

Sussex County Council Public/Media Packet

**MEETING:
October 12, 2021**

****DISCLAIMER****

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**Sussex County Council
2 The Circle | PO Box 589
Georgetown, DE 19947
(302) 855-7743**

COUNTY COUNCIL

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



Sussex County

DELAWARE
sussexcountyde.gov
(302) 855-7743

SUSSEX COUNTY COUNCIL

A G E N D A

OCTOBER 12, 2021

10:00 A.M.

Call to Order

Approval of Agenda

Approval of Minutes – September 21, 2021

Reading of Correspondence

Public Comments

Consent Agenda

1. Existing Wastewater Infrastructure Use Agreement, IUA-134.12.300
SoDel Redfin Ocean View, Ocean View Area
2. Existing Wastewater Infrastructure Use Agreement, IUA-933
Newdale Acres, Ellendale Area
3. Existing Wastewater Infrastructure Use Agreement, IUA-1070 Revised
Sussex Consortium School, West Rehoboth Area

Todd Lawson, County Administrator

1. Administrator's Report



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

Hans Medlarz, County Engineer

1. Mulberry Knoll Sewer Collection System, Project S20-22

A. Bid Results and Contract Action

2. South Coastal Regional Wastewater Facility Treatment Process Upgrade No. 3 and Rehoboth Beach Wastewater Treatment Plant Capital Improvement Program Phase 2

A. Electrical Construction, Project C19-17, Change Order Nos. 11 and 12

John Ashman, Director of Utility Planning and Design

1. Request to prepare and post notices for the Public Hearing on the Proposed Boundary for the Indian River Acres Area of the Sussex County Unified Sanitary Sewer District

10:30 a.m. Public Hearing

1. Knapp Parcels Expansion of the Sussex County Unified Sanitary Sewer District (West Rehoboth Area)

Vince Robertson, Assistant County Attorney

1. Discussion and Possible Introduction of a Proposed Ordinance Related to Buffers, Wetlands and Drainage

Old Business

Conditional Use No. 2236 filed on behalf of Carl M. Freeman Companies

“AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A HOTEL AND RESTAURANT TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 9.2 ACRES, MORE OR LESS” (Tax I.D. No. 533-20.00-22.00 & 20.00 (portion of) (911 Address: None Available)

Grant Requests

- 1. Woodbridge High School MC-JROTC Booster Club for fundraiser expenses**
- 2. Cape Henlopen Educational Foundation for Teacher Grant Program**
- 3. Rehoboth Beach Historical Society for educational programs**
- 4. Good Samaritan Aid Organization for annual outreach**

Introduction of Proposed Zoning Ordinances

Council Members' Comments

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

Possible action on Executive Session items

1:30 p.m. Public Hearing

Conditional Use No. 2262 filed on behalf of Matthew Hete

“AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR MULTI-FAMILY DWELLINGS (4 UNITS) TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 1.25 ACRES, MORE OR LESS” (property lying on the southeast side of Postal Lane [S.C.R. 283], approximately 0.22 mile northeast of Plantations Road [S.C.R. 275]) (Tax I.D. No. 334-6.00-686.00) (911 Address: 34360 Postal Lane, Lewes)

Adjourn

-MEETING DETAILS-

In accordance with 29 Del.C. §10004(e)(2), this Agenda was posted on October 5, 2021 at 4:30 p.m. and at least seven (7) days in advance of the meeting.

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

Agenda items may be considered out of sequence.

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

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

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

To join the meeting via telephone, please dial:

Conference Number: 1-302-394-5036

Conference Code: 570176

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

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

#

SUSSEX COUNTY COUNCIL - GEORGETOWN, DELAWARE, SEPTEMBER 21, 2021

A regularly scheduled meeting of the Sussex County Council was held on Tuesday, September 21, 2021, at 12:30 p.m., in Council Chambers, with the following present:

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

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

Call to Order

Mr. Vincent called the meeting to order.

M 426 21 Approve Agenda

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

Motion Adopted: 5 Yeas.

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

Minutes

The minutes of September 14, 2021 were approved by consent.

Corre- spondence

Mr. Moore reported that correspondence was received from the Bethany Beach Volunteer Fire Company, Inc., the Resilient and Sustainable Communities League (Partnership for the Delaware Estuary), and Delaware Botanic Gardens in appreciation of grants.

Public Comments

Public comments were heard and the following spoke:

Anna Biggs expressed concerns about proposed development on Mulberry Knoll Road.

Judy Vaughn Parker commented on safety concerns on Fred Hudson Road.

Dave Chernuta, Nan Zamorski, Ed Waysz, and Dave Breen expressed concerns about and commented on “uncontrolled development” in the County.

Judy Rose Seibert spoke in support of open space and the proposed buffer ordinance.

**Public
Comments
(continued)**

Keith Steck presented several recommendations to Council including a request for an administrative mechanism to request corrections to Minutes and Findings, etc., and for the creation of a working group for a comprehensive review of ordinances and to consider implementing impact fees.

There were no additional public comments.

**Update/
Buffers,
Wetlands,
Drainage**

At the request of the Council President, Mr. Lawson provided an update on the topic of the 2019-2020 buffers and wetlands initiative. He noted that the term *drainage* has been added to his presentation on this date as the topics of discussion began with buffers and wetlands, and it became apparent that drainage should be a part of the initiative. Mr. Lawson reported on the work produced by the Wetlands & Buffers Working Group, which met in 2019 and 2020; the efforts of the Working Group resulted in a working document.

Mr. Lawson reported that a lot of the endorsed and approved Comprehensive Plan references the buffers and wetlands initiative. He noted that one of the reasons it was decided to go through the initiative is because it became apparent that the County Code needs updating; the terms and definitions need updating and some of the interpretation that became practice also needs adjusting.

Mr. Lawson reviewed what is included in the recommendation: resources subject to the ordinance, definitions for those resources (ephemeral streams, intermittent streams, wetlands resource buffer, etc.), and a list of permitted activities in a buffer, i.e. what could be permitted in a buffer zone.

Following the meetings of the Working Group and the submittal of the recommendations, County staff reviewed the recommendations and developed a working draft related to “certain drainage features, wetland and water resources and the buffers thereto”. In March 2020, it was determined to bring the recommendations to Council; however, that is when the Covid-19 pandemic hit.

Mr. Lawson noted that this initiative is to provide recommendations for how the County applies wetlands and buffer protections. He further noted that what is critically important in this initiative is that it will only impact new development and it will not impact anything outside of residential development; it will have no impact on any property that remains in agriculture.

Mr. Lawson concluded by stating that the next step would be the drafting of an ordinance for discussion; all Councilmembers agreed to move forward with the drafting of the ordinance.

**Adminis-
trator's
Report**

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

1. Delaware State Police Activity Report

The Delaware State Police year-to-date activity report for August 2021 is attached listing the number of violent crime arrests, as well as total traffic charges and corresponding arrests. In addition, DUI and total vehicle crashes investigated are listed. In total, there were 189 troopers assigned to Sussex County for the month of August.

2. Reassessment Town Hall Meetings

In conjunction with Tyler Technologies, the County will host 5 town hall meetings to provide an overview of the reassessment process. The public meetings are scheduled for:

- Thursday, September 23rd from 2 to 4 p.m. at Milton Fire Department
- Thursday, September 23rd from 6 to 8 p.m. at Delaware Technical Community College – Owens Campus – Carter Partnership Center
- Monday, September 27th from 6 to 8 p.m. at the Delaware National Guard – Bethany Beach Training Site
- Wednesday, September 29th from 6 to 8 p.m. at the Millsboro Town Center, and
- Thursday, September 30th from 6 to 8 p.m. at Seaford Volunteer Fire Department.

In addition to the in-person sessions, one virtual session featuring the same presentation will be conducted on Monday, September 27th from 2 to 4 p.m. Anyone interested in viewing the virtual session please visit the County website at www.sussexcountype.gov for more information.

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

**Agricultural
Farm
Leases/
Bid
Results
and
Recom-
mendation**

Hans Medlarz, County Engineer, presented the bid results for the agricultural farm leases for Bunting Farm and the Georgetown parcels. He reported that, following a review of the one bid received, the Engineering Department recommends the award of the five (5) year agricultural lease for the Bunting Farm to Magee Farms for a net annual fee of \$4,500.00. Mr. Medlarz stated that, with no bids received for the Georgetown parcels, the Engineering Department recommends engaging Sussex Conservation District for the establishment of a meadow at the Georgetown parcel.

**M 427 21
Award
Ag Farm
Lease**

A Motion was made by Mr. Rieley, seconded by Mr. Hudson, based upon the recommendation of the Sussex County Engineering Department, that the Sussex County Council approves the award of the Bunting Agricultural

M 427 21 **Farm Lease to Magee Farms for a net annual fee of \$4,500.00 for a five (5)**
(continued) **year lease.**

Motion Adopted: 5 Yeas.

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

Warrington **John Ashman, Director of Utility Planning & Design, presented an update on**
Road **the proposal to extend the boundary of the Sussex County Unified Sanitary**
Annexation **Sewer District, West Rehoboth Area, to include four parcels of land on the**
Update **south side of Warrington Road in Rehoboth Beach. A Public Hearing was**
 held on the proposed expansion on July 27, 2021 at which time a property
 owner expressed concerns with the Engineering Department’s proposal for a
 mechanical pressure system instead of the gravity fed system. At the
 conclusion of the Public Hearing, the Council left the record open for a report
 from Council on the possibility of obtaining the necessary easements. The
 Engineering Department responded to the stated concern and noted that in
 order to look at a gravity connection versus the grinder pump connections,
 an easement would be needed across a piece of the buffers/common areas of
 Redden Ridge. The Department has sent all the information to the
 Homeowners Association (HOA) and following a response, additional
 information was provided. Thereafter, the HOA Board of Directors held a
 meeting and the Department is awaiting a response. Mr. Ashman stated that
 the existing easement is still an option along Warrington Road, so the
 Department can proceed; however, this is the grinder pump option.

Proposal to **Hans Medlarz, County Engineer, reported that the Engineering Department**
Establish **has participated in several meetings with the Town of Slaughter Beach**
Slaughter **pertaining to the possibility of the County providing sewer service to the**
Beach **Town. Mr. Medlarz recognized the Mayor and Vice Mayor of the Town of**
Area of **Slaughter Beach who were in attendance. Mr. Medlarz noted that the**
the SCUSSD **municipal boundary of the Town coincides 100 percent with the proposed**
 sewer district area. On August 9, 2021, the Town passed Ordinance 2021-05
 authorizing Sussex County to provide sewer services within the municipal
 boundaries of the Town of Slaughter Beach. Mr. Medlarz reported that the
 Engineering Department has reviewed the Town’s Ordinance and the
 request and finds the proposal acceptable. Mr. Medlarz noted that the
 Engineering Department will not recommend acceptance by Sussex County
 Council of any funding package exceeding an annual sewer assessment of
 \$1,200.00 per property unless agreed to by the Mayor and Council. It was
 noted that the overall project completion timeline could be up to five (5)
 years.

M 428 21 **A Motion was made by Mr. Schaeffer, seconded by Mr. Rieley, to Adopt**
Adopt **Resolution No. R 023 21 entitled “A RESOLUTION TO ESTABLISH THE**
R 023 21 **SLAUGHTER BEACH AREA OF THE SUSSEX COUNTY UNIFIED**

M 428 21 **SANITARY SEWER DISTRICT UNDER THE PROVISIONS OF TITLE 9**
Adopt **OF THE DELAWARE CODE".**

R 023 21
(continued)

Motion Adopted: 5 Yeas.

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

Rules **Mr. Moore read the rules of procedure for public hearings.**

Public **A Public Hearing was held on the Proposed Ordinance entitled "AN**
Hearing/ **ORDINANCE TO AMEND THE CODE OF SUSSEX COUNTY,**
Proposed **CHAPTER 115, ARTICLE XX BY AMENDING SECTION 115-156 TO**
Ordinance/ **CLARIFY THAT THE LOT AREA WITHIN TABLES II AND III REFERS**
Lot Area/ **TO THE LOT AREA WITHIN EACH PARTICULAR ZONING**
Density **DISTRICT".**
Calculation

Jamie Whitehouse, Planning and Zoning Director, reported that the Planning and Zoning Commission held a Public Hearing on the Proposed Ordinance on August 26, 2021 at which time the Commission recommended approval.

(See the minutes of the Planning and Zoning Commission dated August 26, 2021.)

Mr. Whitehouse reported that no comments were received in support of or in opposition to the Proposed Ordinance.

Vince Robertson, Assistant County Attorney, presented the Proposed Ordinance that addresses a question in the Sussex County Code regarding how multi-family density is calculated.

There were no public comments.

The Public Hearing and public record were closed.

M 429 21 **A Motion was made by Mr. Rieley, seconded by Mr. Hudson, to Adopt**
Adopt **Ordinance No. 2802 entitled "AN ORDINANCE TO AMEND THE CODE**
Ordinance **OF SUSSEX COUNTY, CHAPTER 115, ARTICLE XX BY AMENDING**
No. 2802 **SECTION 115-156 TO CLARIFY THAT THE LOT AREA WITHIN**
 TABLES II AND III REFERS TO THE LOT AREA WITHIN EACH
 PARTICULAR ZONING DISTRICT".

Motion Adopted: 5 Yeas.

**M 429 21
(continued)**

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

**Public
Hearing/
CZ 1945
CU 2292**

A combined Public Hearing was held on the Proposed Ordinances entitled “AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A MR MEDIUM DENSITY RESIDENTIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 8.33 ACRES, MORE OR LESS” (Change of Zone No. 1945) and “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A MR MEDIUM DENSITY RESIDENTIAL DISTRICT FOR MULTI-FAMILY (32 UNITS) TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 8.33 ACRES, MORE OR LESS” (Conditional Use No. 2292) filed on behalf of Gulfstream Development, LLC (Tax I.D. No. 533-19.00-56.05) (911 Address: None Available).

The Planning and Zoning Commission held a Public Hearing on these applications on August 26, 2021 at which action was deferred. On September 9, 2021, the Commission recommended approval of the Change of Zone and the Conditional Use, with the following conditions:

- a. The maximum number of residential units shall be 32.**
- b. All entrances, intersection, roadway, and multi-modal improvements shall be completed by the Developer in accordance with all DelDOT requirements.**
- c. The project shall be served by Sussex County sewer. The Developer shall comply with all Sussex County Engineering Department requirements including any offsite upgrades necessary to provide service to the project.**
- d. The project shall be served by central water to provide drinking water and fire protection.**
- e. Interior street design shall meet or exceed the Sussex County street design requirements.**
- f. As proffered by the Applicant, there shall be sidewalks on both sides of all streets and roadways.**
- g. The Applicant shall submit as part of the Final Site Plan, a landscape plan showing the proposed tree and shrub landscape design, including any buffer areas. The landscape plan shall clearly designate all existing forested areas that will be preserved (77% of the existing forested area, according to the Applicant). The landscape plan shall also identify all “Limits of Disturbance” within the site. These “Limits of Disturbance” shall be clearly marked on the site itself.**
- h. All construction and site work on the property, including deliveries of materials to or from the property, shall only occur between 7:00 a.m. and 6:00 p.m., Monday through Saturday. There shall be no construction activities at the site on Sundays. A 24 inch by 36 inch “NOTICE” sign in**

**Public
Hearing/
CZ 1945
CU 2292
(continued)**

- English and Spanish confirming these hours shall be prominently displayed at all entrances to the site during construction.**
- i. Street naming and addressing shall be subject to the review and approval of the Sussex County Mapping and Addressing Department.**
 - j. The amenities shall include a community center and pool area, with at least 20 off-street parking spaces set aside for these areas. These amenities shall be completed and open to use by the residents of this project and Bay Knolls upon the issuance of the 50th building permit within the combined projects.**
 - k. The Applicant shall form a homeowners' or condominium association for the perpetual maintenance, repair and replacement of the roads, any buffers and landscaping, stormwater management facilities, erosion and sediment control facilities and other common elements.**
 - l. The stormwater management system shall meet or exceed the requirements of the State and County. It shall be constructed and maintained using Best Management Practices.**
 - m. The Final Site Plan shall contain the approval of the Sussex County Conservation District for the design and location of all stormwater management areas and erosion and sedimentation control facilities.**
 - n. The Applicant shall coordinate with the Indian River School District to establish a school bus stop area, which shall be shown on the Final Site Plan if required by the District.**
 - o. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning and Zoning Commission.**

(See the minutes of the Planning and Zoning Commission dated August 26 and September 9, 2021.)

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

Mr. Whitehouse noted that sixteen (16) letters of support have been received.

The Council found that Davit Hutt, Esq., was present on behalf of the Applicant along with Bob Harris, Principal of Gulfstream Development, LLC, and Steve Engel, a registered landscape designer with Vista Design, Inc.

Mr. Hutt stated that Gulfstream Development, LLC is the contract purchaser of the property; that the project site is a 8.33 acre parcel located on Sand Cove Road, a short distance from the intersection of Sand Cove Road and Lighthouse Road (Route 54); that the applications are for a change of zone and for 32 duplex/multi-family units on the property (to be known as Bay Knolls); that the gross density would be 3.84 units/acre which is consistent with the density of other projects in the area; that the Council previously considered an application on the adjacent property for a change of zone from AR-1 to MR and for the approval of 52 duplex/multi-family units on 13.3 acres (Ordinance Nos. 2700 and 2701); that after the Bay Knoll's application was approved in January 2020, Gulfstream Development,

**Public
Hearing/
CZ 1945
CU 2292
(continued)**

LLC purchased the 13.3 acre parcel and also placed the current Application's 8.33 acres under contract; that the Applicant requests approval to continue the theme of the 13.3 acre project, to the 8.33 acre site, resulting in a superior project; that the application site is currently unimproved and used for agricultural purposes; that the parcel is within the Coastal Area according to the Comprehensive Plan; that a single entrance for the combined project (formerly Bay Knolls / Fenwick Commons, LLC project) and the present application) is planned on Sand Cove Road and is to be aligned with the entrance to the Heron's Ridge at Bayside community to create a four-way intersection; that the stormwater management system for the site will include Best Management Practices; that Bay Knolls will be served by public water and sewer; that the street system will be designed and constructed to Sussex County standards and will remain private with maintenance provided by the Homeowner's Association; that the 2020 Delaware Strategies for State Policies and Spending identifies the area as being located in Investment Level 3; that 3.59 acres of open space will be maintained; that five (5) foot sidewalks on both sides of the street will be provided to include a pedestrian connection internally and with the other side of the community; that DelDOT did not require a Traffic Impact Study; that the proposed project, when combined with the approval for Bay Knolls (Ordinance No. 2701 – formerly Fenwick Commons, LLC), will create a superior project as compared to two separate projects; that this application will add on-site amenities, including a pool and community center, to the existing approval for Bay Knolls; that the project is consistent with the character and trend of development in the area and, in particular, with adjacent neighboring projects; and that the proposed project meets the purpose of the Zoning Code and the Comprehensive Plan.

There were no public comments.

The Public Hearing and public record were closed.

**M 430 21
Adopt
Ordinance
No. 2803/
CZ 1945**

A Motion was made by Mr. Rieley, seconded by Mr. Hudson, to Adopt Ordinance No. 2803 entitled "AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A MR MEDIUM DENSITY RESIDENTIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 8.33 ACRES, MORE OR LESS" (Change of Zone No. 1945) filed on behalf of Gulfstream Development, LLC.

Motion Adopted: 5 Yeas.

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

**M 431 21
Adopt
Ordinance
No. 2804/
CU 2292**

A Motion was made by Mr. Rieley, seconded by Mr. Hudson, to Adopt Ordinance No. 2804 entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A MR MEDIUM DENSITY RESIDENTIAL DISTRICT FOR MULTI-FAMILY (32 UNITS) TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 8.33 ACRES, MORE OR LESS” (Conditional Use No. 2292) filed on behalf of Gulfstream Development, LLC, with the following conditions:

- a. The maximum number of residential units shall be 32.**
- b. All entrances, intersection, roadway, and multi-modal improvements shall be completed by the Developer in accordance with all DelDOT requirements.**
- c. The project shall be served by Sussex County sewer. The Developer shall comply with all Sussex County Engineering Department requirements including any offsite upgrades necessary to provide service to the project.**
- d. The project shall be served by central water to provide drinking water and fire protection.**
- e. Interior street design shall meet or exceed the Sussex County street design requirements.**
- f. As proffered by the Applicant, there shall be sidewalks on both sides of all streets and roadways.**
- g. The Applicant shall submit as part of the Final Site Plan, a landscape plan showing the proposed tree and shrub landscape design, including any buffer areas. The landscape plan shall clearly designate all existing forested areas that will be preserved (77% of the existing forested area, according to the Applicant). The landscape plan shall also identify all “Limits of Disturbance” within the site. These “Limits of Disturbance” shall be clearly marked on the site itself.**
- h. All construction and site work on the property, including deliveries of materials to or from the property, shall only occur between 7:00 a.m. and 6:00 p.m., Monday through Saturday. There shall be no construction activities at the site on Sundays. A 24 inch by 36 inch “NOTICE” sign in English and Spanish confirming these hours shall be prominently displayed at all entrances to the site during construction.**
- i. Street naming and addressing shall be subject to the review and approval of the Sussex County Mapping and Addressing Department.**
- j. The amenities shall include a community center and pool area, with at least 20 off-street parking spaces set aside for these areas. These amenities shall be completed and open to use by the residents of this project and Bay Knolls upon the issuance of the 50th building permit within the combined projects.**
- k. The Applicant shall form a homeowners’ or condominium association for the perpetual maintenance, repair and replacement of the roads, any buffers and landscaping, stormwater management facilities, erosion and sediment control facilities and other common elements.**

M 431 21
Adopt
Ordinance
No. 2804/
CU 2292
(continued)

- l. The stormwater management system shall meet or exceed the requirements of the State and County. It shall be constructed and maintained using Best Management Practices.**
- m. The Final Site Plan shall contain the approval of the Sussex County Conservation District for the design and location of all stormwater management areas and erosion and sedimentation control facilities.**
- n. The Applicant shall coordinate with the Indian River School District to establish a school bus stop area, which shall be shown on the Final Site Plan if required by the District.**
- o. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning and Zoning Commission.**

Motion Adopted: 5 Yeas.

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

M 432 21
Adjourn

A Motion was made by Mr. Rieley, seconded by Mr. Schaeffer, to adjourn at 2:39 p.m.

Motion Adopted: 5 Yeas.

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

Respectfully submitted,

Robin A. Griffith
Clerk of the Council

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

Consent Agenda 10-12-2021

SoDel Redfin Ocean View

Existing Sewer Infrastructure Use Agreement – IUA-134.12.300

Ocean View Brewing Company, LLC to pay \$8,616.00 for 11.03 EDUs

Ocean View Area

Newdale Acres

Existing Sewer Infrastructure Use Agreement – IUA-933

Liborio Ellendale, LLC to pay \$282,439.00 for 275.00 EDUs

Ellendale Area

Sussex Consortium School

Existing Sewer Infrastructure Use Agreement – IUA-1070 REVISED

Cape Henlopen School District to pay \$12,455.00 for additional 13.14 EDUs

West Rehoboth Area

EXISTING WASTEWATER INFRASTRUCTURE USE AGREEMENT

SODEL REDFIN OCEAN VIEW – IUA134.12.300

THIS AGREEMENT (“Agreement”), made this _____ day of _____ 2021, by and between:

SUSSEX COUNTY, a political subdivision of the State of Delaware, hereinafter called the “County,” and;

OCEAN VIEW BREWING COMPANY, LLC a Delaware Limited Liability Company and developer of a project known as SoDel Redfin Ocean View, hereinafter called the “Developer.”

WITNESSETH:

WHEREAS, Developer is developing a tract of land identified as Tax Map parcel 134-12.00-300.00 to be known as SoDel Redfin Ocean View (“Project”) and;

WHEREAS, the Project is within the boundary of the Sussex County Unified Sanitary Sewer District (Ocean View Area) and;

WHEREAS, the Project will utilize available capacity in existing wastewater infrastructure previously funded by Sussex County.

NOW THEREFORE, in consideration of the mutual covenants and conditions contained herein, which is hereby acknowledged by both parties as sufficient consideration, the parties hereby agree as follows:

- (1) Developer is proposing to utilize County’s existing collection and transmission capacity by connecting to existing regional infrastructure used by multiple pump stations.
- (2) In exchange for permission to connect up to **11.03** additional equivalent dwelling units to County’s existing system and to utilize the existing capacity in said system, Developer agrees to financial catch-up contribution in the amount of **\$8,616.00** for said existing facilities.
- (3) The contribution amount in the case of multiple pump stations using an existing collection and transmission system is based on the ratio of average flow capacity utilization of said transmission facilities.
- (4) **Payment of the contribution must be submitted at the time of execution of this agreement.**
- (5) If the Project (as currently submitted) is amended and County determines in its sole discretion that such amendments materially affect this Agreement, this Agreement

may be declared by County to be null and void, and any unused payments made pursuant to this Agreement shall be returned to Developer, unless the parties otherwise agree. Nothing herein shall prevent the parties from the negotiation of a new agreement with respect to the amended Project, as the parties may deem appropriate.

- (6) The contribution is to be placed in County's sewer capital fund and expended towards overall debt reduction or at such time when any transmission infrastructure in County's Unified Sanitary Sewer District requires capital improvements (See Chapter 110-96 of the Sussex County Code).
- (7) Developer shall be responsible for payment of any and all undiscounted system connection charges in accordance with and pursuant to the requirements of the *Sussex County Code* for all lots, due at such time the Developer receives the sewer connection permit.
- (8) Developer shall comply in all aspects with the *Sussex County Code* and any other local, state, county, or federal laws, regulations, or policies that may be applicable and as such may be hereinafter amended.
- (9) Prior to the commencement of construction of any sanitary sewer facilities for the Project, Developer shall obtain a project construction permit from the County in accordance with and pursuant to the requirements of the *Sussex County Code*.
- (10) In order to allow the opportunity for a County representative to be present as the County so chooses, Developer shall send written notice to County of the date upon which connection to the County regional transmission system will be made. Developer shall follow County's written or verbal instructions in making said connection to the County sanitary sewer system.
- (11) Developer may assign this Agreement in whole or in part to any entity controlled directly or indirectly by Developer or to any third party who purchases, leases or otherwise controls any portion of Developer's property without the consent of County. Developer, and any subsequent assignees or successors shall provide County at least ten (10) days' written notice of any such assignment. Any other assignments, transfers, or conveyances with respect to this Agreement are prohibited without prior written consent of County.
- (12) To the extent permitted by law, Developer shall indemnify and hold harmless County, and its appointed and elected officials, employees, licensees, and agents for any claims, losses, liabilities, suits, or damages, including but not limited to reasonable attorneys' fees, professional engineering fees, and any other costs of litigation, arising out of Developer's negligence in connection with its performance of this Agreement, including but not limited to damage to the County's infrastructure

in making connection to County's regional transmission system. The obligations of this Paragraph shall survive the termination of this Agreement.

- (13) All the terms, covenants, and conditions of this Agreement shall in all respects be governed and construed under and pursuant to the Laws of the State of Delaware without respect to its conflict of law provisions. This Agreement may only be amended, supplemented or modified by a subsequent written agreement executed by all the parties hereto.
- (14) This Agreement and exhibits constitute the final, entire and exclusive agreement between the parties with respect to the subject matter of all matters discussed in it and supersedes all prior or contemporaneous discussions, statements, representations, warranties or agreements, whether written or oral, made in connection with the Agreement described herein.
- (15) It is mutually agreed between the parties that no review, approval, acceptance, and/or payment made under this Agreement shall be conclusive evidence of the performance of the Agreement, either wholly or in part, and that no review, approval, acceptance, and/or payment shall be construed as acceptance of defective work by County, nor in any way relieve Developer of its responsibility for the adequacy of its work.
- (16) The waiver by any party hereto of a breach of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach. Neither party shall be deemed to have waived any rights under this Agreement unless such waiver is expressly given in writing and signed by the waiving party. No delay or omission on the part of either party in exercising any right shall operate as a waiver of such right or any other right.
- (17) This Agreement shall be executed in duplicate, any copy of which shall be considered and construed as and for the original.
- (18) If any provision of this Agreement shall be deemed invalid or unenforceable for any reason whatsoever, then such invalidity or unenforceability shall not render invalid or unenforceable any of the other provisions of this Agreement which may be given effect without such invalid or unenforceable provision, and to this end, the provisions of this Agreement are hereby deemed to be severable.
- (19) Any notice required to be delivered to or by either party under this Agreement shall be sent by U.S. first class mail. For purposes of this provision, the address of the County is 2 The Circle, P.O. Box 589, Georgetown, Delaware, 19947, and the address of the Developer is **36219 Old Cemetery Road, Frankford Delaware 19945.**

IN WITNESS, WHEREOF, the respective parties hereto have affixed their hands and seals the day and year aforesaid.

FOR THE COUNTY:

{Seal}

By: _____
(President - Sussex County Council)
_____ (DATE)

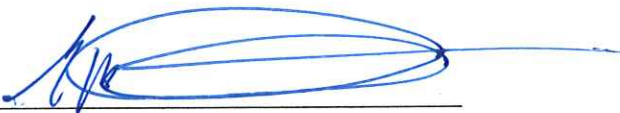
ATTEST:

Robin A. Griffith
Clerk of the County Council

FOR OCEAN VIEW BREWING COMPANY, LLC

By: Brenton Archut (Seal)
Brenton Archut - Authorized Signatory
_____ (DATE)

WITNESS:



EXISTING WASTEWATER INFRASTRUCTURE USE AGREEMENT

Newdale Acres (Additional Parcels) IUA-933

THIS AGREEMENT ("Agreement"), made this 24th day of September 2021, by and between:

SUSSEX COUNTY, a political subdivision of the State of Delaware, hereinafter called the "County," and;

LIBORIO ELLENDALE, LLC a Delaware Limited Liability Company, and developer of a project known as Newdale Acres, hereinafter called the "Developer."

WITNESSETH:

WHEREAS, Developer is developing several tracts of land identified as Tax Map parcels 230-26.00-115.00, 230-26.00-122.00, 230-31.000-33.00 & 230-31.00-31.00 to be known as Newdale Acres ("Project") and;

WHEREAS, the Project is within the boundary of the Sussex County Unified Sanitary Sewer District (Ellendale Area) and;

WHEREAS, the Project will utilize available capacity in existing wastewater infrastructure previously funded by Sussex County.

NOW THEREFORE, in consideration of the mutual covenants and conditions contained herein, which is hereby acknowledged by both parties as sufficient consideration, the parties hereby agree as follows:

- (1) Developer is proposing to utilize County's existing collection and transmission capacity by connecting to existing regional infrastructure used by multiple pump stations.
- (2) In exchange for permission to connect up to **275.00** equivalent dwelling units to County's existing system and to utilize the existing capacity in said system, Developer agrees to financial catch-up contribution in the amount of **\$282,439.00** for said existing facilities. **This is strictly for the additional units added to the previously approved project.**
- (3) The contribution amount in the case of multiple pump stations using an existing collection and transmission system is based on the ratio of average flow capacity utilization of said transmission facilities.
- (4) **Payment of the contribution must be submitted within 30 days from the time of the Town's land use approval.**

- (5) If the Project (as currently submitted) is amended and County determines in its sole discretion that such amendments materially affect this Agreement, this Agreement may be declared by County to be null and void, and any unused payments made pursuant to this Agreement shall be returned to Developer, unless the parties otherwise agree. Nothing herein shall prevent the parties from the negotiation of a new agreement with respect to the amended Project, as the parties may deem appropriate.
- (6) The contribution is to be placed in County's sewer capital fund and expended towards overall debt reduction or at such time when any transmission infrastructure in County's Unified Sanitary Sewer District requires capital improvements (See Chapter 110-96 of the Sussex County Code).
- (7) Developer shall be responsible for payment of any and all undiscounted system connection charges in accordance with and pursuant to the requirements of the *Sussex County Code* for all lots, due at such time the Developer receives the sewer connection permit.
- (8) Developer shall comply in all aspects with the *Sussex County Code* and any other local, state, county, or federal laws, regulations, or policies that may be applicable and as such may be hereinafter amended.
- (9) Prior to the commencement of construction of any sanitary sewer facilities for the Project, Developer shall obtain a project construction permit from the County in accordance with and pursuant to the requirements of the *Sussex County Code*.
- (10) In order to allow the opportunity for a County representative to be present as the County so chooses, Developer shall send written notice to County of the date upon which connection to the County regional transmission system will be made. Developer shall follow County's written or verbal instructions in making said connection to the County sanitary sewer system.
- (11) Developer may assign this Agreement in whole or in part to any entity controlled directly or indirectly by Developer or to any third party who purchases, leases or otherwise controls any portion of Developer's property without the consent of County. Developer, and any subsequent assignees or successors shall provide County at least ten (10) days' written notice of any such assignment. Any other assignments, transfers, or conveyances with respect to this Agreement are prohibited without prior written consent of County.
- (12) To the extent permitted by law, Developer shall indemnify and hold harmless County, and its appointed and elected officials, employees, licensees, and agents for any claims, losses, liabilities, suits, or damages, including but not limited to reasonable attorneys' fees, professional engineering fees, and any other costs of litigation, arising out of Developer's negligence in connection with its performance

of this Agreement, including but not limited to damage to the County's infrastructure in making connection to County's regional transmission system. The obligations of this Paragraph shall survive the termination of this Agreement.

- (13) All the terms, covenants, and conditions of this Agreement shall in all respects be governed and construed under and pursuant to the Laws of the State of Delaware without respect to its conflict of law provisions. This Agreement may only be amended, supplemented or modified by a subsequent written agreement executed by all the parties hereto.
- (14) This Agreement and exhibits constitute the final, entire and exclusive agreement between the parties with respect to the subject matter of all matters discussed in it and supersedes all prior or contemporaneous discussions, statements, representations, warranties or agreements, whether written or oral, made in connection with the Agreement described herein.
- (15) It is mutually agreed between the parties that no review, approval, acceptance, and/or payment made under this Agreement shall be conclusive evidence of the performance of the Agreement, either wholly or in part, and that no review, approval, acceptance, and/or payment shall be construed as acceptance of defective work by County, nor in any way relieve Developer of its responsibility for the adequacy of its work.
- (16) The waiver by any party hereto of a breach of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach. Neither party shall be deemed to have waived any rights under this Agreement unless such waiver is expressly given in writing and signed by the waiving party. No delay or omission on the part of either party in exercising any right shall operate as a waiver of such right or any other right.
- (17) This Agreement shall be executed in duplicate, any copy of which shall be considered and construed as and for the original.
- (18) If any provision of this Agreement shall be deemed invalid or unenforceable for any reason whatsoever, then such invalidity or unenforceability shall not render invalid or unenforceable any of the other provisions of this Agreement which may be given effect without such invalid or unenforceable provision, and to this end, the provisions of this Agreement are hereby deemed to be severable.
- (19) Any notice required to be delivered to or by either party under this Agreement shall be sent by U.S. first class mail. For purposes of this provision, the address of the County is 2 The Circle, P.O. Box 589, Georgetown, Delaware, 19947, and the address of the Developer is **903 North French Street, Wilmington Delaware 19801.**

IN WITNESS, WHEREOF, the respective parties hereto have affixed their hands
and seals the day and year aforesaid.

FOR THE COUNTY:

{Seal}

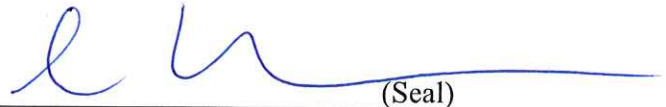
By: _____
(President - Sussex County Council)

_____ (DATE)

ATTEST:

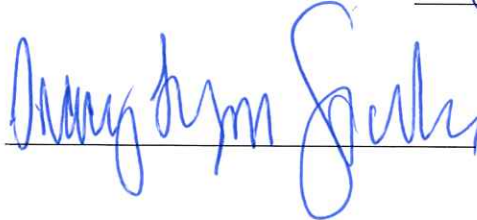
Robin A. Griffith
Clerk of the County Council

FOR LIBORIO ELLENDALE, LLC

By:  _____ (Seal)
Louis Ramunno - Authorized Signatory

9/24/2021 (DATE)

WITNESS:



EXISTING WASTEWATER INFRASTRUCTURE USE AGREEMENT

SUSSEX CONSORTIUM SCHOOL – REVISED IUA-1070

THIS AGREEMENT (“Agreement”), made this 30th day of August 2021, by and between:

SUSSEX COUNTY, a political subdivision of the State of Delaware, hereinafter called the “County,” and;

CAPE HENLOPEN SCHOOL DISTRICT, a school district of the state of Delaware, hereinafter called the “School” and;

WITNESSETH:

WHEREAS, the School is developing a tract of land identified as Tax Map parcel 235-27.00-20.00 to be known as The Sussex Consortium School;

WHEREAS, the parcel was not identified in the County’s Primary Service Area sewer capacity was not allocated for the parcel and;

WHEREAS, the parcel was contiguous to the Sussex County Unified Sanitary Sewer District boundary and recently annexed into the district and;

WHEREAS, the Project will utilize available capacity in existing wastewater infrastructure previously funded by Sussex County.

NOW THEREFORE, in consideration of the mutual covenants and conditions contained herein, which is hereby acknowledged by both parties as sufficient consideration, the parties hereby agree as follows:

- (1) The School is proposing to utilize County’s existing infrastructure capacity by connecting to an existing regional pipeline used by multiple pump stations.
- (2) In exchange for permission to connect an additional **13.14** equivalent dwelling units to County’s existing transmission system and to utilize the existing capacity in said system, Developer agrees to a financial catch-up contribution towards the debt service of said transmission facilities in the amount of **\$12,455.00**.
- (3) The contribution amount in the case of multiple pump stations using an existing transmission system is based on the ratio of average flow capacity utilization of said transmission facilities.
- (4) **Payment of the contribution is required at the time of execution of this agreement.**

- (5) If the Project (as currently approved) is amended and County determines in its sole discretion that such amendments materially affect this Agreement, this Agreement may be declared by County to be null and void, and any unused payments made pursuant to this Agreement shall be returned to Developer, unless the parties otherwise agree. Nothing herein shall prevent the parties from the negotiation of a new agreement with respect to the amended Project, as the parties may deem appropriate.
- (6) The contribution is to be placed in County's sewer capital fund and expended at such time when any transmission infrastructure in County's Unified Sanitary Sewer District requires upgrades or replacement.
- (7) Developer shall be responsible for payment of any and all undiscounted system connection charges in accordance with and pursuant to the requirements of Sections 110-90 and 110-91 of the *Sussex County Code* for all lots, due at such time the Developer receives the sewer connection permit.
- (8) Developer shall comply in all aspects with the *Sussex County Code* and any other local, state, county, or federal laws, regulations, or policies that may be applicable and as such may be hereinafter amended.
- (9) Prior to the commencement of construction of any sanitary sewer facilities for the Project, Developer shall obtain a project construction permit from the County in accordance with and pursuant to the requirements of Section 110-84 of the *Sussex County Code*.
- (10) In order to allow the opportunity for a County representative to be present as the County so chooses, Developer shall send written notice to County of the date upon which connection to the County regional transmission system will be made. Developer shall follow County's written or verbal instructions in making said connection to the County sanitary sewer system.
- (11) Developer may assign this Agreement in whole or in part to any entity controlled directly or indirectly by Developer or to any third party who purchases, leases or otherwise controls any portion of Developer's property without the consent of County. Developer, and any subsequent assignees or successors shall provide County at least ten (10) days' written notice of any such assignment. Any other assignments, transfers, or conveyances with respect to this Agreement are prohibited without prior written consent of County.
- (12) To the extent permitted by law, Developer shall indemnify and hold harmless County, and its appointed and elected officials, employees, licensees, and agents for any claims, losses, liabilities, suits, or damages, including but not limited to reasonable attorneys' fees, professional engineering fees, and any other costs of

litigation, arising out of Developer's negligence in connection with its performance of this Agreement, including but not limited to damage to the County's infrastructure in making connection to County's regional transmission system. The obligations of this Paragraph shall survive the termination of this Agreement.

- (13) All the terms, covenants, and conditions of this Agreement shall in all respects be governed and construed under and pursuant to the Laws of the State of Delaware without respect to its conflict of law provisions. This Agreement may only be amended, supplemented or modified by a subsequent written agreement executed by all the parties hereto.
- (14) This Agreement and exhibits constitute the final, entire and exclusive agreement between the parties with respect to the subject matter of all matters discussed in it and supersedes all prior or contemporaneous discussions, statements, representations, warranties or agreements, whether written or oral, made in connection with the Agreement described herein.
- (15) It is mutually agreed between the parties that no review, approval, acceptance, and/or payment made under this Agreement shall be conclusive evidence of the performance of the Agreement, either wholly or in part, and that no review, approval, acceptance, and/or payment shall be construed as acceptance of defective work by County, nor in any way relieve Developer of its responsibility for the adequacy of its work.
- (16) The waiver by any party hereto of a breach of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach. Neither party shall be deemed to have waived any rights under this Agreement unless such waiver is expressly given in writing and signed by the waiving party. No delay or omission on the part of either party in exercising any right shall operate as a waiver of such right or any other right.
- (17) This Agreement shall be executed in duplicate, any copy of which shall be considered and construed as and for the original.
- (18) If any provision of this Agreement shall be deemed invalid or unenforceable for any reason whatsoever, then such invalidity or unenforceability shall not render invalid or unenforceable any of the other provisions of this Agreement which may be given effect without such invalid or unenforceable provision, and to this end, the provisions of this Agreement are hereby deemed to be severable.
- (19) Any notice required to be delivered to or by either party under this Agreement shall be sent by U.S. first class mail. For purposes of this provision, the address of the County is 2 The Circle, P.O. Box 589, Georgetown, Delaware, 19947, and the address of the Cape Henlopen School District 1270 Kings Highway Lewes DE 19958.

IN WITNESS, WHEREOF, the respective parties hereto have affixed their hands
and seals the day and year aforesaid.

FOR THE COUNTY:

{Seal}

By: _____
(President - Sussex County Council)

_____ (DATE)

ATTEST:

Robin A. Griffith
Clerk of the County Council

APPROVAL TO FORM: _____
Assistant County Attorney

FOR CAPE HENLOPEN SCHOOL DISTRICT

By: Cheyan (Seal)

8/30/21 (DATE)

WITNESS: Kimberly A. Wooding

ENGINEERING DEPARTMENT

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



Sussex County

DELAWARE
sussexcountye.gov

HANS M. MEDLARZ, P.E.
COUNTY ENGINEER

Memorandum

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

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

RE: ***Mulberry Knoll Sewer Collection System, Project S20-22***
A. Recommendation to Reject and Rebid

DATE: October 12, 2021

Council adopted Resolution R 011 17 on June 6, 2017, expanding the Unified Sanitary Sewer District to include the Mulberry Knoll Area. On August 13, 2019, Council conducted a public hearing for an offer of Project funding through the Clean Water State Revolving Fund. Ordinance No. 2672 was adopted, providing issuance of a General Obligation Bond up to \$3,135,379 for design, construction and equipping of the Project, with an expectation of principal forgiveness up to \$1,941,000 reducing the principle amount to \$1,194,379 upon completion.

On October 22, 2019, Council authorized Amendment No. 2 of the KCI Technologies (KCI) Base Agreement for design and bidding phase services associated with the Mulberry Knoll Sewer Expansion Project. Design efforts progressed and based on Department direction, KCI separated the Project into two (2) distinct contracts to focus construction disciplines and improve Project timing and bidding: Project S20-14 would construct a pump station and force main for sewer conveyance, and Project S20-22 the gravity and low pressure systems for sewer collection.

Contract Documents for Project S20-14, Mulberry Knoll Pump Station & Force Main were assembled and advertised on September 25, 2020. Seven (7) bids were received. On November 17, 2020, Council award Project S20-14 to the lowest responsible bidder, Teal Construction Inc, of Dover, DE, contingent upon concurrence of DNREC to ensure the State's commitment to the overall project financing. On March 26, 2021, DNREC notified the Department there was no objection to proceeding with the construction of the Mulberry Knoll Pump Station and Force Main Project with the understanding a supplemental funding request would have DNREC's support when necessary.

Contract Documents for Project S20-22, Mulberry Knoll Collection System were assembled by KCI and advertised on August 20, 2021. Seven (7) bids were received and read aloud on September 23, 2021, and summarized as follows:



R.E. Pierson	Pilesgrove, NJ	\$ 2,205,607.50
Teal Construction Inc.	Dover, DE	\$ 2,998,998.00
Eastern States Construction	Wilmington, DE	\$ 3,475,775.00
A-Del	Newark, DE	\$ 3,561,500.00
Pact One.	Ringoes, NJ	\$ 3,749,050.00
J.J.I.D. Inc.	Bear, DE	\$ 4,135,000.00
JOAO	Bethlehem, PA	\$ 4,664,300.00

The Department initiated a review of the bids received and requested KCI to perform a bid evaluation, noting that the low bidder appeared to provide a response without acknowledging Addendum #1 of the bidding documents. The apparent low bid cannot be compared due to changes made to the bid tabulation as a result of Addendum #1. Furthermore, the second lowest bid received includes mathematical error in Bid Prices of two (2) items.

Since irregularities are involved in the two lowest bids, KCI recommended that all bids be rejected and the project re-bid. The Department concurs with this recommendation. Prior to readvertising, the Department will coordinate with KCI to assimilate the details of Addendum #1 into contract documents along with other minor clarifications for rebidding.

The Engineering Department recommends Council reject all bids received for Project S20-22 and authorize a rebid immediately.



ISO 9001:2015 CERTIFIED

ENGINEERS • PLANNERS • SCIENTISTS • CONSTRUCTION MANAGERS

1352 Marrows Road, Suite 100 • Newark, DE 19711 • Phone 302-731-9176 • Fax 302-731-7807

September 28, 2021

Mr. Patrick Brown, Project Engineer
Sussex County
2 The Circle
Georgetown, DE 19947

**RE: Mulberry Knoll Sewer Collection System – Bid Evaluation and Recommendation
Sussex County Project No. S20-22**

Dear Mr. Brown:

KCI has reviewed the bid packages provided by the County for the subject project and we are providing the following evaluation and recommendation.

Summary of Bids:

A total of seven bids were submitted and are listed below, from the lowest to the highest bids. R.E. Pierson (Pierson) is the lowest bidder with a bid amount of \$2,205,607.50.

<u>Contractor</u>	<u>Based Bid Amount</u>
R.E. Pierson	\$2,205,607.50*
Teal Construction	\$2,998,998.00*
Eastern States	\$3,475,775.00
A-Del Construction Co, Inc.	\$3,561,500.00
Pact One	\$3,749,050.00
JJID, Inc.	\$4,135,000.00
JOAO	\$4,664,300.00

*Indicates irregularities were identified during the bid analysis.

Analysis of Bids & Recommendation:

KCI reviewed the two lowest bids to check for bid responsiveness as potential issues were already noted by the County. The low bidder, Pierson, did not acknowledge receipt of Addendum #1 and did not utilize the revised bid form included in the addendum. Therefore, the bid cannot be compared to the rest as Bid Item #5 was changed to a linear foot-based item, Bid Item #26 was added as a contingency item, and Bid Item #27 was added as a deduct item.

The second lowest bid was from Teal Construction, however there were math errors on the submitted bid form. The Bid Price for Bid Items #7 and #8 were not calculated correctly as they were not multiplied by the quantity. The Subtotal of the base bid items and the Base Bid total reflect the correct calculation.

Employee-Owned Since 1988

Due to the above irregularities, it was determined that a bid tab and additional analysis would not be required. KCI recommends that the County reject the submitted bids and re-bid the project given the multiple irregularities involving the two lowest bids.

If you have any questions with regards to our recommendation, please do not hesitate to contact us at 302-318-1070.

Sincerely Yours,
KCI Technologies, Inc.

A handwritten signature in blue ink, appearing to read 'Ryan Flickinger', with a stylized flourish at the end.

Ryan Flickinger, P.E.
Project Manager

ENGINEERING DEPARTMENT

HANS M. MEDLARZ
COUNTY ENGINEER

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

hans.medlarz@sussexcountysde.gov



Sussex County

DELAWARE
sussexcountysde.gov

Memorandum

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

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

RE: ***South Coastal WRF Treatment Process Upgrade No.3 &
Rehoboth Beach WTP Capital Improvement Program, Phase 2
A. Electrical Construction, Project C19-17, Change Order No. 11 & 12***

DATE: October 12, 2021

In summary, the South Coastal WRF Treatment Process Upgrade No.3 encompasses the following components and statuses:

- a. Effluent Forcemain Relocation/Replacement; Completed in 2019.
- b. Influent Forcemain Consolidation; Completed in May of 2020.
- c. Drainage Network Rerouting;
County Council awarded standalone Change Order Request 554-001 to Ronca & Sons, Inc. in the amount of \$104,592.96 on March 10, 2020 after a favorable cost comparison with General Labor & Equipment Contract. The construction was completed in July 2020.
- d. General Construction Project C19-11; awarded on December 17, 2019 to M.F. Ronca & Sons, Inc.

On March 10, 2020 Council awarded Change Order No.1 in the net amount of \$97,294.31 for deletion of the record drawing requirement and the modification of the RBWTF influent forcemains.

On May 12, 2020 Council authorized credit Change Order No. 2 in the amount of (\$12,705.00) eliminating an explosion proof motor requirement.



On July 28, 2020 Council approved credit Change Order No. 3 in the combined amount (\$9,764.30) for use of surplus materials projects.

Change Order No.4 in the amount of \$871,000.00 for the repairs of partial failures at the two City of Rehoboth's wastewater treatment plant oxidation ditch systems was also approved on July 28, 2020. In May of 2021 M.F. Ronca & Sons, Inc. completed the work and the County increased the flow contribution to the City's plant.

On December 15, 2020 County Council approved Change Order No. 6 for steel framing repairs in the first oxidation ditch on a time & material basis up to \$10,500.00. This is in addition to the concrete repairs which are being conducted per the awarded contingent unit price schedules.

The County initiated RFP-019 addressing modifications to the interior headworks piping and RFP-023 covering the addition of a cross connection between the existing 14-inch process drain header for Aeration Tank Nos. 1-4 and the new header for the Aeration Tank Nos. 5-8. On September 22, 2020 Council approved Change Order No.5 in the combined amount of \$32,991.66.

GHD issued RFP-031 for the installation of plug valves on each of the 12-inch recycle influent pipes to be connected to the existing Aeration Tank Nos. 1-4 and to the new Aeration Tank Nos. 7-8. On December 15, 2020, Council approved Change Order No. 7 for \$31,974.51.

The new South Coastal aeration basin must be connected to the existing large diameter sludge return piping requiring a forward flow stoppage. Minimizing the joint risk M. F. Ronca proposed a line stop approach under Change Order No. 8. Since it also gained construction efficiency, they offered to only charge for the subcontractor work.

In the spring of 2021, the Rehoboth Beach WTP oxidation ditch rehabilitation was receiving expansive attention including:

- Contingent Unit Price Concrete Repairs, Bid Items F-19 & F-20
- Steel Repairs authorized under Change Order No. 6
- Steel Coatings authorized as part of Change Order No. 4

In addition, all of the leaking expansion joints have been repaired under a time & material approach. On March 9, 2021 County Council approved Change Order Nos. 8 and 9 in the respective amounts of \$34,765.50 and \$45,600.00.

Only one of the two headworks influent pipes has a shut off valve. Under RFP-036 we requested another 20" valve in the second vertical influent pipe. Two of the existing headworks slide gates were

compromised in need of replacement. RFP- 034 covers the replacement of the gates. On May 25, 2021, Council approved Change Order No. 10 in the aggregate amount of \$34,160.64.

The County initiated RFP-039 addressing modifications to slide gates WG-530 and WG-539 to avoid conflict with the new air piping. In addition, it was discovered during the rehabilitation work in the grit tanks, that the existing influent chutes to the stacked tray grit removal systems were significantly compromised. On June 22, 2021, Council approved Change Order No. 11 in the aggregate amount of \$59,557.16.

The design team initiated RFP-038 for exhaust duct modifications associated with the new turbo blowers. The headworks cross channel is lower, and the existing channels have steps incorporated, which differed from the available as built information. RFP-041 proposed to construct the Screen Channel No. 3 at the same elevation incorporating modifications to the proposed Screen SCN-103. On July 13, 2021, Council approved Change Order No. 12 to M.F. Ronca & Sons in the amount of \$14,700.07.

The contract as bid includes concrete repairs to the City's headworks and influent splitter box. With the structures in question now by-passed and accessible the full extent of the damage is evident requiring an alternative approach to the refurbishment as detailed in RFP-037.

In summary, the newly revealed site conditions required the full demolition of the upper level of the headworks as well as the channel between it and the splitter box. This meant all the associated gates and plating had to be replaced. Michael F. Ronca & Sons, Inc. proposed to perform the modifications for \$1,043,243.92.

GHD, the City Engineer and the County Engineer supported the approach. This change order was within budget of the City's financing arrangements previously approved by the City and County's elected officials. On August 10, 2021, Council approved Change Order No. 13 to M.F. Ronca & Sons in the amount of \$1,043,243.92.

- e. **Electrical Construction Project C19-17**; awarded on December 17, 2019 to BW Electric, Inc.

On February 4, 2020 Council awarded Change Order No.1 in the credit amount of (\$759,374.80) mostly for changes to the conduit materials. A second credit change order was approved on March 10, 2020 in the amount of (\$6,800.00) for ductbank modifications.

On April 7, 2020 Council approved Change Order No.3 in the not to exceed amount of \$235,637.33 for DP&L requested changes to the utility power service entrance location at the RBWTP.

On May 12, 2020 Council authorized Change Order No.4 in the amount of \$11,350.00 for reconstruction of the original electrical equipment in South Coastal's sludge handling building electrical room accommodating a longer motor control center.

On July 28, 2020 Council approved Change Order No.5 in the combined amount of \$37,830.00 for the removal of an existing electrical handhole and duct bank and the modification of the duct bank between the DP&L utility switching pedestal and the transformer.

On September 22, 2020 Council approved Change Order No.6 in the amount of \$16,550.00 for the change of the sewer service for the Return Sludge Building No. 2 from a gravity drain to a pumped approach.

On September 22, 2020 Council approved Change Order No. 7 in the not to exceed amount of \$307,300.00 for the City of Rehoboth's oxidation ditch complete electrical equipment replacement. This change order had an allowance for sensor replacements which proved too low and required an increase of \$6,582.80. Council approved the modification to Change Order No. 7 on November 10, 2020.

On November 10, 2020 Council also approved Change Order No. 8 in the aggregate amount of \$2,249.00 covering RFP-027, RFP-028, RFP-029 & RFP-030 after GHD concluded that RFP-029 could be rescinded in its entirety. Therefore, the scope of work in the Sludge Building reverts to the Drawings, as modified by Change Order No. 4 associated with RFP-016.

On December 15, 2020, Council approved the modification reducing Change Order No. 8 by \$9,040.00 for a modified net total credit of (\$6,791.00).

On February 9, 2021 Council approved Change Order No. 9 in the aggregate amount of \$30,554.00 covering RFPs-032 & 033. The first RFP provided upsized control panels, conduit and conductors associated with the two (2) Jet Mixing Pump VFDs while the second dealt with a modified temporary electrical feeder arrangement and a redirection of the medium voltage loop.

Under RFP- 035 the Environmental Services team requested waterproof convenience receptacles the return sludge building's pump room while under RPP-040 they requested additional site lighting in the area of the generator and blower buildings. On August 10, 2021, Council approved Change Order No. 10 in the aggregate amount of \$7,320.00.

The City initiated RFPs-042 & 44 in the respective amounts of \$20,055.67 and \$27,273.03. The first one replaces the deteriorated pull box at building B-10 with a stainless steel one and provides temporary power during installation. The second one addresses modifications to the garage feeder after an unknown electrical structure was discovered. The Engineering Department and the City Engineer recommend Council's approval of Change Order No. 11 in the aggregate amount of \$47,328.70.

The Environmental Services team initiated RFP-045 for modification to the aeration basin lighting. It modifies some light locations and reduces the light pole height for the remaining interior poles out of operational safety concerns. The Engineering Department recommends Council's approval of Change Order No. 12 in the amount of \$4,779.38.

- f. Mobile Belt Filter Press; awarded on January 7, 2020 Council to Kershner Environmental Technologies. The unit has been deployed at the Inland Bays RWF, Lewes Board of Public Works and Rehoboth Beach's WTP reducing legacy solids accumulations.
- g. DP&L expenses; on February 4, 2020 Council approved the electric utility service relocation contract.
- h. The Rehoboth Beach WTP was built on a municipal landfill and the design anticipated removal. Council approved a stand-alone purchase order to Melvin L. Joseph Construction Company, Inc. for material hauling & screening on July 14, 2020. The work is complete, and the screening was effective reducing the cost by over 60%.

The updated expenses associated with the South Coastal WRF Treatment Process Upgrade No.3 & Rehoboth Beach WTP Capital Improvement Program; Phase 2 are summarized in the attached spreadsheet.



**SUSSEX COUNTY
CHANGE ORDER REQUEST**

A. ADMINISTRATIVE:

1. Project Name: **SCRWF Treatment Process Upgrade No. 3 & RBWTP Capital Improvement Program, Phase 2 – Electrical Construction**
2. Sussex County Project No. C19-17
3. Change Order No. 11
4. Date Change Order Initiated - 10/12/21
5.
 - a. Original Contract Sum \$22,178,674.00
 - b. Net Change by Previous Change Orders (\$355,479.00)
 - c. Contract Sum Prior to Change Order \$21,823,195.00
 - d. Requested Change \$ 47,328.70
 - e. Net Change (No. of days)
 - f. New Contract Amount \$21,870,523.70
6. Contact Person: Hans Medlarz, P.E.
Telephone No. (302) 855-7718

B. REASON FOR CHANGE ORDER (CHECK ONE)

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

— 6. Factors Affecting Time of Completion

— 7. Other (explain below):

C. BRIEF DESCRIPTION OF CHANGE ORDER:


Replacement of deteriorated pull box at the RBWWTP and modifications to the garage feeder due to an unknown electrical structure.

D. JUSTIFICATION FOR CHANGE ORDER INCLUDED?

Yes X No

E. APPROVALS

1. B.W. Electric, Inc., Contractor

 10.7.2021
Signature Date

Bryon S. Warren
Representative's Name in Block Letters

2. Sussex County Engineer

 10/7/21
Signature Date

3. Sussex County Council President

Signature Date



Request for Proposal

Project Title	SCRWF Upgrade No. 3 & RBWWTP CIP Upgrade Phase 2		
Owner	Sussex County, Delaware		
Contract No.	C19-17: Electrical Construction	GHD Project No.	11121182
Contractor is requested to provide a Change Proposal for the following proposed modifications to the Work. This request alone neither directs nor approves any change to the Work nor any adjustments to the Contract Price or Contract Times. Contractor's proposal shall be submitted to Engineer for review and shall adhere to all requirements of the Contract Documents. If found acceptable to Owner and Engineer, Contractor's Change Proposal will be incorporated into the Work via Change Order.			
RFP No.	042		
RFP Subject	RBWWTP B-10 Pull Box Replacement		
Issued By	D. Murray	Issue Date	Aug. 10, 2021

Description of proposed changes:

Contractor is requested to submit a proposal to replace the corroded junction box at Building B-10 that is the subject of RFI-66. Replace the box with a NEMA 4X SS box of similar size. Replace #12 and twisted pair conductors routed through the box from Chlorine Contact Tanks with specified conductors. Replace multiconductor cable in kind. Coordinate any required shutdowns with the City.

GHD

16701 Melford Boulevard Suite 330 Bowie Maryland 20715 USA
T 240 206 6810 F 240 206 6811 W www.ghd.com

N:\US\Bowie\Projects\111\11121182 South Coastal Expansion\TECH\Construction\Work Changes\Request for Proposals\RFP-042 RBWWTP B-10 Pull Box Replacement\RFP-042 RBWWTP B-10 Pull Box Replacement.docx

REGISTERED COMPANY FOR
ISO 9001
ENGINEERING DESIGN



15342 S. DuPont Hwy
Harrington DE 19952

Bryon Warren
President
302-270-5719

Office: 302.566.6248
Fax: 302.566.6251

Email(s):
office@bwelectricinc.com
estimates@bwelectricinc.com

September 29, 2021

Subject: SCRWF Upgrade No. 3 & RBWWTP CIP Upgrade Phase 2 RFP No. 42

Dear Mr. Medlarz,

Our price to perform the electrical work associated with the above project is based on RFP No. 42. Our price does not include the use of Prevailing Wages. Our price is **\$20,055.67** and includes the following:

Description of proposed changes:

Contactor is requested to submit a proposal to replace the corroded junction box at Building B-10 that is the subject of RFI-66. Replace the box with a NEMA 4X SS box of similar size(60"W x 36"H x 12"D). Install temporary wiring so that box may be removed. Replace #12 and twisted pair conductors routed through the box from Chlorine Contact Tanks with specified conductors. Replace multi conductor cable in kind. Coordinate any required shutdowns with the City.

If this RFP is accepted, we are requesting 6 days be added to the contract.

Exclusions

1. No permit fees.
2. No cutting.
3. No patching or painting.
4. No liquidated damages.

This price is good for thirty (30) days only.

Sincerely,

Jason R. Walters
B. W. Electric, Inc.
Superintendent
JRW/

#SCRWF Upgrade No.3 and RBWWTP CIP Upgrade Phase 2 : RFP No. 042

Totals (Summary) - Bid Summary: Default

Material	
Non-Quoted	\$7,303.15
Quotes	0.00
Sales Tax (0.00%)	0.00
Total Material	\$7,303.15
Labor	
Direct (148.27 hours @ \$65.00)	\$9,637.55
Non-Productive Labor	0.00
Total Labor (148.27 hours)	\$9,637.55
Direct Job Expenses	\$0.00
Tools and Miscellaneous Materials	0.00
Subcontracts	0.00
Job Subtotal (Prime Cost)	\$16,940.70
Overhead (10.00%)	1,694.07
Profit (5.00%)	931.74
Job Total	\$19,566.51
Bond	489.16
Job Total with Bond	\$20,055.67
Actual Bid Price	\$20,055.67
Material to Direct Labor ratio: 0.43	
Prime Cost per square foot	\$0.00
Job Total per square foot	\$0.00
Actual Bid Price per square ft	\$0.00
Labor cost per square foot	\$0.00
Labor hours per square foot	0.00
Gross Profit %	15.53
Gross Profit \$	\$3,114.97
Net Profit %	7.08



Request for Proposal

Project Title	SCRWF Upgrade No. 3 & RBWWTP CIP Upgrade Phase 2		
Owner	Sussex County, Delaware		
Contract No.	C19-17: Electrical Construction	GHD Project No.	11121182
Contractor is requested to provide a Change Proposal for the following proposed modifications to the Work. This request alone neither directs nor approves any change to the Work nor any adjustments to the Contract Price or Contract Times. Contractor's proposal shall be submitted to Engineer for review and shall adhere to all requirements of the Contract Documents. If found acceptable to Owner and Engineer, Contractor's Change Proposal will be incorporated into the Work via Change Order.			
RFP No.	044		
RFP Subject	RBWWTP Garage Feeder		
Issued By	D. Murray	Issue Date	Aug. 23, 2021

Description of proposed changes:

Contractor is requested to submit a proposal for the following changes to the Garage feeder:

1. Demolish unknown structure referenced on page 2/5 of RFI-068 and duct bank from structure to Garage.
2. Provide new duct bank with 2-2" conduits from where unknown structure was removed to Garage.
3. Demolish 4 conduits and pull box on garage wall shown in same photo on page 2/5 of RFI-068.
4. Provide 2-2" conduits from duct bank stub-up to new NEMA 4X SS pull box to replace the demolished box. Provide expansion fitting that allows 4" linear expansion in each conduit.
5. Change feeder conductors for garage to 3-#4/0, 1-#4N, 1-#4G type XHHW conductors.
6. Provide credit for Garage feeder conductors included in Contract or turn over to the City.
7. Update change in conductor size for Final Power Study report.



15342 S. DuPont Hwy
Harrington DE 19952

Office: 302.566.6248
Fax: 302.566.6251

Bryon Warren
President
302-270-5719

Email(s):
office@bwelectricinc.com
estimates@bwelectricinc.com

September 29, 2021

Subject: SCRWF Upgrade No. 3 & RBWWTP CIP Upgrade Phase 2 RFP No. 44

Dear Mr. Medlarz,

Our price to perform the electrical work associated with the above project is based on RFP No. 44. Our price does not include the use of Prevailing Wages. Our price is **\$27,273.03** and includes the following:

Description of proposed changes:

Contractor is requested to submit a proposal for the following changes to the Garage feeder:

1. Demolish unknown structure referenced on page 2/5 of RFI-068 and duct bank from structure to Garage.
2. Provide new duct bank with 2-2" conduits from where unknown structure was removed to Garage.
3. Demolish 4 conduits and pull box on garage wall shown in same photo on page 2/5 of RFI-068.
4. Provide 2-2" conduits from duct bank stub-up to new NEMA 4X SS pull box to replace the demolished box.

Provide expansion fitting that allows 4" linear expansion in each conduit.

5. Change feeder conductors for garage to 3-#4/0, 1-#4N, 1-#4G type XHHW conductors.
6. Provide credit for Garage feeder conductors included in Contract or turn over to the City.
7. Update change in conductor size for Final Power Study report.

If this RFP is accepted, we are requesting 6 days be added to the contract.

Exclusions

1. No permit fees.
2. No cutting.
3. No patching or painting.
4. No liquidated damages.

This price is good for thirty (30) days only.

Sincerely,

Jason R. Walters
B. W. Electric, Inc.
Superintendent
JRW/

#SCRWF Upgrade No.3 and RBWWTP CIP Upgrade Phase 2 : RFP No. 044

Totals (Summary) - Bid Summary: Default

Material	
Non-Quoted	\$13,758.98
Quotes	0.00
Sales Tax (0.00%)	0.00
Total Material	\$13,758.98
Labor	
Direct (142.74 hours @ \$65.00)	\$9,278.10
Non-Productive Labor	0.00
Total Labor (142.74 hours)	\$9,278.10
Direct Job Expenses	\$0.00
Tools and Miscellaneous Materials	0.00
Subcontracts	0.00
Job Subtotal (Prime Cost)	\$23,037.08
Overhead (10.00%)	2,303.71
Profit (5.00%)	1,267.04
Job Total	\$26,607.83
Bond	665.20
Job Total with Bond	\$27,273.03
Actual Bid Price	\$27,273.03
Material to Direct Labor ratio: 0.60	
Prime Cost per square foot	\$0.00
Job Total per square foot	\$0.00
Actual Bid Price per square ft	\$0.00
Labor cost per square foot	\$0.00
Labor hours per square foot	0.00
Gross Profit %	15.53
Gross Profit \$	\$4,235.95
Net Profit %	7.08



**SUSSEX COUNTY
CHANGE ORDER REQUEST**

A. ADMINISTRATIVE:

1. Project Name: **SCRWF Treatment Process Upgrade No. 3 & RBWTP Capital Improvement Program, Phase 2 – Electrical Construction**
2. Sussex County Project No. C19-17
3. Change Order No. 12
4. Date Change Order Initiated - 10/12/21
5.
 - a. Original Contract Sum \$22,178,674.00
 - b. Net Change by Previous Change Orders (\$308,150.30)
 - c. Contract Sum Prior to Change Order \$21,870,523.70
 - d. Requested Change \$ 4,779.38
 - e. Net Change (No. of days)
 - f. New Contract Amount \$21,875,303.08
6. Contact Person: Hans Medlarz, P.E.
Telephone No. (302) 855-7718

B. REASON FOR CHANGE ORDER (CHECK ONE)

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

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

C. **BRIEF DESCRIPTION OF CHANGE ORDER:**
Modification to the aeration basin lighting at SCRWF.

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

Yes X No

E. **APPROVALS**

1. B.W. Electric, Inc., Contractor

Signature

Date

Bryon S. Warren
Representative's Name in Block Letters

10.7.2021

2. Sussex County Engineer

Signature

Date

3. Sussex County Council President

Signature

Date



Request for Proposal

Project Title	SCRWF Upgrade No. 3 & RBWWTP CIP Upgrade Phase 2		
Owner	Sussex County, Delaware		
Contract No.	C19-17: Electrical Construction	GHD Project No.	11121182
Contractor is requested to provide a Change Proposal for the following proposed modifications to the Work. This request alone neither directs nor approves any change to the Work nor any adjustments to the Contract Price or Contract Times. Contractor's proposal shall be submitted to Engineer for review and shall adhere to all requirements of the Contract Documents. If found acceptable to Owner and Engineer, Contractor's Change Proposal will be incorporated into the Work via Change Order.			
RFP No.	045		
RFP Subject	R1 Light Poles & Aeration Tank Nos. 5-8 Lighting		
Issued By	S. Clark	Issue Date	Sep. 15, 2021

Description of proposed changes:

The R1 light fixtures shall be 10' height per the original design intent. Cut the R1 poles to height, paint the cut surfaces, and apply touch up paint on the exterior surface as required.

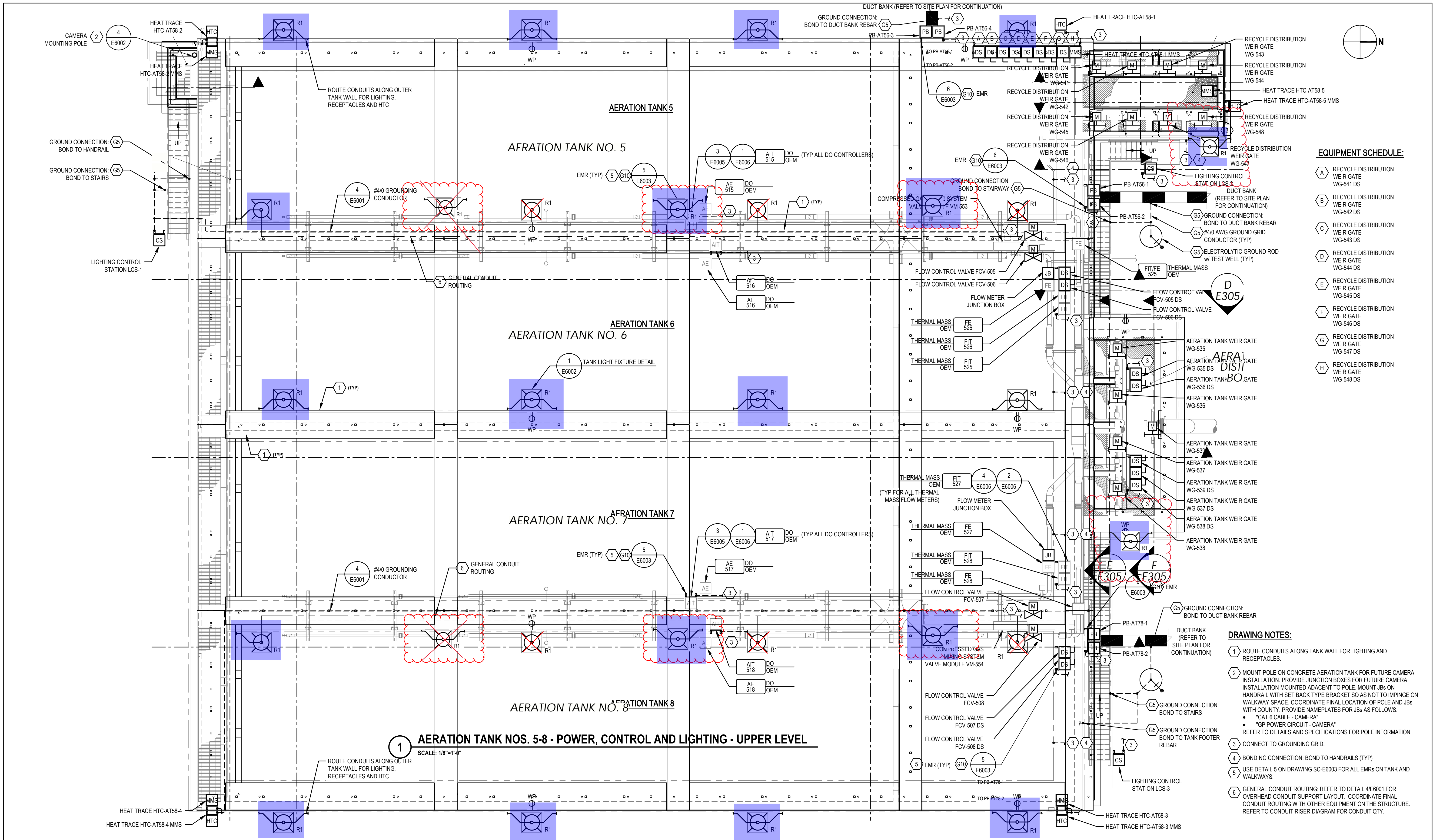
Light pole locations at the Aeration Tank Nos. 5-8 shall be as shown in the attachment. Six pole locations are revised, three each on the wall between Aeration Tank Nos. 5 & 6 and the wall between Aeration Tank Nos. 7 & 8. Four poles are moved to the northernmost structural beams as shown. Two poles are moved to the Influent Distribution Box and Recycle Distribution Box as shown.

GHD

16701 Melford Boulevard Suite 330 Bowie Maryland 20715 USA
T 240 206 6810 F 240 206 6811 W www.ghd.com

N:\US\Bowie\Projects\111\11121182 South Coastal Expansion\TECH\Construction\Work Changes\Request for Proposals\RFP-045 Aeration Tank Lighting\RFP-045 Aeration Tank Lighting.docx





A CONFORMED PER ADDENDA NOS. 1-5				LB TAY 11/2019			
0 FOR BID				SCD TAY 08/2019			
No.	Issue			Drawn	Approved	Date	

Bar is one inch on original size sheet

0 4'-0" 8'-0" 12'-0" 16'-0"

SCALE: 1/8"=1'-0" AT ORIGINAL SIZE

Reuse of Documents

This document and the ideas and designs incorporated herein, as an instrument of professional service, is the property of GHD and shall not be reused in whole or in part for any other project without GHD's written authorization.

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THOMAS A. YOUNG
LICENSE
No. 14872
DELAWARE
PROFESSIONAL ENGINEER

GHD

GHD Inc.
16701 Melford Boulevard, Suite 330
Bowie MD 20715 USA
T 1 240 206 6810 F 1 240 206 6811 W www.ghd.com

Drawn	S.DONNELLY	Designer	S.DONNELLY
Drafting Check	J. MERINO	Design Check	R. CARDINAL
Project Manager	T. YOUNG	Date	08/2019
This document shall not be used for construction unless signed and sealed for construction.		Scale	1/8" = 1'-0"

Client	SUSSEX COUNTY, DELAWARE		
Project	SCRWF NO. 3 AND RBWWTP CIP PHASE 2 UPGRADES		
Title	AERATION TANK NOS. 5-8 - POWER, CONTROL AND LIGHTING - UPPER LEVEL		
Project No.	11121182		
Original Size	ANSI D	Sheet No.	SC-E0303
Sheet	283	of	442



**15342 S. DuPont Hwy
Harrington DE 19952**

**Office: 302.566.6248
Fax: 302.566.6251**

**Bryon Warren
President
302-270-5719**

**Email(s):
office@bwelectricinc.com
estimates@bwelectricinc.com**

September 29, 2021

Subject: SCRWF Upgrade No. 3 & RBWWTP CIP Upgrade Phase 2 RFP No. 45

Dear Mr. Medlarz,

Our price to perform the electrical work associated with the above project is based on RFP No. 45. Our price does not include the use of Prevailing Wages. Our price is **\$4,779.38** and includes the following:

Description of proposed changes:

The R1 light fixtures shall be 10' height per the original design intent. Cut the R1 poles to height, paint the cut

surfaces, and apply touch up paint on the exterior surface as required.

Light pole locations at the Aeration Tank Nos. 5-8 shall be as shown in the attachment. Six pole locations are

revised, three each on the wall between Aeration Tank Nos. 5 & 6 and the wall between Aeration Tank Nos. 7 & 8.

Four poles are moved to the northernmost structural beams as shown. Two poles are moved to the Influent

Distribution Box and Recycle Distribution Box as shown.

If this RFP is accepted, we are requesting 6 days be added to the contract.

Exclusions

1. No permit fees.
2. No cutting.
3. No patching or painting.
4. No liquidated damages.

This price is good for thirty (30) days only.

Sincerely,

Jason R. Walters
B. W. Electric, Inc.
Superintendent
JRW/

#SCRWF Upgrade No.3 and RBWWTP CIP Upgrade Phase 2 : RFP No. 045

Totals (Summary) - Bid Summary: Default

Material	
Non-Quoted	\$2,188.46
Quotes	0.00
Sales Tax (0.00%)	0.00
Total Material	\$2,188.46
Labor	
Direct (28.44 hours @ \$65.00)	\$1,848.60
Non-Productive Labor	0.00
Total Labor (28.44 hours)	\$1,848.60
Direct Job Expenses	\$0.00
Tools and Miscellaneous Materials	0.00
Subcontracts	0.00
Job Subtotal (Prime Cost)	\$4,037.06
Overhead (10.00%)	403.71
Profit (5.00%)	222.04
Job Total	\$4,662.81
Bond	116.57
Job Total with Bond	\$4,779.38
Actual Bid Price	\$4,779.38
Material to Direct Labor ratio: 0.54	
Prime Cost per square foot	\$0.00
Job Total per square foot	\$0.00
Actual Bid Price per square ft	\$0.00
Labor cost per square foot	\$0.00
Labor hours per square foot	0.00
Gross Profit %	15.53
Gross Profit \$	\$742.32
Net Profit %	7.08

South Coastal RWF & Rehoboth Beach WTF Upgrade

10/7/2021

Vendor/Contract	Description	Contract Value
Michael F. Ronca & Sons, Inc.	SCRWF/RBWWTP General Construction	41,879,061.43
BW Electric Inc.	SCRWF/RBWWTP Electrical Construction	21,875,303.08
BW Electric Inc. CO#3	DP&L Service Entrance Modification Conduit System	235,637.33
BW P.O.	Soil Screening @ Rehoboth Plant	4,504.50
GHD	Amd 11 - SCRWF Expansion to 10mgd - Planning & Concept	241,938.68
	Amd 12 - SCRWF Expansion Construction Docs	2,240,280.73
	Amd 13 - Value Engineering	95,080.15
	Amd 14 - Rehoboth WTP Capital Improvement Program Upgrade Phase 2/Joint Project with SCRWF Expansion	398,410.63
	Amd 16 - Ocean Outfall Discharge Modeling & Wetlands Delineation for SCRWF and Add'l Design Services for Rehoboth WTP Capital Improvement Program	181,089.72
	Amd 18 - RBWTP CIP Upgrade Phase 2 - Add'l Design	172,153.01
	Amd 19 - SCRWF Upgrade 3 Add'l Design	108,073.71
	Amd 20 - SCRWF Upgrade 3/RBWTP Upgrade Phase 2 Construction Engineering	6,589,558.49
Core & Main	Influent FM Consolidation Materials	339,944.59
Core & Main	Effluent FM Pipeline Materials	227,603.39
Delmarva Power	Improve service entrances for both projects	175,000.00
G&L	FM Consolidation & Influent Consolidation Phase II	973,229.04
G&L Work- Effluent Relocation		316,635.20
G&L Work - RB Treatment Plant	Parking Lot Repavement	
Kershner Environmental Technologies	Belt Press	295,000.00
Melvin Joseph	Material Screening	80,000.00
DSWA	Loading, Hauling & Disposal of Debris	33,000.00
	Hauling of Rehoboth Oxidation Ditch Remnants	39,663.15
Totals		76,501,166.83

ENGINEERING DEPARTMENT

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



Sussex County

DELAWARE
sussexcountyde.gov

HANS M. MEDLARZ, P.E.
COUNTY ENGINEER

JOHN J. ASHMAN
DIRECTOR OF UTILITY PLANNING

Proposed Indian River Acres Area of the Sussex County Unified Sanitary Sewer District

PERMISSION TO POST FACT SHEET

- April 2021 the Engineering Department received a formal request from the IRAA Board Secretary for the department to establish a sewer project for all parcels known as Indian River Acres in Dagsboro Delaware.
- The County developed a petition and circulated it to all property owners in early June.
- A sufficient number of valid petitions have been received, (56) some being multiple petitions from legal voters in the same household. There are 60 residential lots in the community.
- The Engineering Department would like to request permission to prepare and post notices for a Public Hearing to establish a boundary. At this meeting the department will present a proposed boundary, explain the County Rate structure and the voting process should we move to a referendum.
- The Public Hearing on the Boundary is tentatively scheduled for November 20, 2021 at the Community Lutheran Church in Omar.
- Motion



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

Proposed Boundary Indian River Acres Area of the SCUSSD

Proposed SSD Boundary



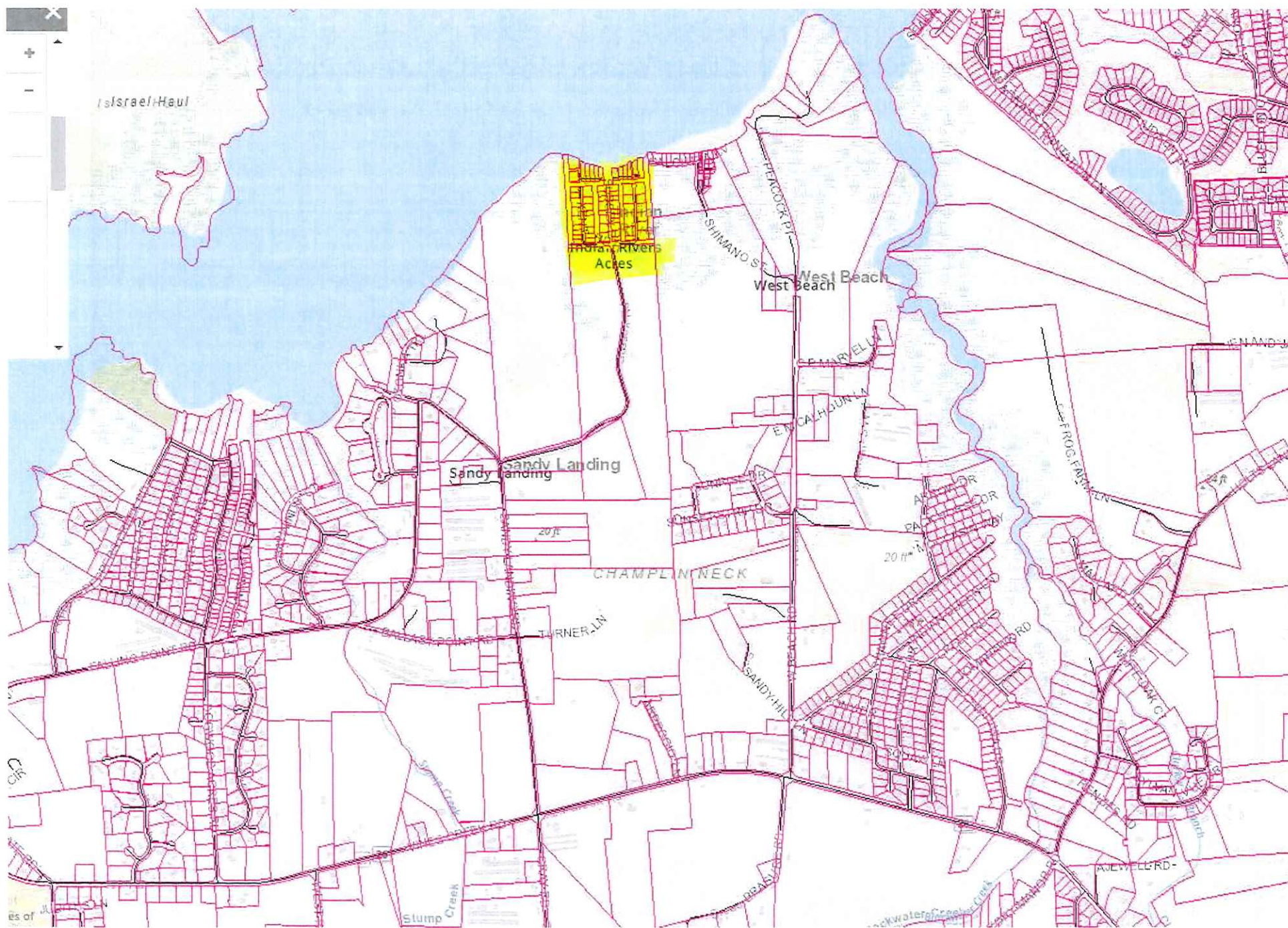
0 50 100 200
Feet



6/8/2021

INDI





ENGINEERING DEPARTMENT

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



Sussex County

DELAWARE
sussexcountype.gov

HANS M. MEDLARZ, P.E.
COUNTY ENGINEER

JOHN J. ASHMAN
DIRECTOR OF UTILITY PLANNING

Proposed Knapp Parcels Expansion of the Sussex County Unified Sanitary Sewer District

PUBLIC HEARING FACT SHEET

- County Council granted permission to prepare and post notices for an expansion of the Sussex County Unified Sanitary Sewer District (West Rehoboth Area) for several parcels identified as the Knapp Parcels.
- The Engineering Department had received a request from Davis, Bowen & Friedel, Inc. on behalf of their client Leslie Gay Knapp Marini, Successor Trustee Under Revocable Trust Agreement of Halsey G. Knapp and Joan D. Knapp .
- The parcels will be responsible for System Connection Charges of \$6,600.00 per EDU based on current rates.
- The Engineering Department posted notices on September 8, 2021 for the scheduled Public Hearing on September 28th. County Council cancelled that meeting therefore we posted a postponement notice moving the hearing until October 12, 2021.
- The meeting was also advertised in local newspaper and placed on the county website.
- To date we have had no correspondence either in support or opposition to this annexation.



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

PUBLIC NOTICE

PROPOSED KNAPP PARCELS EXPANSION OF THE SUSSEX COUNTY UNIFIED SANITARY SEWER DISTRICT (WEST REHOBOTH AREA)

NOTICE IS HEREBY GIVEN that the Sussex County Council voted on **August 24, 2021** to consider extending the boundary of the Sussex County Unified Sanitary Sewer District (SCUSSD), West Rehoboth Area, to include nine parcels on the northwesterly side of New Road, being situate in Lewes & Rehoboth Hundred, Sussex County, Delaware.

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

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

Beginning at a point, said point being on the northwesterly Right-Of-Way (ROW) of New Road, said point also being on the SCUSSD boundary, said point further being the easternmost property corner of lands Now-or-Formerly (N/F) of Schell Brothers LLC; thence proceeding by and with said ROW and SCUSSD boundary in a southwesterly direction a distance of 1,280' to a point; thence leaving said ROW and continuing by and with said SCUSSD boundary in a northwesterly direction a distance of 220' to a point, said point being on the southerly property line of Halsey G. Knapp Trustee; thence leaving said SCUSSD boundary and continuing by and with said Knapp lands in a northeasterly and southeasterly direction respectively a total distance of 1,500' to a point, said point being the **Point of Beginning**.

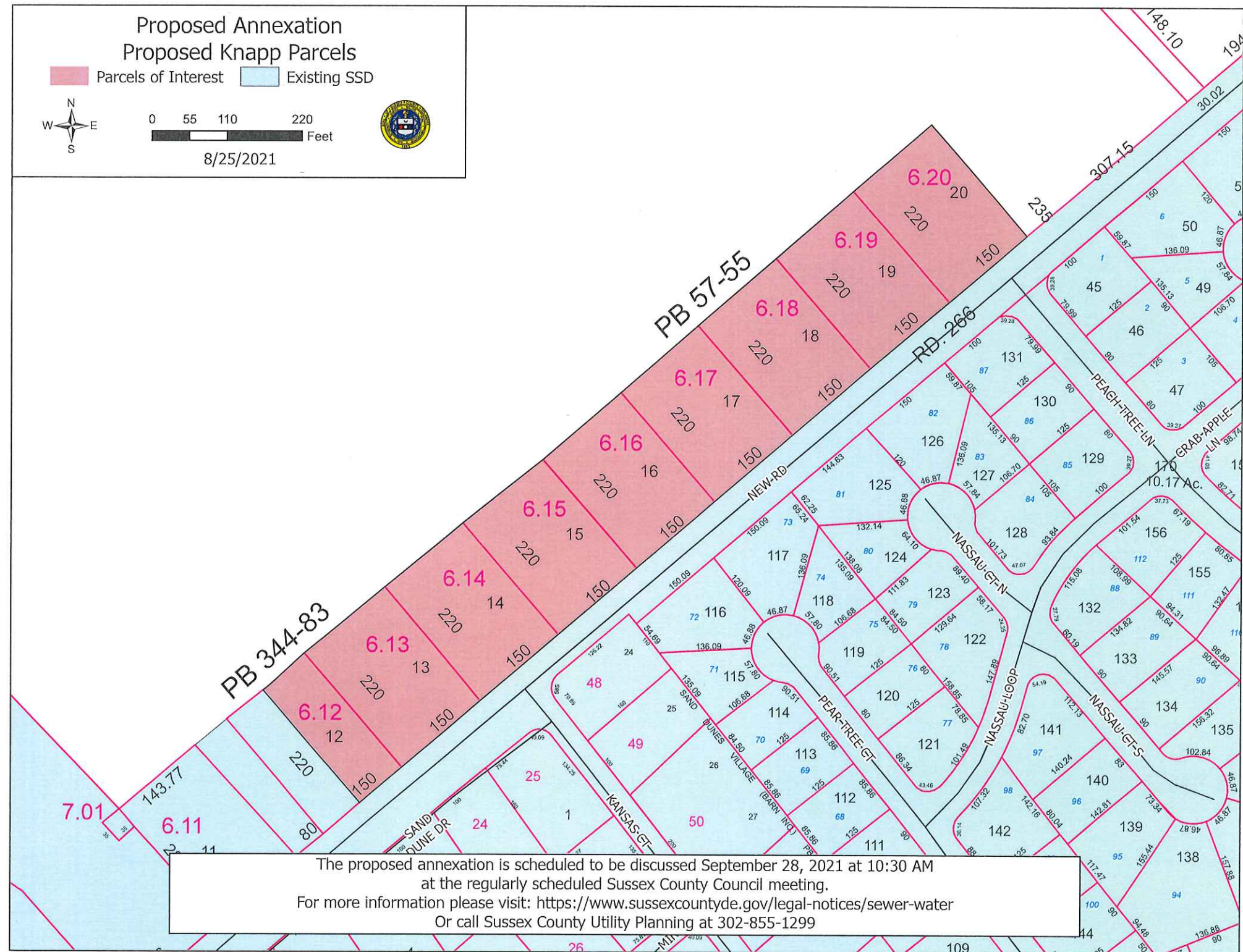
NOTE: The above description has been prepared using Sussex County Tax Map 335-7.00 and Sussex County property assessment records. The annexation contains 6.81 acres more or less.

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

The public hearing will be held on this issue at 10:30 a.m. on September 28, 2021 in the Sussex County Council Chambers, County Administrative Offices, 2 The Circle, Georgetown, Delaware. All interested persons, officials, residents, voters, taxpayers, property owners, or corporations in any way affected by this boundary extension are welcome to attend. There will be an opportunity for questions and answers. The Sussex County Council following the hearing, at one of their regularly scheduled meetings, will make the final decision on the boundary extension.

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

Hans M. Medlarz, P.E.
County Engineer



RESOLUTION

A RESOLUTION TO EXTEND THE BOUNDARY OF THE SUSSEX COUNTY UNIFIED SANITARY SEWER DISTRICT (SCUSSD), TO INCLUDE PARCELS 335-7.00 6.13 – 6.20 AND PART OF 6.12 ON THE NORTH SIDE OF NEW ROAD. THE PARCELS ARE LOCATED IN THE LEWES & REHOBOTH HUNDRED, SUSSEX COUNTY, DELAWARE AND RECORDED IN THE OFFICE OF THE RECORDER OF DEEDS, IN AND FOR SUSSEX COUNTY, DELAWARE.

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

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

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

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

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

NOW, THEREFORE,

BE IT RESOLVED the Sussex County Council hereby revises the boundary of the SCUSSD to encompass the lands mentioned above situated on the north side of New Road, as follows:

Beginning at a point, said point being on the northwesterly Right-Of-Way (ROW) of New Road, said point also being on the SCUSSD boundary, said point further being the easternmost property corner of lands Now-or-Formerly (N/F) of Schell Brothers LLC; thence proceeding by and with said ROW and SCUSSD boundary in a southwesterly direction a distance of 1,280' to a point; thence leaving said ROW and continuing by and with said SCUSSD boundary in a northwesterly direction a distance of 220' to a point, said point being on the southerly property line of Halsey G. Knapp Trustee; thence leaving said SCUSSD boundary and continuing by and with said Knapp lands in a northeasterly and southeasterly direction respectively a total distance of 1,500' to a point, said point being the **Point of Beginning**.

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

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

PROPOSED KNAPP PARCELS EXPANSION
AFFIDAVIT FOR PUBLIC HEARING

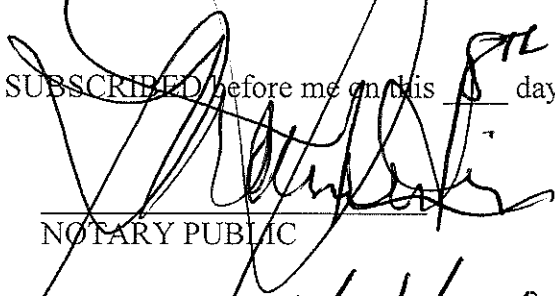
STATE OF DELAWARE)(:
COUNTY OF SUSSEX)(

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

- A. On September 8, 2021 he was a Planning Tech for the Sussex County Engineering Department, Sussex County, State of Delaware; and
- B. On September 8, 2021 he did post the attached "Public Notice," prepared by the Sussex County Engineering Department, at the following locations:
1. On a post in front of a STOP sign in the southerly Right-Of-Way (ROW) of Peach Tree Ln. at the intersection with Old Orchard Rd.,
 2. On a post in front of DEC Pole 87783 in the southerly ROW of New Road 75'± northeast of Peach Tree Lane,
 3. On a post in the northerly ROW of New Road 117'± southwest of Peach Tree Lane,
 4. On a post in the northerly ROW of New Road 364'± southwest of New Road,
 5. On a post in front of STOP sign at the intersection of New Road and Kansas Ct.,
 6. On a post in the northerly ROW of New Road across from Kansas Ct.,
 7. On a post in the northerly ROW of New Road 185'± southwest from Kansas Court,
 8. On a post in front of a STOP sign at the intersection of New Road and Arkansas Court.


PHILLIP C. CALIO

SWORN TO AND SUBSCRIBED before me on this 8th day of Sept A.D., 2021


NOTARY PUBLIC

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

My Commission Expires 6/14/2022

PROPOSED KNAPP PARCELS EXPANSION
AFFIDAVIT FOR PUBLIC HEARING

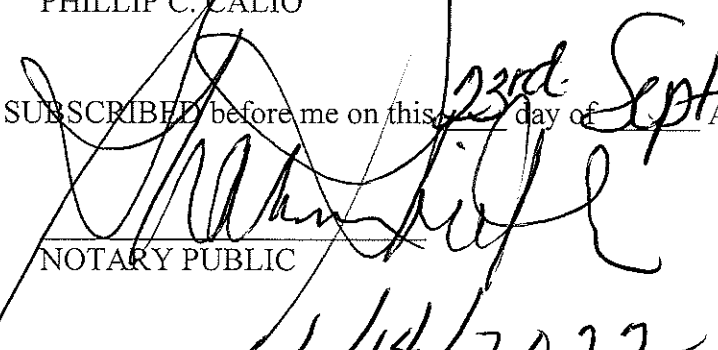
STATE OF DELAWARE)(:
COUNTY OF SUSSEX)(

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

- A. On September 23, 2021 he was a Planning Tech for the Sussex County Engineering Department, Sussex County, State of Delaware; and
- B. On September 23, 2021 he did post the attached "Public Notice," prepared by the Sussex County Engineering Department, at the following locations:
1. On a post in front of a STOP sign in the southerly Right-Of-Way (ROW) of Peach Tree Ln. at the intersection with Old Orchard Rd.,
 2. On a post in front of DEC Pole 87783 in the southerly ROW of New Road 75'± northeast of Peach Tree Lane,
 3. On a post in the northerly ROW of New Road 117'± southwest of Peach Tree Lane,
 4. On a post in the northerly ROW of New Road 364'± southwest of New Road,
 5. On a post in front of STOP sign at the intersection of New Road and Kansas Ct.,
 6. On a post in the northerly ROW of New Road across from Kansas Ct.,
 7. On a post in the northerly ROW of New Road 185'± southwest from Kansas Court,
 8. On a post in front of a STOP sign at the intersection of New Road and Arkansas Court.


PHILLIP C. CALIO

SWORN TO AND SUBSCRIBED before me on this 23rd day of Sept, A.D., 2021


NOTARY PUBLIC

My Commission Expires 6/14/2022

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

AN ORDINANCE TO AMEND CHAPTER 99, SECTIONS 99-5, 99-6, 99-7, 99-23, 99-24, 99-26, AND 99-30, AND CHAPTER 115 SECTIONS 115-4, 115-25, 115-193, 115-220 AND 115-221 REGARDING CERTAIN DRAINAGE FEATURES, WETLAND AND WATER RESOURCES AND THE BUFFERS THERETO.

WHEREAS, Pursuant to the provisions of Title 9, Chapters 68 and 69 of the Delaware Code, the Sussex County Government has the power and authority to regulate the use of land and to adopt a Comprehensive Land Use Plan; and

WHEREAS, Pursuant to Chapters 99 and 115 of the Code of Sussex County, the Sussex County Government has undertaken to regulate the use of land; and

WHEREAS, the existing Section 115-193 of the Code of Sussex County currently regulates the use of land adjacent to certain wetlands and water bodies; and

WHEREAS, the existing Section 115-193 of the Code of Sussex County is in need of improvement regarding its interpretation, application and protection of Resources; and

WHEREAS, certain Resources are in need of substantial enhancements to ensure that Sussex County's drainage network is improved now and maintained in the future; and

WHEREAS, the 2019 Sussex County Comprehensive Plan contemplates the review and improvement of the protection of wetlands and waterways in Sussex County; and

WHEREAS, Goal 4.3 and Objective 4.3.1 of the Future Land Use Element of the 2019 Sussex County Comprehensive Plan states that Sussex County should "Consider strategies for preserving environmental areas from development and the protection of wetlands and waterways", and this Ordinance carries out that Objective; and

WHEREAS, Goal 4.6 and Strategy 4.6.2 of the Future Land Use Element of the 2019 Sussex County Comprehensive Plan states that Sussex County should "Recognize the Inland Bays, their tributaries and other waterbodies as valuable open space areas of ecological importance", and this Ordinance carries out that Strategy; and

WHEREAS, Goal 5.1 of the Conservation Element of the 2019 Sussex County Comprehensive Plan states that Sussex County should “Encourage development practices and regulations that support natural resource protection”, and this Ordinance carries out that Goal; and

WHEREAS, Strategy 5.1.2.2 of the Conservation Element of the 2019 Sussex County Comprehensive Plan states that Sussex County should “Review appropriate sections of Sussex County’s zoning and subdivision codes to determine if amendments are needed that will better help protect groundwater, waterways, sensitive habitat areas and other critical natural lands in Sussex County”, and this Ordinance carries out that Strategy; and

WHEREAS, Goal 5.3 of the Conservation Element of the 2019 Sussex County Comprehensive Plan calls for the protection of the natural functions and quality of the County’s surface waters, groundwater, wetlands and floodplains, and as part of that Goal, the Plan includes Strategies 5.3.1.1, 5.3.1.2 and 5.3.1.6, which respectively state that Sussex County should “Consider developing a program for wetlands and waterways protection”, “Identify an appropriate range of wetlands buffer distances based upon location and context”, and “Recognize the Inland Bays, their tributaries and other waterbodies as valuable open space areas of ecological and economic importance”, and this Ordinance carries out these Goals and Strategies; and

WHEREAS, in adopting this Ordinance, it is the intent of Sussex County Council to balance the protection of land equity with the protection of the Resources defined in the Ordinance and their associated functions; and

WHEREAS, in adopting this Ordinance, it is the intent of Sussex County to establish a framework under which future property owners and Owners Associations will maintain the Resources, Resource Buffers, the properties they are on or adjacent to, and the systems that they are a part of in the future and to ensure the ongoing positive conveyance of drainage features; and

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

NOW, THEREFORE, THE COUNTY OF SUSSEX HEREBY ORDAINS:

Section 1. The Code of Sussex County, Chapter 99, Article I, §99-5 “Definitions,” is hereby amended by inserting the italicized and underlined language alphabetically:

§99-5 Definitions.

For purposes of this Chapter, certain terms and words are hereby defined:

...

EPHEMERAL STREAMS

A feature that carries only runoff in direct response to precipitation with water flowing only during and shortly after large precipitation events. An Ephemeral Stream may or may not have a well-defined channel, its aquatic bed is always above the water table during a year of normal rainfall, and runoff is its primary source of water. An Ephemeral Stream typically lacks the biological, hydrological, and physical characteristics commonly associated with the continuous or intermittent conveyance of water.

...

INTERMITTENT STREAMS

A well-defined channel that contains flowing water for only part of the year, typically during winter and spring when the aquatic bed is below the water table, connecting otherwise isolated Non-Tidal Wetlands to downstream Tidal/Perennial Waters/Streams. The flow may be heavily supplemented by runoff. An Intermittent Stream often lacks the biological and hydrological characteristics commonly associated with the continuous conveyance of water.

...

MAJOR SUBDIVISION

Any subdivision of land creating six or more new Lots [involving a proposed new street or the extension of an existing street].

...

MINOR SUBDIVISION

Any subdivision *creating five or less Lots* [fronting on an existing street and not involving any new street] and not adversely affecting the development of the remainder of the parcel or adjoining property and not in conflict with any provisions or portion of the County Comprehensive Plan, Official Map, Zoning Ordinance, or this chapter. Only one such subdivision shall be approved per year per parcel. The maximum number of lots created in the minor subdivision process shall not exceed four plus one for each 10 acres of original parcel size.

...

NON-TIDAL WETLANDS

Non-Tidal Wetlands are those wetlands, not classified by this Chapter as Tidal Wetlands, which lie contiguous or abutting to Tidal Waters, Tidal Wetlands, Perennial Streams or those Intermittent Streams providing a surface water connection between adjacent Wetlands. Non-Tidal Wetlands also include those Wetlands only separated from otherwise contiguous or abutting Wetlands by constructed dikes, barriers, culverts, natural river berms and beach dunes.

...

ORDINARY HIGH WATER MARK DELINEATION

The boundary of Perennial Non-Tidal Rivers or Streams, Intermittent Streams or Ephemeral Streams shall be defined by the Ordinary High Water Mark. Ordinary High Water Mark means the line on a shore or bank established by the fluctuations of water and indicated by physical characteristics such as a clear, natural line impressed on the bank, shelving, changes in the character of soil, destruction of terrestrial vegetation, the presence of litter and debris, or other similar physical characteristics indicating the frequent presence of flowing water.

...

PERENNIAL NON-TIDAL RIVERS AND STREAMS

A well-defined channel that contains flowing water year-round during a year of normal rainfall with the aquatic bed located below the water table for most of the year and which is not subject to tidal influence. Groundwater is the primary source of water for a Perennial Stream, but it also carries runoff. A Perennial Stream exhibits the typical biological, hydrological, and physical characteristics commonly associated with the continuous conveyance of water.

...

RESOURCE BUFFER - WETLANDS AND WATERS

A managed area between residential land uses and Resources that is not subdividable once established, with the exception of a subdivision boundary resulting from an approved phase. Resource Buffers function to:

- Protect the Resources and their associated functions.
- Improve/protect water quality via sediment filtration, reduce impact of nutrient loading on Resources, moderate water temperature, and enhance infiltration and stabilization of channel banks.
- Provide wildlife habitat via nesting, breeding, and feeding opportunities; provide sanctuary/refuge during high water events; protect critical water's edge habitat; and protect rare, threatened, and endangered species associated with each Resource and its upland edge.
- Enhance and/or maintain the flood plain storage functionality via reduction of flood conveyance velocities as well as dissipation of stormwater discharge energy.

...

RESOURCES

Those Wetlands and waters to be provided with a Resource Buffer due to their importance to Sussex County. These Resources include Tidal Waters, Tidal Wetlands, Non-Tidal Wetlands, Perennial Streams, and those Intermittent Streams providing a surface water connection between Wetlands.

...

TAX DITCH

A Tax Ditch is a drainage channel or conveyance and the corresponding right-of-way established and/or formed in accordance with Title 7, Chapter 41 of the Delaware Code, and approved by a “ditch order” entered by the Superior Court of the State of Delaware and County of Sussex.

...

TIDAL WATERS (MEAN HIGH-WATER LINE)

Those waters occurring below the mean high-water line of any tidal water body, tidal stream, or tidal marsh, which is defined as the average height of all the high-tide water recorded over a nineteen-year period as defined by the National Oceanic and Atmospheric Administration tidal datum.

...

TIDAL WETLANDS

Areas under the jurisdiction of Title 7, Chapter 66 of the Delaware Code, as regulated and mapped by the Department of Natural Resources and Environmental Control.

...

WATER DEPENDENT ACTIVITIES

Activities that are approved through federal and state permit programs that meet the definition of water dependent activities included in those programs. Water-dependent uses are uses that can only be conducted on, in, over, or adjacent to the water; each involves, as an integral part of the use, direct access to and use of the water. Examples include marinas, boat ramps/launches, docks, piers, water intakes, aquatic habitat restoration, and similar uses.

...

WATER RELATED ACTIVITIES

Water Related Activities are those considered ancillary to and supporting permitted Water Dependent Activities completed on adjacent uplands. Examples include utility connections, limited points of access, loading/unloading areas, and similar uses.

...

WETLANDS

Wetlands are areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Agricultural land consisting of "Prior Converted Croplands" as defined by the National Food Security Act Manual (August 1988), are not wetlands. The procedure for delineating the boundary of all wetlands, except for Tidal Wetlands as defined by this ordinance, shall be the methodology provided in the Corps of Engineers Wetland Delineation Manual (January 1987) and the Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Atlantic and Gulf Coastal Plain Region (November 2010).

Section 2. The Code of Sussex County, Chapter 99, Article I, §99-6 "General Requirements and Restrictions", is hereby amended by deleting the language in brackets and inserting the italicized and underlined language in existing subsection J. and as a new subsection K. thereof as follows:

§99-6 General Requirements and Restrictions.

...

J. A forested and/or landscape buffer, as defined in § 99-5, Subsections A through J must be depicted on the preliminary and final plot plans for each major subdivision of lands [into four or more lots] and must be established in accordance with all the requirements of the definition of "forested and/or landscaped buffer strip," Subsections A through J in § 99-5.

...

K. Resources and Resource Buffers, as defined in § 99-5 must be depicted on the preliminary and final plot plans for each major subdivision of lands and must comply with the requirements of §115-193.

Section 3. The Code of Sussex County, Chapter 99, Article II, §99-7 “Preliminary Conference”, is hereby amended by deleting the language in brackets in subsection C. thereof as follows:

§99-7 Preliminary Conference.

C. If the Director determines that the proposed subdivision represents a minor subdivision of a parcel, existing as of the effective date of this amended provision, on a street other than a major arterial roadway, and if the Director determines that review by the Commission is not necessary or desirable, he may waive the requirement of preparing a preliminary plat and may authorize the preparation of a record plat for purposes of recordation. He may, however, request review assistance from other concerned agencies prior to authorizing preparation of the plat. Lots in any minor subdivision plat approved by the Director, without review by the Commission, shall have a minimum area of 3/4 of an acre and a minimum width of 150 feet and shall utilize entrances as approved by the Delaware Department of Transportation. [Such a minor subdivision shall be limited to four lots per parcel, as well as one additional lot for each 10 acres of parcel size, with a maximum of four subdivided lots approved for recordation per calendar year.]

Section 4. The Code of Sussex County, Chapter 99, Article IV, §99-23 “Information to Be Shown”, is hereby amended by inserting the italicized and underlined language as a new subsection T. thereof:

§99-23 Information to Be Shown.

The preliminary plat shall be drawn in a clear and legible manner and shall show the following information”

...

T. The location of all Water and Wetland Resources and their Resource Buffers.

(1) The boundary and type of any Non-Tidal/Tidal Wetland or water resources (Tidal, Perennial, Intermittent) which require a Resource Buffer. The boundary will be shown per methods identified in the definitions of Wetlands and Ordinary High Water Line Delineation.

(2) All existing (i.e., at the time of application) native forest and non-forest meadow within the future Resource Buffer shall be identified.

(3) The area limits of the required Resource Buffers.

(4) Calculations supporting Resource Buffer width averaging (§115-193B).

(5) Calculations supporting Resource Buffer enhancement calculations and corresponding Forested and/or Landscaped Buffer reductions, if applicable (§115-193F).

(6) Proposed access easement layout for access to Resource Buffers and the adjacent Resources with a note that such access easements are “public access easements for maintenance purposes”. For purposes of this requirement, “public” shall mean, and be limited to, those parties requiring access for maintenance purposes.

(7) A reference by title, author and date, to the “Drainage Assessment Report” required by Section 115-193.F.2.

Section 5. The Code of Sussex County, Chapter 99, Article IV, §99-24 “Supporting Statements”, is hereby amended by inserting the italicized and underlined language as a new subsection G thereof:

§99-24 Supporting Statements

The preliminary plat shall be accompanied by the following written and signed statements in support of the subdivision's application for tentative approval:

...

G. A Resource and Resource Buffer Management Plan that describes measures for managing the Resource and Resource Buffer(s) required pursuant to Chapter

115, Article XXV, Section 115-193 on the site. The Resource and Resource Buffer Management Plan shall be included as part of the recorded declaration for the subdivision.

Section 6. The Code of Sussex County, Chapter 99, Article V, §99-26, “Information to Be Shown”, is hereby amended by inserting the italicized and underlined language as a new subsection A.(21) and C thereof:

§99-26 Information to Be Shown.

A. The final plat shall be legibly and accurately drawn and show the following information:

...

(21) The location of all Resource Buffers.

(a) The boundary and type of any Non-Tidal/Tidal Wetland or water resources (Tidal, Perennial, Intermittent) which require a Resource Buffer. The boundary will be shown per methods identified in the definitions of Wetlands and Ordinary High Water Line Delineation.

(b) All existing (i.e., at the time of application) native forest and non-forest meadow within the future Resource Buffer shall be identified.

(c) The area limits of the required Resource Buffer.

(d) Calculations supporting Resource Buffer width averaging (§115-193B).

(e) Calculations supporting Resource Buffer enhancement calculations and corresponding Forested and/or Landscaped Buffer reductions, if applicable (§155-193F).

(f) Proposed access easement layout for access to Resource Buffers and the adjacent Resources with a note that such access easements are “public access easements for maintenance purposes”. For purposes of this requirement, “public” shall mean, and be limited to, those parties requiring access for maintenance purposes.

(g) A statement incorporating the Resource and Resource Management and Maintenance Plan by reference.

(h) A reference by title, author and date, to the “Drainage Assessment Report” required by Section 115-193.F.2.

...

C. An AutoCAD drawing file containing all items required in Section A above shall be submitted in electronic format. The data shall be referenced in NAD 1983 StatePlane Delaware FIPS 0700 (U.S. Feet) Projected Coordinate System.

Section 7. The Code of Sussex County, Chapter 99, Article VI, §99-30, “Plans”, is hereby amended by inserting the italicized and underlined language as a new subsection J. and K. thereof:

§99-30 Plans.

Plans, profiles and specifications for the required improvements shall be prepared by the subdivider and submitted for approval by the appropriate public authorities prior to construction. No construction shall commence prior to the issuance of a notice to proceed by the County Engineer or his or her designee for the required improvements. All plans, profiles and specifications approved by the County Engineer or his or her designee with the issuance of a notice to proceed shall remain valid or, if substantial construction is not actively and continuously underway, they shall expire upon the expiration of the final site plan. Prior to the issuance of a notice to proceed, the County Engineer may require the owner and/or his designee to execute an agreement addressing the required improvements. The plans and profiles submitted for all new construction shall include the following:

...

J. Resources and Resource Buffers.

K. Proposed access easement layout with a note that such access easements are “public access easements for maintenance purposes”. For purposes of this requirement, “public” shall mean, and be limited to, those parties requiring access for maintenance purposes.

Section 8. The Code of Sussex County, Chapter 115, Article I, §115-4 “Definitions and Word Usage,” is hereby amended by inserting the italicized and underlined language alphabetically in Subsection B thereof:

§115-4 Definitions and Word Usage.

....

B. General definitions. For the purpose of this chapter, certain terms and words are hereby defined as follows:

....

EPHEMERAL STREAMS

A feature that carries only runoff in direct response to precipitation with water flowing only during and shortly after large precipitation events. An Ephemeral Stream may or may not have a well-defined channel, its aquatic bed is always above the water table during a year of normal rainfall, and runoff is its primary source of water. An Ephemeral Stream typically lacks the biological, hydrological, and physical characteristics commonly associated with the continuous or intermittent conveyance of water.

...

INTERMITTENT STREAMS

A well-defined channel that contains flowing water for only part of the year, typically during winter and spring when the aquatic bed is below the water table, connecting otherwise isolated Non-tidal Wetlands to downstream Tidal/Perennial Waters/Streams. The flow may be heavily supplemented by runoff. An Intermittent Stream often lacks the biological and hydrological characteristics commonly associated with the continuous conveyance of water.

...

NON-TIDAL WETLANDS

Non-Tidal Wetlands are those Wetlands, not classified by this Chapter as Tidal Wetlands, which lie contiguous or abutting to Tidal Waters, Tidal Wetlands, Perennial Streams or those Intermittent Streams providing a surface water connection between adjacent Wetlands. Non-Tidal Wetlands also include those Wetlands only separated from otherwise contiguous or abutting Wetlands by constructed dikes, barriers, culverts, natural river berms and beach dunes.

...

ORDINARY HIGH WATER MARK DELINEATION

The boundary of Perennial Non-Tidal Rivers or Streams, Intermittent Streams or Ephemeral Streams shall be defined by the Ordinary High Water Mark. Ordinary High Water Mark means the line on a shore or bank established by the fluctuations of water and indicated by physical characteristics such as a clear, natural line impressed on the bank, shelving, changes in the character of soil, destruction of terrestrial vegetation, the presence of litter and debris, or other similar physical characteristics indicating the frequent presence of flowing water.

...

PERENNIAL NON-TIDAL RIVERS AND STREAMS

A well-defined channel that contains flowing water year-round during a year of normal rainfall with the aquatic bed located below the water table for most of the year and which is not subject to tidal influence. Groundwater is the primary source of water for a perennial stream, but it also carries runoff. A Perennial Stream exhibits the typical biological, hydrological, and physical characteristics commonly associated with the continuous conveyance of water.

...

RESOURCE BUFFER - WETLANDS AND WATERS

A managed area between residential land uses and Resources that is not subdividable once established, with the exception of a subdivision boundary resulting from an approved phase. Resource Buffers function to:

- Protect the Resources and their associated functions.
- Improve/protect water quality via sediment filtration, reduce impact of nutrient loading on Resources, moderate water temperature, and enhance infiltration and stabilization of channel banks.
- Provide wildlife habitat via nesting, breeding, and feeding opportunities; provide sanctuary/refuge during high water events; protect critical water's edge habitat; and protect rare, threatened, and endangered species associated with each Resource and its upland edge.
- Enhance and/or maintain the flood plain storage functionality via reduction of flood conveyance velocities as well as dissipation of stormwater discharge energy.

...

RESOURCES

Those wetlands and waters to be provided with a Resource Buffer due to their importance to Sussex County. These Resources include Tidal Waters, Tidal Wetlands, Non-Tidal Wetlands, Perennial Streams, and those Intermittent Streams providing a surface water connection between Wetlands.

...

TAX DITCH

A Tax Ditch is a drainage channel or conveyance and the corresponding right-of-way established and/or formed in accordance with Title 7, Chapter 41 of the Delaware Code, and approved by a "ditch order" entered by the Superior Court of the State of Delaware and County of Sussex.

...

TIDAL WATERS (MEAN HIGH-WATER LINE)

Those waters occurring below the mean high-water line of any tidal water body, tidal stream, or tidal marsh, which is defined as the average height of all the high-tide water recorded over a nineteen-year period as defined by the National Oceanic and Atmospheric Administration tidal datum.

...

TIDAL WETLANDS

Areas under the jurisdiction of Title 7, Chapter 66 of the Delaware Code, as regulated and mapped by the Department of Natural Resources and Environmental Control.

...

WATER DEPENDENT ACTIVITIES

Activities that are approved through federal and state permit programs that meet the definition of water dependent activities included in those programs. Water-dependent uses are uses that can only be conducted on, in, over, or adjacent to the water; each involves, as an integral part of the use, direct access to and use of the water. Examples include marinas, boat ramps/launches, docks, piers, water intakes, aquatic habitat restoration, and similar uses.

...

WATER RELATED ACTIVITIES

Water Related Activities are those considered ancillary to and supporting permitted Water Dependent Activities completed on adjacent uplands. Examples include utility connections, limited points of access, loading/unloading areas, and similar uses.

...

WETLANDS

Wetlands are areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Agricultural land consisting of "Prior Converted Croplands" as defined by the National Food Security Act Manual (August 1988), are not wetlands. The procedure for delineating the boundary of all wetlands, except for Tidal Wetlands as defined by this ordinance, shall be the methodology provided in the Corps of Engineers Wetland Delineation Manual (January 1987) and the Regional

Supplement to the Corps of Engineers Wetland Delineation Manual: Atlantic and Gulf Coastal Plain Region (November 2010).

Section 9. The Code of Sussex County, Chapter 115, Article IV, §115-25 “Height, Area and Bulk Requirements,” is hereby amended by deleting the language in brackets and inserting the italicized and underlined language in Subsection F(3)(a)[4] thereof:

§115-25 Height, Area and Bulk

F. Review procedures for cluster development

...

(3) The Planning & Zoning Commission shall determine that the following requirements are met before approving any preliminary plan and such application shall be reviewed on an expedited basis.

(a) The cluster development sketch plan and the preliminary plan of the cluster subdivision provides for a total environment and design which are superior, [and] *in* the reasonable judgment of the Planning Commission, to that which would be allowed under the regulations for the standard option. For the purposes of this subsection a proposed cluster subdivision which provides for a total environment and design which are superior to that allowed under the standard option subdivision is one which, in the reasonable judgment of the Planning Commission meets all of the following criteria:

...

[4] [A minimum of 25 feet of permanent setback must be maintained around the outer boundaries of all wetlands, except for tidal waters, tidal tributary streams and tidal wetlands and from the ordinary high water line of perennial nontidal rivers and nontidal streams as provided for in §115-193B under Ordinance No. 774 where a fifty-foot permanent setback is required. No buildings or paving shall be placed within these setbacks.] *The*

preliminary plan shall comply with the requirements of §115-193.

Section 10. The Code of Sussex County, Chapter 115, Article XXV, §115-193 “Buffer Zones for Wetlands and Tidal and Nonperennial Waters,” is hereby amended by amending the Title thereof to state “Resource Protection” and deleting the language in brackets and inserting the italicized and underlined language:

§115-193 [Buffer Zones for Wetlands and Tidal and Nonperennial Waters] Resource Protection

[A.

Definitions. As used in this section, the following terms shall have the meanings indicated:

BUFFER ZONE

An existing naturally vegetated area or an area purposely established in vegetation which shall not be cultivated in order to protect aquatic, wetlands, shoreline and upland environments from man-made encroachment and disturbances. The "buffer zone" shall be maintained in natural vegetation, but may include planted vegetation where necessary to protect, stabilize or enhance the area.

MEAN HIGH-WATER LINE OF TIDAL WATER

The average height of all the high-tide water recorded over a nineteen-year period as defined by the National Oceanic and Atmospheric Administration tidal datum.

PERENNIAL NONTIDAL RIVERS AND STREAMS

Any body of water which continuously flows during a year and which is not subject to tidal influence.

TIDAL TRIBUTARY STREAM

A stream under tidal influence, either connecting fresh or salt water.

TIDAL WETLANDS

Areas under the jurisdiction of Title 7, Chapter 66, of the Delaware Code, as the chapter appears as of the date of the adoption of this Article, as regulated and mapped by the Department of Natural Resources and Environmental Control.

WETLANDS

A private or state wetland as defined by the Delaware Department of Natural Resources and Environmental Control regulations and maps as promulgated pursuant to Chapter 66, Title 7, of the Delaware Code, as the chapter appears upon the date of the adoption of this Article.

B. A fifty-foot buffer zone is hereby established landward from the mean high water line of tidal waters, tidal tributary streams and tidal wetlands and from the ordinary high water line of perennial nontidal rivers and nontidal streams in Sussex County.

C. Excluded from buffer zone designation are farm ponds, tax ditches and other man-made bodies of water where these waters are not located on or within perennial streams. A buffer zone shall not be required for agricultural drainage ditches if the adjacent agricultural land is the subject of a conservation farm plan established with the Sussex Conservation District.

D. Excluded from buffer zone regulations are facilities necessarily associated with water-dependent facilities (maritime, recreational, educational or fisheries activities that cannot exist outside of the buffer by reason of the intrinsic nature of their operation) and the installation, repair or maintenance of any stormwater management facility, sanitary sewer system, culvert, bridge, public utility, street, drainage facility, pond, recreational amenity, pier, bulkhead, boat ramp, waterway improvement project or erosion-stabilization project that has received the joint approval of the County Engineering Department and the appropriate federal, state and local agencies. An existing public storm-drain system may be extended in order to complete an unenclosed gap or correct a drainage problem, subject to receiving the approval of the County Engineering Department and the appropriate federal, state and local agencies.

E. Grandfathering provision. The following types of land uses may be developed notwithstanding the provisions of this section:

(1) Existing improvements and construction as of the date of the approval of this section may continue. Alterations or expansions which shall be attached to a preexisting structure built on nonconforming land, pursuant to this section, will not be permitted unless proven that such improvement is

constructed at an equal distance or landward of the preexisting structure which is most proximate to the wetland area and a variance is granted as provided below.

(2) Subdivision plats and site plans approved and of record in the office of the Director of Planning and Zoning or in the office of the Recorder of Deeds in and for Sussex County prior to the adoption of this section, originally adopted July 19, 1988, or approved and similarly of record as of the effective date of this amendment, adopted July 2, 1991, may be developed as of record and shall be subject to setbacks or buffer restrictions established for the use when originally approved. Any previously approved and similarly recorded subdivision plats and site plans, if approved prior to the original date of this section on July 19, 1988, or prior to this amendment, adopted July 2, 1991, may be amended if it is determined by the Planning and Zoning Commission that the amended plan represents an equal or less intrusive use on the buffer area or setback area.

F. Variances to the provisions of this section will be considered by the Board of Adjustment under the following conditions:

(1) That findings are made by the Board of Adjustment which demonstrate that special conditions or circumstances exist that are peculiar to the land or structure within the county and that a literal enforcement of provisions within the buffer zone as designated by this section would result in unwarranted hardship.

(2) That the variance request is not based upon conditions or circumstances which are the result of actions by the applicant, nor does the request arise from any condition relating to land or building use, either permitted or nonconforming, on any neighboring property.

(3) That the granting of a variance will not adversely affect water quality or adversely impact fish, wildlife or plant habitat within the designated buffer zones and in waters adjacent to buffer zones. Variances will be in harmony with the general spirit and intent of the section and any subsequent regulations.

(4) That applications for a variance will be made, in writing, to the Board of Adjustment, with a copy to the County Administrator.

(3) Any land upon which development has progressed to the point of pouring of a foundation or the installation of structural improvements as of

the date of the approval of this section shall be permitted to be developed, provided that there shall be no further encroachment upon the buffer zone, as required in Subsection E(1) above.]

A. Resource Buffer Widths.

1. Resource Buffer Widths shall be established in accordance with Table 1, with Zone A being closest to the Resource.

2. Resource Buffers are not required landward/adjacent to those portions of Resources to be filled or developed with a valid U. S. Army Corps of Engineers or Delaware Department of Natural Resources and Environmental Control permit.

3. No Resource Buffer shall overlay a Tax Ditch or Tax Ditch Right of Way. If a proposed development contains a Tax Ditch, with a right-of-way of less than the total Resource Buffer Width, then that area of the Resource Buffer outside of the right-of-way shall be designated as Zone B.

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<u>Table 1: Resource Buffer Widths</u>			
<u>Resource Type</u> <u>(See Definitions, §115-4B)</u>	<u>Full Buffer</u> <u>Width (ft)</u>	<u>Zone A (ft)</u>	<u>Zone B (ft)</u>
<u>Tidal Waters</u>	<u>100</u>	<u>50</u>	<u>50</u>
<u>Tidal Wetlands</u>	<u>100</u>	<u>50</u>	<u>50</u>
<u>Perennial Non-tidal Rivers and Streams</u>	<u>50</u>	<u>25</u>	<u>25</u>
<u>Non-tidal Wetlands</u>	<u>30</u>	<u>15</u>	<u>15</u>
<u>Intermittent Streams</u>	<u>30</u>	<u>15</u>	<u>15</u>
<u>Ephemeral Streams</u>	<u>0</u>	<u>0</u>	<u>0</u>

665

666 B. Resource Buffer Width Averaging.

667

668 1. Resource Buffer width averaging may be utilized to adjust the required
 669 Zone B Resource Buffer width thereby allowing flexibility for the
 670 proposed development, so long as the overall square footage of the
 671 Zone B Resource Buffer is maintained.

672

673 2. Criteria for utilizing Resource Buffer width averaging:

674 (a) Resource Buffer width averaging is not available for Zone A.

675 (b) The overall square footage of Zone B Resource Buffer must be
 676 achieved within the boundaries of the proposed development unless a
 677 Resource Buffer Option permitted under subsection G is utilized.

678 (c) Resource Buffer width averaging may be used on all of the Zone
 679 B Resource Buffers within the boundaries of the proposed development.

(d) Zone B Resource Buffer averaging shall not be expanded more than double the width of Zone B Resource Buffer as referenced in Section 115-193A.

(e) The overall square footage of Zone B Resource Buffer must be calculated based upon the entire length of the Resource borderline that is located within the boundaries of the proposed development.

C. Permitted Activities.

Activities in Zone A and B shall be “Permitted” or “Not Permitted” as set forth in the following Table. Uses not specifically identified shall be prohibited, unless the contrary is clear from the context of the Table, as determined by the Commission.

<u>Table 2: Resource Buffer Activities by Zone</u>		
<u>ACTIVITY</u>	<u>ZONE A</u>	<u>ZONE B</u>
<u>1. Impacts to resource buffers resulting from State and/or Federally permitted disturbances to Resources (wetlands/waters) such as maintenance of Resources and Resource Buffers, utilities, roads, bridges, docks, piers, boat ramps, bulkheads, shoreline stabilization, and resources authorized to be filled or disturbed for development.</u>	<u>PERMITTED</u>	<u>PERMITTED</u>
<u>2. Water-related facilities and ancillary uses required to support water-dependent projects approved by a federal or state permit, including but not limited to: marinas, wharfs, community docking facilities, boat ramps, and canoe/kayak launches.</u>	<u>PERMITTED</u>	<u>PERMITTED</u>
<u>3. Repair or maintenance of existing infrastructure or utilities, including roads, bridges, culverts, water lines, and sanitary sewer lines.</u>	<u>PERMITTED</u>	<u>PERMITTED</u>
<u>4. Temporary impacts resulting from installation of utilities by trenching</u>	<u>PERMITTED</u>	<u>PERMITTED</u>

Table 2: Resource Buffer Activities by Zone

<u>ACTIVITY</u>	<u>ZONE A</u>	<u>ZONE B</u>
<i><u>methods which are part of State or Federally approved utility installation projects or the installation of utilities by directional boring methods.</u></i>		
<i><u>5. Stormwater Management conveyances as approved by the Sussex Conservation District.</u></i>	<i><u>PERMITTED</u></i>	<i><u>PERMITTED</u></i>
<i><u>6. Tax Ditch Maintenance as approved by DNREC Drainage Program.</u></i>	<i><u>PERMITTED</u></i>	<i><u>PERMITTED</u></i>
<i><u>7. Maintenance or repair of drainage conveyances not within a Tax Ditch Right of Way as approved by the Sussex County Engineering Department or Sussex Conservation District.</u></i>	<i><u>PERMITTED</u></i>	<i><u>PERMITTED</u></i>
<i><u>8. Structural crossings of Resources such as bridges or boardwalks which may not require a State or Federal permit.</u></i>	<i><u>PERMITTED</u></i>	<i><u>PERMITTED</u></i>
<i><u>9. Maintenance or modification to previously existing structures and improvements within existing footprint.</u></i>	<i><u>PERMITTED</u></i>	<i><u>PERMITTED</u></i>
<i><u>10. State or Federally approved wetland restoration, creation, and enhancement projects.</u></i>	<i><u>PERMITTED</u></i>	<i><u>PERMITTED</u></i>
<i><u>11. State or Federally approved flood plain restoration, or Resource restoration projects involving the maintenance, repair, restoration, creation, or enhancement of Resources and their Resource Buffers.</u></i>	<i><u>PERMITTED</u></i>	<i><u>PERMITTED</u></i>
<i><u>12. Soil Erosion and Sediment Control measures as approved by Sussex Conservation District.</u></i>	<i><u>PERMITTED</u></i>	<i><u>PERMITTED</u></i>
<i><u>13. Forest Management Activities conducted under the guidance and direction of a Licensed Forester,</u></i>	<i><u>PERMITTED</u></i>	<i><u>PERMITTED</u></i>

Table 2: Resource Buffer Activities by Zone

<u>ACTIVITY</u>	<u>ZONE A</u>	<u>ZONE B</u>
<u>Arborist, Landscape Architect, or Qualified Resource Buffer Professional.</u>		
<u>14. Invasive Species Control (plant, insect, animal) conducted in accordance with State and Federal law.</u>	<u>PERMITTED</u>	<u>PERMITTED</u>
<u>15. Planting/establishment of non-invasive native species (as listed by DNREC).</u>	<u>PERMITTED</u>	<u>PERMITTED</u>
<u>16. Installation, repair, maintenance, and removal of wells (potable, monitoring, injection as approved by state/federal agencies).</u>	<u>PERMITTED</u>	<u>PERMITTED</u>
<u>17. Walking Trails approved by a State and/or Federal Permit where any associated impervious area runoff is managed under a Sussex Conservation District permit.</u>	<u>PERMITTED</u>	<u>PERMITTED</u>
<u>18. Extended Detention dry and wet stormwater management ponds.</u>	<u>NOT PERMITTED</u>	<u>PERMITTED</u>
<u>19. Removal of any dead, dying, damaged, or unstable live tree from a Resource or Resource Buffer which presents an imminent danger to property or public safety.</u>	<u>PERMITTED</u>	<u>PERMITTED</u>
<u>20. Stormwater Management Water Quality BMPs as approved by the Sussex Conservation District.</u>	<u>PERMITTED</u> <u>(Limited to 10% of Total square footage of Zone A in a proposed development)</u>	<u>PERMITTED</u>
<u>21. Sewage disposal facilities.</u>	<u>NOT PERMITTED</u>	<u>NOT PERMITTED</u>
<u>22. Storage of hazardous materials and siting of industrial sites, landfills, or junkyards.</u>	<u>NOT PERMITTED</u>	<u>NOT PERMITTED</u>

Table 2: Resource Buffer Activities by Zone

<u>ACTIVITY</u>	<u>ZONE A</u>	<u>ZONE B</u>
<u>23. Swimming pools, community clubhouses, and all Non-Water-Dependent or Non-Water Related improvements not specifically permitted under this section.</u>	<u>NOT PERMITTED</u>	<u>NOT PERMITTED</u>

D. Resource Buffer Standards.

1. All existing (i.e., at the time of application) conditions, including the vegetative land features, and the proposed conditions within the proposed Resource Buffer shall be identified on the Preliminary Site Plan.

2. If a proposed development contains a Resource, then the associated Resource Buffer shall conform with the following criteria based on vegetative features existing at the time of Preliminary Site plan Submission:

(a) Established native forests and non-forest meadows predominated by non-invasive species shall be retained.

(i) Forest: Subject to §115-193C, all existing trees and understory constituting a proposed Resource Buffer shall be preserved and maintained in their natural state. "Selective Cutting" (Subsection E) activities may be implemented. Invasive species may be removed from the Resource Buffer.

(ii) Non-forest Meadow: Subject to §115-193C, all existing meadows constituting a proposed non-forested Resource Buffer that are composed of herbaceous and shrub species shall be preserved and maintained in their natural state. Non-forest meadow may also include old field areas with a mixture of herbaceous vegetation, shrubs and trees transitioning to a forested condition through natural succession. Invasive species may be removed from the Resource Buffer.

(b) Grazed pasture, managed turf, active cropland or areas of bare earth not stabilized with vegetative cover shall be re- established as native forest or non-forest meadow prior to determination of substantial completion of the proposed development phase where that “unstabilized” area is located by planting of non-invasive species or through the process of natural succession augmented with invasive species control.

E. Selective Cutting.

1. “Selective Cutting” is defined as the removal or limbing of trees greater than three inches in diameter at breast height which does not change the area of the overall forest canopy by the concentrated removal of trees in a specific location. “Selective Cutting” also permits the removal or brushing of forest understory. Disruption of a contiguous forest canopy for a width greater than thirty feet shall not occur and does not meet the definition of “Selective Cutting”. “Selective Cutting” does not include stump removal.
2. “Selective Cutting” shall be completed under the guidance and approval of a Licensed Forester, ISA Certified Arborist, Registered Landscape Architect, or Qualified Resource Buffer Professional

F. Maintenance of Drainage Conveyances

1. All Resource Buffers identified on a Final Site Plan shall be designated as a drainage and access easement permitting access by any future owners’ association, federal, state or local agency and the public, for the limited purpose of maintenance or monitoring of drainage capacity or conveyance by any future owners’ association; federal state or local agency; and the public. In addition, a corresponding easement for access into each individual Resource Buffer established on the site shall, whenever possible, be provided from a public road or street within a proposed development.
2. If a Resource Buffer abuts or contains features such as ephemeral, intermittent or perennial streams which are not part of an established Tax Ditch and which convey drainage from or through a site proposed for development, a “Drainage Assessment Report” shall be prepared by a registered Delaware Professional Engineer. As part of the pre-application process, Sussex County will determine the information to be included in the Drainage Assessment Report. At a minimum, the Drainage Assessment

Report shall identify the following concerning measures needed for drainage conveyances:

(a) Identification of any unstable or eroding stream banks or conveyance requiring stabilization or restoration measures.

(b) The location of any stream blockages such as debris jams, fallen or unstable trees, beaver dams or similar impediments to conveyance.

(c) The location of any sand or gravel deposition within a channel or conveyance which impedes the flow of water produced by a storm having an annual probability of occurrence of 10%.

(d) A discussion of all recommended measures to remedy any impediment to drainage conveyance or drainage stability.

(e) A summary of required local, state or federal permits required to remedy any impediment to drainage conveyance.

(f) The easement width and a sufficient number of easements to provide adequate access to the Resource for maintenance.

3. Remedies required by Sussex County as a result of the Drainage Assessment Report shall be shown on the Final Site Plan.

G. Resource Buffer Options

1. A proposed development shall be permitted to utilize the following options, consistent with §115-193, Section B. Resource Buffer Width Averaging, to incentivize the retention of forests:

(a) When the preservation of a forest within the Resource Buffer that has been in existence for at least five years prior to the date of application as identified by a Licensed Forester, Arborist, Landscape Architect, or Qualified Resource Buffer Professional is achieved, then a corresponding area reduction of either the Resource Buffer Zone B along the entire or part of that Resource; or the Forested and/or

Landscaped Buffer required in Chapter 99 in areas adjacent to like-zoned land is permitted.

(b) When the Preservation of a forest connected to (but not within) a Resource Buffer in excess of the requirements listed in Section 115-193.A. is achieved, then a corresponding area reduction of either non-Forest Resource Buffer Zone B on the same Resource, or Forested and/or Landscaped Buffer required in Chapter 99 in areas adjacent to like-zoned land is permitted.

(c) When the provision of Resource Buffer widths in excess of the requirements listed in Section 115-193.A. is achieved, then a corresponding area reduction of the Forested and/or Landscaped Buffer required in Chapter 99 in areas adjacent to like-zoned land is permitted.

2. A proposed development shall be permitted to utilize the following options to incentivize the retention or expansion of Resource Buffers or provide additional functional benefit of Resource Buffers:

(a) (i) When the creation of a Resource Buffer under a perpetual conservation easement for the benefit of a conservation organization approved by Sussex County on lands in the same twelve-digit hydrologic unit code as defined by the United States Geological Survey as the proposed development is achieved, then a 75 percent corresponding area reduction of the Resource Buffer Zones A and/or B on the same Resource within the proposed development is permitted.

(ii) When the creation of a Resource Buffer for forest preservation under a perpetual conservation easement for the benefit of a conservation organization approved by Sussex County on lands in the same twelve-digit hydrologic unit code as defined by the United States Geological Survey as the proposed development is achieved, then a 125 percent corresponding area reduction of the Resource Buffer Zones A and/or B on the same Resource within the proposed development is permitted.

(b) Funding, partially or entirely, an off-site restoration project under the Sussex County Clean Water Enhancement Program, subject to approval

of the Sussex Conservation District, with completion of the restoration by Sussex County in the same twelve digit hydrologic unit code as defined by the United States Geological Survey as the proposed development with a corresponding Resource Buffer Zone A and/or B reduction equal to the Resource Buffer area created in the off-site project.

(c) (i) A proposed development with a pre-existing property boundary in the center of an Intermittent or Perennial Stream that includes a perpetual conservation easement for the benefit of a conservation organization approved by Sussex County in the form of a Zone A Resource Buffer on the opposite side of the Intermittent or Perennial Stream may receive a corresponding area reduction of the Zone B Resource Buffer within the proposed development.

(ii) A proposed development with a pre-existing boundary in the center of an Intermittent or Perennial Stream may receive a 200 percent area reduction of Zone B Resource Buffer if forest lands designated as Zone A Resource Buffers are secured under a perpetual conservation easement for the benefit of a conservation organization approved by Sussex County on the opposite side of the Intermittent or Perennial Stream along the proposed development boundary.

3. For purposes of this Subsection G., "Forest" shall mean: A vegetative community dominated by trees and other woody plants covering a land area of 10,000 square feet or greater. Forest includes: (1) areas that have at least 100 trees per acre with at least 50% of those having a two-inch or greater diameter at 4.5 feet above the ground and larger, and (2) forest areas that have been cut but neither stumps were removed nor the land surface regraded.

H. Resource and Resource Buffer Maintenance and Management.

1. Resource and Resource Buffer Management Plan

Any proposed development where Resource Buffers are required shall submit a Resource and Resource Buffer Management Plan, prepared by a Qualified

Resource Buffer Management Professional, that describes measures for maintaining or improving the Resource and the Resource Buffer(s) on the site. The Resource and Resource Buffer Management Plan shall be proffered as part of the Supporting Statement requirements of §99-24, or at the time of Preliminary Site Plan approval for any residential conditional use. The maintenance standards or management actions associated with the Resource and Resource Buffer Management Plan shall be included as an obligation of the owners' association in the recorded declaration for any new development. The Resource and Resource Buffer Management Plan shall describe how the Resource Buffer will be managed to maintain its functions and cite any measures to be implemented for the enhancement of Resource Buffers or their functions. It shall also include a narrative discussing the overall plan for access easements sufficient for expected short- and long-term maintenance and management needs.

2. Any Perennial or Intermittent Stream within a proposed development that does not exhibit a positive conveyance (regardless of whether it is part of a Tax Ditch) shall be identified by phase on the Detailed Grading Plan as follows:

(a) If the deficient Perennial or Intermittent Stream has adjacent Non-Tidal Wetlands, the applicant shall restore the conveyance channel to a positive conveyance (i.e. the removal of conveyance impediments) within the entire site prior to the issuance of substantial completion of the final approved phase. This restoration shall be in compliance with all applicable federal, state and county requirements.

(b) If the deficient Perennial or Intermittent Stream has no adjacent Non-Tidal Wetlands, the applicant shall restore the conveyance channel to a positive conveyance (i.e. the removal of conveyance impediments) within the entire site prior to the issuance of substantial completion of the first approved phase. This restoration shall be in compliance with all applicable federal, state and county requirements.

I. Modifications and Exceptions.

The Planning and Zoning Commission shall be authorized, as part of the site plan review process, to grant preliminary or final site plan approval with modifications of, or exceptions to, the foregoing requirements upon the submission of a detailed

and specific written request from the applicant with supporting documentation from a Qualified Wetland Resource Professional or Qualified Resource Buffer Management Professional, but only upon the satisfaction of all of the following conditions:

1. When the Commission finds that special conditions or circumstances exist that are peculiar to the land or structure and that a literal enforcement of a specific requirement of this section would result in unwarranted hardship.

2. That the modification or exception request is not based upon conditions or circumstances which are the result of actions by the applicant, nor does the request arise from any condition relating to land or building use, either permitted or nonconforming, on any neighboring property.

3. That the granting of a modification or exception will not adversely affect the functions of the Resource or its Resource Buffer as set forth in the definition of that term. Waivers shall be in harmony with the general spirit and intent of this section and any subsequent regulations.

4. That the basis for the modification or exception cannot be achieved through Resource Buffer Width Averaging as provided by §115-193B.

5. That in no event shall there be a modification or exception to the width requirements of Zone A.

The date of any modification or exception by the Commission shall be noted on the final site plan.

J. These requirements shall only apply to subdivisions governed by Chapter 99, Residential Planned Communities and uses identified in §115-219A(1) and (2).

Section 11. The Code of Sussex County, Chapter 115, Article XXVIII, §115-220 “Preliminary Site Plan Requirements”, is hereby amended by inserting the italicized and underlined language as a new Subsection B(17) thereof:

§115-220 Preliminary Site Plan Requirements

...

B. The preliminary site plan shall show the following:

...

(17) In the case of a proposed development with the uses identified in §115-219A(1) and (2) or Residential Planned Communities, the site plan shall include all required Resource Buffers and the following:

(a) The boundary and type of any Non-Tidal/Tidal Wetland or water resources (Tidal, Perennial, Intermittent) which require a Resource Buffer. The boundary will be shown per methods identified in the definitions of Wetlands and Ordinary High Water Line Delineation.

(b) All existing (i.e., at the time of application) native forest and non-forest meadow within the future Resource Buffer.

(c) The limits of the required Resource Buffers.

(d) Calculations supporting Resource Buffer width averaging (§115-193B).

(e) Calculations supporting Resource Buffer enhancement calculations and corresponding Forested and/or Landscaped Buffer reductions, if applicable (§115-193F).

(f) Proposed access easement layout for access to Resource Buffers and the adjacent Resources with a note that such access easements are “public access easements for maintenance purposes”. For purposes of this requirement, “public” shall mean, and be limited to, those parties requiring access for maintenance purposes.

(g) A reference by title, author and date, to the “Drainage Assessment Report” required by Section 115-193.F.2.

Section 12. The Code of Sussex County, Chapter 115, Article XXVIII, §115-221 “Final Site Plan Requirements”, is hereby amended by inserting the italicized and underlined language as a new Subsections B(19) and E. thereof:

§115-221 Final Site Plan Requirements

...

B. The final site plan shall show the following:

(19) In the case of a proposed development with the uses identified in §115-219A(1) and (2) or Residential Planned Communities, the site plan shall include all required Resources and Resource Buffers including the following, where applicable:

(a) The boundary and type of any Non-Tidal/Tidal Wetland or water resources (Tidal, Perennial, Intermittent) which require a Resource Buffer. The boundary will be shown per methods identified in the definitions of Wetlands and Ordinary High Water Line Delineation.

(b) All existing (i.e., at the time of application) native forest and non-forest meadow within the future Resource Buffer.

(c) The limits of the required Resource Buffers.

(d) Calculations supporting Resource Buffer width averaging (§115-193B).

(e) Calculations supporting Resource Buffer enhancement calculations and corresponding Forested and/or Landscaped Buffer reductions, if applicable (§115-193F).

(f) Proposed access easement layout for access to Resource Buffers and the adjacent Resources with a note that such access easements are “public access easements for maintenance purposes”. For purposes of this requirement, “public” shall mean, and be limited to, those parties requiring access for maintenance purposes.

(g) A statement incorporating the Resource and Resource Management and Maintenance Plan by reference.

(h) A reference by title, author and date, to the “Drainage Assessment Report” required by Section 115-193.F.2.

...

E. An AutoCAD drawing file containing all items required in Section A above shall be submitted in electronic format. The data shall be referenced in NAD 1983 StatePlane Delaware FIPS 0700 (U.S. Feet) Projected Coordinate System.

Section13. Effective Date.

996 This Ordinance shall take effect upon _____ (__) months from the date of adoption
997 by Sussex County Council. Provided however, that it shall not apply to any
998 completed applications on file with the Sussex County Office of Planning & Zoning.

Sussex County Drainage and Resource Buffer Ordinance Summary Paper

The following information is a summary of the provisions within the Buffers – Wetlands – Drainage Ordinance to be used as a guide in the review of the Ordinance.

Section ¹	Title	Summary	Page Numbers
1	Definitions	Defines: ephemeral streams, intermittent streams, major subdivision, minor subdivision, non-tidal wetlands, ordinary high-water mark delineation, perennial non-tidal rivers and streams, resource buffer – wetlands and waters, resources, tax ditch, tidal waters (mean high-water line), tidal wetlands, water dependent activities, water related activities, and wetlands.	Pages: 3-7
2	General Requirements & Restrictions	Requires Resources and Resources Buffers to be depicted on preliminary and final plot plans for each major subdivision of lands	Pages: 7-8
3	Preliminary Conference	Amends the current Code to strike the reference to a minor subdivision	Page: 8
4	Information to Be Shown	Lists the specific information to be shown on the preliminary plat	Pages: 8-9
5	Supporting Statements	Requires a Resource and Resource Buffer Management Plan and the same to be recorded as part of the subdivision	Pages: 9-10
6	Information to Be Shown	Lists the specific information to be shown on the final plat	Pages: 10-11
7	Plans	Requires Resources and Resources Buffers and the public access easement as part of the Chapter 99 “Plans”	Page: 11
8	Definitions and Word Usage	Includes identical definitions as Section 1	Pages: 12-16
9	Height, Area and Bulk Requirements	Amends the current Code related to cluster subdivisions to come into compliance with the requirements of §115-193.	Pages: 16-17

Section ¹	Title	Summary	Page Numbers
10	Resource Protection	<p>Strikes the current buffer ordinance (§115-193) and renames the section “Resource Protection”</p> <p>10A. Requires Resource Buffer widths</p> <p>10A. Lists the Resource Buffer widths (Table 1)</p> <p>10B. Defines Resource Buffer averaging</p> <p>10C. Lists the Resource Buffer Permitted Activities by Zone (Table 2)</p> <p>10D. Defines the Resource Buffer Standards</p> <p>10E. Defines Selective Cutting</p> <p>10F. Defines the maintenance of drainage conveyances including a requirement for a Drainage Assessment Report</p> <p>10G. Defines Resource Buffer Options to incentivize the retention of forests and the retention or expansion of Resource Buffers</p> <p>10H. Defines the Resource and Resource Buffer Maintenance and Management requirements</p> <p>10I. Defines the requirements for the PZ Commission to grant an exception or modification</p>	<p>Pages: 17-20</p> <p>Pages: 20-21</p> <p>Page: 21</p> <p>Pages: 21-22</p> <p>Pages: 22-25</p> <p>Pages: 25-26</p> <p>Page: 26</p> <p>Pages: 26-27</p> <p>Pages: 27-29</p> <p>Pages: 29-30</p> <p>Pages: 30-31</p>
11	Preliminary Site Plan Requirements	Lists the specific information to be shown on the preliminary site plan	Pages: 31-32
12	Final Site Plan Requirements	Lists the specific information to be shown on the final site plan	Pages: 32-33
13	Effective Date	Effective date of the ordinance	Page: 33-34

1. Sections 1-7 address Chapter 99 of County Code. Sections 8-12 address Chapter 115 of County Code.



Memorandum

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

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

CC: Everett Moore, County Attorney

Date: October 8, 2021

RE: County Council Report for CU 2236 filed on behalf of Carl M. Freeman Companies

The Planning and Zoning Department received an application (CU 2236 filed on behalf of Carl M. Freeman Companies) for a Conditional Use for parcels 533-20.00-22.00 and 20.00 (portion of) for a hotel and restaurant. The property is within the Agricultural Residential (AR-1) Zoning District and is located on the northwest side of the intersection of Lighthouse Road (S.C.R. 58) and Bennett Avenue, approximately 0.79 mile west of Coastal Highway (Route One). The parcel size is 9.2 acres +/-.

The Planning and Zoning Commission held a public hearing on June 10, 2021. At the meeting of July 8, 2021 there was no formal recommendation given by the Planning & Zoning Commission. Four (4) Commissioners were eligible to vote on the application and a motion to deny was made but failed as it only received 2 votes. Planning & Zoning Commission Rule 5.5 provides that 3 affirmative votes are needed to approve any matter within the Commission's jurisdiction and failure to receive 3 affirmative votes shall be deemed to disapprove any matter. The Commissioners discussed the matter and determined that there were not 3 affirmative votes as the Commissioners were split 2 to 2.

The County Council held a Public Hearing on the application on July 27, 2021. At the conclusion of the Public Hearing, Council deferred for further consideration.

Below are the approved minutes from the Planning & Zoning Commission meeting of June 10, 2021 and the approved minutes from the Planning & Zoning Commission meeting of July 8, 2021.

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

C/U 2236 – Carl M. Freeman Companies

An Ordinance to grant a Conditional Use of land in an AR-1 Agricultural Residential District



for a hotel and restaurant to be located on a certain parcel of land lying and being in Baltimore Hundred, Sussex County, containing 9.2 acres, more or less. The property is lying on the northwest side of the intersection of Lighthouse Road (S.C.R. 58) and Bennett Avenue, approximately 0.79 mile west of Coastal Highway (Route 1). 911 Address: N/A. Tax Parcel: 533-20.00-22.00 & 20.00 (Portion of).

Ms. Wingate recused herself from the next case and left Chambers. Mr. Robertson recused himself from the case and left Chambers. Mr. Sharp was present for this case.

Mr. Whitehouse advised the Commission that submitted into the record is a copy of the Applicant's exhibit booklet, Applicant's conceptual site plan, a copy of DelDOT Traffic Operational Analysis with DelDOT's response, a copy of DelDOT's Service Level Evaluation Response, a copy of PLUS comments from the State Planning Office, a letter from Sussex County Engineering Department Utility Planning Division, a copy of the staff analysis, 160 letters of opposition (some duplicates), one letter of support, and two mail returns.

The Commission found that Mr. James Fuqua, Esq. was present on behalf of the Applicant, Carl M. Freeman Companies; that also present are Mr. Josh Mastrangelo on behalf of Freeman Companies, Katja Kalinski and Mr. Steve Marsh with George, Miles & Buhr (GMB), Mr. Ed Launay, Environmental Resources Inc, and Mr. William Conaway with Century Engineering; that this is a Conditional Use application for a 70-room hotel with a separate restaurant; that the parcel is in the AR-1 zoning district on 9.2 acres of land fronting onto Rt. 54 1-mile west of the intersection of Rt.1 and Rt. 54 in Fenwick Island; that the 9.2 acres are part of a 120-acre parcel containing 25 acres of uplands and 83 acres of wetlands previously purchased from the estate of Everette and Allie Cannon; that the Cannon Family owned this property since 1901; that the majority of the property was the subject of subdivision application 2018-18; that the subdivision was approved at a public hearing held on November 15, 2018 as a 70-lot single family subdivision with conditions and modifications to the site plan; that a revised preliminary subdivision plan incorporating the modifications was approved on April 2, 2021; and that the 9.2 acres fronting on Rt. 54 is the remainder of the property that was not part of the approved subdivision; that the Conditional Use proposes two separate but related uses; that the front portion of the parcel would be the site of a 8,500 square foot restaurant; and that the rear portion would be developed as a 70-room hotel including an outdoor pool; that the 9.2 acre parcel fronts on the south side of Rt. 54 and Bennett Avenue to the east; and to the future 20-ft landscape buffer of the approved subdivision to the north with tidal and non-tidal wetlands to the west; that the parcel is located west of "the ditch" the channel of water connecting Assawoman Bay to Little Assawoman Bay; that all the land on both sides of Rt. 54 from the Rt. 1 intersection to the ditch are zoned C-1- General Commercial, which is fully developed with residential and commercial uses; that the land immediately next to the site to the west side of the ditch and Bennett Avenue contains a variety of zoning districts and existing uses; and that some single-family homes fronting on Bennett Avenue in AR-1 zoning district; and that the northern portion of the adjacent property is zoned Marine which is developed with a multifamily townhouse development, Fenwick Landing; and that the most eastern part of the Marine land is a marina with boat slips and the restaurant, Catch 54 Fish House; and that the remaining land fronting Rt. 54 is zoned B-1 Neighborhood Business which includes a spa and a restaurant, a large parking lot for various businesses; that the land to the west of the site being tidal and non-tidal wetlands; that the rear of the site is the approved 70-lot subdivision

which is being developed by Freeman Companies; that the site will be served by public water and sewer; that the County Engineering Department confirmed adequate capacity is available for proposed uses as stated in the memo in the file dated May 25, 2021; that storm water management facilities will be constructed in accordance with DNREC regulations and will be reviewed and approved by the Sussex Conservation District; that a large storm water management pond is proposed to be located on the northeast quadrant of the site between Bennett Avenue and the hotel parking lot; that the entire 120- acre Cannon property including the 9.2 acre parcel had a wetland delineation performed by Mr. Ed Launay with Environmental Resources Inc; and reviewed by US Army Corps of Engineers Office where a jurisdictional of determination letter was issued on November 16, 2018; that all proposed development in the Conditional Use will maintain the required 50-ft. buffer from the tidal wetland line with a minimum 20-ft. buffer from the non-tidal wetland line, that there is no factual basis to the opposing e-mails with concerns that the wetlands will be filled or destroyed as the wetlands will not be encroached; that both tidal and non-tidal wetlands will have significant buffers; and that Environmental Resources Inc confirmed with U.S. Fish & Wildlife Service that no endangered species and no critical habitats are associated with the site; that in response to the Service Level Evaluation Request, DelDOT determined that the Applicant could pay an Area-Wide Study Fee in lieu of a Traffic Impact Study (TIS) which was stated in a letter from DelDOT on July 8, 2020; that the entrance to the hotel and restaurant would be a joint entrance from Bennett Avenue, and would also be the entrance to the subdivision; that the DelDOT Traffic Operational Analysis (TOA) determined the following improvements would be the responsibility of the Applicant, that Bennett Avenue would be realigned at the intersection with Rt. 54 directly opposite Monroe Avenue on the south side of Rt. 54 to create a four-legged intersection that the location of the realigned road residing on lands owned by the Applicant which will be dedicated to DelDOT; that the new intersection will have turn lanes, pedestrian, bicycle and transit improvements as required by DelDOT; that the developer will be required to provide a 15-foot permanent easement along the site frontage and construct a 10-foot shared-use path; that at DelDOT's discretion the developer will provide a concrete overlay as needed to address any restriping and pavement damage; that the developer will coordinate with DART to provide a bus stop, including a pad, shelter and sidewalk along Rt. 54 on the site frontage near Bennett Avenue; that the Applicant must enter into a signal agreement for costs associated with the future signal light of the intersection; that in 2019 DelDOT's TOA did not recommend the installation of a signal light as it did not meet the DelDOT traffic volume warrants; that DelDOT's Rt. 54 Corridor Study from 2019-2020 it was recommended that a traffic signal be installed at the Rt. 54 and Bennett Avenue intersection; that as a result a new TOA letter issued on February 15, 2021 indicated the Applicant would be responsible for the Bennett Avenue realignment and that intersection would be signalized; that in the proposed site design the main entrance would be from Bennett Avenue directly opposite Madison Avenue; that there will be a secondary access in the rear of the hotel parking lot; that there will be 99 parking spaces for the hotel and 99 parking spaces for the restaurant; that the provision in the zoning code Section 115-165 regarding shared parking which allows a reduction of parking spaces up to 50% for uses located near one another; that a parking study was performed by GMB which determined the greatest need for parking would be on Saturday and Sunday evenings from 6:00 pm until 10:00 pm which resulted in 198 parking spaces; and that the Applicant is reducing parking by 15% from the stand alone requirements; and that the outdoor swimming pool located between the hotel building in the east and the open wetland area on the west; that the hotel would have 70 rooms and not exceed 42-feet in height; that the restaurant has not yet been designed, but is

not intended to be a fast-food restaurant; that the Applicant is proposing under Condition “T” that the restaurant will not have a drive-through capability or design; that the restaurant will have an outdoor seating area on the west of the building; that the Applicant proposes under Condition “J” that any outdoor seating and/or music would stop at 10:00 pm; that the Applicant is requesting two lighted signs for the hotel and restaurant; that one sign is not to exceed 200 feet per side and would be located on Rt. 54 near the entrance; that one sign which is not to exceed 32 square feet to be located at the entrance at Bennett Avenue; and that both signs are to be traditional lighted signs and not an Electronic Message Centers as outlined under condition “G”; that there will be a landscape buffer along Rt. 54 and the west side of Bennett Avenue; that landscaping will be throughout the parking areas; that the proposed site plan will result in 53% of the 9.2 acre site remaining open space including wetland areas and wetland buffers; that the site is in the Fire Protection Service area of the Roxanna Fire Company; that under the 2019 Comprehensive Plans Future Land Use Map the parcel is located in the Coastal Area which is a growth area designated by the Comprehensive Plan; that the plan states that retail and office spaces are appropriate in the Coastal Area; that as required a 50-foot buffer is provided from the tidal wetlands line and 20-foot buffer for the non-tidal wetlands line; that tourism is becoming a dominate force in the County’s economy; that tourism is mostly concentrated in the eastern part of the County along the coast; that the proposed economic development goals are maintaining and strengthening the economic base of the County, and encouraging economic diversity and expansion, maintaining & strengthening the County position as a tourist destination; that the proposed Conditional Use is in accordance to the revision and goals of the Comprehensive Plan; that the proposed usages are essential and desirable for the general convenience and welfare of full and part-time residents and visitors to the beach area; that rather than seeking a business or commercial zoning district as a Change of Zone application which would permit a wide variety of commercial uses, the Applicant elected for Conditional Use approval for only a hotel and restaurant; that the parcel is the last undeveloped site along Rt. 54 making it a natural and logical extension of the commercial usage adjacent to the site; that development was originally proposed for a site located on a secondary or minor road but the Applicant felt it should be located on a primary or major road; that The Freeman Companies has over 50 years of creating residential and commercial development in Sussex County, and that the Freeman Companies are a supporter of many County charities and organizations and operates The Freeman Stage, within the Americana Bayside development.

Mr. Fuqua submitted proposed findings of fact and conditions.

Mr. Mears stated that this area needs a traffic light so he is happy to hear that one is planned; that he has concerns regarding the existing entrance to Catch 54 restaurant, Papa Grandes restaurant, and the spa being taken away with the only entrance being that from Madison Avenue.

Mr. Fuqua states that would be a decision for DelDOT to determine.

Mr. Mears asked if the buffer on the north side of the property is part of the current application or part of the 70-lot development application.

Mr. Fuqua stated the buffer was previously part of the 70-lot development application.

Ms. Stevenson questioned the size of the buffer between the subdivision and the new commercial parking.

Mr. Fuqua stated it was a 20-foot landscape buffer.

Ms. Stevenson requested examples and distances of the buffer for the wetlands and how they are more than required.

Mr. Fuqua stated with a combination of the buffers being 50 feet and 20 feet in addition to the setback of any parking, pool, or building the buffer is greater than what is required.

Ms. Stevenson asked if the Applicant will follow the recommendations from the JMT Engineering TOA report.

Mr. Fuqua stated the Applicant is required to follow the recommendation given on the most recent TOA report from February 2021.

Ms. Stevenson stated that she has an interest in the lighting plan for the Application.

Mr. Fuqua stated the lighting will be appropriate. The parking lot lighting will be controlled in a downward position and not extending very far.

Ms. Stevenson questioned if there would be any lighting at the top of the hotel pointing downward.

Mr. Fuqua stated the hotel would be no higher than 42-feet; that there is no intent to create a nuisance; that the same company is developing the subdivision directly behind the site making them as impacted as much as anyone else; and that it will be done properly.

Chairman Wheatley stated that being a Conditional Use process the Commission has the ability to impose stipulations.

Mr. Sharp asked if the hotel would have an event center for weddings or conferences.

Mr. Fuqua stated events would affect parking requirements and with the shared parking design he did not believe the Hotel would be able to host events.

Mr. Sharp noted that there is an end time for the outdoor seating and music and asked what the start time is for the outdoor seating and music.

Mr. Fuqua stated he does not know of a set start time for outdoor seating and music; that potentially outdoor seating and music would start upon opening for the day; that the design for outdoor seating is still in discussion; and that upon stopping at 10 pm outdoor seating and music will not begin again until opening the next business day.

Mr. Sharp expressed concern about the traffic circle placement and the ability for emergency vehicles to arrive at the subdivision. Mr. Fuqua stated the traffic circle would be designed per DelDOT requirements and would include any radius needed for emergency vehicles.

The Commission found that Ms. Doris Pierce spoke in opposition to the Application; that she had concerns about the infrastructure not being able to handle the amount of traffic on Rt. 54 specifically on Saturdays and Sundays; that the bottleneck of traffic that occurs at The Ditch; and that DelDOT should reconstruct to accommodate the commercial development and traffic.

The Commission found that Mr. Ben Moses spoke in opposition to the Application; that he has concerns regarding the capability of emergency personnel to respond to emergencies with increased traffic; that he has concerns regarding the hotel lighting brightness and color; that the proposed traffic signal will create another bottleneck on Rt. 54; that the increase of people will affect businesses struggling to find workers; that deviation from the AR-1 Zoning Code defeats the purpose of the zoning; and that the environmental impact this Application will have on the area.

The Commission found that Ms. Maria Colello spoke in opposition to the Application; that she has concerns about the impact on wildlife and infrastructure, traffic congestion, emergency response; and impact on water and sewer lines.

The Commission found that Mr. Brian Ratcliffe spoke in opposition to the Application and expressed concerns about losing the last non-developed land on Rt. 54; and the effects of increased traffic on Rt. 54.

The Commission found that Ms. Diana Messino spoke in opposition to the Application who expressed concerns about the wildlife, the effect of increased traffic, and the effects the construction would cause on Rt. 54.

The Commission found that Mr. Ryan Owen spoke in opposition to the Application and expressed concerns about the effects of increased traffic on Rt. 54 and losing the last remaining undeveloped land on Rt. 54.

The Commission found that Ms. Julie Moses spoke in opposition of the Application and expressed concerns about the environmental effects and pollution the development would cause; the increased traffic on Rt. 54; where emergency helicopters will land when the road is blocked with the additional traffic; the hotel height if it is placed on already elevated land; and about the hotel intensity and color of lighting, and overflow parking.

The Commission found that Mr. Mark Tingle spoke in opposition of the Application and expressed concerns of the effects on increased pedestrian traffic who are walking to the beach with unsuitable shoulders on Rt. 54, and the zoning for Conditional Use versus permanent commercial zoning; and regarding the effects the traffic light will create with backed-up traffic at turn of Shark's Cove.

The Commission found that Mr. John Lewis spoke in opposition to the Application and expressed concern about the bottleneck of traffic the proposed traffic light will cause on Rt. 54.

The Commission found that Ms. Samantha Danaher spoke in opposition of the Application and expressed concerns about the effects of increased traffic; the loss of scenic views; that the project will not support Fenwick Island as a quiet resort; and that the hotel will financially affect locals that rent homes in this area.

The Commission found that Ms. Sharon Feeney spoke in opposition to the Application and expressed concerns for the effects of increased traffic and emergency response time.

The Commission found that Ms. Carol Lindy spoke in opposition to the Application and expressed concerns that The Freeman Companies may not have the best interest of the community at heart.

The Commission found that Ms. Laura Missy West spoke in opposition to the Application and requests that The Carl Freeman Companies listen to the community.

The following people spoke by teleconference in opposition to the Application: Mr. Henry Bennett, Mr. Paul Elder, Mr. Thomas Riley, Ms. Kathy Bean, Mr. Brock Kadowdi, Ms. Joann Hess, Ms. Nancy Suma, Ms. Natalie Madgaberger, Mr. Joe Brzostowski, and Ms. Ashley Cummings. The concerns raised were about the increased traffic, the loss of open space, the effect on wildlife and wetlands, the pollution; the response times for emergency vehicles, increased density, and increased flooding.

Ms. Stevenson stated she would like everyone to look up the Sussex County Land Trust which is a non-profit which buys land for land preservation and consider making a donation.

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

In relation to Application C/U 2236 – Carl M. Freeman Companies. Motion by Mr. Mears to defer action for further consideration, seconded by Ms. Stevenson. Motion carried 3-0. Ms. Wingate abstained.

Mr. Whitehouse confirmed that the County Council hearing date for this Application will be July 27, 2021, at 1:30 pm in the County Council Chambers.

Ms. Wingate and Mr. Robertson returned to Chambers for the next application.

Approved Minutes of the July 8, 2021 Planning & Zoning Commission Meeting

Ms. Wingate recused herself from this case. Mr. Robertson recused himself from this case. Mr. Sharp was present for this case.

Mr. Hopkins stated that he has reviewed the Application material and is prepared to vote.

The Commission discussed this application which has been deferred since June 10, 2021.

Mr. Mears moved that the Commission recommend denial of C/U # 2236 for CARL M. FREEMAN COMPANIES for a Hotel and Restaurant based upon the record made during the public hearing and for the following reasons:

1. While the site is designated as Coastal Area on the Comprehensive Plan, the proposed hotel and restaurant is too intensive for the area. It is not compatible, and would be out of character, with the surrounding properties, and does not promote the orderly growth, convenience, prosperity, and welfare of the County.
2. The parcel consists of approximately 9.2 acres and the Applicant proposes to develop the parcel with a 70-room hotel and a 8,500 square foot restaurant. The parcel was formerly part of a larger parcel which was largely undeveloped and contained significant wetlands areas but is now otherwise being developed for a 70-lot subdivision.
3. As noted above, this use is too intensive and inappropriate for the site particularly since the site is environmentally sensitive. The site is just west of the "Ditch" that connects the Little Assawoman Bay from the Big Assawoman Bay. The Applicant has acknowledged that the site has 4.89 acres of federal and state wetlands. In the PLUS review, DNREC noted that the entire parcel has wetland associated hydric soils and will be significantly impacted by permanent inundation of future sea level rise. Nearly all of the parcel is situated within the 100-year floodplain.
4. The use is not a residential project and is a commercial enterprise in the middle of a predominantly residential area. The proposed hotel and restaurant are not in character with surrounding uses and, therefore, are incompatible.
5. The application is not essential or desirable for the general convenience and welfare of the area where it is located. This project will result in significant increases in traffic congestion in an area that is already congested.
6. The Application does not promote the health, safety and general welfare of the public in that increases in emergency response time will result due to increased traffic which will adversely affect the care of residents in the area; particularly since there are few ways to reach nearby Fenwick Island.
7. Based on the record, the Application would be detrimental to the health, safety and general welfare of the public, neighboring property owners, and pedestrians and motorists in the area in that much of the surrounding area consists of residential developments of various sorts; that the proposed hotel is not residential in nature and rather, is a commercial venture designed to attract transient vacationing guests to the area; that the restaurant is also a commercial use; that the site is located in a flood zone; and that the project will put current residents in the area, as well as emergency response teams, at risk in the event of evacuations or emergencies.
8. Based on the record, the proposed use, which includes outdoor recreation space and outdoor restaurant seating with music, will create an increase in noise level which, along with increased traffic concerns, will be disruptive to the residents in the vicinity and is not compatible with the existing residential uses that largely surround the property.
9. The Applicant's proposal will result in fewer parking spaces than is required by Code, and the proposed shared parking proposals would not be likely to address this shortfall. This area is already congested and the reduction of parking spaces will likely exacerbate the area's congestion and will negatively affect the character of the neighborhood.
10. The Commission received 160 letters and emails, some of which may be duplicates, expressing opposition to the project. These communications have come from parties who live in the surrounding communities. Finally, there were 26 people present at the Planning and Zoning Commission public hearing in opposition to the Application.
11. For all of these reasons, I recommend a denial of this Conditional Use.

The motion by Mr. Mears, seconded by Ms. Stevenson to recommend denial of C/U 2236 for Carl M. Freeman Companies failed.

Roll call vote: Mr. Mears-yea, Mr. Wheatley-nay, Mr. Hopkins-nay, Ms. Stevenson-yea.

Mr. Sharp stated that pursuant to 5.5 of the Planning and Zoning Commission Rules of Procedure three affirmative votes shall be required to approve any matter within the jurisdiction of the Planning and Zoning Commission.

Planning & Zoning Commission Rule 5.5 provides that 3 affirmative votes are needed to approve any matter within the Commission's jurisdiction and failure to receive 3 affirmative votes shall be deemed to disapprove any matter. The Commissioners discussed the matter and determined that there were not 3 affirmative votes as the Commissioners were split 2 to 2.

Approved Minutes of July 27, 2021 County Council Meeting

Mr. Moore stated that Mr. Hudson would be recusing himself from participating in or voting on the Public Hearing on Conditional Use No. 2236 due to a potential conflict of interest. Mr. Hudson left the meeting. A Public Hearing was held on the Proposed Ordinance entitled

“AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A HOTEL AND RESTAURANT TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 9.2 ACRES, MORE OR LESS” (Conditional Use No. 2236) filed on behalf of Carl M. Freeman Companies (Tax I.D. No. 533-20.00-22.00 & 20.00 (Portion of) (911 Address: None Available).

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

The Planning and Zoning Commission held a Public Hearing on this application on June 10, 2021 at which time action was deferred. Commission Member Wingate recused herself from this case. On July 8, 2021, the Commission considered the application. On that date a Motion was made and Seconded to recommend denial of Conditional Use No. 2236. The Motion to recommend denial failed with a vote of 2 to 2. Mr. Whitehouse noted that the Planning and Zoning Commission's Rule 5.5 provides that 3 affirmative votes are needed to approve any matter within the Commission's jurisdiction and failure to receive 3 affirmative votes shall be deemed to disapprove any matter. (See the minutes of the Planning and Zoning Commission dated June 10 and July 8, 2021.) Mr. Whitehouse reported that 386 comments have been received in opposition to the application and 1 comment in favor. He noted that of those comments received in opposition, some of them appear to be duplicates. The Council found that Jim Fuqua, Esq. was present on behalf of the Applicant along with Josh Mastrangelo on behalf of Freeman Companies; Katja Kalinski with George, Miles & Buhr; Ed Launay with Environmental Resources; and William Conway with Century Engineering. Mr. Fuqua commented on the misinformation reported in the media that the Applicant wants to build a hotel and restaurant on State- and Federal regulated wetlands and also that the Planning and Zoning Commission recommended denial of the application. Mr. Fuqua stated that neither of these two things are true; that the proposed hotel and restaurant would not be built on wetlands and no wetlands will be encroached upon, disturbed, or touched; that not only is the required 50 foot buffer from tidal wetlands being provided, but the Applicant is voluntarily providing a minimum 20 foot buffer from the non-tidal wetlands; that it was originally reported that the Planning and Zoning Commission

recommended denial because they didn't recommend approval; that a Motion was made to deny the application and the Motion was a 2-2 tie, so the Motion to deny failed; that there was not a Motion made to approve it, but if there had been, that would have also been a 2-2 tie and, therefore, there is no recommendation of approval, there is no recommendation of denial, and there is no recommendation. Mr. Fuqua asked Council to disregard any misinformation.

Mr. Fuqua stated that the application is for a 70 unit hotel and a separate restaurant; that the parcel of land contains 9.2 acres and fronts on Route 54 at Bennett Avenue, approximately 1 mile west of the Route One – Route 54 intersection at Fenwick Island; that the 9.2 acres are part of a 120 acre parcel of land that contains approximately 35 acres of uplands and 83 acres of wetlands; and that the land is under contract to the Applicant. Mr. Fuqua provided background information on the ownership of the property and background on the Freeman Companies' selection of this site for the proposed project. He stated that the Freeman Companies decided that the appropriate development plan for the property was a single family cluster subdivision on the majority of the uplands with the exception of the parcel fronting on Route 54 that is adjacent to existing commercial uses, which is the site of the proposed hotel and restaurant; that the Freeman Companies received approval from the Planning and Zoning Commission for a 70-lot single family cluster subdivision on the northern or rear 26 upland acres of the site in 2018 and a revised preliminary subdivision plan incorporating the conditions and modifications that were imposed by the Planning and Zoning Commission was approved on April 22, 2021; that the 9.2 acre parcel fronting on Route 54 is the remaining portion of the property that was not included as part of the approved subdivision; that of the 9.2 acres, 4.8 acres are uplands and 4.32 acres are the wetlands; that the front portion of the parcel would be the site of a quality restaurant with a square footage of 8,500 square feet; that the rear portion would be developed with a 70 room hotel with an outdoor pool; that Bennett Avenue is located along the east side; that a future 20 foot landscaped buffer, which is part of the approved cluster subdivision is located to the north (to the rear) of the site; that there is an expansive area of tidal and non-tidal wetlands located to the west of the site; that the site is located just west of the ditch which is a channel of water that connects the Assawoman Bay and the Little Assawoman Bay; that all of the lands fronting along Route 54 from the Route One intersection to the ditch is all zoned C-1 Commercial and is fully developed with a variety of residential and commercial uses; that water will be provided by Artesian; that the site is located within the County's West Fenwick Sanitary Sewer District and will be served by County sewer; that stormwater management will be in accordance with DNREC regulations and the Sussex Conservation District; and that a wetland delineation was performed by Ed Launey of Environmental Resources, Inc. and was reviewed by the U.S. Army Corp of Engineers and a jurisdictional determination letter was issued by the Army Corps of Engineers.

Mr. Launay responded to questions raised by Council regarding the comments in the PLUS Review in the wetlands section that hydric soils are present in the entire proposed project area in comparison to his own findings that hydric soils are limited to those areas classified as wetlands. Mr. Launay stated the comments regarding hydric soils in the PLUS Review rely on the USDA Soil Survey which can be highly inaccurate and that his report relies on a physical visit to the site and actual soil samples/borings.

Mr. Fuqua stated that almost all of this area around Fenwick Island and Route 54 is located in the 100 year flood plain which means that the Applicant has to comply with the construction elevations and other construction requirements; that one exception to being in the 100 Year Flood Plain is this 9 acre parcel – it is not in the flood zone, it is designated as being in Zone X which is outside of the flood zone; that the majority of the site being disturbed for development is in the Zone X area; that in regard to traffic impact, DelDOT determined that the Applicant could pay an Area Wide Study Fee in lieu

of a Traffic Impact Study; that in accordance with DelDOT's letter of July 8, 2020, the entrance to the hotel and restaurant will be from Bennett Avenue; that Bennett Avenue is also the approved entrance to the Freeman subdivision; that there would be a secondary access at the rear of the hotel parking lot; that when the subdivision was being reviewed by DelDOT, a Traffic Operational Analysis (TOA) was required by DelDOT; that the TOA considered the traffic impact of the subdivision as well as the impact of the proposed commercial use of the parcel fronting on Route 54; as a result of the TOA, DelDOT is requiring improvements that would be the responsibility of the Applicant including the realignment of Bennett Avenue so that it intersects opposite of Monroe Avenue creating a 4-way intersection, which is a safer 90 degree intersection; that the Developer will be responsible for granting a 15 foot permanent easement along the site frontage and constructing a 10 foot shared use path; that a new TOA review letter was issued by DelDOT, dated February 15, 2021, which indicates that the Applicant will be responsible for the Bennett Avenue and Route 54 intersection realignment and installation of a traffic signal at the new realigned intersection and the required road configuration changes; and that the Applicant will be responsible for the cost of these significant improvements. In response to questions raised by Council, William Conway reported on traffic counts and the proposed enhanced Level of Service with the improvements. Mr. Fuqua stated that the original site plan, based on the shared use parking study, proposed 198 parking spaces which is in compliance with the Zoning Ordinance; however, the shared use parking request has been withdrawn and the Applicant's revised site plan includes a revised parking plan providing 237 parking spaces which is more spaces than required by the Zoning Ordinance; that Condition K of the conditions proposed by the Applicant provides that parking shall meet or exceed the parking requirements for a stand-alone hotel and restaurant; that the parking areas will be lighted but the lighting fixtures will be designed to preserve the natural night environment to the greatest extent possible; that the proposed project will not add any light pollution to the area; that the project site is located in a high density residential and commercial area; that the maximum height of the hotel would not exceed 42 feet; that the Applicant is proposing a condition that the restaurant will not have drive-through capability or design; that an outdoor dining area is proposed on the western side of the building; that the Applicant is proposing a condition that any outdoor dining area would terminate service no later than 10:00 p.m.; that the Applicant is also proposing a condition that music and entertainment will be prohibited in the outdoor dining area; that two lighted signs are proposed and they would not be electronic message center signs; that a landscaped buffer area is proposed along Route 54 and the west side of Bennett Avenue; that the proposed site plan will result in approximately 53 percent of the 9.2 acre site remaining as open space; that the proposed Conditional Use is in accordance with the 2019 Comprehensive Land Use Plan; that the project site is located in the Coastal Area which is a Growth Area according to the Plan; that the Conditional Use is fully supported by the Plan; that the proposed use is not out of character with the area; that the Plan states that further development of the Leisure Tourism Market in the County should be a priority; that one of the Economic Development goals of the Plan is to maintain and strengthen the County's position as a tourist destination with the objective of continuing to support the growth of the tourism industry and the expansion of various types of tourism; that the proposed project is the type of development that is a goal and priority of the Economic Development Chapter of the Plan; and that the Planning and Zoning Commission's reasons/basis for denial are not justified.

Public comments were heard.

There were no public comments in support of the application.

Public comments were heard in opposition to the application.

Frank Cintron, Doris Pierce, Ed Waysz, Nancy Flacco (speaking on behalf of SSCCAG – Southern Sussex County Community Action Group), Henry Bennett, Fran Lazero, Barbara Smolinski, Samantha Danaher, Lori Goss, Ben Moses, Brian Radcliffe, Fred Pioggia, Ken Hahn, Jim Jewell, Kirsten McGuigan, Boe Daley, Dave Breen, Julie Moses, Andy Twarowski, Quin Revel, Jeanette Akhter, Thomas Reilly, Mary Rozell, Paul and Dorothy Elder, Cynthia Harper, and Patty Gregorio spoke in opposition to the application.

They expressed concerns about over-development, the additional traffic that will create more congestion on the area roadways, the impact on the quality of life of area residents, public safety impacts including pedestrian and bicycle safety, emergency response times, emergency evacuations, environmental impacts including impacts on the wetlands; stormwater runoff and flooding, at-risk wildlife, lack of sufficient support services as development continues, the impact on farming including the inability to move agriculture equipment around, light pollution, the effect on local businesses where staffing shortages are already a problem; the amount of impervious surface; and traffic reports and the lack of proper research in regard to increased traffic on Route 54.

The opposition referenced the letter from the Director of Office of State Planning, dated 8/19/20. The letter states that this project represents a commercial development within the Level 4 and out-of-play areas according to the 2015 Strategies for State Policies and Spending and that Investment Level 4 indicates where State investments will support agriculture preservation, natural resource protection, and the continuation of the rural nature of these areas; that new commercial development activities are not supported in Investment Level 4 Areas; and that this development is inconsistent with the 2015 Strategies for State Policies and Spending and the Office of State Planning does not support this commercial use.

The opposition stated that existing and increased traffic problems impact local businesses; that the area's infrastructure, beaches, etc. are already overwhelmed; that the project site is an elevated soil disposal site; that the proposed hotel will be situated on the uplands and they question where the water/run-off will go, stating that it will go into the Inland Bays; that Council needs to listen to the USDA soil studies and not the report from the Applicant's representative (Environmental Resources); that in regards to the hydric soils, there is no information in the packet on the core sampling results; that DelDOT cannot keep up with development now and does not need any more development added; that this is not an in-fill project; that there are currently no hotels on Route 54, that the area is predominantly residential; that there is not enough parking in the area to accommodate summer crowds; that they question how the Applicant will increase the number of parking spaces; that this application is in direct opposition to the AR-1 District; that a hotel is not a permitted use; that construction traffic and road closures will create additional traffic problems and traffic accidents; that they question the duration of construction; that there will be wetlands disturbance; that the public hearing notice and signage on the site was inadequate; that future sea level rise needs to be considered; that an independent traffic study should be performed; that DelDOT should require a formal Traffic Impact Study; that the proposal does not consider the overall traffic impact on Route 54; that a regional assessment of traffic was not done; that the project should require a regional impact study; that they ask Council to deny this application or at least delay it until the review of the Southeast Sussex Study (a comprehensive traffic analysis) is to be completed in 2022; that on Page 19 of the detailed transportation analysis (TOA review dated 2/15/21), a table of Level of Service figures shows that with the traffic circle, the Level of Service on eastbound Route 54 is rated as an E (and a score of 44) and putting a signal light at the same intersection will result in a Level of Service D (with a score of 51 which rates a F), that approval of this project will set a precedent; that the Planning and Zoning

Commission did not get the required three votes; that every part of this project is a nuisance; that area residents have given an overwhelming message of opposition to the project; and that eastern Sussex County is at capacity and “enough is enough”. A petition containing 97 signatures was submitted into the record. There were no additional public comments. The Public Hearing and public record were closed.

A Motion was made by Mr. Rieley, seconded by Mr. Schaeffer, to defer action on Conditional Use No. 2236 filed on behalf of Carl M. Freeman Companies. Motion Adopted: 4 Yeas, 1 Absent. Vote by Roll Call: Mrs. Green, Yea; Mr. Schaeffer, Yea; Mr. Hudson, Absent; Mr. Rieley, Yea; Mr. Vincent, Yea.

PLANNING & ZONING COMMISSION

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



Sussex County

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

PLANNING AND ZONING AND COUNTY COUNCIL INFORMATION SHEET

Planning Commission Public Hearing Date: June 10th, 2021

Application: CU 2236 Carl M. Freeman Companies

Applicant: Carl M. Freeman Companies
21 Village Green Drive Suite 200
Ocean View, DE 19970

Owner: Carl M. Freeman Companies
21 Village Green Drive Suite 200
Ocean View, DE 19970

Site Location: Lying on the northwest side of the intersection of Lighthouse Road (S.C.R. 58) and Bennett Avenue, approximately 0.79 mile west of Coastal Highway (Route 1)

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

Proposed Use: Hotel and Restaurant

Comprehensive Land
Use Plan Reference: Coastal Area

Councilmanic
District: Mr. Rieley

School District: Indian River School District

Fire District: Roxana Fire Department

Sewer: Sussex County

Water: Artesian

Site Area: 9.2 acres +/-

Tax Map ID.: 533-20.00-22.00 & 20.00 (Portion of)





Memorandum

To: Sussex County Planning Commission Members
From: Nicholas Torrance, Planner I
CC: Vince Robertson, Assistant County Attorney and applicant
Date: June 3rd, 2021
RE: Staff Analysis for CU 2236 Carl M. Freeman Companies

This memo is to provide background and analysis for the Planning Commission to consider as a part of application CU 2236 Carl M. Freeman Companies to be reviewed during the June 10th, 2021 Planning Commission Meeting. This analysis should be included in the record of this application and is subject to comments and information that may be presented during the public hearing.

The request is for a Conditional Use for Tax Parcels 533-20.00-22.00 & 20.00 (Portion of) to allow for a Conditional Use of land in an Agricultural Residential (AR-1) Zoning District for a hotel and restaurant. The parcel is located on the north side of Lighthouse Road in Selbyville, Delaware. The area of the site is approximately 9.2 acres +/-.

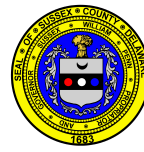
The 2018 Sussex County Comprehensive Plan Update (Comprehensive Plan) provides a framework for how land is to be developed. As part of the Comprehensive Plan, a Future Land Use Map is included to help determine how land should be zoned to ensure responsible development. The Future Land Use map in the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

The Coastal Area land use designation recognizes that a range of housing types should be permitted in Coastal Area, including single-family homes, townhouses, and multifamily units. Retail and office uses are appropriate but larger shopping centers and office parks should be confined to selected locations with access along arterial roads. Appropriate mixed-use development should also be allowed. It also recognizes a careful mixture of homes with light commercial, office and institutional uses can be appropriate to provide convenient services and to allow people to work close to home.

The property is within an Agricultural Residential (AR-1) Zoning District. The parcels to the north, west, and south across Lighthouse Rd are also within an AR-1 Zoning District. There are five (5) small parcels directly to the east that are zoned Neighborhood Business District B-1.

Since 1971, there have been 20 Conditional Use applications within a one-mile radius of the application site. Of the 20 Conditional Use applications within a one-mile radius, 16 have been approved, 3 have been denied, and 1 was withdrawn.

Based on the analysis of the land use, surrounding zoning and uses, the Conditional Use to allow for a hotel and restaurant, subject to considerations of scale and impact, could be considered as being consistent with the land use, area zoning and surrounding uses.



PIN:	533-20.00-20.00
Owner Name	CANNON ALLIE HEIRS
Book	5056
Mailing Address	38518 DUPONT BLVD
City	SELBYVILLE
State	DE
Description	HWY TO FENWICK
Description 2	ISLAND
Description 3	T12544 19177
Land Code	

polygonLayer

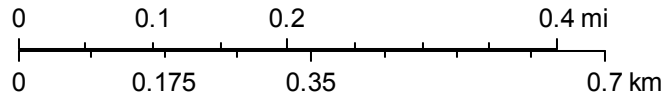
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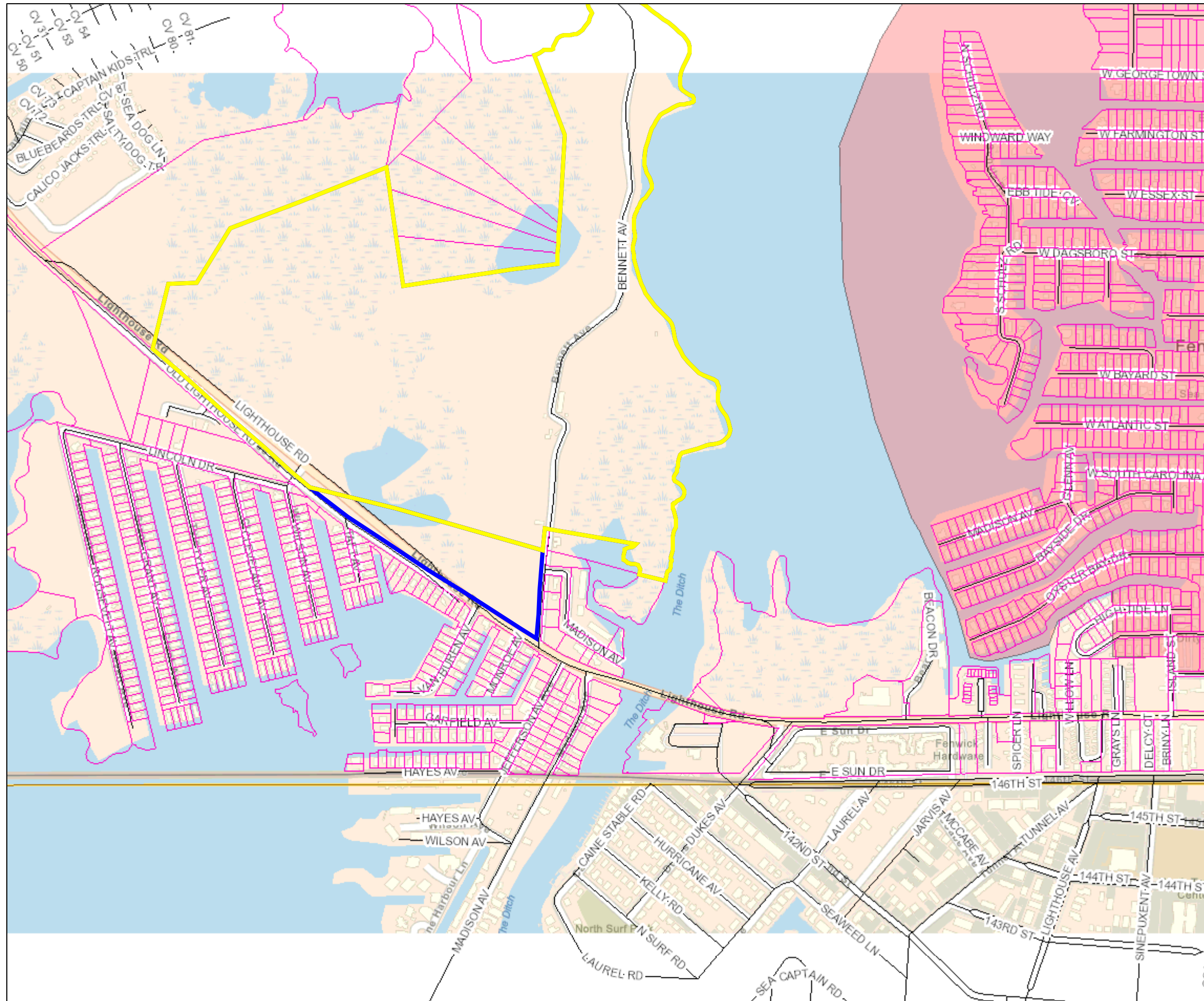
- Tax Parcels
- Streets
- County Boundaries
- Extent of Right-of-Way
- Municipal Boundaries

1:9,028





Sussex County



PIN:	533-20.00-20.00
Owner Name	CANNON ALLIE HEIRS
Book	5056
Mailing Address	38518 DUPONT BLVD
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Land Code	

polygonLayer

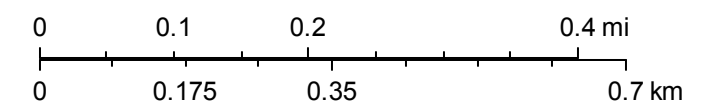
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Override 1

- Tax Parcels
- Streets
- County Boundaries
- Extent of Right-of-Way
- Municipal Boundaries

1:9,028





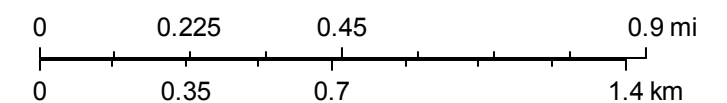
Sussex County



PIN:	533-20.00-20.00
Owner Name	CANNON ALLIE HEIRS
Book	5056
Mailing Address	38518 DUPONT BLVD
City	SELBYVILLE
State	DE
Description	HWY TO FENWICK
Description 2	ISLAND
Description 3	T12544 19177
Land Code	

polygonLayer
Override 1
polygonLayer
Override 1
Tax Parcels
Streets

1:18,056



Council District 5 - Rieley

Tax I.D. No. 533-20.00-22.00 & 20.00 (Portion of)

911 Address: None Available

ORDINANCE NO. ____

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A HOTEL AND RESTAURANT TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 9.2 ACRES, MORE OR LESS

WHEREAS, on the 12th day of August 2020, a conditional use application, denominated Conditional Use No. 2236 was filed on behalf of Carl M. Freeman Companies; and

WHEREAS, on the ____ day of _____ 2020, 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. 2236 be _____; and

WHEREAS, on the ____ day of _____ 2020, a public hearing was held, after notice, before the County Council of Sussex County and the County Council of Sussex County determined, based on the findings of facts, that said conditional use is in accordance with the Comprehensive Development Plan and promotes the health, safety, morals, convenience, order, prosperity and welfare of the present and future inhabitants of Sussex County, and that the conditional use is for the general convenience and welfare of the inhabitants of Sussex County.

NOW, THEREFORE, THE COUNTY OF SUSSEX HEREBY ORDAINS:

Section 1. That Chapter 115, Article V, Subsection 115-22, Code of Sussex County, be amended by adding the designation of Conditional Use No. 2236 as it applies to the property hereinafter described.

Section 2. The subject property is described as follows:

ALL that certain tract, piece or parcel of land, lying and being situate in Baltimore Hundred, Sussex County, Delaware, and lying on the northwest side of the intersection of Lighthouse Road (S.C.R. 58) and Bennett Avenue, approximately 0.79 mile west of Coastal Highway (Route 1) and being more particularly described in the attached legal description prepared by George, Miles & Buhr, said parcel containing 9.20 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.

green-yes



SUSSEX COUNTY GOVERNMENT

GRANT APPLICATION

SECTION 1 APPLICANT INFORMATION

ORGANIZATION NAME: Woodbridge High School Marine Corps JROTC Booster Club ✓

PROJECT NAME: 3rd Annual Halloween 5K Run/Walk & Fun Walk

FEDERAL TAX ID: 81-2007291 ✓ NON-PROFIT: ☒ YES ☐ NO

DOES YOUR ORGANIZATION OR ITS PARENT ORGANIZATION HAVE A RELIGIOUS AFFILIATION?

☐ YES ☒ NO *IF YES, FILL OUT SECTION 3B.

ORGANIZATION'S MISSION: The mission of the Woodbridge High School Marine Corps JROTC Program is to instill in all cadets a sense of citizenship, community service, self-discipline, respect for authority, personal responsibility, leadership, self-esteem, and service to the United States.

ADDRESS: Woodbridge High School

14712 Woodbridge Road

Greenwood DE 19950

(CITY) (STATE) (ZIP)

CONTACT PERSON: Regina Chillas

TITLE: President (MCJROTC Booster Club)

PHONE: (302)265-9984 EMAIL: stv94gna@gmail.com

TOTAL FUNDING REQUEST: \$3,200.00

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

If YES, how much was received in the last 12 months? \$3,200

If you are asking for funding for building or building improvements, do you own the building in which the funding will be used for? ☐ YES ☒ NO

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

If YES, approximately what percentage of the project's funding does the Council grant represent? 30%

SECTION 2: PROGRAM DESCRIPTION

PROGRAM CATEGORY (choose all that apply)

- | | | |
|--|--|---|
| <input type="checkbox"/> Fair Housing | <input type="checkbox"/> Health and Human Services | <input type="checkbox"/> Cultural |
| <input type="checkbox"/> Infrastructure ¹ | <input type="checkbox"/> Other _____ | <input checked="" type="checkbox"/> Educational |

BENEFICIARY CATEGORY

- | | | |
|---|--|---|
| <input type="checkbox"/> Disability & Special Needs | <input type="checkbox"/> Victims of Domestic Violence | <input type="checkbox"/> Homeless |
| <input type="checkbox"/> Elderly Persons | <input type="checkbox"/> Low to Moderate Income ² | <input checked="" type="checkbox"/> Youth |
| <input type="checkbox"/> Minority | <input type="checkbox"/> Other _____ | |

BENEFICIARY NUMBER

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

10,000

SECTION 3: PROGRAM SCOPE

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

The Woodbridge High School Marine Corps JROTC Booster Club is holding it's "3rd Annual Halloween 5K Fun Run / Walk" on Saturday, October 30, 2020. It will be held at the Bridgeville Library, 600 South Cannon Street, Bridgeville, DE 19933. The proceeds from the event benefit the WHS MCJROTC to help establish better learning opportunities, equipment, field trips, food, and scholarships for these leaders of tomorrow. The mission of the Marine Corps JROTC Program is to instill in all cadets a sense of citizenship, community service, self-discipline, respect, personal responsibility, leadership, self-esteem, and service to the United States.

The funding that we are requesting from Sussex County government will go toward operating expenses for the event. This along with sponsorships that we are seeking from local businesses will help us to fund trips, community support activities, training opportunities, and to purchase equipment for the 2021-2022 school year.

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

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

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

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

SECTION 4: BUDGET

REVENUE	
Please enter the current support your organization receives for this project (not entire organization revenue if not applicable to request)	
TOTAL REVENUES	0.00
EXPENDITURES	
Please enter the total projected budget for the project (not entire organization expense if not applicable to request). Example of expenditure items: PERSONNEL-one lump sum that would include benefits, OPERATING COSTS-supplies, equipment, rent/lease, insurance, printing telephone, CONSTRUCTION/ACQUISITION-acquisition, development, rehab hard cost, physical inspections, architectural engineering, permits and fees, insurance, appraisal. (Put amounts in as a negative)	
TriSports Events set up and marketing fees	\$ 3,500.00
Advertising	\$ 200.00
Signage	\$ 400.00
Food, Candy, Office supplies Costs ect...	\$ 300.00
TOTAL EXPENDITURES	\$ 4,400.00
TOTAL DEFICIT FOR PROJECT OR ORGANIZATION	\$ 4,400.00

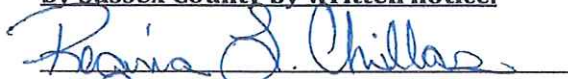
SECTION 5: STATEMENT OF ASSURANCES

If this grant application is awarded funding, the Woodbridge High School Marine Corps JROTC agrees that:
(Name of Organization)

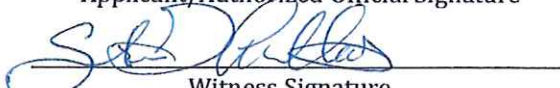
- 1) For non-religious organizations, all expenditures must have adequate documentation and must be expended within one (1) year of receipt of award funds. The funding awarded to the organization must be used in substantial conformity with the anticipated expenditures set forth in the submitted application.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

SECTION 5: STATEMENT OF ASSURANCES (continued)

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


Applicant/Authorized Official Signature

9/15/21
Date


Witness Signature

9/15/21
Date

Completed application can be submitted by:

Email: gjennings@sussexcountyde.gov

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

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

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

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

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

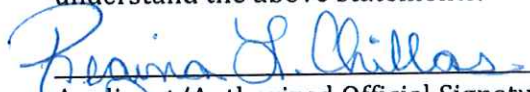
For non-religious organizations, all accounting records and supporting documentation shall be available for inspection by Sussex County within thirty (30) days after the organization's expenditure of the awarded funding, or within one year after the receipt of the awarded funds, whichever first occurs.

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

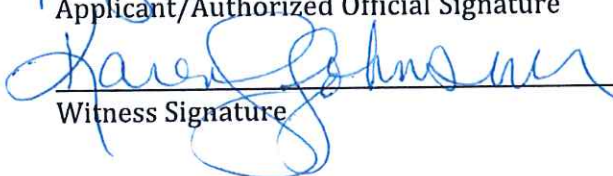
Certain programs are not eligible for funding pursuant to United States Constitution and State of Delaware Constitution. Those constitutional principles prohibit the use of funding to advance or inhibit religious activities. By signing below, the organization acknowledges that the funding shall be used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

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

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



Applicant/Authorized Official Signature



Witness Signature

Booster President

Title

9/8/2021

Date

Hudson - yes
Schaeffer - yes

Council Grant Form

Legal Name of Agency/Organization	Cape Henlopen Educational Foundation ✓
Project Name	Teacher Grant Program
Federal Tax ID	51-0403370 ✓
Non-Profit	Yes
Does your organization or its parent organization have a religious affiliation? (If yes, fill out Section 3B.)	No
Organization's Mission	The Cape Henlopen Educational Foundation (CHEF) seeks to inspire learning, and to prepare all students for a healthy, productive life in a diverse and global society. To accomplish this, we seek to engage the entire community - educators, parents, business, civic and legislative leaders - in providing students with the tools they need to excel.
Address	1470 Kings Highway
Address 2	
City	Lewes
State	DE
Zip Code	19958
Contact Person	Stephanie Mastrangelo

Contact Title	CHEF Board Member
Contact Phone Number	3024660811
Contact Email Address	stephaniesarley@msn.com
Total Funding Request	2000
Has your organization received other grant funds from Sussex County Government in the last year?	Yes
If YES, how much was received in the last 12 months?	5000
Are you seeking other sources of funding other than Sussex County Council?	Yes
If YES, approximately what percentage of the project's funding does the Council grant represent?	4
Program Category (choose all that apply)	Educational
Program Category Other	
Primary Beneficiary Category	Youth

Beneficiary Category
Other

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

5500

Scope

The Cape Henlopen Educational Foundation has budgeted \$25,000 for teacher grants, scholarships for students in the performing arts, Teacher of the Year Awards, and the Caravan of Caring Program. In the Caravan of Caring program we provide school supplies to low income and homeless students at the start of school and will continue to provide them as the school school progresses. This is includes hygiene and technology supplies for any student in need.

The Teacher Grant Program allows teachers to create grant opportunities for students that are not otherwise supported in normal operating budgets. This program is built upon a thorough vetting process and fiscal accountability. All teachers must submit a grant request that identifies the specific education expectations that meet state standards. The grant requests are reviewed by school district administrators and reviewed by the entire CHEF Board. All teachers are expected to submit receipts and a final report.

Here are two examples of teacher grants just approved at our last board meeting earlier this month, including the number of students benefiting from the grant:

- 1) Angela Holodick , Reading Specialist Rehoboth Elementary School, Project name: My Voice is a Trumpet \$595.60 , 575 students
- 2) Michael McGinley, Science Teacher CHHS, Project name: Implementing Aquaria in the Marine Science Curriculum

\$1,000.00 (180 students, including students from Sussex Consortium)

Religious Components n/a

**Please enter the
current support your
organization receives
for this project (not
entire organization
revenue if not
applicable to request)** 23,000.00

Description Teacher Grants, school supplies, scholarships, Teacher of Year awards

Amount 25,000.00

Description

Amount

Description

Amount

Description

Amount

Description

Amount

Description

Amount

Description

Amount

Description

Amount

TOTAL	25,000.00
EXPENDITURES	

TOTAL DEFICIT FOR PROJECT OR ORGANIZATION	-2,000.00
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Name of Organization	Cape Henlopen Educational Foundation
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Applicant/Authorized Official	Stephanie Mastrangelo
----------------------------------	-----------------------

Date	09/28/2021
------	------------

Affidavit	Yes
Acknowledgement	

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Hudson-yes

Council Grant Form

Legal Name of
Agency/Organization

Rehoboth Beach Historical Society ✓

Project Name

Educational Programs

Federal Tax ID

51-0203755 ✓

Non-Profit

Yes

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

No

Organization's Mission

The Rehoboth Beach Historical Society is a nonprofit organization dedicated to encouraging and promoting public knowledge of and participation in the preservation of the history, culture, architecture, and special character of Rehoboth Beach.

Address

511 Rehoboth Avenue

Address 2

City

Rehoboth Beach

State

DE

Zip Code

19971

Contact Person

Nancy Alexander

Contact Title

Director

Contact Phone Number 3029303005

Contact Email Address director@rehobothbeachmuseum.org

Total Funding Request \$2,500

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

If YES, how much was received in the last 12 months? N/A

Are you seeking other sources of funding other than Sussex County Council? Yes

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

Program Category (choose all that apply) Educational

Program Category Other

Primary Beneficiary Category Other

Beneficiary Category	Residents of Sussex County with disabilities or who are elderly
Other	
Approximately the total number of Sussex County Beneficiaries served, or expected to be served, annually by this program	400
Scope	The Rehoboth Beach Historical Society has hired a retired museum educator to conduct outreach to residents of assisted living facilities, persons with hearing and sight impairment, students at local schools who have special needs, and to guide the museum in using technical software to close caption our recorded videos and provide descriptive services for those with disabilities.
Religious Components	
Please enter the current support your organization receives for this project (not entire organization revenue if not applicable to request)	2,500.00
Description	Part-time salary for instructor
Amount	3,500.00
Description	Software and video editing of our videos to include closed captioning
Amount	1,500.00

Description

Amount

Description

Amount

Description

Amount

Description

Amount

Description

Amount

Description

Amount

TOTAL	5,000.00
EXPENDITURES	

TOTAL DEFICIT FOR	-2,500.00
PROJECT OR	
ORGANIZATION	

Name of Organization	Rehoboth Beach Historical Society
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Applicant/Authorized	Nancy Alexander
Official	

Date	09/25/2021
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Affidavit

Yes

Acknowledgement

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Pieley-yes

Council Grant Form

Legal Name of Agency/Organization	Good Samaritan Aid Organization Inc. ✓
Project Name	Annual Christmas Outreach for Needy Families
Federal Tax ID	51-0303717 ✓
Non-Profit	Yes
Does your organization or its parent organization have a religious affiliation? (If yes, fill out Section 3B.)	No
Organization's Mission	Good Samaritan is committed to the provision of financial assistance and clothing/food resources to those families who are disadvantaged financially in the Laurel DE and Delmar DE communities. The Annual Christmas outreach is limited to families in the Laurel DE school district.
Address	P. O. Box 330
Address 2	115 W Market Street
City	Laurel
State	DE
Zip Code	19956
Contact Person	Melinda Tingle
Contact Title	President

Contact Phone Number 302/875-0355

Contact Email Address mtingle57@comcast.net

Total Funding Request 1000.00

Has your organization received other grant funds from Sussex County Government in the last year? Yes

If YES, how much was received in the last 12 months? 1000

Are you seeking other sources of funding other than Sussex County Council? Yes

If YES, approximately what percentage of the project's funding does the Council grant represent? 10

Program Category (choose all that apply) Health and Human Services

Program Category Other

Primary Beneficiary Category Low to Moderate Income

Beneficiary Category
Other

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

700

Scope

The goal of the annual Christmas outreach supported by Good Samaritan (Good Sam) is to ensure that no family in the Laurel DE school district goes without Christmas gifts for their children. Additionally, those same families receive food boxes (sized appropriately for the family) as part of the Christmas outreach. The outreach is supported by donations from the community and service organizations in addition to any grant received from entities like Sussex County Council. This particular outreach has served thousands of children and families over the last 30+ years in the Laurel DE community. The clients we serve are referred by school nurses, churches and service organizations in the Laurel school district community. We service every referral unless there is a duplication from another agency performing a similar outreach. The Laurel DE school district is one of the poorest districts in the state as evidenced by the high percentage of children that qualify for free lunch in school. The Laurel community has a high percentage of rental residences, either in subsidized housing or apartments, so the percentage of low income households is relatively high. The Christmas outreach services in excess of 175 families or a total of approximately 700 individuals including 400+ children. Donated funds will be utilized to purchase toys/gifts for children and/or non-perishable food items to include in the food baskets distributed at Christmas.

Religious Components

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

7,500.00

Description

Purchase of Food Lion Gift cards

Amount

12,500.00

Description

Purchase of Christmas gifts/toys for children

Amount

3,000.00

Description

Amount

Description

Amount

Description

Amount

Description

Amount

Description

Amount

Description

Amount

TOTAL 15,500.00
EXPENDITURES

TOTAL DEFICIT FOR -8,000.00
PROJECT OR
ORGANIZATION

Name of Organization Good Samaritan Aid Organization, Inc.

Applicant/Authorized Melinda R, Tingle
Official

Date 10/04/2021

Affidavit Yes
Acknowledgement

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

To Be Introduced 10/12/21

Council District 5 - Rieley

Tax I.D. No. 134-15.00-20.04

911 Address: 34018 Roxana Road, Frankford

ORDINANCE NO. ____

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A LANDSCAPING BUSINESS TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 2.00 ACRES, MORE OR LESS

WHEREAS, on the 26th day of July 2021, a conditional use application, denominated Conditional Use No. 2301 was filed on behalf of Jason Tedesco; and

WHEREAS, on the ____ day of _____ 2021, a public hearing was held, after notice, before the Planning and Zoning Commission of Sussex County and said Planning and Zoning Commission recommended that Conditional Use No. 2301 be _____; and

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

NOW, THEREFORE, THE COUNTY OF SUSSEX HEREBY ORDAINS:

Section 1. That Chapter 115, Article VI, Subsection 115-22, Code of Sussex County, be amended by adding the designation of Conditional Use No. 2301 as it applies to the property hereinafter described.

Section 2. The subject property is described as follows:

ALL that certain tract, piece or parcel of land, lying and being situate in Baltimore Hundred, Sussex County, Delaware, and lying on the west side of Roxana Road (S.C.R. 52), approximately 0.23 mile south of the intersection of Powell Farm Road (S.C.R. 365) and Peppers Corner Road (S.C.R. 365), and being more particularly described in the attached legal description prepared by D. Stephen Parsons, P.A., said parcel containing 2.00 acres, more or less.

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

To Be Introduced 10/12/21

**Council District 5 - Rieley
Tax I.D. No. 234-32.00-60.00
911 Address: N/A**

ORDINANCE NO. ____

AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A B-2 BUSINESS COMMUNITY DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 0.95 ACRES, MORE OR LESS

WHEREAS, on the 9th day of March 2021, a zoning application, denominated Change of Zone No. 1941 was filed on behalf of Charletta Speaks-Floyd; and

WHEREAS, on the ____ day of _____ 2021, a public hearing was held, after notice, before the Planning and Zoning Commission of Sussex County and said Planning and Zoning Commission recommended that Change of Zone No. 1941 be _____; and

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

NOW, THEREFORE, THE COUNTY OF SUSSEX HEREBY ORDAINS:

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

Section 2. The subject property is described as follows:

ALL that certain tract, piece or parcel of land lying and being situate in Indian River Hundred, Sussex County, Delaware, and lying on the south east side of John J. Williams Highway (Rt. 24) approximately 0.15 mile south west of Hollyville Road (S.C.R. 305) and being more particularly described in the attached legal description prepared by Fuqua, Willard, Stevens & Schab, P.A., said parcel containing 0.95 ac., more or less.

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

To Be Introduced 10/12/21

**Council District 4 - Hudson
Tax I.D. No. 134-11.00-175.00
911 Address: 34861 Atlantic Avenue, Ocean View**

ORDINANCE NO. ____

AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A C-2 MEDIUM COMMERCIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 0.91 ACRES, MORE OR LESS

WHEREAS, on the 24th day of March 2021, a zoning application, denominated Change of Zone No. 1943 was filed on behalf of Shirley and Gordon Price, Jr.; and

WHEREAS, on the ____ day of _____ 2022, a public hearing was held, after notice, before the Planning and Zoning Commission of Sussex County and said Planning and Zoning Commission recommended that Change of Zone No. 1943 be _____; and

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

NOW, THEREFORE, THE COUNTY OF SUSSEX HEREBY ORDAINS:

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

Section 2. The subject property is described as follows:

ALL that certain tract, piece or parcel of land lying and being situate in Baltimore Hundred, Sussex County, Delaware, and lying on the north side of Atlantic Avenue (Rt. 26) approximately 0.13 mile northwest of Roxana Road (Rt. 17) and being more particularly described in the attached legal description prepared by Raymond E. Tomasetti, Jr., said parcel containing 0.91 acres, more or less.

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

To Be Introduced 10/12/21

Council District 5 - Rieley

Tax I.D. No. 533-19.00-13.02

911 Address: 35131 Lighthouse Road, Selbyville

ORDINANCE NO. ____

AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A C-2 MEDIUM COMMERCIAL DISTRICT FOR A PORTION OF A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 1.646 ACRES, MORE OR LESS

WHEREAS, on the 28th day of July 2021, a zoning application, denominated Change of Zone No. 1953 was filed on behalf of Brasure Holdings, LLC; and

WHEREAS, on the ____ day of _____ 2022, a public hearing was held, after notice, before the Planning and Zoning Commission of Sussex County and said Planning and Zoning Commission recommended that Change of Zone No. 1953 be _____; and

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

NOW, THEREFORE, THE COUNTY OF SUSSEX HEREBY ORDAINS:

Section 1. That Chapter 115, Article II, Subsection 115-7, Code of Sussex County, be amended by deleting from the Comprehensive Zoning Map of Sussex County the zoning classification of AR-1 Agricultural Residential District for a portion of the parcel (1.646 acres) and adding in lieu thereof the designation of C-2 Medium Commercial District as it applies to the property hereinafter described.

Section 2. The subject property is described as follows:

ALL that certain tract, piece or parcel of land lying and being situate in Baltimore Hundred, Sussex County, Delaware, and lying on the northwest side of Lighthouse Road (Route 54) approximately 0.27 mile southwest of Zion Church Road (Route 20), and being more particularly described in the attached legal description prepared by Land Surveying Services, said parcel containing 1.646 acres, more or less.

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

To Be Introduced 10/12/21

Council District 5 - Rieley

Tax I.D. No. 133-20.00-17.16

911 Address: 30134 Millsboro Highway, Millsboro.

ORDINANCE NO. ____

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A FIRE DEPARTMENT SUBSTATION TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN DAGSBORO HUNDRED, SUSSEX COUNTY, CONTAINING 1.54 ACRES, MORE OR LESS

WHEREAS, on the 22nd day of September 2021, a conditional use application, denominated Conditional Use No. 2314 was filed on behalf of Millsboro Fire Company; and

WHEREAS, on the ____ day of _____ 2021, a public hearing was held, after notice, before the Planning and Zoning Commission of Sussex County and said Planning and Zoning Commission recommended that Conditional Use No. 2314 be _____; and

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

NOW, THEREFORE, THE COUNTY OF SUSSEX HEREBY ORDAINS:

Section 1. That Chapter 115, Article IV, Subsection 115-22, Code of Sussex County, be amended by adding the designation of Conditional Use No. 2314 as it applies to the property hereinafter described.

Section 2. The subject property is described as follows:

ALL that certain tract, piece or parcel of land, lying and being situate in Dagsboro Hundred, Sussex County, Delaware, and lying on the northeast corner of Millsboro Highway (Rt. 24) and Lewis Road (S.C.R. 409) and being more particularly described in the attached legal description prepared by Moore & Rutt, P.A., said parcel containing 1.54 acres, more or less.

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



Memorandum

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

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

CC: Everett Moore, County Attorney

Date: October 8, 2021

RE: County Council Report for CU 2262 filed on behalf of Matthew Hete

The Planning and Zoning Department received an application (CU 2262 filed on behalf of Matthew Hete) for a Conditional Use for parcel 334-6.00-686.00 for multi-family dwellings (4 Units). The property is within the Agricultural Residential (AR-1) Zoning District and is located on the southeast side of Postal Lane (SCR 283), approximately 0.22 mile northeast of Plantations Road (SCR 275). The parcel size is 1.25 acres +/-.

The Planning & Zoning Commission held a Public Hearing on the application on September 9, 2021. At the conclusion of the Public Hearing, the Commission deferred action on the application for further consideration. The application is currently scheduled to be considered by the Commission at its meeting of October 13, 2021.

Below are the draft minutes from the Planning & Zoning Commission meeting of September 9, 2021.

Draft Minutes of the September 9, 2021 Planning & Zoning Commission Meeting

C/U 2262 Matthew Hete

An Ordinance to grant a Conditional Use of land in an AR-1 Agricultural Residential District for multi-family dwellings (4 units) to be located on a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, containing 1.25 acres, more or less. The property is lying on the southeast side of Postal Lane (S.C.R. 283), approximately 0.22-mile northeast of Plantations Road (S.C.R. 275). 911 Address: 34360 Postal Lane, Lewes. Tax Parcel: 334-6.00-686.00.

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



of the Sussex County Council meeting minutes from July 28, 2020, 13 letters of support, one mail return; that the Commission may recall the proposed parcel from the Planning and Zoning Commission meeting of June 25, 2020, where the previous application requested a Change of Zone from AR-1 Agricultural Residential to MR Medium Residential along with a corresponding Conditional Use and the current Application request is only for a Conditional Use without the request of a Change of Zone.

The Commission found that Mr. Kevin Smith and Mr. Matthew Hete were present on behalf of the Application; that this project was before Planning and Zoning and Sussex County Council last year for a completely different use; that the client has decided to propose single-family homes on the property in a condominium-style format; that it appears to be four separate units on one parcel; that with the parcel being 1.249-acres it comes out to 3.2 units per acre; that he requests to read into record a letter; that the proposed request is for four single-family style homes in a condominium development; that the units depict a one car garage and a six car parking pad driveway; that the density for the proposed layout is 3.2 units per acre; that the single-family style home is indicative of the current conditions in the immediate vicinity of the property; that the developer of Lands of Hete, LLC made every attempt to assure the design of the project conforms to the articles as present in the Sussex County Code; that the developer would like to ensure the members of the Planning and Zoning Commission are aware of what investigations have been performed on the proposed property during the public hearing; that attached to the letter are findings associated with Lands of Hete, LLC; that all documents contained shall be on record with Planning and Zoning's file; that the hope is the documents can be used as a guide to the Commission on making the recommendation and decision on the proposed Application; that he submitted into the record the letter he read and a written proposed findings of fact for the property; that the Application requests a Conditional Use for single-family condominium-style development on a parcel of land on the southside of Postal Lane; that the property is 1.249-acres in size; that the property is identified by the Sussex County Assessment Office as Sussex County Tax Map 334-6.00-686.00; that the property is currently zoned AR-1 Agricultural Residential; that the property is located within the Sussex County Environmentally Sensitive Development District Overlay Zone; that the property is located across from Sandy Brae which is zoned MR Medium Residential; that there are other developments located in the immediate vicinity of the proposed property that are zoned MR; that these developments are Plantations East, Plantations Summercrest, and Maple Wood; that there are also commercial development nearby, such as Pelican Square, Heritage Inn, Bob Evans, Tangler Outlets and Midway Shopping Center; that according to the Sussex County Comprehensive Plan the property is identified for future land use purposes as Mixed Residential; that the Strategies for State Policy and Spending identify the area as an Investment Level I; that the project is in character with a long history of development and approved applications for development in the immediate area; that the proposed development will provide housing in an area where infrastructure and transit services area available; that this thereby meets the general purpose of the Sussex County Zoning Ordinance by promoting growth, convenience, order, prosperity, and welfare of Sussex County; that the project will be served by central water through Tidewater Utilities; that wastewater collection will be provided through Sussex County by the Dewey Beach Sanitary Sewer District; that this recommendation of approval is subject to the following Conditions; that there should be no more than four dwelling units on the subject parcel; that the final record plan shall be subject to review and approval by the Sussex County Planning and Zoning Commission; that he did prepare Chapter 115-194.3 compliance within a letter which he submitted into the record; that the letter stated, if the Application was acted favorably upon, the proposed drainage design would be subject to the approval of Sussex Soil Conservation District for stormwater management; that if DelDOT requires roadway improvements or drainage improvements that road frontage will be

required as well; that water and sewer can be provided by Tidewater Utilities and Sussex County; that four units per acre meets the requirement of Sussex County; that four units per acre seems pretty small considering the area; that there are no threatened species indicated on the proposed property; that there is no indication of tidal and nontidal wetlands being located on the proposed property; that the proposed layout of the development promotes open space; that what is proposed to be impervious is what is currently shown on the plan; that there may be a sidewalk to a step but generally .789 acres or 63% of the site should remain green open area; that potentially Sussex Conservation District may request to have a BMP infiltration area placed on the property; that regarding public and private infrastructure, in the immediate area there is a parking facility provided for wastewater and water utilities; that there are no known historical and cultural resources located on the property; that currently there is only one single-family residence located on the property; that the Applicant has gone to Sandy Brae Development and to the neighbors along Postal Lane over the past year with the preliminary plan to ensure the surrounding neighbors approve of the Applicant developing the property and the Applicant presented into the record two additional letters of support from surrounding neighbors that were not originally included.

The Commission found that Mr. Matthew Hete spoke on behalf of his Application; that he performed a lot of due diligence working with the neighbors to make sure they approved of the proposed project and helped overcome any objections the neighbors may have; that he has spoken to all three nearby developments as well as all adjacent neighbors; that all neighbors are in support of the project; that this is shown in the written letters of recommendation for the project; that his proposed plan is to place single-family homes that fit into the neighborhood; that there will be no mobile homes or excessively large homes, only homes that are conducive to the surrounding area; that he has children and his ultimate goal is to try to keep them in the area; that his children cannot continue to live in the area and have employment here because there is not a place affordable for them to live; that his intention is to place single-family homes on this property, making it affordable for his children to move into; that it is not his intention to sell after placing the homes; that he wanted to keep the proposed homes for his family; that to make it easier on the neighborhood he made a one driveway entrance and exit; that this had previously been a subject of objection by Sandy Brae and other associations; that they were concerned about multiple driveways, so he created only one entrance off of Postal Lane; that he believes DelDOT is considering performing some widening of the road as he previously read this in an article within the Cape Gazette; that he has friends that are builders; that they are taking down homes in the Lewes and Rehoboth areas; that he would like to take advantage of the homes that will be plowed down and relocate them to the proposed property; that he hopes in doing this it will keep the heritage of Lewes and Rehoboth alive; that the surrounding area is listed as MR, but his intention is to keep the area Agricultural Residential.

Ms. Stevenson questioned how many units per acre are permitted within the AR-1 Zoning District and questioned if the Applicant has enough space for the widening of the road as she feels the road desperately needs it.

Mr. Whitehouse stated since the zoning is not changing, this Application falls within the density bonus provisions of the AR-1 Zoning District; that a multi-family application may propose to increase above two dwellings units to the acre but no more than four dwelling units to the acre; that each unit, over the two dwelling units per acre, must contribute the density bonus fee; that this fee is per unit; that off the top of his head, in this location, it is \$20,000 per unit for two additional units and this would go to an off-site open space contribution.

Mr. Robertson stated that money goes into the funds administered by the land trustee; that then Sussex County uses that money to purchase off-site open space; that an example of this was the big property near the rail trail along Rt. 9 and there have not been many Applicants to do this in the past.

Mr. Smith stated the Applicant will provide the necessary right of way that DelDOT requires.

Mr. Hete states he intends to add a walking path, biking path, or sidewalk along the parcel's frontage; that although this may not extend down the street, he hopes this would be beneficial to the neighborhood.

Mr. Mears stated the Applicant remedied the parking concerns the Commission had from the previously proposed Application.

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

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

In relation to Application C/U 2262 - Matthew Hete. Motion by Ms. Stevenson, to defer action for further consideration, seconded by Ms. Wingate and carried unanimously. Motion carried 4-0.

PLANNING & ZONING COMMISSION

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



Sussex County

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

PLANNING AND ZONING AND COUNTY COUNCIL INFORMATION SHEET Planning Commission Public Hearing Date September 9, 2021.

Application: CU 2262 Matthew Hete

Applicant: Matthew C. Hete
45 Kings Creek Circle
Rehoboth Beach, DE 19971

Owner: Matthew C. Hete
45 Kings Creek Circle
Rehoboth Beach, DE 19971

Site Location: The property is lying on the southeast side of Postal Lane (S.C.R. 283), approximately 0.22-mile northeast of Plantations Road (S.C.R. 75) at 34360 Postal Lane in Lewes, Delaware.

Current Zoning: Agricultural Residential (AR-1)

Proposed Use: Multifamily (4 units)

Comprehensive Land
Use Plan Reference: Coastal Area

Councilmanic
District: Mr. Schaffer

School District: Cape Henlopen School District

Fire District: Lewes Fire District

Sewer: Sussex County

Water: Tidewater Utilities

Site Area: 1.25 acres +/-

Tax Map ID.: 334-6.00-686.00



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



Sussex County

DELAWARE
sussexcountye.gov

Memorandum

To: Sussex County Planning Commission Members
From: Lauren DeVore, Planner III
CC: Vince Robertson, Assistant County Attorney and Applicant
Date: September 2, 2021
RE: Staff Analysis for CU 2262 Matthew Hete

This memo is to provide background and analysis for the Planning Commission to consider as a part of application CU 2262 Matthew Hete to be reviewed during the September 9, 2021 Planning Commission Meeting. This analysis should be included in the record of this application and is subject to comments and information that may be presented during the public hearing.

The request is for a Conditional Use for Tax Parcel: 334-6.00-686.00 to allow for the establishment of four (4) multifamily dwelling units. The parcels are lying on the southeast side of Postal Lane (S.C.R. 283), approximately 0.22-mile northeast of Plantations Road (Route 1D). The parcels consist of 1.25 acres +/-.

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

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

The subject property is zoned Agricultural Residential (AR-1). The adjacent properties to the northeast, northwest and south of the subject site are also zoned Agricultural Residential (AR-1). The surrounding area to the north features a number of differently zoned parcels including parcels of which the majority are zoned Medium Density Residential (MR). The properties to the northeast which line Coastal Highway (Route 1) are all zoned General Commercial (C-1).

Since 1999, there have been four (4) Conditional Use applications within a 2-mile radius of the application site. The first application was for Conditional Use No. 2252 Delaware Electric Co-op to allow for a substation to be located within a Medium Density Residential (MR) Zoning District. This application was approved by the Sussex County Council on July 13, 2021. This change was adopted through Ordinance No. 2788.



The second application was for Conditional Use No. 2237 Sam Warrington II for outdoor RV and boat storage to be located within an Agricultural Residential (AR-1) Zoning District. This application was approved by the Sussex County Council on December 1, 2020 and was adopted through Ordinance No. 2756.

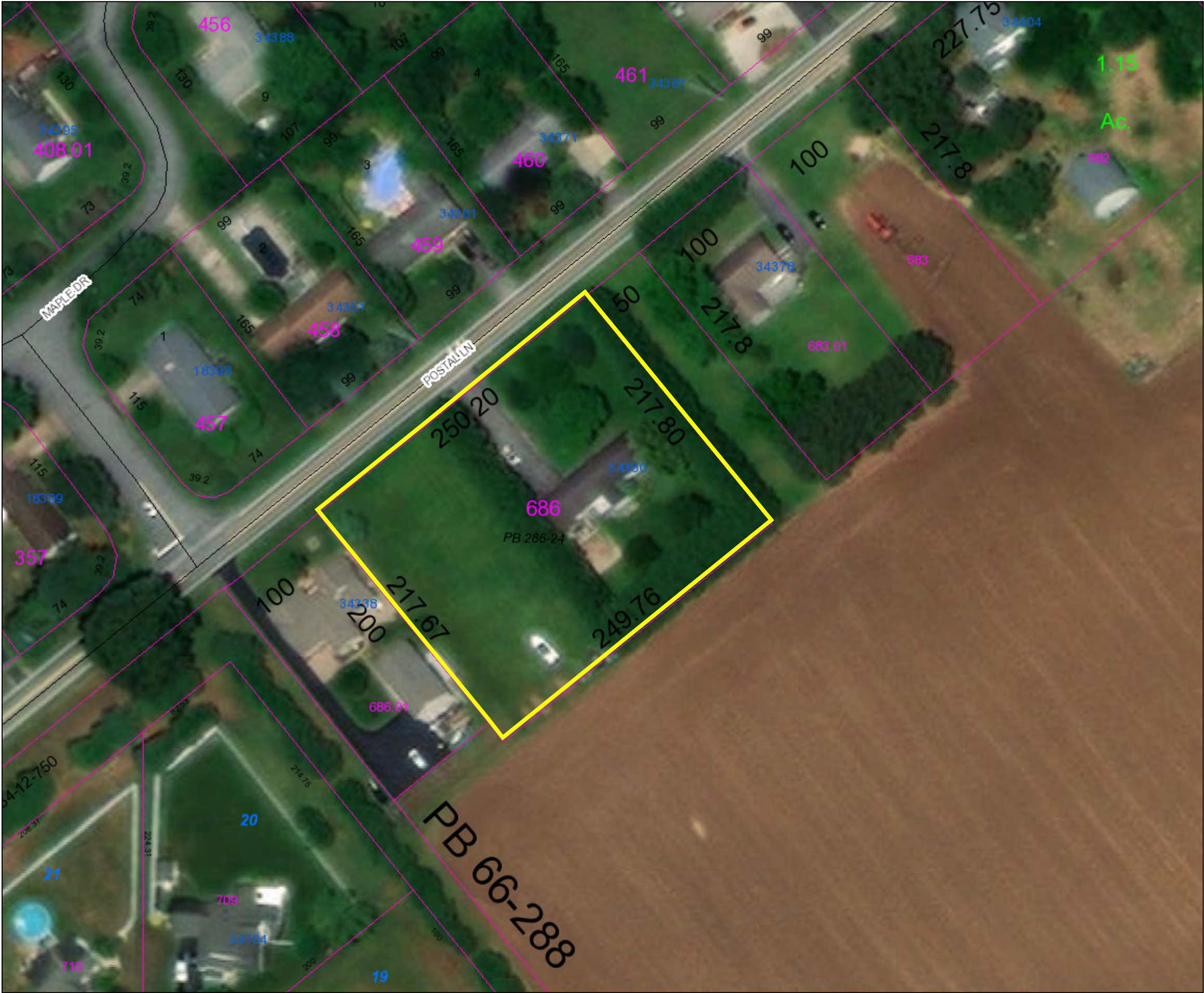
The third application was for Conditional Use No. 1357 Super Fresh Food Market for sales of soft/hard goods off carts within a General Commercial (C-1) Zoning District. This application was approved by the Sussex County Council on May 1, 2001 and was adopted through Ordinance No. 1452.

The final and fourth application was for Conditional Use No. 1294 Don Derrickson for an apartment to be constructed on the second floor of a golf pro shop to be located within an Agricultural Residential (AR-1) Zoning District. This application was approved by the Sussex County Council on July 27, 1999 and was adopted through Ordinance No. 1332.

Based on the analysis of the land use, surrounding zoning and uses, the Conditional use to allow for the establishment of four (4) multifamily units, subject to considerations of scale and impact, could be considered as being consistent with the land use, area zoning and surrounding uses.



Sussex County



PIN:	334-6.00-686.00
Owner Name	HETE MATTHEW C
Book	4887
Mailing Address	45 KING CREEK CIR
City	REHOBOTH BEACH
State	DE
Description	SE/S RD 283
Description 2	2080' S/RT 1
Description 3	N/A
Land Code	

polygonLayer

Override 1

polygonLayer

Override 1

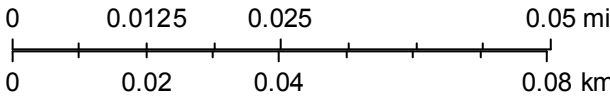
⋮ Tax Parcels

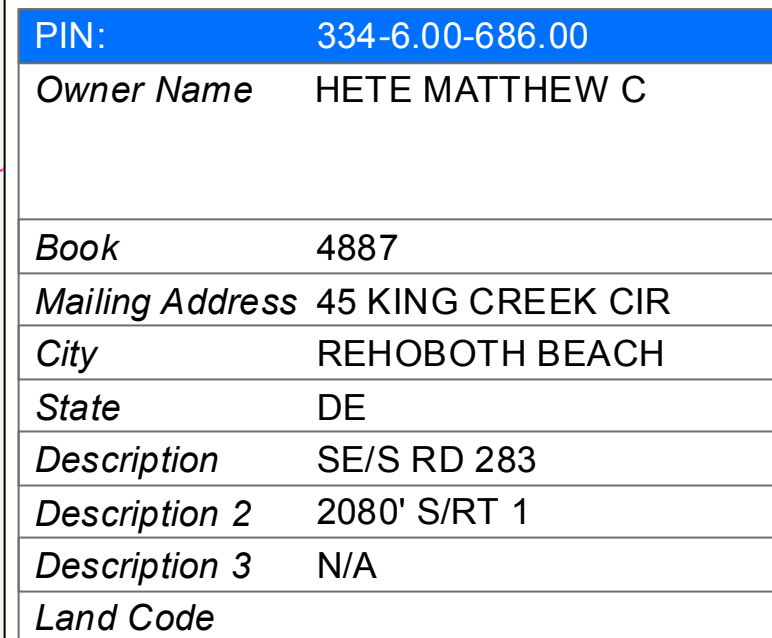
911 Address

— Streets

⋮ County Boundaries

1:1,128





polygonLayer
Override 1

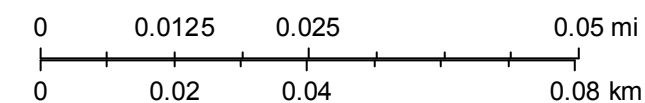
polygonLayer
Override 1

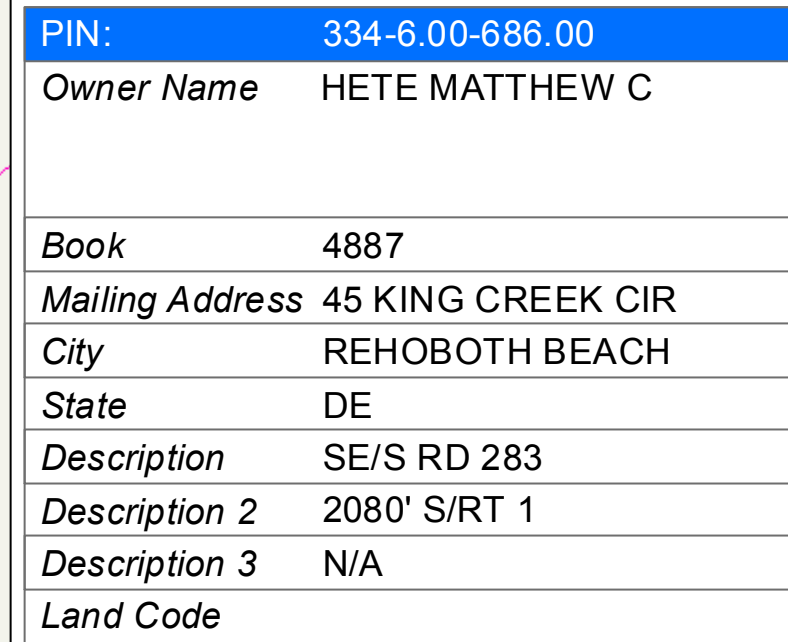
⋮ Tax Parcels
911 Address

— Streets

⋮ County Boundaries

1:1,128





1:1,128

0 0.0125 0.025 0.05 mi

0 0.02 0.04 0.08 km

To Be Re-Introduced 08/24/21

**Council District 3 - Schaeffer
Tax I.D. No. 334-6.00-686.00
911 Address: 34360 Postal Lane, Lewes**

ORDINANCE NO. ____

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR MULTI-FAMILY DWELLINGS (4 UNITS) TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 1.25 ACRES, MORE OR LESS

WHEREAS, on the 11th day of January 2021, a conditional use application, denominated Conditional Use No. 2262 was filed on behalf of Matthew Hete; and

WHEREAS, on the ____ day of _____ 2021, a public hearing was held, after notice, before the Planning and Zoning Commission of Sussex County and said Planning and Zoning Commission recommended that Conditional Use No. 2262 be _____; and

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

NOW, THEREFORE, THE COUNTY OF SUSSEX HEREBY ORDAINS:

Section 1. That Chapter 115, Article V, Subsection 115-22, Code of Sussex County, be amended by adding the designation of Conditional Use No. 2262 as it applies to the property hereinafter described.

Section 2. The subject property is described as follows:

ALL that certain tract, piece or parcel of land, lying and being situate in Lewes and Rehoboth Hundred, Sussex County, Delaware, and lying on the southeast side of Postal Lane approximately 0.22 mile northeast of Plantation Road and being more particularly described in the attached legal description prepared by Hudson, Jones, Jaywork & Fisher, said parcel containing 1.25 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.