



Sussex County Council Public/Media Packet

**MEETING:
November 19, 2013**

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

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



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Sussex County Council

AGENDA

NOVEMBER 19, 2013

10:00 A.M.

Call to Order

Approval of Agenda

Approval of Minutes

Reading of Correspondence

Todd Lawson, County Administrator

1. Employee of the Quarter – Anthony DiGiuseppe
2. Administrator's Report

Gina Jennings, Finance Director

1. Financial Report for the First Quarter ending September 30, 2013

Lawrence Lank, Director of Planning & Zoning

1. Discussion on Gun Shops as a Special Use Exception

10:30 a.m. Public Hearings

“AN ORDINANCE TO AMEND CHAPTER 115, ARTICLE XXV, SECTION 115-179B OF THE CODE OF SUSSEX COUNTY, ENTITLED “HEIGHT REGULATIONS” IN REGARD TO THE HEIGHT OF CERTAIN BUILDINGS”

“AN ORDINANCE TO AMEND CHAPTER 99 OF THE CODE OF SUSSEX COUNTY, ENTITLED “SUBDIVISION OF LAND” IN ORDER TO EXTEND THE TIMEFRAME IN WHICH LANDOWNERS MAY PERFORM SITE WORK OR CONSTRUCT CERTAIN IMPROVEMENTS WITHOUT POSTING A BOND OR PERFORMANCE GUARANTY”



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

Grant Requests

- 1. Clear Space Productions for programming and development.**
- 2. Town of Ocean View for 2014 Homecoming Event.**
- 3. Rehoboth Beach Historical Society for Museum building renovations.**

Introduction of Proposed Zoning Ordinances

Any Additional Business Brought Before Council

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

Possible Action on Executive Session Items

1:30 p.m. Public Hearings

Conditional Use No. 1970 filed on behalf of Matthew A. Carr

“AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR AN AUTO REPAIR SHOP TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN GEORGETOWN HUNDRED, SUSSEX COUNTY, CONTAINING 1.033 ACRES, MORE OR LESS” (land lying east of Sand Hill Road (Road 319) and 0.3 mile south of Wilson Road (Road 244); (Tax Map I.D. 1-35-10.00-56.03)

Change of Zone No. 1736 filed on behalf of Judith B. Demeno, Trustee

“AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A B-1 NEIGHBORHOOD BUSINESS DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 1.24 ACRES, MORE OR LESS” (land lying north of Route 9, 1,800 feet west of Road 281 (Josephs Road) and 1,400 feet east of Road 290 (Cool Spring Road) (Tax Map I.D. 3-34-10.00-199.00)

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

In accordance with 29 Del. C. §10004(e)(2), this Agenda was posted on November 12, 2013 at 4:45 p.m., and at least seven (7) days in advance of the meeting.

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

Agenda items listed may be considered out of sequence.

###

SUSSEX COUNTY COUNCIL - GEORGETOWN, DELAWARE, NOVEMBER 12, 2013

A regularly scheduled meeting of the Sussex County Council was held on Tuesday, November 12, 2013, at 10:00 a.m., in the Council Chambers, Sussex County Administrative Office Building, Georgetown, Delaware, with the following present:

Michael H. Vincent	President
Samuel R. Wilson, Jr.	Vice President
George B. Cole	Councilman
Joan R. Deaver	Councilwoman
Vance Phillips	Councilman
Todd F. Lawson	County Administrator
Gina A. Jennings	Finance Director
J. Everett Moore, Jr.	County Attorney

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

**Call to
Order**

Mr. Vincent called the meeting to order.

**M 527 13
Approve
Agenda**

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

Motion Adopted: 5 Yeas.

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

Minutes

The minutes of October 29 and November 5, 2013 were approved by consent.

**Corre-
spondence/
Announce-
ments**

Mrs. Deaver announced that the University of Delaware Institute of Public Administration has scheduled a course entitled "Municipal Regulations and the "Takings" Issue". The course will be held on Thursday, November 14th, in Dover.

Mr. Cole referenced an article in a newspaper from West Virginia regarding coyotes.

Veterans Day was November 11, 2013; Mr. Phillips recognized Councilmembers and Veterans George Cole, Michael Vincent, and Sam Wilson for their service to our country.

**Presen-
tation**

Randal Wiedemann of R.A. Wiedemann & Associates, Inc. gave a presentation on the Sussex County Airport Business Plan, a plan funded by the Delaware Department of Transportation. Mr. Wiedeman reported that

**Presentation/
Sussex
County
Airport
Business
Plan
(continued)**

the key issues identified in the airport study started when there was a “SWOT” analysis (strengths, weaknesses, opportunities and threats) performed. Representatives of the Airport Advisory Committee, the Georgetown Chamber of Commerce, and Sussex County attended a workshop at which time input was received for the business plan.

Mr. Wiedemann reviewed the Business Plan. Revenue enhancement options examined were: airport branding, retain/expand the PATS operation, Delaware Technical & Community College partnership, Delaware Flight School Partnership, Industrial Park Expansion, and rates and charges adjustments. Mr. Wiedemann discussed the benefits of airport branding, presented suggested name changes for the airport, and he reviewed the following: management options, revenue enhancement options, a market area comparison, financial performance, economic impact, airport layout, seeking hangar rentals, lease agreement updates, airport rules and regulations, an updated security system, implementing a safety training program, and benefits of runway expansions.

A link to the full presentation on the Sussex County Airport Business Plan can be found on the County’s website at www.sussexcountype.gov.

**Adminis-
trator’s
Report**

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

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

The Advisory Committee on Aging & Adults with Physical Disabilities for Sussex County will meet November 18 at 10:00 a.m. at Heritage at Milford Senior Living, 500 South DuPont Boulevard, in Milford. A copy of the agenda is attached. Lisa Bond, Deputy Director, Delaware Division of Services for Aging and Adults with Physical Disabilities, and Katie Macklin, Alzheimer’s Association, will be speaking on the *Delaware State Plan on Alzheimer’s*.

2. Project Receiving Substantial Completion

Per the attached Engineering Department Fact Sheet, Senators – Phase 1C received Substantial Completion effective November 6, 2013.

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

Mrs. Deaver expressed concerns about the coordination of public transportation services, the proposed cuts in paratransit services, and the proposed increase in fees in paratransit services.

**Investment
Portfolio
Analysis**

Gina Jennings, Finance Director, announced that Dominick D’Eramo, Director of Fixed Income with the Wilmington Trust Company, was in attendance and would be discussing the County’s investment portfolio (Sussex

**Investment
Portfolio
Analysis
(continued)**

County – Reserve Liquidity Account).

Mrs. Jennings reported that the investment account was opened a year ago and the structure has not been changed since its modification in January. The portfolio is constructed foremost around the safety of its principal. The year-to-date return is .773 percent, which equates to \$813,659 annually (net of fees). If these funds were maintained in the County’s operating money market account, the County would have realized \$183,000. Mrs. Jennings stated that the change in the County’s investment policy has been a success and the County is seeing a positive return on funds while continuing to keep its assets secure.

Mr. D’Eramo discussed the economy: the Fed’s expected timetable for tapering their asset purchase program; U.S. Treasury yields; and volatility increasing over the quarter (December 2012 – September 2013). Mr. D’Eramo reported that inflation levels are below target (2 percent) and unemployment levels are higher than where they would like them to be (6.5 percent or less). Unemployment levels are currently at 7.3 percent; inflation levels are at 1.5 to 1.7 percent.

Mr. D’Eramo reviewed Sussex County’s investment portfolio and he stated that the return is 78 basis points, the fee is 20 basis points, and the net return is 58 basis points. Mrs. Jennings noted that, in comparison, the regular investments show 15 basis points. Mr. D’Eramo noted that the portfolio contains fixed income only (treasuries and agencies); it is a laddered approach where they are maintaining principal preservation and providing liquidity; the yield is the outcome of these two constraints. Mrs. Jennings noted that this entire portfolio is all fixed income (no equities). Mr. D’Eramo concluded by saying that the County’s portfolio will probably continue to perform at the same levels since the Federal Reserve has been clear that the short rates will remain zero to 25 basis points into 2015.

**Wastewater
Agreement**

Hal Godwin, Deputy County Administrator, presented a Wastewater Agreement for the Council’s consideration.

**M 528 13
Approve
Wastewater
Agreement/
Americana
Bayside/
Phase 1/
Revision 3**

A Motion was made by Mr. Phillips, seconded by Mr. Cole, based upon the recommendation of the Sussex County Engineering Department, for Sussex County Project No. 81-04, Agreement No. 341-3, that the Sussex County Council execute a Construction Administration and Construction Inspection Agreement between Sussex County Council and Carl M. Freeman Communities, for wastewater facilities to be constructed in Americana Bayside – Phase 1 – Revision 3, located in the Fenwick Island Sanitary Sewer District.

Motion Adopted: 5 Yeas.

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

Grant Requests

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

M 529 13 Councilmanic Grant

A Motion was made by Mr. Phillips, seconded by Mr. Cole, to give \$1,000.00 (\$800.00 from Mr. Phillips' Councilmanic Grant Account and \$200.00 from Mr. Cole's Councilmanic Grant Account) to the Fenwick Island Lions Club for program expenses.

Motion Adopted: 5 Yeas.

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

Mrs. Deaver questioned why the Council encourages groups to come back every year for funding and she stated that, perhaps these types of grants should be included in the budget.

M 530 13 Councilmanic Grant

A Motion was made by Mr. Cole, seconded by Mr. Phillips, to give \$250.00 (\$50.00 from each Councilmanic Grant Account) to the Sussex County Foster Parent Association for their Annual Holiday Party.

Motion Adopted: 5 Yeas.

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

M 531 13 Councilmanic Grant

A Motion was made by Mr. Cole, seconded by Mr. Phillips, to give \$700.00 (\$500.00 from Mr. Cole's Councilmanic Grant Account, \$100.00 from Mr. Phillips' Councilmanic Grant Account, and \$100.00 from Mr. Vincent's Councilmanic Grant Account) to the Rehoboth Concert Band for operating expenses.

Motion Adopted: 5 Yeas.

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

M 532 13 Councilmanic Grant

A Motion was made by Mr. Wilson, seconded by Mr. Phillips, to give \$600.00 (\$500.00 from Mr. Vincent's Councilmanic Grant Account and \$100.00 from Mr. Phillips' Councilmanic Grant Account) to the Town of Blades Kids Christmas for bazaar expenses.

Motion Adopted: 5 Yeas.

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

**M 533 13
Council-
manic
Grant**

A Motion was made by Mr. Cole, seconded by Mr. Phillips, to give \$1,000.00 (\$600.00 from Mr. Phillips' Councilmanic Grant Account and \$100.00 each from Mr. Cole's, Mrs. Deaver's, Mr. Vincent's and Mr. Wilson's Councilmanic Grant Accounts) to the Mason Dixon Woodworkers for toys for needy children.

Motion Adopted: 5 Yeas.

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

**Grant
Request/
Punkin
Chunkin
Association**

Mr. Phillips discussed the grant request from the Punkin Chunkin Association. He stated that he asked that the letter be sent; that with the recent publicity, he wished to make a grant to them to defray some of their costs; that he wants it to be understood that the grant funding (taxpayer dollars) are to be used not only for operating expenses but also donations to charities as the Association makes hundreds of thousands of dollars in contributions to charities; and that one area of fees charged by the County for the 2013 event is for the Mobile Command Unit (\$40.00 per hour) for a total invoice of \$1,720.00.

Mr. Wilson commented that the Punkin Chunkin Association has money in the bank. In response to questions, Mrs. Jennings reported that, in 2012, the Association had \$576,000 in cash and cash investments. Mr. Wilson noted that, in light of this information, the Association does not need to complain about how Sussex County treats them.

Mr. Phillips referenced that the Association operates a \$600,000 event each year; last year, after Superstorm Sandy and a decrease in attendance, they had to use some of their reserve to pay their bills. Mr. Phillips stated that he believes this event should remain in Sussex County.

Mrs. Jennings noted that there have been no past Councilmanic Grants for this event. The last County grant was in 2009 in the amount of \$4,600.00.

Mrs. Deaver noted that the County has been providing emergency services at this event for years and that the cost of the services has not been reimbursed to the County. She stated that the event is a liability nightmare and a concern. She also stated that she misspoke during a radio interview regarding the grants the County has provided to the Punkin Chunkin Association.

Mr. Lawson noted that, in August 2013, the Ordinance relating to Special Events was adopted by the Council and as a result, an invoice was sent to the Punkin Chunkin Association for services provided by EMS/EOC.

Mr. Lawson reported that the County and the State Police have Command Units at the event. He noted that Joe Thomas, Director of EOC, Bob

Grant Request/ Punkin Chunkin (continued) **Stuart, Director of EMS, and the State Police all agree that the Command Units are absolutely necessary; the State Police also agree. Mr. Lawson advised that the entire communications of running the event goes in and out of the two command units. Mr. Wilson stated that he believes the County’s 911 Center should be able to handle the extra activity.**

M 534 13 Reduce Invoice Sent to Punkin Chunkin Association for Services **A Motion was made by Mr. Cole, seconded by Mr. Phillips, to reduce the invoice issued by Sussex County to the Punkin Chunkin Association by \$1,000.00 (from \$1,720.00 to \$720.00).**

Motion Adopted: 3 Yeas, 2 Nays.

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

M 535 13 Councilmanic Grant **A Motion was made by Mr. Phillips, seconded by Mr. Cole, to give \$720.00 from Mr. Phillips’ Councilmanic Grant Account to the Punkin Chunkin Association.**

Motion Adopted: 5 Yeas.

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

Introduction of Proposed Ordinance **Mrs. Deaver introduced the Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A HAIR SALON TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 0.767 ACRE, MORE OR LESS (Conditional Use No. 1974) filed on behalf of Sara Kay I. Phillips.**

The Proposed Ordinance will be advertised for Public Hearing.

Phillips/ Question Regarding Change of Zone Application **Mr. Phillips presented a question to the Council and County Attorney. He stated that he has a little piece of property which is in the works for rezoning to commercial and he would like to represent himself (at the Public Hearings before the Planning and Zoning Commission and County Council) to avoid attorney fees; he questioned if there is any problem with that. Mr. Moore responded that he doesn’t foresee a problem with Mr. Phillips representing himself; however, he should recuse himself from any vote on the matter. Mr. Phillips asked if there was any objection from Council. Mrs. Deaver stated that she would like to consider it.**

Additional Business **Under Additional Business, Paul Reiger was present and he referenced his previous discussions at Council during the Additional Business portion of the meeting. Mr. Reiger discussed the following: a problem with zoning in**

**Additional
Business
(continued)**

the area; a problem with 100 ducks in the area; a problem with an owner allowing animals to be run over in the road creating a public hazard; concern regarding a neighbor being permitted to do things that disrupt other neighbors; the use of barbed wire fencing; drainage issues; and the need for an ordinance pertaining to ducks, excluding wildlife game birds. Mr. Phillips stated that he would meet with Mr. Reiger following the end of the meeting to discuss his concerns.

Under Additional Business, Dan Kramer complained about problems with accessing information on the County's new website. Mr. Kramer also referenced traffic problems on Route One and he noted that there is no problem if you compare it to traffic on the beltway.

**M 536 13
Go Into
Executive
Session**

At 11:31 a.m., a Motion was made by Mrs. Deaver, seconded by Mr. Wilson, to recess the Regular Session and to go into Executive Session for the purpose of discussing matters relating to personnel and pending/potential litigation.

Motion Adopted: 5 Yeas.

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

**Executive
Session**

At 11:32 a.m., an Executive Session of the Sussex County Council was held in the Caucus Room of the Council Chambers for the purpose of discussing matters relating to personnel and pending/potential litigation. The Executive Session concluded at 11:47 a.m.

**M 537 13
Reconvene
Regular
Session**

At 11:49 a.m., a Motion was made by Mr. Wilson, seconded by Mrs. Deaver, to come out of Executive Session and to reconvene the Regular Session.

Motion Adopted: 5 Yeas.

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

**Recommen-
dation/
Personnel
Matter**

Mr. Lawson reported that it is his recommendation along with the recommendation of Karen Brewington, Director of Human Resources, to appoint Chris S. Keeler as the Acting Director of Assessment, for a period of six months to replace Director Eddy Parker, who intends to retire effective December 16, 2013.

**M 538 13
Appoint-
ment/**

A Motion was made by Mr. Phillips, seconded by Mr. Wilson, to appoint Chris S. Keeler as the Acting Director of Assessment, for a period of six months, to replace Director Eddy Parker, who intends to retire effective December 16, 2013.

M 538 13
Acting
Director of
Assessment
(continued)

Motion Adopted: 5 Yeas.

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

M 539 13
Adjourn

A Motion was made by Mr. Cole, seconded by Mr. Phillips, to adjourn at 11:50 a.m.

Motion Adopted: 5 Yeas.

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

Respectfully submitted,

Robin A. Griffith
Clerk of the Council

DRAFT

SUSSEX COUNTY COUNCIL



—△—
TRIBUTE

*Be it hereby known to all that the
Sussex County Council
commends*

ANTHONY DIGIUSEPPE

***SUSSEX COUNTY
EMPLOYEE OF THE QUARTER***

~Fourth Quarter 2013~



*The Sussex County Council extends its thanks and
congratulations and directs this Tribute to be presented to
Anthony DiGiuseppe on the 19th day of November 2013.*



Michael H. Vincent, President

GINA A. JENNINGS, MBA, MPA
FINANCE DIRECTOR

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Sussex County
DELAWARE
sussexcountype.gov

MEMORANDUM:


TO: The Honorable Michael H. Vincent
President, Sussex County Council

The Honorable Samuel R. Wilson, Jr.
Vice President, Sussex County Council

The Honorable George B. Cole
Sussex County Councilman

The Honorable Joan R. Deaver
Sussex County Councilwoman

The Honorable Vance Phillips
Sussex County Councilman

FROM: Gina A. Jennings 
Finance Director

RE: ***FINANCIAL REPORT FOR THE THREE MONTHS
ENDING SEPTEMBER 30, 2013***

DATE: November 15, 2013

Attached is the unaudited estimated Revenue and Expense Report for the three months ending September 30, 2013, which I will be presenting to Council on Tuesday, November 19, 2013. Due to the increase in building related revenues, I have also attached a separate schedule to show the increase in activity for the first quarter.

GAJ/nc

Attachment



Sussex County Council
Unaudited Revenue and Expense Report
As of September 30, 2013

	YTD Actual	Budgeted Amounts		% Over (Under) Budget YTD
		Annual	YTD	
REVENUES				
TAXES				
Property tax *	\$ 3,443,195.25	\$ 13,772,781.00	\$ 3,443,195.25	0.00%
Capitation tax	94.57	-	-	100.00%
TOTAL TAXES	<u>3,443,289.82</u>	<u>13,772,781.00</u>	<u>3,443,195.25</u>	<u>0.00%</u>
REALTY TRANSFER TAX	5,307,355.69	16,000,000.00	4,000,000.00	32.68%
SERVICES - BUILDING AND CONSTRUCTION				
Fire service fee (pass through)	324,154.23	900,000.00	225,000.00	44.07%
Building permit and zoning fee	426,251.30	1,315,000.00	328,750.00	29.66%
Building inspections	405,296.25	856,000.00	214,000.00	89.39%
Private road - review/inspection	64,718.95	250,000.00	62,500.00	3.55%
Water and sewer - review/inspection	-	4,400.00	1,100.00	-100.00%
Mobile home placement tax (pass through)	19,357.75	74,000.00	18,500.00	4.64%
TOTAL SERVICES - BUILDING AND CONSTRUCTION	<u>1,239,778.48</u>	<u>3,399,400.00</u>	<u>849,850.00</u>	<u>45.88%</u>
SERVICES - GOVERNMENTAL FEES				
General government fee (911 system fee)	139,909.14	559,630.00	139,907.50	0.00%
Dog licensing	9,829.50	72,000.00	18,000.00	-45.39%
Other department fees	7,462.09	20,000.00	5,000.00	49.24%
TOTAL SERVICES - GOVERNMENTAL FEES	<u>157,200.73</u>	<u>651,630.00</u>	<u>162,907.50</u>	<u>-3.50%</u>
INTERGOVERNMENTAL				
Federal operating grants	10,333.44	178,850.00	44,712.50	-76.89%
State operating grants *	1,038,901.52	4,351,073.00	1,087,768.25	-4.49%
State capital grants	8,074.16	-	-	100.00%
Community development	4,804.00	1,856,300.00	464,075.00	-98.96%
TOTAL INTERGOVERNMENTAL	<u>1,062,113.12</u>	<u>6,386,223.00</u>	<u>1,596,555.75</u>	<u>-33.47%</u>
CONSTITUTIONAL OFFICES				
Clerk of the peace	89,087.50	115,000.00	28,750.00	209.87%
Recorder of deeds	947,466.26	3,370,000.00	842,500.00	12.46%
Register of wills	235,961.02	1,000,000.00	250,000.00	-5.62%
Sheriff	497,396.81	2,010,000.00	502,500.00	-1.02%
TOTAL CONSTITUTIONAL OFFICES	<u>1,769,911.59</u>	<u>6,495,000.00</u>	<u>1,623,750.00</u>	<u>9.00%</u>
RENT				
Airport fuel sales	-	17,000.00	4,250.00	-100.00%
Industrial airpark rent	165,947.04	411,032.00	102,758.00	61.49%
Land rent	1,446.67	3,710.00	927.50	55.98%
Emergency operations center (SUSCOM)	17,500.00	17,500.00	4,375.00	300.00%
Miscellaneous rentals	5,967.54	16,000.00	4,000.00	49.19%
TOTAL RENT	<u>190,861.25</u>	<u>465,242.00</u>	<u>116,310.50</u>	<u>64.10%</u>
MISCELLANEOUS				
Investment earnings	44,335.87	170,000.00	42,500.00	4.32%
Fines	6,793.44	24,000.00	6,000.00	13.22%
Prothonotary	1,650.93	2,000.00	500.00	230.19%
Project income - community development	292,517.21	-	-	100.00%
Other charges	51,126.78	192,340.00	48,085.00	6.33%
Appropriated project reserves	-	2,278,232.00	569,558.00	0.00%
TOTAL MISCELLANEOUS	<u>396,424.23</u>	<u>2,666,572.00</u>	<u>666,643.00</u>	<u>-40.53%</u>
Transfers in from sewer and water	-	300,000.00	75,000.00	-100.00%
TOTAL REVENUES	<u>\$ 13,566,934.91</u>	<u>\$ 50,136,848.00</u>	<u>\$ 12,534,212.00</u>	<u>8.24%</u>

* Accruals

Sussex County Council
Unaudited Revenue and Expense Report
As of September 30, 2013

	YTD Actual	Budgeted Amounts		% Over (Under) Budget YTD
		Annual	YTD	
EXPENDITURES				
General Government				
County council	\$ 113,265.41	\$ 502,368.00	\$ 125,592.00	-9.81%
County administration	163,998.45	2,881,559.00	720,389.75	-77.23%
Legal	64,386.39	335,000.00	83,750.00	-23.12%
Finance	513,994.38	1,822,808.00	455,702.00	12.79%
Assessment	335,314.29	1,403,250.00	350,812.50	-4.42%
Building code	128,672.96	620,243.00	155,060.75	-17.02%
Mapping	202,188.71	686,443.00	171,610.75	17.82%
Human resources	141,497.98	663,158.00	165,789.50	-14.65%
General employment and retirement	238,535.65	608,216.00	152,054.00	56.88%
Boards and Commissions	14,263.60	76,372.00	19,093.00	-25.29%
Building and grounds	268,760.23	1,343,246.00	335,811.50	-19.97%
Security	114,204.00	475,712.00	118,928.00	-3.97%
Data processing	93,094.97	340,982.00	85,245.50	9.21%
Information Technology	276,268.25	1,131,861.00	282,965.25	-2.37%
Constable	57,594.38	240,845.00	60,211.25	-4.35%
Constable - dog control	179,315.00	720,665.00	180,166.25	-0.47%
Grant-in-aid programs	1,832,403.75	7,329,615.00	1,832,403.75	0.00%
Planning and zoning	285,861.21	1,197,923.00	299,480.75	-4.55%
Paramedic	3,242,573.86	13,137,115.00	3,284,278.75	-1.27%
Emergency operations center administration	99,268.96	478,060.00	119,515.00	-16.94%
Emergency operations center dispatchers	515,727.87	2,017,436.00	504,359.00	2.25%
Communications	98,660.89	462,864.00	115,716.00	-14.74%
Local emergency plan program	20,666.41	80,640.00	20,160.00	2.51%
Economic development	24,419.23	109,691.00	27,422.75	-10.95%
Industrial airpark	140,691.00	512,440.00	128,110.00	9.82%
Community development	258,127.75	2,100,243.00	525,060.75	-50.84%
Engineering - administration	272,992.39	1,209,323.00	302,330.75	-9.70%
Engineering - public works	136,178.62	554,441.00	138,610.25	-1.75%
Engineering - solid waste	4,281.50	150,000.00	37,500.00	-88.58%
Records management	39,157.97	156,759.00	39,189.75	-0.08%
Library	948,461.94	3,884,601.00	971,150.25	-2.34%
Marriage Bureau	37,164.11	165,415.00	41,353.75	-10.13%
Recorder of deeds	251,091.71	1,125,127.00	281,281.75	-10.73%
Register of wills	108,181.56	481,485.00	120,371.25	-10.13%
Sheriff	148,650.05	630,942.00	157,735.50	-5.76%
Interfund transfers	125,000.00	500,000.00	125,000.00	0.00%
TOTAL EXPENDITURES	11,494,915.43	50,136,848.00	12,534,212.00	-8.29%
EXCESS (DEFICIT) OF REVENUES OVER EXPENDITURES	2,072,019.48	-	-	

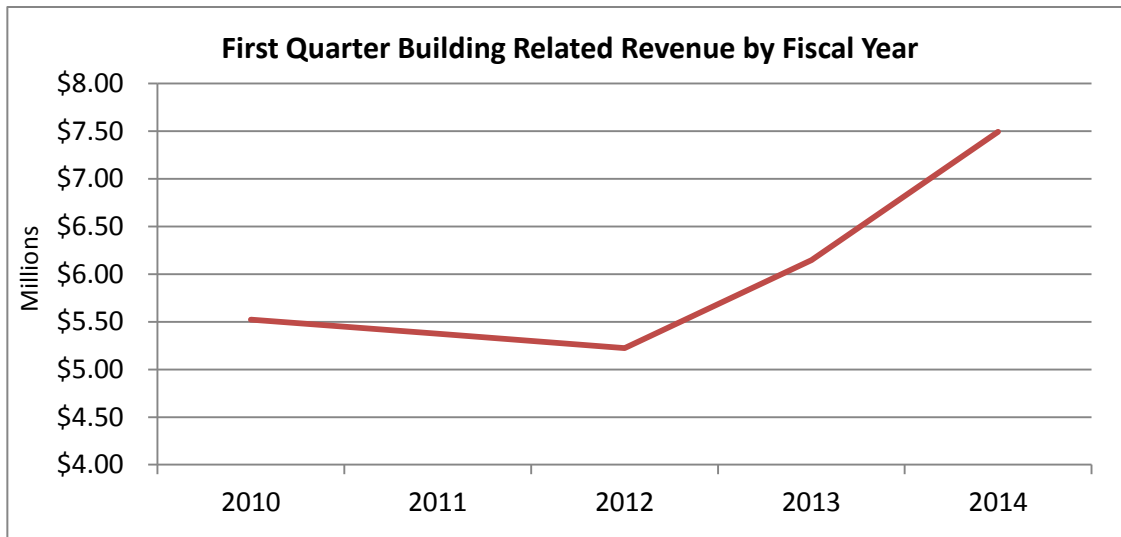
Note: This report has been prepared using the best available data. It is however, preliminary in nature and subject to change pending formal audit.

Sussex County Council
Unaudited Revenue and Expense Report
As of September 30, 2013

	<u>YTD Actual</u>	<u>Budgeted Amounts</u>		<u>% Over (Under) Budget YTD</u>
		<u>Annual</u>	<u>YTD</u>	
CAPITAL IMPROVEMENT REVENUES				
Federal airport grant	998,503.81	2,803,500.00	700,875.00	42.47%
State airport grant	-	155,750.00	38,937.50	-100.00%
State library grant	211,617.46	1,000,000.00	250,000.00	-15.35%
State paramedic grant	-	120,000.00	30,000.00	-100.00%
Reimbursements and refunds	224.78	-	-	100.00%
Investment earnings	25.11	14,000.00	3,500.00	-99.28%
Operating Transfers	125,000.00	500,000.00	125,000.00	
Appropriated reserves	-	5,279,770.00	1,319,942.50	-100.00%
TOTAL CAPITAL IMPROVEMENT REVENUES	<u>1,335,371.16</u>	<u>9,873,020.00</u>	<u>2,468,255.00</u>	<u>-45.90%</u>
CAPITAL IMPROVEMENT EXPENDITURES				
General government	199,115.02	1,186,000.00	296,500.00	-32.84%
Paramedics	1,909.98	400,000.00	100,000.00	-98.09%
Engineering	-	625,000.00	156,250.00	-100.00%
Library	351,328.23	2,246,370.00	561,592.50	-37.44%
Airpark	1,078,370.62	5,415,650.00	1,353,912.50	-20.35%
TOTAL CAPITAL IMPROVEMENT EXPENDITURE	<u>1,630,723.85</u>	<u>9,873,020.00</u>	<u>2,468,255.00</u>	<u>-33.93%</u>
EXCESS (DEFICIT) OF REVENUES OVER EXPENDITURES	<u>(295,352.69)</u>	<u>-</u>	<u>-</u>	

First Quarter Building Related Revenue by Fiscal Year

Building Related Revenue	2010	2011	2012	2013	2014
Building inspections	\$ 242,893.56	\$ 206,962.64	\$ 133,921.06	\$ 221,139.64	\$ 405,296.25
Building permit and zoning fee	319,506.82	283,736.42	311,960.39	312,971.09	426,251.30
Fire service fee (pass through)	232,212.78	193,541.76	217,633.90	224,107.93	324,154.23
Mobile home placement tax (pass through)	33,705.87	18,200.75	18,685.21	13,827.67	19,357.75
Private road - review/inspection	63,016.75	66,192.69	30,066.20	144,239.27	64,718.95
Recorder of Deeds	900,895.34	768,966.63	710,820.50	930,075.86	947,466.26
	1,792,231.12	1,537,600.89	1,423,087.26	1,846,361.46	2,187,244.74
Realty Transfer Tax	3,732,082.39	3,836,735.75	3,800,778.24	4,301,059.50	5,307,355.69
Total Building Related Revenue	\$ 5,524,313.51	\$ 5,374,336.64	\$ 5,223,865.50	\$ 6,147,420.96	\$ 7,494,600.43



Revenue	Percent increase over Previous Year
Building inspections	83%
Building permit and zoning fee	36%
Fire service fee	45%
Mobile home placement tax	40%
Private road - review/inspection	-55%
Recorder of Deeds	2%
Realty Transfer Tax	23%
Total	22%

Total Dwelling Permits Issued through November 4th

	2011	2012	2013
Dwelling Permits	468	535	710
Percent increase over the previous year		14%	33%

PUBLIC HEARINGS
November 19, 2013

This is to certify that on November 14, 2013 the Sussex County Planning and Zoning Commission conducted a public hearing on the below listed Ordinance Amendments. At the conclusion of the public hearings, the Commission moved and passed that the Ordinance Amendments be forwarded to the Sussex County Council with the recommendations as stated.

Respectfully submitted:

COUNTY PLANNING AND ZONING
COMMISSION OF SUSSEX COUNTY

Lawrence B. Lank
Director of Planning and Zoning

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

AN ORDINANCE TO AMEND CHAPTER 115, ARTICLE XXV, SUBSECTION 115-179b OF THE CODE OF SUSSEX COUNTY, ENTITLED “HEIGHT REGULATIONS” IN REGARD TO THE HEIGHT OF CERTAIN BUILDINGS.

Mr. Lank advised the Commission that this Ordinance modifies Section 115-179B of the Sussex County Code to only allow governmental buildings, hospitals, institutions and schools to be built to a maximum height of 60 feet when those structures are permitted in the underlying zoning district. Churches and Temples are unaffected by this amendment. It applies to any new buildings not currently approved with a valid Sussex County building permit.

Mr. Lank advised the Commission that a memorandum was received from Michael Izzo, County Engineer, referencing that in commercial zoning, where the greater height limit will come into play, the Engineering Department has planned for 12 EDUs per acre; that as long as any land-use plan does not exceed this density, a negative impact on our sewer planning will not be realized; that the most current example of this type of development, the Colonial Oaks Motel did not exceed the 12-units per acre designation, and a statement of “no objection” was submitted by their Department; and that they will continue to review each application on a case by case basis.

Mr. Lank advised the Commission that a memorandum was received on October 14, 2013 from Diane Hanson, Mayor of Dewey Beach, in opposition to the false interpretation that public or semi-public buildings can now be built to 60’ in the County and requesting that the option of a moratorium on any building currently planning to build to 60’ and a clarifying ordinance to clarify the past history of the height limit and its original intent be investigated; that knowing that the Town of Dewey Beach held a referendum vote on the height of 35’ in 2008 and that 86%

of those who voted supported this height limit be maintained, she is certain that the vast majority of people in Dewey Beach would also support that position; that the history of Sussex County has been that the height limit was 42' and all developers had abided by that rule until recently; that it is unconscionable that this change was allowed to happen without any public knowledge or input; that, as mayor, she had no knowledge of this change until she read it in an editorial; that such a major change in building height, especially along Route One, will bring total grid lock to our area; that traffic is not only an inconvenience, it is a major safety issue as the traffic can slow down ambulances, fire trucks, police and other emergency vehicles from attending to emergencies promptly; that as individual towns we can control the height of buildings within our borders, but are not able to control such a major impact on our quality of life without the support of our County Council and government.

Mr. Lank advised the Commission that a letter was received on October 15, 2013 from Fernmoor Homes, aka Fernmoor Holdings at Vineyards DE Limited Liability Company, the ground tenant since October 2011 of the Vineyards at Nassau Valley; that Fernmoor respectfully requests that either: (a) the ordinance being considered for action be revised to permit those projects which receipted concept or preliminary approvals, and constructed buildings relying on the current ordinance, be allowed to continue development under the existing ordinance, or (b) the introduction of the ordinance be delayed so that interested parties, such as Fernmoor, which will bear the brunt of such a change, be permitted to have adequate time to present information regarding the negative impact of such a change; that when considering the acquisition of its leasehold interest in the Vineyards, Fernmoor took into account many factors, including most importantly, the projects approval status and what the approvals permit to be built; that a key factor in analyzing the financial viability of this project was the continued ability to construct mixed-use buildings with a maximum height of 60', which is the regulation utilized to construct the buildings that were in place in 2011; that those existing buildings were based on the approvals that dated back to 2002 and continue to exist today; that based on this understanding, Fernmoor made a significant investment at the Vineyards; and that they oppose any moratorium.

Mr. Robertson advised the Commission that during the County Council discussion on the height questions, there was some thought to create a moratorium, but one was not imposed; that there has not been any changes in the Code about height and that the 60 foot limit is based on the Code; that the Code refers to a 42 foot height limit throughout the districts, but separately the Supplementary Conditions of the Code establish a 60 foot height limit; that Subsection 115-179B of the Code states that "Except within an area defined as an airport approach zone by the Federal Aviation Administration, public and semipublic or public service buildings, hospitals, institutions or schools, when permitted in a district, may be erected to a height not exceeding 60 feet and churches and temples may be erected to a height not exceeding 75 feet when the required side and rear yards are each increased by at least one foot for each one foot of additional building height above the height regulations for the district in which the building is located."; that the wording goes back to the original Comprehensive Zoning Ordinance; that the definition of "public" in the Code is referenced as "open to common use, whether or not public ownership is involved." And that has a broad meaning and can include a variety of uses where the public is invited, including hotels, restaurants, shopping areas, etc.; that public/semipublic uses are referenced elsewhere in the Code including the standards for granting Conditional Uses; that

many commercial and business type enterprises have been approved based upon their classification as “public or semi-public uses” by the County; that examples even include Conditional Uses for borrow pits since they provide services and materials to the public or for public projects; that the County Council has proposed to change the Code to read “Except within an area defined as an airport approach zone by the Federal Aviation Administration, buildings owned by a political subdivision of the State of Delaware, the Federal Government or any agency thereof, hospitals, institutions or schools, when permitted in a district, may be erected to a height not exceed 60 feet and churches and temples may be erected to a height not exceed 75 feet when the required side and rear yards are each increased by at least one foot for each one foot of additional building height above the height regulations for the district in which the building is located.”; that if the Code is amended as proposed, an applicant will still be able to make application for a variance in the height for review by the Board of Adjustment; that the RPC Residential Planned Community regulations in the Code still allow for adjustments to the height of buildings in RPC project when creating a superior living environment by using design ingenuity; and that the use applied for has to be a permitted use in the particular zoning district.

The Commission discussed the proposed ordinance amendment and some of the comments from the Commission members included: that buildings 60 feet tall have more recently become attractive for construction consideration by developers; that there is a mechanism for consideration of increased height through the Board of Adjustment; that there is not a loop-hole in the Code to allow buildings to be built to 60 feet; that the referenced section of the Code just has not been utilized; questioning how the height of a building will impact public sewer; questioning uses v. measurements in reference to Equivalent Dwelling Units; questioning why a 60 foot motel creates such controversy; that there may be a better solution, but has not yet been determined; that further study may be necessary; that the most floors in a 60 foot tall building will be a tight six (6) floors; that there are a lot of cost issues for increased height; that a 60 foot height might help reduce sprawl; that the County should take a more comprehensive look at the issue, including appropriate locations for taller buildings, separation from roadways and waterways and other factors; and that more time might be necessary prior to making a recommendation on this ordinance amendment.

The Commission found that there were no parties present in support of or in opposition to this ordinance amendment.

At the conclusion of the public hearings the Commission discussed this ordinance amendment.

Mr. Wheatley questioned if a workshop of the Commission and the County Council would be appropriate.

Motion by Mr. Ross, seconded by Mr. Johnson, and carried unanimously to defer action for further consideration.

AN ORDINANCE TO AMEND CHAPTER 99 OF THE CODE OF SUSSEX COUNTY, ENTITLED “SUBDIVISION OF LAND” IN ORDER TO EXTEND THE TIMEFRAME IN WHICH LANDOWNERS MAY PERFORM SITE WORK OR CONSTRUCT CERTAIN IMPROVEMENTS WITHOUT POSTING A BOND OR PERFORMANCE GUARANTY.

Mr. Lank advised the Commission that this ordinance modifies Section 99-32 of the Sussex County Code in order to extend the time period to January 1, 2015 in which landowners may perform site work and construct certain improvements without posting a bond or other guaranty, subject to the conditions contained in the amendment.

Mr. Robertson advised that Commission that this proposed ordinance amendment is fairly straight forward; that the County allows site work without bonding; that in a No-Bond project no building permits are issued and no lots can be sold until the work is completed or a bonding method is in place; that the process has been in place and had a dead-end date of December 2013; that it is the intent of the amendment to allow the process to continue for one additional year; and that the process has worked fairly well.

The Commission found that there were no parties present in support of or in opposition to this ordinance amendment.

At the conclusion of the public hearings, the Commission discussed this ordinance amendment.

Motion by Mr. Johnson, seconded by Mr. Smith, and carried unanimously to recommend approval of this ordinance amendment with a further recommendation that the time frame be extended to January 1, 2016, in order to match the current time extension ordinance (which relates to Subdivisions, Residential Planned Communities, and Conditional Uses). Motion carried 5 – 0.

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

Mr. Lank advised the Commission that this ordinance modifies Section 90-8 and 99-32 of the Sussex County Code in order to remove the provision that Sussex County will require bonding and guaranties for surface drainage facilities and erosion and sedimentation control facilities required by the Sussex Conservation District.

Mr. Robertson advised the Commission that the County has been holding bonds for the Sussex Conservation District (District) for years; that the District is now setting up to do their own bonds for work that they inspect and have jurisdiction over; that questions have been raised for some time as to why the County is holding bonds for the District; that legally, the County should not be holding bonds for other agencies’ work; and that under the current process, it is likely that a bonding company may not honor the bond held by the County for another agencies’ work.

During the Commissions discussion, there were some concerns expressed about the percentage of the bonding amount that may be imposed by the District; that the County requires 125%; and that it is rumored that the District may require 150%.

Mr. Robertson responded by stating regardless of cost, the County should not legally be holding a bond for the work required, regulated, inspected, and approved by another agency separate from the County.

The Commission found that there were no parties present in support of or in opposition to this ordinance amendment.

At the conclusion of the public hearings, the Commission discussed this ordinance amendment.

Motion by Mr. Johnson, seconded by Mr. Burton, and carried unanimously to approve this ordinance amendment as circulated. Motion carried 5 – 0.

GRIFFIN & HACKETT, P.A.
ATTORNEYS AT LAW

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MEMORANDUM

TO: Sussex County Council

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

RE: Zoning Code Height Limits

DATE: October 3, 2013

As you know, Sussex County's Height Limit has recently received attention in the local media. For that reason, I have been asked to provide an explanation of what the County's Code says with regard to height.

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

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

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

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

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

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

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

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

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

VGR:ssj

Privileged & Confidential

MEMORANDUM

TO: COUNTY ADMINISTRATOR
Todd F. Lawson

FROM: ASSISTANT COUNTY ATTORNEY
David N. Rutt

RE: Height Restrictions in *Sussex County Code*

DATE: October 11, 2013

Background

Sussex County Council, pursuant to its authority granted in Delaware Code, Title 9, Chapters 68 and 69, regulates zoning in the unincorporated portion of Sussex County. Sussex County Code ("County Code"), provides limitations on the maximum height of buildings and structures within certain zoning districts. The zoning districts typically set the maximum height at forty-two (42) feet. However, Article XXV ("Supplementary Regulations"), Section 115-179 ("Height Regulations") of the County Code provides that "public and semipublic or public service buildings, hospitals, institutions or schools, when permitted in a district, may be erected to a height not exceeding 60 feet." The definition of "public" set forth in County Code Section 115-4 is broadly stated: "open to common use-, whether or not public ownership is involved."

County Council desires to narrow the exception for buildings subject to the maximum of sixty (60) feet by excluding public, semipublic, and public service buildings, as currently defined. County Council has requested guidance regarding the procedures necessary to institute a moratorium and/or amendatory ordinance to enact such a change to the zoning regulations.

Issue

The issue is whether Council should adopt an ordinance to amend the height restrictions in the County Code or adopt a moratorium until a Code amendment can be made effective, or some combination thereof.

Brief Summary of Conclusion

Provided that Sussex County complies with procedural requirements set forth in Title 9, Chapters 69 and 70 of the Delaware Code, Sussex County may either adopt a moratorium ordinance or an ordinance to amend the height restrictions. It is recommended that County Council proceed to adopt the amendatory ordinance, as it would be the more efficient method.

Analysis

1. The Requirements to Enact a Change to the Zoning Regulations Are Contained in Chapters 69 and 70 of the Delaware Code.

Delaware Code states that "changes" to "any other provision of any zoning regulation" must be submitted to the Planning and Zoning Commission. 9 Del. C. §6911. Height restrictions are clearly considered zoning regulations under the State Code, as referenced in Chapter 69 entitled "Zoning," 9 Del. C. §6902, which states that the County government may "...regulate the location, height, bulk and size of buildings and other structures,..." [emphasis added]. The requirements to enact a change to the zoning regulations are mostly contained in 9 Del. C. §7002(m) and 9 Del. C. §6911 and can be generally summarized as follows:

- 1) Introduction of ordinance at regular or special meeting of Council;
- 2) Distribution of copies of ordinance;
- 3) Publication of ordinance or title in two newspapers of general circulation and posting of notice on property;
- 4) Submission to Planning and Zoning Commission, which schedules a public hearing after additional public notice;
- 5) Notice of public hearing;
- 6) Public hearing during County Council meeting; and
- 7) Vote by Council to adopt or reject ordinance.

Please note that Delaware Code also contains abbreviated procedures for emergency ordinances affecting life, health, property, or the public peace, but these procedures are likely inapplicable in these circumstances where the subject language has been in the County Code for more than twenty (20) years.

2. A Moratorium May Be Enacted by an Ordinance that Follows Applicable State Code Procedures for Zoning Regulation Modifications.

State courts across the country vary in their analysis of the necessary procedures to enact a moratorium. The treatise, *Rathkopf's The Law of Zoning and Planning* acknowledges this:

“An important issue with respect to the validity of interim zoning and building moratoria is whether these temporary measures must be enacted pursuant to the notice and hearing procedures set out in zoning-enabling statutes. A number of state courts have exempted interim measures from the procedural requirements applicable to ordinary zoning ordinances. However, in many states, courts have held interim zoning and stop-gap ordinances invalid as a result of procedural defects in adoption of these measures.” *Rathkopf’s The Law of Zoning and Planning* § 13:12 (4th ed.).

Although many states have adopted varying conclusions regarding this issue, Delaware courts have not yet definitively settled how the issue will be handled in Delaware. In the recent case of *Upfront Enterprises, LLC v. The Kent County Levy Court*, Kent County enacted an ordinance to impose a moratorium on the acceptance of certain land use applications without first submitting the ordinance to its planning commission, and the court held that the ordinance was void *ab initio*. 2007 WL 1862709 (Del. Ch. at *4) (as clarified by 2009 WL 1531576 (Del. Ch. at *2)). In reaching this result, the court focused on the question of whether the ordinance was considered a change to a zoning regulation pursuant to 9 Del. C. § 4911, which is a nearly exact reproduction of the Code Section applicable to Sussex County, 9 Del. C. § 6911. *Id.* 9 Del. C. § 4911 states the following:

"9 Del. C. § 4911. Changes in zoning district; map or regulations; procedure.

(a) The county government may, from time to time, make amendments, supplements, changes or modifications (herein called "changes") in accordance with the comprehensive development plan with respect to the number, shape, boundary or area of any district or districts, or any regulation of, or within, such district or districts, or any other provision of any zoning regulation or regulations, but no such changes shall be made or become effective until the same shall have been proposed by or be first submitted to the Zoning Commission."

However, the court specifically refused to address whether a moratorium may be enacted administratively, calling it an “interesting question, which need not be resolved now.” 2007 WL 1862709 (Del. Ch. at *2). The court further expands on its refusal to address the underlying authority for a moratorium:

“[T]he present debate is not over the source of the County’s power to enact the Ordinance; the question, instead, turns on whether the ordinance causes a change in a County zoning regulation. Regardless of whether the Ordinance is based upon the delegated zoning power or on the separately delegated police powers, this Court still, as a matter of applying 9 Del. C. § 4911, must determine if the Ordinance caused a change to a zoning regulation. The debate about the source of authority, while interesting and perhaps important in a different context, is of no help in resolving the question precisely framed for the Court.” *Id.* at *3.

Other than clarifying that an ordinance that causes a “change...to any provision of any zoning regulation” requires the consideration of the planning commission, *Upfront Enterprises* does not shed light on other methods for the proper enactment of a moratorium.

The *Upfront Enterprises* case is definitive that an ordinance for a moratorium may pass muster if it follows the State Code’s procedural requirements, including submission to the planning commission. Therefore, my recommendation is to enact an ordinance, either an amendatory or moratorium ordinance, in compliance with the procedures set forth above in Section 1 of this Memorandum. Since an amendatory ordinance would take the same amount of time and process as a moratorium ordinance, it is recommended to begin the process of adoption of the amendment to the Code.

3. Delaware Caselaw Makes Limited Reference to a Moratorium via County Council Motion.

Interestingly, in one earlier Delaware case, *Glassco v. County Council of Sussex County*, opponents to a rezoning argued that Sussex County Council could not rezone a property due to an earlier moratorium enacted by Council via motion (or perhaps via resolution, as the court uses the terms interchangeably). 1993 WL 50287 (Del. Ch. at *4). The court discusses a moratorium enacted by a motion at a County Council meeting in 1985, stating as follows:

“In my opinion, one Council may not legally bind a later Council by a self-proclaimed moratorium to refrain from the exercise of a statutorily granted power. It may announce its own policy by that method and fairness among applicants requires it to apply that policy rationally, while it obtains.” [emphasis added]

However, the court’s approbation of County Council’s ability to bind itself (but not future Councils) to a moratorium by motion is not part of the holding of the case; the court does not rely on this reasoning in its decision, stating that “I need not base my decision on this point, however, as I conclude as a matter of fact the record establishes that Council did enact the December 1986 resolution...” Although the *Glassco* case provides some arguable basis to enact a moratorium by motion, a moratorium by motion is not my primary recommendation. We can discuss this issue in more detail at your convenience.

In sum, the County’s strongest legal position is to follow the statutory procedures to enact a change to a zoning regulation. It is then more efficient to proceed to enact the amendatory ordinance directly, since the process for a moratorium ordinance and amendatory ordinance would be subject to the same procedures.

Please do not hesitate to contact me with additional questions regarding this matter.

ORDINANCE NO. ____

AN ORDINANCE TO AMEND CHAPTER 115, ARTICLE XXV, SECTION 115-179B OF THE CODE OF SUSSEX COUNTY, ENTITLED "HEIGHT REGULATIONS" IN REGARD TO THE HEIGHT OF CERTAIN BUILDINGS.

WHEREAS, Sussex County Code, Chapter 115, Article XXV, Section 115-179B currently permits (except in airport approach zones defined by the FAA) "public and semi-public, or public service buildings, hospitals, institutions and schools, when permitted in a district" to be constructed to a height not exceeding 60 feet; and

WHEREAS, Sussex County Code, Chapter 115, Article I, Section 115-4 defines "Public" as merely "open to common use- whether or not public ownership is involved" and said definition is very broad and would apply to many different types of buildings where the public is invited when applied to Section 115-179B of the Sussex County Zoning Code; and

WHEREAS, Sussex County Council desires to amend the Sussex County Code, specifically Section 115-179B thereof, to state that only government buildings, hospitals, institutions and schools may be constructed to a height of 60 feet when those uses are permitted in a district and are not located in an airport approach zone.

NOW, THEREFORE, THE COUNTY OF SUSSEX HEREBY ORDAINS:

Section 1. The Code of Sussex County is hereby amended by deleting the phrase "public and semi-public, or public service buildings" from Section 115-179B as shown in brackets and adding the phrase "buildings owned by a political subdivision of the State of Delaware, the Federal Government or any agency thereof" as shown underlined:

§ 115-179. Height Regulations.

B. Except within an area defined as an airport approach zone by the Federal Aviation Administration, [public and semipublic or public service buildings,] buildings owned by a political subdivision of the State of Delaware, the Federal Government or any agency thereof, hospitals, institutions or schools, when permitted in a district, may be erected to a height not exceeding 60 feet and churches and temples may be erected to a height not exceeding 75 feet when

the required side and rear yards are each increased by at least one foot for each one foot of additional building height above the height regulations for the district in which the building is located.

Section 2. This Ordinance shall take effect upon its adoption by Sussex County Council. It shall not apply to any structures or buildings exceeding 42 feet that have a valid Building Permit issued by Sussex County prior to the adoption of this Ordinance.

Synopsis

This Ordinance modifies Section 115-179B of the Sussex County Zoning Code to only allow government buildings, hospitals, institutions and schools to be built to a maximum height of 60 feet when those structures are permitted in the underlying zoning district. Churches and Temples are unaffected by this amendment. It applies to any new building not currently approved with a valid Sussex County Building Permit.

Deleted text is shown in brackets, additional text is underlined.


TODD F. LAWSON
COUNTY ADMINISTRATOR
(302) 855-7742 T
(302) 855-7749 F
tlawson@sussexcountyde.gov



Sussex County
DELAWARE
sussexcountyde.gov

Memorandum

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

FROM: Todd F. Lawson
County Administrator 

RE: **COUNTY BOND REQUIREMENTS**

DATE: November 15, 2013

As you are aware, County staff has been working on a variety of issues relating to the Sussex County Bonding Requirements and Process for Chapter 99 Improvements. Please allow this memo to provide you an update on the work conducted to date and background information for the upcoming public hearings.

BACKGROUND

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

I. Sussex Conservation District Bond Requirements

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



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

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

A memorandum prepared by County Attorney David Rutt provides further detail into the legal liability the current situation places the County (*see attachment 2*). To effectuate the necessary changes, Chapters 90 and 99 of the County Code will need to be amended. A copy of the proposed Ordinance is attached (*see attachment 3*).

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

II. “No Bond” Requirements

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

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

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

CONCLUSION

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

TFL/sww

Attachments

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

Mr. David Baird, Sussex Conservation District



Sussex Conservation District Financial Guarantee Policy for Sediment and Stormwater Improvements

SCD Policy No. 2013-XX

DRAFT—June 5, 2013

1. PURPOSE

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

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

2. APPLICABILITY

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

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

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

3. APPLICATION PROCESS

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

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

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

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

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

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

4. MODIFICATION/RENEWAL/RELEASE OF SECURITY

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

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

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

5. COORDINATION WITH SUSSEX COUNTY & MUNICIPAL JURISDICTIONS

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

Agreement No: _____
Agreement Name: _____

AGREEMENT

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

- AND -

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

RECITALS

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

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

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

WHEREFORE

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

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

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

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

Agreement No: _____
Agreement Name: _____

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

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

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

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

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

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

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

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

Agreement No: _____
Agreement Name: _____

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

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

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

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

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

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

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

Agreement No: _____
Agreement Name: _____

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

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

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

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

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

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

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

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

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

Agreement No: _____
Agreement Name: _____

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

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

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

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

Witness:

The Sussex Conservation District

By: _____

(SEAL)
By: David Baird, District Coordinator

Witness:

(DEVELOPER)

By: _____

(SEAL)
By:

[NAME AND ADDRESS OF ISSUER]

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

RE: IRREVOCABLE COMMERCIAL LETTER OF CREDIT NO.

AGREEMENT NO. _____

AGREEMENT NAME: _____

To Whom it May Concern:

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

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

1. Effective Date: _____

2. Expiration Date: _____

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

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

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

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

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

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

Very truly yours,

Witness

Bank

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

PERFORMANCE CASH BOND

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

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

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

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

1. This Bond shall remain in full force and effect until such time as all improvements covered by the Bond have been constructed and approved by the District.
2. The amount of the Bond shall, at all relevant times, be sufficient to secure provision of the improvements called for by the Agreement that have not yet been constructed and approved by the District.
3. This Bond shall not be subject to cancellation by the Principal for any reason until such time as all improvements subject to the Bond have been constructed and approved by the District. Written notice of completion of the improvements shall be provided by the District upon full completion and approval thereof.
4. This Bond shall be continuous in form and shall remain in full force and effect until such time as all the improvements subject to the Bond have been constructed and approved by the District. Provided the Principal is not in default of its obligations under the Agreement, upon construction and approval of all improvements by the District, this Bond shall then be released.

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

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

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

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

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

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

[SIGNATURE PAGE TO FOLLOW]

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

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

SIGNED, SEALED AND DELIVERED IN THE PRESENCE OF: _____

DEVELOPER
Corporate Seal

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

Print Name: _____

Title: _____

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

PERFORMANCE SURETY BOND

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

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

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

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

1. This Bond shall remain in full force and effect until such time as all improvements covered by the Bond have been constructed and approved by the District.
2. The amount of the Bond shall, at all relevant times, be sufficient to secure provision of the improvements called for by the Agreement that have not yet been constructed and approved by the District.
3. This Bond shall not be subject to cancellation either by the Principal or by the Surety for any reason until such time as all improvements subject to the Bond have been constructed and approved by the District. Written notice of completion of the improvements shall be provided by the District upon full completion and approval thereof.
4. This Bond shall be continuous in form and shall remain in full force and effect until such time as all the improvements subject to the Bond have been constructed and approved by the

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

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

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

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

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

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

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

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

[SIGNATURE PAGE TO FOLLOW]

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

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

SIGNED, SEALED AND DELIVERED IN THE PRESENCE OF:

DEVELOPER
Corporate Seal

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

SURETY
Corporate Seal

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

MOORE & RUTT, P.A.

ATTORNEYS AT LAW

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

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

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

Reply To _____ Georgetown
_____ Milford

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

MEMORANDUM

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

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

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

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

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

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

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

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

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

ORDINANCE NO. __

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

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

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

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

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

NOW THEREFORE, THE COUNTY OF SUSSEX HEREBY ORDAINS:

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

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

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

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

§99-32. Bonds and guaranties.

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

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

Synopsis

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

Deleted text is shown in brackets.

ORDINANCE NO. __

AN ORDINANCE TO AMEND CHAPTER 99 OF THE CODE OF SUSSEX COUNTY, ENTITLED "SUBDIVISION OF LAND" IN ORDER TO EXTEND THE TIMEFRAME IN WHICH LANDOWNERS MAY PERFORM SITE WORK OR CONSTRUCT CERTAIN IMPROVEMENTS WITHOUT POSTING A BOND OR PERFORMANCE GUARANTY.

WHEREAS, Sussex County Code currently allows landowners to perform site work and make certain improvements without posting a bond or other guaranty until January 10, 2014, and at such time, the provisions related thereto shall automatically sunset and expire; and

WHEREAS, Sussex County Code permits the above-referenced work to occur without posting a bond or other guaranty, provided that no lots shall be transferred and no residential building permits or zoning permits shall be issued until the work is completed or a bond or other performance guaranty is provided to Sussex County; and

WHEREAS, Sussex County Council desires to amend the Sussex County Code to extend the time period to January 1, 2015 in which landowners may perform site work or construct certain improvements without posting a bond or performance guaranty subject to the conditions contained therein.

NOW THEREFORE, THE COUNTY OF SUSSEX HEREBY ORDAINS:

Section 1. The Code of Sussex County is hereby amended by deleting the bracketed language in the current Section 99-32 and inserting the underlined language as follows:

D. Notwithstanding the preceding subsections of this section, no performance bond or other guaranty shall be required for improvements required by the application of this chapter upon lands owned by the party seeking to construct the improvements; provided, however, that no lots shall be sold or transferred and no residential building permits or zoning permits shall be issued until: (1) all required improvements are constructed and receive substantial completion; or (2) a bond or guaranty is posted in accordance with Subsections A, B and C of this section. In the event no bond or performance guaranty is provided, a notice in the form acceptable to the County Attorney shall be recorded in the office of the Recorder of Deeds putting the public on notice that no transfer or sale of lots is permitted in the development until such bond or other guaranty is provided as required by this section. This Subsection D of § 99-32 of Chapter 99 of the Code of Sussex County shall automatically sunset and expire [two years from the date of its adoption] on January 1, 2015.

Section 2. This Ordinance shall become effective upon its adoption.

Synopsis

This Ordinance modifies Section 99-32 of the Sussex County Code in order to extend the time period to January 1, 2015 in which landowners may perform site work and construct certain improvements without posting a bond or other guaranty, subject to the conditions contained therein.

Deleted text is shown in brackets. Additional text is underlined.



clear space productions

www.ClearSpaceTheatre.org
info@ClearSpaceTheatre.org

**Artistic endeavors of
integrity and risk**

P.O. BOX 304
Rehoboth Beach
Delaware, 19971

Main Office Phone
302.227.2270
Main Office Fax
302.227.2269
ENCORE Thrift Shop
Phone/Fax
302.645.1676

Wesley Paulson
Executive Director

Doug Yetter
Artistic Director

October 31, 2013

Councilmember Joan Deaver
Sussex County Council
P. O. Box 589
Georgetown, DE 19947

Dear Councilmember Deaver:

The Clear Space Theatre Company, founded in 2004, is a 501(c)3 cultural organization located at 20 Baltimore Ave. in Rehoboth. It is comprised of a remarkable team of full time, part-time and volunteer administrators, artists and educators.

There are 3 facets to Clear Space: the Acting Company, a professional acting company producing dozens of performances each season; the Arts Institute, an educational program offering classes to more than 700 students each season; and On Tour, which makes community presentations throughout Delaware using professional actors and outstanding students in its performances.

Each year, the Acting Company provides approximately 150 professional theatre performances. The talented casts, often times utilizing students from the Arts Institute, performed for more than 23,000 theatre goers in 2013 at the theatre house in Rehoboth, or through ongoing partnerships at the Schwartz Center for the Arts in Dover and the Freeman Stage in Fenwick Island. The outreach on the Eastern Shore is tremendous, both as superb entertainment that most often receives standing ovations, but also as an educational tool for youth and adults alike. Just last year, one of our graduating students was accepted into the Julliard School for the Performing Arts in New York City, and he returned this summer to perform, giving back some of his talent to the community in which he grew up.

Clear Space Theatre Company raises 47% of its current budget through earned income (ticket sales, contracts, and tuitions), but 53% must be raised through contributions from donors, including individuals, local businesses, grants, local government sources and the Encore thrift store. It is critical that Clear Space reach out to the community for support to keep these great artistic shows alive for residents and visitors. Our audiences are growing each year, and we want to continue to entertain and educate for many years to come.

With that in mind, Clear Space would like to request a grant in the amount of \$1,500 from the Sussex County Council to help us end this year successfully, so that we can move into the next year confident that we will be able to continue providing outstanding performances to a growing number of patrons. Your contribution will be recognized on our theatre screen as one of the donors that keeps Clear Space alive in the community. Thank you.

Sincerely,

Wesley Paulson

Wesley Paulson
Executive Director

TOWN OF OCEAN VIEW

201 CENTRAL AVE, 2ND FLOOR
OCEAN VIEW, DE 19970

November 7, 2013

Sussex County Council
Attn: George Cole
P.O. Box 589
Georgetown, DE 19947

Dear Mr. Cole,

I am writing to see if the Sussex County Council would be interested in providing a sponsorship for the 2014 Homecoming Event scheduled to be held on Saturday, May 10, 2014 in John West Park located at 32 West Avenue, Ocean View, DE.

“Homecoming” is a century old tradition held every May in the Town of Ocean View to welcome back the summer residents. This event would not be possible without the generous support from our local business partners and other organizations.

Your generous sponsorship would be highlighted in announcements to the community, during the introduction at the event itself and in articles about the event published in the newspapers. You and any other members of the Council would be most welcome to attend so that we could thank you personally for your support. A table, two chairs and two parking spaces would be made available should members of the Council wish to attend the event.

I would be most appreciative of a telephone call to let me know of your interest. My telephone number is 302-539-9797, ext. 104. I look forward to hearing from you.

Thank you for considering this request. A sponsorship form has been enclosed for your convenience.

Sincerely yours,

Dianne L. Vogel
Town Manager
Town of Ocean View



November 1, 2013

Councilman George Cole
P.O. Box 589
Georgetown, DE 19947

Dear Councilman Cole, *George,*

I want to thank you for the past support we have received from the Sussex County Council. Your generosity to the Rehoboth Beach Historical Society has helped in achieving our goal to preserve the character of the community. Here are some of this year's achievements:

- This year's exhibit, Beach Eats! and its programs drew a record number of visitors. We had to turn people away for some of our lectures due to lack of space.
- We recently received a grant from Discover Bank to conduct Lego Robotics programs in local low-income communities.
- The alumni of Rehoboth High School have raised over \$30,000 toward the installation of an elevator, which will allow us to move to the second floor and expand our exhibits.

We have begun conversations with donors and foundations to complete the second floor and are finalizing construction drawings to maximize the use of space.

I write now to ask that you renew your support of the Rehoboth Beach Historical Society. I know that funds are extremely limited in the current economic climate. However, a Councilmanic grant of \$5,000 again this year would certainly be appreciated.

As always, you have a personal invitation to tour the Museum and I would be happy to host your family. Please call me at (302) 430-8484 if you have any questions.

Sincerely,


Paul Kuhns
President

*THANK YOU SO MUCH
FOR YOUR CONTINUOUS
SUPPORT.*

A Project of the Rehoboth Beach Historical Society
511 Rehoboth Avenue, Rehoboth Beach, DE 19971

(302)227-7310

rbhistoricalsociety@verizon.net

PUBLIC HEARINGS
November 19, 2013

This is to certify that on October 10, 2013 the Sussex County Planning and Zoning Commission conducted public hearings on the below listed applications for Conditional Use and Change of Zone. At the conclusion of the public hearings, the Commission moved and passed that the applications be forwarded to the Sussex County Council with the recommendations as stated.

Respectfully submitted:

COUNTY PLANNING AND ZONING
COMMISSION OF SUSSEX COUNTY

Lawrence B. Lank
Director of Planning and Zoning

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

CONDITIONAL USE #1970 – MATTHEW A. CARR

Application of **MATTHEW A. CARR** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for an auto repair shop to be located on a certain parcel of land lying and being in Georgetown Hundred, Sussex County, containing 1.033 acres, more or less, lying east of Sand Hill Road (Road 319) and 0.3 mile south of Wilson Road (Road 244)(Tax Map I.D. 1-35-10.00-56.03).

The Commission found that the Applicant provided a survey of the site depicting the location of an existing metal building and approved driveway location.

The Commission found that DelDOT provided comments in the form of a memorandum, dated July 23, 2013, which references that a traffic impact study is not recommended and that the current Level of Service “B” of Sandhill Road will not change as a result of this application.

The Commission found that the Sussex County Engineering Department Utility Planning Division provided comments in the form of a memorandum, dated October 7, 2013, which references that the site is located in the North Coastal Planning Area; that an on-site septic system is proposed; that conformity to the North Coastal Planning Study will be required; that the proposed use is not in an area where the County currently has a schedule to provide sewer service; and that a concept plan is not required.

The Commission found that a petition, containing three signatures, was received on October 8, 2013 in opposition to this application and referenced that the opposition is concerned that the land is currently zoned AR-1 Agricultural Residential; that the parcel is surrounded by farmed land, family homes, and parceled lots; that a change to permit an auto repair shop would adversely impact the adjacent properties as well as the entire area; that the use is an inappropriate use of land in an Agricultural Residential area and is incompatible with the rest of the neighborhood; that the rezoning would set a precedent for future requests; that the purchase of the adjoining lot would allow for expansion of the facility; that the use would alter the character of the neighborhood; that the use would negatively affect surrounding property values; noise pollution; environmental pollution; improper storage of waste materials: used rags, solvents, used oil, used antifreeze, waste wash water, hazardous chemicals, etc.; that the use poses a threat to the health and safety of the residents of the neighborhood; that the use could generate an excessive number of parked and inoperable vehicles, offensive odor emissions, and fire hazards.

The Commission found that Matthew Carr was present and stated in this presentation and in response to questions raised by the Commission that the site was previously used as a sign business, Lankford Sign Company; that he does not anticipate any difference in activities; that he purchased the property in January 2013; that septic already exists on the property; that he will comply with all waste regulations, and that he has no objection to a condition requiring the use of a licensed waste hauler; that he currently is working for a dealership and is proposing to work part time doing mechanical work on vehicles; he is will be disposing of materials and fluids properly; that he is not in business on the site at this time; that the entrance is shown on the site plan; that customer parking is proposed in front of the existing building; that if a farmer approached him and asked for repair of a piece of farm equipment, he would assist; that the existing building has a concrete floor and is insulated; that he intends to perform all repair work indoors; that there are no immediate neighbors; that he does not anticipate any noise issues; that he is proposing to start the business, part-time, with hours of 4:00 p.m. through 7:00 p.m. Monday through Friday and from 8:00 a.m. through 12:00 Noon on Saturdays; that he anticipates operating part-time for one or two years; that his full-time hours will be from 8:00 a.m. through 5:00 p.m.; that he only intends to perform auto repair work, no retail; that he has no intent to store more than 4 vehicles outside, other than personal vehicles; that he can store 5 vehicles inside of the shop; that no towing service is proposed; that vehicles waiting for repair can be stored behind the building; that he may perform some welding and fabrication; that the building is now 55 feet long and includes his residence; that he has no immediate need for signage, but he may want signage in the future, and that he would like to be able to light the sign; that pole lights already exists on the site; that the sign post for the original sign shop still exists; that he also owns Lot 1 immediately adjacent to this lot, and plans to build a dwelling on that lot in the future; and that this application is for an auto repair shop, not an auto body shop.

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

The Commission found that Patricia Huff was present in opposition to this application and expressed concerns that she lives approximately 400 feet from the site across Sandhill Road; that four residential lots have been created across from the site; that the Lankford home is located in the wooded area behind the site and is now for sale; that Lot 3, adjacent to the site, is also for

sale and that Applicant, if he purchases the property, could expand his business further; that property values could be negatively impacted; that she is concerned about signage; that she has environmental concerns about waste oils, fluids, greases, etc.; that the site is located in a rural area and would be out of character with the area.

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

On October 10, 2013 there was a motion by Mr. Johnson, seconded by Mr. Burton, and carried unanimously to defer action for further consideration. Motion carried 5 – 0.

On October 24, 2013 the Commission discussed this application under Old Business.

Mr. Johnson stated that he would move that the Commission recommend approval of Conditional Use #1970 for Matthew A. Carr for an auto repair shop based upon the record made at the public hearing and for the following reasons:

- 1) The site was previously used for business purposes. It was occupied by a sign and lawn service company until that business relocated.
- 2) The site is currently the residence of the applicant. The applicant testified that he intends to relocate his residence to the lot he owns next door. Based upon the testimony of the applicant, the use will be a family-run business and the size and scope of the auto repair business will be very consistent with that of a home occupation.
- 3) The applicant will be required to comply with all waste disposal regulations and requirements associated with oils, lubricants, etc. associated with the auto repair business.
- 4) The use, particularly in a location where a business previously existed, will not have any adverse impact on traffic on area roadways.
- 5) The use, with the conditions and stipulations placed upon it, will not have any adverse impact on neighboring properties or the community.
- 6) The use as an auto repair facility is of a public or semi-public character that promotes the convenience of providing an auto repair service to Sussex County residents. The applicant also stated that he could perform work on agricultural equipment of nearby farmers.
- 7) The applicant has stated that all repair work will be performed within the building located on the site.
- 8) The applicant has stated that no towing service will be conducted from the site.
- 9) This recommendation is subject to the following conditions and stipulations:
 - A. The use shall be limited to an automobile repair facility, with repairs to agricultural equipment, as needed. There shall not be any boat repair or large truck repairs permitted on the site.
 - B. No towing operations shall occur from the site.
 - C. No junked, permanently inoperable, or unregistered vehicles shall be stored on the site.
 - D. No more than four (4) vehicles awaiting repair shall be stored outside on the site at any one time, other than the owner's personal vehicles. Any vehicles awaiting repair shall be either in the building or located behind it.
 - E. All repairs shall occur within the building.

- F. The application shall comply with all State and Federal requirements regarding the storage, use and disposal of all fluids associated with the use.
- G. One lighted sign shall be permitted, not to exceed 32 square feet per side.
- H. The hours of operation shall be from 8:00 a.m. to 7:00 p.m. Monday through Friday, and 8:00 a.m. to 12:00 Noon on Saturday.
- I. All dumpsters or trash receptacles shall be screened from view of neighboring properties or roadways.
- J. The Final Site Plan shall show the location of all parking areas, dumpster areas, outside containers, and screening required by this approval.
- K. No used car sales or retail operations shall be conducted from the site.
- L. The Final Site Plan will be subject to the review and approval of the Sussex County Planning and Zoning Commission.

Motion by Mr. Johnson, seconded by Mr. Burton, and carried unanimously to forward this application to the Sussex County Council with the recommendation that the application be approved for the reasons and with the conditions and stipulations stated. Motion carried 4 – 0.

CHANGE OF ZONE #1736 – JUDITH B. DEMENO, TRUSTEE

Application of **JUDITH B. DEMENO, TRUSTEE** to amend Comprehensive Zoning Map from AR-1 Agricultural Residential District to a B-1 Neighborhood Business District for a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, containing 1.24 acres, more or less, lying north of Route 9, 1,800 feet west of Road 281 (Josephs Road) and 1,400 feet east of Road 290 (Cool Spring Road)(Tax Map I.D. 3-34-10.00-199.00).

The Commission found that the Applicant submitted a survey/site plan and an Exhibit Booklet for consideration, and that the Exhibit Booklet contains a copy of the Application form; a copy of the deed to the property; a copy of Beers Atlas for the area; a copy of an information sheet and map for Conditional Use No. 229, approved August 27, 1974 for a gift shop, and Conditional Use No. 245, approved December 3, 1974 for an addition to the gift shop for this site; a copy of the septic permit for the site, dated June 19, 2002; a copy of the Service Level Evaluation Request, map, and Support Facilities Report from DelDOT, dated July 23, 2013; a map of surrounding commercial properties; a USGS map of the area; a soils classification map of the area; a copy of the State Strategies and Investment Levels Map depicting the site in an Investment Level 4 and just outside of an Investment Level 3; a copy of the PLUS comments, dated September 25, 2013, with responses; a letter from Community Bank referencing that Conditional Use applications can be problematic and that banks prefer that zoning be in place prior to loan settlement; and suggested proposed Findings of Fact.

The Commission found that DelDOT provided comments in the form of a memorandum on July 23, 2013 which references that a traffic impact study is not recommended, and that the current Level of Service “E” of Route 9 will not change as a result of this application.

The Commission found that the Sussex County Engineering Department Utility Planning Division provided comments in the form of a memorandum, dated October 4, 2013, which references that the site is located in the North Coastal Planning Area; that an on-site septic system is proposed; that conformity to the North Coastal Planning Study will be required; that the proposed use is not in an area where the County currently has a schedule to provide sewer service; and that a concept plan is not required.

The Commission found that Judy Demeno was present with Gene Bayard, Esquire with Morris James Wilson Halbrook & Bayard, LLP, and that they stated in their presentation and in response to questions raised by the Commission that according to the State Strategies Map the site is located in an Investment Level 4 area, just outside of an Investment Level 3 area; that the site has been used historically as a business use since 1974 as York's Antiques and York's Refinishing; that the character and trend of development along Route 9 in this area has been going toward business and commercial uses; that Ms. Demeno purchased the property from Harlan York in 2005; that she has been in the retail clothing business for over 25 years; that the site contains approximately 1.2 acres of land and is improved by a farmhouse, a garage, a garage with a second story, and a clothing shop; that all of the buildings have been used for the previous business uses; that she is proposing to lease the home for a day spa; that the property has been fully developed; that there are no wetlands on the property; that she sent letters to 6 or 8 neighbors and has not received any responses; that there should not be any negative impact on the neighborhood; that there should not be any negative impact on property values; that Tab 4 of the Exhibit Booklet contains references to the approval for the gift shop (Conditional Use No. 229) and the expansion or addition to the gift shop (Conditional Use No. 245); that the Exhibit Booklet contains a letter from Community Bank which references conditional uses v. rezoning; that they disagree with the Investment Level 3 and 4 boundaries on the Strategies Map based on the amount of commercial and business development that has existed along Route 9; that the site is area surrounding the site includes several, if not many, business and commercial uses, i.e. computer repair shop, appliance store, antique stores, Moose Lodge, roofing company, landscaping, fencing, and building supply business; model home sales office, gun shop, commercial dog kennels, furniture repair, cabinet shop, soup kitchen, etc., a mix of commercial and conditional use sites; that B-1 Neighborhood Business zoning is permitted in Low Density Areas according to the Comprehensive Land Use Plan; that it appears that the PLUS comments have ignored the Comprehensive Land Use Plan and the trend of development in the area; that the use is consistent with the Comprehensive Land Use Plan; that this property has been used commercially for 40 years; that the existing clothing business is being moved to Milford; that there is not intent to subdivide the property; and that the property is not for sale, it is intended to be leased for the day spa.

The Commission found that there were no parties present in support of or in opposition to this application.

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

Mr. Johnson stated that he would move that the Commission recommend approval of Change of Zone No. 1736 for Judith B. Demeno, Trustee, for a change in zone from AR-1 Agricultural Residential to B-1 Neighborhood Business based upon the record made at the public hearing and for the following reasons:

- 1) The site is appropriate for a change of zone to B-1 Neighborhood Business. It is located on the north side of Route 9, which is appropriate for small businesses that are allowed under the B-1 zoning.
- 2) The B-1 rezoning is consistent with the orderly growth of the County. There are a number of businesses and commercial uses located in the vicinity along Route 9, including several properties that are zoned C-1 General Commercial.
- 3) The change of zoning will not adversely affect neighboring or adjacent properties or nearby communities.
- 4) Although the State has objected based on the location of the property being in an Investment Level 4 area, the site is almost adjacent to an Investment Level 3, and the Investment Level 4 designation does not appear to take into account development trends along Route 9.
- 5) The rezoning is consistent with the historical use of the property, including a gift shop approved as a conditional use in 1974.
- 6) The change of zone is consistent with the Sussex County Comprehensive Land Use Plan.
- 7) Site Plan approval for any use of the property will be subject to the review and approval of the Planning and Zoning Commission.

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

Lands N/F of CHURCH

13

Lands N/F of CHURCH

160

Lands N/F of CHURCH

160

Lands N/F of CHURCH

160

Lands N/F of HUFF

02

SANDHILL-RD

Lands N/F of MILLER

Lands N/F of LANKFORD

Lands N/F of LANKFORD

Lands N/F of LANKFORD

Lands N/F of LANKFORD

Lands N/F of WILKINS

163.25

150

1

56.02

300

150

1.03
AC.

56.03

2

150

1.04
AC.

56.04

3

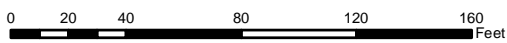


Conditional Use Application #1970

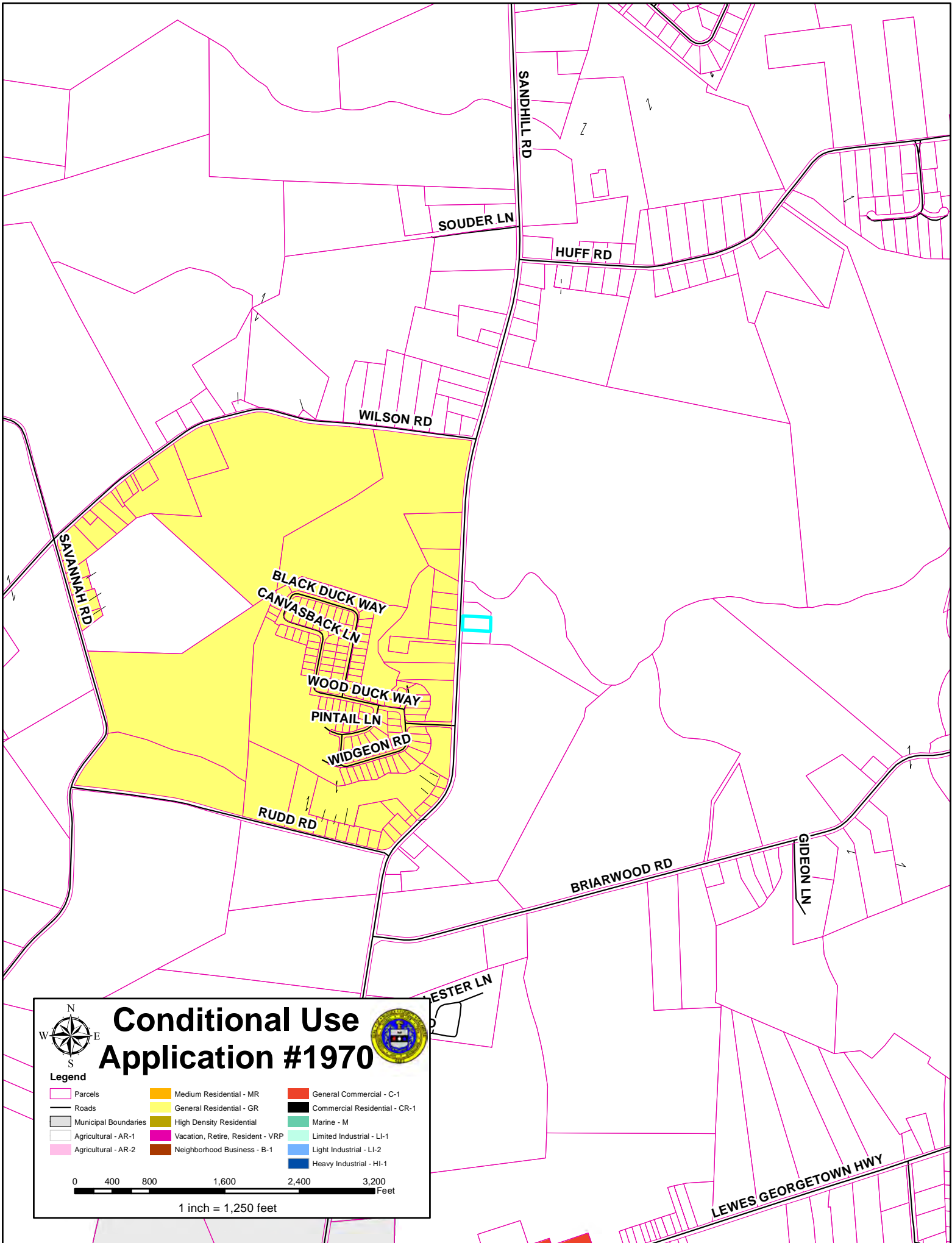


Legend

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



1 inch = 67 feet

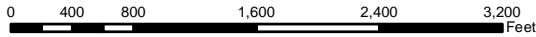


Conditional Use Application #1970



Legend

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



1 inch = 1,250 feet



Conditional Use Application #1970

Legend

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

0 20 40 80 120 160 Feet

1 inch = 67 feet

Lands N/F of
TRIPLE B FARMS

Lands N/F of
TRIPLE B FARMS

Lands N/F of
DEMENO 199

1.24

Ac.

Lands N/F of
TRIPLE B FARMS


220

LEWES-GEORGETOWN HWY

430.19

Lands N/F of
TROISE

Change of Zone Application #1736



Legend

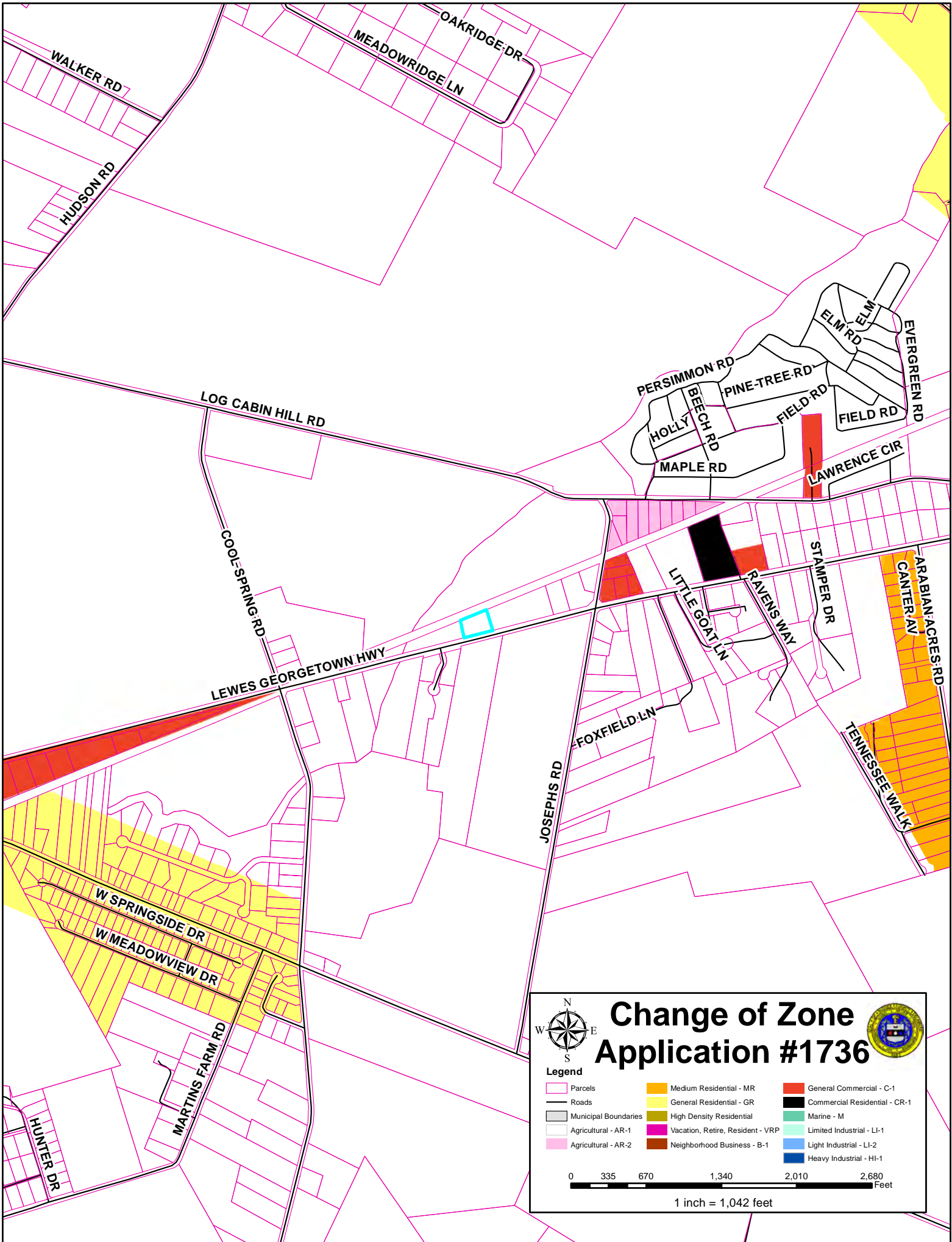
Parcels	Medium Residential - MR	Commercial Residential - CR-1
Roads	General Residential - GR	Marine - M
Railroad	High Density Residential	Limited Industrial - LI-1
Municipal Boundaries	Vacation, Retire, Resident - VRP	Light Industrial - LI-2
Agricultural - AR-1	Neighborhood Business - B-1	Heavy Industrial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

0 15 30 60 90 120 Feet

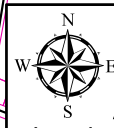
1 inch = 53 feet

Lands
WOLF

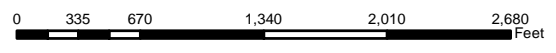
WOLF



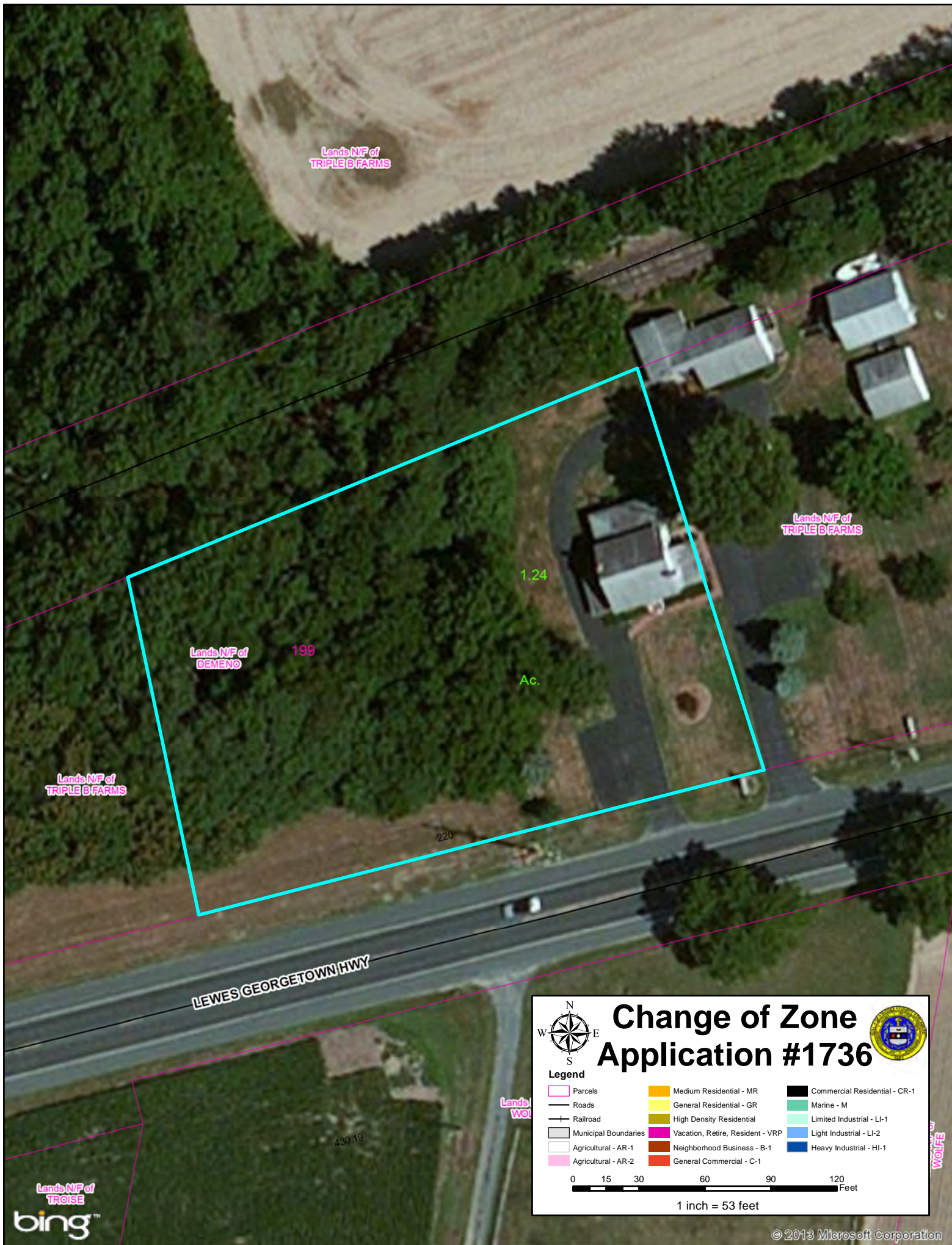
Change of Zone Application #1736



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



1 inch = 1,042 feet



Lands N/F of TRIPLE B FARMS

Lands N/F of TRIPLE B FARMS

Lands N/F of DEMENO 199

1.24

Ac.

Lands N/F of TRIPLE B FARMS

LEWES GEORGETOWN HWY

Lands N/F of TROISE

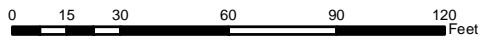


Change of Zone Application #1736



Legend

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



1 inch = 53 feet