

Sussex County Council Public/Media Packet

**MEETING:
October 18, 2022**

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COUNTY COUNCIL

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



Sussex County

DELAWARE
sussexcountyde.gov
(302) 855-7743

SUSSEX COUNTY COUNCIL

A G E N D A

OCTOBER 18, 2022

12:30 P.M.

Call to Order

Approval of Agenda

Approval of Minutes – October 11, 2022

Reading of Correspondence

Public Comments

Todd Lawson, County Administrator

1. Administrator's Report

Hans Medlarz, County Engineer

1. Western Sussex Unified Sewer District Contract 5: Segment B, Project S19-29
 - A. Balancing Change Order and Substantial Completion
2. Land Survey and Mapping Services Contract
 - A. Approval for Increase of FY23 Not-To-Exceed Costs



Mark Parker, Assistant County Engineer

1. Delaware Coastal Business Park Improvements, Project A21-11
 - A. Change Order No. 2
2. Becker Morgan Group, Inc. Professional Services Contract
 - A. Scope Amendment No. 4

Old Business

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

Introduction of Proposed Zoning Ordinances

Council Members’ Comments

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

Possible action on Executive Session items

1:30 p.m. Public Hearings

Conditional Use No. 2319 filed on behalf of Austin & Megan Embleton

“AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A TOURIST HOME, EVENT VENUE, & HAIR SALON TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN NANTICOKE HUNDRED, SUSSEX COUNTY, CONTAINING 2.05 ACRES, MORE OR LESS” (property lying on the south side of Memory Road [S.C.R. 613], approximately 0.41-mile southeast of Shawnee Road [Rt. 36]) (911 Address: 10775 Memory Road, Harrington) (Tax Parcel: 430-3.00-20.08)

Conditional Use No. 2321 filed on behalf of Coastal Properties, LLC

“AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A KITCHEN AND BATHROOM SHOWROOM TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES & REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 0.248 ACRES, MORE OR LESS” (property lying on the northeast side of Beaver Dam Road [Rt. 23], approximately 0.16-mile southwest of the intersection of Church Street and Salt Marsh Boulevard) (911 Address: 17677 Stingey Lane, Lewes) (Tax Parcel: 334-5.00-196.00)

Change of Zone No. 1964 filed on behalf of Martin Property Development, LLC

“AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT AND A C-1 GENERAL COMMERCIAL DISTRICT TO AN LI-2 LIGHT INDUSTRIAL DISTRICT FOR CERTAIN PARCELS OF LAND LYING AND BEING IN DAGSBORO HUNDRED, SUSSEX COUNTY, CONTAINING 19.71 ACRES, MORE OR LESS” (properties lying on the west side of Delaware Avenue and on the east side of Dupont Boulevard [Route 113], approximately 0.3 mile north of Parker Road [S.C.R. 380]) (911 Addresses: 34796, 34770, 34752 & 34708 Delaware Avenue) (Tax Parcels: 433-11.00-21.00, 433-11.00-21.02)

Change of Zone No. 1965 filed on behalf of Kent Walston, LLC

“AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO AN MR MEDIUM DENSITY RESIDENTIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 1.4 ACRES, MORE OR LESS” (property lying on the east side of Kent Avenue [S.C.R. 361], approximately 350 feet north of Jefferson Bridge Road [S.C.R. 361A]) (911 Address: N/A) (Tax Parcel: 134-17.07-173.02)

“AN ORDINANCE TO AMEND THE FUTURE LAND USE MAP OF THE COMPREHENSIVE PLAN IN RELATION TO TAX PARCEL 134-17.07-173.02 (P/O)” (property lying on the east side of Kent Avenue [S.C.R. 361], approximately 350 feet north of Jefferson Bridge Road [S.C.R. 361A]) (911 Address: N/A)

Adjourn

-MEETING DETAILS-

In accordance with 29 Del.C. §10004(e)(2), this Agenda was posted on October 11, 2022 at 4:15 p.m. and at least seven (7) days in advance of the meeting.

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

Agenda items may be considered out of sequence.

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

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

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

To join the meeting via telephone, please dial:

Conference Number: 1-302-394-5036

Conference Code: 570176

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

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

#

SUSSEX COUNTY COUNCIL - GEORGETOWN, DELAWARE, OCTOBER 11, 2022

A regularly scheduled meeting of the Sussex County Council was held on Tuesday, October 11, 2022, at 9:00 a.m., in Council Chambers, with the following present:

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

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

**Call to
Order**

Mr. Vincent called the meeting to order.

**M 465 22
Approve
Agenda**

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

Motion Adopted: 4 Yeas, 1 Absent

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

The Council considered an Appeal on the Sussex County Planning and Zoning Commission's decision to approve Subdivision Application No. 2021-06 (Coral Lakes, F.K.A. Coral Crossing).

Mr. Vincent introduced The Honorable Charles H. Toliver, IV, Superior Court Judge Retired. It was noted that one of the participants was not present, he asked if Counsel had information regarding Mr. Bartley; all parties replied that they did not. Judge Toliver suggested to wait until 9:15 a.m. for Mr. Bartley to arrive; there was no objection.

Mr. Moore noted that in the scheduled order, the Hicks appeal was scheduled to go first.

Mr. Mette stated that on behalf of the Hicks appeal, they are prepared to move forward; their appeal is independent from Mr. Bartley's appeal.

**M 466 22
Recess**

A Motion was made by Mr. Hudson, seconded by Mr. Schaeffer to recess until 9:15 a.m.

M 466 22 Motion Adopted: 4 Yeas, 1 Absent

Recess

(continued)

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

M 467 22

Reconvene

At 9:13 a.m., a Motion was made by Mr. Hudson, seconded by Mr. Schaeffer to reconvene.

Motion Adopted: 4 Yeas, 1 Absent

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

Mr. Moore read the following statement.

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You will notice that Mr. Rieley is not here this morning. In spite of the lack of any prior involvement, consideration, conclusion and/or predetermination of the merits of the Coral Lakes II appeal in any form or fashion, he wanted to avoid any appearance to the contrary to the citizens of Sussex County and in deference to any possible concerns of the parties. He thus has decided to recuse himself from any involved in the Coral Lakes II appeal that might have resulted from an interview in a public forum/podcast earlier this past summer posted on social media. That interview referenced the existence of the Coral Lakes subdivision process. In addition, he wanted me to affirmatively state that he has not discussed the matter of the Coral Lakes II appeal in any form or fashion with any other members of the Sussex County Council. He has recused himself voluntarily to preserve the integrity of the process and to erase even the appearance of impropriety.

In light of that recusal, Mr. Moore stated that for the record, he has spoken to each member of Council, and each has indicated to him that he or she has had no prior discussion, consideration, bias, or opinions of any kind formed regarding the outcome or any other aspect of this matter from the date this matter was remanded to the Planning and Zoning Commission on June 23, 2022.

Judge Toliver reported that this is the appeal of the decision of the Planning and Zoning Commission for Coral Lakes Subdivision Application No. 2021-6. The appellees are Schell Brothers and the Planning and Zoning Commission, and the appellants are Mr. Bartley and the Hicks appellants represented by Mr. Mette.

Judge Toliver reported that a meeting was held with the parties via teleconference to discuss the submissions and the preliminary issues that have been resolved. The appellees followed their submissions on September

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21, 2022, and the appellants filed their submissions on October 5, 2022, which is in addition to their notice of appeal. Judge Toliver reviewed the procedures for the hearing. Judge Toliver reported that this appeal results from the decision of the Planning and Zoning Commission on June 23, 2022, following the remand from the County Council on May 24, 2022.

Mr. Luke Mette, Esq. from Armstrong Teasdale, LLP came forward representing the Hicks appellants. Mr. Mette reported that the appellant parties include Jill Hicks, William Hicks, Susan Petze-Rosenblum, Sergei Boboshko and Kerry Russo. Mr. Mette stated that he will refer to them as the Hicks appellants.

Mr. Mette stated that the arguments on this appeal were straight forward and simple. He is arguing that the record of the actual and unscripted reasons given by the Planning and Zoning Commission members for their June 23rd vote demonstrated that the decision was not the result of an orderly and logical review of the evidence and applicable provisions of the Subdivision Ordinance. But rather, the result of the Commissioners voting the way that their Counsel told them or advised them to vote. Mr. Mette shared the vote of three out of five of the Commissioners votes. Mr. Mette added that the reasons were not the result of the Planning and Zoning Commission or the Commissioners review of the evidence in an open session. It is being argued that the only record evidence changed from the prior denial of the Application in March to its approval in June was the statements set forth on the slides shown and the impact of Council's advice and direction on the vote.

It is also being argued that the Planning and Zoning Commission failed to abide by the Council's May 24th remand in two ways. First, the Planning and Zoning Commission did not consider the entire record to include all evidence and facts of the Application in open session. The only thing that happened in open session was a motion that was read, immediately so moved, seconded, and voted on without any debate.

Also, the Planning and Zoning Commission did not issue a written decision that was required in the Council's remand. A written decision was not issued that contained the Commission's findings and conclusions. The briefs from the Planning and Zoning Commission and Schell Brothers did not respond to any of the arguments that are being made by him. Instead, they try to avoid looking at what was done on June 23rd. Their direct response in their briefs to the actual reasons given by the Commissioners for their June 23rd vote. They ran from the record; they do not even quote the relevant highlighted section of Commissioner Stevenson. They did not even mention the significance of the highlighted sections shown for Commissioners Wingate and Mears statements for their votes.

Mr. Mette stated that the Planning and Zoning Commission is the body charged by statute and by Delaware law with reviewing and voting on Applications and stating their reasons for the decisions for the Council's

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review. The Code specifically requires that the Planning and Commission should act, review, and decide. It is being submitted that the Planning and Zoning Commission cannot simply advocate it's duties by simply delegating them to Counsel because it is convenient or because that is the way that it has always been done.

Mr. Mette shared a case in the Delaware Supreme Court, *Tony Ashburn & Son Inc.* This case stated that a Planning Commission most certainly has a measure of discretion, and they cannot simply rubber stamp an application. It is being submitted that the Planning and Zoning Commission discretion must be exercised not advocated and that here, the Planning and Zoning Commission simply rubber stamped what their attorney told them to do without making any independent determinations of their own.

Schell and the Planning and Zoning Commission's direct response in their briefs to the argument that the Planning and Zoning Commission failed to comply to the County Council's remand instructions by failing to further consider the entire record in an open session and to issue a written decision containing findings and conclusions consist with law. Mr. Mette submits zero direct response to his argument because there is nothing in the record. There is nothing in the record that indicates that the Planning and Zoning Commission considered in open session the motion that was read verbally for eleven minutes, so moved, seconded and vote that was completed with no discussion or consideration. There is no written decision from the Planning and Zoning Commission; they point to a June 23rd notice of decision that was not signed or adopted by the Planning and Zoning Commission. It simply lists the conditions; it does not identify the reasons for the vote. In their briefs, it points to what the lawyers did and the Counsel's verbal motion, a notice of decision that is not a decision, take a look at a pre remand record which resulted in a denial of the application. Mr. Mette stated that case law is clear that their attempts to muddy the record and to confuse the Council can only strength his argument that remand is necessary. The Planning and Zoning Commission members must state their reasons and they have to be clear and not muddy.

Mr. Mette stated that the Council is the governing body of Sussex County who can remand the Planning and Zoning Commission's June 23rd decision as done previously. The County Council is in charge of what happens next.

The Planning and Zoning Commissioners are required by Delaware case law to state their reasons for their votes on June 23rd. In the remand order given by the County Council on May 24, 2022, required that as well. The Counsel for the Planning and Zoning Commission specifically directed the Commissioners to state their reasons for their vote and they did so. Mr. Mette stated that at least three votes out of five were directly based on instructions from the Planning and Zoning Commissions counsel rather than an independent judgement of the Commissioner themselves. Commissioner Stevenson abstained because "I was told what our counsel said was that we can't deny it". Commissioner Mears who had previously

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voted against the application in March, stated in his vote “Unfortunately, as counsel explained, it complies with the Subdivision Code and Zoning Code. Therefore, I vote yes based on the reasons in the motion”. Commission Wingate voted “Mr. Chair, I am a yes for the extensive -- because of the extensive explanation by counsel and the condition imposed”. Mr. Mette stated that counsel does not vote; he is not a member of the Planning and Zoning Commission. These three members did not make their own independent determination of Code compliance. It is being submitted that this record cannot stand on appeal before the County Council. Attorneys and judges do not tell the people that are voting how to apply the law and they did not exercise it. Mr. Mette stated that this not how government is supposed to work and is contrary to the language in the County Code and any notation of good government.

Mr. Mette stated that the record is clear in this; there must be a remand.

Mr. Mette further discussed the arguments that Schell and the Planning and Zoning Commission discussed in their briefs. First, they rely on the June 23rd verbal motion which is still not written, it took 11 minutes and 11 pages to read into the record by the Planning and Zoning Commission’s counsel for whoever wants to make it. Immediately after the motion was read, the motion so moved, seconded and then a vote was taken. There was no debate or discussion to the reasons why they were voting the way they were voting.

In addition, the motion was not considered in an open session. Mr. Mette stated that it could not have possibility been considered in open session; perhaps, it was discussed in an executive session which would create FOIA problems. Mr. Mette stated that it is being questioned if the Commissioners independently articulate their reasons for their votes.

Next, the pre-remand record resulted in the Planning and Zoning Commission denying the application in March. This Council ordered the Planning and Zoning Commission to conduct a further consideration of the entire record again in open session. Mr. Mette further explained that this decision cannot be held based on a record that they interpret in their briefs and on a motion that they read that was not debated.

Mr. Mette pointed out that you do not have to speculate what was going on and questioned why they did a 180 and turned it down. If there is any doubt at all, there must be a remand. The June 24th notice of decision does not report to be an actual decision that was not signed or state any reasons of decision. It is being submitted that the June 23rd decision did not comply with the County Council’s May 24th remand instruction that the Planning and Zoning Commission conduct a further review of the entire record, all evidence, and facts of this application in open session. Mr. Mette pointed out that it is being questioned if Schell’s application complied with applicable law that enacted in 2021 (Superior Design requirements). The application was filed on November 25, 2020 and was not filed by Schell

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Brothers. In addition, it is questioned whether this impacts which version of the Code should apply to the application; 2020 or 2021. The record of this decision does not indicate that the Commissioners made that key finding of code compliance. The June 23rd decision did not comply with the remand requirement that the Planning and Zoning Commission issue a written decision pertaining findings and conclusions that are consistent with law.

Mr. Mette stated that good government and Delaware law requires more respectful than what the Planning and Zoning Commission did on June 23, 2022. Regardless of how busy they are or how many they have coming through the pipes; they have to do their job. The Planning and Zoning Commission must make independent findings of fact and conclusions of law regarding code compliance. A subdivision approval is not a check the box exercise but rather an important decision especially in Sussex County given the amount of development. The County Council can insist that the Planning and Zoning Commission comply with the remand order given and Delaware Law and Code by stating their reasons for their vote and exercise their discretion rather than advocate.

Mr. Terry Bartley came forward to present his appeal. Mr. Bartley stated that given the Council is well acquainted with the facts of this application and the procedural requirements, only the arguments of each ground of appeal will be provided.

The Commission failed to provide adequate notice. Sussex County Code §99 (A) and the Delaware Code 9 §6812 regulated Coral Lakes public hearing notice as follows:

Any public hearing required by this chapter shall be held within the County and notice of the time and place thereof shall be published in 2 newspapers of general circulation in the County. Notice shall be published at least 15 days before the date of the hearing. In addition, notice of the hearing shall posted on the property itself. The notice shall state the place at which the text and maps relating to the proposed change may be examined.

The record of the hearing for Coral Lakes has affidavits for the placement of two advertisements. Neither advertisement states the place of which the text and maps relating to the proposed change may be examined. Delaware Supreme Court Chief Justice Herman in 1982 land case stated, “the objective of the required notice is to announce the purpose, dates, and times of the hearings and to describe the area to be subdivided and advise public of its right to inspect the relevant documents in advance and its right to be heard at the hearings”. For the public avail themselves of their rights, specifically to inspect the relevant documents in advance, it is imperative for them to know where the documents are located. Chief Justice Herman in the same case continued by the use of the word “shall” indicates the legislative intent requiring mandatory compliance.

The enabling §6812 must be strictly followed. *Id.* The Commission by failing to strictly adhere to 9 Del C §6812 resulted in the improper

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The Commission's advertisement's wording: "Additional information pertaining to the applications may be reviewed online at sussexcountyde.gov prior to the meeting." Does not meet the requirement of 9 Del. C. § 6812. The website sussexcountyde.gov is not a place. A website does not address the part of the public who do not have internet access and the website is a large website. To comply, the Commission would at least have to give an URL address. Just as buildings have a street address, webpages also have unique addresses to help people locate them. The required Property Sign Notice for the Hearing states, "text and maps of this application may be examined at the county administrative office building." The required newspaper advertisements for the Hearing states "additional information pertaining to the applications may be reviewed online at sussexcountyde.gov prior to the meeting." Logically the Commission cannot claim there are two different places at which the text and maps relating to the proposed subdivision may be examined. One of the notices must be in error. Given that Planning and Zoning Department is an actual place, then the advertisements reviewed online must be an error.

Mr. Bartley further stated that appellant Hicks testimony raised the issue that the notice did not comply with §6812. The following passage of Appellant Ms. Hicks' testimony from the transcripts of the Hearing states: "and even the difference in the site plan on file with P&Z could be requested on December 18th, 9 days ago and the plan provided to the public and the online packet 3 days later on January 21st of which there were changes made. Therefore, we request that a current PLUS review be performed." Clearly § 6812 requires one place where the public can review all the documents relating to a subdivision. The Commission cannot have multiple locations with different documents in each location where the text and maps relating to the proposed subdivision may be examined. Ms. Hicks notified the Commission that the documents located in the Planning and Zoning office are different then documents contained on the online packet. As a matter of fact, majority of the online packet consisting of hundreds of pages is still not on file in the Planning and Zoning office. Given that the Council's decision must be based on the record, he hopes that Council takes the time to go through the official record from Planning and Zoning.

The right to inspect the relevant documents in advance of the hearings is governed by §6812 by setting the timeframe for the meaning of "in advance" as at "least 15 days before the date of the hearing." Clearly the Delaware Legislature would not require a notice state, "the place at which the text and maps relating to the proposed change may be examined" and not require the documents be there. That would have the public inspecting the documents which do not accurately reflect the subdivision application. The Commission is not free to arbitrarily set a date shorter than 15 days. Ms. Hicks notified the Commission that the online packet was only available to the public for 7 days before the hearing. Given the Applicant had over a year to prepare a record of support, fundamental fairness would require

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they make available to the public the online packet which was a 276-page report within the statutory required 15 days. In summary, there were three locations with text and maps were located for Coral Lakes. First, the official record located in the Planning and Zoning office which does not contain hundreds of pages of the online packet. Secondly, online where the Planning and Zoning agenda was located. From Ms. Hicks testimony, we know that this only available seven days before the hearing. Third, the online land use document; this is the only location online that had Coral Lakes listed when the Cape Gazette ad was published and when the 15-day period past. Unfortunately, there were no text or maps listed. Mr. Bartley stated that he visited the site several times prior to the hearing to review the information and there was never any information listed. The Commission's failure to provide proper notice was a fundamental error. The "fundamental error" doctrine is an exception to the rule that issues cannot be raised for the first time on appeal. Given land use has Constitutional protections, notice requirements would be a matter of due process. In fact, courts have said that "fundamental error must be equivalent to a denial of due process."

Mr. Bartley stated that all wetland simply means all wetlands. The applicant when deciding to develop these parcels understood that wetlands would be the defining feature of this application. The Coral Lakes is a cluster subdivision application which are governed by Code §115-25. Logically, the application would look to the Code that section to find the regulations of what governs wetlands. Wetlands for cluster subdivisions are regulated by Code § 115-25 E "design requirement for cluster development [states that] all lots shall be configured to be contained completely outside of all wetlands." The Applicant should then develop a record of substantial evidence to support the Commission's findings of fact. The Applicant did not mention, consider, or develop evidence for the Application complying with Code § 115-25 E in its record of support. There is no evidence that the Commission mentioned, considered, or developed evidence for finding the Application complied with Code § 115-25 E in the record of support. Commission gave no evidence to support the notion that meaning of Code § 115-25 E all wetlands only include jurisdictional wetlands. The applicant's Counsel made the false argument that all wetlands only apply to definition of wetlands containing §115-93. Buffer zones are wetlands, tidal and non-tidal waters, however, §115-93 states: "definition as used in this section shall have the following meaning indicated: the applicant's process is identifying and excluding non-jurisdictional wetlands should only be utilized when applying buffer regulations and should not be applied to cluster development regulations. The County Council regulates land use in Sussex County, not the federal government. Any federal regulations should be enforced in addition to the zoning code regulations and not in place of." The Army Corps of Engineering provide an approved jurisdictional determination that lists three wetlands: Wetland C 12.75 acres, Wetland D 5.31 acres and Wetland E 0.30 acres. The applicant record report shows an upward of 18.36 acres of non-jurisdictional wetlands. On page 6 of the PLUS review, a representative from DNREC stated "the newest project application proposes to disturb/fill upwards of 25 acres of non-tidal

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wetlands. These non-tidal wetlands provide significant water quality, benefits and habitats for plants and animals species. By filling these wetland areas and building homes and infrastructure upon them will direct result in an adverse drainage and flooding impacts for future residents.” DNREC is a state agency that is charged through the PLUS process to give recommendations concerning the environment and wetlands specifically. In addition, DNREC gives the Commission evidence that the required design element §115-25E states that all lots shall be configured to be completely outside of all wetlands will not be met. The Commission is not free to ignore this and must give their reasons on the record as to why they did not agree with the testament. The record has no evidence that the Commission considered the Code. The Commission did not address DNREC’s submission that filling these wetland areas then building homes and infrastructure upon them will directly result in adverse draining and flooding impacts for future residents. This resulted in the improper interpretation and application of Sussex County Code 115-25E.

The record fails to affirm that the application follows the code. The Commission failed to comply with Code §99-8 (B) which requires that the preliminary plat shall be checked by the staff to determine its conformity with the county's Official Zoning Map, other pertinent features of the Comprehensive Plan of the County, applicable zoning and other regulations and the design principles and standards and requirements for plat submission as set forth in this chapter. The Planning and Zoning staff prepared the Review to comply with the “preliminary plat shall be checked by the staff” requirement of Code §99-8 (B). In the staff review letter, the Planner notified the applicant and the Commission that the Preliminary Site Plan did not contain a grading plan and an easement for the site plan. The Code §99-23 (N) requires “The preliminary plat shall be drawn in a clear and legible manner and shall show the proposed grading plan when excavation, recontouring or similar work is to occur in conjunction with development of the subdivision.” The Response in addressing the grading deficiency of The Code §99-23 (N) identified in the Review replied as follows:

Comment j. Please submit a grading plan.

Response j. A grading plan will be submitted with the Final Site Plan.

The Response is clear the Applicant knew the Plan did not comply with the Code §99-23 (H), and §99-23 (N). Their replies: “all easements will be shown on the Final Site Plan” and “a grading plan will be submitted with the Final Site Plan”, are proof positive that they did not complete these two requirements. The easement and grading drawings are requirements of the preliminary plat, not the final site plan. Applicant’s record of support does not contain the required easement and grading drawings. There is only one logical conclusion, the Applicant’s record of support through the Response is an admission by the Applicant that the Plan does not comply with the Subdivision Code.

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There is no evidence in the Record that the Planner or Staff received the Response. There is no evidence in the Record that the Planner or Staff made any determinations concerning the Applicant's assertions that they cured the thirty-five identified deficiencies. The Commission's Counsel addressed the importance of this step at the first Appeal of Coral Lakes. Mr. Robertson pointed out that you must then have staff review; the argument is that if the plat is compliant, it must be approved. Mr. Robertson explained that you are not able to just take someone's word that it is complaint, there has to be a staff review that occurs to ensure that the plat submitted is complaint with the County' subdivision code. Based on the Record one must conclude that the Commission, the Director, and the Staff just accepted the Applicant's word that the plat submitted was compliant.

The Commission in their motion to approve the Plan included Condition (S.) "The Final Site Plan shall include a Grading Plan for the site." The Commission concurred with the Applicant that the preliminary plat does not have the required grading plan. Conditions placed on subdivision approvals are intended as "reasonable conditions which the Planning Commission may impose in order to minimize any adverse impact on nearby landowners and residents." Conditions are not intended as curative measures to address any Plat deficiencies of specific criteria found in ordinances. The mere fact that the Commission required the applicant to include a Grading Plan in the Final Site Plan shows that the Plan is not in compliance with §99-8 (B).

The Commission's failure to hold a fair and orderly public hearing. Mr. Bartley stated that for an application that has had a lot of controversy, there is one thing is agreed on, when the record was closed. All parties agreed that the record was closed on January 27, 2022. In Council's decision to remand the application back to the Commission, the Council instructed the Commission to further consider the entire record, all evidence, and facts of this application in an open session and consult with their legal counsel to take a legal vote. The Commission at its June 23, 2022, meeting included Coral Lakes as an agenda item to comply with the Council's instructions. First up at the meeting, was the Commission's legal Counsel consultation with the Commission concerning the application. This consultation comprised of six pages of transcribed testimony to discuss the well-settled law on subdivisions in Delaware. This discussion reviewed eight citations of court cases, the Delaware Code, the Zoning Code, the Subdivision Code, and Commission's Rules of Procedure. The Counsel's discourse ended with: So, again, in summary, under well-established Delaware law, if a subdivision satisfies the requirements of the Zoning Code and the Subdivision Code, then it must be approved. Next up was to take a public vote thereon based on the "entire record." However, there was a problem, the Plan must satisfy the requirements of the Zoning Code and the Subdivision Code. So, it can fulfill the if/then condition of Counsel's summary above. As previously established, there was an evidentiary defect

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At the conclusion of Counsel’s remarks, he stated the following: “So, based upon the law that I have described, I'd now ask Mr. Whitehouse to confirm, for the record [emphasis added], whether Subdivision 2021-06 for Coral Lakes complies with the Subdivision and Zoning Code.” Mr. Whitehouse replied, “And it does, Mr. Chairman. The bulk area open space density and buffer requirements within Chapter 115 are complied with and the design requirements in Chapter 99 are also met.”

Counsel’s question and answer session with the Director was clearly a curative step to address the evidential defect in the Record. But at what cost? Now there is a procedural defect in that evidence was added to the Record, after it was clearly closed. In a twist of irony, the Director’s declaration that the application complied with the Code outside of the Record, must be construed as an admission that he never confirmed that application conformed with the Code on the record.

The Council instructed the Commission to consult with their Counsel. Their Counsel consults that if the application complies with the Zoning and Subdivision Code, they must approve it. Then the Counsel has the Director, outside the record, confirm that the Plan does comply with the Zoning and Subdivision Code. Given these set of circumstances, one must conclude that the procedural error was fatal to the application, in that Counsel and the Director’s actions were prejudicial to the Application receiving a fair, orderly, and logical review.

The Commission by allowing and considering evidence presented outside of the Public Hearing record allowed for decision that was a result of an orderly and logical review of the evidence.

Mr. Bartley stated that 9 Del. C §6811 gives the residents of Sussex County the right of action to challenge a site plan approval by the Sussex County Planning and Zoning to the Sussex County Council. This section states “any approval or disapproval of Subdivision Application may be appealed to the County Government within 30 days of the official action of the County Government”. The Commission and Applicant failed to recognize this fact when citing cases to challenge his standing.

Mr. Bartley stated that given these errors, Council’s only just and reasonable course of action is to reverse the Commission’s decision to approve Coral Lakes.

A Motion was made by Mr. Hudson, seconded by Mrs. Green to do a 5-minute recess.

**M 468 22
Recess**

Motion Adopted: 4 Yeas, 1 Absent

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

**M 469 22
Reconvene**

At 10:13 a.m., a Motion was made by Mr. Hudson, seconded by Mrs. Green to reconvene.

Motion Adopted: 4 Yeas, 1 Absent

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

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Vince Robertson, Esq. of Parkowski, Guerke and Swayze came forward representing the Planning and Zoning Commission. Mr. Robertson explained that this is a usual situation in that fact that he is defending a client that is being challenged because they listened to the law.

Mr. Robertson shared that Coral Lakes was a coastal area subdivision; it was not a cluster subdivision. The superior design standards that apply to cluster subdivisions do not apply. Therefore, subdivisions such as this one are by-right; if the code is followed on a subdivision, then it must be approved. The Commission is allowed to impose conditions of which 21 were imposed in this case.

This law is not disputed by anyone; people may not like the law, but it is not being disputed.

Mr. Robertson explained the standard of review on one of these appeals which is governed by Section 99-39 of the Subdivision Code. He noted that what needs to be looked at is whether the commission correctly applied and interpreted the code and whether there was an orderly and logical review. He believes that both of these occurred, therefore, the Planning and Zoning Commission's decision should be affirmed.

Mr. Robertson addressed the Hicks appeal first that argues three reasons for reversal. One, that the Commission did not follow County Council's instructions, that the Commission did not conduct an orderly and logical review and the record fails to demonstrate that the Commission's decision was the proper application of the law.

With regards to Council's instruction to remand, they specifically directed the Commission to consult with their attorney. The Hicks appellants never dispute the legal advice provided by him; in fact, they cite the same law. In addition, this is not the first time this legal advice was given, the first vote for Coral Lakes, Commissioner Stevenson asked for an explanation on how subdivisions are treated in Delaware. Mr. Robertson explained that he was appointed and directed by County Council to explain the law to the

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With regard to the motion itself, this was not the first time the Commission saw this motion. In March, nearly an identical motion was made and there were 4 votes given to deny but no reasons provided. They had 3 months to consider what that motion said and was considered again in June. Mr. Robertson noted that all of the Hicks appellants ignore the motion itself and never talk about the findings or conditions given in that motion. Instead, they suggest that each member of the Commission has to restate the motion entirely whenever voting on it which is not required. The motion was read by him which is permitted. However, the motion was made by Mr. Mears and seconded by Ms. Wingate and then an independent vote was conducted. He pointed out that nobody had to make the motion or second the motion and each person could vote the way they wanted. Mr. Robertson pointed out that it was the same motion that was made back in March at which time, Ms. Stevenson during the 3/10/22 meeting admitted that we worked very hard on this to include the Commission. Then going into June, it was their motion. The County Council cannot ignore or look past the motion itself and the specific findings.

Next, Mr. Robertson discussed if there was an orderly and logical review. This was a remand that was based on the record that was previously heard. When you look at the hearing, the Commission discussed several items to include but not limited to: wetlands, impacts on adjacent developments, interconnectivity, stormwater design, DelDOT questions, drainage, archaeological studies, and adjacent landing strips. Then the motion that made it the first time and on remand stated that it was based upon the record. There was an orderly and logical review because it was based on the record that occurred at the hearing in early 2022. There was specific finding relating to density and the bonus density lots was denied for the protection of trees and federal wetlands. The motion also addressed the Henlopen TID, DelDOT requirements, 17 items of §99-9C and there were conditions that related back to that. In addition, it addressed central water and sewer, coastal area provisions of the Comprehensive Plan, required perimeter and wetland buffers and preservation of trees and other vegetation. It also addressed that there had to be at least 30% of the site be contiguous open space, maintenance of street, roads, stormwater management facilities, buffers, and common areas by HOA. It also discussed sidewalks, street lighting, amenities, internal street design and road naming. It also required an entire street to be removed and relocated in that subdivision. In addition, it discussed the agricultural use protection notice, the existence of a nearby airfield, a notice requiring nearby neighbors to be aware that there is hunting activities in the area. It also discussed what should happen if there were nearby grave sites located in the subdivision.

Mr. Robertson stated that although the Hicks appellants would ask you to ignore those findings and conditions; they cannot be ignored. There were also cites to the record for each of those in pages 13-15 of his written submission.

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Next, the Hicks appellants discussed the case of Tony Asburn case about how their cannot be a rubber stamp. They further explain that the Commission has the further right to scrutinize the layout of the project as shown on the site plan and attach conditions to it. Mr. Robertson explained that it is exactly what happened. In addition to the 16 findings, there were 21 conditions of approval doing exactly what East Lake and Ashburn allowed. Finally, Council has already determined that an orderly and logical review occurred on its first decision on this subdivision, and it cannot reopen that prior finding.

With regard to Mr. Robertson reading the motion, there is no issue with that. It is supported by Mason Manual of Legislative Procedure which allows others to read a motion and is consistent with legislative motion practice in the State and here in Sussex County. There were examples provided of that to minutes and that included Terrapin Island which was approved by this Council on appeal. Mr. Robertson noted that the Hicks appellants never disputed a legal advice that was incorporated into the motion. In summary, the motion that was made, seconded, and approved was by its own terms based upon the record; 16 separate findings and 21 conditions. The three votes in favor of that motion adopted it as their own.

Mr. Robertson stated that Mr. Mette spent some time reviewing court cases that talk about how a court needs to know exactly in detail why the subdivision was approved. At County Council unlike Planning and Zoning, a short title is read, someone states “so moved”; then each Council person has to give his or her reasons why their voting on that motion. When the motion substance is only so moved, the response “I vote yes” does not cut it; you need more reasoning so that a court on appeal can decided why you voted yes. Here, there was a very specific motion made with 16 separate findings and 21 detailed conditions. It is clear to any reviewing court why it was approved. Mr. Robertson discussed the Gibson vs. Sussex County; in Gibson, the court quoted the Commission specific reasons given in its motion like what was done here and found that this was “articulated reasoning with a thorough and rational review”. It looked at the motion, not the individual votes. Here, Tate vs. Miles, TD Rehoboth, Gibson, and Terrapin Island confirm that the Commission motion does provide adequate justification for the Commission’s decision and gives everyone reasoning why Coral Lakes was approved.

With regard to the question of a written decision, it was issued by the Commission staff on June 24, 2022. This was in accordance of the requirements in Title 9 that discuss the type of decision that should be issued in the case of a disapproval. In this case, it was an approval, however, a written decision was still issued. Mr. Robertson noted that Planning and Zoning Rule 15.4 should also be looked at that provides further guidance. It states provided a decision by the Commission on an application, a copy of the written shall be sent by the applicant which did occur. A written decision was issued and sent. There is no requirement that it needs to be signed by individual Commission members here in Sussex County. It was

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In summary regarding the Hicks appeal, the Planning and Zoning Commission did follow the Council's instruction. Their decision was an orderly and logical review. In addition, it is not disputed that the record demonstrates that the decision was the proper application of the law.

Mr. Robertson then addressed the Mr. Bartley's argument. He noted that he did not appear at the hearing or submit anything into the record during hearing. He stood by and did nothing during the hearing when he could have participated. During the hearing, it is the time to raise your concerns about a subdivision and make them known to the Planning and Zoning Commission. Then, fall back to them on appeal which did not occur. In addition, he does not live close proximity to the subdivision and does not allege in any way how he is an aggrieved party. He did not show up to the hearing; this is a minimum requirement of Section 99-39 and Mr. Bartley did not satisfy it. Mr. Robertson stated that he submits that his appeal should not be considered by Council.

The first issue raised by Mr. Bartley was the notice requirement which not raised previously and cannot be raised now on appeal. This is in accordance with Judge Tolliver's September 16, 2022, ruling. Mr. Bartley referenced a statement by Ms. Hicks relating to PLUS review that has nothing to do with the legal notices that were published, mailed to people, and posted on the property. It is clear that the notices worked; there were 11 people spoke and there were numerous letters submitted. Of all of those people that were in attendance, there were no complaints about notice raised during the hearing. He does cite the Title 9 requirements for hearing notice, but they do not support his claim. The purpose was stated, the date, place and time were stated. In addition, the area to be subdivided was described and it showed where the right to inspect was located. A physical place was listed, and a website was also provided which has been strived to do so more documents can be provided. The website is a place to go to locate the documents if you do not desire to travel to Georgetown. In addition, the phone number is provided by anyone that is unable to figure out any of the previous discussed options out. Therefore, there is no issue with notice.

Mr. Bartley discusses the Commissioner's alleged failure to hold a fair and orderly public hearing. Mr. Bartley focuses on Mr. Robertson's statement about the law and Mr. Whitehouse's statement about the information in the record that is complied with the zoning and subdivision codes. Mr. Robertson stated that his statement was fully compliant with Council's directive to consult with legal Counsel. Mr. Whitehouse only confirmed what was already in the record which was complaint with the Council's directive to consider the record and all evidence and facts of the application. Further, it is appropriate for the Commission's staff to advise the Commission. Mr. Whitehouse is such a member of the Commission and staff that he is authorized to sign plots on behalf of the Commission each

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year. In fact, if staff participation was considered testimony or evidence, no record would ever be closed.

With regard to site plan compliance, it was not raised during the hearing below and should not be considered for the first time on appeal. Mr. Bartley raised two issues, one has to do with easements and the other has to do with the grading plan. With regards to easements, he claims there were none shown. Mr. Robertson explained when you come in for a preliminary site plan approval no easements exist. Engineering is done after the preliminary site plan approval is received. Therefore, it was accurate for what existed at the time. In regard to the grading plan, they were shown on the plan, and it was required as condition S of the Commission's motion.

In regard to wetlands, Mr. Robertson stated that the problem is that Mr. Bartley does not explain what he means by what a wetland is. Mr. Robertson explained that there are two types of wetlands; Regulated vs. Unregulated (in areas that happen to be wet). Wetlands are defined in the Code as federal (regulated by Corp. of Engineers or state (regulated by DNREC). Mr. Bartley expects the County to regulate other soil types or damp ground areas but never provides any authority for that because there is none. In addition, Mr. Bartley cites Section 115.25E that all lots must be configured to be outside of all wetlands. Mr. Robertson stated that 115-25E does not apply to this subdivision due to it being a Coastal Area Subdivision. Those requirements are within an AR-1 subdivision which are two different standards. In the site plan, there are 5.65 acres of non-tidal wetlands that are regulated by the Army Corp that will be saved. Mr. Robertson noted that the request for bonus density was denied by the Commission so that lots would be pulled away from them. Mr. Bartley claims that there were 18.36 other acres of land that happen to be wet at times that should not be touched. However, there are no regulations to support that. The regulated wetlands were protected by the conditions of the approval.

Mr. Bartley also raised points about the density calculation. Mr. Robertson stated that density is based on what the zoning code says. At the time of subdivision, the lot is the entire parcel which is how density is determined. Mr. Robertson further explained that it is not based on site plan design, it is based on what the code says.

Mr. Robertson stated that nobody has disputed that the Planning and Zoning Commission misapplied or misinterpreted the County Code or the law that he read to the Commission in his explanation. In addition, Council directed him to give him that advice. The Planning and Commission's findings were the result of an orderly and logical review. Mr. Robertson pointed out that there were 16 findings and 21 conditions of approval which shows that it was not a rubber stamp. Finally, Council's instructions on remand were followed. For all of those reasons, he submits that the Commission's decision should be affirmed.

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Mr. Jon Horner, General Counsel for Schell Brothers came forward. Mr. Horner stated that Coral Lakes is a bi-right application meaning the application is zoned AR-1 and the proposed use of the project is residential single-family housing consist with the AR-1 zoning.

The appellants today consist of immediate neighbors of the project as well an individual that lives miles away from the project. Mr. Horner stated that those appellants are asking Council to disregard the law, constitution, property rights and the sound orderly and logical review of the Planning Commission because they do not want this project near them. For the Hicks appellants, they live next door to the project and have enjoyed wooded views from their homes as well as the unrestricted use of that forest. They immediately opposed this application for the reason to preserve the forest which is the exact same forest that was cut down to build their homes and the roads serving their homes. Mr. Horner stated that if given the option, we would all like to have a forest in our background that we did not have to pay for rather than homes. Or, given the option, tell our neighbors what to do with their land or to tell our neighbors that we want their land to remain untouched. Luckily for the applicant, the rule of law still prevails in this Country and neighboring property owners desire to control the use of someone's land is trumped by the property rights of the owner of that land. The same property right that allowed each of the appellants to build their homes are the same property rights that demand the affirmation of the approval of this application.

Mr. Horner stated that the Council may only reverse the decision of the Planning and Zoning Commission upon a finding that the Commission made an error in its interpretation of the applicable sections of the Subdivision Code or that the Commission's findings and conclusions were not the result of an orderly and logical review of the evidence. If there is substantial evidence that demonstrates the Commission's decision based on an orderly and logical review of the evidence and the law was accurately applied, the Council must uphold the Commission's decision. As this Council stated in the Terrapin Island appeal, the Council's review is limited to correcting errors of law and determining whether substantial evidence exists to support the Commission's findings of fact and that when substantial evidence exists, the Council will not reweigh it or substitute its own judgement for that of that of the Commission.

Mr. Horner stated that Mr. Bartley lacks standing to purse this appeal under Delaware Law and legal precedence as well as under the Sussex County Code. Therefore, his appeal must be dismissed. Delaware Courts have stated that for an individual to having standing, they must demonstrate the interest they seek to protect or within the zone of interest and alleged a related injury in fact. Mr. Horner noted that Mr. Bartley does not allege or even attempt any particular harm that is concrete; this is because he does not live by the Coral Lakes project; he lives miles away and there is no harm by this project. Therefore, he does not meet that requirement and the appeal must be dismissed under Delaware Law.

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Looking next at the Sussex County Code, Mr. Bartley cannot say that he was aggrieved by the Commission. A review of the record shows that he did not write letters, did not sign petitions, or participate in the public hearing stage at all. Mr. Horner noted that any party with standing can appear which is not the case here.

Mr. Horner stated that there are several cases cited in their briefs that state you do not have a constitutional protected right in the by-right land use of another landowner. It is that landowner that has the constitutional protected right. The cases cited by Mr. Bartley dealt with rezoning or conditional uses; not by-right subdivisions.

Mr. Bartley alleges that the public notice for the public hearing was inefficient because it did not state the place that the texts and maps related to the proposed change may be examined. Mr. Horner replied that this information was provided including a phone number, address, and website. Mr. Horner noted that this issue was not noted by anyone during the public hearing process. Mr. Horner emphasized that Mr. Bartley did not participate in the public hearing process at all and was given ample opportunity to do so. Regardless, the public hearing notice was complied with properly.

Next, Mr. Bartley argued that an orderly public hearing was not held. Mr. Horner stated that the Commission is allowed to consult with its staff including its attorney and Planning and Zoning staff. Furthermore, Mr. Whitehouse's statement was not new; it was a confirmation of facts already in the record. This Council has already found in the prior appeal that the process was orderly. Mr. Horner noted that even if you agreed with Mr. Bartley's statement that Mr. Whitehouse's statement somehow constituted new testimony in a public hearing, the remedy would be to disregard the statement. Even if that were done, there is still substantial evidence to uphold the Commission's decision. The appropriate staff review occurred which is undisputed, the staff provided a response letter and then the applicant responded to those comments. The Planning and Zoning staff specifically Mr. Whitehouse then confirmed that the plan met code. Mr. Horner stated that the plan complies with the code as confirmed by Mr. Whitehouse and the extensive record. The review by staff as required by §99-8B occurred and the staff confirmed that it complied.

Mr. Bartley also wrongly states that the application does not comply with the code because the application has lots configured within the wetland areas. This is a Coastal Area Subdivision and not a Cluster Subdivision; the provisions cited by Mr. Bartley are not applicable to this project. Mr. Horner noted that there are regulated wetlands on the property that are located at the rear of the property and will not be disturbed. The areas where the lots are located do not contain any wetlands that are regulated by federal, state or county law. Recently, the County passed a buffer ordinance that reaffirms the intend not to regulate these low isolated wetlands as it does not contain any buffers or regulation of these low isolated areas.

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Mr. Bartley also argued the calculation of the density of the proposed subdivision. Mr. Horner stated these issues were never raised below, therefore; it should not be considered on appeal. However, even if it were considered, Mr. Bartley is wrong. The density is a function of zoning and is calculated for a property based on the zoning for the property. Therefore, the density for the Coral Lakes property is established and calculated prior to the submission of plan and does not change with the submission of a plan. At the time it was calculated for Coral Lakes, the project was two tax parcels or two lots. Density is determined in the zoning code not the subdivision code. Here, at the time density is calculated, the entirety of the Coral Lakes project consisted of a gross area as defined by the code of 152.34 acres which allows for 304 lots; exactly what was approved here. Mr. Horner explained open space further. Mr. Horner explained that if Mr. Bartley's interpretation of the Code was applied, it would create an endless loop of redesigns for projects.

Mr. Horner stated that the Planning and Zoning Commission conducted an orderly and logical review of the record and properly applied the law when approving Coral Lakes. Therefore, this Council should affirm the decision of the Planning and Zoning Commission.

Ms. Kate Mowery, Attorney from Richards, Layton, and Fingers came forward representing Schell Brothers. Ms. Mowery stated that it is remarkable that the argument today is that the Commission did something wrong by following the advice of their legal Counsel. It is not being argued that the law provided was incorrect and the Hicks appellants do not object to the way it was presented or the actual substance; it is the fact that the Commission should not have followed the advice of Delaware law. In addition, that somehow legal Counsel made the decision for the Commission by reading that Delaware law into the record. Ms. Mowery stated that what legal Counsel did here was appropriate and followed the law.

Ms. Mowery discussed prior precedent; this same Council confirmed Terrapin Island preliminary plat approval last year. Ms. Mowery stated that the applications were almost identical. The only difference is here in the Coral Lakes application, there were additional evidence of careful consideration was provided. Therefore, it cannot be that the Council found that process logical and orderly and the proper application of law and not this one.

Ms. Mowery stated that the Hicks appellants are stating that Schell is fleeing from the record which is the opposite. Schell accepts the record as it stands which shows an orderly and logical review and proper application of the law. The Hicks appellants want to ignore the 12-page transcript motion made by Commissioner Mears. Ms. Mowery discussed the motion of which was very detailed, and it is clear to show that a clearly and logical review of evidence. Ms. Mowery noted that the Council found a motion similar to this format in the Terrapin Island project. Additionally, for the Coral Lakes

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project, the Commission did more than just this motion, each Commissioner stated reasons for his or her vote which was more than what was done during the Terrapin Island vote. On remand, the reasoning for their vote was requested by Council. Mr. Mowery reviewed each Commissioner's vote and their reasons that they provided. Each of those votes showed individual consideration and individual articulation. Further, there is no evidence that legal Counsel directed the Commissioner's on how to vote. There were also two members of the Commission that did not vote in favor of the application approval which shows there was individual thoughts by each member and that legal Counsel did not direct the vote.

The Commission complied with remand instructions and precedent. Ms. Mowery shared the procedures that were completed during the Coral Lakes and Terrapin Island projects. Based on this record, it cannot be that where the same procedures done in one appeal and affirmed that it is not in the second.

Ms. Mowery asked for the decision to be affirmed.

Mr. Mette came forward for rebuttal. Mr. Mette stated that in the January 27, 2022, record, there were numerous record that his clients testified and providing specific impact to them. As to the notion that the Planning and Zoning Commission only have to state their reasons if their disapproving application is not what Delaware Law or the Council's remand order stated. Therefore, the reasons people gave for their vote cannot stand; there is an independent basis for the appeal under the law. The public body must state its reasons for their vote which did not happen here. Mr. Mette stated that Terrapin is not controlling here and did not involve these facts at all. Mr. Mette is not stating that they should not rely on advice from Counsel; he is stating that Counsel does not get a vote and Counsel cannot tell them how to apply the law. As to the motion being read; he is stating that the motion was not considered in open session not that Counsel made it. Property rights must be balanced of why public body should states its reasons.

Mr. Bartley came forward to rebuttal. Mr. Bartley stated that he visited the site several time and there was no information listed. In addition, hundreds of pages of the online packet are still not on file at the Planning and Zoning office. Therefore, the official record does not have hundreds of pages of their testimony. It was DNREC that said the wetlands were being filled which was part of the PLUS review and they are required to respond to that.

**M 470 22
Go Into
Executive
Session**

At 11:18 a.m., a Motion was made by Mr. Schaeffer, seconded by Mr. Hudson to recess the Regular Session, and go into Executive Session for the purpose of discussing matters relating to pending/potential litigation and land acquisition.

Motion Adopted: 4 Yeas, 1 Absent

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

Executive Session At 11:24 a.m., an Executive Session of the Sussex County Council was held in the Council Chambers to discuss matters relating to pending/potential litigation and land acquisition. The Executive Session concluded at 11:57 a.m.

M 471 22 Reconvene A Motion was made by Mr. Hudson, seconded by Mr. Schaeffer to come out of Executive Session to go back into Regular Session.

Motion Adopted: 4 Yeas, 1 Absent

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

E/S Action Preliminary Matters/ Standard of Law Mr. Moore reviewed some preliminary matters and standards in the law that are applicable to both appeals. It is important to focus on the standard of review. As you will see, this standard does not permit the Council to substitute its own opinion for that of the Commission, nor does it permit a rehearing of what was before the Commission. It is, and was, a hearing of the record that you have heard already.

In reviewing the Commission’s decision on appeal, the Sussex County Code 99, Section 39, Subsection 2 states that:

“[t]he Council shall review the record of the hearing before the Commission and shall make a determination as to whether the Commission’s decision was the result of an orderly and logical review of the evidence and involved the proper interpretation and application of the chapter”

The Delaware Supreme Court held that the Commission’s consideration of a preliminary subdivision plan application acts in a manner that is “partly in a ministerial function and partly in a judicial capacity” [and, therefore, on appeal the appealing body must] determine whether the decision is supported by substantial evidence and is free from legal error. Substantial evidence “means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion”.

The Council’s review is “limit[ed] to correcting errors of law and determining whether substantial evidence exists to support the [Commission’s] finding of fact” and that “[w]hen substantial evidence exists, [the Council] will not reweigh it or substitute [its] own judgment for that of the [Commission].” In other words, even if some Council members think it is not how they would have voted, they are not permitted to substitute those views here – if there is substantial evidence to support the

**Preliminary
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(continued)**

Commission’s decision and if the law was not misinterpreted.

The Appellants have the burden of proof to demonstrate that the Commission did not engage in an orderly and logical review of the evidence and erred in its application of the law or that there was no orderly and logical review of the evidence. Therefore, if there is substantial evidence that demonstrates the Commission’s decision was based on an “orderly and logical review of the evidence” and the law was accurately applied, the Council must uphold the Commission’s approval.

In addition, the Council is not permitted to consider any issues and arguments raised by Appellants on appeal that were not raised below as they are considered waived on appeal.

After hearing each appeal, the Council may:

- 1. Affirm the Commission’s decision**
- 2. Reverse the Commission’s decision; or**
- 3. Remand the matter back to the Commission for further review and consideration.**

If the Council remands the matter back to the Commission, it may direct the Commission to hold a new hearing within a specified time period and following the hearing, it can direct the Commission to issue a written decision containing findings and conclusions. The Council may reverse a decision only if the Commission made an error of law or the Commission’s decision was the result of an orderly and logical review of the evidence and the applicable law.

For the two appeals before Council today, each will be dealt with separately in the order they were heard. They will be referred to as the Hicks Appeal and the Bartley Appeal. The first appeal to be acted on is the Hicks Appeal.

**M 472 22
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Hicks
Appeal
Decision**

A Motion was made by Mr. Vincent, seconded by Mr. Hudson, In the matter of the Hicks Appeal, I move that the Council affirm the decision of the Planning and Zoning Commission on remand in its approval of Application No. S-2021-06 filed by Schell Brothers, LLC for Coral Lakes (F.K.A. Coral Crossing) for the reasons outlined below and based on the standards as read by our attorney, Mr. Moore, which are incorporated herein by reference.

- 1. The Commission Complied with the Council’s Remand Instructions**

The Hicks Appellants argue that the Commission did not comply with the Council’s instructions on remand which stated:

“[T]his matter [is] remanded to the Commission for further consideration of the entire record, all evidence and facts of this Application in open session, to consult with its legal counsel, take a

**M 472 22
Coral Lakes
Hicks
Appeal
Decision
(continued)**

public vote thereon, with instructions to clearly state in the record reasons in support of the Commission’s vote and, in accordance with 9 *Del C.* § 6811 and the Commission’s Rules of Procedure, Section 15.4, to issue a written decision containing findings and conclusions that are consistent with the law.”

Council finds that the Commission complied fully with these instructions. On June 23, 2022, the Commission reconsidered this matter in open session at a Commission meeting. The Commission’s reconsideration included a comprehensive statement of the law by the Commission’s legal counsel, confirmation from the Planning and Zoning Director Jamie Whitehouse that the Applicant’s submission met all of the requirements for preliminary approval, a public vote based on 16 findings and 21 conditions enumerated in the motion for approval as read by counsel (3 “yes” votes, 1 “no” vote and 1 abstention) with each Commissioner stating the reasons for his or her respective vote), and, by letter dated June 24, 2022, a written decision was issued to the Applicant in accordance with the Planning and Zoning Commission’s Rules of Procedures, Rule 15.4 (“[f]ollowing a decision by the Commission on an application, a copy of the written decision shall be sent to the applicant, or the agent or attorney for the applicant.”).

In addition, the motion was specifically “based on the record made during the public hearing.” The Commission was not required to hold a new hearing or restate the entire record in open session. The Commissioners were required to review and reconsider the entire record, then vote in open session and provide reasons for their vote.

The comprehensive motion, vote, and reasons for such votes demonstrates the Commission’s thorough consideration of the issues surrounding this Application as outlined in the record, thus confirming that the Commission engaged in an orderly and logical review of this Application based on the entire record prior to approving the Preliminary Subdivision Plan. In fact, Council had already found that the Commission engaged in an orderly and logical review of this Application following the initial appeal hearing filed by the Applicant thus negating the need to revisit it here.

The fact that legal counsel read the motion is immaterial. The motion itself was made by Commissioner Mears following the reading when he stated, “So moved”. Moreover, in accordance with Rule 11.1 of the Planning and Zoning Commission’s Rules of Procedure, the Commission follows Mason’s Manual of Legislative Procedure. If a written motion is submitted, Section 156(3) permits a person other than the Commissioner making the motion to actually read the motion into the record.

**M 472 22
Coral Lakes
Hicks
Appeal
Decision
(continued)**

Mr. Whitehouse’s confirmation that the Application complies with the Subdivision and Zoning Code cannot be interpreted as the Commission delegating its authority to a staff member. It is common practice for Mr. Whitehouse to review and comment on subdivision applicants’ compliance or noncompliance with the applicable Code provisions. In fact, Sussex County Code, §99-8B mandates that staff review. However, Mr. Whitehouse does not make the final decision and does not have a vote; the final vote to approve or deny a subdivision application lies in the Commission only.

2. The Commission’s June 23rd Decision was the Result of an Orderly and Logical Review of the Evidence

The Hicks Appellants object to the Commissions’ legal counsel providing legal guidance on the record and insinuates that this is akin to the “Commissioners voting the way their attorney told them to vote”. This argument is flawed in several ways.

First, the Council expressly instructed the Commission “to consult with its legal counsel” during the process on remand. Clearly this was done, and it was done in open session thus providing complete transparency to the public.

Second, although each Commissioner provided reasons for his or her vote, it is important to note that one Commissioner voted “nay” and one Commissioner abstained. Had legal counsel or staff controlled their votes as the Hicks Appellants allege, one would expect that vote to be a unanimous approval. In order to perform an orderly, logical, and thorough review, the Commission needed to not only have the facts and documentation available to it but the applicable law as well. This was this done and resulted in the imposition of extensive conditions of approval, including the denial of bonus density lots, reconfiguration of the lots, and more. These conditions must be complied with, or the project will not get built.

The Hicks Appellants also reiterate their objection to Mr. Whitehouse’s confirmation that the Application complied with the applicable Code provisions. The Sussex County Code mandates staff review as to conformity with County requirements. However, the ultimate decision lies with the Commission.

3. The June 23rd Approval Was Based on the Proper Application of the Law and Regulations.

The Hick Appellants allege that the Commission’s approval on remand “should be reversed because the record does not demonstrate that the decision involved a proper application of applicable law and regulation.” The crux of their argument rests on the assertion that the

**M 472 22
Coral Lakes
Hicks
Appeal
Decision
(continued)**

Commission did not publicly deliberate or determine compliance with the law at the June 23rd meeting, but rather the Commission's legal counsel provided an extensive review of the law and the facts, and Mr. Whitehouse's confirmation that Application complied with the applicable ordinances. The Hicks Appellants fail to take into account the extensive written, record below, the public hearing, public input, agency input, several deferred votes to allow time for additional consideration, and more. The Commission has been reviewing this matter for months. The Code does not require the Commissioners to individually review all of the evidence and comment on it in open session. It does, however, require that each provide reasons for their vote which, upon remand, did occur.

Motion Adopted: 4 Yeas, 1 Absent

Vote by Roll Call:

Mrs. Green stated that based on the motion given and testimony given today and the three votes to affirm, I vote yes;

Mr. Schaeffer stated that he has made his opinion clear on this subdivision over the past few months and he does not believe there is any mistake as to how he feels about it. However, his review today is very limited in scope, and he believes firmly that the Planning and Zoning Commission did apply a logical review of the application and the submittals. He did not find that there has been any errors in their application of the law and he believes that the Planning and Zoning Commission reviewed and considered substantial evidence and took it into consideration when they made their decision. Therefore, he will affirm the Planning and Zoning decision and he approves of President Vincent's motion, and he votes yes;

Mr. Hudson stated that he agrees with the reasons and the motion and the decision of the Planning and Zoning Commission that they made an orderly and logical decision, I vote yes;

Mr. Vincent stated that he agrees of everything that he read as a motion and he thinks that everything was done properly, my vote is yes;

Mr. Rieley, absent.

**M 473 22
Coral Lakes
Bartley
Appeal**

A Motion was made by Mr. Vincent, seconded by Mr. Hudson, In the matter of the Bartley Appeal, I move that the Council affirm the decision of the Planning and Zoning Commission on remand in its approval of Application No. S-2021-06 filed by Schell Brothers, LLC for Coral Lakes (F.K.A. Coral Crossing) for the reasons outlined below and based on the standards as read by our attorney, Mr. Moore, which are incorporated herein by reference.

**M 473 22
Coral Lakes
Bartley
Appeal
(continued)**

1. The Commission Provided Adequate Notice of the Hearing

Mr. Bartley alleges that the Commission did not provide adequate notice of the public hearing claiming that the notice failed to include “the place at which the text and maps relating to the proposed change may be examined.” Mr. Bartley’s argument fails on multiple levels. The Commission hearing was advertised in two (2) newspapers (the Delaware State News and Cape Gazette), copies of which have been attached to the Commission’s Response together with the corresponding affidavits of publication. Not only do the advertisements include the place, date, and time of the public hearing at which the “text and maps” will be discussed and available for examination, but the advertisements also include a statement that, “[a]dditional information pertaining to the applications may be reviewed online at sussexcountyde.gov prior to the meeting or by calling 302-855-7878. Office hours are Monday through Friday, 8:30 am to 4:30 pm.” This provides two (2) additional avenues to review the “text and maps” at issue prior to the public hearing. Moreover, the hearing was well-attended by the public, many of whom spoke and/or submitted letters to the Commission. This confirms the notice was adequate.

In addition, Mr. Bartley did not raise an objection to the form of notice at the public hearing. The Council is not permitted to consider any issues and arguments raised on appeal that were not raised below as they are considered waived on appeal. This was confirmed by the Presiding Judge in this matter who ruled, “even if timely raised, an argument or evidence not part of the record below, cannot be considered on appeal.”

2. The Commission Held a Fair and Orderly Public Hearing

Mr. Bartley also contends that the Commission “[f]ailed to hold a fair and orderly public hearing.” His argument is flawed on its face. First, in its decision on the first appeal brought by the Applicant, Council already found that the Commission engaged in an orderly and logical review of this Application and, therefore, the issue as to whether the hearing was orderly is moot.

Mr. Bartley also contends that a statement made by Jamie Whitehouse, the Sussex County Planning and Zoning Director, confirming that the Applicant’s plan meets the requirements of the Subdivision and Zoning Code somehow opened the record which triggered the public’s right to comment. Mr. Whitehouse’s statement did not add evidence to the closed record; it was a statement as to the application of the Code to the evidence in the record and is precisely what the Council instructed the Commission to reconsider on remand.

The Appellant claimed that the Commission did not adequately

**M 473 22
Coral Lakes
Bartley
Appeal
(continued)**

consider this project, but the record shows that it did. The record in this case is voluminous. There was a lengthy application which contained information concerning property ownership, plots, maps, developer information and more.

3. The Record Demonstrates the Application Conforms to the County Code

Mr. Bartley argues that neither the Planning and Zoning Director or staff checked the preliminary plat to ensure conformity with the applicable County zoning and subdivision regulations. First, by not raising this issue below, Mr. Bartley is barred from asserting it on appeal.

Second, Mr. Bartley’s argument is not supported by the record. The record is replete with evidence contrary to this argument. In its January 11, 2022 letter, the Department staff reviewed the Application and provided comments, each of which were addressed by Schell in writing prior to the public hearing, and were available for the Commission’s consideration at the public hearing.

The Commission’s Response further outlined numerous ways in which the Plan followed the County Code. These were considered by the Commission on remand as part of the record.

In his Reply, Mr. Bartley raises a new argument that the easements and grading plan were not properly addressed by the Commission, because they were not included on the Preliminary Site Plan. This argument, again, was not raised by Mr. Bartley below and, therefore, it is barred on appeal. However, it is important to note that these items will be part of the Final Site Plan. In fact, Mr. Bartley acknowledges that Condition S mandates that the Final Site Plan contain a grading plan. Condition S also states that no building permit will be issued without a grading plan and, no certificates of occupancy will be issued without a grading certificate showing compliance.

4. The Wetlands Were Properly Considered

Mr. Bartley next argues that the wetlands were not properly considered, and that the lot design will disturb “upwards of 25 acres of non-tidal wetlands”. Mr. Bartley’s interpretation of both the subdivision plan and the applicable law is incorrect. The record includes information pertaining to Wetlands Delineation as to federal wetlands which are under the U.S. Army Corps of Engineers’ jurisdiction. The isolated low areas identified by the U.S. Army Corps of Engineers do not meet the DNREC’s definition of wetlands and, therefore, do not meet the County’s definition of wetlands and are otherwise unregulated.

**M 473 22
Coral Lakes
Bartley
Appeal
(continued)**

Low wet areas do not, in and of itself, constitute regulated wetlands. There are no DNREC Wetlands on this site. There are, however, 5.65 acres of federal wetlands which the Commission specifically protected by denying the “bonus density lots” which were originally located adjacent thereto. While there are regulated non-tidal wetlands on this site, all of the proposed lots will be configured outside of those regulated wetlands, as well as the non-regulated non-tidal wetlands that meet the definition by DNREC consistent with the County Code. There will also be 50-foot buffer from the non-tidal jurisdictional wetlands, which is twice the Code’s 25-foot buffer requirement.

Finally, Condition B expressly provides that, “No lots shall contain any Federal or State wetlands. All Federal or State wetlands shall be clearly shown on the Final Site Plan.”

5. The Density Was Accurately Calculated

Mr. Bartley has raised an objection to the density calculation. However, this issue was not raised below and, therefore, is barred on appeal.

That being said, Mr. Bartley’s density calculation is erroneous. Because it is located in a Coastal Area, Coral Lakes falls under Section 115-194.3C. which uses the “density of the underlying zoning district for developments using central wastewater collection and treatment systems” with the “allowable density” being determined based on the “lot area and the area of land set aside for common open space or recreational use but shall exclude any area designated as a tidal tributary stream or tidal wetlands by §115-193.” Coral Lakes is located in an AR-1 Zoning District which permits two units per acre.¹ The site contains a total of 152.34 acres. Because there are no tidal tributary stream or tidal wetlands, the total acreage is multiplied by 2 which is an “allowable density” of 304 units.

6. The Appeal Fee is Not Subject to Council’s Jurisdiction.

Mr. Bartley has raised an issue as to the appeal fee charged in this matter under Ordinance # 2868. On August 23, 2022, Mr. Bartley filed suit in the Court of Chancery captioned, Terrance Bartley v. County Council of Sussex County, Delaware, C.A. No. 2022-0743, challenging the appeal fee. As such, this is not the proper venue for deciding this issue.

7. Mr. Bartley’s Assertion of Future Rights Concerning the Final Subdivision Plan Has No Bearing on this Appeal.

Mr. Bartley makes an assertion that, under 9 Del. C. §§ 6810 and

¹ Sussex County Code, §115-25B(3).

M 473 22 **6811, he has the ability to appeal the Final Site Plan once it is recorded.**
Coral Lakes **This argument has no bearing on the current appeal and, therefore, does**
Bartley **not warrant discussion.**

Appeal
(continued) **Motion Adopted: 4 Yeas, 1 Absent**

Vote by Roll Call:

Mrs. Green stated that based on the motion and testimony given here today, I vote yes;

Mr. Schaeffer stated that he has been very clear on his opinion of this Subdivision, however, his review today is very limited in scope, he agrees with what President Vincent's motion, he believes that the Planning and Zoning Commission did act in an orderly and logical review of the record and evidence presented, he found no errors in law and he will vote yes;

Mr. Hudson stated that he agrees with the reasons in the motion and the decisions of the Planning and Zoning were logical and orderly, I vote yes;

Mr. Vincent stated that he agrees with the motion as he read and vote yes;

Mr. Rieley, Absent.

A Motion was made by Mr. Schaeffer, seconded by Mrs. Green to recess.

Motion Adopted: 4 Yeas, 1 Absent

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

Mr. Rieley joined the meeting.

At 1:02 p.m., a Motion was made by Mr. Schaeffer, seconded by Mr. Rieley to come out of recess and back into Regular Session.

M 474 22 **Motion Adopted: 5 Yeas**
Recess

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

Minutes **The minutes of the September 27, 2022 meeting were approved by consensus.**

Correspon- **Mr. Moore read correspondence thanking Council for their support for the**
dence **Beach to the Band event.**

**Public
Comment

M 475 22
Approve
Consent
Agenda**

There were no public comments.

A Motion was made by Mr. Hudson, seconded by Mrs. Green to approve the following item under the Consent Agenda:

**Use of Existing Sewer Infrastructure Agreement, IUA 1205
Heritage Shores Phase 4F (Western Sussex Area)**

Motion Adopted: 5 Yeas

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

**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 2022 is attached listing the number of violent crime and property crime arrests, as well as total traffic charges and corresponding arrests. In addition, DUI and total vehicle crashes investigated are listed. In total, there were 191 troopers assigned to Sussex County for the month of August.

2. Project Receiving Substantial Completion

Per the attached Engineering Department Fact Sheet, Hailey's Glen – Phase 2 (Construction Record) received Substantial Completion effective September 28th.

3. Alvana "Beverly" Wilson

It is with sadness that we note the passing of former county employee Beverly Wilson on Thursday, September 29th. Beverly began her career with Sussex County Government in July 1989, with a total of 14 years of service, her last position was Security Guard at the Airport. We would like to extend our condolences to the Wilson family.

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

**SCWRF
General**

John Ashman, Director of Utility Planning and Design presented Change Order No. 25 for general construction for Project C19-11 for Council's

**Construct-
Ion/CO No.
25**

consideration. The headworks at the SCRWF are covered and the ventilated air treated for odors. The contract included unit pricing repair items for the headworks. The damage was discovered during the rehabilitation work in the headworks and grit tanks indicated corrosion way above the anticipated levels.

**M 476 22
Approve CO
No.
25/Project
C19-11**

A Motion was made by Mr. Hudson, seconded by Mrs. Green, that be it moved based upon the recommendation of the Sussex County Engineering Department, that Change Order No. 25 for Contract C19-11, South Coastal WRF Treatment Process Upgrade No. 3 & Rehoboth Beach WTP Capital Improvement Program Phase 2 – General Construction, be approved increasing the contract by \$126,590.76.

Motion Adopted: 5 Yeas

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

**SCWRF
Electrical
Construct-
ion/ CO No.
19**

John Ashman, Director of Utility Planning and Design presented Change Order No. 19 for electrical construction for Project C19-17 for Council's consideration. The Off-Site Manufacturer Course Training specified in the construction documents is being removed which will create a credit.

**M 477 22
Approve CO
No. 19/
Project C19-
17**

A Motion was made by Mr. Rieley, seconded by Mr. Hudson, that be it moved based upon the recommendation of the Sussex County Engineering Department, that Change Order No. 19 for contract C19-17, SCRWF Treatment Process Upgrade No. 3 & RBWTP Capital Improvement Program, Phase 2 – Electrical Construction, be approved, for a decrease of \$17,758.13.

Motion Adopted: 5 Yeas

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

**Grant
Requests**

Mrs. Jennings presented grant requests for Council's consideration.

**M 478 22
Milton Arts
Guild Inc.**

A Motion was made by Mrs. Green, seconded by Mr. Schaeffer to give \$1,000 (\$1,000 from Mrs. Green's Councilmanic Grant Account) to Milton Arts Guild Inc. for their facility expansion project.

Motion Adopted: 5 Yeas

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

Mr. Vincent, Yea

M 479 22 **A Motion was made by Mrs. Green, seconded by Mr. Hudson to give \$1,000**
Milton **(\$1,000 from Mrs. Green’s Councilmanic Grant Account) to Milton**
Historical **Historical Society for upgrades to their financial system to a Cloud-Based**
Society **POS system.**

Motion Adopted: 5 Yeas

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

M 480 22 **A Motion was made by Mr. Schaeffer, seconded by Mrs. Green to give**
Clear Space **\$1,500 (\$1,500 from Mr. Schaeffer’s Councilmanic Grant Account) to Clear**
Theatre **Space Theatre for their 2023 Spring Productions.**

Motion Adopted: 5 Yeas

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

M 481 22 **A Motion was made by Mr. Schaeffer, seconded by Mr. Hudson to give**
Children’s **\$2,000 (\$1,000 from Mr. Schaeffer’s Councilmanic Grant Account and**
Beach **\$1,000 from Mr. Hudson’s Councilmanic Grant Account) to Children’s**
House, Inc. **Beach House, Inc. for their Youth Development Program.**

Motion Adopted: 5 Yeas

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

M 482 22 **A Motion was made by Mr. Schaeffer, seconded by Mrs. Green to give**
Family **\$1,000 (\$1,000 from Mr. Schaeffer’s Councilmanic Grant Account) to**
Promise of **Family Promise of Southern Delaware for their Eviction Prevention**
Southern **Program.**
Delaware

Motion Adopted: 5 Yeas

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

Proposed **Mr. Schaeffer introduced a Proposed Ordinance entitled “AN**
Ordinance **ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-**
Introduct- **1 AGRICULTURAL RESIDENTIAL DISTRICT FOR AN AMENDMENT**
ions **OF CONDITION “N” OF THE CONDITIONS OF APPROVAL IN**

ORDINANCE NO. 2766 (CONDITIONAL USE NO. 2201) RELATING TO THE SALE OF CAMPSITES WITHIN A CAMPGROUND/RV PARK TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 8.0 ACRES, MORE OR LESS”

Mr. Schaeffer reintroduced a Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR MULTI-FAMILY (2 UNITS) TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 4.79 ACRES, MORE OR LESS”

Mrs. Green reintroduced a Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT AND A C-1 GENERAL COMMERCIAL DISTRICT FOR A SOLAR FARM TO BE LOCATED ON A PORTION OF A CERTAIN PARCEL OF LAND LYING AND BEING IN CEDAR CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 25.327 ACRES, MORE OR LESS”

Mr. Vincent reintroduced a Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A SOLAR FARM TO BE LOCATED ON A PORTION OF A CERTAIN PARCEL OF LAND LYING AND BEING IN BROAD CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 25.012 ACRES, MORE OR LESS”

Mrs. Green reintroduced a Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A 5.8 MEGAWATT GROUND MOUNTED SOLAR FARM TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN CEDAR CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 32.90 ACRES, MORE OR LESS”

**Council
Members’
Comments**

Mrs. Green asked if there was an update on the fire occurred at one of the EMS stations. Mr. Lawson stated that the shoreline on the back of one of the paramedic vehicles caught on fire. The one bay that the vehicle was in was damaged. That bay will be taken down to the studs and will be rebuilt.

**M 483 22
Adjourn**

A Motion was made by Mr. Hudson, seconded by Mr. Schaeffer to adjourn at 1:15 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,

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

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

ENGINEERING DEPARTMENT

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COUNTY ENGINEER

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Sussex County

DELAWARE
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Memorandum

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

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

RE: ***Western Sussex Unified Sewer District:
Contract 5, Project S19-29
A. Segment B: Balancing Change Order & Substantial Completion***

DATE: October 18, 2022

In February 2017, the municipal councils of Bridgeville and Greenwood requested investigation of an alternate County Sewer District based scenario. Upon review of the findings both municipal Councils requested formation of a County sewer district pursuant to Title 9 Del. Code § 6501, and on August 22, 2017, County Council adopted a resolution establishing the Western Sussex Area of the Unified Sanitary Sewer District.

The County requested funding consideration under the Clean Water State Revolving Fund and on August 14, 2018, the State issued a binding commitment offer in the overall amount of \$16,634,748 to be repaid within 30-years with 2.5% interest. On November 27, 2018, Council accepted the offer and approved the associated borrowing ordinance. After project completion, \$3,200,000 will be applied in principle forgiveness reducing the overall borrowing. On May 15, 2020 the County filed a supplemental CWSRF funding request in the amount of \$850,000 to cover unanticipated change orders associated with the DeIDOT restoration on RT-13. The County's request was approved by the Water Infrastructure Advisory Council during their July 15, 2020 meeting in the form of "Loan Forgiveness."

Council also authorized a 2nd request for supplemental funding for the Western Sussex District Area Expansion Project through the CWSRF in the amount of \$1,336,315.00. Once an offer is received, an associated debt ordinance would be introduced and voted on by Council after a public hearing. Since the project is already at the affordability limits an offer in the form of mostly "Loan Forgiveness" is expected.



The project has three (3) components; transmission under Contracts 1-4, treatment plant demolition/system rehabilitation Contract 5, maintenance garage under Contract 6 and the Bridgeville Branch restoration under a “green” project funding scenario spearheaded by the Sussex Conservation District.

The construction of the transmission project was further broken down in the following four (4) individual contracts based on DelDOT’s schedule requirements:

- Contract No.1 to A-Del Construction Co, Inc. in the amount of \$3,224,820.00, for the force main work in the RT-13 rights-of-way. Awarded by Council on May 14, 2019.
- Contract No.2 to Pact One LLC in the amount of \$2,063,255.00, for the gravity sewer upgrades. Awarded by Council on May 14, 2019.
- Contract No.3 to A-Del Construction Co, Inc. in the amount of \$2,980,602.00, for the force main work in the RT-13 Alternate and Herring Road rights-of-way. Awarded by Council on January 7, 2020.
- Contract No.4 to Zack’s Excavating, Inc. in the amount of \$3,236,939.00, for gravity sewer equalization chambers and two (2) pump stations. Awarded by Council on November 12, 2019.
- Contract No. 6 to GGI, Inc. in the amount of \$410,525.00, for construction of a new Office/Garage Building. Awarded by Council on June 23, 2020.

During the construction of Contract No.1 awarded to A-Del Construction Co, Inc., DelDOT did not allow the reuse of most of the excavated trench material and required Type C Borrow instead. Therefore, this unit price item went considerably above the bid quantity. In addition, a wider concrete base course was encountered under the Cannon Road crossing. Rather than using hot-mix for restoration, DelDOT required reinstallation of the concrete base course adding 25% to the cost of this lump sum item. On February 4, 2020, Council approved the associated Change Order No.1 in the amount of \$254,188.92. During the final restoration phase DelDOT required additional matting and utility adjustments resulting in a final balancing Change Order No. 2 in the amount of \$26,486.65. Council issued Change Order No.2 and granted final project completion on June 2, 2020.

The award of Contract No.2 to Pact One, LLC included the base bid and two alternate bid items. At the time of award, the Alternate Bid Item D5 was not awarded due its significantly higher than anticipated cost. In subsequent discussions, Pact One LLC realized they had misinterpreted the scope for Item D5 and submitted an alternate proposal at approximately 16% of the original bid. On September 10, 2019 Council awarded Change Order No. 1 in the amount of \$96,840.00 to cover item D5. On June 2, 2020 Council approved a final balancing Change Order No. 2 in the credit amount of (\$128,708.70) and granted final project completion.

Contract No.3 awarded to A-Del Construction Co, Inc. encountered no issues and on June 15, 2021 Council approved the balancing Change Order No. 1 in the credit amount of

\$643,915.22 together with final project completion as of April 7, 2021.

During the construction of Contract No. 4 awarded to Zack's Excavating, Inc. a groundwater contamination was encountered, in addition to a construction sequencing issue at the Bridgeville site. In response, the Department developed a value engineering approach approved by Council on June 2, 2020 under Change Order No.1 in the amount of \$40,045.00. The north Seaford pump station included RT-13 entrance improvements which required a more substantial reconstruction due to lack of an existing base course as well as a compromised subbase. In response Council approved Change Order No. 2 in the amount of \$22,642.78 on July 28, 2020. On September 30, 2020 Zack's Excavating, Inc. encountered a previously unknown ductile iron water pipe within the area of the deep excavation of the Bridgeville pump station structures. On November 10, 2020 Council approved Change Order No. 3 in the total amount of \$32,644.19 for the time and material relocation effort.

On February 3, 2021, Delmarva Power and Light contacted the Sussex County with an opportunity for net schedule and cost savings by adjusting the transformer type from pad mount to a pole mounted system. While this decreased the charges from Delmarva Power and Light, it actually increases the work for Zack's Excavating Inc.'s electrical subcontractor by \$5,504.87. However, the coordination with DP&L did affect the critical schedule and caused a two-week delay. In addition, the Environmental Services team did additional assessments of the Heritage Shores Pump Station pre-existing conditions and recommended additional upgrades to the existing SCADA system to bring it up to the current county standard exceeding the stipulated contract allowance by \$16,000.00. On March 9, 2021 Council approved Change Order No. 4 in the amount of \$21,504.87 and the associated two-week contract time extension.

The final gravity sewer line to transferred to the new Bridgeville pump station had significant, previously unknown, infiltration. The Department requested a change order for the necessary repairs but Zack's Excavating, Inc. declined any further change orders. Subsequently, after receiving concurrence from the funding agency, the Engineering Department mobilized the County's General Labor & Equipment contractor to the site. Furthermore, the Department suggested to transition Zack's contract to a lump sum approach, requesting credit proposals for several remaining incidental work items and allowances. On May 25, 2022 Council issued the close out credit Change Order No. 5 in the amount of (\$92,704.30) as well as the granting of substantial project completion.

The Invitation to Bid for the last remaining Western Sussex Unified Sewer District, Contract 5, Project S19-29 was advertised in the local newspaper, available to view on the County website and directly forwarded to interested contractors. On February 9, 2022, seven (7) bids were received.

On February 22, 2022, Council awarded Segment A to A-Del Construction Co., Inc. in the total amount of \$427,000.00, Segment B to Richard E. Pierson Construction Co., Inc. in the total amount of \$920,800.00 and Segment D to Standard Pipe Services, LLC in the total amount of \$525,100.00, contingent upon SRF concurrence.

Three (3) bids were received for Segment C, however, there were irregularities in the low bid. Council rejected all bids for Segment C and authorized an immediate re-bid. On March 25,

2022, two (2) re-bids were received and on April 26, 2022 Council awarded Segment C to Zack's Excavating, Inc. in the amount of \$551,585.16.

Western Sussex Unified Sewer District Contract 5, Project S19-29 change order requests and substantial completion summary.

- Segment A was awarded to A-Del Construction Co, Inc for \$427,700.00. The contractor states they are 'substantially complete' on June 23, 2022, with the last remaining waste materials picked up from the Bridgeville Wastewater Treatment plant for disposal. As part of this removal, there was small amount of additional chemicals that were not in the original bid inventory sheets. The additional chemicals in change order no. 1 amounted to \$2,628.88 for a new contract amount of \$430,328.88. The substantial complete balancing change order no. 2 with consideration for less than anticipated removal of residual liquids, solids and sludger resulted in a surplus of \$216,097.35. On July 12, 2022, Council approved Change Order No. 1. On June 23, 2022 Council approved the balancing Change Order No. 2 and granted substantial completion.
- Segment B was awarded to Richard E. Pierson Construction Co., Inc. for \$920,800.00. In the process of demolition, Richard E. Pierson recognized that the existing water main crossing the site would not be sustainable in its current location. Therefore, Richard E. Pierson Construction Co., Inc. proposed Change Order No. 1 for the relocation of the main in the amount of \$27,743.89 which was approved by Council on July 12, 2022.

With the completion of the demolition of the structures to planned depth below grade, and completion of the restoration work including necessary contingency items. Richard E. Pierson Co.'s scope is substantially complete, the Engineering Department requests approval on the balancing Change Order No. 2 in a credit amount of \$177,857.89 due to utilizing less contingency bid items as well as the granting substantial completion effective October 11, 2022.

- Segment D was awarded to Standard Pipe Services, LLC for \$525,100.00. Standard Pipe Services, LLC proposed Change Order No. 1 in the amount of \$52,500.00 for unit rates covering camera work beyond the main for locating, cleaning and televising laterals estimated and Change Order No. 2 in the amount of \$33,900.00 or contingent unit rates approval for heavy cleaning services prior to camera work. Council approved both change orders on July 12, 2022.

Date of Issuance: 7/12/22	Effective Date: 10/18/22
Owner: Sussex County	Owner's Contract No.: S19-29
Contractor: Richard E. Pierson Construction Co.	Contractor's Project No.:
Engineer: Davis, Bowen & Friedel, Inc.	Engineer's Project No.: 1897B016
Project: Western Sussex Transmission Facilities: Contract 5 Segment B	Contract Name:

The Contract is modified as follows upon execution of this Change Order:

Attachments: Change order request #2 – Settling Change Order & Final Invoice

CHANGE IN CONTRACT PRICE	CHANGE IN CONTRACT TIMES <i>[note changes in Milestones if applicable]</i>
Original Contract Price: \$ <u>920,800.00</u>	Original Contract Times: Substantial Completion: _____ Ready for Final Payment: _____ 210 calendar days
Increase from previously approved Change Orders No. 1 to No. <u>1</u> : \$ <u>27,743.89</u>	Increase from previously approved Change Orders No. to No. <u> </u> : Substantial Completion: _____ Ready for Final Payment: _____
Contract Price prior to this Change Order: \$ <u>948,543.89</u>	Contract Times prior to this Change Order: Substantial Completion: _____ Ready for Final Payment: _____
Decrease of this Change Order: \$ <u>177,857.60</u>	[Increase] [Decrease] of this Change Order: 0 days Substantial Completion: _____ Ready for Final Payment: _____
Contract Price incorporating this Change Order: \$ <u>770,686.29</u>	Contract Times with all approved Change Orders: Substantial Completion: _____ Ready for Final Payment: _____

By: <u>[Signature]</u> Engineer (if required)	ACCEPTED: By: _____ Owner (Authorized Signature)	By: <u>[Signature]</u> Contractor (Authorized Signature)
Title: <u>PROJECT ENGINEER</u>	Title: _____	Title: <u>DEMO (BETON MANAGER)</u>
Date: <u>10/11/2022</u>	Date: _____	Date: <u>10/11/22</u>

Approved by Funding Agency (if applicable)

By: [Signature] Date: 10-13-22
 Title: Project Manager DNREC Environmental Finance

ENGINEERING DEPARTMENT

HANS M. MEDLARZ
COUNTY ENGINEER

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Sussex County
DELAWARE
sussexcountyde.gov

Memorandum

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

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

RE: ***LAND SURVEY AND MAPPING SERVICES CONTRACT***
A. Increase Approval of FY2023 Not-to-Exceed Costs

DATE: October 18, 2022

The Engineering Department undertakes a variety of improvement projects each year with the assistance of various professional services to supplement and support County personnel. Although a Miscellaneous Engineering contract is procured on a five-year rolling basis land survey was identified as a unique discipline gap which needed to be procured separately to compliment Department project needs.

In early 2019 the Department received County Administrator approval of the scope for a Request for Proposals (RFP) as well as the selection committee. The Request for professional services to perform Land Survey and Mapping Services on an as-needed basis was advertised and ten (10) firms responded by the deadline of March 1, 2019.

As per the County Consultant Selection Policy and Delaware Code, proposals are evaluated based on approved Consultant Rating Criteria. The three (3) highest scoring firms are identified in the Selection Committee summary below:

Firm	Average Committee Rank	Overall Ranking
DBF, Inc	1.25 / 10	1
Solutions IPEM	2 / 10	2
Century Engineering	3.75 / 10	3

On April 16, 2019, County Council approved the Engineering Department to execute a professional service agreement with DBF, Inc (Davis, Bowen & Friedel) for on-call Land



Survey and Mapping Services to supplement and support the Department over a five (5) year contract period, with an annual cost cap not to exceed seventy-five thousand dollars (\$75,000.00). The actual amount spent for FY2020 fiscal year was significantly less. Attached is a task summary spreadsheet covering FY2020 -2023.

In FY2022 several survey tasks were delayed and could not be completed by the end of the fiscal year. Therefore, purchase orders had to be re-created to encumber the funds for FY2023. The Engineering Department now expects to exceed the Council set cost cap and is requesting it to be increased due to the unusual carry over by \$45,000.00.

DAVIS, BOWEN & FRIEDEL, INC.
LAND SURVEY AND MAPPING SERVICES TASKS
 CONTRACT EFFECTIVE THROUGH JUNE 11, 2024 *

TASK ORDER NO.	TASK ORDER DESCRIPTION	AMOUNT	REMAINING	P.O.	
FY 20					
1	Effluent Loop Property (MMW Investments)	\$18,500.00	\$56,500.00	20200246	
2	Coastal Club Boundary	\$1,500.00	\$55,000.00	20200762	
3	Bridgeville/Greenwood Sewer Survey	\$5,000.00	\$50,000.00	20201212	
4	On-Call Survey/GIS Support	\$15,000.00	\$35,000.00	20201272	
5	WNWWF 10 Acre Transfer	\$3,750.00	\$31,250.00	20202131	
6	IB Topography - Drainage	\$1,000.00	\$30,250.00	20202296	
Total Encumbered		\$44,750.00			
FY 21					
7	IB Boundary Survey & Lot Consolidation	\$27,500.00	\$47,500.00	20210315	
8	Topo Survey @ IB Road & Cannon Rd.	\$1,500.00	\$46,000.00	20210599	
9	State Family Court Lot Consolidation & Line Adj.	\$6,300.00	\$39,700.00	20210748	
10	Topo Survey - E. Lake Drive	\$5,500.00	\$34,200.00	20211009	
4 - Continued	On-Call Survey/GIS Support	\$1,391.26	\$32,808.74	20212252	
11	Eli Walls Tax Ditch	\$19,500.00	\$13,308.74	20212460	
Total Encumbered		\$61,691.26			
FY 22					
12	Bridgeville/Heritage Shores Survey Services	\$6,200.00	\$68,800.00	20220388	
13	Warrington Road Extension Survey	\$3,500.00	\$65,300.00	20221719	
14	Coastal Airport Survey	\$5,000.00	\$60,300.00	20221905	
15	Hebron Road Easement	\$5,000.00	\$55,300.00	20221907	
16	Piney Neck Survey	\$5,000.00	\$50,300.00	20221902	
17	Jones Farm Survey	\$15,000.00	\$35,300.00	20222386	
18	Dawson Brothers Boundary Survey	\$7,500.00	\$27,800.00	20222385	
Total Encumbered		\$47,200.00			
FY 23					
15	Hebron Road Easement	\$6,478.30	\$68,521.70	20230347	* Re-created PO for FY 23 with add'l funds
16	Piney Neck Survey	\$12,500.00	\$56,021.70	20230348	* Re-created PO for FY 23 with add'l funds
19	Vines Creek Road	\$5,500.00	\$50,521.70	20230395	
18	Dawson Brothers Boundary Survey	\$7,500.00	\$43,021.70	20230519	*Re-entry for PO not expended in FY22
17	Jones Farm Survey	\$15,000.00	\$28,021.70	20230520	*Re-entry for PO not expended in FY22
15	Hebron Road Easement	\$5,000.00	\$23,021.70	20230521	*Re-entry for PO not expended in FY22
20	Cave Neck Road Survey	\$5,500.00	\$17,521.70	20230667	
21	Avebury LLC Lot Consolidation	\$1,500.00	\$16,021.70	20230980	
22	Rt. 13 - Seaford	\$7,500.00	\$8,521.70	20230970	
16	Increase to Task 16 (PO closed)	\$1,000.00	\$7,521.70	20230985	
Total Encumbered		\$67,478.30			

** Encumbered Costs not to exceed \$75k/year w/o Council approval

ENGINEERING DEPARTMENT

J. MARK PARKER, P.E.
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Sussex County

DELAWARE
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Memorandum

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

FROM: J. Mark Parker, P.E., Assistant County Engineer

RE: ***Delaware Coastal Business Park Improvements, Project A21-11***
A. Change Order No. 2

Becker Morgan Group, Inc. Professional Services Contract
A. Scope Amendment No. 4

DATE: October 18, 2022

The Delaware Coastal Business Park Improvements project consists of two separate infrastructure improvement initiatives in the business park: upgrades to a section of Baltimore Avenue in the original section of the Business Park and final build-out (Phase 2) of the new section of Business Park off Park Avenue. Following a public advertisement process, Council authorized award of the Delaware Coastal Business Park Improvements project to A-Del Construction in the amount of \$3,839,433.00. Notice to Proceed for construction was subsequently issued by the Engineering Department on January 25, 2022.

On September 20, 2022, Council authorized Change Order No. 1 in the amount of \$128,630.00 related to construction changes that were needed to accommodate the planned build-out of one of our Business Park tenants, Great Outdoor Cottages. The construction changes involved grading, stormwater management, and storm drainage modifications in the Phase 2 portion of the Business Park, and are now fully complete.

As part of the Baltimore Avenue upgrades, a new speed hump was installed within the 1,800 foot section of improved roadway. The speed hump was designed at slowing down vehicle speeds along the tangent section of the road which has a posted speed limit of 25 MPH. Following completion of the Baltimore Avenue work including the speed hump, continued routine speeding has been observed along the roadway particularly during the timeframe of work shifts ending at some of the businesses with the Business Park. As a result, it was decided to install two additional speed humps – one along the improved section of Baltimore Avenue and another within the roadway section constructed in 2019 connecting to Park Avenue. The

speed hump work involves re-mobilization of paving equipment and road preparation work, in addition to the installation of the actual speed humps. Our Contractor A-Del Construction was requested to submit a change order to cover the work for the two additional speed humps. **The Engineering Department has reviewed and recommends approval of Change Order No. 2 to A-Del Construction in the amount of \$9,999.00.**

On March 14, 2017, Council approved the assumption of Georgetown Airport Center, LLC's Professional Engineering Contract and retained the Engineer of Record, Becker Morgan Group, Inc., as the consultant for Delaware Coastal Business Park on a time and material basis, in accordance with their hourly rate schedule with a not to exceed limit of \$200,000.00

On January 16, 2018, Council approved Becker Morgan Group, Inc.'s *Scope Modification No. 1* for the realignment and extension of Baltimore Avenue and the stormwater over-management in an amount not-to-exceed \$48,000.00.

On December 11, 2018, Council approved *Scope Amendment No. 2* for Becker Morgan Group, Inc., in the not-to-exceed amount of \$350,000.00 for design services related to the Delaware Coastal Business Park Phase 2, including the upgrade of the section Baltimore Avenue within the original Business Park.

On June 8, 2021, Council approved *Scope Amendment No. 3* for Becker Morgan Group, Inc., in the not-to-exceed amount of \$45,000.00 for additional design services related to utility investigations and other miscellaneous design efforts not included in Scope Amendment No. 2.

In conjunction with the construction changes needed to accommodate the planned build-out of Great Outdoor Cottages as referenced above, stormwater redesign efforts were necessary by Becker Morgan Group, Inc. which included revising the approved stormwater report and resubmitting to Soil Conservation District for review. A total of two (2) submissions were required for agency approval. As a result of these additional efforts, **the Engineering Department recommends approval of *Scope Amendment No. 4* for Becker Morgan Group, Inc., in the not-to-exceed amount of \$10,000.00.**



**SUSSEX COUNTY
CHANGE ORDER REQUEST**

A. ADMINISTRATIVE:

1. Project Name: **Delaware Coastal Business Park Improvements**
2. Sussex County Project No. A21-11
3. Change Order No. 2
4. Date Change Order Initiated - 10/03/2018
5.
 - a. Original Contract Sum \$3,839,433.00
 - b. Net Change by Previous Change Orders \$ 128,630.00
 - c. Contract Sum Prior to Current Change Order \$3,968,063.00
 - d. Requested Change \$9,999.00
 - e. Net Change (No. of days) 0
 - f. New Contract Amount \$3,978,062.00
6. Contact Person: Mark Parker, P.E.
Telephone No. (302) 855-7382

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):

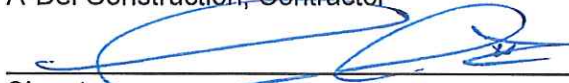
C. **BRIEF DESCRIPTION OF CHANGE ORDER:**
Addition of two (2) speed humps into the project scope.

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

Yes X No

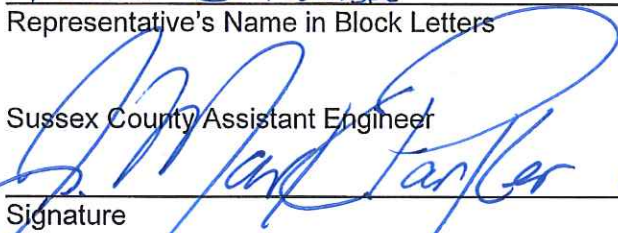
E. **APPROVALS**

1. A-Del Construction, Contractor


Signature 10/12/2022
Date

ROBERT C. KEMSKE
Representative's Name in Block Letters

2. Sussex County Assistant Engineer


Signature 12 OCT. 2022
Date

3. Sussex County Council President

Signature Date



ARCHITECTURE
ENGINEERING

Work Authorization No. 4

Date:	October 13, 2022		
Project:	DE Coastal Business Park	Project Manager:	Jonathan D. Richard, P.E.
Project No:	2017019.03	Principal in Charge:	J. Michael Riemann, P.E.

Description of work to be performed:

This work is authorized pursuant to the agreement, dated 12/3/18, between Sussex County and Becker Morgan Group, Inc. for the following project: Delaware Coastal Business Park Phase II.

Traditional Constructed Wetlands Revision

Sussex County has requested additional services beyond the original scope documented in the executed agreement dated 12/3/18. Specifically, services requested include:

As a result of Lease Area 5 expansion and stormwater pond revision, additional engineering effort was necessary to address these conditions.

These services will be rendered on an hourly basis but will require an increase to the original Purchase Order in the amount estimated below.

Construction Budget (if applicable):	Estimated Fee Budget Increase: \$10,000.00
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Phase of Work	Billing Instructions
<input checked="" type="checkbox"/> Design <input type="checkbox"/> Construction Docs <input type="checkbox"/> Bid/Construct Phase <input type="checkbox"/> Other:	<input type="checkbox"/> included in basic fee <input checked="" type="checkbox"/> additional services, increase budget <input type="checkbox"/> additional services, separate account <input type="checkbox"/> additional services, separate task

Client	Principal
Signature:	Signature:
Name: Mark Parker	Name: J. Michael Riemann, P.E.
Title: Assistant County Engineer	Title: Vice President
Organization: Sussex County	Organization: Becker Morgan Group, Inc.
Date: 10/13/2022	Date: 10/13/22

Routing						
<input type="checkbox"/> PM	<input type="checkbox"/> PIC	<input type="checkbox"/> Accounting	<input type="checkbox"/> Owner	<input type="checkbox"/> Contractor	<input type="checkbox"/>	<input type="checkbox"/>

JAMIE WHITEHOUSE, AICP
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Sussex County

DELAWARE
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Memorandum

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

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

CC: Everett Moore, County Attorney

Date: October 14, 2022

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

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

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

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

A Public Hearing was held before the County Council at its meeting of June 28, 2022. At the conclusion of the Public Hearing, the record was left open for a period of two weeks for the receipt of additional written comments only. The minutes of the County Council meeting of June 28, 2022 can be found at the link below. On August 9, 2022, the County Council discussed the application and action on the Ordinance was deferred for further consideration.

On September 27, 2022 staff provided an update to County Council.



COUNTY ADMINISTRATIVE OFFICES
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GEORGETOWN, DELAWARE

[Link to Minutes for County Council meeting of June 28, 2022](#)

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

Minutes of the April 28, 2022 Planning & Zoning Commission Meeting

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

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

The Commission found that Mr. Vincent Robertson spoke on behalf of the Ordinance; that also present was Ms. Brandy Nauman, who runs the Community Development and Housing Office for Sussex County; that the Ordinance originated back in 2018 with the 2018 Comprehensive Land Use Plan; that there was a lot of input offered related to the lack of affordable workforce housing in Sussex County; the basis for the initiative is cited in the Where As clauses of the Ordinance; that there is a housing vision which supports the initiative; that in 2018 the Comprehensive Plan recognized an influx of new residents in Sussex County, which fueled prosperity within the County's real estate market, hospitality industry and related economic sectors; that most housing, particularly on the eastern side of the County is new and often unaffordable to low-income families, seasonal employees, entry-level workers, and recent college graduates; that the Comprehensive Plan also recognized the shortage of affordable housing remains a very real problem for low to moderate household within Sussex County; that there were a few objectives discussed within the housing element where the need to improve the Sussex County Rental (SCRP) Program, by providing incentives to properly reflect the housing market, while incentivizing developers to participate in the provision for affordable housing; that one of the strategies mentioned explore ways for private developers to provide multi-family affordable housing opportunities in Sussex County; that there were several objectives and strategies which mentioned facilitating and promoting land use policies that enable and increase in the supply of affordable housing in areas with adequate infrastructure, increase affordable housing options, which include supplying rental units near employment opportunities, review of County Code to determine if there are regulatory barriers to development of affordable housing, to revisit the Zoning Code to determine in districts where multifamily housing is currently considered a Conditional Use versus being considered a permitted use, where water and sewer area already present to the site; that there are other objectives mentioned in the housing element as well; that Ms. Brandy Nauman's office, in following the directives of the Comprehensive Plan developed and RFP for a housing consultant to provide recommendation for Sussex County, which was done in April 2021; that the County contracted with LSA to perform a Housing Needs, Market Analysis, Economic Feasibility Analysis, Housing Opportunity and Market Evaluations; that these were broad topics within the Comprehensive Plan; that he believes people do understand the need to address and increase the affordable and workforce housing opportunities in Sussex County; that it is one thing to discuss the need, but it is another issue to figure out way which works for Sussex County, the future residence and the developers who will build the units; that there is a current Rental Unit Program for Sussex

County; that this program is known as the SCRP Program; that when the SCRP Program was originally initiated around 2008 or 2009, there was no study performed; that there were incentives offered in the initial program; that some of these incentives were expediting the Application, bonus density and other incentives; that within the last 14 years, there has only been one developer to utilize the SCRP Program; that the feedback from the SCRP Program was the program was economically infeasible and the process was not smooth to go through, which resulted in no one utilizing the program; that the first issue was to identify why that was and try not to make the same mistake twice when developing a new program; that they attempted to develop a new program based on expert opinions and facts which confirms affordable and workforce housing could be supplied and Sussex County would be able to partner with the development community in a way which would be economically viable for developers; that there are elements to those areas within the LSA report; that LSA did have discussions with people who are involved and engaged in the process; that LSA had discussion with people from the public sector, private sector, housing sector and Sussex County staff; that there are a lot of different variables which went into this, such as the land use costs; that land use costs are higher on the coastal side of the County than on the western side of the County; that on the flip side of the situation, the market rate rent is higher on the coastal side of the County than on the western side of the County; that meanwhile the fixed costs and construction costs essentially remain the same on both sides of the County; that this example is an oversimplification; that the math of the situation is, there must be enough density, referenced by LSA as “Cross Subsidizing”, where there must be enough of the market rate units to make the affordable and workforce housing units viable; that when there are lower property values on the western side of the County for market rate units; that it is tough to offer the units on the western side; that it is also difficult to offer on the eastern side, as there is higher rent, but also having higher land use; that the LSA report can be found on the Sussex County website; the LSA report determined 12 units per acre is required to make the program work; that within the LSA report it was stated the Zoning Code should be modified to promote housing and affordability within the growth areas identified within the Comprehensive Plan, which should include the by right allowance of a maximum density of 12 units per acre, where affordable units are provided; that they learned from the experience of developing the only SCRP project, known as Coastal Tide, located behind Home Depot in Lewes; that Coastal Tide was a good test case; that the existing SCRP Code provisions are located in Chapter 72; that the way the SCRP provisions are drafted, it places Sussex County in partnership with the property management, by evaluating tenants; that it creates Sussex County to become a duplicate property management agency, despite there already being a property management agency present, who works for the developer; that they chose to change this issue by allowing all of the requirements to remain in place, but require the property manager or the developer to certify that they are complying with the requirements and supply the information and certification to Sussex County on an annual basis; that this allows for checks and balances within the processes, without duplicating work which is already being performed; that this is one of the big changes made to Chapter 72 of the County Code; that it removes the bonus and expedited densities; that the proposed Ordinance states if housing is provided to the qualified individuals, the developer would be permitted to do 12 units to the acre in all the residential zoning districts; that 12 units to the acres is already permitted within the HR Zoning Districts; that this would be allowed within AR-1 and AR-2 (Agricultural Residential) Zoning Districts as well; that there are conditions and requirements placed; that there were three main strategies mentioned within the final recommendations from the LSA report; that the strategy currently being focused on is for the modification to the County Zoning Code to help promote affordability in growth areas identified in the Comprehensive Plan; that the Local

Housing Trust Fund is a separate initiative, which is currently underway; that the third strategy to preserve the existing supply of affordable housing is an ongoing initiative; that they have added the annual audit requirements; that the audit must be prepared by a Certified Public Accountant (CPA), who is not otherwise affiliated with the developer; that the County requires a third-party, independent auditor; that the auditor must certify that all Chapter 72 requirements and all the terms of the SCRP agreement are being adhered to; that the auditor must confirm the status of each leased or vacant SCRP unit; that the auditor must certify that each of eligible tenants renting an SCRP unit within the project are eligible as of the date of the report; that the auditor must certify and provide the status and duration of any SCRP unit vacancies; that the auditor must certify any marketing efforts to re-rent any vacant SCRP units; that the auditor must provide a status list of any eligible SCRP tenants waiting for an available SCRP unit; that the auditor must provide any other information requested by the Certified Public Accountant's (CPA) office or by the Sussex County Community Development Department; that by setting these requirements, it will allow the developer to run the project, providing housing to tenants; that it also allows Ms. Brandy Nauman and the Sussex County Community Development Department to perform their jobs more efficiently; that they did place a penalty provision in the Ordinance, in the attempt to avoid a developer sitting on a SCRP unit or not making a concerted effort to rent a SCRP unit; that there is a provision in place which states if a SCRP unit is rented at market rate, the developer will be required to pay the rent occurred to Sussex County, where it is placed back into the Housing fund for the County; that this penalty does provide an incentive to rent the units; that within the proposed Ordinance, affordable housing would be permitted by right in the Coastal Area, Developing Area and the Town Center Area; that these areas are all considered growth areas within Sussex County; that they placed standards within the Ordinance as to where the affordable housing could be located within the growth areas; that without the placement of the standards, it would almost eliminate the purpose of zoning; that they attempted to make sure the projects would be placed in appropriate locations, with appropriate perimeters; that the Planning & Zoning Office hired AECOM to take the proposed perimeters, attempting to confirm if development would be feasible with the proposed perimeters; that the LSA report confirmed the economic elements would work at 12 units to the acre; that AECOM was hired to ensure that the 12 units to the acre could be constructed, while meeting the separation, parking and stormwater management requirements; that stated in the proposed Design Criteria, at least 30% of the project units must be SCRP units; that there must be a perimeter buffer of 100-ft.; that the permitted building height increased to 52-ft. and four stories; that due to the height limits, many of the multi-family and apartment complexes within Sussex County have flat roofs; that they hoped of offer more flexibility for design ingenuity, where a pitched roof may be possible; that the open space is required to be at least 50%; that central water and sewer are required; that the LSA report did mention the necessity for central utilities; that he feels the project could move forward without central water, but he feels central sewer would be essential; that without central sewer, the project would require a lot more land to accommodate the required drain field for a project without central sewer; that he does understand this requirement will limit geographically where projects can be constructed; that if a commercial zoned property is located adjacent, there must be interconnectivity provided; that all sidewalks and streets will be interconnected with surrounding sidewalk systems; that walking and biking trails are required to be interconnected; that the trails would be permitted within the 100-ft buffer perimeter; that primary views for all units will be directed to open spaces and amenities; that this is a design requirement to avoid all of the units being crammed onto a parcel; that this is similar to the superiority design perimeters for cluster subdivisions; that projects should be located near and existing and/or planned DART route; that the idea is for the

projects to be located near employment centers or allowing access to employment centers; that within the current Ordinance, it requires projects to be located within a half mile of an existing or proposed DART route; that DART had mentioned excitement in the Ordinance requirement, as it would promote DART ridership; that the housing requirements state only multi-family and rental units would be permitted; that the current Ordinance does not include home ownership; that home ownership is part of a separate plan for Sussex County; that home ownership would not require a property manager or developer running a project with market rate and SCRP units; that at least 30% of restricted units that average 80% of AMI or less; that compliance reporting is required, based on submitted audits and certifications; that there is financial penalties if the requirements are violated; that AECOM did produce two site plan analysis on a 10 acre parcel and a 30 acre parcel using the proposed perimeter requirements;

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

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

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

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

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

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

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

Ms. Brandy Nauman stated the percentages can get confusing; that under requirement No. 2, to be eligible to receive permitted use, 30% of the project must be offered as affordable SCRP units; that for example 30 units out of 100 units must be offered as affordable SCRP units; that the 30% of SCRP

units must serve a population that is 80% of the AMI or less and this is a standard that is considered moderate to low income.

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

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

Ms. Nauman stated AMI stands for Area Median Income; that AMI does not differentiate between the east and the west side; that the AMI is County specific; that for a household of two people, the range would be \$18,030 to \$48,100 earned annually; that a one-bedroom rental unit is \$590, \$705 for a two-bedroom rental unit and \$815 for a three-bedroom rental unit; that those are the current rental prices being used within Coastal Tide; that the 2022 Income Limits were just released that week; that they will be updating the prices based off of the reported income limits, which did go up and that a family of four can earn up to \$60,100.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Mr. Hopkins stated he agrees there is a current problem; that he believes the LSA report was well written; that he strongly encourages everyone to read the whole report; that the report clearly shows that half of Sussex County's workforce cannot afford a \$250,000 house; that the LSA evaluation mentions both ownership as well as rentals and he questioned if the Ordinance was referencing rental units only.

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

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

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

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

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

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

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

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

Mr. Hopkins stated that the LSA report goes on to list information in the table, which was based on the information provided by the consortium; that it is stated the 80% to 100% and lower; that one would take the less than 30% of AMI, the 30% to 50% of AMI, the 50% to 80% of AMI; that these are the numbers which are reference in the proposed Ordinance as medium and low categories; that it states Sussex County should be building the 99, the 131 and the 171 to keep up with the demand; that it was stated we should not touch the 10,700 households mention in the paragraph Ms. Stevenson previously read; that Sussex County should be generating 401 based on the total number of units of 1,549; that last year the total number of units was not 1,549; that it was 5,200 units, being the same the year before and the year before that; that based off of previous years, one could think the provided numbers are going to increase as well; that he suggested they use the provided numbers, which state Sussex County should be providing 401 units annually and he states Sussex County first need address how large the problem is, then how does the County achieve what is needed.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Mr. Hopkins stated he did not see Mr. Robertson's information to be true; that he stated that 80% of \$100 is \$80; that he understood the Ordinance to state he would be eligible at \$80 when everyone else

is paying \$100; that he would be sliding in just under the threshold at 80%; that he questioned what happens if he only makes \$50 and he would not be eligible to rent.

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

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

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

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

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

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

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

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

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

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

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

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

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

Mr. Robertson stated they attempted to ensure if this type of high density were to be placed in other residential areas, they offer some separation; that this type of separation is offered in other areas of the County Code, such as with RPCs; that also due to the permitted height increase; that they considered ratios of the height to the setbacks, but this was found to be very complicated to plan; that they proposed the 100-ft. buffer as it would provide a vegetated buffer and separation from the property boundaries and the development; that this is one reason they requested AECOM; that they wanted to ensure they were not impacting the ability to construct 12 units to the acre by imposing

the 100-ft. separation and buffer; that they, as staff, drafted the proposed Ordinance based on the information provided in the LSA report and the Comprehensive Plan; that many people had an opportunity to participate in the drafting of the Comprehensive Plan; that they did not invent an Ordinance that was not based upon all of the stakeholder information provided in the LSA report and Comprehensive Plan; that there was a lot of thought that went into the Ordinance, as well as a lot of verification was performed to ensure the Ordinance would work;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Mr. Robertson stated consideration was not made directly based on the Delaware Strategies for State Policies and Spending; that this was due to the fact the State Levels state they are not to be used as land use tools for Sussex County to follow; that there is a strong indirect correlation with projects being limited to Growth, Developing, Coastal and Townhome Center areas; that these areas are mostly located within Investment Level Areas 1 and 2; that there have been Investment Level 4 areas being applied for development; that the Coastal Area is not located within Investment Level 4; that he does believe the Delaware Office of State Planning & Spending recently updated their Investment Level map; that they chose to keep the Ordinance compatible with Sussex County land use and the Sussex County Comprehensive Plan; that the State can always change where Investment Levels are located, which could impact the Ordinance and locations where Sussex County desires the projects be built; that the Henlopen TID is based on density assumptions; that if a project were to be located within the Henlopen TID, the project would be required to go through the TIS process; that the developer would not be permitted to pay the TID fee and continue as the project is not two units to the acre.

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

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

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

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

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

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

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

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

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

Ms. Nauman stated she believes considering alternative dwelling options is on the radar for Sussex County, as it was mentioned during the Comprehensive Plan; that another initiative happening currently within her office is the Housing Trust Fund; that the Housing Trust Fund just rolled out at the beginning of April; that the Housing Trust Fund initiative is hoping to address the homeownership components of the LSA report; that Sussex County is offering direct homeownership assistance with the Housing Trust Fund; that they are offering down payment closing and offering a developer grant program for those who are building affordable housing; that between the current proposed Ordinance and the current Housing Trust Fund initiative, it has been two large lifts for the six staff members within the Sussex County Community Development Department and homelessness is also an issue they hope to address.

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

and yet the project was designated within Level 4; that within Level 4 designates for no State spending; that he had approached Mr. David Edgell's predecessor regarding updating the Investment Level maps to reflect what DelDOT had included within their budget; that the State Planning Office refused to update the maps at that time; that he questioned if there were an idea of how many units the Ordinance will provide or impact analysis performed; that a shortened version of his comments would be, good, congratulations, too little too late, we are in a crisis and the current Ordinance is a band-aid; that he feels the Ordinance is a band-aid on a big gaping wound, in a submarine hole, completely underwater; that the report was done in 2019, and prices have increased drastically since then; that he was looking at a housing project, which had been constructed near Plantation Rd. and Rt. 24 intersection; that the homes were constructed by a large home builder; that the project had been approved years ago; that the homes started at \$500,000; that now, the same homes with the same floor plan is listed within the \$800,000 range; that this price increase was over a two year time period, similar to the two year period of the home evaluation performed by LSA; that the housing crisis is even more acute than the LSA report reflected a few years ago; that when he said too little too late, he is not trying to criticize the Council; that he believes the Ordinance is heading in the right direction, however, he feels Sussex County needs to head in the right direction a lot faster; that everyone is dealing with inflation and shortages in labor, materials and supplies; that housing costs are going up; that wages have become stagnant; that this is a toxic mix for the work force; that a major issue for many employers he has spoken with is housing their workforce; that many employers are now seeking to purchase housing, to house their workforce; that he has heard stories about company towns and how awful those scenarios were; that is the direction Sussex County is heading if the housing issue does not get solved and he is in support of the permitted use provision of the Ordinance.

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

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

Mr. Hudson stated he feels the bulk standards could be lessened; that he felt the 100-ft. buffer was almost discriminative against low-income residents, in the fact, the Ordinance would require a 100-ft. buffer, but does not require single-family housing to have a 100-ft. buffer; that he questioned if the Ordinance wants density, why is there a requirement to take away land; that if the project is considered permitted and the projects are limited on the location they can be constructed, why would we not maximize the density; that these densities would be specifically located near the DART routes, with

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

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

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

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

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

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

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

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

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

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

Mr. Gilmore stated Habitat for Humanity has built over 160 affordable homes in Sussex County; that it has taken 30 years to achieve the 160 homes; that the majority home have been built within the last 15 years; that they average about 10 to 12 affordable units per year; that Habitat for Humanity finances the unit to allow affordability to the homebuyer; that they maintain the values in the community, but allow the payments to become affordable to the homebuyer; that they have been exploring other ideas on how to make the unit affordable; that they have launched impressive programs in the past to help keep people in their current homes; that there is an aging population, who is on a fixed income, who may not always be able to perform minor repairs to their home; that last year Habitat for Humanity performed 100 repairs to homes in Sussex County; that this helped keep residents in their current homes; that these repairs were everything from placing skirting around manufactured homes, to help improve energy efficiency to placing grab bars, tub cuts, ramps and updated windows; that the home improvements has been a growing aspect of what Habitat for Humanity does; that they are not going to be able to just build their way out of the affordable housing crisis at only 10 to 12 homes a year; that they have had over 30,000 volunteers help build houses in Sussex County; that they asked themselves what they could do in their current public forum; that they felt they could help improve housing conditions to homes, even if they are not constructing the homes themselves; that Habitat for Humanity has received support from Sussex County Council for many years; that he appreciates working with Ms. Brandy Nauman and the Sussex County Housing Development team; that they tag team on many projects to help the community; that they perform a lot of work intown as well; that they have been doing a lot of work in Georgetown, Seaford and Laurel; that they have been focusing on blocks; that if a block has eight houses, they may try to focus on five homes to improve; that this may be tearing down homes and rebuilding or renovating existing homes and by doing this is causes the market to go up and encourages people to invest more money into the properties.

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

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

a lot to be required on every side of the property; that when reading the Ordinance he felt it portrayed, affordable housing being an issue, the Ordinance being what Sussex County wants to do about the issue, but the Ordinance is also how Sussex County will protect certain areas of the County from affordable workforce housing from being built, that he is concerned the Ordinance will be pushed through, but be impossible to make work

Mr. Whitehouse stated Sussex County would be able to state the estimated cost for building the home, which received a building permit, but Sussex County would not know the selling price of the home, as Sussex County does not collect data on selling price; that he would estimate, under \$200,000 on average, considering all units that received building permits; that manufactured homes do bring down the pricing of larger homes; that they did conduct an analysis to look at how many parcels could be subdivided, how many parcels are undeveloped near transit areas; that he did not have the number in front of him, but an analysis was performed; that they do have a number to the acreage, but he did not have the exact number at that moment

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

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

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

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

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

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

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

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

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

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

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

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

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

At the conclusion of the public hearing, the Commission discussed the Application.

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

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

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

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

Mr. Robertson stated that there were a couple of variables to mention; that the Commission is somewhat seeing the proposed Ordinance for the first time; that County Council has been discussing the issue for some time; that the examples shown were information staff had when heading into the County Council presentations; that there are some notable differences; that the buildings of Beach Plum Dunes are 42-ft. in height; that the Ordinance proposes 52-ft., which would allow for another

story; that the addition of another story would increase the ability to have more affordable units and greater density; that the threshold for open space within the Ordinance is 50% and the open space offered in Beach Plum Dunes is 89%.

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

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

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

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

project would be feasible with the Ordinance requirements and the few changed lines was not the cause of the delay.

Chairman Wheatley stated Sussex County will have to do better with the workforce housing issue; that he believes the proposed Ordinance is not the end, but intended to be the beginning; that the Ordinance is one piece of a very large pie; that apartments and houses cost the same amount regardless of where they are built; that housing will cost the same in Seaford, as they would in Rehoboth; that the variable cost for developers is the land; that the construction cost is the same; that the land cost will not come down to the point it will cause a large disparity, due to the construction costs being fixed; that in order to offer more reasonable rents in areas which are less desirable, the Commission may have to consider additional incentives on the western side of the County; that when it comes to specifics, he is still concerned about a 50-ft. setback versus a 100-ft. setback, as well as the 50% versus 30% of open space; that after the numerical data and project examples, he does recognize the 50% open space is achievable; that deferring action would allow the Commission time to digest the newly presented information; that he does agree the Ordinance needs to be advanced; that he stated the Commission should keep in mind, many projects are built upon multiple parcels which are purchased and combined into one parcel; that the data being presented is based on individual tax parcels; and he requested to know the distribution numbers, from one to five acre parcels, five to ten acre parcels, 10 to 20 acre parcels and 20+ acre parcels.

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

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

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

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

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

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

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

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

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

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

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

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

Ordinance, then the greater setback of 100 feet shall be required as currently stated in the introduced version of the Ordinance.

- D. In Sections 2, 4, 6, 8, and 10 of the Ordinance, the requirement for proximity to DART Routes should be amended so that the development can also occur in a location where DART certifies in writing that a DART Route will be established within 3 years from the date of Final Site Plan approval for the development, OR the Developer obtains a written commitment from DART that it will serve the development no later than when 50% of the leasable units are fully constructed and ready for occupancy.

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

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

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

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

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

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

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

Options such as ADU’s additional dwelling units, and garage apartments could create immediate supply. The county could support dormitory-style housing and non-profits that build workforce housing. The county could also create incentives such as waivers on height restrictions to allow companies to provide housing on top of new business construction. The county could even up-zone

areas where there are already affordable housing developments so more of that housing could be built as in-fill. Support of tiny homes, manufactured housing (land-lease), and even year-round campground options could provide more equitable, faster, and broader relief for the problems we face in the workforce housing arena”.

Mr. Hopkins stated: “In a nutshell, the affordable housing crisis is a supply issue. There simply isn’t a supply of moderately priced housing in Sussex County. This has the greatest negative impact on gainfully employed hard-working middle-class citizens. I think Sussex County should be a wonderful place to work and live for people of all economic backgrounds.

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

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

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

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

Quote:

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

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

End of Quote.

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

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

The County recognized affordable housing was an issue in 2008. This effort failed miserably. So much so that it amazes me that it took ten years to recognize the failure. Even after the 2018

Comprehensive plan review highlighted the growing crisis it has taken the County four years to move forward with a partial solution that doesn't offer a fee simple purchase option. It is noteworthy that home ownership is the single largest store of wealth in the United States.

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

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

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

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

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

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

Mr. Chairman, I vote no".

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

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

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

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

As Introduced

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

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

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

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

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

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

33

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

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

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

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

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

66

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

71

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

78

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

85

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

89

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

96

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

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

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

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

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

114
115 **§ 72-16 Intent.**

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

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

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

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

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

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

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

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

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

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

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

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

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

167

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

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

177
178 **§ 72-19 Definitions.**

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

181
182 **APPLICANT**

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

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

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

201 AREA MEDIAN INCOME

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

205

206 AT ONE LOCATION

207 All land of the [a]Applicant if:

208 A. The property lines are contiguous; or

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

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

215

216 [CERTIFICATE OF ELIGIBILITY

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

222

223 [CONTROL PERIOD

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

227

228 DATE OF LEASE

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

231

232 DENSITY INCENTIVE

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

239
240 DEPARTMENT

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

243
244 DEPARTMENT-DESIGNATED ENTITY (DDE)

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

249
250 DIRECTOR

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

253
254 DWELLING

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

261
262 ELIGIBLE INCOME

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

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

279
280 ELIGIBLE TENANT

281 Person(s):

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

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

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

287
288 EXPEDITED REVIEW

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

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

304
305 FORECLOSURE EVENT

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

310
311 LANDLORD

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

314
315 QUALIFYING LAND

316 All land that:

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

326
327 SUSSEX COUNTY RENTAL PROGRAM UNIT (SCRPs UNIT)

328 A dwelling which is:

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

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

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

336

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

338

339 A. Eligible [t]Tenants must:

340

341 (1) Have proof of citizenship.

342

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

346

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

352

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

357

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

364

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

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

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

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

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

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

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

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

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

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

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

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

421 422 § 72-23 SCRП Agreements.

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

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

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

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

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

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

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

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

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

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

- 472
- 473 E. Be signed by the [a]Applicant and all other parties having an
474 interest in the property whose signatures are required for the
475 effective and binding execution of contracts conveying real
476 property. SCRP [a]Agreements must be executed in a manner that
477 will enable them to be recorded in the land records of the County.
478 [If the applicant is a corporation or limited liability company, the
479 principal officers of the entity must sign the agreements
480 individually and on behalf of the corporation pursuant to a duly
481 adopted resolution.]
- 482
- 483 F. Partnerships, associations, corporations and other entities may not
484 evade the requirements of the SCRP [a]Agreement through
485 voluntary dissolution, bankruptcy, or the sale or transfer of
486 qualifying land.
- 487
- 488 G. The SCRP [a]Agreement may only be assigned with the prior
489 written approval of the Department and only if the proposed
490 assignee demonstrates the financial ability to fulfill all of the
491 [a]Applicant's obligations under the SCRP [a]Agreement.
- 492
- 493 H. Landlords are responsible for marketing, leasing, and determining
494 tenant eligibility for the SCRP [u]Units. [A lease agreement shall
495 not be signed unless validated by a certificate of eligibility.] A
496 landlord shall not be permitted to refuse to rent a unit to an
497 [e]Eligible [t]Tenant [without providing the Department with just
498 cause, to the Department's satisfaction, for the refusal]. The
499 reasons for a refusal to rent to an Eligible Tenant shall be
500 documented and included in the Annual Audit and Certification
501 required by §72-28
- 502
- 503 I. If the [a]Applicant is not also the builder, the relationship between
504 the [a]Applicant and the builder shall be fully disclosed to the

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

507

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

519

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

525

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

529

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

537

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

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

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

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

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

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

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

572

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

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

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

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

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

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

602 § 72-24 SCRП [u]Units.

603

604 A. Rent.

605

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

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

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

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

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

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

626
627 A. Leases to [e]Eligible [t]Tenants.
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- (1) Every SCRP [u]Unit constructed under this program must be offered to all [e]Eligible [t]Tenants for lease as the [e]Eligible [t]Tenant's principal residence. Notification to the public of SCRP [u]Unit availability will be made by the [l]Landlord and is recommended to be made by advertising on DelawareHousingSearch.org *and similar sites*. The Department may, but is not obligated to, provide notice of SCRP [u]Unit availability through the Department's website.
- (2) The [l]Landlord will determine SCRP tenant eligibility under § 72-20[, and lease agreements shall not be signed until the tenant has received a certificate of eligibility from the landlord].
- (3) Annually, the Department will provide updated income guidelines and rental rates to the [l]Landlord for use in leasing the SCRP [u]Units.
- (4) Lease agreements shall contain the same terms and conditions as the lease agreements with market-rate renters with the exception of the rental rates and other terms and conditions as required under this article.
- (5) All lease agreements of SCRP [u]Units shall cover a period of one year.
- (6) An [e]Eligible [t]Tenant already occupying a SCRP [u]Unit *[has]shall have a* first-option to renew the lease agreement each year, as long as the tenant maintains good standing with the [l]Landlord and continues to qualify as an [e]Eligible [t]Tenant. *[The Department shall be notified by the landlord of the intent to evict and the reasons therefor at the same time the landlord first provides notice to the tenant.]*

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

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

§ 72-26 Foreclosure or default.

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

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

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

§ 72-27 Implementation.

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

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§72-28 Annual Audit and Certification.

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

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

728
729
730
731
732

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

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

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

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

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

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

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

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

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

§115-20 Permitted Uses.

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

...

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

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

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

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

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

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

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

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

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

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

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

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

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

841
842 . . .

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

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

853
854 **§115-29 Permitted Uses.**

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

857
858 . . .

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

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

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

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

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

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

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

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

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

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

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

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

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

905
906 . . .
907

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

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

918
919 **§115-37 Permitted Uses.**

920
921 Permitted uses are as follows:
922 . . .

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

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

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

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

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

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

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

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

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

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

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

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

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

967
968 . . .

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

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

980
981 **§115-45 Permitted Uses.**

982
983 Permitted uses are as follows:

984
985 . . .

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

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

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

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

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

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

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

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

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

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

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

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

1030
1031 . . .

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

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

1043
1044 **§115-53 Permitted Uses.**

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

1047
1048 . . .

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

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

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

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

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

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

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

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

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

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

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

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

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

1093
1094 . . .

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

1101

PROPOSED

To Be Introduced: 10/18/22

Council District 5: Mr. Rieley
Tax I.D. No.: 234-10.00-70.03
911 Address: 23086 Hollyville Road, Harbeson

ORDINANCE NO. ____

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A SWIMMING POOL BUSINESS TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 6.56 ACRES, MORE OR LESS

WHEREAS, on the 17th day of June 2022, a conditional use application, denominated Conditional Use No. 2376 was filed on behalf of Jose Hernandez; and

WHEREAS, on the ____ day of _____ 2023, a public hearing was held, after notice, before the Planning and Zoning Commission of Sussex County and said Planning and Zoning Commission recommended that Conditional Use No. 2376 be _____; and

WHEREAS, on the ____ day of _____ 2023, a public hearing was held, after notice, before the County Council of Sussex County and the County Council of Sussex County determined, based on the findings of facts, that said conditional use is in accordance with the Comprehensive Development Plan and promotes the health, safety, morals, convenience, order, prosperity and welfare of the present and future inhabitants of Sussex County, and that the conditional use is for the general convenience and welfare of the inhabitants of Sussex County.

NOW, THEREFORE, THE COUNTY OF SUSSEX HEREBY ORDAINS:

Section 1. That Chapter 115, Article IV, Subsection 115-22, Code of Sussex County, be amended by adding the designation of Conditional Use No. 2376 as it applies to the property hereinafter described.

Section 2. The subject property is described as follows:

ALL that certain tract, piece or parcel of land, lying and being situate in Indian River Hundred, Sussex County, Delaware, and lying on north side of Hollyville Road (S.C.R 48) approximately 0.28 mile southwest of Harbeson Road (Rt. 5) and being more particularly described in the attached legal description prepared by Ward & Taylor, LLC, said parcel containing 6.56 acres, more or less.

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

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



Sussex County

DELAWARE
sussexcountyde.gov

Memorandum

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

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

CC: Everett Moore, County Attorney

Date: October 14, 2022

RE: County Council Report for C/U 2319 filed on behalf of Austin & Megan Embleton

The Planning and Zoning Department received an application (C/U 2319 filed on behalf of Austin & Megan Embleton) for a Conditional Use for parcel 430-3.00-20.08 for a tourist home, event venue & hair salon. The property is located at 10775 Memory Road, Harrington. The parcel size is 2.05 acres +/-.

The Planning & Zoning Commission held a Public Hearing on the application on September 8, 2022. At the meeting of October 13, 2022, the Planning & Zoning Commission recommended approval of the application for the 7 reasons stated and subject to 8 recommended conditions as outlined within the motion (copied below).

Below are the minutes from the Planning & Zoning Commission meetings of September 8, 2022 and October 13, 2022.

Minutes of the September 8, 2022 Planning & Zoning Commission Meeting

C/U 2319 Austin & Megan Embleton

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A TOURIST HOME, EVENT VENUE, & HAIR SALON TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN NANTICOKE HUNDRED, SUSSEX COUNTY, CONTAINING 2.05 ACRES, MORE OR LESS. The property is lying on the south side of Memory Road (S.C.R. 613), approximately 0.41-mile southeast of Shawnee Road (Rt. 36). 911 Address: 10775 Memory Road, Harrington. Tax Parcel: 430-3.00-20.08.



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

Mr. Whitehouse advised the Commission that submitted into the record was the Staff Analysis, a letter received from Sussex County Engineering Department Utility Planning Division, the Applicant's Concept Plan, and the DelDOT Service Level Evaluation Response. Mr. Whitehouse noted that there were three letters in support of the Application.

The Commission found that Megan Embleton was present on behalf of her Application; that she and her husband are the owners of the property; that the property has been in her family for over 100 years; that the existing farmhouse on the property is currently a rental and has been for the last 25 years; that they are interested in renovating the farmhouse into an Air B&B; that they would like to renovate the outbuilding in the back into a two-chair hair salon; that she and her sister-in-law are both part-time hair stylists; that she has been a stylist for 16 years; that she has a great following of clients; that she and her sister-in-law both book by appointment only; that there is no walk-in clientele; that they request to turn the second part of the outbuilding into a small event venue; that she has no intention of hosting large scale events; that she is more interested in hosting small, intimate special events; that she feels her community of Greenwood does not have many locations to host small events; that they do have an adjacent neighbor, located to the left of the property; that they intend to place a six foot privacy fence, that would extend down the property line, past the cow pasture; that they propose this to provide a buffer to noise and for privacy; that her husband's grandfather was born and raised in the farmhouse that they live in; that her husband's grandfather built the house her neighbors now own; that both properties have a black-top connected driveway and the proposed fence would be placed in between the two driveways, extending down the property line to provide complete separation.

Mr. Hopkins stated he knew of the Embletons grandfather; that he questioned if a sign would be needed and if there is enough space to allow for proposed event parking.

Ms. Stevenson stated she knew of previous events held in the nearby area; that she questioned the hours of operations and proposed lighting, and she questioned if there would be event vendors supplying food or if there was a plan for a kitchen to be placed in the event building.

Mr. Mears questioned if Mrs. Embleton would want to be limited to only Thursdays, Fridays, and Saturdays for the hair salon hours.

Chairman Wheatley questioned the number of people anticipated for the small-scale event venue use.

Mrs. Embleton stated if the proposed venue was approved, they would request a small scale sign be located near the farmhouse; that there is a sign on the property currently, which states "*Memory Lane Estates*"; that if a sign were approved, the new sign would replace the current sign; that they are not requesting any additional signage; that they have provided a parking area, as well as an additional area for any overflow parking; that the proposed event venue would stop operation no later than 10:00 pm; that there will be no loud or excessive music; that the event venue would operate both inside and outside of the building; that the building is completely enclosed; that there is room to place a tent outside; that if lighting were to be needed for parking, they intend to rent the generated lights; that by renting the lighting there would be no consistent lighting other than the existing flood light located to the left of the property; that she and her sister-in-law are both part time stylist; that they work Thursdays and Fridays and occasionally part of a Saturday; that there is not much traffic proposed for any other days of the week; that there currently is no intention of placing a kitchen in the event venue; that their plans are only for the building itself; that event clients would bring in their own caterers;

that event clients would be required to rent the restroom trailers; that she would not like to be limited to only Thursdays, Fridays and Saturdays; that she would appreciate the flexibility for salon hours if needed; that currently the salon hours have been Thursday, Fridays with occasional Saturday hours for the past 10 years; that she does not know what their max capacity would be as the State Fire Marshal's Office had not yet been to the site; that her preliminary thoughts would be 75 to 100 people maximum for an event and that she does not desire to host for events any larger than 100 people.

The Commission found that two people spoke in support of the Application.

The Commission found that Ms. Lindsey Dodge spoke in support of the Application; that her family had also owned property along Memory Rd. for at least a century or more; that she and her husband intend to build their forever home on property across the street, to the right of the property; that their proposed forever home will be within eyesight of the proposed event venue; that she speaks in support of the Application; that she would love to see a fellow born and raised, young, female, an entrepreneur from Memory Rd. start a small business; that there are other small businesses located within the immediate surrounding area; that there is a business located across the street; that she believes that business handles service to gutters; that the home she currently resides in previously was used for a stamped concrete business until they purchased the home a year ago; that there is a working farm located at the corner of Bender Farm Rd. and Memory Rd.; that milk trucks come and go frequently from the farm location all hours of the day and she feels the proposed Application hours of operation are reasonable.

The Commission found that Ms. Sydney Hamilton; that she was an Embleton; that her father was Mr. Merrill Embleton; that she is in full support of the Application; that she owns the property to the right and rear of the Application property; that her home is located behind the cow pastures; that she has known the Applicants their whole lives; that the Applicants do things nicely and the work the Applicants have completed currently has been top notch.

The Commission found that Mr. John Gampp expressed some questions and concerns about the Application; that he resides at the adjacent property to the left of the Application site; that he is the owner for Merrill Embleton's house; that he originally had questions regarding the hours of operations and the number of occupancy for events; that he questioned how often, how large and how loud the proposed events may be; that he has known the Embletons for three years; that he does trust the Embletons will perform good work regarding the proposed use; that he does have concerns as to what the proposed use could become; that he believes the intent to be for occasional small weddings; that he questioned what does a small event permit would allow; that he questioned if there would be conditions placed to the frequency or the size; that he has no issues with the proposed use of a hair salon; that he does have some small concerns to the Air B&B; that he is concerned about unknown individuals coming within close proximity of his home and these concerns are not expressed in opposition, however he felt the need to express the concerns.

Mr. Robertson stated with Conditional Use approval, conditions would be placed on the Application based on the Applicant's testimony and the Commission's discretion and a site plan would be required showing the location of parking, fencing, and buildings.

Chairman Wheatley questioned Mr. Gampp on his feelings about the proposed 10:00 pm end time for events; that he questioned if screening to the lighting would be of any concern, and he questioned Mr. Gampp's feelings about the proposed size occupancy size of 100 people.

Mr. Gampp stated he felt the proposed end time of 10:00 pm was fair; that all of the bedrooms in his house are located nearest to the proposed site; that if events were to be held longer, it could become a disturbance; that he is not as concerned to lighting disturbance as there are no windows located on the adjacent side of his house; that he believes the proposed occupancy of 100 people is fair; that his concern with an occupancy of 100 people would be the amount of and space for vehicles; that he would like to see no more than 50 vehicles; that he wants to remain friendly to his neighbor and not inhibit her dream.

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

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

At the conclusion of the public hearing, the Commission discussed the Application.

In relation to C/U 2319 Austin & Megan Embleton. Motion by Mr. Hopkins to defer action for further consideration, seconded by Mr. Mears and carried unanimously. Motion carried 5-0.

Draft Minutes of the October 13, 2022 Planning & Zoning Commission Meeting

The Commission discussed this application which had deferred from the September 8, 2022 Planning & Zoning Commission meeting.

Mr. Hopkins moved that the Commission recommend approval of Conditional Use # 2319 for AUSTIN & MEGAN EMBLETON for an Event Venue, Tourist Home and Hair Salon based on the record made during the public hearing and for the following reasons:

1. The site is a 2.05-acre parcel of land owned by the Applicants. The property has been in the Applicants' family for more than 100 years, and it is an area where other farmland is owned by the Applicants' family.
2. The use will occur within the existing farmhouse and within renovated agricultural buildings and the areas surrounding those buildings.
3. This use is a reasonable re-use of the farmhouse and buildings that are part of the prior agricultural use of the property. It is also consistent with the agricultural uses that occur on the surrounding farmland.
4. The Applicant intends to hold events that include weddings, birthday parties and similar functions in addition to renting the farmhouse for guests. The Applicant has a small hair salon business that she wants to relocate to the property too. The hair salon is very nearly a permitted home occupation.
5. The site will have sufficient areas for parking.
6. With the conditions and limitations placed upon this Conditional Use, it will not adversely affect neighboring properties or area roadways.
7. The use promotes agricultural activities in Sussex County and is an innovative re-use of the farmhouse and farm buildings.
8. This recommendation is subject to the following conditions:

- a. The use shall be limited to a Tourist Home within the existing dwelling, a hair salon within the renovated farm/shop building and an Event Venue.
- b. All areas for parking shall be clearly shown on the Final Site Plan and marked upon the site itself. No parking shall be permitted along Memory Road.
- c. There shall be a 6-foot-tall privacy fence installed along the common boundary with the property to the west of this site. The fence and the materials used to construct it shall be shown on the Final Site Plan.
- d. All dumpsters shall be screened from view of neighboring properties and roadways.
- e. All events shall conclude by 10:00 p.m.
- f. Catered food and beverage service shall be permitted as part of the Event Venue.
- g. One lighted sign shall be permitted. It shall be no larger than 32 square feet on each side.
- h. The Final Site Plan shall be subject to the review and approval of the Planning & Zoning Commission.

Motion by Mr. Hopkins, seconded by Ms. Stevenson and carried unanimously to recommend approval of C/U 2319 Austin & Megan Embleton for the reasons and conditions stated in the motion. Motion carried 5-0.

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

PLANNING & ZONING COMMISSION

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



Sussex County

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JAMIE WHITEHOUSE, MRTPI, AICP
DIRECTOR OF PLANNING & ZONING

PLANNING AND ZONING AND COUNTY COUNCIL INFORMATION SHEET
Planning Commission Public Hearing Date: September 8th, 2022

Application: CU 2319 Austin & Megan Embleton

Applicant: Austin & Megan Embleton
11176 Old Reliance Lane
Greenwood, DE 19950

Owner: The Estate of Merle L. Embleton
10775 Memory Road
Harrington, DE 19952

Site Location: 10775 Memory Road, Harrington.

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

Proposed Use: Air B&B, two (2) chair hair salon, small event venue

Comprehensive Land
Use Plan Reference: Low Density

Councilmanic
District: Ms. Green

School District: Woodbridge School District

Fire District: Greenwood Fire Department

Sewer: Private Septic

Water: Private Well

Site Area: 2.05 ac. +/-

Tax Map ID.: 430-3.00-20.08



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



Sussex County

DELAWARE
sussexcountyde.gov

Memorandum

To: Sussex County Planning and Zoning Commission Members
From: Mrs. Christin Scott, Planner II
CC: Mr. Vince Robertson, Assistant County Attorney and Applicant
Date: September 1st, 2022
RE: Staff Analysis for CU 2319 Austin & Megan Embleton

The purpose of this memo is to provide background and analysis for the Planning and Zoning Commission to consider as a part of Application CU 2319 Austin & Megan Embleton to be reviewed during the September 8th, 2022, Planning and Zoning 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: 430-3.00-20.08 to allow for a tourist home, event venue and hair salon, to be located on Memory Road, Harrington, Delaware. The property is lying on the south side of Memory Road (S.C.R. 613), approximately 0.41 mile southeast of Shawnee Road (Rt. 36). The parcel consists of 2.05 acres +/-.

Comprehensive Plan Analysis

The 2018 Sussex County Comprehensive Plan Update (Comprehensive Plan) provides a framework of how land is to be developed. As part of the Comprehensive Plan, a Future Land Use Map is included to help determine how land should be zoned to ensure responsible development. The Future Land Use Map in the plan indicates that the parcel has a designation of "Low Density". The adjoining parcels to the south, east, and west also have a Future Land Use Map designation of "Low Density". The parcels to the north across Memory Road (S.C.R. 613) also have a Future Land Use Map designation of "Low Density", with the exception of one parcel directly across the street with a Future Land Use Map designation of "Commercial".

As outlined in the 2018 Sussex County Comprehensive Plan, the primary uses envisioned in Low Density Areas are agricultural activities and homes. Business development should be largely confined to businesses addressing the needs of these two uses. Industrial and agribusiness uses that support or depend on agriculture should be permitted. The focus of retail and office uses in Low Density Areas should be providing convenience goods and services to nearby residents. Commercial uses in these residential areas should be limited in their location, size, and hours of operation. More intense commercial uses should be avoided in these areas. Institutional and commercial uses may be appropriate depending on surrounding uses (Sussex County Comprehensive Plan, 4-19).

Zoning Information

The subject property is zoned Agricultural Residential (AR-1) District. The adjacent properties to the south, east, and west of the subject property are zoned Agricultural Residential (AR-1) District. The parcels to the north across Memory Road (S.C.R. 613) of the subject property are zoned



Agricultural Residential (AR-1), with the exception of one parcel directly across the street that is zoned General Commercial (C-1).

Existing Conditional Uses within the Vicinity of the Subject Property

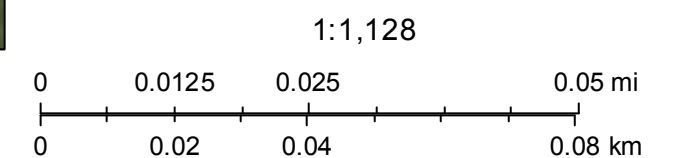
Since 2011, there have been zero (0) Conditional Use applications within a one (1) mile radius of the application site.

Based on the analysis provided, the Conditional use to allow for a tourist home, event venue and hair salon in this location could be considered as being consistent with the surrounding land use, zoning, and uses, subject to considerations of scale and impact.



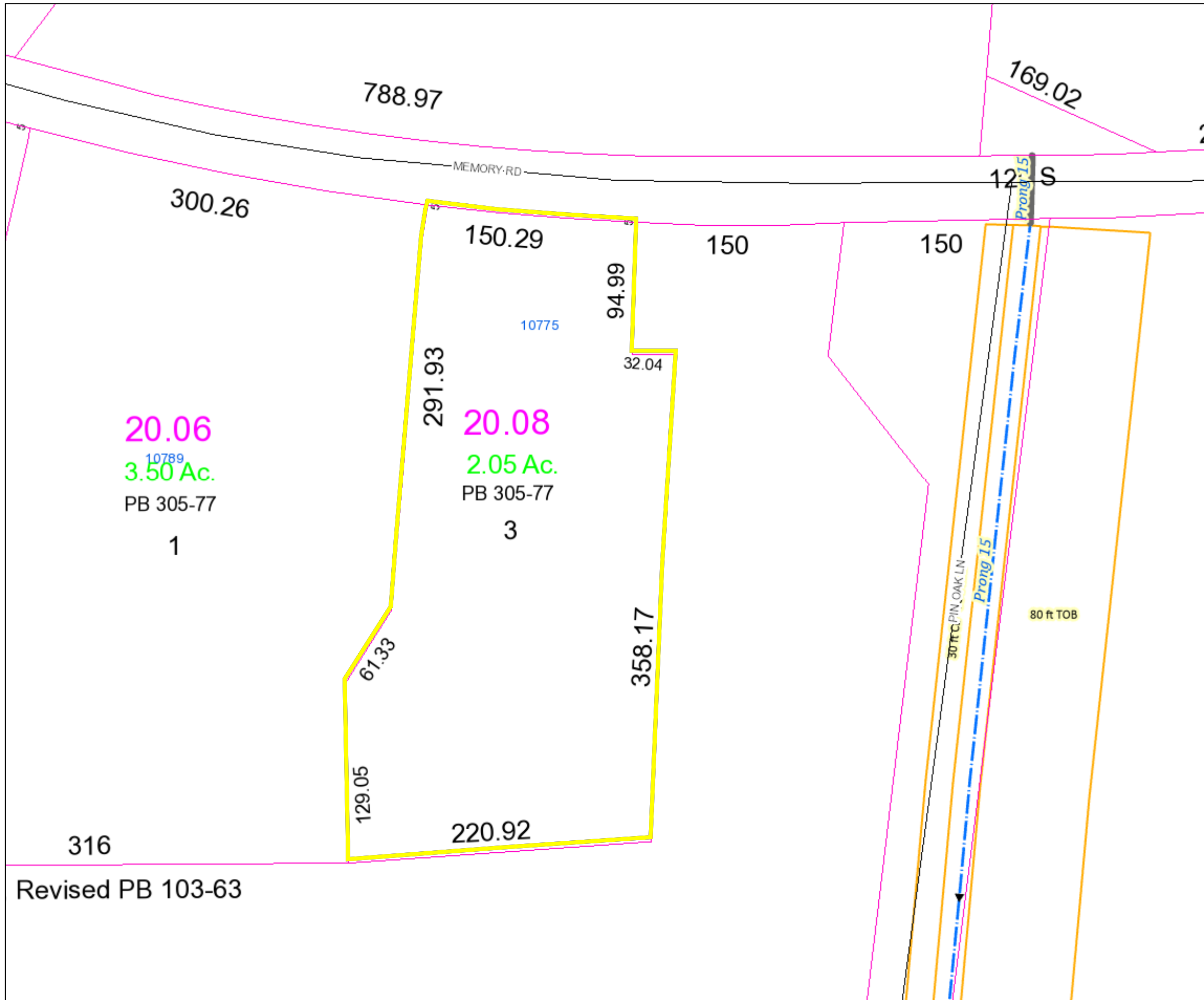
PIN:	430-3.00-20.08
Owner Name	EMBLETON AUSTIN J
Book	5663
Mailing Address	11176 OLD RELIANCE LN
City	GREENWOOD
State	DE
Description	S/ MEMORY RD
Description 2	W/ PIN OAK LN
Description 3	LOT # 3
Land Code	

- polygonLayer**
 - Override 1
- polygonLayer**
 - Override 1
- Tax Parcels
- 911 Address
- Streets
- County Boundaries
- Flood Zones 2018**
 - 0.2 PCT ANNUAL CHANCE FLOOD HAZARD
 - A
 - AE
 - AO
 - OPEN WATER
 - VE





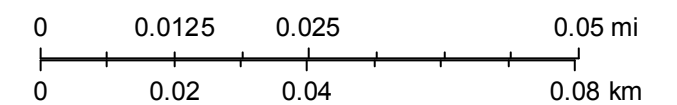
Sussex County



PIN:	430-3.00-20.08
Owner Name	EMBLETON AUSTIN J
Book	5663
Mailing Address	11176 OLD RELIANCE LN
City	GREENWOOD
State	DE
Description	S/ MEMORY RD
Description 2	W/ PIN OAK LN
Description 3	LOT # 3
Land Code	

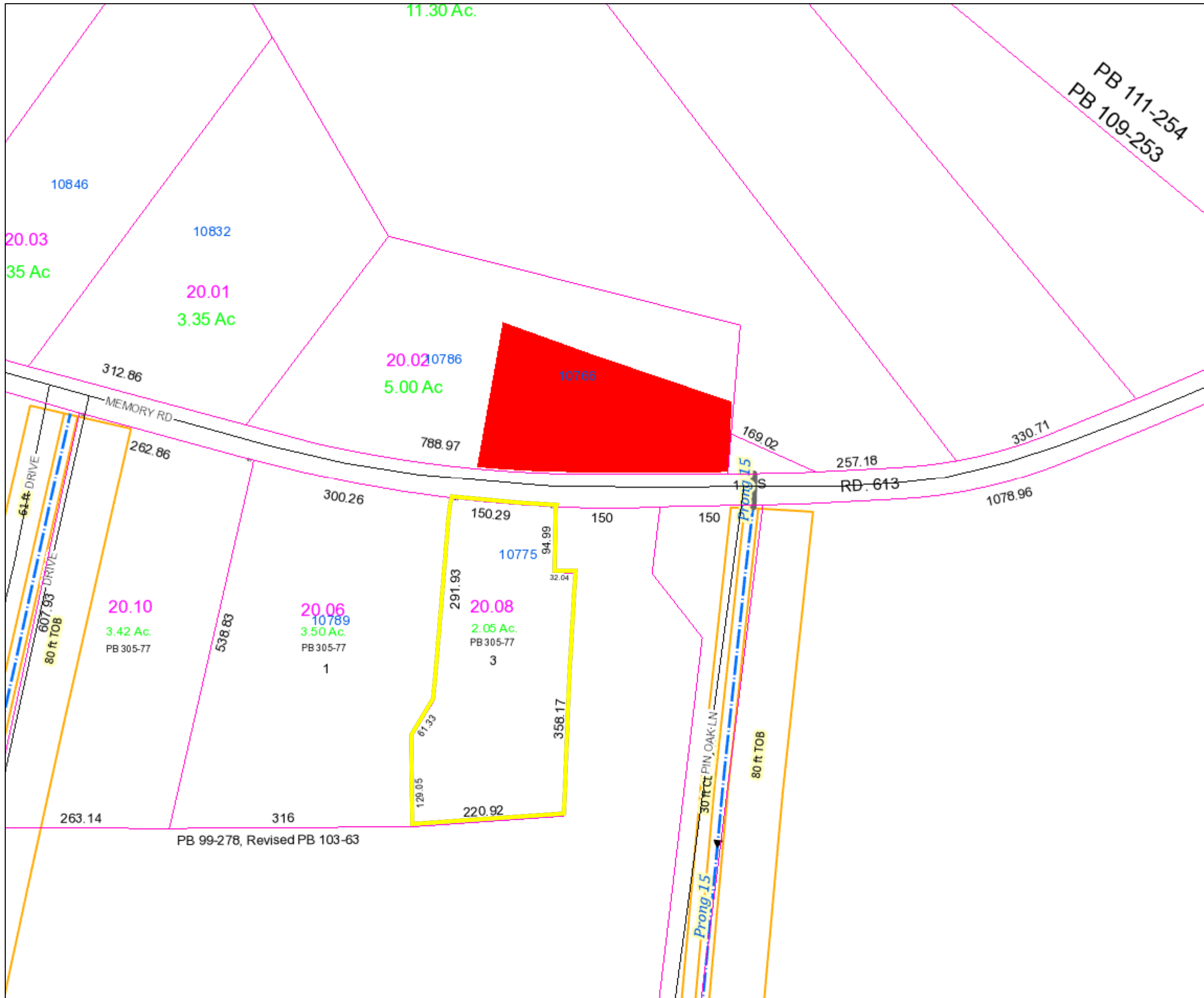
- polygonLayer**
- Override 1
- polygonLayer**
- Override 1
- Tax Parcels
- 911 Address
- Streets
- County Boundaries
- Flood Zones 2018**
- 0.2 PCT ANNUAL CHANCE FLOOD HAZARD
- A
- AE
- AO
- OPEN WATER
- VE

1:1,128





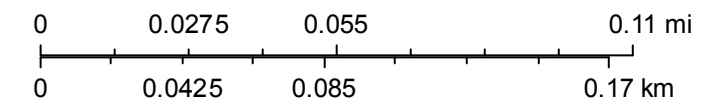
Sussex County



PIN:	430-3.00-20.08
Owner Name	EMBLETON AUSTIN J
Book	5663
Mailing Address	11176 OLD RELIANCE LN
City	GREENWOOD
State	DE
Description	S/ MEMORY RD
Description 2	W/ PIN OAK LN
Description 3	LOT # 3
Land Code	

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

1:2,257



Introduced: 03/08/2022

Council District 2: Mrs. Green
Tax I.D. No.: 430-3.00-20.08
911 Address: 10775 Memory Road, Harrington

ORDINANCE NO. ____

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A TOURIST HOME, EVENT VENUE, & HAIR SALON TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN NANTICOKE HUNDRED, SUSSEX COUNTY, CONTAINING 2.05 ACRES, MORE OR LESS

WHEREAS, on the 19th day of October 2021, a conditional use application, denominated Conditional Use No. 2319 was filed on behalf of Austin & Megan Embleton; and

WHEREAS, on the ____ day of _____ 2022, a public hearing was held, after notice, before the Planning and Zoning Commission of Sussex County and said Planning and Zoning Commission recommended that Conditional Use No. 2319 be _____; and

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

NOW, THEREFORE, THE COUNTY OF SUSSEX HEREBY ORDAINS:

Section 1. That Chapter 115, Article IV, Subsection 115-22, Code of Sussex County, be amended by adding the designation of Conditional Use No. 2319 as it applies to the property hereinafter described.

Section 2. The subject property is described as follows:

ALL that certain tract, piece or parcel of land, lying and being situate in Nanticoke Hundred, Sussex County, Delaware, and lying on the south side of Memory Road (S.C.R. 613), approximately 0.41 mile southeast of Shawnee Road (Rt. 36) and being more particularly described in the attached legal description prepared by George B. Smith, Esq., said parcel containing 2.05 acres, more or less.

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

JAMIE WHITEHOUSE, AICP
DIRECTOR OF PLANNING & ZONING
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Sussex County

DELAWARE
sussexcountyde.gov

Memorandum

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

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

CC: Everett Moore, County Attorney

Date: October 14, 2022

RE: County Council Report for C/U 2321 filed on behalf of Coastal Properties, LLC

The Planning and Zoning Department received an application (C/U 2321 filed on behalf of Coastal Properties, LLC) for a Conditional Use for parcel 334-5.00-196.00 for a kitchen and bathroom showroom. The property is located at 17677 Stingey Lane, Lewes. The parcel size is 0.248 acres +/-.

The Planning & Zoning Commission held a Public Hearing on the application on September 8, 2022. At the meeting of October 13, 2022, the Planning & Zoning Commission closed the record and deferred for further consideration.

Once a recommendation is received from the Planning & Zoning Commission, it will be reported to the County Council.

Below are the minutes from the Planning & Zoning Commission meetings of September 8, 2022 and October 13, 2022.

Minutes of the September 8, 2022 Planning & Zoning Commission Meeting

C/U 2321 Coastal Properties, LLC

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A KITCHEN AND BATHROOM SHOWROOM TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES & REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 0.248 ACRES, MORE OR LESS. The property is lying on the northeast side of Beaver Dam Road (Rt. 23), approximately 0.16-mile southwest of the intersection of Church Street and Salt Marsh Boulevard. 911 Address: 17677 Stingey Lane, Lewes. Tax Parcel: 334-5.00-196.00.



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Mr. Whitehouse advised the Commission that submitted into the record were the Conceptual Site Plan, the Staff Analysis, and a letter from the Sussex County Engineering Department Utility Planning Division. Mr. Whitehouse advised the Commission that no comments were received.

The Commission found that Mr. Kris Groszer spoke on behalf of the Application, C/U 2321 Coastal Properties, LLC; that also present was Ms. Colleen Groszer; that the property located to the rear belongs to Stockley Material; that Stingey Lane is located to the left side of the property; that he believed Delaware Electric Coop is located on another adjacent property; that located down the street, Mr. Steve Falcone, opened an accounting firm; that they request to open their own business as well and the hours of operation would be Monday through Friday from 9:00 am until 5:00 pm, with Saturday hours from 9:00 am until 1:00 pm.

The Commission found that Mrs. Colleen Groszer spoke on behalf of the Application; that she stated they wished to bring a smaller scale of their business to Sussex County; that they have been in their business for 16 years; that they love the business they do; that she is also a real estate agent; that she also performs the kitchen and bathroom designs; that the Application location is proposed to offer operations, a showroom, and storage for cabinetry; that in doing this, they will be able to offer service to any customers close by; that they have never had the opportunity to show and sample their work; that all of the samples would be shown within one showroom; that customer would be scheduled by appointment only; that she and one other designer would work at the location; that the proposed use is low scale; that their intention is to provide four spec homes a year; that currently, they flip homes; that they provide commercial and residential construction; that the COVID-19 Pandemic changed things for them; that with their current team they would love to put out four homes a year and in doing this, it would allow them to have a full service showroom.

Ms. Stevenson questioned if there were buildings already located on the property; that she questioned if only two buildings will remain when the project is completed; that she questioned the amount of provided parking; that she requested no parking within the front yard setback and she questioned the hours of operations.

Ms. Wingate questioned if a sign was requested for the property, if the sign is requested to be lighted and where the entrance and parking area are located.

Ms. Groszer stated there is a house and buildings existing on the property; that the home was a 100-year-old home that was buried in weeds; that they are currently renovating the house; that anything currently on the site is mostly the construction debris during the renovation of the house; that in one of the outbuildings they had a major flood; that there were utility lines backed up underneath which required repair; that some of their cabinetry was damaged, requiring them to remove it from the building; that there are supplies currently sitting on the property in limbo, waiting until they can be placed back inside the building; that three offices will be located within the existing home; that the outbuilding will hold storage of cabinets, countertops and any other material they can fabricate; that they requested to place a monument sign with stack stone at the existing home location; that it would blend with the area, matching the natural grasses in the area; that there is a small parking pad located to the front; that the site would not be accessed by Stingey Lane; that traffic would enter the site from Beaver Dam Rd.; that hours of operation would be Monday through Friday, 9:00 am until 5:00 pm; that Saturday hours would close earlier than 5:00 pm; that customers are provided scheduled

appointment times; that Saturday appointments would be very limited; that they would like a sign and they would propose solar lighting for the sign.

Mr. Groszer stated for the future, Stingey Lane is existing; that most of their potential customers will enter and park in the back, as it is already a road.

Chairman Wheatley stated should the Application be approved; the next step will be site plan review and approval and approval from DelDOT.

Mr. Robertson stated Sussex County had to condemn Stingey Lane to provide a sewer easement because they could not establish who owned it and DelDOT will only have a regulation to the property frontage on Beaver Dam Rd.

The Commission found two people spoke in opposition to the Application.

The Commission found that Ms. Patricia Edwards spoke in opposition to the Application; that also present was her husband, Mr. Theodore Edwards; that they spoke with the Applicant when he purchased the property; that the Applicant previously stated he intended to renovate the home, restoring it to the way it was originally; that then they found out the Applicant was proposing a business on the property; that Stingey Lane is very small; that the Applicant placed a parking pad in front of the house; that DelDOT had previously told them, they were not permitted to place parking in the front of their home because of Beaver Dam Rd.; that when they leave Stingey Lane, they have to pull up to the white line along Beaver Dam Rd. to be able to view oncoming traffic, due to the placement of the parking pad; that DelDOT stated the Applicant could not have the parking pad in that location, but the Applicant placed the parking pad anyway; that there are trucks and trailers parking directly behind their driveway; that at times they are required to request a vehicle to move in order for them to exit their driveway; that having a business located in the middle of the residential properties will be a disaster; that exiting onto Beaver Dam Rd. was hard enough to do before the Applicant placed the parking pad; that the area of the Applicant's parking pad has made a bad situation worse; that the Applicant has vehicles, which do not belong to the Applicant, park on the property; that the vehicles belong to Delmarva Power; that they Applicant cleared an area for the vehicles to park; that most of the parked vehicles have expired tags; that the Applicant dumps trailers of construction debris on the property; that they had captured two opossums; that their dog had killed rats; that rodents are making homes in the current debris at the site; that they found babies in the garage; that they had to request an exterminator; that she stated the property should not be used for a dumping ground; that the debris should be taken to the dump; that the Applicant is very inconsiderate with their hours of operation; that the Applicant works all hours of the day; that the Applicant works on Saturdays and Sundays; that the Applicant stated he was building a garage; that she questioned why the garage is being built with glass doors; that there was an apartment built above the garage; that the constable was called to investigate; that the Applicant was not building a garage, rather building an apartment; that the Applicant had placed a patio off of the garage building; that the constable had informed the Applicant they could not have the patio; that she assumed there was some type of violation; that she has called Sussex County many times and she was told until the Applicant were to go through the Conditional Use process, receiving approval or denial, he is able to continue operating.

The Commission found that Mr. Theodore Edwards spoke in opposition to the Application; that he gets up early in the mornings to walk his dog; that many times he has walked outside to an 18-wheeler

trailer facing his driveway; that he also has had an 18-wheeler facing his property from Beaver Dam Rd. and the Applicant does not have respect for the property.

Chairman Wheatley questioned Mr. Whitehouse if a violation was issued for the property.

Mr. Whitehouse stated when the Application was received there was no outstanding violation; that there is a note stating a constable visited the site for multiple maintenance complaints, regarding tall grass, placed in September 2019 and no violation was found as the property was found to be in compliance.

Chairman Wheatley questioned Mr. Groszer if there were piles of trash located on his property, as there was a photograph submitted in the record reflecting trash located on the site; that he stated the Commission understands the construction business, as some Commissioners have been in the construction business, with others still being in the construction business; that the Commission places great emphasis on being good neighbors; that some of the issues mentioned will be handled at the site plan review level; that the Commission does have the ability to place conditions and stipulations for applications.

Mr. Robertson questioned more information about the mentioned apartment located on the property; that he stated the Conditional Use request is for a commercial enterprise; that should the Conditional Use be approved; the vehicles will not be permitted to be parked on another property and parking will not be permitted within a setback.

Ms. Stevenson questioned what types of deliveries are made, how frequent are deliveries made, and what types of trucks make the deliveries.

Mr. Groszer stated he was blown away; that he had saved his whole life savings to purchase the house; that he is trying to remodel the home; that he is trying to improve the property; that there are trailers and vans on the property; that he believed the piles of trash are branches; that this future plan is to clean up the yard, move all the vehicles and operate the property as a business; that currently he is trying to balance; that he does not know anything about an apartment; that the building is currently a garage with two floors; that he currently has cabinets stored on the second floor; that anyone can come to look at the building; that there is no infrastructure for water and sewer; that there is no electric to the building; that the property receives deliveries approximately once a month; that it is a tractor that delivers material; that the tractor is present at the site for 20 to 30 minutes or less, depending who is onsite to offload the material; that he is not asking for a landscape business to be ran from the property; that he is trying to improve the property; that he will comply with any conditions the Commission place; that he has called the gentleman that comes to the fenced in area, as well as Delaware Electric Coop regarding the parked vehicles; that there were no issues expressed; that Delaware Electric Coop cuts the grass where his vans are parked and they have purchased another property in Frankford for the vehicles.

Ms. Groszer stated that she apologized for any garbage that may have been left on site; that she takes care of her children, runs real estate, and performs the back end of the business; that she handles all the calls to Coastal Containers; that at times she has been late making the call, resulting in missing the container delivery; that they do not leave trash on job sites; that they take the trash to the dump; that at times she has forgotten to make the call to the container pick up and when this has happened the trash may have been present at the site for three to four days.

Mr. Whitehouse stated he did find a second violation complaint; that the Sussex County Constables have been involved; that in April 2021 when an inspection was performed for the remodeling of a building without a building permit; that there was a notice of violation issued at that time; that there is are multiple notes and multiple inspections on file and it does appear that the Application was made as a result of a violation received from Sussex County Constables.

Mr. Grozer stated the back building was built too large.

Mr. Robertson stated the Applicants testified they are in the real estate business; that the Applicants knew they wanted to operate a business at the property; that he questioned why the Applicants did not originally apply for a Conditional Use, as they knew the current zoning did not permit commercial use.

Ms. Stevenson questioned if the building in the back was still in violation.

Ms. Grozer stated they originally did not intend the property to be used for commercial use; that they originally were considering living at the property; that the timing was directly before the COVID-19 pandemic; that she got cold feet which resulted in the choice to flip the home; that after things settle down with COVID-19, they decided they did not want to let go of the property; that their employees began working on the property during the COVID-19 pandemic; that they wanted to pay them versus them applying for unemployment; that the building in the back is no longer in violation; that it was made smaller than what is shown on the survey; that they originally requested a variance for the building; that the variance was denied and had to make the building smaller.

Mr. Whitehouse stated that the 2019 violation was for grass height; that the grass violation was resolved; that in 2021 a violation was issued for building without a permit; that the permit violation was resolved as the Applicant obtained a permit; that there were additional notes to potential building within the side yard setback; that there were many other notes and it looks like with each note made, it was the reasoning behind the current Application.

Mr. Grozer stated if the Commission tells him what to do, he will do it.

Mr. Whitehouse stated there is an additional note, from January 2022, stating that there was a stove located on the garage floor.

Mr. Grozer stated, just as his wife stated, things were placed in the building; that there was a flood, requiring multiple items to be removed to be cleaned up, dried out to be placed back in the building and he does have an approved trash container with a lid from the trash company.

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

At the conclusion of the public hearing, the Commission discussed the Application.

In relation to C/U 2321 Coastal Properties, LLC. Motion by Ms. Stevenson to defer action, holding the record open to receive additional information from the Director, seconded by Mr. Hopkins and carried unanimously. Motion carried 5-0.

Draft Minutes of the October 13, 2022 Planning & Zoning Commission Meeting

The Commission discussed this application which had deferred from the September 8, 2022 Planning & Zoning Commission meeting.

Mr. Whitehouse announced that the Commission had left the record open for receipt of additional information from staff, summarizing the inspections of the property. Mr. Whitehouse confirmed that this document had been prepared and had been circulated to the Commission.

Motion by Ms. Stevenson, seconded by Ms. Wingate and carried unanimously to close the public record and to defer action on the application for further consideration.

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

PLANNING & ZONING COMMISSION

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



Sussex County

DELAWARE
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JAMIE WHITEHOUSE, MRTPI, AICP
DIRECTOR OF PLANNING & ZONING

PLANNING AND ZONING AND COUNTY COUNCIL INFORMATION SHEET
Planning Commission Public Hearing Date: September 8th, 2022

Application: CU 2321 Coastal Properties, LLC

Applicant: Coastal Construction, LLC
17280 Coastal Highway, Unit #2
Lewes, DE 19958

Owner: Kristopher L. Groszer
32777 Dionis Drive
Lewes, DE 19958

Site Location: 17677 Stingey Lane, Lewes.

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

Proposed Use: Kitchen/Bathroom Showroom

Comprehensive Land Use Plan Reference: Coastal Area

Councilmanic District: Mr. Schaeffer

School District: Cape Henlopen School District

Fire District: Lewes Fire Department

Sewer: Sussex County

Water: Tidewater

Site Area: 0.248 ac. +/-

Tax Map ID.: 334-5.00-196.00



JAMIE WHITEHOUSE, AICP MRTPI
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Sussex County

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Memorandum

To: Sussex County Planning and Zoning Commission Members
From: Mrs. Christin Scott, Planner II
CC: Mr. Vince Robertson, Assistant County Attorney and Applicant
Date: September 1st, 2022
RE: Staff Analysis for CU 2321 Coastal Properties, LLC

The purpose of this memo is to provide background and analysis for the Planning and Zoning Commission to consider as a part of Application CU 2321 Coastal Properties, LLC to be reviewed during the September 8th, 2022, Planning and Zoning 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: 334-5.00-196.00 to allow for a kitchen and bathroom showroom, to be located on Beaver Dam Road and Stingey Lane, Lewes, Delaware. The property is lying on the northeast side of Beaver Dam Road (Rt. 23), approximately 0.16 mile southeast of the intersection of Church Street and Salt Marsh Boulevard. The parcel consists of 0.248 acres +/-.

Comprehensive Plan Analysis

The 2018 Sussex County Comprehensive Plan Update (Comprehensive Plan) provides a framework of how land is to be developed. As part of the Comprehensive Plan, a Future Land Use Map is included to help determine how land should be zoned to ensure responsible development. The Future Land Use Map in the plan indicates that the parcel has a designation of "Coastal Area". The adjoining parcels to the north, east, and west also have a Future Land Use Map designation of "Coastal Area". The parcels to the south across Beaver Dam Road (Rt. 23) also have a Future Land Use Map designation of "Coastal Area". Properties further to the north across Lewes-Georgetown Highway (Rt. 9) have a Future Land Use Map designation of "Commercial".

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

Zoning Information

The subject property is zoned Agricultural Residential (AR-1) District. The adjacent properties to the north, east, and west of the subject property are zoned Agricultural Residential (AR-1) District. The parcels to the south across Beaver Dam Road (Rt. 23) of the subject property are zoned

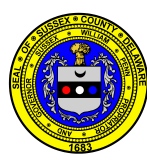


Medium Residential (MR). Properties further to the north across Lewes-Georgetown Highway (Rt. 9) are zoned General Commercial (C-1).

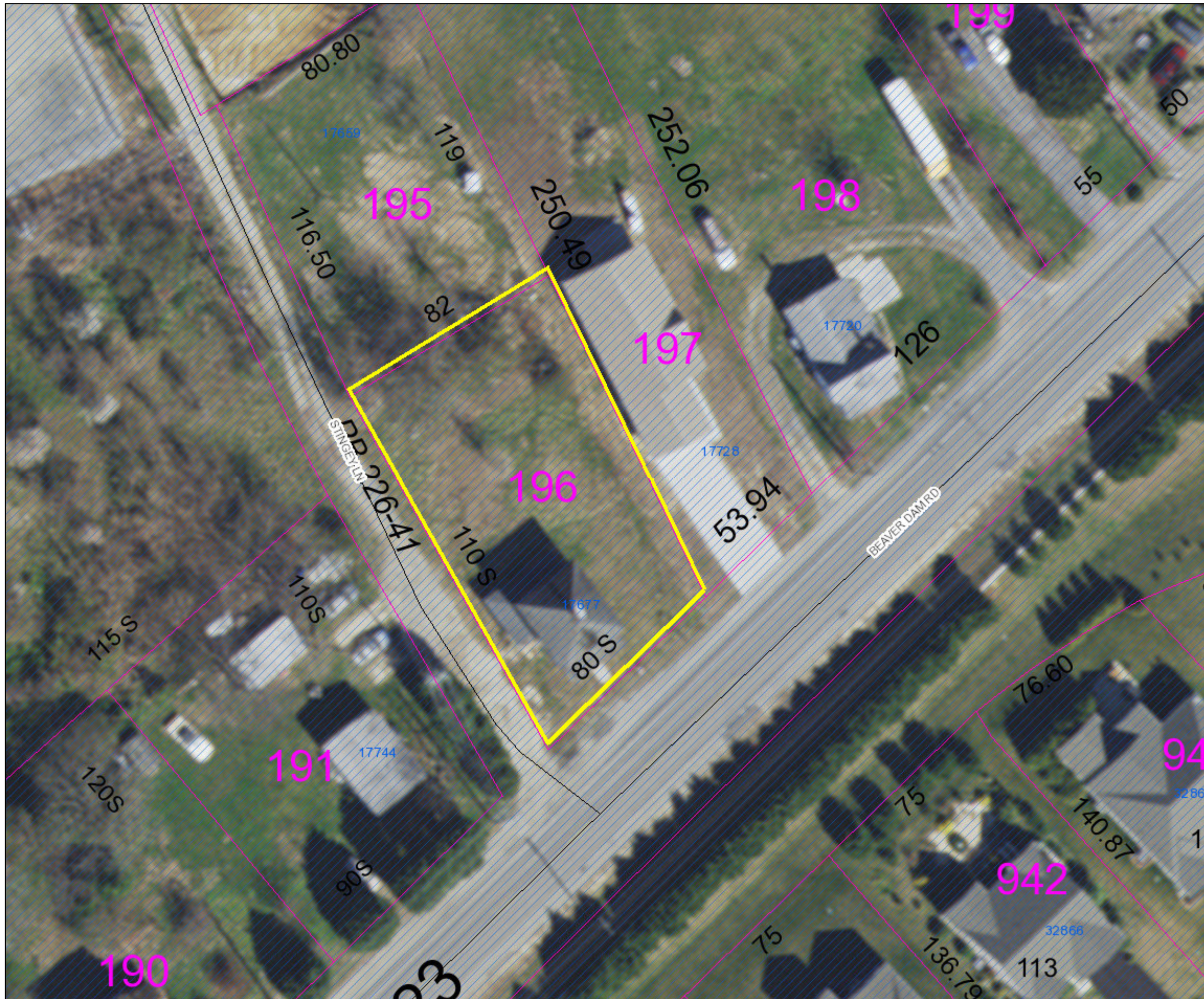
Existing Conditional Uses within the Vicinity of the Subject Property

Since 2011, there have been sixteen (16) Conditional Use applications within a one (1) mile radius of the application site. Out of those sixteen (16) applications, two (2) have been withdrawn, one (1) has been denied, and thirteen (13) have been approved.

Based on the analysis provided, the Conditional use to allow for a tourist home, event venue and hair salon in this location could be considered as being consistent with the surrounding land use, zoning, and uses, subject to considerations of scale and impact.



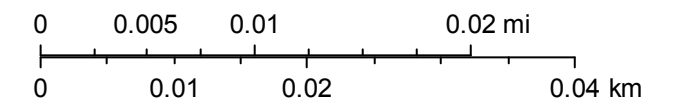
Sussex County



PIN:	334-5.00-196.00
Owner Name	COASTAL PROPERTIES DE LLC
Book	5614
Mailing Address	17280 COASTAL HWY UNIT
City	LEWES
State	DE
Description	BETWEEN HWY 18
Description 2	RT 285
Description 3	N/A
Land Code	

- polygonLayer**
 - Override 1
- polygonLayer**
 - Override 1
- ⋯ Tax Parcels
- 911 Address
- Streets
- County Boundaries
- Flood Zones 2018**
 - 0.2 PCT ANNUAL CHANCE FLOOD HAZARD
 - A
 - AE
 - AO
 - OPEN WATER
 - VE

1:564



ORDINANCE NO. ____

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A KITCHEN AND BATHROOM SHOWROOM TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES & REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 0.248 ACRES, MORE OR LESS

WHEREAS, on the 28th day of October 2021, a conditional use application, denominated Conditional Use No. 2321 was filed on behalf of Coastal Properties, LLC; and

WHEREAS, on the ____ day of _____ 2022, a public hearing was held, after notice, before the Planning and Zoning Commission of Sussex County and said Planning and Zoning Commission recommended that Conditional Use No. 2321 be _____; and

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

NOW, THEREFORE, THE COUNTY OF SUSSEX HEREBY ORDAINS:

Section 1. That Chapter 115, Article IV, Subsection 115-22, Code of Sussex County, be amended by adding the designation of Conditional Use No. 2321 as it applies to the property hereinafter described.

Section 2. The subject property is described as follows:

ALL that certain tract, piece or parcel of land, lying and being situate in Lewes & Rehoboth Hundred, Sussex County, Delaware, and lying on northeast side of Beaver Dam Road (Rt. 23), approximately 0.16 mile southwest of the intersection of Church Street and Salt Marsh Boulevard and being more particularly described in the attached legal description prepared by Morris, Hardwick & Schneider, LLC, said parcel containing 0.248 acres, more or less.

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

JAMIE WHITEHOUSE, AICP
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jamie.whitehouse@sussexcountyde.gov



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Memorandum

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

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

CC: Everett Moore, County Attorney

Date: October 18, 2022

RE: County Council Report for C/Z 1964 filed on behalf of Martin Property Development, LLC

The Planning and Zoning Department received an application (C/Z 1964 filed on behalf of Martin Property Development, LLC) to amend the Comprehensive Zoning Map of Sussex County from a C-1 General Commercial District to an LI-2 Light Industrial District. The property is located at 34796, 34770, 34752 & 34708 Delaware Avenue, Frankford. The change of zone is for 19.71 acres, more or less.

The Planning and Zoning Commission held a public hearing on September 8, 2022. At the meeting of October 13, 2022, the Commission recommended approval of the application for the 8 reasons as outlined within the motion (included below).

Below are the minutes from the Planning & Zoning Commission meetings of September 8, 2022 and October 13, 2022.

Minutes of the September 8, 2022 Planning & Zoning Commission Meeting

C/Z 1964 Martin Property Development, LLC

An Ordinance to amend the Comprehensive Zoning Map of Sussex County from an AR-1 Agricultural Residential District and a C-1 General Commercial District to an LI-2 Light Industrial District for certain parcels of land lying and being in Dagsboro Hundred, Sussex County, containing 19.71 acres more or less. The properties are lying on the west side of Delaware Avenue and on the east side of Dupont Boulevard (Route 113), approximately 0.3 mile north of Parker Road (S.C.R. 380). 911 Address: 34796, 34770, 34752, & 34708 Delaware Avenue. Tax Parcels: 433-11.00-21.00, 433-11.00-21.02



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GEORGETOWN, DELAWARE

Mr. Whitehouse advised the Commission that submitted into the record was a copy of the Preliminary Site Plan, the DelDOT Service Level Evaluation Response, PLUS response, and the Staff Analysis. Mr. Whitehouse advised the Commission that zero comments had been received for the Application.

The Commission found that Mr. Timothy Willard, Esq., with Fuqua, Willard & Schab, P.A., spoke on behalf of the Application, C/Z 1964 Martin Property Development, LLC; that also present was Mr. Travis Martin, owner of Chesapeake Plumbing & Heating, Inc.; that Mr. Martin has several companies associated with HVAC services; that the property is located south of Frankford, on the east side; that the Application request is for a change in zoning; that the Application had been put through the PLUS process; that both parcels are split zoned; that the two parcels primarily zoned C-1 (General Commercial) within the front portions of the properties; that both properties have areas of AR-1 (Agricultural Residential) Zoning to the rear of the properties; that properties can no longer be rezoned for C-1; that the closest zoning to C-1 is LI-2 (Light Industrial) Zoning District; that the request is to change the zoning for both properties to be completely located within LI-2 Zoning; that of the 19 acre total between both properties, 17 acres is zoned for C-1; that two acres are located within AR-1 Zoning; that the properties are located within a Developing District according the Comprehensive Plan; that LI-2 is listed as an appropriate zoning for the developing area; that to the south of the properties there is Industrial Zoning for a forest service company; that the properties are primarily surrounded by commercially zoned properties; that the properties are located adjacent to the municipal Town of Frankford; that developing areas are typically found next to municipal areas; that developing areas recognize business and industrial parks, with good access to roads; that the properties are located along Rt. 113; that Delaware Ave is located to the rear of the properties; that the Applicant has received entrance permits; that the Applicant almost has final completed, with DelDOT approval on Phase 1 of the project; that no Traffic Impact Study (TIS) was recommended; that the LI-2 zoning is zoned for light industrial uses, such as fabrication, processing, wholesale distribution, and warehousing, located along major roads; that Rt. 113 is considered a major road; that the Applicant's use will support economic activity for Delaware; that the properties are located within Investment Level 3 for State Strategies for Spending; that Investment Level 3 areas encourage and acknowledge growth in the infrastructure improvements; that he presented a letter from Mr. William (Bill) Pfaff, with Sussex County Development Office; that the Applicant applied for a grant for Phase 2 of the project, which was received; that the grant is the Delaware Site Readiness Fund, whose purpose is to attract out-of-state businesses to shuttle-ready sites; that Mr. Pfaff's letter, dated February 11, 2022, which stated, *on behalf of the Sussex County Economic Development Office, I am writing to express my support for the Frankford Business Park Application for the Site Readiness Grant Funds to expand into Phase 2 of the park; that the expansion of the business park and the funds that would make it possible would create new shuttle ready sites that can be quickly marked to potential business; that the Frankford Business Park – Phase 2 project includes central water and central sewer, industrial water, natural gas, high-speed internet, stormwater management pond and is located along Rt. 113; that not only will the infrastructure project help increase the inventory to shuttle-ready sites in Sussex County, but it will also provide jobs and contribute to the economic health of Sussex County; that for all these reasons Sussex County Economic Development Office fully supports this Application for site readiness funds and believes it will have a meaningful and sustainable impact;* that the letter was for Phase 2, as Phase 1 was already significantly underway; the Applicant already has the contract with the State of Delaware; that there were ten million dollars allotted; that the Applicant received the grant for a million; that the Applicant already has a tenant, CP Cases, from Maryland, who build high-end cases; that the Application does fit the Comprehensive Plan; that there are other businesses located in the surrounding area; that he requested

to submit proposed Findings of Fact and for all the reasons stated the Change of Zone request is appropriate.

Mr. Tavis Martin spoke on behalf of his Application; that the grant he received was from the Delaware Site Readiness fund; that the purpose of the fund is to create shuttle-ready sites and attract businesses from out-of-state to the shuttle-ready sites; that the purpose is to attract specifically businesses from Maryland, Pennsylvania, and New Jersey to do business in Delaware.

The Commission found that Mr. Wesley Hayes, Jr. spoke in opposition to the Application; that he lives along Delaware Ave.; that he owns a 19.5-acre property directly across the street from the subject properties; that there are many elderly people residing along Delaware Ave; that half of the residences are under the jurisdiction of the Town of Frankford; that the other half of the residences are under the jurisdiction of Sussex County; that there currently is a speeding issue in the area; that he previously had brought the concern to the Town of Frankford, the police department and the Troop 7 State Police; that his son was killed at seven years old along Delaware Ave; that the location where the Applicant's office is located, being where Rt. 113 and Delaware Ave intersect, there have been a series of accidents in the past; that he has lived in Sussex County his whole life; that he has family residing adjacent to him on both sides; that he knows almost everyone residing on the street; that he has no problem with the Applicant; that he does not agree with the zoning request; that he has previously helped with site work for the Applicant; that he feels the rest of Delaware Ave should have been notified of the request; that the Change of Zone request is not a light impact; that the request is a major impact; that there is a concrete island on the Rt. 113 side of the property; that this will not allow any large trucks to enter the site from Rt. 113; that he believes it will be difficult to access the property; that all of the traffic will be diverted to Delaware Ave; that he had previously spoken with Mr. Martin regarding his employees and the speeds they travel; that Delaware Ave is constructed of nine foot travel lanes; that there are no curbs along the road; that Delaware Ave is a State maintained street; that the Town of Frankford maintains the road on the other side of the railroad tracks; that he had spoken with DelDOT regarding his concerns multiple times; that the entrance to the site has been constructed; that he has voiced his complaint to DelDOT about the strip along the street, as he feels it was constructed horribly; that there will be too much traffic for Delaware Ave to handle; that there are 50 to 500 vehicle trips listed under the C-1 Zoning; that he questions if the property will have the ability to have up to 2,000 vehicle trips permitted under the LI-2 Zoning; that it cannot be determined, what amount of traffic will be generated from the companies being brought in by the grant and he questioned by the property could not stay zoned C-1.

Mr. Robertson stated the proposed use is what determines the anticipated vehicle trips to the site; that the zoning of the property would not determine the vehicle trips to the site; that it would be reviewed through the Site Plan Review process; that the Applicant is needing to rezone the AR-1 portions of the property to commercial zoning; that the Applicant cannot rezone the remaining portion of the property C-1, because C-1 is a closed zoning district; that the C-1 Zoning District was closed 15 years ago; that the Applicant, regardless of the zoning requested, would still have a property that would be split zoned and there is a preference to have a property under the same zoning classification when dealing with land use.

Chairman Wheatley stated the Commission is limited in regulations regarding roads, as Sussex County does not regulate roads; that DelDOT or the town municipalities have regulation over the roads; that the red portion of the property is commercial zoning; that the majority of the property is already zoned

for commercial use; that the Applicant is requesting a slightly different zoning change than the zoning which currently exists and the Commission was needed to consider if the Applicant's request will have less or more of an impact than what is already permitted; that there are already permitted uses under the existing C-1 Zoning that could produce the increased traffic numbers; that LI-2 Zoning does not necessarily mean more traffic than C-Z Zoning does; that the companies will be limited to permitted uses within the Zoning District; that the concerns with traffic should be discussed with DelDOT; that if the Commission were to approve the Change of Zone, it would not impact the traffic for the proposed site and the Commission will need to consider if the requested zoning is appropriate for the property.

Mr. Whitehouse stated in the record, that there was a DelDOT Service Level Evaluation Response, based on the number of vehicle trips; that the document serves to identify what level of specialist studies the Applicant will be required to perform; that upon submittal of the Application, the Applicant provides the Planning & Zoning staff an indication of anticipated vehicle trips; that the provided information is provided to DelDOT by the Planning & Zoning staff; that DelDOT will review and respond as to if the Applicant will be required to perform a Traffic Impact Study (TIS); that the number of anticipated vehicle trips is what determines if an Application is required to perform a TIS; that DelDOT analyze the proposed use and make the final determination if the TIS is required or not for the project.

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

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

Ms. Wingate returned to the chambers.

At the conclusion of the public hearing, the Commission discussed the Application.

In relation to C/Z 1964 Martin Property Development, LLC. Motion by Mr. Mears to defer action for further consideration, seconded by Ms. Stevenson and carried unanimously. Motion carried 4-0. Ms. Wingate abstained.

Draft Minutes of the October 13, 2022 Planning & Zoning Commission Meeting

The Commission discussed the Application which had been deferred since September 8, 2022.

Mr. Mears moved that the Commission recommend approval of CZ #1964 for MARTIN PROPERTY DEVELOPMENT, LLC for a change in zone from AR-1 Agricultural Residential and C-1 General Commercial to LI-2 Light Industrial based on the record made during the public hearing and for the following reasons:

1. This location, along Route 113, has a split-zoning of AR-1 and C-1.
2. There are other nearby uses that are commercially zoned and very nearly industrial in character and zoning. This is an appropriate location for the proposed LI-2 Zoning.
3. The intended use of the site will be for manufacturing, light industrial uses and flex space. These are appropriate uses for this area, and they are consistent with the surrounding uses.

4. The rezoning and the resulting possible uses will not have an adverse impact on neighboring properties, roadways or other public facilities.
5. This rezoning to LI-2 will stimulate economic activities in Sussex County by providing shovel-ready sites to attract new businesses in an appropriate location along Route 113.
6. This site is located in the “Developing District” according to the Sussex County Comprehensive Plan. LI-2 is an appropriate zoning district in this Area according to the Plan.
7. This LI-2 zone satisfies the stated purposes of the district according to the Sussex County Zoning Code.
8. Any development of this property under LI-2 zoning will be subject to site plan review by the Sussex County Planning and Zoning Commission to ensure that it complies with all requirements of the Zoning Code.

Motion by Mr. Mears, seconded by Ms. Wingate and carried unanimously to recommend approval of C/Z 1964 Martin Property Development, LLC., for the reasons and conditions stated in the motion. Motion carried 5-0.

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

PLANNING & ZONING COMMISSION

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



Sussex County

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JAMIE WHITEHOUSE, MRTPI, AICP
DIRECTOR OF PLANNING & ZONING

PLANNING AND ZONING AND COUNTY COUNCIL INFORMATION SHEET
Planning Commission Public Hearing Date: September 8th, 2022

Application: C/Z 1964 Martin Property Development, LLC

Applicant: Martin Property Development, LLC
34913 Delaware Avenue
Frankford, DE 19945

Owner: Martin Property Development, LLC c/o Travis Martin
34913 Delaware Avenue
Frankford, DE 19945

Site Location: 34796, 34770, 34752, 34708 Delaware Avenue, Frankford. Lying on the west side of Delaware Avenue and the east side of Dupont Boulevard (Route 113), approximately 0.3 mile north of Parker Road (S.C.R. 380)

Current Zoning: C-1 – General Commercial District, AR-1 Agricultural Residential District

Proposed Zoning: LI-2 – Light Industrial District

Comprehensive Land Use Plan Reference: Developing Area

Councilmanic District: Mr. Hudson

School District: Indian River School District

Fire District: Frankford Fire Company

Sewer: Sussex County

Water: Artesian

Site Area: 19.71 acres +/-

Tax Map ID.: 433-11.00-21.00 & 433-11.00-21.02



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Sussex County

DELAWARE
sussexcountyde.gov

Memorandum

To: Sussex County Planning Commission Members
From: Michael Lowrey, Planner III
CC: Mr. Vince Robertson, Assistant County Attorney and Applicant
Date: August 5, 2022
RE: Staff Analysis for C/Z 1964 Martin Property Development, LLC

This memo is to provide background and analysis for the Planning Commission to consider as a part of application C/Z 1964 Martin Property Development LLC to be reviewed during the September 8th, 2022, Planning Commission Meeting. This analysis should be included in the record of this application and is subject to comments and information that may be presented during the public hearing.

The request is for a Change of Zone for Tax Parcels 433-11.00-21.00 & 433-11.00-21.02 to allow for a change of zone from an Agricultural Residential District (AR-1) and a General Commercial District (C-1) to a Light Industrial District (LI-2) to provide for improvements including 196,973 square feet of warehouse use, 10,00 square feet of office use, two pipe yards, parking, and ancillary improvements. The properties are lying on the west side of Delaware Avenue and on the east side of Dupont Boulevard (Route 113), approximately 0.3 mile north of Parker Road (S.C.R. 380). The two parcels consist of a total of 19.71 acres +/-.

Comprehensive Plan Analysis

The 2018 Sussex County Comprehensive Plan Update (Comprehensive Plan) provides a framework of how land is to be developed. As part of the Comprehensive Plan, a Future Land Use Map is included to help determine how land should be zoned to ensure responsible development. The Future Land Use Map in the plan indicates that the subject parcels have a designation of “Developing Area”, with the parcels adjacent on the west side of Delaware Avenue having Future Land Use Map designation of “Developing Area” and the parcels to the east across Delaware Avenue having designations of both “Developing Area” and “Commercial Area”. The parcels immediately west on the opposite side of Dupont Boulevard (Route 113) have a Future Land Use Map designation of “Commercial Area.”

Developing Areas are newer, emerging growth areas that demonstrate the characteristics of developmental pressures. Most of the proposed Developing Areas are adjacent to municipalities, within or adjacent to potential future annexation areas of a municipality, or adjacent to Town Centers (Sussex County Comprehensive Plan, 4-14). As outlined within the 2018 Sussex County Comprehensive Plan, Developing Areas “should allow for business and industrial parks” in portions with “good road access and few nearby homes.”



Zoning Information

The 2018 Sussex County Comprehensive Plan outlines Zoning Districts by their applicability to each Future Land Use category. Under Table 4.5-2 “Zoning Districts Applicable to Future Land Use Categories”, the Light Industrial (LI-1) District is listed as an Applicable Zoning District within a “Developing Area.” (Sussex County Comprehensive Plan, 4-25).

The property is dual-zoned with approximately 17.21 acres of the western portions of the properties (with frontage along Dupont Boulevard (Route 113)), being zoned General Commercial (C-1) District. The eastern portions of the properties (with frontage along Delaware Avenue) consist of 2.5 acres is currently zoned Agricultural Residential (AR-1) District.

The adjacent parcels to the north, south, and west on both sides the Dupont Boulevard (Route 113) corridor are zoned General Commercial (C-1) District. The adjacent parcels to the east are zoned Agricultural Residential (AR-1) District.

Existing Conditional Uses within the Vicinity of the Subject Site

Since 2011, there has been one (1) Change of Zone application within a 1-mile radius of the application site. The application was Change of Zone No. 1894 for a change of zone from an Agricultural Residential (AR-1) District to a Heavy Commercial (C-3) District. The application was approved by the Sussex County Council at their meeting of Tuesday, November 19, 2019, and the change was adopted through Ordinance No. 2693.

Based on the analysis of the land use, surrounding zoning and uses, a Change of Zone from a General Commercial (C-1) and an Agricultural Residential (AR-1) District to a Light Industrial (LI-2) District could be considered as being consistent with the land use, area zoning and surrounding uses.



433-11.00-21.00

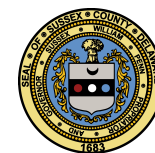
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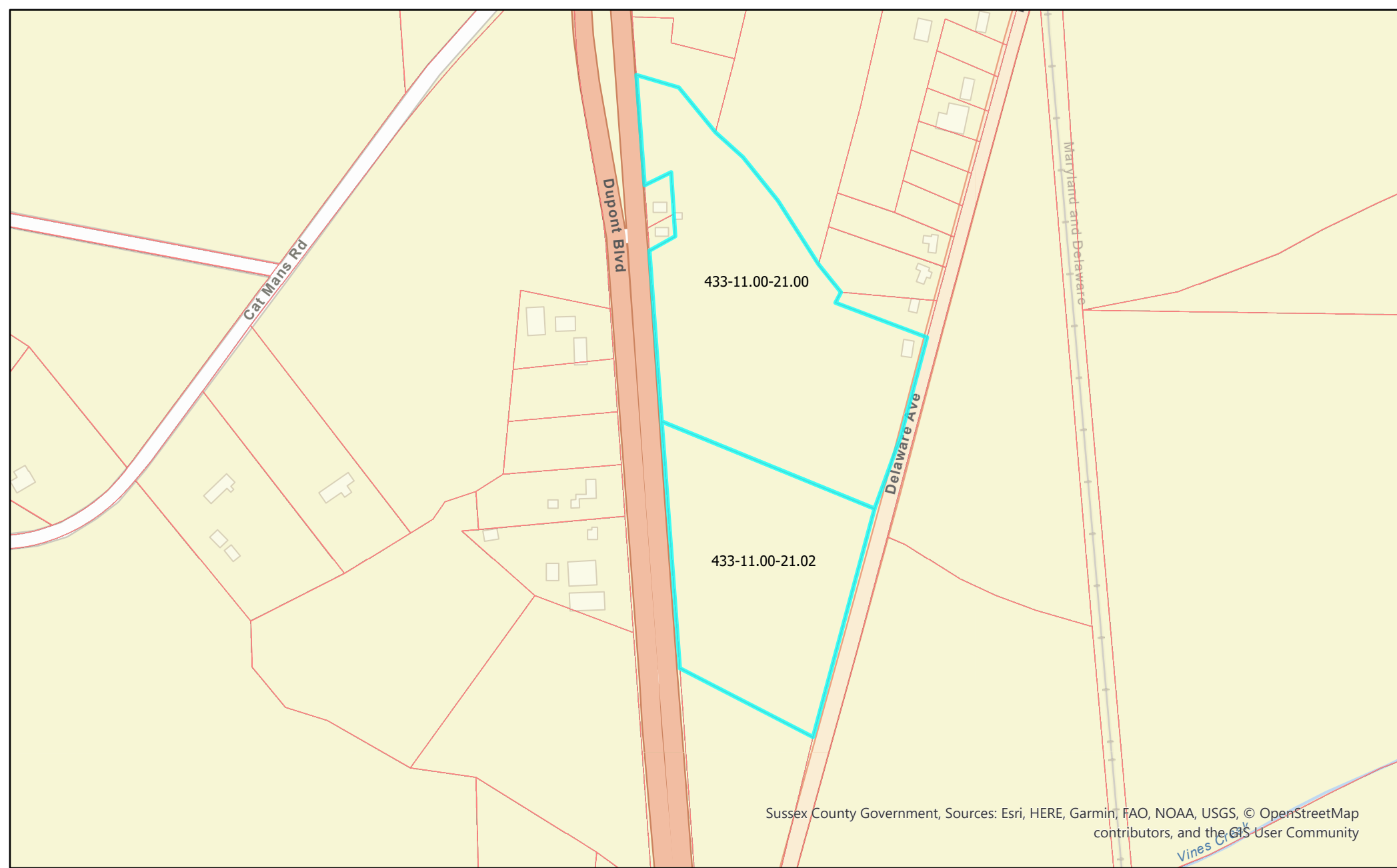
Sussex County Government, Source: Esri, Maxar, Earthstar Geographics, and the GIS User Community



0 250 500 1,000 Feet

Tax Parcels:
433-11.00-21.00
433-11.00-21.02





Sussex County Government, Sources: Esri, HERE, Garmin, FAO, NOAA, USGS, © OpenStreetMap contributors, and the GIS User Community

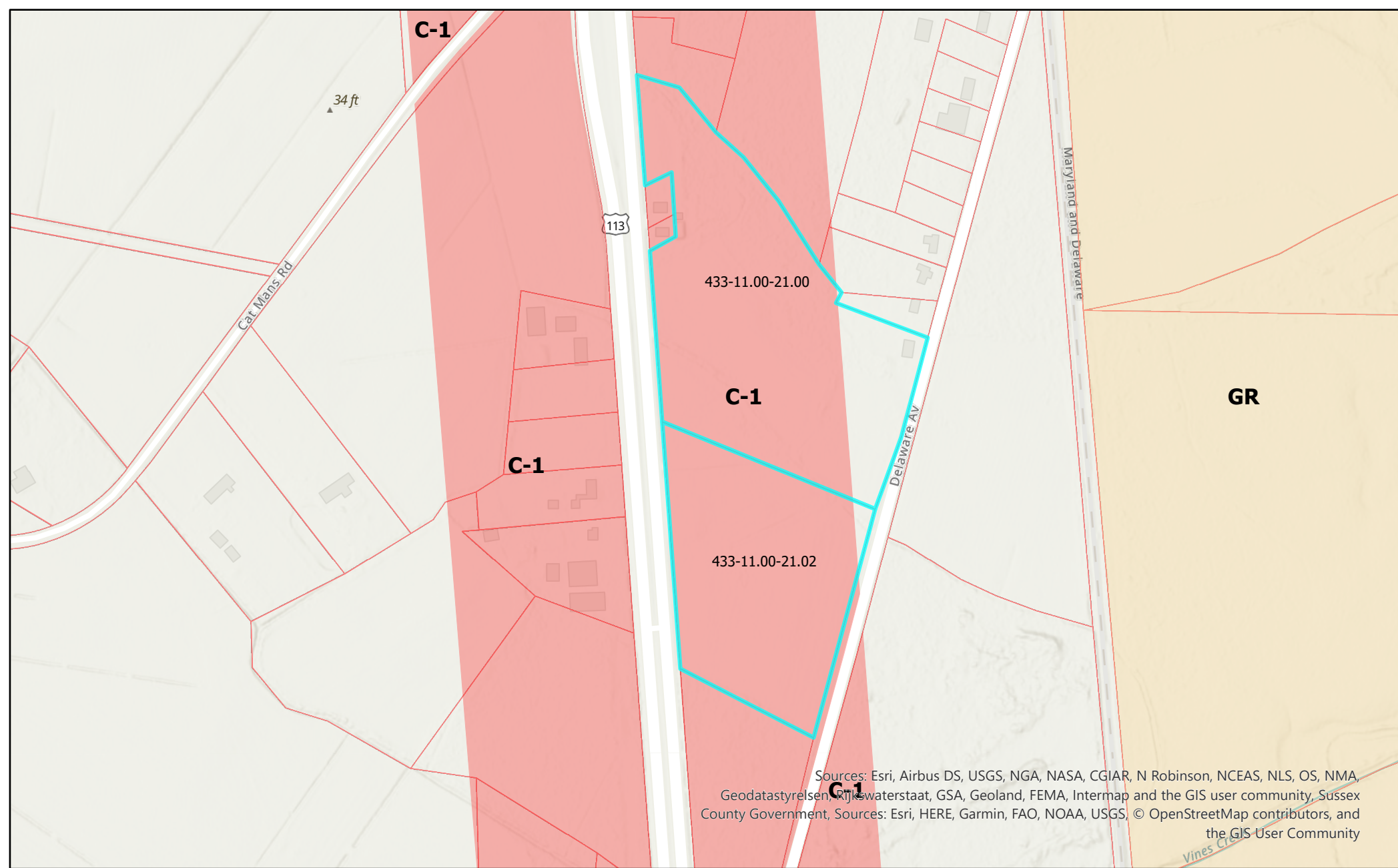
Vines Creek



0 250 500 1,000 Feet

Tax Parcels:
433-11.00-21.00
433-11.00-21.02





0 250 500 1,000 Feet



Tax Parcels:
433-11.00-21.00
433-11.00-21.02

Zoning					
	Agricultural Residential - AR-1		Vacation, Retire, Resident - VRP		General Commercial - C-5
	Agricultural Residential - AR-2		Neighborhood Business - B-1		Commercial Residential - CR-1
	Medium Residential - MR		Neighborhood Business - B-2		Institutional - I-1
	General Residential - GR		Business Research - B-3		Marine - M
	High Density Residential - HR-1		General Commercial - C-1		Limited Industrial - LI-1
	High Density Residential - HR-2		General Commercial - C-2		Light Industrial - LI-2
			General Commercial - C-3		Heavy Industrial - HI-1
			General Commercial - C-4		

To Be Introduced: 08/23/22

Council District 4: Mr. Hudson

Tax I.D. Nos: 433-11.00-21.00 & 433-11.00-21.02

911 Address: 34796, 34770, 34752, & 34708 Delaware Avenue, Frankford, DE

ORDINANCE NO. ____

AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT AND A C-1 GENERAL COMMERCIAL DISTRICT TO AN LI-2 LIGHT INDUSTRIAL DISTRICT FOR CERTAIN PARCELS OF LAND LYING AND BEING IN DAGSBORO HUNDRED, SUSSEX COUNTY, CONTAINING 19.71 ACRES, MORE OR LESS

WHEREAS, on the 22nd day of December 2021, a zoning application, denominated Change of Zone No. 1964 was filed on behalf of Martin Property Development, 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. 1964 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 C-1 General Commercial District and adding in lieu thereof the designation of LI-2 Light Industrial District as it applies to the properties hereinafter described.

Section 2. The subject property is described as follows:

ALL that certain tract, piece or parcels of land lying and being situate in Dagsboro Hundred, Sussex County, Delaware, and lying on the west side of Delaware Avenue and on the east side of Dupont Boulevard (Route 113), approximately 0.3 mile north of Parker Road (S.C.R. 380), being more particularly described in the attached deeds prepared by Tunnell & Raysor, P.A. said parcels containing 19.71 acres, more or less.

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

JAMIE WHITEHOUSE, AICP
DIRECTOR OF PLANNING & ZONING
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jamie.whitehouse@sussexcountyde.gov



Sussex County

DELAWARE
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Memorandum

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

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

CC: Everett Moore, County Attorney

Date: October 14, 2022

RE: County Council Report for C/Z 1965 filed on behalf of Kent Walston, LLC

The Planning and Zoning Department received an application (C/Z 1965 filed on behalf of Kent Walston, LLC) to amend the Comprehensive Zoning Map of Sussex County from an AR-1 Agricultural Residential District to an MR Medium Density Residential District. The property is located at the east side of Kent Avenue (SCR 361), approximately 350 feet north of Jefferson Bridge Road (SCR 361A). The change of zone is for 1.4 acres, more or less.

The Planning and Zoning Commission held a public hearing on September 8, 2022. At the meeting of October 13, 2022, the Commission recommended approval of the application for the 10 reasons as outlined within the motion (included below).

Below are the minutes from the Planning & Zoning Commission meetings of September 8, 2022 and October 13, 2022.

Minutes of the September 8, 2022 Planning & Zoning Commission Meeting

C/Z 1965 Kent Walston, LLC

An Ordinance to amend the Comprehensive Zoning Map of Sussex County from an AR-1 Agricultural Residential District to an MR Medium Density Residential District for a certain parcel of land lying and being in Baltimore Hundred, Sussex County, containing 1.4 acres, more or less. The property is lying on the east side of Kent Avenue (S.C.R. 361), approximately 350 feet north of Jefferson Bridge Road (S.C.R. 361A). 911 Address: N/A. Tax Parcel: 134-17.07-173.02.

Mr. Whitehouse advised the Commission that submitted into the record was a copy of the Preliminary Site Plan, the DelDOT Service Level Evaluation Response, the PLUS response, and the Staff Analysis.



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

Mr. Whitehouse advised the Commission that one letter of opposition was received for the Application.

The Commission found that Mr. Chris Phifer spoke on behalf of the Application, C/Z 1965 Kent Walston, LLC; that he is a professional engineer with GMB, LLC; that also present was the Applicant, Mr. Paul McCabe; that the property is 1.37 acres; that the property is located off Kent Ave., being adjacent to Bethany Beach, Delaware; that the project is seeking a Change of Zone; that there was an issue found while going through the process; that while going through PLUS it was discovered the property was showing as being under the jurisdiction of the Town of Bethany Beach; that he confirmed the property is located within Sussex County's jurisdiction; that the property was incorrectly included within the Bethany Beach Municipality in the 2019 Comprehensive Plan; that this error was discovered during the PLUS meeting of November 17, 2021; that the Ordinance request is to amend the Comprehensive Zoning Map to show the property as being within Sussex County's Coastal Area; that the property is currently zoned as AR-1 (Agricultural Residential) Zoning District; that the Change of Zone requesting a zoning change to MR (Medium-Density Residential) Zoning; that the site is directly adjacent to Bethany Beach; that all of the adjacent properties to the north are zoned R-2 (Residential District) for the Town of Bethany Beach; that per the Town of Bethany Beach, the R-2 Zoning District permits one, two, three and four standard dwelling unit buildings; that Bethany Proper is located directly north of the property; that Bethany Proper includes multifamily duplexes, triplexes and quadplexes; that to the south of the property are MR properties located within Sussex County's jurisdiction; that there is one HR-1 (High-Density Residential) property being located directly to the west of the property; that the HR-1 area is a mix of condominiums and single-family homes; that the proposed site would be for three multi-family units; that proposed is one duplex and a separate garage residence, who would share a driveway; that the driveway would be off Kent Ave.; that stormwater management would be designed to meet the requirements of Sussex Conservation District; that a preapplication meeting was held with Sussex Conservation District on July 21, 2021; that public water is provided by Bethany Beach; that sewer service will be served by Sussex County; that Kent Ave. is a DelDOT maintained road; that the entrance off Kent Ave will be coordinated with DelDOT, following all rules and regulations; that DelDOT did not require a Traffic Impact Study (TIS), as there was less than 500 vehicle trips anticipated per day; that the project anticipates 42 vehicle trips per day; that an Environmental Assessment and Public Facilities Evaluation Report was prepared by GMB, LLC; that there was an additional Environmental Assessment Report, prepared by ERI (Environmental Resources, Inc.), which indicated no threatened or endangered species were found on the site; that there was a site investigation performed by ERI, confirming there were no State regulated tidal wetlands located on the property; that the Federally Regulated Wetlands are still being distinguished; that a wetland report will be submitted to Philadelphia District Corps and it has been indicated there are no anticipated impacts to any potential Federally regulated wetlands on the site.

Ms. Wingate requested confirmation that one multi-family unit is proposed, by itself and there would be two units located next to each other, making a total of three units.

Mr. Phifer stated that a total of three units is proposed.

Mr. Robertson stated the reasoning for removing the Application for C/U 2333 Kent Walston, Inc. is the newspaper notice advertisements stated two units were proposed; that the correct proposal is for three units and the Application C/U 2333 Kent Walston, Inc. will be readvertised and heard at a future Commission meeting.

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 Applications.

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

At the conclusion of the public hearing, the Commission discussed the application.

In relation to C/Z 1965 Kent Walston, LLC. Motion by Mr. Mears to defer action for further consideration, seconded by Ms. Wingate and carried unanimously. Motion carried 5-0.

Ms. Wingate recused herself from the next public hearing and left chambers.

Draft Minutes of the October 13, 2022 Planning & Zoning Commission Meeting

Mr. Mears moved that the Commission recommend approval of CZ # 1965 for KENT WALSTON, LLC for a change in zone from AR-1 to MR based on the record made during the public hearing and for the following reasons:

1. This application seeks a change in zone from AR-1 to MR. The purpose of the MR zone is to provide housing in an area which is expected to become urban in character and where central water and sewer is available.
2. Both central water and sewer are available at this site.
3. This site is situated along Kent Avenue adjacent to the municipal boundary of the Town of Bethany Beach. Given its location, MR zoning is appropriate for this property.
4. The property is near other properties that are zoned MR and it is next to Bethany Beach Town Zoning that is similar to Sussex County's MR Zone.
5. The proposed MR zoning is consistent with other nearby residential uses, including townhomes.
6. The proposed MR zoning meets the purpose of the Zoning Ordinance in that it promotes the orderly growth of the County in an appropriate location.
7. The Commission has recommended a corrective amendment to the Future Land Use Map in the Sussex County Comprehensive Plan to show that this property is in the Coastal Area. MR Zoning is appropriate in this Area according to the Plan.
8. No parties appeared in opposition to this Application.
9. Any future development of the site will require either a conditional use or site plan approvals by the Sussex County Planning & Zoning Commission.
10. For all these reasons, MR zoning is appropriate for this site.

Motion by Mr. Mears, seconded by Ms. Wingate and carried unanimously to recommend approval of application C/Z 1965 filed on behalf of Kent Walston, LLC for the reasons stated in the motion. Motion carried 5-0.

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

PLANNING & ZONING COMMISSION

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



Sussex County

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JAMIE WHITEHOUSE, MRTPI, AICP
DIRECTOR OF PLANNING & ZONING

PLANNING AND ZONING AND COUNTY COUNCIL INFORMATION SHEET
Planning Commission Public Hearing Date: September 8th, 2022

Application: C/Z 1965 Kent Walston, LLC

Applicant: Kent Walston, LLC
30398 Pavilion Drive #1704
Ocean View, Delaware 19970

Owner: Same as Applicant

Site Location: East Side of Kent Avenue, North of Jefferson Bridge Road

Current Zoning: Agricultural Residential (AR-1)

Proposed Zoning: Medium Density Residential (MR)

Proposed Use: Duplex (multifamily, 2 units)

Current
Comprehensive Land
Use Plan Reference: Low Density

Proposed
Comprehensive Land
Use Plan Reference: Coastal Area

Councilmanic
District: Mr. Hudson

School District: Indian River School District

Fire District: Greenwood Fire Department

Sewer: County Sewer

Water: Private Provider

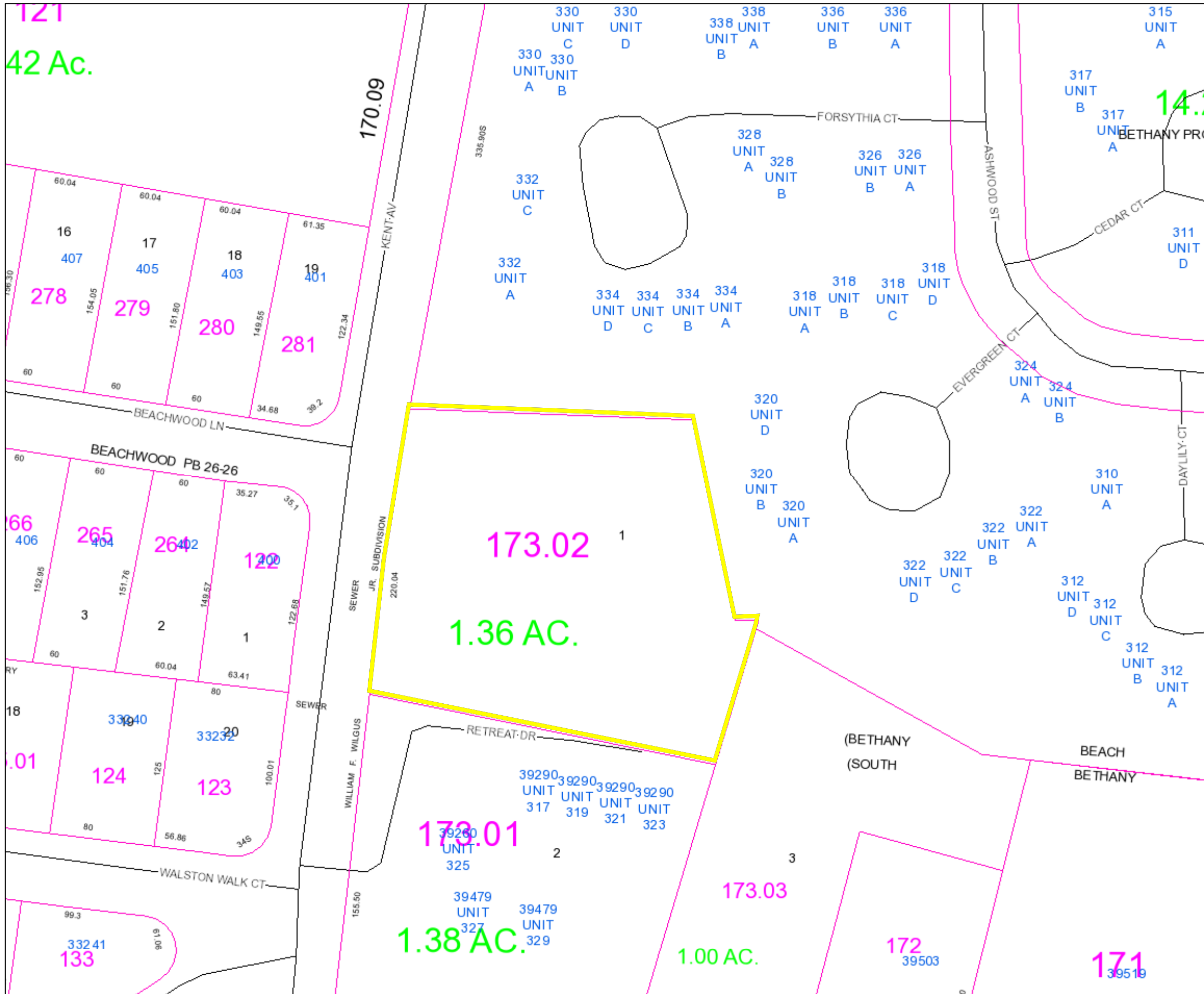
Site Area: 1.4 ac. +/-

Tax Map ID.: 134-17.07-173.02





Sussex County



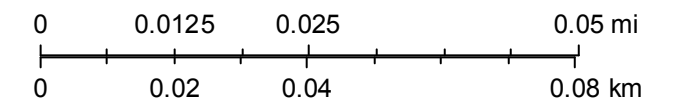
PIN:	134-17.07-173.02
Owner Name	KENT WALSTON LLC
Book	5429
Mailing Address	30398 PAVILION DR 1704
City	OCEAN VIEW
State	DE
Description	WILLIAM F WILGUS JR
Description 2	LOT 1
Description 3	BLK 2
Land Code	

- polygonLayer

 - Override 1
- polygonLayer

 - Override 1
- Tax Parcels
- 911 Address
- Streets
- County Boundaries

1:1,128



To Be Introduced: 08/23/22

Council District 4: Mr. Hudson

Tax I.D. No: 134-17.07-173.02

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 AN MR MEDIUM DENSITY RESIDENTIAL DISTRICT FOR A PORTION OF CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 1.4 ACRES, MORE OR LESS

WHEREAS, on the 28th day of December 2021, a zoning application, denominated Change of Zone No. 1965 was filed on behalf of Kent Walston, 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. 1965 be _____; and

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

NOW, THEREFORE, THE COUNTY OF SUSSEX HEREBY ORDAINS:

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

Section 2. The subject property is described as follows:

ALL that certain tract, piece or parcel of land lying and being situate in Baltimore Hundred, Sussex County, Delaware, and lying on the east side of Kent Avenue (S.C.R. 361), approximately 350 feet north of Jefferson Bridge Road (S.C.R. 361A). and being more particularly described in the attached deed prepared by Sergovic, Carmean, Weidman, McCartney & Owens, P.A., said parcel containing 1.4 acres, more or less.

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

JAMIE WHITEHOUSE, AICP
DIRECTOR OF PLANNING & ZONING
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Sussex County

DELAWARE
sussexcountyde.gov

Memorandum

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

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

CC: Everett Moore, County Attorney

Date: October 14, 2022

RE: County Council Report for Ord. 22-02 – An Ordinance to amend the Future Land Use Map of the Comprehensive Plan in relation to Tax Parcel 134-17.02-173.02 (Portion of).

On August 23, 2022 the County Council introduced an Ordinance to amend the Future Land Use Map of the Comprehensive Plan in relation to Tax Parcel 134-17.02-173.02 (Portion of). The requested amendment, which was requested on behalf of Kent Walston, LLC is to change the map area designation of the Future Land Use Map element of the Comprehensive Plan to show the parcel as being within the Coastal Area (shaded yellow on the plan).

The property is located at the east side of Kent Avenue (SCR 361), approximately 350 feet north of Jefferson Bridge Road (SCR 361A). The change of zone is for 1.4 acres, more or less.

The Planning and Zoning Commission held a public hearing on September 8, 2022. At the meeting of October 13, 2022, the Commission recommended approval of the Ordinance for the 5 reasons as outlined within the motion (included below).

Below are the minutes from the Planning & Zoning Commission meetings of September 8, 2022 and October 13, 2022.

Minutes of the September 8, 2022 Planning & Zoning Commission Meeting

Chairman Wheatley stated the next Application is Ordinance 22-02, which is a request to amend the Future Land Use Map; that Ordinance 22-02 is related to the following Application, C/Z 1965 Kent Walston, LLC; that the Commission will hear one presentation which will consolidate the two Application public hearings into one; that the Application C/U 2333 Kent Walston, LLC is also related, but was removed from the agenda and will be re-noticed for a future Commission meeting.



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

Ord. 22- 02

AN ORDINANCE TO AMEND THE FUTURE LAND USE MAP OF THE COMPREHENSIVE PLAN IN RELATION TO TAX PARCEL 134-17.07-173.02 (P/O). The property is lying on the east side of Kent Avenue (S.C.R. 361), approximately 350 feet north of Jefferson Bridge Road (S.C.R. 361A). 911 Address: N/A.

Mr. Whitehouse advised the Commission that submitted into the record was a copy of the Preliminary Site Plan, the DelDOT Service Level Evaluation Response, the PLUS response, and the Staff Analysis. Mr. Whitehouse advised the Commission that one letter of opposition was received for the Application.

The Commission found that Mr. Chris Phifer spoke on behalf of the Application, C/Z 1965 Kent Walston, LLC; that he is a professional engineer with GMB, LLC; that also present was the Applicant, Mr. Paul McCabe; that the property is 1.37 acres; that the property is located off Kent Ave., being adjacent to Bethany Beach, Delaware; that the project is seeking a Change of Zone; that there was an issue found while going through the process; that while going through PLUS it was discovered the property was showing as being under the jurisdiction of the Town of Bethany Beach; that he confirmed the property is located within Sussex County's jurisdiction; that the property was incorrectly included within the Bethany Beach Municipality in the 2019 Comprehensive Plan; that this error was discovered during the PLUS meeting of November 17, 2021; that the Ordinance request is to amend the Comprehensive Zoning Map to show the property as being within Sussex County's Coastal Area; that the property is currently zoned as AR-1 (Agricultural Residential) Zoning District; that the Change of Zone requesting a zoning change to MR (Medium-Density Residential) Zoning; that the site is directly adjacent to Bethany Beach; that all of the adjacent properties to the north are zoned R-2 (Residential District) for the Town of Bethany Beach; that per the Town of Bethany Beach, the R-2 Zoning District permits one, two, three and four standard dwelling unit buildings; that Bethany Proper is located directly north of the property; that Bethany Proper includes multifamily duplexes, triplexes and quadplexes; that to the south of the property are MR properties located within Sussex County's jurisdiction; that there is one HR-1 (High-Density Residential) property being located directly to the west of the property; that the HR-1 area is a mix of condominiums and single-family homes; that the proposed site would be for three multi-family units; that proposed is one duplex and a separate garage residence, who would share a driveway; that the driveway would be off Kent Ave.; that stormwater management would be designed to meet the requirements of Sussex Conservation District; that a preapplication meeting was held with Sussex Conservation District on July 21, 2021; that public water is provided by Bethany Beach; that sewer service will be served by Sussex County; that Kent Ave. is a DelDOT maintained road; that the entrance off Kent Ave will be coordinated with DelDOT, following all rules and regulations; that DelDOT did not require a Traffic Impact Study (TIS), as there was less than 500 vehicle trips anticipated per day; that the project anticipates 42 vehicle trips per day; that an Environmental Assessment and Public Facilities Evaluation Report was prepared by GMB, LLC; that there was an additional Environmental Assessment Report, prepared by ERI (Environmental Resources, Inc.), which indicated no threatened or endangered species were found on the site; that there was a site investigation performed by ERI, confirming there were no State regulated tidal wetlands located on the property; that the Federally Regulated Wetlands are still being distinguished; that a wetland report will be submitted to Philadelphia District Corps and it has been indicated there are no anticipated impacts to any potential Federally regulated wetlands on the site.

Ms. Wingate requested confirmation that one multi-family unit is proposed, by itself and there would be two units located next to each other, making a total of three units.

Mr. Phifer stated that a total of three units is proposed.

Mr. Robertson stated the reasoning for removing the Application for C/U 2333 Kent Walston, Inc. is the newspaper notice advertisements stated two units were proposed; that the correct proposal is for three units and the Application C/U 2333 Kent Walston, Inc. will be readvertised and heard at a future Commission meeting.

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 Applications.

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

At the conclusion of the public hearing, the Commission discussed the Applications.

In relation to Ordinance 22-02. Motion by Mr. Mears to defer action for further consideration, seconded by Ms. Wingate and carried unanimously. Motion carried 5-0.

Draft Minutes of the October 13, 2022 Planning & Zoning Commission Meeting

The Commission discussed the Ordinance which had been deferred from the Planning & Zoning Commission meeting of September 8, 2022.

Mr. Mears moved that the Commission recommend approval of Ordinance # 22-02 to amend the Future Land Use Map in the current Sussex County Comprehensive Plan for a portion of Parcel 134-17.07-173.02 to a Coastal Area Designation based on the record made during the public hearing and for the following reasons:

1. This Ordinance corrects an error in the County's Future Land Use Map. A portion of the property is currently designated as being within the boundaries of the Town of Bethany Beach, when in fact it is within the jurisdiction of Sussex County.
2. The Future Land Use Map needs to be corrected to show that this property is within the jurisdiction of Sussex County and to show an appropriate County land use classification.
3. The surrounding property that is outside of the Bethany Beach town limits is designated as "Coastal Area". It is appropriate to bring this site under the "Coastal Area" designation, for consistency with the adjacent properties.
4. This revision to the Future Land Use Map will not adversely affect neighboring properties, area roadways or future land-use planning in the area.
5. This revision of the Future Land Use Map is appropriate to correct a mapping error at the time the County's current Future Land Use Map was approved.

Motion by Mr. Mears, seconded by Ms. Wingate and carried unanimously to recommend approval of Ordinance 22-02 for the reasons stated in the motion. Motion carried 5-0.

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

ORDINANCE NO. _____

AN ORDINANCE TO AMEND THE FUTURE LAND USE MAP OF THE COMPREHENSIVE PLAN IN RELATION TO TAX PARCEL 134-17.07-173.02 (portion of).

WHEREAS, on December 28th, 2021, the Sussex County Planning and Zoning Office received an application for a Comprehensive Plan Amendment Request to amend the Future Land Use Map element of the Comprehensive Plan to change the Area designation of a portion of Sussex County Parcel No. 134-17.07-173.02 from the Municipalities Area to the Coastal Area; and

WHEREAS, the Parcel comprises 1.4 acres of land, lying and being within Baltimore Hundred, and located on the east side of Kent Avenue (S.C.R. 361), approximately 350 feet north of Jefferson Bridge Road (S.C.R. 361A); and

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

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

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

NOW, THEREFORE, THE COUNTY OF SUSSEX HEREBY ORDAINS:

Section 1. The Future Land Use Map identified as Figure 4.5-1 of the Sussex County Comprehensive Plan is hereby amended to change a portion of the parcel currently classified as the Municipalities Area designation of Sussex County Parcel No. 134-17.07-173.02 from the Municipalities Area to the Coastal Area. The portion of Sussex County Parcel No. 134-17.07-173.02 so changed is identified in Exhibit A, attached hereto and incorporated herein.

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

