated with the Pot-Nets developments, and two small townhouse developments. We do not believe that accounting for these additional developments would change the recommendations from our review of the 2005 TIS.
- 5) As Mr. Raign suggests, studies in the area have shown that the intersection of Delaware Route 24 and Long Neck Road is congested during peak periods, especially during summer weekends. We have a capital project under development to widen Route 24 and relieve that congestion to some extent. However, it is beyond the means of this development or any other in the area to build that project, much less to accelerate the project development process. A new TIS is not necessary to demonstrate these things.
- 6) We agree that the RV park would bring more large vehicles and more trailered vehicles to the site than the single-family housing development would. As we see it, the primary impacts would be on the design of the site entrance and the roundabout that is contemplated for possible construction at the intersection of Long Neck Road and Pot-Nets Road. Regarding geometric deficiencies at existing intersections, the intersections in the study area all accommodate trucks today without apparent problems.

Mr. Lawrence B. Lank.

July 19, 2013

Page 3 of 3

Regardless, TIS typically look at conditions during highway peak hours. In that regard, we understand that RV owners generally move those vehicles as little as possible, bringing them in at the start of their stay and out at the end, and timing their trips to avoid congestion as much as possible. In between, they tend to either stay in the campground, use transit if available, or use smaller vehicles that they bring with them.

- 7) If the County approves the proposed development, we will keep the concern about parking along the shoulders of Long Neck Road in mind as we review the development's site and entrance plans, but this is not something that a TIS would be especially useful in addressing.

Please contact me at (302) 760-2109 if you have questions regarding this correspondence.

Sincerely,



T. William Brockenbrough, Jr.
County Coordinator

TWB:bs

Enclosure

cc: Mr. Stephen A. Raign, Kercher Engineering, Inc.
Mr. Drew A. Boyce, Director of Planning
Mr. J. Marc Coté, Assistant Director, Development Coordination
Mr. Troy E. Brestel, Project Engineer
Mr. Claudy Joinville, Project Engineer



June 18, 2013

**KERCHER
ENGINEERING
INC**

Civil Engineers

Municipal Engineers

Pavement Engineers

Traffic Engineers

Planners

Asset Management

Construction Services

G.I.S. / G.P.S.

Surveyors

CCR Reviews

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Phone: 919.608.7807

www.kercherei.com

The Honorable Michael H. Vincent, Sussex County Council President
Sussex County Council
2 The Circle
P.O. Box 589
Georgetown, DE 19947

RE: Change of Zone #1729 and Conditional Use #1963 – Applications of Ida C. Faucett, Faucett Heirs, LLC and Massey's Landing Park, Inc.

Dear President Vincent:

Kercher Engineering, Inc. (KEI) has been retained by the Massey's Landing Home Owners Association (MLHOA) to review the 2005 Traffic Impact Study (TIS), Del DOT's recent letters regarding their recommendations and approvals regarding traffic, the application file and testimony from the March 23, 2013 Planning and Zoning Commission hearing. Based on review of this information, KEI offers the following suggested findings of fact for the Council's consideration:

1. Del DOT letter dated January 28, 2013 in reference to TIS comment states "we find that conditions in the study area have not changed substantively since the 2005 study was done and that the development now proposed would be similar in its trip generation." Upon review of Del DOT's 2004 Traffic Summary and the 2012 Traffic Summary, the Average Annual Daily Traffic (AADT) on Long Neck Road (SCR 22) between Massey's landing and DE Rt. 24 has increased nearly 47% (see attached sheets from the 2004 & 2012 Traffic Summaries).
2. As per the Planning and Zoning Commission minutes regarding the May 23, 2013 public hearings on the referenced application, it was stated by the applicants representatives in response to questions raised by the Commission "that sites are intended to be for transient use; that based on Del DOT's criteria, single-family units generate approximately 10 trips per day and RV sites have a 20% reduction compared to a single-family unit." Therefore, based on the previously approved site plan with a mix of 120 single-family dwelling unit types, the daily trip generation would be 1,200 trips per day and the proposed RV/Campsite plan showing 322 sites will have a daily trip generation rate of 8 trips per site or 2,576 trips per day which is greater than a 100% increase in daily trips.
3. The 2005 TIS analyzes the intersections within the study area based on a full build out year of 2009 for the proposed single-family plan. The build out year for the proposed RV Park Plan is 2014 or five years in the future compared to the cases evaluated in the 2005 study.

4. The 2005 TIS included eleven committed developments in various stages of development, since that time certainly there have been changes which should be taken into consideration based on the current development trends in the Long Neck area.
5. As per the 2005 TIS and based on the Traffic Distribution Diagram, 85% of the site generated traffic will pass through the DE Rt. 24/Long Neck Road intersection which according to recent studies in the area show that there are same capacity and traffic issues at this intersection. Since both intersecting roads are classified as Major Collector roads, it would seem reasonable to require the developer to look at the impacts that the proposed RV Park traffic generation will have on the capacity and operation at this intersection location.
6. The traffic generation from the proposed RV Park has very different characteristics than the traffic generated from the approved single-family site plan that was previously approved and studied. The RV Park vehicles will be much larger and, in many cases, these vehicles will be trailering either a camper or a car. With an increased number of the larger-size vehicles passing through the intersections in the study area it is almost certain that these vehicles will have an impact operationally on each intersection.
7. During the summer months many times the parking lot at Massey's landing is filled to capacity due to the use of the public boat ramps, at these peak periods of usage the overflow parking area becomes the Long Neck Road shoulders in the area of the proposed RV Park development (see attached aerial from Google Earth Maps). This operational issue should be taken into consideration when designing site access and Long Neck Road improvements.

Given the facts and issues raised as presented in regard to our review of the 2005 TIS, Del DOT correspondence, and the minutes of the Planning and Zoning Commission's Public Hearing, it is KEI's professional opinion and recommendation to Council that an updated TIS be prepared by the applicant's engineer to address the capacity and operational aspects of the intersection within the study area along Long Neck Road. The basis of this request is due to the increased traffic generation from the proposed RV Park Plans and the belief that the conditions in the study area have changed substantively since the 2005 study was completed.

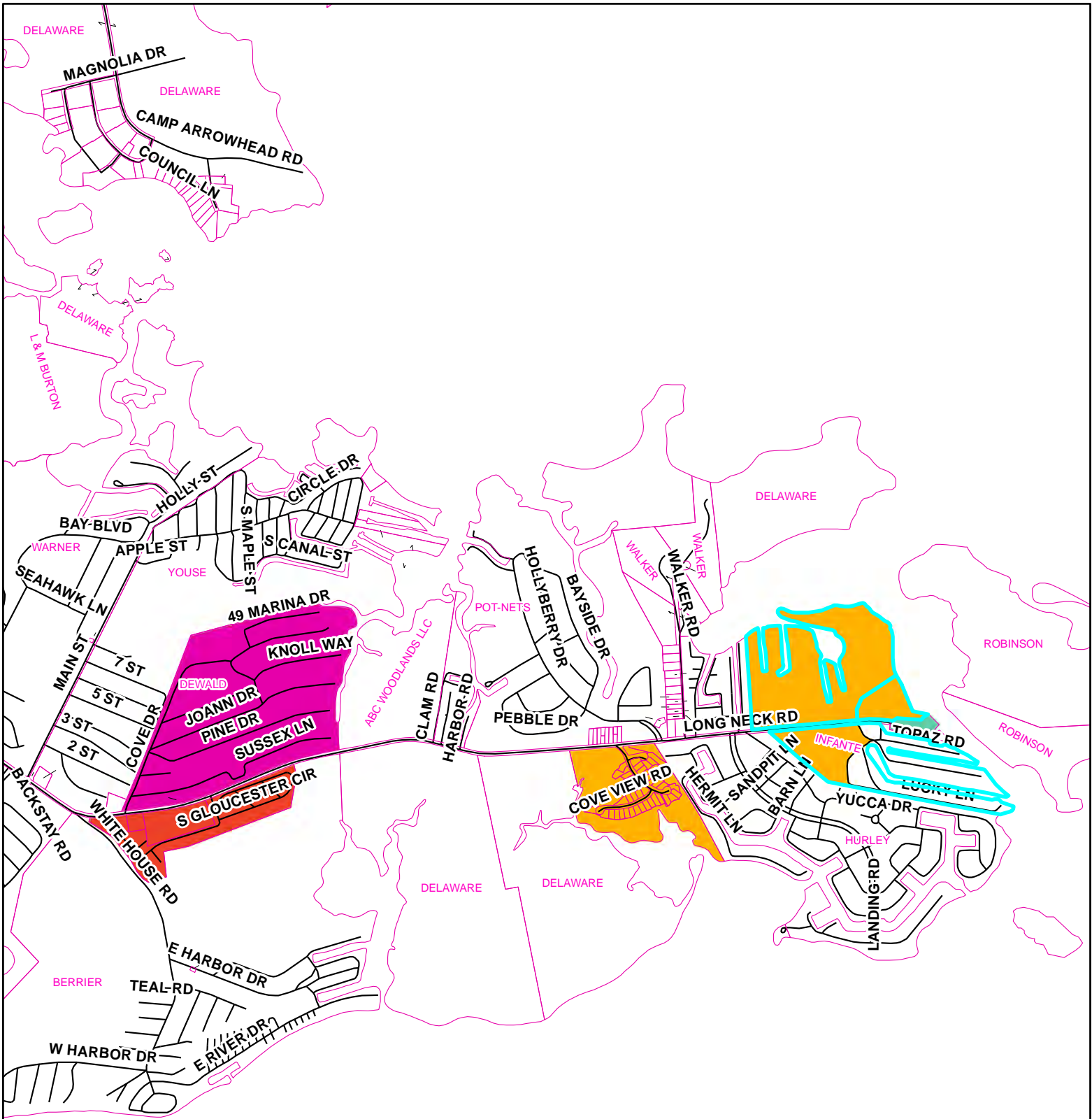
Sincerely,

KERCHER ENGINEERING, INC.



Stephen A. Raign
Project Engineer

cc: Lawrence Lank, Director of Planning & Zoning
Mary Hecker, Massey's Landing Home Owners Association



Conditional Use Application #1963

Legend

<ul style="list-style-type: none"> Parcels Roads Municipal Boundaries Agricultural - AR-1 Agricultural - AR-2 	<ul style="list-style-type: none"> General Residential - GR High Density Residential Vacation, Retire, Resident - VRP Neighborhood Business - B-1 	<ul style="list-style-type: none"> General Commercial - C-1 Commercial Residential - CR-1 Marine - M Limited Industrial - LI-1 Light Industrial - LI-2 Heavy Industrial - HI-1
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0 500 1,000 2,000 3,000 4,000
Feet

1 inch = 1,667 feet

DELAWARE

ROBINSON

32

78.13 Ac.S

FAUCETT HEIRS

31.02
53.97 AC.S

PB 102-68

31.04

FAUCETT 5.90 AC.

31.01 2.90 AC.

B DELAWARE

34.03 1.44 AC.

ROBINSON

31 A
39.38 AC.

INFANTE

TOPAZ RD

JASPER VIEW LN

SHASTA WAY

YUCCA DR

LUCKY LN

CAPTAINS WALK

HURLEY

153.08 AC.S

TERRAPIN RD

SHARKTOOTH DR

CURLEY

POTNETS

E MALLARD RD

MALLARD RD

LONGNECK RD

BEACH PLUM RD

SANDPIT LN

BARN LN

WAGON

MOUND LILY LN

OYSTER CRACKER RD

LANDING RD


LANDING RD

CANVASBACK DR

TERRAPIN RD

SUNSET STRIP

Conditional Use Application #1963

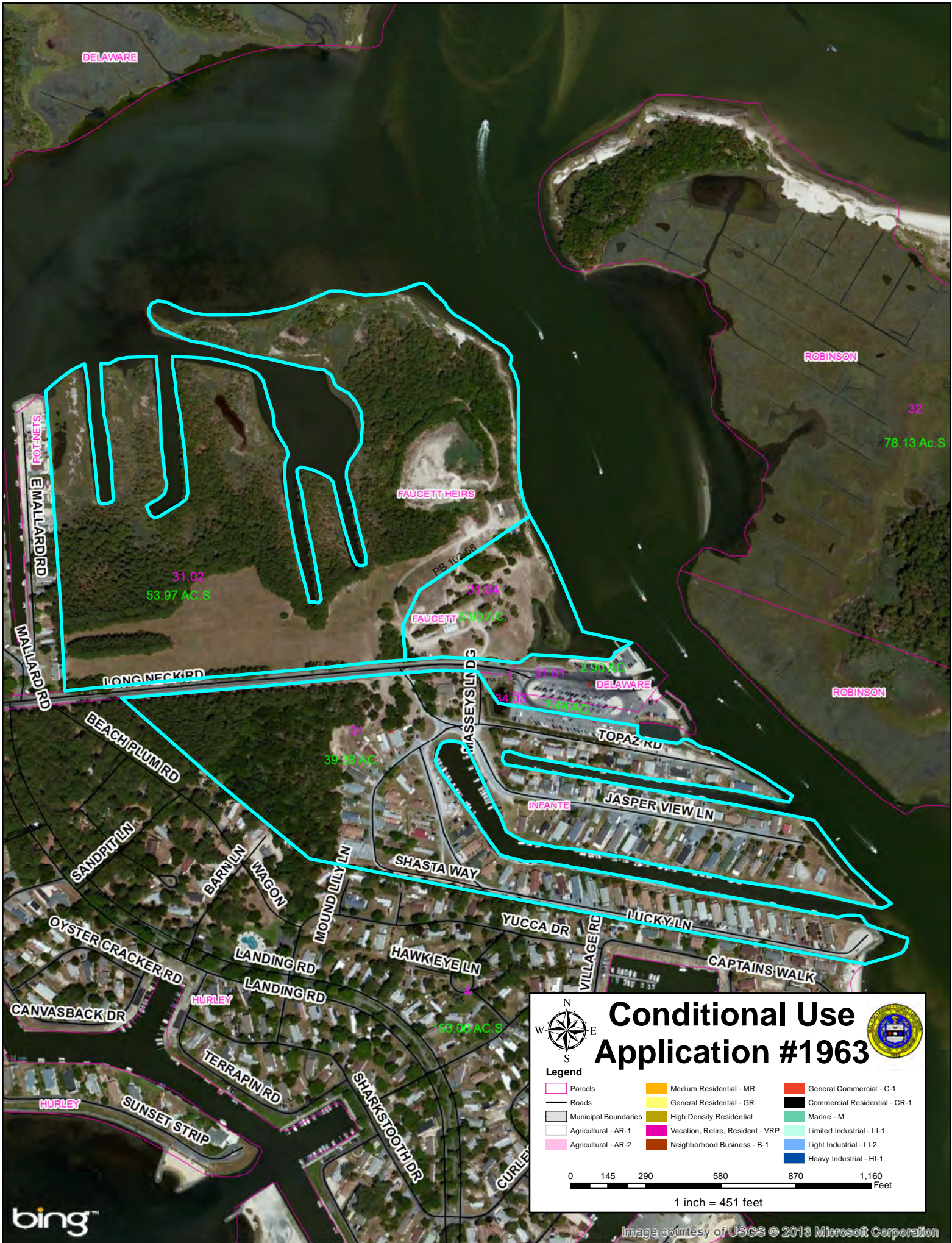


Legend

Parcels	Medium Residential - MR	General Commercial - C-1
Roads	General Residential - GR	Commercial Residential - CR-1
Municipal Boundaries	High Density Residential	Marine - M
Agricultural - AR-1	Vacation, Retire, Resident - VRP	Limited Industrial - LI-1
Agricultural - AR-2	Neighborhood Business - B-1	Light Industrial - LI-2
		Heavy Industrial - HI-1

0 145 290 580 870 1,160 Feet

1 inch = 451 feet



DELAWARE

ROBINSON

32

78.13 Ac S

FAUCETT HEIRS

31.02

53.97 AC S

PB 107-68

31.04

FAUCETT 5.90 AC

31.01

1.48 AC

DELAWARE

ROBINSON

TOPAZ RD

JASPER VIEW LN

INFANTE

SHASTA WAY

YUCCA DR

LUCKY LN

CAPTAINS WALK

31

39.38 AC

HAWKEYE LN

153.09 AC S

LANDING RD

LANDING RD

TERRAPIN RD

SHARKTOOTH DR

SUNSET STRIP

OYSTER CRACKER RD

CANVASBACK DR

SANDPIT LN

BARN LN

WAGON

MOUND LILY LN

MALLARD RD

LONGNECK RD

BEACH PLUM RD

STEWART

EMALLARD RD

HURLEY

HURLEY

bing

Image courtesy of USGS © 2013 Microsoft Corporation

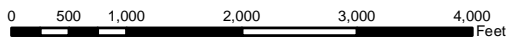


Change of Zone Application #1729



Legend

- Parcels
- Roads
- Municipal Boundaries
- Agricultural - AR-1
- Agricultural - AR-2
- Medium Residential - MR
- General Residential - GR
- High Density Residential
- Vacation, Retire, Resident - VRP
- Neighborhood Business - B-1
- General Commercial - C-1
- Commercial Residential - CR-1
- Marine - M
- Limited Industrial - LI-1
- Light Industrial - LI-2
- Heavy Industrial - HI-1



1 inch = 1,667 feet

DELAWARE

ROBINSON

32

78.13 Ac.S

FAUCETT HEIRS

31.02
53.97 AC.S

PB 102-68

31.04

FAUCETT 5.90 AC.

31.01 2.90 AC.

B DELAWARE

34.03 1.44 AC.

ROBINSON

PB 87-348

LONGNECK RD

BEACH PLUM RD

MASSEYS LND 3

TOPAZ RD

JASPER VIEW LN

INFANTE

SHASTA WAY

YUCCA DR

LUCKY LN

CAPTAINS WALK

HURLEY

PLOVERS REACH

INDIAN VILLAGE RD

CURLEW WAY

OTTER WAY

POTNETS
E MALLARD RD

MALLARD RD

SANDPIT LN

BARN LN

WAGON

MOUND LILY LN

HAWK EYE LN

OYSTER CRACKER RD

LANDING RD

LANDING RD

Change of Zone Application #1729



Legend

- Parcels
- Roads
- Municipal Boundaries
- Agricultural - AR-1
- Agricultural - AR-2
- Medium Residential - MR
- General Residential - GR
- High Density Residential
- Vacation, Retire, Resident - VRP
- Neighborhood Business - B-1
- General Commercial - C-1
- Commercial Residential - CR-1
- Marine - M
- Limited Industrial - LI-1
- Light Industrial - LI-2
- Heavy Industrial - HI-1

0 145 290 580 870 1,160 Feet

1 inch = 451 feet

153.08 AC.S

DELAWARE

ROBINSON

32

78.13 Ac S

FAUCETT HEIRS

31.02
53.97 AC S

31.04

FAUCETT 5.90 AC

31.01

DELAWARE

ROBINSON

31
39.36 AC

TOPAZ RD

INFANTE

JASPER VIEW LN

SHASTA WAY

YUCCA DR

LUCKY LN

CAPTAINS WALK

HURLEY

PLOVERS REACH

CURLEW WAY

OTTERWAY



Change of Zone Application #1729



Legend

- Parcels
- Roads
- Municipal Boundaries
- Agricultural - AR-1
- Agricultural - AR-2
- Medium Residential - MR
- General Residential - GR
- High Density Residential
- Vacation, Retire, Resident - VRP
- Neighborhood Business - B-1
- General Commercial - C-1
- Commercial Residential - CR-1
- Marine - M
- Limited Industrial - LI-1
- Light Industrial - LI-2
- Heavy Industrial - HI-1

0 145 290 580 870 1,160 Feet

1 inch = 451 feet



Beebe Medical Foundation

902 Savannah Road, Lewes, Delaware 19958

302. 644. 2900 • FAX 302. 644. 2950

www.beebefoundation.org

September 3, 2013

The Honorable Joan R. Deaver
Sussex County Council
2 The Circle
PO Box 589
Georgetown, DE 19947

Dear The Honorable Deaver:

We invite you to join us Under the Big Top and support the premier event of the fall season, the **26th Annual Beebe Ball** benefiting the expansion of the Margaret H. Rollins School of Nursing at Beebe Medical Center. *"The Greatest Ball on Earth"* will be held Saturday, November 2, 2013, at the Rehoboth Beach Convention Center in downtown Rehoboth Beach. Your participation as a sponsor will help ensure our success in continuing to meet the needs of our growing community.

Sponsorship and underwriting opportunities are outlined in the enclosed materials. Underwriting opportunities will be reserved on a first come first served basis. The packet describes a number of highly visible sponsorship benefits to promote your company and demonstrate your continued support of Beebe Medical Center. Our goal is to raise \$95,000 in sponsorship support to expand Beebe's 90-year old School of Nursing which is the only hospital based nursing school in the state of Delaware. The expansion will allow us to double the number of graduates each year.

If you would like to take advantage of one of these opportunities please respond today with your commitment. We will work to give your company as much recognition as possible, but we need to hear from you soon.

I thank you in advance for your support of the **26th Annual Beebe Ball** and for your continued and generous support of Beebe Medical Center. Together let us make this year's ball truly, *"The Greatest Ball on Earth!"*

Sincerely,

Benedette C. Cooper, Chair
Corporate Sponsorship Committee



P.O. 413
Lewes, DE 19958
302 644 8050

Lightship Overfalls
From neglected hulk to **National Historic Landmark**
thanks to generous people like you.

August 22, 2013

Dear Friend,

During the past year, thousands of visitors have come to the Overfalls site to learn about the fascinating maritime history of the Delaware Bay and experience the virtual life of a lightship sailor. All are amazed to learn that a small group of dedicated people had a vision to convert a broken down old ship into a National Historic Landmark. What was once considered an unattainable dream is now a proud icon of the Lewes canalfront. None of this would have been possible without the generous donations of time and dollars that friends like you have provided over the years when this vision was in the making.

Our mission has been not only to preserve the Lightship Overfalls, but also to teach maritime history. With this in mind, we have added new structures to the property which will enrich the experience for our visitors. The Pilot House Museum will house many of the artifacts we have collected over these past years. The Monomoy life boat will provide young visitors with a hands-on experience in seamanship and teamwork. We are proud to have set our course for the future as a multi-experience Lightship Museum.

Thanks to our wonderful team of volunteers, we have managed to move forward on our limited budget. Still, costs continue to rise and the ship needs to be preserved. The Overfalls Foundation is the vehicle by which we raise needed funds through annual giving, membership dues and special events.

At this time we are asking our members, friends and the community for much needed financial support. We sincerely ask that you consider a 2013 gift to the Overfalls Foundation to maintain this historic vessel for generations to come...every dollar makes a difference.

With sincere gratitude,

Joan Reader
Bill Reader

Joan and Bill Reader
Co-Chairs, Overfalls Annual Giving Campaign

DELAWARE HOSPICE

Since 1982

Wilmington Office

3515 Silverside Rd.

Wilmington, DE 19810

302-478-5707

FAX 302-479-2586

July 22, 2013

Dear Friend:

I hope you will consider being a Delaware Hospice Golf Outing Sponsor for the 6th Annual Delaware Hospice Golf Outing for Kent and Sussex Counties. This key fundraising event will be held on Monday, October 7th 2013, at the Cripple Creek Golf and Country Club, Dagsboro Delaware.

Dover Office

911 S. DuPont Hwy.

Dover, DE 19901

302-678-4444

FAX 302-678-4451

Founded in 1982, Delaware Hospice has served 43,000 patients and families as the largest, most experienced, and only nonprofit hospice in Delaware. Funds raised from this golf outing will make a significant contribution to the organization's mission of meeting community needs while maintaining its high standards of excellence.

The agenda for this event follows:

Format:	Scramble
10:00 a.m.	Registration/Range Open
11:00 a.m.	Lunch
12:00 p.m.	Shotgun Start
5:30 p.m.	Awards Reception Heavy Hors d'oeuvres with Wine and Beer

Milford Office

Delaware Hospice Center

100 Patriots Way

Milford, DE 19963

302-856-7717

FAX 302-422-7315

I hope you will consider supporting the Delaware Hospice Golf Outing. All sponsors will earn recognition in our official program, while many sponsorship levels earn additional signage and special recognition at the Awards Reception.

To become a sponsor or to learn more about the Golf Outing, please contact me at 302-746-4666, or e-mail me at pdolby@delawarehospice.org. I hope to hear from you soon.

800-838-9800

www.delawarehospice.org

Sincerely,

Peggy Dolby
Assistant Director of Development



Enclosures



The Joint Commission

ORDINANCE NO. ____

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR EXCAVATION OF A BORROW PIT TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 7.2 ACRES, MORE OR LESS (Tax Map I.D. 1-34-11.00-207.00)

WHEREAS, on the 31st day of July 2013, a conditional use application, denominated Conditional Use No. 1969 was filed on behalf of Melvin L. Joseph Construction Co., Inc.; and

WHEREAS, on the ____ day of _____ 2013, 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. 1969 be _____; and

WHEREAS, on the ____ day of _____ 2013, a public hearing was held, after notice, before the County Council of Sussex County and the County Council of Sussex County determined, based on the findings of facts, that said conditional use is in accordance with the Comprehensive Development Plan and promotes the health, safety, morals, convenience, order, prosperity and welfare of the present and future inhabitants of Sussex County, and that the conditional use is for the general convenience and welfare of the inhabitants of Sussex County.

NOW, THEREFORE, THE COUNTY OF SUSSEX HEREBY ORDAINS:

Section 1. That Chapter 115, Article IV, Subsection 115-22, Code of Sussex County, be amended by adding the designation of Conditional Use No. 1969 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 east of Powell Farm Road (Road 365) approximately 0.5 mile north of Burbage Road (Road 353) and being more particularly described by the legal description in Deed Book 4153, Page 230 in the Office of the Recorder of Deeds in and for Sussex County, said parcel containing 7.2 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.

PUBLIC HEARING
October 8, 2013

This is to certify that on September 26, 2013 the Sussex County Planning and Zoning Commission conducted a public hearing on the below listed application for Conditional Use. At the conclusion of the public hearing, the Commission moved and passed that this application be forwarded to the Sussex County Council with the recommendations as stated.

Respectfully submitted:

COUNTY PLANNING AND ZONING
COMMISSION OF SUSSEX COUNTY

Lawrence B. Lank
Director of Planning and Zoning

The attached comments relating to the public hearing are findings of the Planning and Zoning Commission based on a summary of comments read into the record, and comments stated by interested parties during the public hearing.

CONDITIONAL USE #1969 – MELVIN L. JOSEPH CONSTRUCTION CO., INC.

Application of **MELVIN L. JOSEPH CONSTRUCTION CO., INC.** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for excavation of a borrow pit to be located on a certain parcel of land lying and being in Baltimore Hundred, Sussex County, containing 7.2 acres, more or less, lying east of Powell Farm Road (Road 365) approximately 0.5 mile north of Burbage Road (Road 353) (Tax Map I.D. #1-34-11.00-207.00).

The Commission found that the Applicants submitted a survey/site plan with the application on July 31, 2013, and Exhibit Booklets on September 16, 2013. The Exhibit Booklets contain a cover letter; a copy of the Application form for the Conditional Use; a copy of the deed to the property; a zoning map of the area; a copy of a portion of the State Strategies and Investment Levels map; a series of aerial maps, i.e. a recent Google map, a 1954 Orthophoto, a 1961 Orthophoto, a 1968 Orthophoto, a 1992 Orthophoto, a 1997 Orthophoto, a 2007 Orthophoto, and a 2012 Orthophoto; site plans; copies of letters from DelDOT, dated July 23, 2013 and August 5, 2013; suggested proposed Findings of Fact; and suggested proposed Conditions of Approval.

The Commission found that the County Engineering Department Utility Planning Division provided comments on September 24, 2013 in the form of a memorandum and referencing that

the site is located in the Beaver Dam Planning Area; that Ordinance 38 construction will not be required; that central sewer has not been extended to the area at this time; that conformity to the South Coastal Area Planning Study – 2005 Update will be required; that if the parcel requires sewer service in the future, the owner could install infrastructure to an approved connection point; and that a concept plan is not required.

The Commission found that on September 16, 2013 the Applicants provided four (4) letters in support of the application to expand the existing borrow pit onto the proposed site.

The Commission found that five (5) letters in opposition have been received.

The Commission found that Ken Adams, President of Melvin L. Joseph Construction Co., Inc. was present with Gene Bayard, Esquire of Morris James Wilson Halbrook & Bayard, LLP, Robert L. Stickels of Melvin L. Joseph Construction Co., Inc., and Mark Davidson of Pennoni Associates, LLC, and that they stated in their presentations and in response to questions raised by the Commission that the company has been operating the adjoining borrow pit, called the Gibson Pit, for approximately 40 years; that the Gibson Pit site contains approximately 14 acres of which 2 acres has not been disturbed; that the Gibson Pit site is gated; that keys have been made available to local emergency agencies for access to the dry well; that no fuel is stored on the site; that water trucks, sweepers and broom trucks are available when needed to control dust; that the only entrance is on Burbage Road; that the frontage along Powell Farm Road will never be used for truck traffic; that materials removed will be used for fill for construction projects in the area; that normal activity hours on the site will be on Monday through Friday from 6:00 am to 6:00 pm, and Saturday from 6:00 am until 12:00 noon; that there will be no Sunday activities; that they are proposing to include the Gibson Pit site in their plans for reclamation of the project, and that the reclamation will bring the Gibson Pit into compliance with current regulations; that aerial photography depicts borrow activities on this site since 1954; that they are proposing to borrow approximately 3.5 acres of the 7.2 acre site; that the proposed borrow pit will connect to the existing Gibson Pit; that the remaining 3.7 acres of the site will be left undisturbed; that no off-site materials will be brought onto this site; that the existing entrance on Burbage Road will be the only access to this site by extending the access road from the Gibson Pit site to this site; that they have met with DelDOT representatives who support the use of the existing entrance; that the entrance has recently been paved and the apron extended into the site; that the site is not located in a flood plain; that there are no wetlands on the site; that no endangered species were reported on the site; that 2:1 slopes are proposed with 10 foot safety benches; that they will improve those areas of the 50 foot buffer with additional tree plantings where needed; that the service road will be located outside of the buffer areas; that the borrow area will be no closer than 300 feet to Powell Farm Road; that the borrow area will be no closer than 200 feet to any adjacent dwellings; that no buildings are proposed to be erected on the site; that Preliminary and Final Site Plans will be submitted for Planning and Zoning Commission review and approval; that once the project is fully excavated the 2:1 slopes and landscaping will be provided; that they would like it to be clear that they are doing a voluntary reclamation of the Gibson Pit; that vegetated area buffering of the site should not cause any negative impact on property owners along Powell Farm Road; that a Traffic Impact Study was not required by DelDOT; that no permanent or temporary office will be erected on the site; that they will not start excavation until

they receive all appropriate agency approvals; that a need exists to provide materials to serve projects in the area; that the landscaping provided will include native species; that they will comply with all County requirements; that areas of the site that have been previously disturbed will be improved; that when the site slopes are repaired and brought to 2:1 slopes, they will also be stabilized, seeded, planted, and then left to remain in a natural state; that there was an incident that happen years ago when a gentleman trespassed onto the site and swung out over a pond in the pit, and he was paralyzed at impact; that some berms already exist; that the borrow pit area will be posted with warning signage about trespassing and deep water; that a neighbor oversees the site and reports any trespassing; that this site was timbered approximately 10 years ago; that they are proposing to start digging from the far corner back out toward the Gibson Pit; that they area intending to use excavators, but may dredge; that they will maintain any average depth of 25 feet; that they have estimated that there may be 180 vehicles trips per day; that according to DelDOT this number of trips should not impact Burbage Road; that they have received 4 additional letters in support from Beth Cumby, Josh Cain, Casey Whitney, and James Gibbs; that they submitted suggested proposed Findings of Fact as follows: 1) This is an application by Melvin L. Joseph Construction Co., Inc. for a conditional use to excavate a borrow pit for the removal of sand, gravel and stone on Powell Farm Road (SCR 365) in Baltimore Hundred, Sussex County, pursuant to §§ 115-22 and 115-172B of the S.C. Zoning Code; 2) The conditional use is 7.2 acres, more or less, and is identified on the Tax Maps of the Sussex County Department of Finance as T.M. No. 1-34-11.00-207.00; 3) The conditional use site is immediately adjacent to a pre-existing borrow pit of the applicant and will be an extension thereof; 4) A borrow pit is a public or semi-public use that is essential and desirable for the general convenience and welfare, which, because of possible impacts on neighboring properties requires the exercise of planning judgment; 5) The granting of this application will provide a borrow pit for the processing and removal of sand, gravel, and stone, to be used in the construction of private and public works projects in the immediate area and the southeastern region of Sussex County; 6) The conditional use requested will promote the health and safety of the inhabitants of Sussex County and any nearby projects that have been or may be approved for development; 7) By the use of the appropriate conditions of approval, the impact of the borrow pit on neighboring properties may be reduced; and that they submitted suggested proposed Conditions as follows: 1) A final site plan of the project shall be subject to review by the Commission prior to the commencement of operations. The final site plan shall include the present and proposed pits, all side slopes, excavation phasing, and reclamation plans; 2) Reclamation plans shall indicate finished grading, seeding, and planting schedules designed to create a pleasing appearance. The applicant shall notify the Office of the Planning and Zoning Commission in writing on or before April 1st of each year as to the status of the reclamation plans for the following year; 3) No materials may be brought from off the site for processing, mixing or similar purposes; 4) The entrance to the borrow pit shall be from the Burbage Road entrance of the adjacent borrow pit; 5) Any roadway and entrance improvements required by DelDOT shall be completed by the applicant; 6) Entrances to the borrow pit shall be secured when the pit is not in operation; 7) The hours of operation of trucking activities shall be from 6:00 a.m. to 6:00 p.m. Monday through Friday and 6:00 a.m. to 12:00 p.m. on Saturday. There shall be no borrow or trucking activities on Sunday; and 8) The operation of the borrow pit shall be controlled to provide reasonable protection to surrounding properties, as follows: A. A 50 foot buffer, 30 feet of which shall be vegetated buffer, shall be maintained along the perimeter of the

site, except where it adjoins the adjacent pre-existing borrow pit; B. A water truck will be available to control dust from road traffic when conditions require; C. No materials may be stored on an access roads or buffer areas; D. No fuel may be stored on-site for borrow pit operations; E. No stumps, branches, debris or similar items will be buried on the site; F. Markers and signs shall be placed at appropriate locations to designate pit areas; G. The pit shall have 2:1 slopes and the slopes shall be seeded and planted to control erosion; H. No more than 180 loads per day of materials may be hauled from the site; and I. The pit operations shall be consistent with the Mine Safety and Health Administration (MHSa) requirements; 8) This conditional use shall expire forty (40) years from the date of its granting. Every five (5) years after the commencement of excavation, the Planning and Zoning Commission shall perform an inspection of the site and shall request written comment from all appropriate State agencies so that the Planning and Zoning Commission in order to verify compliance with the then existing regulations. After twenty (20) years, the property owner shall complete at its expense an environmental resources and impact study, as that phrase is defined by the DNREC, or its successor. Upon confirmation by DNREC of the owner's compliance with the then-existing regulations, the permit shall continue for the remaining period of twenty (20) years; and 9) The applicant shall secure all other licenses and permits required for the use of the premises as a borrow pit from all state or federal agencies with jurisdiction over the use of the property and shall otherwise comply will all applicable rules, regulations, statutes or ordinances relating to the use of the premises as a borrow pit.

The Commission found that there were no parties present in support of the application.

The Commission found that Joyce Logan, Claudia Howard, and Florence Mumford, all area residents, were present in opposition to this application and stated that the borrow pit started around 1951; that they are concerned about the safety of children in the area; that the existing pit does not have any safety features; that a church in close proximity to the site operates a summer kids camp and they are concerned about the children; that the church has plans on improving the cemetery and is concerned about damage and trespass on the cemetery site; that trees have already fallen onto the cemetery property; that they oppose any further digging; that they oppose the number of trucks and truck trips; that area roadways cannot handle the anticipated truck traffic; that there is frontage for the property on Powell Farm Road and they are concerned about the use of that frontage for access to the pits; that they are concerned about noise; that they question the proposed truck routes to be utilized; that they question what happens to lands left undisturbed; that they question if the property will, in the future, be developed residentially; and they questioned the setback from the church property.

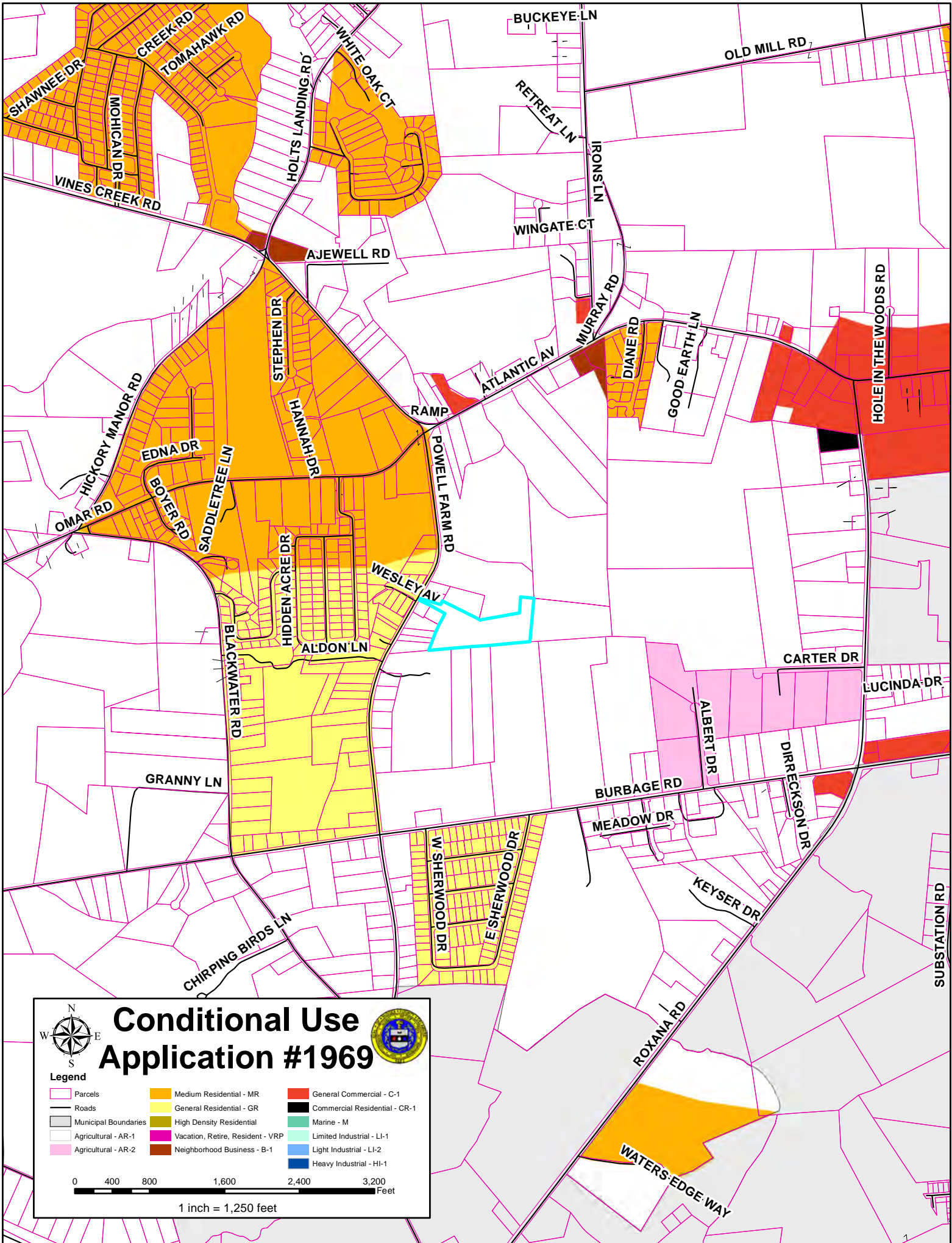
The Commission found that Mr. Davidson responded that the borrow pit will be reclaimed as a pond, that a minimum of 50 feet setback will be maintained from the church property line, and that the maximum number of trucks per day will be 180 trucks.

The Commission found that Mr. Bayard responded that the applicants will comply with the Findings proffered.

At the conclusion of the public hearings, the Commission discussed this application.

Mr. Smith stated that he would like to review all of the letters received.

Motion by Mr. Smith, seconded by Mr. Ross, and carried unanimously to defer action for further consideration. Motion carried 5 – 0.

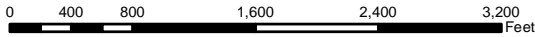


Conditional Use Application #1969



Legend

- Parcels
- Roads
- Municipal Boundaries
- Agricultural - AR-1
- Agricultural - AR-2
- Medium Residential - MR
- General Residential - GR
- High Density Residential
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- Marine - M
- Limited Industrial - LI-1
- Light Industrial - LI-2
- Heavy Industrial - HI-1



20.16 Ac.S.

Lands N/F of WARRINGTON

Lands N/F of GRAY

Lands N/F of GRAY

UNION WESLEY METHODIST CHURCH

8.37 AC.

Lands N/F of CHURCH

195

Lands N/F of DELOACH

2.00 AC.

Lands N/F of BANKS

207

Lands N/F of TURNER

8.67 AC.S

Lands N/F of CUMBY

Lands N/F of JOSEPH

Lands N/F of PHILLIPS

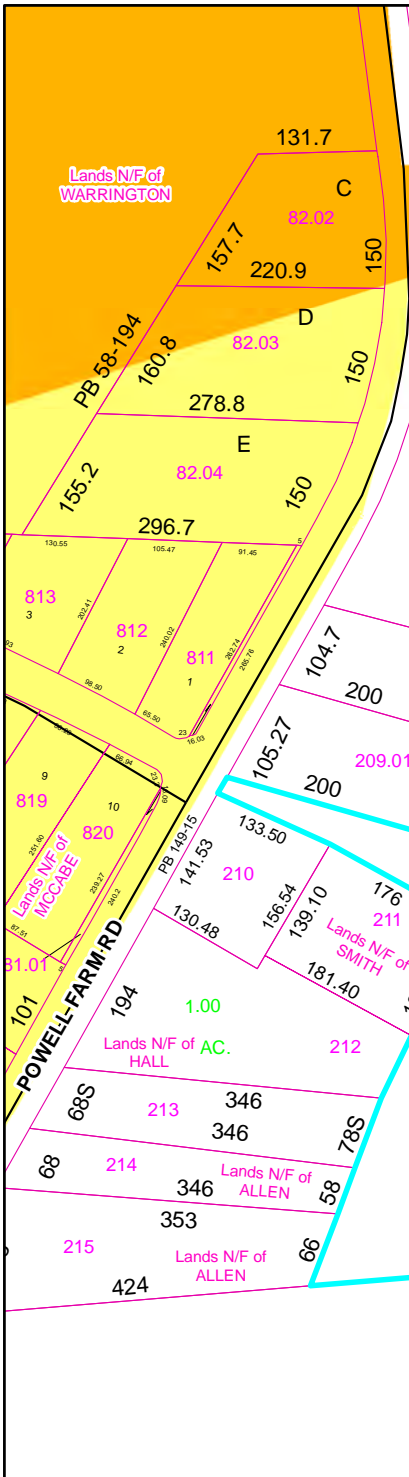
220

218

23.74 AC.

6.13

6.50



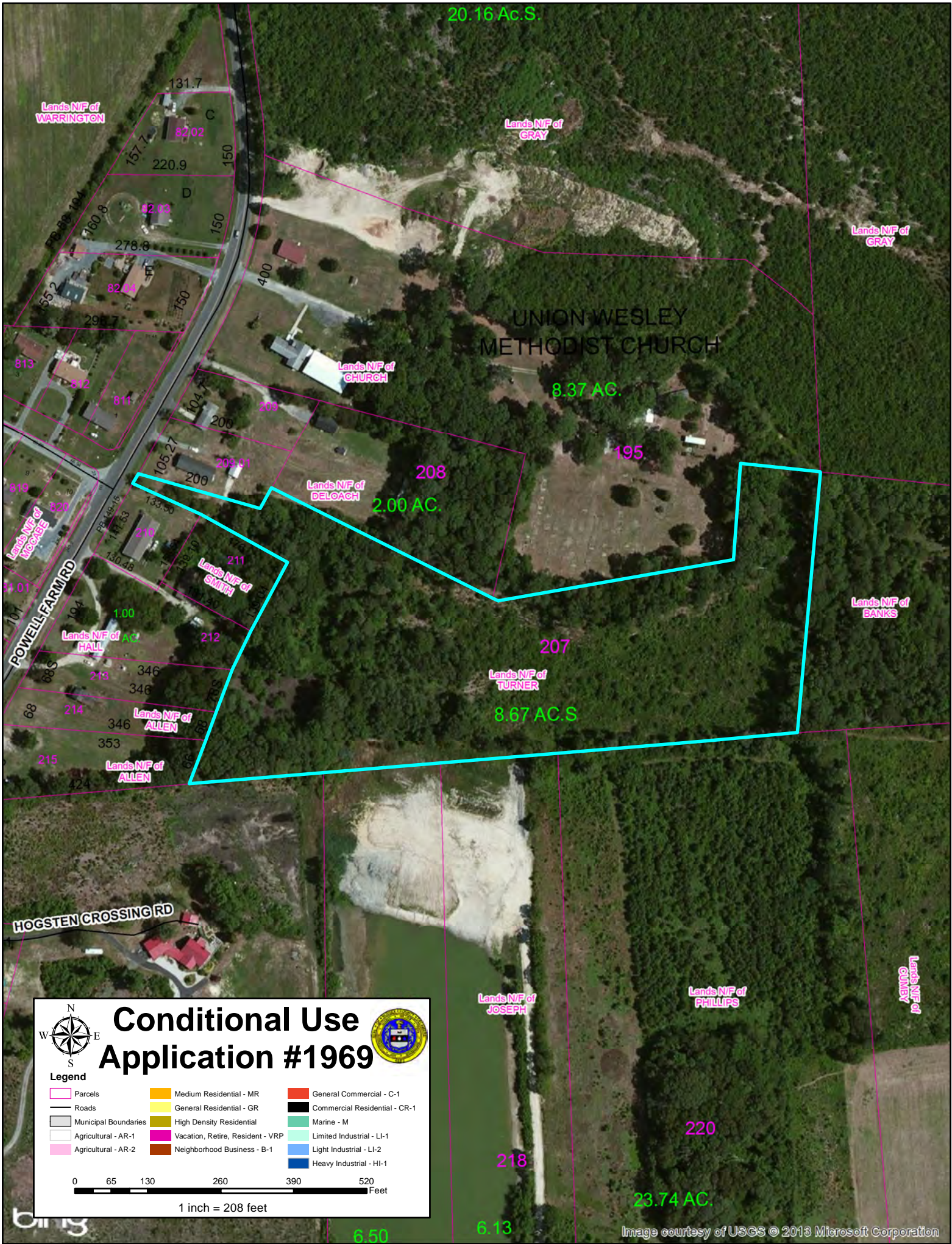
HOGSTEN CROSSING RD

Conditional Use Application #1969

Legend

- Parcels
- Roads
- Municipal Boundaries
- Agricultural - AR-1
- Agricultural - AR-2
- Medium Residential - MR
- General Residential - GR
- High Density Residential
- Vacation, Retire, Resident - VRP
- Neighborhood Business - B-1
- General Commercial - C-1
- Commercial Residential - CR-1
- Marine - M
- Limited Industrial - LI-1
- Light Industrial - LI-2
- Heavy Industrial - HI-1

0 65 130 260 390 520 Feet
1 inch = 208 feet



20.16 Ac.S.

Lands N/F of
WARRINGTON

Lands N/F of
GRAY

Lands N/F of
GRAY

UNION WESLEY
METHODIST CHURCH

8.37 AC.

Lands N/F of
CHURCH

2.00 AC.

Lands N/F of
DELOACH

POWELL FARM RD

Lands N/F of
MOOME

Lands N/F of
SMITH

Lands N/F of
HALL

Lands N/F of
ALLEN

Lands N/F of
ALLEN

Lands N/F of
BANKS

Lands N/F of
TURNER

HOGSTEN CROSSING RD

Lands N/F of
JOSEPH

Lands N/F of
PHILLIPS

Lands N/F of
GUNBY

Conditional Use Application #1969



- Legend**
- | | | |
|----------------------|----------------------------------|-------------------------------|
| Parcels | Medium Residential - MR | General Commercial - C-1 |
| Roads | General Residential - GR | Commercial Residential - CR-1 |
| Municipal Boundaries | High Density Residential | Marine - M |
| Agricultural - AR-1 | Vacation, Retire, Resident - VRP | Limited Industrial - LI-1 |
| Agricultural - AR-2 | Neighborhood Business - B-1 | Light Industrial - LI-2 |
| | | Heavy Industrial - HI-1 |

0 65 130 260 390 520 Feet

1 inch = 208 feet

23.74 AC.