

COUNTY COUNCIL

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



Sussex County

DELAWARE
sussexcountye.gov
(302) 855-7743

SUSSEX COUNTY COUNCIL

A G E N D A

December 12, 2023

10:00 AM

Call to Order

Approval of Agenda

Approval of Minutes - December 5, 2023

[Draft Minutes 120523](#)

Reading of Correspondence

Public Comments

Consent Agenda

1. **Use of Existing Wastewater Infrastructure Use Agreement IUA-1189 (Phase 1)
Villas at Bridgeville (Western Sussex Area)**
[Villas at Bridgeville \(Phase I\)](#)
2. **Use of Existing Wastewater Infrastructure Use Agreement IUA-1189 (Phase 2)
Villas at Bridgeville (Western Sussex Area)**
[Villas at Bridgeville \(Phase II\)](#)
3. **Use of Existing Wastewater Infrastructure Use Agreement IUA-1242
Silver Woods Villa District (Miller Creek Area)**
[Silver Woods Villa District](#)



Todd Lawson, County Administrator

1. **Recognition of Cape Henlopen High School Field Hockey Division I State Champions**
2. **Recognition of Delmar High School Field Hockey Division II State Champions**
3. **Recognition of Sussex Academy High School Boys' Soccer Division II State Champions**
4. **Recognition of Retiree - Jacqueline D. Clark**
5. **Recognition of Retiree - Richard A. King**
6. **Discussion Related to Perimeter Buffer Update**
7. **Administrator's Report**

Hans Medlarz, County Engineer & John Ashman, Director of Utility Planning & Design Review

1. **Interim Sewer Operations & Transition Agreement**
[Interim Sewer Operations & Transition Agreement](#)
2. **Blackwater Village – Tentative SRF Funding Offer**
[Blackwater Village - Tentative SRF Funding](#)

John Ashman, Director of Utility Planning & Design Review

1. **2023 Mass Annexation**
[Mass Annexation 2023](#)

Old Business

1. [Conditional Use No. 2285 filed on behalf of Ashley DiMichele](#)

“AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A TOURIST HOME TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BROADKILL HUNDRED, SUSSEX COUNTY, CONTAINING 2.831 ACRES, MORE OR LESS” (property lying on the south side of Cave Neck Road [S.C.R. 88] approximately 0.43 mile west of Diamond Farm Road [S.C.R. 257]) (911 Address: 26182 Cave Neck Road, Milton) (Tax Parcel: 235-21.00-48.00)

[Old Business CU2285](#)

2. [Ordinance No. 23-11](#)

“AN ORDINANCE TO AMEND THE FUTURE LAND USE MAP OF THE COMPREHENSIVE PLAN IN RELATION TO TAX PARCEL NO. 234-6.00-6.02” (property lying on the west side of Beaver Dam Road [Rt. 23], approximately 0.50 mile north of Hopkins Road [S.C.R. 286]) (911 Address: 30857 Saddle Ridge Way, Lewes) (Tax Map Parcel: 234-6.00-6.02)

[Old Business Ord 23-11](#)

3. [Conditional Use No. 2350 filed on behalf of Beaver Dam Enterprises, LLC](#)

“AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR MULTI-FAMILY (2 UNITS) TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 2.144 ACRES, MORE OR LESS” (property lying on the west side of Beaver Dam Road [Rt. 23], approximately 0.50 mile north of Hopkins Road [S.C.R. 286]) (911 Address: 30857 Saddle Ridge Way, Lewes) (Tax Map Parcel: 234-6.00-6.02)

[Old Business CU2350](#)

4. [Conditional Use No. 2379 filed on behalf of Lewes Solar Ridge Solar 1, LLC](#)

“AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A SOLAR FARM TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 15.97 ACRES, MORE OR LESS” (properties lying on the north and south side of Saddle Ridge Way and the west side of Beaver Dam Road [S.C.R. 23], approximately 0.57-mile northeast of Hopkins Road [S.C.R. 286]) (911 Address: 30857 & 30862 Saddle Ridge Way) (Tax Map Parcels: 234-6.00-6.02, 6.03 & 6.04)

[Old Business CU2379](#)

5. [Conditional Use No. 2380 filed on behalf of Dagsboro Thorogoods Solar 1, LLC](#)

“AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A SOLAR FARM TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN DAGSBORO HUNDRED, SUSSEX COUNTY, CONTAINING 28.81 ACRES, MORE OR LESS” (property lying on the east side of Thorogoods Road [S.C.R. 333], approximately 0.41-mile northeast of Dagsboro Road [Rt. 20]) (911 Address: 30561 Thorogoods Road, Dagsboro) (Tax Map Parcel: 233-5.00-187.00)

[Old Business CU2380](#)

Grant Requests

1. **Greater Lewes Foundation for their 3rd Annual Rally for First Responders**

[Greater Lewes Foundation](#)

2. **Southern Delaware Alliance for Racial Justice for their Black Voices magazine program**

[Southern Delaware Alliance for Racial Justice](#)

3. **New Coverdale Outreach Mission for Clothing for kids for Christmas**

[New Coverdale Outreach Mission](#)

4. **Historical Georgetown Association for Education and Disability purposes**

[Historical Georgetown Association](#)

5. **Clothing our Kids for their Clothe A Kid program**

[Clothing our Kids](#)

Introduction of Proposed Zoning Ordinances

[Ord Intros CU2436 CZ2004 CZ1992](#)

Council Members' Comments

Executive Session - Pending & Potential Litigation, Collective Bargaining, Personnel, & Job Applicants' Qualifications pursuant to 29 Del.C.§10004(b)

Possible action on Executive Session Items

1:30 p.m. Public Hearings

1. [Conditional Use No. 2471 filed on behalf of Epworth UMC](#)

“AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO ALLOW FOR AN ON-PREMISES ELECTRONIC MESSAGE CENTER SIGN TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES & REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 8.19 ACRES, MORE OR LESS” (property lying on the southeast side of Holland Glade Road [S.C.R. 271], approximately 950 ft. northeast of Coastal Highway [Rt. 1]) (911 Address: 19285 Holland Glade Road, Rehoboth Beach) (Tax Map Parcel: 334-13.00-325.47)

[CU 2471 filed on behalf of Epworth UMC CC Report for 12.12.2023 with maps](#)

2. [Change of Zone No. 1996 filed on behalf of McKee Builders, LLC](#)

“AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A MR MEDIUM DENSITY RESIDENTIAL DISTRICT FOR CERTAIN PARCELS OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 51.23 ACRES, MORE OR LESS” (properties on the west side of Central Avenue [Rt. 84] approximately 0.25 mile east of Peppers Corner Road [S.C.R. 365]) (911 Address: 34428 & 34434 Central Avenue, Frankford) (Tax Map Parcels: 134-19.00-13.00 & 13.04)

[CZ 1996 filed on behalf of McKee Builders, LLC CC Report for 12.12.2023 with maps](#)

3. [Conditional Use No. 2402 filed on behalf of McKee Builders, LLC](#)

“AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN MR MEDIUM DENSITY RESIDENTIAL DISTRICT FOR MULTI-FAMILY (174 UNITS) TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 51.23 ACRES, MORE OR LESS” (properties lie on the west side of Central Avenue [Rt. 84] approximately 0.25 mile east of Peppers Corner Road [S.C.R. 365]) (911 Address: 34428 & 34434 Central Avenue, Frankford) (Tax Map Parcels: 134-19.00-13.00 & 13.04)

[CU 2402 filed on behalf of McKee Builders, LLC CC Report for 12.12.2023 with maps](#)

4. [Conditional Use No. 2388 filed on behalf of Rifle Range Road Solar, LLC](#)

“AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A SOLAR FARM ON A CERTAIN PARCEL OF LAND LYING AND BEING IN NORTHWEST FORK HUNDRED, SUSSEX COUNTY, CONTAINING 93.66 ACRES, MORE OR LESS” (property lying on the south side of Rifle Range Road [S.C.R. 545], approximately 1.14 mile east of Sussex Highway [Rt. 13]) (911 Address: N/A) (Tax Map Parcel: 131-15.00-51.00 [p/o])

[CU 2388 filed on behalf of Rifle Range Solar, LLC CC Report for 12.12.2023 with maps](#)

5. [Conditional Use No. 2390 filed on behalf of Taylor Mill Road Solar 1, LLC](#)

“AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A SOLAR FARM TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BROAD CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 79.59 ACRES, MORE OR LESS” (property lying on the south side of Taylor Mill Road [S.C.R. 467B], the west side of Fire Tower Road [S.C.R. 479], and the east side of County Seat Highway [Rt. 9], at the intersection of County Seat Highway [Rt. 9] and Fire Tower Road [S.C.R. 467]) (911 Address: N/A) (Tax Map Parcel: 232-7.00-3.00 [p/o])

[CU 2390 filed on behalf of Taylor Mill Road Solar, LLC CC Report for 12.12.2023 with maps](#)

6. [Conditional Use No. 2393 filed on behalf of Sunrise Solar, Inc.](#)

“AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A GR GENERAL RESIDENTIAL DISTRICT FOR A SOLAR ARRAY TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LITTLE CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 134.61 ACRES, MORE OR LESS” (property lying on the north and south sides of R & R Lane, approximately 0.38 mile west of BiState Boulevard [Rt. 13A]) (911 Address: 10198 R & R Lane, Delmar) (Tax Map Parcel: 532-6.00-8.00 [p/o])

[CU 2393 filed on behalf of Sunrise Solar, Inc CC Report for 12.12.2023 with maps](#)

7. [Conditional Use No. 2397 filed on behalf of Mispillion Solar Farm, LLC](#)

“AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A SOLAR ARRAY TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN CEDAR CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 121.33 ACRES, MORE OR LESS” (property lying on the northwest side of Shawnee Road [Rt. 36] approximately 0.20 mile southwest of Old Shawnee Road [S.C.R. 42]) (911 Address: 7152 Shawnee Rd. Milford) (Tax Map Parcel: 130-3.00-63.00 [p/o])

[CU 2397 filed on behalf of Mispillion Solar Farm, LLC CC Report for 12.12.2023 with maps](#)

8. **Conditional Use No. 2398 filed on behalf of Chaberton Energy (Blue Hen Solar)**

“AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO ALLOW FOR A SOLAR FARM TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 61.15 ACRES, MORE OR LESS” (property lying on the southeast side of Hudson Road [S.C.R. 387], approximately 0.61 mile south of the intersection of Lighthouse Road [Route 54] and Hudson Road [S.C.R. 387]) (911 Address: N/A) (Tax Map Parcels: 533-17.00-187.00 [p/o])

[CU 2398 filed on behalf of Chaberton Energy \(Blue Hen Solar\) CC Report for 12.12.2023 with maps](#)

9. **Conditional Use No. 2433 filed on behalf of Chaberton Solar**

“AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A SOLAR ARRAY TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 50.50 ACRES, MORE OR LESS” (property lying on Marlyn Lane, on the south side of Lighthouse Road [Rt. 54], approximately 1.05 miles east of Hudson Road [S.C.R. 387]) (911 Address: 38510 Marlyn Lane, Selbyville) (Tax Map Parcel: 533-18.00-39.00)

[CU 2433 filed on behalf of Chaberton Solar CC Report for 12.12.2023 with maps](#)

Adjourn

-MEETING DETAILS-

In accordance with 29 Del.C. §10004(e)(2), this Agenda was posted on December 5, 2023 at 4:45p.m. and at least seven (7) days in advance of the meeting.

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

Agenda items may be considered out of sequence.

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

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

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

To join the meeting via telephone, please dial:

Conference Number: 1-302-394-5036

Conference Code: 570176

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

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

SUSSEX COUNTY COUNCIL - GEORGETOWN, DELAWARE, DECEMBER 5, 2023

A regularly scheduled meeting of the Sussex County Council was held on Tuesday, December 5, 2023, at 10:00 a.m., in Council Chambers, with the following present:

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

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

**Call to
Order**

Mr. Vincent called the meeting to order.

**M 555 23
Approve
Agenda**

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

Motion Adopted: 5 Yeas

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

Minutes

The minutes from November 14, 2023, were approved by consensus.

**Corre-
spondence**

Mr. Moore reported that correspondence was received from Delaware Lions Foundation, Milford Housing Development Corporation and Cape Henlopen Senior Center thanking Council for their grants and donations.

**Public
Comments**

Public comments were heard.

Mr. Rick Hasen spoke about the Design Development and interconnectivity.

**M 556 23
Approve
Consent
Agenda**

A Motion was made by Mr. Schaeffer, seconded by Mr. Rieley to approve the following items under the Consent Agenda:

- 1. Proclamation Request – Cape Henlopen High School Field Hockey Division I State Champions**
- 2. Proclamation Request – Delmar High School Field Hockey Division**

**M 556 23
Approve
Consent
Agenda
(continued)**

II State Champions

- 3. Proclamation Request – Sussex Academy High School Boys’ Soccer Division II State Champions**
- 4. Use of Existing Wastewater Infrastructure Use Agreement IUA-1802 350
Millville Square (Millville Area)**
- 5. Use of Existing Wastewater Infrastructure Use Agreement IUA-1193
The Preserve at Shore Vista (Ocean View Area)**

Motion Adopted: 5 Years

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

**Adminis-
trator’s
Report**

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

1. Caroling on The Circle

A reminder that the annual Caroling on The Circle program will take place on Thursday, December 7th, at 6:30 p.m. in front of the Sussex County Courthouse. This is a free event sponsored by the Sussex County Council each year. Everyone is welcome and encouraged to attend, and to bring a food item for the less fortunate if they can afford to do so. The “Pack the Pod” campaign will remain in full swing until the end of December. New this year we are partnering with the Georgetown Chamber of Commerce which sponsors the Georgetown Christmas parade. Following Caroling on The Circle, the Town will hold its tree lighting before the parade steps off at 7:00 p.m. We invite the public to attend this fun-filled, festive evening.

2. Delaware State Police Activity Report

The Delaware State Police year-to-date activity report for October 2023 is attached listing the number of violent crime and property crime arrests, as well as total traffic charges and corresponding arrests. In addition, DUI and total vehicle crashes investigated are listed. In total, there were 190 troopers assigned to Sussex County for the month of October.

3. Projects Receiving Substantial Completion

**Administrator's
Report
(continued)**

Per the attached Engineering Department Fact Sheets, the following projects have received Substantial Completion: Maritima (FKA Red Clover Walk, Cedar Grove & Coastal Cove) – Phase 1 Roads and Phase 1 & 2 Sewer effective October 31st; Vincent Overlook – Phase 6A (Construction Record), Vincent Overlook Phase 6B (Construction Record) and Vincent Overlook - Phase 8 (Construction Record) effective November 1st.

4. Pauline Hughes

It is with great sadness that we inform you that pensioner, Pauline Hughes, passed away on Tuesday, November 21, 2023. Ms. Hughes began her career with Sussex County in February 2004 where she worked until February 2018 for a total of 14 years of service. Her last position with the County was Clerk IV in Building Code. We would like to extend our condolences to the Hughes family.

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

**Plan Review
& Inspection
Agreement**

John Ashman, Director of Utility Planning & Design Review presented a plan review and inspection agreement for Council's consideration. The agreement would shift the review and inspection of roadways, site grading and stormwater conveyance in proposed subdivisions within the municipal boundary to Sussex County. Mr. Ashman reported that one such agreement has been executed by the Town of Blades for Council's consideration and a second agreement is awaiting execution by the Town of Ellendale. If Council chooses to approve this template, all future agreements could be completed as a Consent Agenda item once executed by the respective municipality.

**M 557 23
Approve
Plan Review
& Inspection
Agreement**

A Motion was made by Mr. Rieley, seconded by Mr. Hudson that be it moved based upon the recommendation of the Sussex County Engineering Department that Sussex County Council approves the plan review and inspection agreement template and the Town of Blades agreement shifting the review and inspection of roadways, site grading and stormwater within Municipal Boundaries to Sussex County as presented.

Motion Adopted: 5 Yeas

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

**Permission
to Prepare
& Post**

John Ashman, Director of Utility Planning & Design Review presented a permission to prepare and post notices for South Greenwood Annexation

Notices/ South Greenwood	<p>into the Sussex County Unified Sanitary Sewer District (Western Sussex Area) for Council's consideration. The expansion creates a new area consisting of parcel 530-14.00-16.00 & 17.00. The Engineering Department has received a request from Delaware Electric Co-op for sewer service to a facility south of Greenwood. The facility is not contiguous to the existing boundary therefore it would need to be established as a new area, holding a public hearing and referendum. The request comes stating the inability to replace or expand their existing on-site system based on the existing building layouts and impervious area. The request also states that without the ability to replace or expand the existing on-site facility they would be unable to move forward with their planned expansion and provide new employment opportunities. Their desire is to construct a low-pressure sewer system connecting multiple buildings to a common small grinder station that would connect to the County's existing infrastructure. Understanding that they would pay for the improvements and offer paying for the electricity and providing the back-up generator service for the grinder station.</p>
M 558 23 Approve Permission to Prepare & Post Notices/ South Greenwood	<p>A Motion was made by Mrs. Green, seconded by Mr. Hudson, be it moved by Sussex County Council that the Sussex County Engineering Department is authorized to prepare and post notices for a public hearing to establish the boundary for the South Greenwood area of the Sussex County Unified Sanitary Sewer District as presented.</p> <p>Motion Adopted: 5 Yeas</p> <p>Vote by Roll Call: Mrs. Green, Yea; Mr. Schaeffer, Yea; Mr. Hudson, Yea; Mr. Rieley, Yea; Mr. Vincent, Yea</p>
Amend. 5/ Joy Beach	<p>Hans Medlarz, County Engineer presented KCI Amendment 5 for Joy Beach Phase II for Council's consideration.</p>
M 559 23 Approve Amend. No. 5/ Joy Beach	<p>A Motion was made by Mr. Hudson, seconded by Mr. Schaeffer, that be it moved based upon the recommendation of the Sussex County Engineering Department that Amendment No. 5 to the 5-year Miscellaneous Engineering Services Agreement with KCI Technologies, Inc. be approved in the amount not to exceed \$152,520.00 for the design and permitting of Joy Beach Phase II.</p> <p>Motion Adopted: 5 Yeas</p> <p>Vote by Roll Call: Mrs. Green, Yea; Mr. Schaeffer, Yea; Mr. Hudson, Yea; Mr. Rieley, Yea; Mr. Vincent, Yea</p>
SC CO No. 25	<p>Hans Medlarz, County Engineer presented change order no. 25 for South Coastal WRF treatment process upgrade no. 3 & Rehoboth Beach WTP capital improvement program, phase 2 for Council's consideration.</p>

M 560 23 **A Motion was made by Mr. Hudson, seconded by Mr. Schaeffer, be it**
Approve CO **moved based upon the recommendation of the Sussex County Engineering**
No. 25/SC **Department, that change order no. 25 for contract C19-17, SCRWF**
WTF & RB **Treatment Process Upgrade No. 3 & RBWTP capital improvement**
WTP **program, phase 2 – electrical construction, be approved, for an increase of**
 \$17,939.03.

Motion Adopted: 5 Yeas

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

Cannon- **Hans Medlarz, County Engineer presented change order no. 3 for Cannon-**
Inland Bays/ **Inland Bays Roads Drainage Improvements & Constructed Wetlands for**
CO No. 3 **Council's consideration.**

M 561 23 **A Motion was made by Mr. Rieley, seconded by Mr. Hudson, that be it**
Approve CO **moved based upon the recommendation of the Sussex County Engineering**
No. 3/ **Department that change order no. 3 for contract S22-05, Cannon**
Cannon - **Road/Inland Bays Road Drainage Improvements and Constructed**
Inland Bays **Wetlands, be approved, increasing the contract amount by \$375,000.00 and**
 extend the contract by 29 calendar days.

Motion Adopted: 5 Yeas

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

DE **Vince Robertson, Assistant County Attorney discussed the Delaware**
Marijuana **Marijuana Control Act. Mr. Robertson reported that the Delaware**
Control Act **Marijuana Control Act was enacted back in April, 2023. One of the things**
 that the Act said was that the towns can prohibit marijuana establishments,
 and everything associated, however, the Counties cannot. Mr. Robertson
 added that to date, it is known that the following Towns have prohibited
 marijuana include Rehoboth Beach, Dewey Beach, Bethany Beach,
 Millville, Seaford, Ocean View, Fenwick Island, Millsboro, Dagsboro, and
 Middletown. There may be more or some that have not acted on it yet. With
 our County Zoning under the Act, we can enact Zoning Ordinances that
 regulate it and we can regulate based on time, matter and place for
 marijuana establishments. With regard to the establishments, the different
 Zoning Districts were looked at with staff and it is thought that the C-3,
 Heavy Commercial District is the appropriate location. In addition, it would
 require a Conditional Use so it would go through Planning & Zoning
 Commission and County Council. In terms of the time and place
 restrictions, it was discussed that no marijuana establishment should be
 located within 1 mile of any municipal boundary, 3 miles of another
 marijuana establishment and no marijuana establishment can be located

**DE
Marijuana
Control Act
(continued)**

closer than 1 mile to any church, treatment center, school, or college. In addition, hours of operation would be 7:00 a.m. until 9:00 p.m. These are the guardrails that were discussed to be in the Code.

Mr. Robertson then discussed the marijuana cultivation facility which is growing the plant and under the state definition, it includes the preparation and packaging. On one hand, it is a crop as an agricultural use and the other hand it goes beyond that with preparation and packaging. The thought was to keep it in the AR-1 district and require a Conditional Use.

Mr. Robertson stated that the next step would be to draft an Ordinance to bring back to the Commission and Council.

Mr. Hudson questioned the security of the land of where the crops are being grown. Mr. Robertson responded that it will be approved by the State so they will need to go to the Commission to get approval for that. It would also be no closer than a certain number of feet from the property line.

Mrs. Green suggested to change it to be the same measurement for everything.

**Old
Business/
Ord. No. 20-
06**

Under Old Business, Jamie Whitehouse, Planning & Zoning Director presented a Proposed Ordinance entitled "AN ORDINANCE TO AMEND THE FUTURE LAND USE MAP OF THE COMPREHENSIVE PLAN IN RELATION TO TAX PARCEL NO. 132-2.00-264.00 (PORTION OF)".

The County Council held a Public Hearing on the Ordinance at its meeting of February 9, 2021. At the conclusion of the Public Hearing, action on the application was deferred for further consideration.

**M 562 23
Approve
Ord. No.
20-06/
DENIED**

A Motion was made by Mr. Hudson, seconded by Mr. to approve a Proposed Ordinance entitled "AN ORDINANCE TO AMEND THE FUTURE LAND USE MAP OF THE COMPREHENSIVE PLAN IN RELATION TO TAX PARCEL NO. 132-2.00-264.00 (PORTION OF)".

Motion DENIED: 5 Nays

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

All Members voted no based on the reason given by Mr. Vincent.

**Old
Business/
CZ1910**

Under Old Business, Mr. Whitehouse presented a Proposed Ordinance entitled "AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A GR GENERAL RESIDENTIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN BROAD CREEK HUNDRED, SUSSEX

COUNTY, CONTAINING 3.093 ACRES, MORE OR LESS” (property lying on the northwest side of Brickyard Road, approximately 0.3 miles southeast of Sussex Highway) (Route 13) (Tax I.D. No. 132-2.00-264.00) (911 Address: 9329 Brickyard Road, Seaford) filed on behalf of Brickyard Apartments, LLC.

Mr. Whitehouse noted that the previous application relied on approval of the previous application presented.

**M 563 23
Approve
CZ1910/
DENIED**

A Motion was made by Mr. Hudson, seconded by Mr. Rieley to approve a Proposed Ordinance entitled “AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A GR GENERAL RESIDENTIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN BROAD CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 3.093 ACRES, MORE OR LESS”.

Motion DENIED: 5 Nays

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

The Members voted no based on the reasons provided by Mr. Vincent.

**Old
Business/
CU2212**

Under Old Business, Mr. Whitehouse presented a Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A GR GENERAL RESIDENTIAL DISTRICT FOR MULTI-FAMILY (48 APARTMENTS) TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BROAD CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 5.05 ACRES, MORE OR LESS” (property lying on the northwest side of Brickyard Road, approximately 0.3 miles southeast of Sussex Highway (Route 13) (Tax I.D. No. 132-2.00-264.00) (911 Address: 9329 Brickyard Road, Seaford) filed on behalf of Brickyard Apartments, LLC.

The Council held a Public Hearing for the application at its meeting on February 9, 2021. At the conclusion of the Public Hearing, action on the application was deferred for further consideration. Mr. Whitehouse noted that this application was related to the previous two applications.

**M 564 23
Approve
CU2212/
DENIED**

A Motion was made by Mr. Hudson, seconded by Mr. Rieley to approve a Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A GR GENERAL RESIDENTIAL DISTRICT FOR MULTI-FAMILY (48 APARTMENTS) TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BROAD CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 5.05 ACRES, MORE OR LESS” for the reasons and conditions given by the Planning & Zoning Commission.

Motion DENIED: 5 Nays

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

The Members voted no based on the reasons provided by Mr. Vincent.

**Old
Business/
Ord. No. 22-
08**

Under Old Business, Mr. Whitehouse presented a Proposed Ordinance entitled “AN ORDINANCE TO AMEND THE FUTURE LAND USE MAP OF THE COMPREHENSIVE PLAN IN RELATION TO TAX PARCEL 135-11.00-65.00” (property located on the north side of Lewes Georgetown Highway [Rt. 9], approximately 620 feet northeast of Gravel Hill Road [Rt. 30]) (911 Address: N/A) (Tax Parcel: 135-11.00-65.00).

The County Council held a Public Hearing on the Ordinance at its meeting of February 7, 2023. At the conclusion of the Public Hearing, action on the application was deferred for further consideration.

**M 565 23
Approve
Ord. No. 22-
08/
DENIED**

A Motion was made by Mr. Rieley, seconded by Mr. Hudson to approve a Proposed Ordinance entitled “AN ORDINANCE TO AMEND THE FUTURE LAND USE MAP OF THE COMPREHENSIVE PLAN IN RELATION TO TAX PARCEL 135-11.00-65.00”.

Motion DENIED: 2 Yeas, 3 Nays

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

**Old
Business/
CZ1959**

Under Old Business, Mr. Whitehouse presented a Proposed Ordinance entitled “AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A MR MEDIUM RESIDENTIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN GEORGETOWN HUNDRED, SUSSEX COUNTY, CONTAINING 9.72 ACRES, MORE OR LESS” (property located on the north side of Lewes Georgetown Highway [Rt. 9], approximately 620 feet northeast of Gravel Hill Road [Rt. 30]) (911 Address: N/A) (Tax Parcel: 135-11.00-65.00) filed on behalf of Charles E. Turner Jr.

The County Council held a Public Hearing on the Application at its meeting of February 7, 2023. At the conclusion of the Public Hearing, action on the application was deferred for further consideration. Mr. Whitehouse noted that this application was linked to the previous application.

**M 566 23
Approve**

A Motion was made by Mr. Rieley, seconded by Mr. Hudson to approve a Proposed Ordinance entitled “AN ORDINANCE TO AMEND THE

**CZ1959/
DENIED**

COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A MR MEDIUM RESIDENTIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN GEORGETOWN HUNDRED, SUSSEX COUNTY, CONTAINING 9.72 ACRES, MORE OR LESS”.

Motion DENIED: 5 Nays

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

**Old
Business/
CU2320/
DENIED**

Under Old Business, Mr. Whitehouse presented a Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A MR MEDIUM DENSITY RESIDENTIAL DISTRICT FOR MULTI-FAMILY DWELLINGS (42 UNITS) TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN GEORGETOWN HUNDRED, SUSSEX COUNTY, CONTAINING 9.72 ACRES, MORE OR LESS” (property located on the north side of Lewes Georgetown Highway [Rt. 9], approximately 620 feet northeast of Gravel Hill Road [Rt. 30]) (911 Address: N/A) (Tax Parcel: 135-11.00-65.00) filed on behalf of Charles E. Turner, Jr.

The County Council held a Public Hearing on the Application at its meeting of February 7, 2023. At the conclusion of the Public Hearing, action on the application was deferred for further consideration.

**M 567 23
Approve
CU2320/
DENIED**

A Motion was made by Mr. Rieley, seconded by Mr. Hudson to approve a Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A MR MEDIUM DENSITY RESIDENTIAL DISTRICT FOR MULTI-FAMILY DWELLINGS (42 UNITS) TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN GEORGETOWN HUNDRED, SUSSEX COUNTY, CONTAINING 9.72 ACRES, MORE OR LESS”.

Motion DENIED: 5 Nays

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

**Old
Business/
CZ1979**

Under Old Business, Mr. Whitehouse presented a Proposed Ordinance entitled “AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO AN MR MEDIUM RESIDENTIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES & REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 25.56 ACRES, MORE OR LESS” (property lying on the east side of Kings Highway [Rt. 9] and Gills Neck Road [S.C.R. 267], at the intersection of

Kings Highway [Rt. 9] and Gills Neck Road [S.C.R. 267]) (911 Address: 16673 Kings Highway, Lewes) (Tax Map Parcel: 335-12.00-3.00 [p/o]) filed on behalf of J.G. Townsend Jr. & Co.

The County Council held a Public Hearing on the application at its meeting of June 27, 2023. At the conclusion of the Public Hearing, action on the application was deferred for further consideration.

**M 568 23
Adopt
Ordinance
No. 2963
CZ1979**

A Motion was made by Mr. Schaeffer, seconded by Mr. Hudson to Adopt Ordinance No. 2963 entitled “AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO AN MR MEDIUM RESIDENTIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES & REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 25.56 ACRES, MORE OR LESS” for the reasons given by the Planning and Zoning Commission as follows:

- 1. This application seeks a change in zone from AR-1 to MR. The purpose of the MR zone is to provide housing in an area which is expected to become urban in character and where central water and sewer is available.**
- 2. The stated purpose of the MR District is satisfied for this site. Both central water and central sewer will be available. It is also in an area with a more urban character since it is near the City of Lewes, in the vicinity of a high school campus, and near various businesses. There is also other MR-Zoned land in the area. This rezoning is consistent with other zoning and land uses in the area.**
- 3. The proposed MR Zoning meets the purpose of the Zoning Ordinance in that it promotes the orderly growth of the County in an appropriate location.**
- 4. The site is located within the Coastal Area according to the Sussex County Comprehensive Plan. MR Zoning is appropriate in this Area according to the Plan.**
- 5. The intended use of this property will be to allow the development of it with multi-family residential units. This is an appropriate use for this location given its surroundings.**
- 6. The Comprehensive Plan suggests that higher densities such as those permitted in the MR District can be appropriate where there is water and sewer available, there are appropriate roadways to handle the density, and there are nearby commercial or employment centers. All of those factors are satisfied with regard to this application.**
- 7. DelDOT has stated that the proposed rezoning to MR will have a “minor” impact upon local area roadways. In addition, the overall traffic in the area has recently been studied through Traffic Impact Studies and Traffic Operations Analyses for other nearby properties. These studies take into account this proposed rezoning as well as DelDOT’s “US9, Kings Highway, Dartmouth Drive to Freeman Highway (DelDOT Contract No. T202212901)”.**

M 568 23 **8. For all of these reasons, MR zoning is appropriate for this site.**

Adopt

Ordinance

No. 2963

CZ1979

(continued)

Motion Adopted: 5 Yeas

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

Old

Business/

CU2359

Under Old Business, Mr. Whitehouse presented a Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN MR (MEDIUM RESIDENTIAL DISTRICT) FOR MULTI-FAMILY (102 UNITS) TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES & REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 25.56 ACRES, MORE OR LESS” (property lying on the east side of Kings Highway [Rt. 9] and the south side of Gills Neck Road [S.C.R. 267], at the intersection of Kings Highway [Rt. 9] and Gills Neck Road [S.C.R. 267]) (911 Address: 16673 Kings Highway, Lewes) (Tax Map Parcel: 335-12.00-3.00 [p/o]) filed on behalf of J.G. Townsend Jr. & Co.

The County Council held a Public Hearing on the application at its meeting of June 27, 2023. At the conclusion of the Public Hearing, action on the application was deferred for further consideration.

M 569 23

Amend

Condition 4/

CU2359

A Motion was made by Mr. Schaeffer, seconded by Mr. Hudson to amend Condition 4 in the Findings provided by Planning and Zoning be amended by striking the number 6 in the last line and substitute the number 4 in its place. This is done because the application is actually 3.99 units per acre.

Motion Adopted: 5 Yeas

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

M 570 23

Amend

Condition 9

C/CU2359

A Motion was made by Mr. Schaeffer, seconded by Mr. Hudson to Condition 9 C of the Conditions provided by Planning and Zoning be amended in regard to the size of the pool by striking one zero to reduce the size of the surface area of the pool from 10,000 square feet to 1,000 square feet.

Motion Adopted: 5 Yeas

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

M 571 23

Add

A Motion was made by Mr. Schaeffer, seconded by Mr. Hudson that an additional condition be added to read as follows *The Final Site Plan shall*

**Condition R/
CU2359** *contain a landscape plan for the subdivision's frontage along Kings Highway with appropriate landscaping consistent with the goals of the Lewes Scenic and Historic Byway Corridor Management Plan. The Kings Highway landscaping shall be perpetually maintained by the developer and/or homeowner's association and shall be noted on the Final Site Plan.*

Motion Adopted: 5 Yeas

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

**M 572 23
Amend
Condition 9
H/
CU2359** A Motion was made by Mr. Schaeffer, seconded by Mr. Hudson, to amend Condition 9 H by adding the following at the end of the condition: However, while the interconnection must remain open, to address the concerns about this becoming a short-cut where people will speed through these connected communities, the Applicant shall install a gate, approved by the State Fire Marshall to limit through traffic except through card use by residents of Governors Subdivision, and also install other traffic calming devices including curb bump outs and elevated crosswalks, as set forth in the Sussex County Comprehensive Plan, at the boundary line between the Governors' community and the cottage community.

Motion Adopted: 4 Yeas, 1 Nay

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

**M 573 23
Adopt
Ordinance
No. 2964/
CU2359** A Motion was made by Mr. Schaeffer, seconded by Mr. Hudson to Adopt Ordinance No. 2964 entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN MR (MEDIUM RESIDENTIAL DISTRICT) FOR MULTI-FAMILY (102 UNITS) TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES & REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 25.56 ACRES, MORE OR LESS" for the reasons and conditions given by the Planning & Zoning Commission as amended:

1. This property has been recommended for approval of a change in zone from AR-1 to MR Medium Density Residential. The purpose of the MR zone is to provide housing in an area which is expected to become urban in character and where central water and sewer is available. This conditional use application for multi-family units is in compliance with the purposes of the MR zone.
2. Both central water and central sewer will be available to this site.
3. This site is the location of the Gill's Neck Road and King's Highway lighted intersection and the King's Highway and Cave Neck Road lighted intersection. DelDOT is also planning to improve the King's Highway Corridor in the near future. Multi-family development is

**M 573 23
Adopt
Ordinance
No. 2964/
CU2359
(continued)**

- appropriate for this property in the area of these roadways and intersections.
4. The property is in the immediate vicinity of other properties with a variety of business, commercial, and institutional uses. The site is near the Cape Henlopen High School campus. It is near the City of Lewes with nearby Mixed Residential, General Commercial, and Community Facilities zoning districts within the City. Some nearby residential uses include Dutchman's Harvest within the City of Lewes with 17.7 units per acre; Jefferson Apartments within the City of Lewes with 9.8 units per acre; the Moorings at Lewes in Sussex County with 6.4 units per acre; and Henlopen Gardens in the City of Lewes with 5.5 units per acre. This is also the last parcel of the planned development of Gills Neck Road, with an appropriate density transitioning between the adjacent B-1 property on one side and the existing multifamily units on the other side. This conditional use at approximately four (4) units per acre is consistent with other zoning and multi-family developments in the area.
 5. DelDOT has reviewed the proposed project and has determined that its traffic impact will be "Minor". When DelDOT determines that traffic impact will be minor, a project is eligible to pay an Area Wide Study Fee instead of obtaining a Traffic Impact Study. Paying this fee does not eliminate the developer's obligation to construct or pay for offsite road improvements that are required by DelDOT. This project has also already been incorporated into other existing Traffic Impact Studies and Traffic Operational Analysis as well as DelDot's Contract No. T202212901 for US9, Kings Highway, Dartmouth Drive to Freeman Highway. As the Site Plan is finalized, DelDOT will also require the developer to provide safe vehicular and pedestrian movement onto Gill's Neck Road and King's Highway.
 6. The proposed multi-family conditional use meets the purpose of the Zoning Ordinance in that it promotes the orderly growth of the County in an appropriate location.
 7. The proposed use is consistent with the County's Comprehensive Land Use Plan. It is in the Coastal Area according to the Plan, which is a Growth Area. The Plan states that medium and higher densities can be appropriate where, like here, there are features such as central water and sewer and nearby commercial uses and employment centers. The Plan also states that a range of housing types should be permitted in the Coastal Area, including single-family homes, townhouses, and multifamily units.
 8. There is no evidence that this project will adversely affect the neighboring properties, area roadways, or community facilities.
 9. This recommendation is subject to the following conditions:
 - a. There shall be no more than 102 Units within the development.
 - b. All entrances, intersections, roadways, and multimodal improvements required by DelDOT shall be completed by the applicant in accordance with DelDOT's determination.
 - c. The recreational amenities shall include cottage courts, pocket parks,

**M 573 23
Adopt
Ordinance
No. 2964/
CU2359
(continued)**

- green area, and a central amenity area, including a pool with at least 1,000 square feet of surface area, and a community center/clubhouse of at least 2,000 square feet in size. These amenities shall be completed within the development as follows:
- i. The Community Center/Clubhouse and pool shall be completed on or before the 60th residential building permit; and
 - ii. The other amenities shall be completed as the adjacent dwellings are completed.
 - d. Central sewer shall be provided to the development by Sussex County. The developer shall comply with all requirements and specifications of the Sussex County Engineering Department.
 - e. The development shall be served by a central water system providing adequate drinking water and fire protection as required by applicable regulations.
 - f. Stormwater management and erosion and sediment control shall be constructed in accordance with applicable State and County requirements, and the project shall utilize Best Management Practices to construct and maintain these fixtures. The Final Site Plan shall contain the approval of the Sussex Conservation District.
 - g. Interior street design shall comply with or exceed Sussex County standards. However, the Sussex County Street design standards shall not apply to the parking lanes within the development.
 - h. This project is interconnected with the adjacent commercial areas facing King's Highway as well as the Governor's community which is itself interconnected with the Senator's Community. This interconnection is part of the larger plan for the residential development of King's Highway and Gill's Neck Road. This interconnectivity is important and necessary for safe vehicular and pedestrian movement within the developments to provide a means of access to and from them in addition to use Gill's Neck Road. This interconnectivity has been part of the developer's Master Plan for this entire area, and it has been shown and approved by Sussex County at each stage of development along Gills Neck Road. Therefore, once construction is completed this interconnectivity must remain open to all vehicular traffic at all times without obstruction. However, while the interconnection must remain open, to address the concerns about this becoming a short-cut where people will speed through these connected communities, the Applicant shall install a gate, approved by the State Fire Marshall to limit through traffic except through card access use by residents of Governors Subdivision, and also install other traffic calming devices including curb bump outs and elevated crosswalks, as set forth in the Sussex County Comprehensive Plan, at the boundary line between the Governors' community and the cottage community.
 - i. Road naming and addressing shall be subject to the review and approval of the Sussex County Geographic Information Office.
 - j. The Applicant shall consult with the local school district's transportation manager to determine if a school bus stop is appropriate. If it is, the location of such a bus stop shall be shown on

**M 573 23
Adopt
Ordinance
No. 2964/
CU2359
(continued)**

- the Final Site Plan.
- k. Construction, site work, and deliveries shall only occur on the site between the hours of 7:00 a.m. through 6:00 p.m. Monday through Friday and on Saturdays between October 1 and April 30th. No Sunday hours are permitted. A 24-inch by 36-inch “NOTICE” sign confirming these hours in English and Spanish shall be prominently displayed at the site entrance during construction.
 - l. The Final Site Plan shall include a landscape plan for the development showing the proposed tree and shrub landscape design for the community including the transitional landscaping used to screen the common boundary between this development and Governors. No buffering shall be required along the stormwater ponds shared with the adjacent Governor’s community. The Landscape Plan shall identify all “Limits of Disturbance” within the site and these “Limits of Disturbance” shall be clearly marked on the site itself.
 - m. The Applicant shall form a Condominium Association that shall be responsible for the maintenance of all interior roadways and parking areas, buildings, buffers, stormwater management areas, recreational amenities, and open space.
 - n. All lighting on the site shall be shielded and downward screened so that it does not shine on neighboring properties or roadways.
 - o. The development shall comply with the requirements of Chapter 89 of the Sussex County Code and the following notes shall be included within the Final Site Plan to ensure the long-term viability of the Wellhead Protection Area:
 - “During construction document plan review, the Applicant/Developer shall provide verification to the Sussex County Engineering Department that the post-development recharge exceeds the pre-development volume as calculated within the Water Climatic Budget. Additional recharge may be required if the side slop infiltration in the existing stormwater management ponds do not meet this requirement.”*
 - “Rooftop air conditioning system components requiring intermittent unit blowdown are prohibited within the cottages project. The recorded condominium declaration for the cottages shall include this prohibition.”*
 - p. The Final Site Plan shall contain the approval of the Sussex Conservation District for the design and location of all stormwater management areas and erosion and sedimentation control facilities.
 - q. The Final Site Plan shall depict or note these conditions of approval and it shall be subject to the review and approval of the Sussex Planning & Zoning Commission.
 - r. *The Final Site Plan shall contain a landscape plan for the subdivision’s frontage along Kings Highway with appropriate landscaping consistent with the goals of the Lewes Scenic and Historic Byway Corridor Management Plan. The Kings Highway landscaping shall be perpetually maintained by the developer and/or homeowner’s association and shall be noted on the Final Site Plan.*

Motion Adopted: 4 Yeas, 1 Nay

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

**Grant
Requests**

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

**M 574 23
Law
Enforce-
ment
United, inc.**

A Motion was made by Mr. Schaeffer, seconded by Mr. Hudson to give \$1,000 (\$500 from Mr. Schaeffer's Councilmanic Grant Account and \$500 from Mr. Hudson's Councilmanic Grant Account) to Law Enforcement United, Inc. for Road to Hope 2024.

Motion Adopted: 5 Yeas

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

**M 575 23
Good
Samaritan
Aid
Organiza-
tions inc.**

A Motion was made by Mr. Hudson, seconded by Mr. Rieley to give \$1,000 (\$1,000 from Mr. Vincent's Councilmanic Grant Account) to Good Samaritan Aid Organization, Inc. for their Annual Christmas Food Basket/Toy Outreach.

Motion Adopted: 5 Yeas

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

**M 576 23
Blades
Police
Department**

A Motion was made by Mr. Rieley, seconded by Mr. Schaeffer to give \$550 (\$550 from Mr. Vincent's Councilmanic Grant Account) to the Blades Police Department for security cameras and a shelf monitor.

Motion Adopted: 5 Yeas

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

**Proposed
Ordinance
Introduc-
tions**

Mr. Hudson introduced a Proposed Ordinance entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A GR GENERAL RESIDENTIAL DISTRICT FOR MULTI-FAMILY (180 UNITS) TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 48.36 ACRES, MORE OR LESS" filed on behalf of OA Sundance Club, LLC.

Mr. Hudson introduced a Proposed Ordinance entitled "AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX

Proposed Ordinance Introductions (continued) **COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A C-2 MEDIUM COMMERCIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 4.7 ACRES, MORE OR LESS” filed on behalf of Mahmut Yilmaz.**

Mr. Hudson introduced a Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO AMEND THE CONDITIONS OF APPROVAL FOR CONDITIONAL USE NO. 1713 (ORDINANCE NO. 1961) TO ALLOW FOR AN ADDITIONAL BUILDING TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 1.28 ACRES, MORE OR LESS” filed on behalf of TN Hitch, LLC.

Mr. Rieley reintroduced a Proposed Ordinance entitled “AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM A GR GENERAL RESIDENTIAL DISTRICT TO A C-2 MEDIUM COMMERCIAL DISTRICT FOR A PORTION OF A CERTAIN PARCEL OF LAND LYING AND BEING IN DAGSBORO HUNDRED, SUSSEX COUNTY, CONTAINING 1.11 ACRES, MORE OR LESS” filed on behalf of Horacio Paxtor.

CC Member Comments **Mr. Moore noted that comments cannot be accepted on any matter that has had a public hearing and the record has been closed.**

Mr. Vincent commented about solar arrays and their requirements.

M 577 23 Go Into Executive Session **At 10:59 a.m., a Motion was made by Mr. Rieley, seconded by Mr. Hudson to recess the Regular Session, and go into Executive Session for the purpose of discussing matters related to personnel.**

Motion Adopted: 5 Yeas

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

Executive Session **At 11:05 a.m., an Executive Session of the Sussex County Council was held in the Basement Caucus Room to discuss matters related to personnel. The Executive Session concluded at 12:09 p.m.**

M 578 23 Reconvene **At 12:13 p.m., a Motion was made by Mr. Rieley, seconded by Mr. Hudson to come out of Executive Session back into Regular Session.**

Motion Adopted: 5 Yeas

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

**Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Vincent, Yea**

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

**M 579 23 A Motion was made by Mr. Schaeffer, seconded by Mr. Rieley to recess
Recess until 1:30 p.m. Public Hearings.**

Motion Adopted: 5 Yeas

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

**M 580 23 At 1:30 p.m., a Motion was made by Mr. Hudson, seconded by Mr. Rieley to
Reconvene reconvene.**

Motion Adopted: 5 Yeas

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

**Public A Public Hearing was held on a Proposed Ordinance entitled “AN
Hearing/
Proposed ORDINANCE TO AMEND ORDINANCE NO. 2787 TO AUTHORIZE
Lochwood THE ISSUANCE OF UP TO A TOTAL OF \$5,187,000 OF GENERAL
Ordinance OBLIGATION BONDS OF SUSSEX COUNTY TO COVER THE
INCREASED COSTS OF THE CONSTRUCTION AND EQUIPPING OF
AN EXTENSION OF SANITARY SEWER SERVICES TO LOCHWOOD
AND AUTHORIZING ALL NECESSARY ACTIONS IN CONNECTION
THEREWITH”.**

**Mr. Medlarz provided a report on the project and the need for additional
funding.**

There were no public comments.

The Public Hearing and public record were closed.

**M 581 23 A Motion was made by Mr. Hudson, seconded by Mr. Rieley to Adopt
Adopt Ordinance No. 2965 entitled “AN ORDINANCE TO AMEND
Ordinance ORDINANCE NO. 2787 TO AUTHORIZE THE ISSUANCE OF UP TO A
No. 2965/ TOTAL OF \$5,187,000 OF GENERAL OBLIGATION BONDS OF
Lochwood SUSSEX COUNTY TO COVER THE INCREASED COSTS OF THE
Ordinance CONSTRUCTION AND EQUIPPING OF AN EXTENSION OF
SANITARY SEWER SERVICES TO LOCHWOOD AND
AUTHORIZING ALL NECESSARY ACTIONS IN CONNECTION
THEREWITH”.**

Motion Adopted: 5 Yeas

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

**M 582 23
Approve
USDA Loan
Resolution
& Grant
Agreement**

A Motion was made by Mr. Hudson, seconded by Mr. Rieley, be it moved, based upon the recommendation of the Sussex County Engineering & Finance Departments, that the USDA Loan Resolution and Grant Agreement associated with the Lochwood Community area expansion be approved.

Motion Adopted: 5 Yeas

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

Rules

Mr. Moore read the rules and procedures for public hearings.

**Public
Hearing/
CU2381**

A Public Hearing was held on a Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A SOLAR FARM TO BE LOCATED ON A PORTION OF CERTAIN PARCELS OF LAND LYING AND BEING IN BROADKILL HUNDRED, SUSSEX COUNTY, CONTAINING 43.27 ACRES, MORE OR LESS” (properties lying on the south side of Lewes Georgetown Highway [Rt. 9], approximately 0.40 mile east of Harbeson Road [Rt. 5]) (911 Address: 26628 & 26772 Lewes Georgetown Highway, Harbeson) (Tax Map Parcels: 235-30.00-61.00, 58.06 & 58.07) filed on behalf of Consolidated Edison Development, Inc.

The Planning & Zoning Commission held a Public Hearing on the application on September 28, 2023. At the meeting of October 12, 2023, the Planning & Zoning Commission recommended approval of the application for the 11 reasons and 11 recommended conditions.

Jamie Whitehouse, Planning and Zoning Director presented the application.

The Council found that Mr. David Hutt, Esq. with Morris James, LLP introduced the Application, that Mr. Joe Shanahan, RWE Clean Energy owner of Consolidate Edison Development, Inc.; that also present were Mr. Brian Conlon, Langan Engineering; that Council has seen a number of these applications recently; that Governor Carney signed two bills in 2021, Senate Bill 2 and Senate Bill 33; that Senate Bill 33 had a requirement that Delaware raise its renewable portfolio standard by 40% by 2035; that Senate 22 updated requirements for community energy owned facilities; that they are limited in size; that a set amount must be provided to low-income customers; that they require a certificate to operate that is obtained

**Public
Hearing/
CU2381
(continued)**

from the Public Service Commission.

The Council found that Mr. Joe Shanahan spoke on behalf of the Applicant, RWE Clean Energy owner of Consolidate Edison Development, Inc.; that also present were Mr. Brian Conlon, Langan Engineering and Environmental Services, the engineering firm working on this project, and the following two projects; and Mr. John Lee, Colliers Engineering & Design, the engineering firm on the subsequent four projects on the agenda. Mr. Shanahan stated that RWE Group is one of the largest renewable energy companies in the United States; that RWE has been developing, constructing, and operating renewable energy facilities for more than 15 years in the United States; RWE has a secure investment grade credit rating and revenue over 38 billion; that RWE has over 1,500 employees and is the second largest solar owner and operator in the United States with a renewable energy portfolio of about 8 gigawatts (GW) of installed capacity including solar, battery storage, and onshore wind.

Mr. Shanahan stated that that members of the Council know the general characteristics of ground mounted community solar projects because of the number of public hearings during the past 12 months; that he will mention the characteristics again so that they are in the record for this application and the other six applications being considered; that solar projects do not emit any noise or odors; that they do not create and glare during the day and as there are no lights on the sites do not create any illumination at night; that they do not produce any form of waste; that they do not create any traffic because once constructed there are only occasional visits to the site for inspections, landscaping and maintenance; that they do not require sanitary sewer service or utilize the water supply; that solar projects do not create any burden on local fire, police, or other first respondent departments; that solar projects do not put any additional children in the respective school districts; that solar projects particularly in rural areas raise tax revenue in areas that have difficulty increasing their tax base without putting any additional burden on community services or infrastructure; that community solar projects allow access to solar power for all Delmarva Power customers; that 15% of users will be low-income households; that this project and the other six applications will provide rental income for the property owners and allow them to keep the farm for future generations; that when the life of the solar project comes to an end the equipment will be removed and the site will be restored to its previous condition; that Sussex County requires a decommissioning plan; and that these attributes apply to C/U 2381 and the other six applications.

Mr. Shanahan stated that each project is a public utility use under the Sussex County Zoning Code and meets the purposes of a Conditional Use because each has a semi-public character that essential and desirable for the general convenience and welfare of Sussex County residents. Each of the project is located in either a GR (General Residential) District or AR-1 (Agricultural Residential) District; that public utility use is allowed in both of those districts with the approval of this County Council; that the

**Public
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CU2381
(continued)**

applications were submitted on July 1, 2022; that they were submitted prior to the adoption of the recent Solar Ordinance in April, 2023; that the projects comply with the requirements of the new Ordinance including the decommissioning plan; that the conditions given by the Planning & Zoning Commission have been incorporated into each of the final site plans that have been submitted; that all of the projects are proposed as a 4 mega watt AC projects; that none of the projects utilize all of the land; that most of the landlords will continue to farm on the remaining land; that all of the projects are setback significantly from the roadways from which they gain their access; that all of the projects will be accessed by 20 ft. wide gravel driveways; that all of the projects will be enclosed by a 7 ft. fence; that the projects will be enclosed by a 7ft. fence as required by the National Electrical Code; that the fence will be gated with a lock and knox box; that the grounds around and below the panels will be planted with a pollinator friendly mix that provides more shelter for a variety of insects that provide a food source for wild animals and birds; that an exhibit book was submitted for each project and contains the DelDOT Service Level negative determination, a Federal Aviation Administration Determination of No Hazard, Invoice from and fee paid to Delmarva Power to undertake Community Solar Interconnection Study, determination by the state Historic Preservation Office (SHPO) that a review of the property or of the project under the National Historic Preservation Act (NHPA) is not necessary, determination from the United States fish and Wildlife Service that the project will have no adverse impact on any threatened or endangered species, United States Army Corps of Engineers Preliminary Jurisdictional Determination (PJD), Approval by the Office of State Fire Marshal, "Clean" Phase 1 Environmental Site Assessment, and the Decommissioning Plan and Cost Estimate.

Mr. Shanahan stated that C/U 2381 is the Harbeson A Solar Project located at 26628 and 26772 Lewes Georgetown Highway in Harbeson, Delaware; that the lease area is shown on the site plan is 25.8 acres on an overall 43 acre property; that the project would be set back 315 feet from Lewes Georgetown Highway accessed by 20 ft. wide gravel driveway; that the site is mainly undeveloped with one residential building and the landowner resides at the property; that this site is owned by Terri L. Martin; that there was no opposition to the application during the Public Hearing at the Planning & Zoning Commission meeting; that the Commission voted unanimously for its approval; that Ms. Martin requested that the following be read into the record:

"Members of the County Council, my name is Terri Martin. I was born and raised in Sussex County. I graduated from Cape Henlopen high school, Delaware Tech Community College, and Wilmington University. Reminders of my family's deep roots include Martins Farm Road, Thompsonville, and Russell Road, Bridgeville. Having inherited none of the family land, I began assembling my property in 1984 and have added to it as contiguous pieces of land became available over the years with the last piece being purchased in 2009. In total, I currently own 44 acres, I have also

**Public
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CU2381
(continued)**

owned and operated a successful business, M&D Bird Farm for the last 21 years. It has always been my plan that I would find a way for my land to produce an income so that I could retire comfortably without creating another housing development. I was intrigued by the several calls I received from solar com, like ConEd, offering to lease my land for a solar farm. Most assuredly, this was stimulated by Delaware's State mandates to increase the amount of power that comes from renewable energy sources like solar. I found the prospect of reducing our carbon footprint with solar power very appealing. In conclusion, I am requesting that the Council approve this Conditional Use and allow ConEd to move forward with making Sussex County more energy efficient. Respectfully submitted. Terri Martin".

A discussion was held about the bond and who could subscribe to the solar arrays to receive credits.

Public comments were heard.

Mr. John Nichols spoke in opposition of the application; that he is opposed to solar farms; that they are not farms; that they are industrial power plants; that they do not conform with goals for safety; that there are many things lacking; that material safety data sheets are never seen; that all of the solar panels are contaminated with hazard chemicals that cause cancer; that it increases their efficiency and life span; that 90% of the panels come from China; that the capacity factor was questioned; that in Delaware, you are going to get about 14%; that 90% of the energy in Delaware is provided by natural gas; that it was recently stated by John Carey that he wants to shut down every coal fire plant in America; that these facilities are critical; that the more solar that is built into the system, the more likely we will have power outages; that it has been announced that we are short in our capacity during emergency situations; that if it snows and on cloudy days, there will be little coming from these systems; that this is a poor waste of land; that we need reliable energy generation; that during peak demand hours, the value of the electricity that they can dispatch increases; that they store it and use it when it is high value; that this adds very little to grid capacity; that the amount of carbon dioxide that will be reduced is negotiable; that there is nothing that is renewable about it; that it is a rent seeker dream; that it should be required to be done in an industrial setting; that the land should be zoned appropriately; that this should not be done at all; that he recommends that the Ordinance be changed; that there is litigation in Kent County against permits that were issued on a Conditional Use basis; that the argument is that the permit should have never been issued by Kent County; that there are legal liabilities that should be considered; that he does not believe there are adequate safeguards put forth.

Mr. Kevin Goldsborough spoke in opposition of the application; that he has talked to many people about solar in the last few years; that this is not a farm; that you cannot eat anything that a solar panel produces; that it is only good for whoever is selling or leasing it; that there are laws to protect adjacent property owners; that there is a risk to the crop dusters; that

**Public
Hearing/
CU2381
(continued)**

many studies show that projects of this scale can increase temperature up to 5 or 6 degrees; that the process of photosynthesis should be considered; that he discussed droughts and how that affects the land; that when it is does to this scale, they can only recycle about 10% of the panels that are being placed; that if the company goes bankrupt, it is questioned who would clean up these panels; that it has been confirmed that there are 15 containments that go into the construction of these panels; that you have the potential for these chemicals to get into the water; that there should be soil testes and environmental impact studies done; that only 23% of the land is to be covered by anything other than agricultural; that the Governor's mandate was discussed; that this is not a community project; that if you want the money you should put the work in and continue to farm; that there is a potential of Indian artifacts can be on these lands.

The Public Hearing and public record were closed.

**M 583 23
Defer
Action/
CU2381**

A Motion was made by Mr. Rieley, seconded by Mr. Schaeffer to defer action on a Proposed Ordinance entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A SOLAR FARM TO BE LOCATED ON A PORTION OF CERTAIN PARCELS OF LAND LYING AND BEING IN BROADKILL HUNDRED, SUSSEX COUNTY, CONTAINING 43.27 ACRES, MORE OR LESS".

Motion Adopted: 5 Yeas

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

**Public
Hearing/
CU2382**

A Public Hearing was held on a Proposed Ordinance entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT AND A GR GENERAL RESIDENTIAL DISTRICT FOR A SOLAR FARM TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 37.04 ACRES, MORE OR LESS" (property lying on the south side of Kendale Road [S.C.R. 287], approximately 0.15 mile east of Wil King Road [Rt. 288]) (911 Address: N/A) (Tax Map Parcel: 234-2.00-18.00) filed on behalf of Consolidated Edison Development, Inc.

The Planning & Zoning Commission held a Public Hearing on the application on September 28, 2023. At the meeting of October 12, 2023, the Planning & Zoning Commission recommended approval of the application for the 11 reasons and 10 recommended conditions as outlined.

Jamie Whitehouse, Planning and Zoning Director presented the application. The Council found that Mr. Joe Shanahan, spoke on behalf of the Applicant, RWE Clean Energy owner of Consolidate Edison Development,

**Public
Hearing/
CU2382
(continued)**

Inc. Mr. Shanahan stated that C/U 2382 is the Lewes A project located on Kendale Road in Lewes, Delaware; that for the purpose of this public hearing he requested that the testimony presented in connection with the public hearing for C/U 2381, including the introductions and attributes that these seven projects have in common be entered into this record; that he has no problem producing certifications, material data sheets as a condition to certify what the panels are made of if this should be approved; that none of the panels have toxic base or any that go into the soil below them to affect the ground water; that there is no application presented today have battery storage; that the specifics of this site are shown on the site plan and the lease area/conditional use area is 21.6 acres of an overall 37 acre property; that the setback is approximately 200 ft. from Kendale Road with access by a 20 ft. gravel driveway; that the site is mainly undeveloped with some residential properties to the north of the site; that there are portions of wooded areas and wetlands to the south and east of the property and all development is outside of the wetlands; that there was no opposition expressed at the Planning & Zoning Commission hearing; that the Commission voted unanimously for approval; that he has met with two of the neighbors and they requested a screening plan to be developed and they have worked that out with the neighbors; that that this site is owned by Garciel Street Family and Matt Tucker, family member, is present; that requested that the following be read into the record:

“Thank you for taking the time to consider our family’s farmland as a future site for clean energy production in Lewes, Delaware. Our family has farmed the land containing this parcel for the last century and it is now being managed by the fourth generation of the family. Aside from contributing to the local agricultural community, the Garciel Street family are members of the Nanticoke Indian Tribe and have deep roots both in the tribe and the area. It is very humbling to know that through this partnership with Con Edison, we will be able to continue to make an impact on the community and the people in this area. Through this project, we will be able to ensure that this land remains in the family and continues to be one of the few remaining undeveloped agricultural properties on the western side of Lewes. Signed by Matt Tucker–Garciel Street family”.

Public comments were heard.

Mr. Kevin Goldsborough asked that his previous comments be incorporated into the record for this application and the other applications presented today; that he has a petition of people that do not want these; that they are highly subsidized.

The Public Hearing and public record were closed.

A Motion was made by Mr. Rieley, seconded by Mr. Hudson to defer action on a Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT AND A GR GENERAL RESIDENTIAL

**M 584 23
Defer
Action/
CU2382**

DISTRICT FOR A SOLAR FARM TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 37.04 ACRES, MORE OR LESS”.

Motion Adopted: 5 Yeas

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

**Public
Hearing/
CU2383**

A Public Hearing was held on a Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A SOLAR FARM TO BE LOCATED ON A 30.1 ACRE PORTION OF A CERTAIN PARCEL OF LAND LYING AND BEING IN BROAD CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 143.09 ACRES, MORE OR LESS” (property lying on the southwest side of Woodland Ferry Road [S.C.R. 78], approximately 635 feet northwest of Old Sailor Road [S.C.R. 78A]) (911 Address: N/A) (Tax Map Parcel: 232-12.00-4.00 [p/o]) filed on behalf of Consolidated Edison Development, Inc.

The Planning & Zoning Commission held a Public Hearing on the application on September 28, 2023. At the meeting of October 12, 2023, the Planning & Zoning Commission recommended approval of the application for the 12 reasons and 10 recommended conditions as outlined within the motion.

Jamie Whitehouse, Planning and Zoning Director presented the application.

The Council found that Mr. Joe Shanahan, spoke on behalf of the Applicant, RWE Clean Energy owner of Consolidate Edison Development, Inc. Mr. Shanahan stated that C/U 2383 is the Laurel E project located on Woodland Ferry Road in Lewes, Delaware; that for the purpose of this public hearing he requested that the testimony presented in connection with the public hearing for C/U 2381, including the introductions and attributes that these seven projects have in common be entered into this record; that the specifics of this site are shown on the site plan and the lease area/conditional use area is 30.1 acres of an overall 143 acre property; that the setback is approximately 1,500 ft. from Woodland Ferry Road with access by a 20 ft. wide gravel driveway; that the site is mainly undeveloped with portions of wooded areas, wetlands and floodplains of Broad Creek to the rear of the property to the south and all development is outside of the wetlands and the floodplain; that there was no opposition to the application during the Planning & Zoning Commission meeting; that the Commission voted unanimously to approve the application; that this site is owned by the Dickerson Family, currently by Richard Dickerson and Zachary Dickerson; Richard and Zachary represent the fifth and sixth generations of Dickerson’s to own and operate this property as a farm; that Richard and Zachary Dickerson said that approval of this

**Public
Hearing/
CU2383
(continued)**

application would allow their family to create value from an underperforming portion of their property as this location is very sandy and nearly impossible to irrigate; that the lease to Con Edison will afford them a steady stream of income that will assist them in keeping the farm in operation and the land in the family for still more generations to come; and that Richard Dickerson feels that the opportunity to make a positive impact on the greenhouse gas effect caused by fossil fuels with this solar project will in some way offset the many years of emissions which have resulted from his family having had to use diesel fuel to operate farm equipment.

There were no public comments.

The Public Hearing and public hearing were closed.

**M 585 23
Defer
Action/
CU2383**

A Motion was made by Mr. Vincent, seconded by Mr. Rieley to defer action on a Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A SOLAR FARM TO BE LOCATED ON A 30.1 ACRE PORTION OF A CERTAIN PARCEL OF LAND LYING AND BEING IN BROAD CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 143.09 ACRES, MORE OR LESS”

Motion Adopted: 5 Yeas

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

**Public
Hearing/
CU2384**

A Public Hearing was held on a Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A SOLAR FARM ON A 19.61 ACRE, PORTION, MORE OR LESS, OF A CERTAIN PARCEL OF LAND LYING AND BEING IN NORTHWEST FORK HUNDRED, SUSSEX COUNTY, CONTAINING 74.96 ACRES, MORE OR LESS” (property is lying on the west side of South Main Street [Rt. 13A], approximately 380 feet north of Rifle Range Road [S.C.R. 545]) (911 Address: 18374 South Main Street, Bridgeville) (Tax Map Parcel: 131-14.00-29.00 [p/o]) filed on behalf of Consolidated Edison Development, Inc.

The Planning & Zoning Commission held a Public Hearing on the application on September 28, 2023. At the meeting of October 12, 2023, the Planning & Zoning Commission recommended approval of the application for the 11 reasons and 11 recommended conditions as outlined.

Jamie Whitehouse, Planning and Zoning Director presented the application.

The Council found that Mr. Joe Shanahan, spoke on behalf of the Applicant, RWE Clean Energy owner of Consolidate Edison Development,

**Public
Hearing/
CU2384
(continued)**

Inc. Mr. Shanahan stated that C/U 2384 is the Bridgeville A project located at 18374 South Main Street in Bridgeville, Delaware; that for the purpose of this public hearing he requested that the testimony presented in connection with the public hearing for C/U 2381, including the introductions and attributes that these seven projects have in common be entered into this record; that the specifics of this site are shown on the site plan and the lease area/conditional use area is 18.74 acres of an overall 75 acre property; that the setback is approximately 685 ft. from South Main Street with access by a 20 ft. wide gravel driveway; that the site is mainly undeveloped with some residential properties east of property; that there are no wetlands on the property; that the Commission voted unanimously for its approval; that an attorney representing a project being developed north to this site expressed concern about the view shed between the properties; that as a result, the Planning & Zoning Commission included in its vote to recommend approval of the requirement that a 30 ft. deep landscape buffer be installed on the entire northerly property line; that such buffer has been added to the final site plan that has been submitted for this project; that that the site is owned by Karen L. Walls and has been in her family for over 70 years; that Ms. Walls is present and requested that the following be read into the record:

“My name is Karen L. Adams Walls, and I am the owner of the property located at 18374 South Main Street, Bridgeville, Delaware. This property was purchased by my parents, Maurice and Mildred Adams, and our family farm known as Grateful Acres was built in 1953. My father and Aunt, Mary Adams were the owners of Rapa, Inc. which was established by my uncles in 1926. As you can see our roots in Sussex County run deep. Until recently we have enjoyed continuing the tradition of raising and racing standard-bred horses, since we are now in our seventies, and this has become too labor intensive we began looking into different options to maintain the farm and to keep it green. Con Edison was the answer to our prayers, knowing that after the lease expires our land will be returned to its natural state while at the same time while at the same time helping the environment was a perfect solution for us. I truly appreciate your consideration in granting the permits needed for this community solar project. My grandchildren do as well, we look forward to keeping Grateful Acres in the family for generations to come. Respectfully yours, Karen Walls”; that Ms. Walls acknowledged that when adjoining property owners came into town to built multiple 3-story apartment buildings with little setbacks; that they were concerned about the view shed; that she never objected to that development; that she has had many of her neighbors come to her that said they were rather look at solar arrays than the apartment buildings; that he would like to incorporate all points about the panels and that there would be no batteries also be incorporated into the record.

There were no public comments.

The Public Hearing and public record were closed.

**M 586 23
Defer
Action/
CU2384**

A Motion was made by Mrs. Green, seconded by Mr. Rieley to defer action on a Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A SOLAR FARM ON A 19.61 ACRE, PORTION, MORE OR LESS, OF A CERTAIN PARCEL OF LAND LYING AND BEING IN NORTHWEST FORK HUNDRED, SUSSEX COUNTY, CONTAINING 74.96 ACRES, MORE OR LESS”.

Motion Adopted: 5 Yeas

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

**Public
Hearing/
CU2385**

A Public Hearing was held on a Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A GR GENERAL RESIDENTIAL DISTRICT FOR A SOLAR FARM ON A 17.45 ACRE PORTION, MORE OR LESS, OF A CERTAIN PARCEL OF LAND LYING AND BEING IN LITTLE CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 29.45 ACRES, MORE OR LESS” (property lying on the north side of West Line Road [S.C.R. 512], approximately 0.67 mile west of Delmar Road [Route 54]) (911 Address: 8517 West Line Road, Delmar) (Tax Map Parcel: 532-19.00-57.00) filed on behalf of Consolidated Edison Development, Inc.

The Planning & Zoning Commission held a Public Hearing on the application on September 28, 2023. At the meeting of October 12, 2023, the Planning & Zoning Commission recommended approval of the application for the 11 reasons and 11 recommended conditions as outlined.

Jamie Whitehouse, Planning & Zoning Director presented the application.

The Council found that Mr. Joe Shanahan, spoke on behalf of the Applicant, RWE Clean Energy owner of Consolidate Edison Development, Inc. Mr. Shanahan stated that C/U 2385 is the Delmar B project located at 8517 West Line Road in Delmar, Delaware; that for the purpose of this public hearing he requested that the testimony presented in connection with the public hearing for C/U 2381, including the introductions and attributes and any other information provided for these seven projects have in common be entered into this record; that the specifics of this site are shown on the site plan and the lease area/conditional use area is 17.21 acres of an overall 29.45 acre property; that the setback is approximately 425 ft. from Delaware Avenue with access by a 20 ft. gravel driveway; that the site is mainly undeveloped except for a single-family dwelling occupied by the landowners daughter; that there are portions of wooded area to the east, west and north; that there are some wetlands to the south and western sides of the property and all development is outside of the wetlands; that there was no opposition expressed at the Planning & Zoning Commission meeting; that the P&Z Commission voted unanimously to approve the

**Public
Hearing/
CU2385
(continued)**

application; that the site is owned by William J. and Janet James who purchased the property in 2010 as it was adjacent to their then existing property where they continue to reside; that Mr. and Mrs. James were unable to attend today.

There were no public comments.

The Public Hearing and public record were closed.

**M 587 23
Defer
Action/
CU2385**

A Motion was made by Mr. Vincent, seconded by Mr. Hudson to defer on Proposed Ordinance entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A GR GENERAL RESIDENTIAL DISTRICT FOR A SOLAR FARM ON A 17.45 ACRE PORTION, MORE OR LESS, OF A CERTAIN PARCEL OF LAND LYING AND BEING IN LITTLE CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 29.45 ACRES, MORE OR LESS".

Motion Adopted: 5 Yeas

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

**Public
Hearing/
CU2386**

A Public Hearing was held on a Proposed Ordinance entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A GR GENERAL RESIDENTIAL DISTRICT FOR A SOLAR FARM ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LITTLE CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 53.891 ACRES, MORE OR LESS" (property lying on the east and west side of Cast Rite Drive on the south side of Bacons Road [S.C.R. 515], approximately 0.39 mile west of Country Walk) (911 Address: 35204 Cast Rite Drive, Delmar) (Tax Map Parcel: 532-6.00-32.00) filed on behalf of Consolidated Edison Development, Inc.

The Planning & Zoning Commission held a Public Hearing on the application on September 28, 2023. At the meeting of October 12, 2023, the Planning & Zoning Commission recommended approval of the application for the 11 reasons and 11 recommended conditions as outlined.

The Council found that Mr. Joe Shanahan, spoke on behalf of the Applicant, RWE Clean Energy owner of Consolidate Edison Development, Inc. Mr. Shanahan stated that C/U 2386 is the Delmar C project located at 35204 Cast Rite Drive in Delmar, Delaware; that for the purpose of this public hearing he requested that the testimony presented in connection with the public hearing for C/U 2381, including the introductions and attributes and all information offered about these seven projects have in common be entered into this record; that the specifics of this site are shown on the site plan and the lease area/conditional use area is 24.53 acres of an overall 53.89 acre property; that the setback is approximately 350 ft. from Bacons

**Public
Hearing/
CU2386
(continued)**

Road with access by a 20 ft. gravel driveway; that the site is mainly undeveloped except for a single-family dwelling occupied by the landowner; that there are portions of wooded areas with wetlands to the western side of the property and all development is outside of the wetlands; that at the Planning & Zoning Commission meeting, there was no opposition to the application; that the Planning & Zoning Commission voted unanimously for approval; that the site is owned by Robert Blaney; that he asked that the following statement be entered into the record on his behalf:

“To whom it may concern, Pursuant to Delaware’s agenda to go green and utilize solar technology to generate electricity rather than fossil fuels—i.e., heavy oils, coal, and even natural gas seems to be a rational approach rather than nuclear generation which is fraught with too many fears and technical problems. Desiring to contribute my small part to alleviate the problem of airborne pollution, when I was approached by Consolidated Edison after consideration, I agreed to their proposal. Long-term the land can be returned to agricultural use as the decommissioning will leave no contamination of the soils or groundwater. Ruralness of the area will be preserved, if solar proves to be the long-term solution to society's energy needs this project will play a role in that endeavor. Thank you, Robert Blaney.”

There were no public comments.

The Public Hearing and public record were closed.

**M 588 23
Defer
Action/
CU2386**

A Motion was made by Mr. Vincent, seconded by Mr. Schaeffer to defer action on a Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A GR GENERAL RESIDENTIAL DISTRICT FOR A SOLAR FARM ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LITTLE CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 53.891 ACRES, MORE OR LESS”.

Motion Adopted: 5 Yeas

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

**Public
Hearing/
CU2387**

A Public Hearing was held on a Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A GR GENERAL RESIDENTIAL DISTRICT FOR A SOLAR FARM TO BE LOCATED ON A PORTION OF A CERTAIN PARCEL OF LAND LYING AND BEING IN LITTLE CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 17.04 ACRES, MORE OR LESS” (property lying on the north and south sides of Hastings Lane and the west side of Bi-State Boulevard [Rt. 13A], approximately 0.37 mile north of Old Crow Road [S.C.R. 503B]) (911 Address: 10311 Hastings Lane, Delmar) (Tax Map Parcel: 532-13.00-22.00 [p/o]) filed on behalf of Consolidated Edison

**Public
Hearing/
CU2387
(continued)**

Development, Inc.

The Planning & Zoning Commission held a Public Hearing on the application on September 28, 2023. At the meeting of October 12, 2023, the Planning & Zoning Commission recommended approval of the application for the 10 reasons sand 11 recommended conditions as outlined.

The Council found that Mr. Joe Shanahan, spoke on behalf of the Applicant, RWE Clean Energy owner of Consolidate Edison Development, Inc. Mr. Shanahan stated that C/U 2387 is the Delmar D project located at 10311 Hastings Lane in Delmar, Delaware; that for the purpose of this public hearing he requested that the testimony presented in connection with the public hearing for C/U 2381, including the introductions and attributes and any other information that these seven projects have in common be entered into this record; that the specifics of this site are shown on the site plan and the lease area/conditional use area is 16.94 acres of an overall 54.49 acre property; that the setback is approximately 410 ft. with access by a 20 ft. gravel driveway; that the site is undeveloped and currently used as part of the family farm; that there are no wetlands on the property; that the Planning and Zoning Commission voted unanimously to approve the project; that during the P&Z Commission public hearing, there were abutting property owners that expressed concerns about the view shed between the properties; that as a result, the Commission included in their vote to recommend approval that a 30 ft. deep landscape buffer be installed to mitigate the concern; that such a buffer has been added to the final site plan that has been submitted; that it is a significant commitment that has been addressed; that the site is owned by Rufus Lester (Skip) Ammons and his wife Charlotte Ammons who live on the property with their daughter and son-in-law who operate the farm and farm seed and equipment business at this location; that Mr. and Mrs. Ammons are present; and that the Ammons family asked that he read the following statement into the record on their behalf:

“To whom it may concern, my wife and I ask that you consider the approval of a solar panel project on a small acreage of our family farm. My wife’s parents purchased this farm in 1945 with the intent of it being a family farm for generations to come. We are the second generation and upon our death, our two children will become the third generation. At this time, we have grown grandchildren who represent the fourth generation. We presently have three generations living on the farm. We see this project to be a win-win thing, it will bring financial stability to the farm operation, and it will provide financial support in the form of discounts on electric bills to the surrounding community. We also have strong feelings not only about the present but also future need for electric power. Thank you for your consideration in this matter. Skip and Charlotte Ammons.”

Mr. Shanahan stated that the applications do meet the requirements of the Ordinance set forth for Solar applications.

**Public
Hearing/
CU2387
(continued)**

Public comments were heard.

Ms. Sheree Hammerer spoke in opposition to the application. Ms. Hammerer stated that she found that RWE acquired Consolidated Edison Development, Inc. on March 1, 2023, and they based out of Germany; that it is disturbing to her that the solar panels are going to be manufactured in China; that she found an article written by a North Carolina State professor that is on why solar farms are not a good use for agricultural lands; that solar panels only capture about 20% of light for about 5 hours a day; that the rest of the solar energy is going to pass through the ground; that there is going to be contamination; that there are many rare earth minerals that are being used to make these panels; that it is not known for sure what is going to happen in the 25 years of the lease; that there is a loss of business for feed companies, seed, chemical dealer, hardware, machinery that depend on agricultural for their business; that she questioned if the money would still be there in 25 years for the bond; that the panels are considered a toxic waste; that solar farms are not a good use of land; that the traditional utility are still going to have to produce their normal amount of power for the other times; that on cloudy, rainy days, other power will need to be provided for 24 hours; that we are not improving our climate or our environment; that there are 37 homes that surround where the solar farm is going to be; that out of the 37 homes, there were 22 that signed a petition opposing the solar farm; that 4 of the families were not able to be spoken to for various reasons; that 8 of the families, they were unable to make contact with them; that there 3 families for personal reasons did not want to be involved with the petition; that she provided information stating the disadvantages of living near a solar farm; that she lives on the east side of Bi State Blvd.; that she discussed the disadvantages that were discussed in the article; that there is an increase of cancer and potential effects on the nervous system; that she has concerns about the glare coming off of the panels; that she also had concerns about radiation or buzzing noise from the solar panels; that she has land use concerns; that that she has concerns about the animals in the fields; that property values will decrease; that heat stress was discussed; that there is a fire hazard; that if one panel goes out, all of them will go out since they are connected; that the disadvantages should be addressed; that it is critical to balance the advantages with the disadvantages; that a study should be done to show the effects; that she submitted copies of the study she referenced.

The Council found that Mr. Steve Harrison spoke in opposition to the application. Mr. Harrison stated that he put together some information that he found on the internet; that he agrees with the previous speaker's comments; that they did go through the neighborhood to ask people if they knew about it; that quite of few did not know about this application; that he had a copy of the petition that was referenced by the previous speaker; that the petition has 25 signatures.

Mr. Vincent Hammerer spoke in opposition to the application. Mr. Hammerer stated that his wife's family has been in the area for many years;

**Public
Hearing/
CU2387
(continued)**

that when the application came to the P&Z Commission meeting, the information was misleading; that he presented a copy of what was received by the neighbors; that many of the neighbors did not receive the information; that he asked that Mr. John A. Nichols's for CU2381 comments be incorporated into the record for this application (CU2387); that he is the voice for the members that signed the petition; that he is committed to the community; that he thinks property values will be impacted; that the panels are made in China; that he questioned if malware is placed on the panels; that he questioned what was out there to protect the property owners; that he asked who would clean the property up; that he has concerns with the wildlife; that he would like to have an impact study to set up better guidelines.

Mr. Donald Messick spoke in opposition of the application; that his neighbors have said everything that he needs to say.

Mr. Rieley questioned if the panels contained heavy metals. Mr. Shanahan stated that solar panels can be found that contain the worst of everything. The solar panels that his company uses contain no materials that will degrade or leachate into the soil. He is willing to provide documentation.

It was added that the notice for the public hearings are sent out by the County and a discussion was held about the property taxes.

The Public Hearing and public record were closed.

**M 589 23
Defer
Action/
CU2387**

A Motion was made by Mr. Vincent, seconded by Mr. Hudson to defer action on a Proposed Ordinance entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A GR GENERAL RESIDENTIAL DISTRICT FOR A SOLAR FARM TO BE LOCATED ON A PORTION OF A CERTAIN PARCEL OF LAND LYING AND BEING IN LITTLE CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 17.04 ACRES, MORE OR LESS".

Motion Adopted: 5 Yeas

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

**M 590 23
Adjourn**

A Motion was made by Mr. Hudson seconded by Mr. Rieley to adjourn at 4:15 p.m.

Motion Adopted: 5 Yeas

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

Respectfully submitted,

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

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

ENGINEERING DEPARTMENT

ADMINISTRATION	(302) 855-7718
AIRPORT & INDUSTRIAL PARK	(302) 855-7774
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Sussex County


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HANS M. MEDLARZ, P.E.
COUNTY ENGINEER

JOHN J. ASHMAN
DIRECTOR OF UTILITY PLANNING

Memorandum

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

FROM: John J. Ashman 
Director of Utility Planning & Design Review

RE: *Existing Wastewater Infrastructure Use Agreement
Villas at Bridgeville IUA-1189 (Phase I)
File: OM 9.01*

DATE: December 12, 2023

The Existing Wastewater Infrastructure Use Agreement is an arrangement that collects financial contributions based on development built out flows for available capacity in the existing wastewater transmission infrastructure previously funded by the County while at the same time eliminating the granting of "oversizing" credits.

The Engineering Department requests approval of an agreement for the existing wastewater infrastructure use with **Heritage Shores Villas, LLC** for **Villas at Bridgeville (Phase I)** project in the **Western Sussex Area**. Such an arrangement does not modify the underlying land use decision in any form. However, it allows the wastewater originating from the approved project to be conveyed through the existing transmission system previously constructed by the County.

Under the proposed arrangement, **Villas at Bridgeville (Phase I)** project will connect to the existing County owned wastewater infrastructure. In return for utilization of said **Heritage Shores Villas, LLC** will contribute **\$179,654.00** for the financial catch-up contribution of the existing infrastructure to serve **157.00** Equivalent Dwelling Units. Payments of the contribution will be submitted prior to substantial completion of the on-site collection system.



EXISTING WASTEWATER INFRASTRUCTURE USE AGREEMENT

Villas at Bridgeville – IUA 1189 (Phase 1)

THIS AGREEMENT (“Agreement”), made this 16 day of November 2023, by and between:

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

HERITAGE SHORES VILLAS, LLC a Limited Liability Company and developer of a project known as **Villas at Bridgeville**, hereinafter called the “Developer.”

WITNESSETH:

WHEREAS, Developer is developing a tract of land identified as Tax Map parcel 131-14.00-44.22 to be known as **Villas at Bridgeville** (“Project”) and;

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

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

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

- (1) Developer is proposing to utilize County’s existing collection and transmission capacity by connecting to existing regional infrastructure used by multiple pump stations.
- (2) In exchange for permission to connect up to **157.00** additional equivalent dwelling units to County’s existing system and to utilize the existing capacity in said system, Developer agrees to financial catch-up contribution in the amount of **\$179,654.00** for said existing facilities.
- (3) The contribution amount in the case of multiple pump stations using an existing collection and transmission system is based on the ratio of average flow capacity utilization of said transmission facilities.
- (4) **Payment of the contribution must be submitted prior to substantial completion of the on-site collection system.**
- (5) If the Project (as currently submitted) is amended and County determines in its sole discretion that such amendments materially affect this Agreement, this Agreement may be declared by County to be null and void, and any unused payments made

pursuant to this Agreement shall be returned to Developer, unless the parties otherwise agree. Nothing herein shall prevent the parties from the negotiation of a new agreement with respect to the amended Project, as the parties may deem appropriate.

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

- (13) All the terms, covenants, and conditions of this Agreement shall in all respects be governed and construed under and pursuant to the Laws of the State of Delaware without respect to its conflict of law provisions. This Agreement may only be amended, supplemented or modified by a subsequent written agreement executed by all the parties hereto.
- (14) This Agreement and exhibits constitute the final, entire and exclusive agreement between the parties with respect to the subject matter of all matters discussed in it and supersedes all prior or contemporaneous discussions, statements, representations, warranties or agreements, whether written or oral, made in connection with the Agreement described herein.
- (15) It is mutually agreed between the parties that no review, approval, acceptance, and/or payment made under this Agreement shall be conclusive evidence of the performance of the Agreement, either wholly or in part, and that no review, approval, acceptance, and/or payment shall be construed as acceptance of defective work by County, nor in any way relieve Developer of its responsibility for the adequacy of its work.
- (16) The waiver by any party hereto of a breach of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach. Neither party shall be deemed to have waived any rights under this Agreement unless such waiver is expressly given in writing and signed by the waiving party. No delay or omission on the part of either party in exercising any right shall operate as a waiver of such right or any other right.
- (17) This Agreement shall be executed in duplicate, any copy of which shall be considered and construed as and for the original.
- (18) If any provision of this Agreement shall be deemed invalid or unenforceable for any reason whatsoever, then such invalidity or unenforceability shall not render invalid or unenforceable any of the other provisions of this Agreement which may be given effect without such invalid or unenforceable provision, and to this end, the provisions of this Agreement are hereby deemed to be severable.
- (19) Any notice required to be delivered to or by either party under this Agreement shall be sent by U.S. first class mail. For purposes of this provision, the address of the County is 2 The Circle, P.O. Box 589, Georgetown, Delaware, 19947, and the address of the Developer is **1934 Old Gallows Rd. Suite 500, Vienna VA 22182.**

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

FOR THE COUNTY:

{Seal}

By: _____
(President - Sussex County Council)

_____ (DATE)

ATTEST:


Tracy Torbert
Clerk of the County Council

FOR HERITAGE SHORES VILLAS, LLC

By:  _____ (Seal)
Neil Patel

Nov. 16, 2023 _____ (DATE)

WITNESS:



ENGINEERING DEPARTMENT

ADMINISTRATION	(302) 855-7718
AIRPORT & INDUSTRIAL PARK	(302) 855-7774
ENVIRONMENTAL SERVICES	(302) 855-7730
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RECORDS MANAGEMENT	(302) 854-5033
UTILITY ENGINEERING	(302) 855-7717
UTILITY PERMITS	(302) 855-7719
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Sussex County


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HANS M. MEDLARZ, P.E.
COUNTY ENGINEER

JOHN J. ASHMAN
DIRECTOR OF UTILITY PLANNING

Memorandum

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

FROM: John J. Ashman 
Director of Utility Planning & Design Review

RE: *Existing Wastewater Infrastructure Use Agreement
Villas at Bridgeville IUA-1189 (Phase II)
File: OM 9.01*

DATE: December 12, 2023

The Existing Wastewater Infrastructure Use Agreement is an arrangement that collects financial contributions based on development built out flows for available capacity in the existing wastewater transmission infrastructure previously funded by the County while at the same time eliminating the granting of "oversizing" credits.

The Engineering Department requests approval of an agreement for the existing wastewater infrastructure use with **Passwater Farm, LLC** for **Villas at Bridgeville (Phase II)** project in the **Western Sussex Area**. Such an arrangement does not modify the underlying land use decision in any form. However, it allows the wastewater originating from the approved project to be conveyed through the existing transmission system previously constructed by the County.

Under the proposed arrangement, **Villas at Bridgeville (Phase II)** project will connect to the existing County owned wastewater infrastructure. In return for utilization of said **Passwater Farm, LLC** will contribute **\$66,369.00** for the financial catch-up contribution of the existing infrastructure to serve **58.00** Equivalent Dwelling Units. Payments of the contribution will be submitted prior to substantial completion of the on-site collection system.



EXISTING WASTEWATER INFRASTRUCTURE USE AGREEMENT

Villas at Bridgeville – IUA 1189 (Phase 2)

THIS AGREEMENT (“Agreement”), made this 16 day of
November 2023, by and between:

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

PASSWATERS FARM, LLC a Limited Liability Company and developer of a project known as **Villas at Bridgeville**, hereinafter called the “Developer.”

WITNESSETH:

WHEREAS, Developer is developing a tract of land identified as Tax Map parcel 131-14.00-44.23 to be known as **Villas at Bridgeville** (“Project”) and;

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

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

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

- (1) Developer is proposing to utilize County’s existing collection and transmission capacity by connecting to existing regional infrastructure used by multiple pump stations.
- (2) In exchange for permission to connect up to **58.00** additional equivalent dwelling units to County’s existing system and to utilize the existing capacity in said system, Developer agrees to financial catch-up contribution in the amount of **\$66,369.00** for said existing facilities.
- (3) The contribution amount in the case of multiple pump stations using an existing collection and transmission system is based on the ratio of average flow capacity utilization of said transmission facilities.
- (4) **Payment of the contribution must be submitted prior to substantial completion of the on-site collection system.**
- (5) If the Project (as currently submitted) is amended and County determines in its sole discretion that such amendments materially affect this Agreement, this Agreement may be declared by County to be null and void, and any unused payments made

pursuant to this Agreement shall be returned to Developer, unless the parties otherwise agree. Nothing herein shall prevent the parties from the negotiation of a new agreement with respect to the amended Project, as the parties may deem appropriate.

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

- (13) All the terms, covenants, and conditions of this Agreement shall in all respects be governed and construed under and pursuant to the Laws of the State of Delaware without respect to its conflict of law provisions. This Agreement may only be amended, supplemented or modified by a subsequent written agreement executed by all the parties hereto.
- (14) This Agreement and exhibits constitute the final, entire and exclusive agreement between the parties with respect to the subject matter of all matters discussed in it and supersedes all prior or contemporaneous discussions, statements, representations, warranties or agreements, whether written or oral, made in connection with the Agreement described herein.
- (15) It is mutually agreed between the parties that no review, approval, acceptance, and/or payment made under this Agreement shall be conclusive evidence of the performance of the Agreement, either wholly or in part, and that no review, approval, acceptance, and/or payment shall be construed as acceptance of defective work by County, nor in any way relieve Developer of its responsibility for the adequacy of its work.
- (16) The waiver by any party hereto of a breach of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach. Neither party shall be deemed to have waived any rights under this Agreement unless such waiver is expressly given in writing and signed by the waiving party. No delay or omission on the part of either party in exercising any right shall operate as a waiver of such right or any other right.
- (17) This Agreement shall be executed in duplicate, any copy of which shall be considered and construed as and for the original.
- (18) If any provision of this Agreement shall be deemed invalid or unenforceable for any reason whatsoever, then such invalidity or unenforceability shall not render invalid or unenforceable any of the other provisions of this Agreement which may be given effect without such invalid or unenforceable provision, and to this end, the provisions of this Agreement are hereby deemed to be severable.
- (19) Any notice required to be delivered to or by either party under this Agreement shall be sent by U.S. first class mail. For purposes of this provision, the address of the County is 2 The Circle, P.O. Box 589, Georgetown, Delaware, 19947, and the address of the Developer is **3201 Jermantown Road, Suite 150, Fairfax VA 22030.**

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

FOR THE COUNTY:

{Seal}

By: _____
(President - Sussex County Council)

_____ (DATE)

ATTEST:

Tracy Torbert
Clerk of the County Council

FOR PASSWATER FARMS, LLC

By:  _____ (Seal)
Neil Patel

Nov. 16, 2023 _____ (DATE)

WITNESS:  _____
Paula Johnson

ENGINEERING DEPARTMENT

ADMINISTRATION	(302) 855-7718
AIRPORT & INDUSTRIAL PARK	(302) 855-7774
ENVIRONMENTAL SERVICES	(302) 855-7730
PUBLIC WORKS	(302) 855-7703
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HANS M. MEDLARZ, P.E.
COUNTY ENGINEER

JOHN J. ASHMAN
DIRECTOR OF UTILITY PLANNING

Memorandum

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

FROM: John J. Ashman 
Director of Utility Planning & Design Review

RE: ***Existing Wastewater Infrastructure Use Agreement***
Silver Woods Villa District IUA-1242
File: OM 9.01

DATE: December 12, 2023

The Existing Wastewater Infrastructure Use Agreement is an arrangement that collects financial contributions based on development built out flows for available capacity in the existing wastewater transmission infrastructure previously funded by the County while at the same time eliminating the granting of "oversizing" credits.

The Engineering Department requests approval of an agreement for the existing wastewater infrastructure use with **Silverstock WP, LLC** for **Silver Woods Villa District** project in the **Miller Creek Area**. Such an arrangement does not modify the underlying land use decision in any form. However, it allows the wastewater originating from the approved project to be conveyed through the existing transmission system previously constructed by the County.

Under the proposed arrangement, **Silver Woods Villa District** project will connect to the existing County owned wastewater infrastructure. In return for utilization of said **Silverstock WP, LLC** will contribute **\$54,016.00** for the financial catch-up contribution of the existing infrastructure to serve **166.00** Equivalent Dwelling Units. Payments of the contribution will be submitted prior to substantial completion of the on-site collection system.



EXISTING WASTEWATER INFRASTRUCTURE USE AGREEMENT

Silver Woods Villa District – IUA-1242

THIS AGREEMENT (“Agreement”), made this 12TH day of DECEMBER 2023, by and between:

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

SILVERSTOCK WP, LLC, a Delaware Limited Liability Company and developer of a project known as Silver Woods Villa District, hereinafter called the “Developer.”

WITNESSETH:

WHEREAS, Developer is developing a tract of land identified as Tax Map parcels 134-16.00-914.00, 951.00, 45.00, 47.00 & 43.01 to be known as Silver Woods Villa District (“Project”) and;

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

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

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

- (1) Developer is proposing to utilize County’s existing collection and transmission capacity by connecting to existing regional infrastructure used by multiple pump stations.
- (2) In exchange for permission to connect up to **166.00** additional equivalent dwelling units to County’s existing system and to utilize the existing capacity in said system, Developer agrees to financial catch-up contribution in the amount of **\$54,016.00** for said existing facilities.
- (3) The contribution amount in the case of multiple pump stations using an existing collection and transmission system is based on the ratio of average flow capacity utilization of said transmission facilities.
- (4) **Payment of the contribution must be submitted prior to receiving a building permit.**

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

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

- (13) All the terms, covenants, and conditions of this Agreement shall in all respects be governed and construed under and pursuant to the Laws of the State of Delaware without respect to its conflict of law provisions. This Agreement may only be amended, supplemented or modified by a subsequent written agreement executed by all the parties hereto.
- (14) This Agreement and exhibits constitute the final, entire and exclusive agreement between the parties with respect to the subject matter of all matters discussed in it and supersedes all prior or contemporaneous discussions, statements, representations, warranties or agreements, whether written or oral, made in connection with the Agreement described herein.
- (15) It is mutually agreed between the parties that no review, approval, acceptance, and/or payment made under this Agreement shall be conclusive evidence of the performance of the Agreement, either wholly or in part, and that no review, approval, acceptance, and/or payment shall be construed as acceptance of defective work by County, nor in any way relieve Developer of its responsibility for the adequacy of its work.
- (16) The waiver by any party hereto of a breach of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach. Neither party shall be deemed to have waived any rights under this Agreement unless such waiver is expressly given in writing and signed by the waiving party. No delay or omission on the part of either party in exercising any right shall operate as a waiver of such right or any other right.
- (17) This Agreement shall be executed in duplicate, any copy of which shall be considered and construed as and for the original.
- (18) If any provision of this Agreement shall be deemed invalid or unenforceable for any reason whatsoever, then such invalidity or unenforceability shall not render invalid or unenforceable any of the other provisions of this Agreement which may be given effect without such invalid or unenforceable provision, and to this end, the provisions of this Agreement are hereby deemed to be severable.
- (19) Any notice required to be delivered to or by either party under this Agreement shall be sent by U.S. first class mail. For purposes of this provision, the address of the County is 2 The Circle, P.O. Box 589, Georgetown, Delaware, 19947, and the address of the Developer is **P.O. Box 449 Bethany Beach, Delaware 19930.**

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

FOR THE COUNTY:

{Seal}

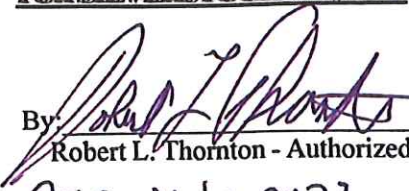
By: _____
(President - Sussex County Council)

(DATE))

ATTEST:

Tracy Torbert
Clerk of the County Council

FOR SILVERSTOCK WP, LLC.

By:  (Seal)
Robert L. Thornton - Authorized Signatory

DEC. 4th 2023 (DATE)

WITNESS: Brenda Thouton

ENGINEERING DEPARTMENT

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



Sussex County

DELAWARE
sussexcountye.gov

HANS M. MEDLARZ, P.E.
COUNTY ENGINEER

JOHN J. ASHMAN
DIRECTOR OF UTILITY PLANNING

Memorandum

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

FROM: Hans Medlarz
County Engineer

John J. Ashman
Director of Utility Planning & Design Review

RE: *Interim Sewer Operations & Transition Agreement*
Gull Point & Warwick Cove
File: OOS-11.14

DATE: December 12, 2023

The Engineering Department requested permission from County Council to post notices for a public hearing for the Warwick Park Area in August of 2022. It was discovered while preparing for the Public Hearing that Gull Point had been issued a letter in **2012** from DNREC notifying them that their operating permit would expire in **5** years and plant upgrades would be required following the promulgation of the Pollution Control Strategy (PCS) Regulations. This information was provided at the Public Hearing and those in attendance from Gull Point appeared to unaware of such letter. Following the meeting the department was asked if we could be available for a special general membership meeting for Gull Point to explain to those not in attendance the information we had shared at the Public Hearing.

Prior to that meeting the County was included in an email from DNREC to Gull Point pertaining to the permit status and advisory letter regarding the compliance status of their on-site wastewater treatment and disposal system. The email also included the original 2012 letter. The department attended the Gull Point meeting where the board shared that DNREC had recently sent notification of the need for Gull Point to come into compliance with the PCS and make application for a new operating permit. The board asked for a vote and the results were unanimous for Gull Point to remain in the proposed boundary for the County annexation and be a part of the Warwick Park Area project.



On January 10, 2023, County Council approved the Warwick Park annexation including two additional communities, Gull Point and Warwick Cove. Sussex County Engineering Department submitted the Notice of Intent (NOI) to DNREC/Environmental Finance for Phase 1 of the Warwick Park project to build a new sub-regional pumpstation to abandon the on-site community septic systems. The project has ranked #1 on the Project Priority List (PPL). The project is a \$2.3M pumpstation that will accept the effluent from these two communities as well as Warwick Park when completed. The first phase of the project includes a short section of gravity main from Gull Point to the proposed pumpstation location, pumpstation construction and a new forcemain to the existing County infrastructure.

The overall project is scheduled for completion mid-2025 and both communities are requesting County assumption of the operations and maintenance of the existing on-site collection and disposal systems prior to the project completion pursuant to Title 9, Del Code §6702. The communities must pay the treatment portion of the system connection charges as outlined in the respective agreement as well as surrender their respective State ground water discharge permits.

The Department requests County Council's approval of the Interim Sewer Operations & Transition Agreement outlining the steps necessary for the communities to relinquish control of the respective on-site systems. Sussex County would then assume the operations and maintenance of the existing systems until such time the effluent can be conveyed to the new pumpstation and transmitted to the County facility for treatment and disposal.

The on-site systems are currently operated & maintained by White Marsh Environmental Systems, Inc. The Department recommends contracting with White Marsh to continue this work at the following rates:

Warwick Cove: \$17,358.53/yr. + an average annual \$10,000.00/yr. supplemental billing.

Gull Point: \$12,873.12/yr. + an average annual \$8,500.00/yr. of supplemental billing.

In total both communities have 179 EDUs which will be billed the County's sewer service charge in accordance with the Interim Sewer Operations & Transition Agreement. This billing will cover the costs incurred on their behalf by White Marsh Environmental with sufficient funding left over for the administrative costs of the County. Therefore, the Department recommends execution of the White Marsh Environmental proposal.

Schedule 1

CONTRACTOR: White Marsh Environmental Systems, Inc.
Attn: Sam Schlegel
1100 S. Little Creek Road
Dover, DE 19901
sschlegel@tuiwater.com
302-945-1136 (fax)

OWNER: Sussex County Council
Attn: Hans Medlarz
2 The Circle
Georgetown, DE 19947
302-855-7370
Hans.medlarz@sussexcountysde.gov

Project Name: Warwick Cove

Location: River Road
Oak Orchard, DE 19966

Facilities: Wastewater Facilities

Owner requests and authorizes Contractor to perform the following Services:

Scope of Services

1. The Contractor's licensed operator will visit the Facilities three (3) times per week during regular business hours to inspect the Facilities and verify that the Facilities are operating properly. Each visit will consist of:
 - a. Visually inspect the equipment to verify proper operation.
 - b. Log the date and time of each visit.
 - c. Log data from instrumentation in place at the Facility.
 - d. Prepare and maintain records, including the monthly DMR Report.
 - e. Sample parameters as required by the permit.
 - f. Inspect and notify Owner when additional chemical supplies are needed to operate the Facility.
2. Identify and recommend routine maintenance, calibration of equipment and associated activities as required.
3. All other work requested by the Owner including maintenance requiring specialty services or personnel, will be billed to Owner on a time and materials basis at the rates set forth herein.
4. Contractor is not responsible for any costs associated with chemicals, repairs, electric or other utilities.

Fees

The minimum Fees to be paid to Contractor by Owner for Services shall be One Thousand One Hundred Five and 00/100 Dollars (\$1,105.00) per month.

Fees for additional services performed beyond the Scope of Services, with the approval from the Owner, shall be billed on a time and materials basis according to the following rate, which may be adjusted from time to time at Contractor's sole discretion:

Regular Business Hours: 8:00 a.m. to 5:00 p.m.

Overtime (OT) Hours: after 5:00 p.m. and before 8:00 am on Weekdays and all Weekend hours

Holiday Hours: Based on the specific holiday according to Contractor's Holiday Rate Schedule

	Regular Hours	OT Hours
General Personnel	\$ 73.00	\$ 98.00
Staff Electrician	\$ 83.00	\$112.00
Engineering Technician	\$ 81.00	\$109.00

Staff Engineer	\$ 83.00	\$112.00
Senior Engineer	\$ 102.00	\$138.00
Professional Engineer	\$ 120.00	\$162.00
Water Quality Manager	\$ 73.00	\$ 98.00
Water Quality Sampler	\$ 51.00	\$ 68.00
Equipment/Backhoe	\$ 57.00	

Materials & Outside Services - Cost + 15% (An administrative markup of 15% above the actual cost will be added to all materials and subcontracted services procured by the Contractor, including additional services.)

Invoice Remittance Address: White Marsh Environmental Systems, Inc., P.O. Box 826538, Philadelphia, PA 19182-6538

Term	Term Commencement Date:	January 1, 2024
	Term Expiration Date:	October 31, 2024

Services covered by this Services Agreement ("Agreement") will be performed in accordance with the Provisions Section herein and any attachments or schedules. This Agreement supersedes all prior agreements and understanding and may only be changed by written amendment executed by both Contractor and Owner (collectively, the "Parties").

CONTRACTOR:

Signature Kirsten E. Higgins

Name (printed) Kirsten E. Higgins

Title Vice President, Development and Contract Administration

Date 12/08/2023

OWNER:

Signature _____

Name (printed) _____

Title _____

Date _____

1. Acceptance

Execution of this Agreement by Owner will be authorization for Contractor to proceed with the Services, unless otherwise provided for in this Agreement.

2. Services

All services performed under this Agreement ("Services") will be performed in accordance to the terms and conditions contained herein.

3. Owner's Duties

Prior to the Contractor commencing Services, Owner shall disclose to Contractor in writing any and all operational, mechanical or compliance related defects related to the Facilities. Owner shall restrict all personnel, other than Contractor, from accessing or operating the Facilities, unless Contractor provides written permission to Owner. Should the influent flow or characteristics change and or treatment system fail to produce an effluent quality in compliance with the permit, Owner will be required to make the necessary improvements in order to meet all applicable state, federal and local rules and regulations.

4. Changes

The Parties may make or approve changes within the general Scope of Services in this Agreement. The Agreement may be amended at any time by written agreement due to regulatory changes which may affect the visitation frequency or operation of the Facility. If such changes affect Contractor's cost or time required for performance of the services, an equitable adjustment will be made through a written amendment. In addition, the Parties may also identify additional Services to be agreed upon and incorporated into this Agreement by mutual amendment, including additional Services beyond routine maintenance.

5. Fees and Payment Terms

- 5.1. Owner will pay to Contractor a fee for the Services (collectively, the "Fees") in accordance with the fee schedule contained herein on Schedule 1. The Fees constitute full compensation to Contractor for charges, costs and expenses incurred by Contractor on behalf of Owner in providing the Services.
- 5.2. The Fees shall increase by five percent (5%) upon any extension of this Agreement.
- 5.3. Monthly invoices will be issued by Contractor for all Services performed under this Agreement. Owner shall pay each invoice within 30 days of invoice date. Interest at a rate of one and a half percent (1.5%) per month will be added for payments not received by the due date. Owner's account number must be referenced on payment check and sent to the remittance address shown on Schedule 1.
- 5.4. Additional Services including, but not limited to capital improvements, emergency repairs, call outs, lead and copper testing, and other expenses, approved by the Owner, shall be billed on a time and material basis.
- 5.5. Owner shall be responsible for all costs associated with chemicals, testing supplies, testing equipment, sampling equipment, outside contracted environmental testing, utilities at the Facilities, and repairs.

6. Term and Termination

- 6.1. Term. Unless otherwise canceled pursuant to the terms of this Agreement, the term of this Agreement shall be from the Commencement Date to the Expiration Date set forth in Schedule 1 (the "Term"). Notwithstanding anything to the contrary contained herein, this Agreement shall automatically renew for one (1) year periods if a notice of termination has not been served as provided herein.

- 6.2. Termination. This Agreement may be terminated by Contractor upon serving thirty (30) days advance written notice of termination of the Agreement to Owner. In such case, Owner agrees to pay Contractor for all charges and expenses incurred by Contractor up to the effective date of termination and this Agreement shall become null and void and of no further force and effect.

7. Authority

Each Party warrants to the other Party that (a) it has the requisite corporate or other authority to enter into and perform this Agreement; (b) its execution, delivery, and performance of this Agreement have been duly authorized by all requisite corporate action on its behalf; and (c) this Agreement is enforceable against it.

8. Warranties

Contractor warrants that each of its employees assigned to perform services under this agreement shall have the proper skill, training and background to perform in a competent and professional manner. Owner acknowledges that the services include unknown and unforeseen problems and Contractor shall attempt to solve such problems. Owner acknowledges that Contractor does not warrant that there will be a satisfactory solution to all problems. OWNER AGREES THAT CONTRACTOR WARRANTS ITS SERVICES "AS IS" AND THAT CONTRACTOR DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED. OWNER AGREES CONTRACTOR SHALL HAVE NO LIABILITY FOR CONSEQUENTIAL DAMAGES, LOST PROFITS, OR ANY DIRECT OR INDIRECT DAMAGES. Owner acknowledges that the rates charged by Contractor would be substantially higher but for these limitations.

9. Indemnification

- 9.1. Contractor shall indemnify and save Owner harmless from and against all claims arising in favor of any person, firm or corporation on account of bodily or personal injury or property damage in any way resulting from the negligent acts of Contractor, its employees or agents, including, but not limited to, negligent operation of the Facility or negligent testing, processing or treatment of water or wastewater.
- 9.2. Owner shall indemnify and save Contractor harmless from and against all claims arising in favor of any person, firm or corporation on account of bodily or personal injury or property damage in any way resulting from the negligent acts of Owner, its employees or agents, including, but not limited to, negligent operation of the Facility or negligent testing, processing or treatment of water or wastewater.

10. Miscellaneous

- 10.1. Independent Contractor Status. Contractor is an independent contractor. Neither Contractor nor Contractor's employees are, or shall be deemed for any purpose to be employees of Owner. Owner shall not be responsible to Contractor, Contractor's employees or any governing body for any payroll taxes related to the performance of the Services.
- 10.2. Non-Solicitation of Employees/Interference with Business. During the term of this Agreement and for one year after its termination for any reason, Owner shall not knowingly, directly or indirectly, solicit, induce, advise, request or influence any person or entity that has a business relationship with Contractor to discontinue, discourage the development of, or otherwise adversely affect such relationship with Contractor, nor shall Owner recruit, solicit, or otherwise induce or influence, directly or indirectly, any employee, consultant, sales representative, agent, or other personnel of Contractor who had direct involvement with the Scope of Services in any capacity whatsoever, whether as an employee, consultant or otherwise.
- 10.3. Prior Agreement. This Agreement supersedes and replaces any and all previous agreements between the Parties for these Facilities.
- 10.4. Entire Agreement. This Agreement, including the exhibits, schedules or other attachments, is the complete and exclusive statement of the Agreement between the Parties, contains the entire understanding of the Parties with

- respect to the Services provided, and supersedes all prior or contemporaneous agreements, understandings, representations and statements, oral or written, between the Parties relating to the subject matter of this Agreement. No provisions of this Agreement may be amended in any way except by an instrument in writing signed by both Parties.
- 10.5. Waiver. The failure of either Party to enforce at any time any of the provisions of this Agreement will not be construed to be a continuing waiver of those provisions, nor will any failure prejudice the right of the Party to take action in the future to enforce any provision.
- 10.6. Severability. If any provision, clause or part of this Agreement, or the application thereof under certain circumstances is held invalid or unenforceable for any reason, the remainder of this Agreement, or the application of such provision, clause or part under other circumstances shall not be affected thereby.
- 10.7. Headings and Captions. Heading and captions are for convenience of reference only and do not alter the meaning or interpretation of any provision of this Agreement.
- 10.8. Compliance with Laws. In performing the Services required under this Agreement, Contractor shall comply with all applicable statutes, rules, regulations, codes and ordinances of any federal, state or local government agency, applying to the Services required by this Agreement, including any authorized changes. Owner will obtain all necessary permits required to perform the Services.
- 10.9. Assignment. Neither Party may assign this Agreement or any of its rights and obligations hereunder without the prior written consent of the other Party.
- 10.10. Notices. All communications, notices and disclosures required or permitted by the Agreement shall be in writing and shall be deemed to have been given one day after being delivered personally or by messenger or being received via electronic transmission, or two days after being sent by overnight delivery service, in all cases addressed to the respective address appearing on Schedule 1.
- 10.11. Counterparts. The Agreement may be signed in one or more counterparts (including faxed or electronically scanned copies), each of which will be deemed one and the same original. Reproductions of this executed original (with reproduced signatures) will be deemed to be original counterparts of this Agreement.
- 10.12. Force Majeure. Any one or more of the duties and obligations of the Parties shall be suspended so long as, and only to the extent that, performance thereof is prevented or impeded by an Act of God, civil disturbance, act of terrorism, governmental action (including, without limitation, any Change in Law), severe and unusual weather, plague, epidemic, pandemic, outbreaks of infectious disease or any other public health crisis, including quarantine or other employee restrictions, or any other act or event that has had, or may reasonably be expected to have, a material adverse effect upon either party in its ability to perform its obligations under this Contract, if such acts or events are beyond the control of that party.
- 10.13. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware.

Schedule 1

CONTRACTOR: White Marsh Environmental Systems, Inc.
Attn: Sam Schlegel
1100 S. Little Creek Road
Dover, DE 19901
sschlegel@tuiwater.com
302-945-1136 (fax)

OWNER: Sussex County Council
Attn: Hans Medlarz
2 The Circle
Georgetown, DE 19947
302-855-7370
hans.medlarz@sussexcountysde.gov

Project Name: Gull Point

Location: Crype Mrytle Drive
Oak Orchard, DE 19966

Facilities: Wastewater Facilities

Owner requests and authorizes Contractor to perform the following Services:

Scope of Services

1. The Contractor's licensed operator will visit the Facilities two (2) times per week during regular business hours to inspect the Facilities and verify that the Facilities are operating properly. Each visit will consist of:
 - a. Visually inspect the equipment to verify proper operation.
 - b. Log the date and time of each visit.
 - c. Log data from instrumentation in place at the Facility.
 - d. Prepare and maintain records, including the monthly DMR Report.
 - e. Sample parameters as required by the permit.
 - f. Inspect and notify Owner when additional chemical supplies are needed to operate the Facility.
2. Identify and recommend routine maintenance, calibration of equipment and associated activities as required.
3. All other work requested by the Owner including maintenance requiring specialty services or personnel, will be billed to Owner on a time and materials basis at the rates set forth herein.
4. Contractor is not responsible for any costs associated with chemicals, repairs, electric or other utilities.

Fees

The minimum Fees to be paid to Contractor by Owner for Services shall be One Thousand Four Hundred Fourty Six and 53/100 Dollars (\$1,446.53) per month.

Fees for additional services performed beyond the Scope of Services, with the approval from the Owner, shall be billed on a time and materials basis according to the following rate, which may be adjusted from time to time at Contractor's sole discretion:

Regular Business Hours: 8:00 a.m. to 5:00 p.m.

Overtime (OT) Hours: after 5:00 p.m. and before 8:00 am on Weekdays and all Weekend hours

Holiday Hours: Based on the specific holiday according to Contractor's Holiday Rate Schedule

	Regular Hours	OT Hours
General Personnel	\$ 73.00	\$ 98.00
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Provisions

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Invoice Remittance Address: White Marsh Environmental Systems, Inc., P.O. Box 826538, Philadelphia, PA 19182-6538

Term

Term Commencement Date:	January 1, 2024
Term Expiration Date:	October 31, 2024

Services covered by this Services Agreement ("Agreement") will be performed in accordance with the Provisions Section herein and any attachments or schedules. This Agreement supersedes all prior agreements and understanding and may only be changed by written amendment executed by both Contractor and Owner (collectively, the "Parties").

CONTRACTOR:

Signature Kirsten E. Higgins
Name (printed) Kirsten E. Higgins
Title Vice President, Development and Contract Administration
Date 12/08/2023

OWNER:

Signature _____
Name (printed) _____
Title _____
Date _____

1. Acceptance

Execution of this Agreement by Owner will be authorization for Contractor to proceed with the Services, unless otherwise provided for in this Agreement.

2. Services

All services performed under this Agreement ("Services") will be performed in accordance to the terms and conditions contained herein.

3. Owner's Duties

Prior to the Contractor commencing Services, Owner shall disclose to Contractor in writing any and all operational, mechanical or compliance related defects related to the Facilities. Owner shall restrict all personnel, other than Contractor, from accessing or operating the Facilities, unless Contractor provides written permission to Owner. Should the influent flow or characteristics change and or treatment system fail to produce an effluent quality in compliance with the permit, Owner will be required to make the necessary improvements in order to meet all applicable state, federal and local rules and regulations.

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- 6.2. Termination. This Agreement may be terminated by Contractor upon serving thirty (30) days advance written notice of termination of the Agreement to Owner. In such case, Owner agrees to pay Contractor for all charges and expenses incurred by Contractor up to the effective date of termination and this Agreement shall become null and void and of no further force and effect.

7. Authority

Each Party warrants to the other Party that (a) it has the requisite corporate or other authority to enter into and perform this Agreement; (b) its execution, delivery, and performance of this Agreement have been duly authorized by all requisite corporate action on its behalf; and (c) this Agreement is enforceable against it.

8. Warranties

Contractor warrants that each of its employees assigned to perform services under this agreement shall have the proper skill, training and background to perform in a competent and professional manner. Owner acknowledges that the services include unknown and unforeseen problems and Contractor shall attempt to solve such problems. Owner acknowledges that Contractor does not warrant that there will be a satisfactory solution to all problems. OWNER AGREES THAT CONTRACTOR WARRANTS ITS SERVICES "AS IS" AND THAT CONTRACTOR DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED. OWNER AGREES CONTRACTOR SHALL HAVE NO LIABILITY FOR CONSEQUENTIAL DAMAGES, LOST PROFITS, OR ANY DIRECT OR INDIRECT DAMAGES. Owner acknowledges that the rates charged by Contractor would be substantially higher but for these limitations.

9. Indemnification

- 9.1. Contractor shall indemnify and save Owner harmless from and against all claims arising in favor of any person, firm or corporation on account of bodily or personal injury or property damage in any way resulting from the negligent acts of Contractor, its employees or agents, including, but not limited to, negligent operation of the Facility or negligent testing, processing or treatment of water or wastewater.
- 9.2. Owner shall indemnify and save Contractor harmless from and against all claims arising in favor of any person, firm or corporation on account of bodily or personal injury or property damage in any way resulting from the negligent acts of Owner, its employees or agents, including, but not limited to, negligent operation of the Facility or negligent testing, processing or treatment of water or wastewater.

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- 10.2. Non-Solicitation of Employees/Interference with Business. During the term of this Agreement and for one year after its termination for any reason, Owner shall not knowingly, directly or indirectly, solicit, induce, advise, request or influence any person or entity that has a business relationship with Contractor to discontinue, discourage the development of, or otherwise adversely affect such relationship with Contractor, nor shall Owner recruit, solicit, or otherwise induce or influence, directly or indirectly, any employee, consultant, sales representative, agent, or other personnel of Contractor who had direct involvement with the Scope of Services in any capacity whatsoever, whether as an employee, consultant or otherwise.
- 10.3. Prior Agreement. This Agreement supersedes and replaces any and all previous agreements between the Parties for these Facilities.
- 10.4. Entire Agreement. This Agreement, including the exhibits, schedules or other attachments, is the complete and exclusive statement of the Agreement between the Parties, contains the entire understanding of the Parties with

respect to the Services provided, and supersedes all prior or contemporaneous agreements, understandings, representations and statements, oral or written, between the Parties relating to the subject matter of this Agreement. No provisions of this Agreement may be amended in any way except by an instrument in writing signed by both Parties.

- 10.5. Waiver. The failure of either Party to enforce at any time any of the provisions of this Agreement will not be construed to be a continuing waiver of those provisions, nor will any failure prejudice the right of the Party to take action in the future to enforce any provision.
- 10.6. Severability. If any provision, clause or part of this Agreement, or the application thereof under certain circumstances is held invalid or unenforceable for any reason, the remainder of this Agreement, or the application of such provision, clause or part under other circumstances shall not be affected thereby.
- 10.7. Headings and Captions. Heading and captions are for convenience of reference only and do not alter the meaning or interpretation of any provision of this Agreement.
- 10.8. Compliance with Laws. In performing the Services required under this Agreement, Contractor shall comply with all applicable statutes, rules, regulations, codes and ordinances of any federal, state or local government agency, applying to the Services required by this Agreement, including any authorized changes. Owner will obtain all necessary permits required to perform the Services.
- 10.9. Assignment. Neither Party may assign this Agreement or any of its rights and obligations hereunder without the prior written consent of the other Party.
- 10.10. Notices. All communications, notices and disclosures required or permitted by the Agreement shall be in writing and shall be deemed to have been given one day after being delivered personally or by messenger or being received via electronic transmission, or two days after being sent by overnight delivery service, in all cases addressed to the respective address appearing on Schedule 1.
- 10.11. Counterparts. The Agreement may be signed in one or more counterparts (including faxed or electronically scanned copies), each of which will be deemed one and the same original. Reproductions of this executed original (with reproduced signatures) will be deemed to be original counterparts of this Agreement.
- 10.12. Force Majeure. Any one or more of the duties and obligations of the Parties shall be suspended so long as, and only to the extent that, performance thereof is prevented or impeded by an Act of God, civil disturbance, act of terrorism, governmental action (including, without limitation, any Change in Law), severe and unusual weather, plague, epidemic, pandemic, outbreaks of infectious disease or any other public health crisis, including quarantine or other employee restrictions, or any other act or event that has had, or may reasonably be expected to have, a material adverse effect upon either party in its ability to perform its obligations under this Contract, if such acts or events are beyond the control of that party.
- 10.13. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware.

INTERIM SEWER OPERATIONS & TRANSITION AGREEMENT

WARWICK COVE

THIS AGREEMENT, made and entered into this _____ day of _____, 2023, by and between the WARWICK COVE CONDOMINIUM ASSOCIATION a residential community organization in the State of Delaware, party of the first part, hereinafter referred to as “WARWICK COVE”

-AND-

SUSSEX COUNTY, a political subdivision of the State of Delaware, party of the second part, hereinafter referred to as “COUNTY.”

WITNESSETH:

WHEREAS, the COUNTY received a request from the Warwick Cove Condominium Association for information on annexation into the sewer district, immediately followed by requests from Warwick Park and Gull Point Association (collectively the “Warwick Park Area”); and

WHEREAS, the COUNTY posted and held a Public Hearing for all (3) three communities explaining potential costs, billing methods, timelines and those in attendance agreed to proceed with the annexation.

WHEREAS, on January 10, 2023, County Council approved the annexation of the Warwick Park Area of the Sussex County Unified Sanitary Sewer District, and;

WHEREAS, two of the above-mentioned communities have existing on-site treatment and disposal systems and WARWICK COVE desires to engage in an interim sewer operations and

transition agreement with the COUNTY pursuant to Title 9, Del Code §6702, hereinafter referred to as the “Agreement”, and;

- NOW, THEREFORE, for the consideration set forth herein, the parties agree as follows:
1. Warwick Cove shall pay the COUNTY for the treatment portion of the system connection charge in the amount of \$60,480.00 on or before December 31, 2023.
 2. All property owners in WARWICK COVE will then transition to individual COUNTY sewer account customers and receive an annual service charge based on current County rates (billed quarterly), once the pumpstation improvements are complete the County will begin billing of an annual assessment charge.
 3. WARWICK COVE agrees that it would be the most cost-effective alternative for the COUNTY to assume the operation and maintenance of the residential community wastewater system until such time the flow is redirected to the county’s regional wastewater treatment facility and as a result WARWICK COVE agrees to surrender their State issued GWD permits on or before December 31, 2023. (No. 359318-02).
 4. WARWICK COVE shall grant twenty (20) feet wide easements for all existing sewer infrastructure and grant blanket access rights over and across all subdivision streets.
 5. COUNTY shall assume all fixed assets associated with the on-site sewer system at the time of transfer at no cost in as-is condition. A bill of Sale shall be executed and delivered to County by WARWICK COVE for all of the fixed assets. All equipment currently used to process the community’s sewer shall remain on the existing facility property, when and if the equipment is no longer needed the COUNTY shall remove said equipment and return the existing building(s) to WARWICK COVE.
 6. WARWICK COVE shall transfer, at no cost to the COUNTY, the existing wastewater

assets on or before December 31, 2023.

- 7. The parties hereto agree that the COUNTY will facilitate the daily operations and maintenance of the on-site systems and will pay all costs associated with these operations including those related to the compliance of all state and federal regulations, such as licensed operational costs, water testing, etc., as well as all required maintenance and associated utilities with the on-site systems including water and electricity.
- 8. The COUNTY reserves the right to utilize private contractors, including commercial haulers, on an as-needed basis and at the time of system transfer WARWICK COVE shall release and COUNTY shall respond to Miss Utility call outs based on system design information but not assume any liability for accuracy.
- 9. The COUNTY will seek a DNREC permit to undertake said operations.
- 10. WARWICK COVE FURTHER AGREES to hold harmless, indemnify and defend COUNTY, its appointed and elected officials, officers, directors, employees, agents and consultants and its personal representatives, successors and assigns (collectively “Indemnified Parties”) from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, or judgments, including, without limitation, reasonable attorneys’ fees, arising from or in any way connected with injury to or death of any person, or physical damages to any property, resulting from any act, omission, condition, or other matter related to or occurring or about the leased land, regardless of cause, unless due to the gross negligence or willful misconduct of any of the Indemnified Parties.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their proper corporate officers and their respective corporate seals to be hereto affixed, the day and year first above written.

WARWICK COVE CONDOMINIUM ASSOCIATION

Attest: Kathy D. Kenney
Secretary

By: Rick Edmiston
Rick Edmiston, President

SUSSEX COUNTY

Attest: _____
Clerk, Sussex County Council

By: _____
Michael H. Vincent, President

INTERIM SEWER OPERATIONS & TRANSITION AGREEMENT

GULL POINT

THIS AGREEMENT, made and entered into this _____ day of _____, 2023, by and between the GULL POINT CONDOMINIUM ASSOCIATION a residential community organization in the State of Delaware, party of the first part, hereinafter referred to as “GULL POINT”

-AND-

SUSSEX COUNTY, a political subdivision of the State of Delaware, party of the second part, hereinafter referred to as “COUNTY.”

WITNESSETH:

WHEREAS, the COUNTY received a request from the Warwick Cove Condominium Association for information on annexation into the sewer district, immediately followed by requests from Warwick Park and Gull Point Association (collectively the “Warwick Park Area”); and

WHEREAS, the COUNTY posted and held a Public Hearing for all (3) three communities explaining potential costs, billing methods, timelines and those in attendance agreed to proceed with the annexation.

WHEREAS, on January 10, 2023, County Council approved the annexation of the Warwick Park Area of the Sussex County Unified Sanitary Sewer District, and;

WHEREAS, two of the above-mentioned communities have existing on-site treatment and disposal systems and GULL POINT desires to engage in an interim sewer operations and transition

agreement with the COUNTY pursuant to Title 9, Del Code §6702, hereinafter referred to as the “Agreement”, and;

NOW, THEREFORE, for the consideration set forth herein, the parties agree as follows:

1. Gull Point shall pay the COUNTY for the treatment portion of the system connection charge in the amount of \$712,800.00 at the time of connection to the County infrastructure.
2. All property owners in GULL POINT will then transition to individual COUNTY sewer account customers and receive an annual service charge based on current County rates (billed quarterly), once the pumpstation improvements are complete the COUNTY will begin billing of an annual assessment charge.
3. GULL POINT agrees that it would be the most cost-effective alternative for the COUNTY to assume the operation and maintenance of the residential community wastewater system until such time the flow is redirected to the county’s regional wastewater treatment facility and as a result GULL POINT agrees to surrender their State issued GWD permits on or before December 31, 2023. (No. C4013-91S).
4. GULL POINT shall grant twenty (20) feet wide easements for all existing sewer infrastructure and grant blanket access rights over and across all subdivision streets.
5. COUNTY shall assume all fixed assets associated with the on-site sewer system at the time of transfer at no cost in as-is condition. A bill of Sale shall be executed and delivered to COUNTY by GULL POINT for all of the fixed assets. All equipment currently used to process the community’s sewer shall remain on the existing facility property, when and if the equipment is no longer needed the COUNTY shall remove said equipment and return the existing building(s) to GULL POINT.

6. GULL POINT shall transfer, at no cost to the COUNTY, the existing wastewater assets on or before December 31, 2023.
7. The parties hereto agree that the COUNTY will facilitate the daily operations and maintenance of the on-site systems and will pay all costs associated with these operations including those related to the compliance of all state and federal regulations, such as licensed operational costs, water testing, etc., as well as all required maintenance and associated utilities with the on-site systems including water and electricity.
8. The COUNTY reserves the right to utilize private contractors, including commercial haulers, on an as-needed basis and at the time of system transfer GULL POINT shall release and COUNTY shall respond to Miss Utility call outs based on system design information but not assume any liability for accuracy.
9. The COUNTY will seek a DNREC permit to undertake said operations.
10. GULL POINT FURTHER AGREES to hold harmless, indemnify and defend COUNTY, its appointed and elected officials, officers, directors, employees, agents and consultants and its personal representatives, successors and assigns (collectively “Indemnified Parties”) from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, or judgments, including, without limitation, reasonable attorneys’ fees, arising from or in any way connected with injury to or death of any person, or physical damages to any property, resulting from any act, omission, condition, or other matter related to or occurring or about the leased land, regardless of cause, unless due to the gross negligence or willful misconduct of any of the Indemnified Parties.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their proper corporate officers and their respective corporate seals to be hereto affixed, the day and year first above written.

GULL POINT ASSOCIATION

Attest: _____
Secretary

By: Matthew Kendzierski
Matt Kendzierski, President

SUSSEX COUNTY

Attest: _____
Clerk, Sussex County Council

By: _____
Michael H. Vincent, President

ENGINEERING DEPARTMENT

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



Sussex County

DELAWARE
sussexcountyde.gov

HANS M. MEDLARZ, P.E.
COUNTY ENGINEER

JOHN J. ASHMAN
DIRECTOR OF UTILITY PLANNING

Memorandum

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

FROM: Hans Medlarz, County Engineer
John J. Ashman, Director of Utility Planning & Design Review

RE: ***Tentative SRF Funding Offer***
Blackwater Village
File: BWV-1.07

DATE: December 12, 2023

The Blackwater Village community had approached the County in the past with a signed petition for central sewer service however the distance to our existing infrastructure made the project unaffordable. With the completion of the Route 26 Phase III project the existing infrastructure is now considerably closer to the community. In February 2019 we received a request to prepare and distribute petitions to the community. In October 2019 the HOA presented signed petitions to the department along with a Resolution supporting the petition for extending sewer service to Blackwater Village from the Blackwater Village Association Inc. dated April 11, 2019. There were (75) valid petitions received.

On October 31, 2020, the Engineering Department held a public hearing for the Blackwater Village Area of the Sussex County Unified Sanitary Sewer District (SCUSSD) and established a boundary to hold a referendum vote by the residents for extend central sewer to the area. Referendum results were 91 in favor and 61 opposed.

On February 9th, 2021 County Council annexed Blackwater Village in the Unified Sanitary Sewer District.

The project ranked number 1 in the Delaware Water Pollution Revolving Loan Fund 2023 Project Priority List and Environmental Finance solicited applications for project funding through the WPCRF. In June of 2023, the Engineering and Finance Departments finalized the



Preliminary Engineering Report, the Environmental Information Documents, and the overall funding application.

The two-year delay between the sewer district area creation and the County's funding submittal was caused by the former HOA Board President. He initiated a petition drive for "additional utilities and subdivision improvements" i. e. central water, street lighting and drainage improvements. The required number of presented petitions were received based on assumptions neither developed by nor shared with the Department. The associated official public hearing was held on October 1, 2021. At that time the Department presented the estimated costs, timelines, and referendum/voting guidelines. The residents in attendance objected to the estimated costs stating that they had no knowledge of these costs prior to submitting the petitions. They furthermore inquired about a path forward without involving a referendum. As a result, a sufficient number of notarized letters for the revocation of the initial interest in central water, street lighting and drainage improvements was submitted.

The Department initially considered a standard gravity collection system to serve the community. However, the delay allowed some key lots targeted for easements to be sold and improved making the gravity approach no longer feasible and necessitated a switch a vacuum system. Construction cost escalation over the past three years was reflected in the County's SRF funding request. DNREC's available loan forgiveness for the current fiscal year is insufficient to keep the annual costs of sewer service below the target of 1.5% of Median Household Income. The referendum was set up based on the SRF's ability to provide sufficient loan forgiveness and therefore does not provide authorization for Council to accept the tentative offer.

Therefore, the Department requests County Council's approval for a 2nd public hearing possibly followed by a referendum which would require a separate Council approval.

Blackwater Village Septic Elimination Project Affordability Analysis

		Without Principal Forgiveness
Project Budget Including Connection Fees	\$16,273,000	\$16,273,000
Total CWSRF Loan Amount	<u>\$16,273,000</u>	<u>\$16,273,000</u>
Principal Forgiveness @ Project Completion	\$5,014,170	\$0
Loan Amount at Project Completion	\$11,258,830	\$16,273,000
<u>Wastewater</u>		
Interest Rate	2%	2%
Loan Terms Years	30	30
Annual Debt Service for Proposed Project	\$500,893	\$723,968
Total Facility Cost	<u>\$500,893</u>	<u>\$723,968</u>
Residential Share at 100%	<u>\$500,893</u>	<u>\$723,968</u>
Estimated Wastewater EDUs @ Project Completion	276	276
Total Debt Service Per EDU	\$1,815	\$2,623
Estimated Service Charge Per EDU @ Project Completion	\$330	\$330
Total Estimated Annual Charge Per EDU	<u>\$2,145</u>	<u>\$2,953</u>
Median Household Income	\$81,792	\$81,792
% of MHI	<u>2.62%</u>	<u>3.61%</u>
Subsidy Provided Per EDU	\$18,167	\$0

**Service charges recover the cost of operating and maintaining the enterprise systems. These fees are billed using the EDU unit of measure. The EDUs in the Blackwater Village area will pay the debt service for this project in the form of assessment charges. Total Assessment Charges to the end users for this project must remain at \$615 per initial agreement therefore 100% Principal Forgiveness of the supplemental request was provided.*

CWSRF Loan	\$ 16,273,000
TOTAL	\$ 16,273,000

Project Budget

Administration & Legal	\$175,000
Engineering	\$2,130,359

Construction	\$10,856,491
Other - Connection Fees	\$1,610,400
Contingencies	\$1,500,750
Total	\$16,273,000

ENGINEERING DEPARTMENT

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UTILITY PERMITS (302) 855-7719
UTILITY PLANNING (302) 855-1299
FAX (302) 855-7799



Sussex County


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HANS M. MEDLARZ, P.E.
COUNTY ENGINEER

JOHN J. ASHMAN
DIRECTOR OF UTILITY PLANNING

Memorandum

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

FROM: John J. Ashman 
Director of Utility Planning

RE: *Mass Annexation of Individual Parcels*
2023 Connections
File: ADM 2.02-A

DATE: December 12, 2023

Under the direction of the County Engineer and under his authority according to County Code §110-98 & §110-99 the Sussex County Engineering Department has been accepting annexation fees and connecting individual parcels on an as-needed basis. The Engineer may grant connections to scattered parcels at the equivalent dwelling unit (EDU) density of the abutting property but cannot exceed 12 EDUs per acre. The connection of the scattered parcels must be determined to not overload the capacity in the existing sewer system taking into account the full development capacity of other parcels within the area.

This is an all-encompassing annexation of those parcels previously requesting annexation, meeting the above requirements and submitting the appropriate annexation fee for the following parcels:

234-12.00-9.03 334-6.00-552.01
234-23.00-116.03

All parcels were able to be served by previously installed infrastructure or fairly simple lateral adjustments.



March 1, 2023

Sussex County
Sewer Division
Attn: John Ashman
P.O. Box 589
2 The Circle
Georgetown, DE 19947

RE: Brian & Lisa White – Annex Parcel 2-34-12.00-9.03 as part of the Angola Sewer District.

Dear Mr. Ashman

Brian and myself would like to request that our tax map parcel (2-34-12.00-9.03) become a part of the Angola Sewer District. We are in the process of obtaining a building permit for this parcel for a residential pole building with apartment. I have provided a check in the amount of \$500.00 for the application fee.

Sincerely,



Lisa White

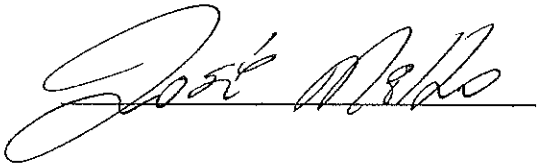
To: Sussex County Council
Attention: John Ashman, Engineering Department

My name is Jose Gontino Netto and I would like to request for annexation into the Sussex County sewer district for my property located at:

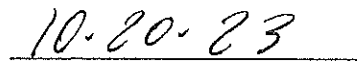
Address: 26566 Bay Farm Road, Millsboro-Delaware, 19966
Parcel # 234-23.00-116.03

Please contact me if any further questions at 443-497-9204 or netto.21@aol.com

Thank you,

A handwritten signature in cursive script, appearing to read "Jose Netto", written over a horizontal line.

Jose Gontino Netto

A handwritten date "10.20.23" written over a horizontal line.

Date

David K Edwards
25729 Timmons Lane
Dagsboro, De 19939

John Ashman
Sussex County Engineering Department
PO Box 589
Georgetown, De 19947

March 3rd, 2023

RE: 18179 Robinsonville Road Lewes, De
Prop Tax ID 334-6.00-552.01

Gentlemen:

I am attempting to sell my old house at 18179 Robinsonville Road in Lewes, De. The septic will not pass inspection to sell. It is too small, the drain is too deep, and the baffles are damaged.

I know that you are moving everyone toward central sewer. My house has a lateral installed for connection as part of the Maritima subdivision. I would like to connect to it. I am aware that it has not been turned over to the county but the subdivision is telling me that should occur in approximately one and a half months.

Please annex me into the sewer district so that I can connect to the county system. I am enclosing a check for \$500 for the application fee.

Sincerely,



David K Edwards
302-362-5826
Enc: Check #4680 \$500.00

ACREAGE	FEE
less than 2	\$500
2.1 - 9.99	\$750
10-150	\$1,500
over 150	\$2,500

PARCEL	AREA	OWNER	ACREAGE	AMOUNT OWED	STATUS	NOTES
234-12.00-9.03	Angola Neck	Brian & Lisa White	2	\$500.00	paid	already has a lateral
334-6.00-552.01	West Rehoboth	David K. Edwards & June M. Trustees	<2	\$500.00	paid	needs Maritima PS online
234-23.00-116.03	Long Neck	Jose Netto & Karyne Silva	<2	\$500.00	paid	existing lateral on Bay Farm Rd



Memorandum

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

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

CC: Everett Moore, County Attorney

Date: December 6, 2023

RE: County Council Report for C/U 2285 filed on behalf of Ashley DiMichele

The Planning and Zoning Department received an application (C/U 2334 filed on behalf of Henlopen Properties, LLC) for a Conditional Use for parcel 235-21.00-48.00 for a tourist home. The property is located within the Agricultural Residential (AR-1) Zoning District and is located at 26182 Cave Neck Road, Milton. The parcel size is 2.831 acres +/-.

The Planning & Zoning Commission held a Public Hearing on the application on February 10, 2022. At the meeting of March 24, 2022, the Planning & Zoning Commission recommended denial of the application for the 10 reasons as outlined within the motion (copied below).

The County Council held a Public Hearing on the application at its meeting on April 26, 2022. At the conclusion of the Public Hearing, action on the application was deferred for further consideration. Below is a link to the minutes of the County Council meeting of April 26, 2022.

[Link to the Minutes of the April 26, 2022 County Council Meeting](#)

Below are the minutes from the Planning & Zoning Commission meetings of February 10, 2022 and March 24, 2022.

[Minutes of the February 10, 2022 Planning & Zoning Commission Meeting](#)

C/U 2285 Ashley DiMichele

An Ordinance to grant a Conditional Use of land in an AR-1 Agricultural Residential Zoning District for a tourist home to be located on a certain parcel of land lying and being in Broadkill Hundred, Sussex County, containing 2.831 acres, more or less. The property is lying on the south



side of Cave Neck Road (S.C.R. 88), approximately 0.43 mile west of Diamond Farm Road (S.C.R. 257). 911 Address: 26182 Cave Neck Road, Milton. Tax Parcel: 235-21.00-48.00

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

The Commission found Ms. Ashley DiMichele spoke on behalf of her Application; that she owns a tiny home; that it is built like a RV; that it is road ready but has more of the comforts of a home; that it is off-grid capable; that it can be plugged up like an RV; that it has a water hose, 50 amp plug in, composting toilet and a grey tank; that the tiny home was originally purchased as a retirement plan, a vacation home, which was capable of being taken offsite or a guest house for visiting family; that she works at a restaurant; that when the COVID-19 pandemic hit, business and income went down; that once things began to open up she desired to make money with the idea of an Air B&B; that the home received more traffic than expected; that she did not realize it was required to update the tourist home, due to her regular home is located on the same property; that their property is near Dog Fish Head Brewery, McCabe Preserve, Prime Hook and Broadkill Beach and Dewey Beach Beer Company; that she has a lot of visitors from the cities, who are tired of working from their own homes; that these visitors stay to walk the trails, bird watch, go to the beaches; that she limits it to only two visitors at a time; that typically the group of people who stay are very quiet; that at times she has had people stay and never leave the tourist home; that she submitted pictures of the tourist home into the record; that the tourist home is set back from the road; that the tiny home is shielded next to a large magnolia tree, in between the wood line, to help prevent anything objectional to adjacent neighbors; that the home located to the front-left of their property is also a rental home; that any visitor for the tiny home uses her personal driveway; that she also submitted information and specs from the builder of the tiny home and the specs provide information of how the home differs from an RV.

Mr. Whitehouse stated there was a history to this Application; that it had been explored a tourist home can be approved a Special Use Exception before the Sussex County Board of Adjustment; that the definition of a tourist home within the Code specifically prohibits cooking facilities in the individual rental rooms; that there was a lot of discussion on this, but a Conditional Use was decided to be the best path forward; that this could be the first Application the Commission has seen of this nature; that there was further discussion as to whether or not to describe the home as a "tiny home" in the legal advertisements; that tiny home is not currently defined in Sussex County Code which led to the decision to describe the home as a tourist home; that there is a mechanism within the AR-1 Zoning District, if an applicant cannot proceed forward under the permitted uses, the application can come forward as a Conditional Use and the Application began after questions were raised regarding the requirement of a building permit.

Ms. Stevenson questioned if Ms. DiMichele permanently lived onsite, how water is supplied; that she confirmed the home has a compost toilet, and questioned the length of the rental stays and she questioned Mr. Robertson if there should be a limitation to how long visitors could stay.

Mr. Hopkins stated he likes the idea and questioned how the Application came about.

Mr. Robertson questioned how the septic was constructed and stated he is unsure how the County would enforce rental length limitations.

Ms. DiMichele stated a hose hook up is provided for water services; that water is collected in a grey tank; that the kitchen contains a stovetop, refrigerator, and sink; that the home does not contain an oven; that currently, she has a two day stay minimum; that most people stay at least three days to a week; that her goal is not to have a permanent resident for the home; that they were originally under the impression they were not required to obtain a building permit, due to the home being built like an RV by a licensed company; that after the home was placed on-site, they were informed they were required to obtain a building permit and after further investigation it was later ruled she was not required to obtain a building permit

Mr. Phillips confirmed Ms. DiMichele and he worked together to obtain a building permit; that upon further investigation it was decided a building permit was not required for the home and he confirmed with the County Assessment Department the home is not a taxable dwelling unit.

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

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

In relation to Application C/U 2285 Ashley DiMichele. Motion by Ms. Stevenson to defer action for further consideration, seconded by Ms. Wingate, and carried unanimously. Motion carried 5-0.

Draft Minutes of the March 24, 2022 Planning & Zoning Commission Meeting

The Commission discussed the Application which has been deferred since February 10, 2022.

Ms. Stevenson moved that the Commission recommend a denial of C/U 2285 for Ashley DiMichele for a tourist home based upon the record made during the public hearing and for the following reasons:

1. The Applicant is requesting a conditional use to operate a tourist home using an RV camper on her property as the home. Based upon the record, it is intended to be rented on a short-term basis through services such as Airbnb or VRBO.
2. The RV camper is not on a fixed foundation, and it does not have permanent utility connections. Instead, the record indicates that water service is via a hose connection, and wastewater is held in a tank within the RV Camper that is emptied on an as-needed basis.
3. The use as an RV Camper cannot be considered a “dwelling” under the applicable Codes, including the County Building Code. Although the use was informally referred to as a “tiny home” at times, it cannot be considered a “home” because it is not habitable as a “dwelling” under our applicable Codes.
4. This use is essentially a one-camper campground. There are specific requirements in the Sussex County Zoning Code for campgrounds and these apply whether the request is for 1 or 100 campsites. All campsites within Sussex County must comply with these requirements.

5. Section 115-172H of the Sussex County Zoning Code regulates the use of “mobile campers, tents, camp trailers, touring vans and the like”, and several of the placement requirements for these campsites are not satisfied with this application.
6. Section 115-172H requires access to the campsite to be via an easement that has a width of at least 50 feet. This section also requires all interior drive easements to have paving that is 24 feet wide within a 30 foot right of way. That requirement is not satisfied here.
7. Section 115-172H requires each campsite to be at least 400 feet from any existing dwelling on the property of other ownership. This RV Camper and campsite is not 400 feet from dwellings of other ownership on Mercury Lane. This requirement is not satisfied.
8. Section 115-172H requires every campsite to have an area of at least 2,000 square feet and a width of not less than 40 feet. It also requires campsites to have a landscaped space that is at least 50 feet wide along all boundaries that is free of buildings and streets. These requirements are not satisfied here.
9. Even though this is just one campsite with one RV Camper, it is held to the same requirements as larger campgrounds. Since it does not meet those standards, and since it cannot be considered a “dwelling” since it is undersized, does not have proper utility connections, and does not have a foundation, the application should be denied.
10. While this application was for an RV camper to be used for short-term vacation rentals and not for housing, it provides a good opportunity to start the larger conversation of how the County should address “tiny homes” in the future. Tiny homes can provide an affordable housing option for residents of Sussex County with the proper standards in place governing them. I would recommend that County Council look at ways to regulate and permit tiny homes as dwellings.

Motion by Ms. Stevenson, seconded by Mr. Mears and carried to recommend denial of C/U 2285 Ashley DiMichele for the reasons stated in the motion. Motion carried 4-1.

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

PLANNING & ZONING COMMISSION

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



Sussex County

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

PLANNING AND ZONING AND COUNTY COUNCIL INFORMATION SHEET

Planning Commission Public Hearing Date: February 10th, 2022

Application: CU 2285 (Tourist Home)

Applicant: Ashley DiMichele
26182 Cave Neck Road
Milton, DE 19968

Owner: Ashley & Patrick DiMichele
26182 Cave Neck Road
Milton, DE 19968

Site Location: South side of Cave Neck Road at 26182 Cave Neck Road, Milton

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

Proposed Use: Tourist Home

Comprehensive Land
Use Plan Reference: Developing Area, portion being Town Center

Councilmanic
District: Mr. Schaeffer

School District: Cape Henlopen School District

Fire District: Milton Fire Department

Sewer: On-site septic system

Water: Private on-site well

Site Area: 2.831 acres +/-

Tax Map ID.: 235-21.00-48.00



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



Sussex County

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sussexcountype.gov

Memorandum

To: Sussex County Planning Commission Members
From: Chase Phillips, Planner II
CC: Vince Robertson, Assistant County Attorney and Applicant
Date: February 3rd, 2022
RE: Staff Analysis for CU 2285 (Ashley DiMichele)

This memo provides background and an analysis for the Planning Commission to consider as a part of Conditional Use No. 2285 to be reviewed during the February 3rd, 2022, Planning Commission Meeting. This analysis should be a part of the record, and it is subject to the comments presented during the public hearing.

The request is for a Conditional Use of land for a tourist home to be located on Tax Parcel: 235-21.00-48.00. The parcel is on the southwest side of Cave Neck Road (S.C.R. 88), approximately 0.43 of a mile west of Diamond Farm Road (S.C.R. 257). The property is 2.831 acres +/-.

Comprehensive Plan Analysis

The 2018 Sussex County Comprehensive Plan Update (Comprehensive Plan) includes a Future Land Use Map that helps determine how land uses should change over time. The Future Land Use Map in the plan indicates that the subject property is split between the “Developing Area” and “Town Center” designations. A map is attached that shows the extent of this split designation.

Developing Areas are emerging growth areas that demonstrate characteristics of developmental pressures. A range of housing types, including single family, townhomes, and multi-family units, could be desirable in the Developing Area. Development in this designation could be best suited in areas with good road access. Appropriate mixed-use developments should be considered as well. This classification supports the base residential density of two (2) units to the acre, and medium densities (4 – 12 units) may be appropriate in select locations.

The Town Center designation includes areas of county jurisdiction that surround municipalities. The Town Center designation acknowledges that commercial uses should serve the daily needs of residents, workers, and visitors. Smaller scale and lower impact uses may be appropriate, but larger uses such as industrial uses are proposed to be directed to Industrial Areas. Medium to high density residential development is encouraged. This ranges from 4 to 12 units per acre. Development within Town Centers are strongly encouraged to be served by central water and sewer facilities. As mentioned above, a map is published in the packet that shows the extent of the two Future Land Use Map is attached in the published packet.

Zoning

The subject property is within the Agricultural Residential (AR-1) Zoning District. All properties to the north, south, east, and west are also within the AR-1 Zoning District. The AR-1 Zoning District is established to provide opportunity for a full range of agricultural uses and to protect agricultural lands and the county’s most valuable natural resources. This district is also intended to



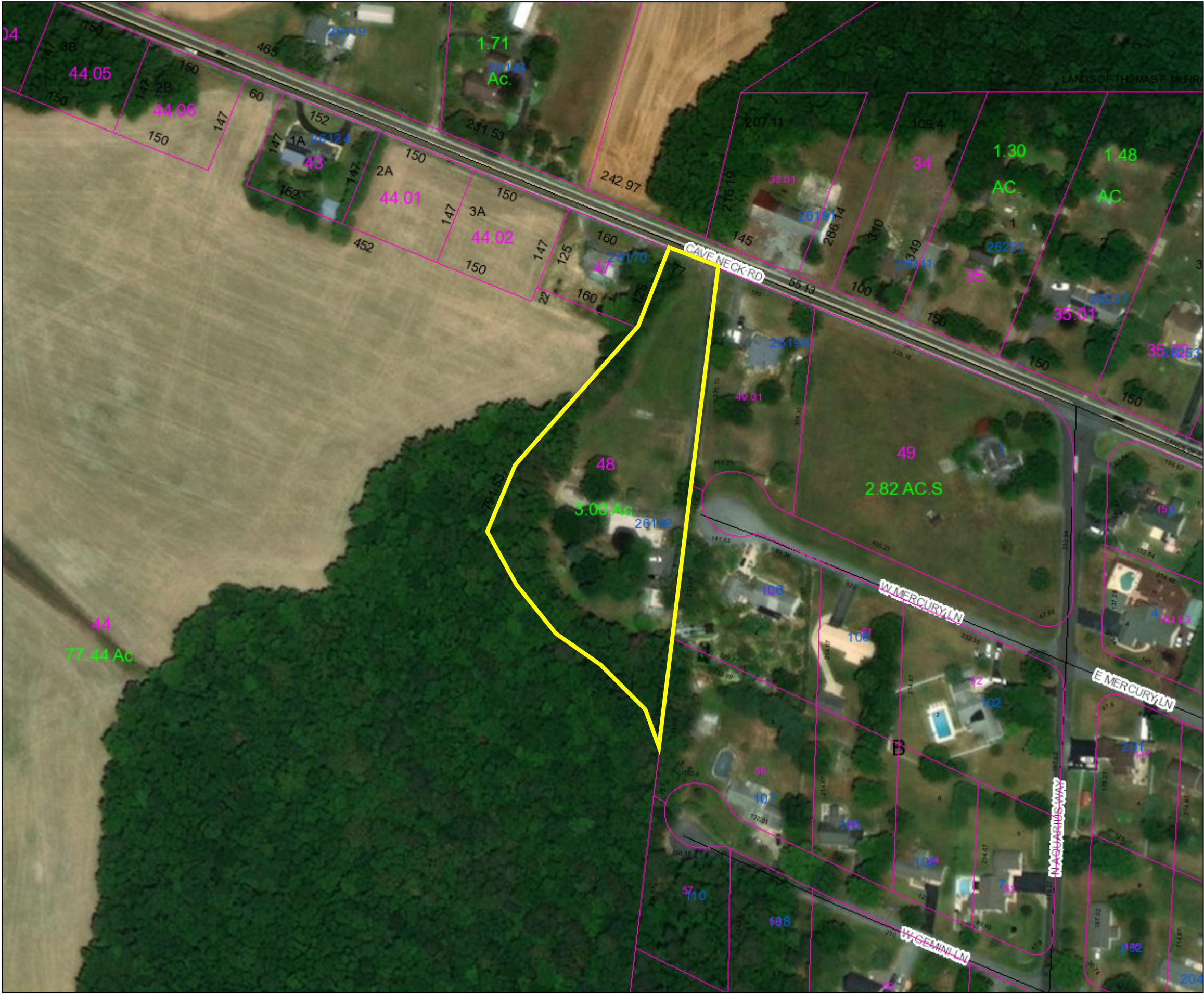
protect watersheds, waterways, forests, and scenic values as it accommodates lower density single family housing that is often classified as single family. The AR-1 Zoning District seeks to prevent untimely scattering of more urban uses which are encouraged to be in places planned for the provision of public services and utilities.

There have been no other approved Conditional Use within a one-mile radius within the past 20 years.

Based on the analysis provided, a Conditional Use for a tourist home could be considered as consistent with the surrounding land uses and zoning regulations given plans of scale and impact.



Sussex County

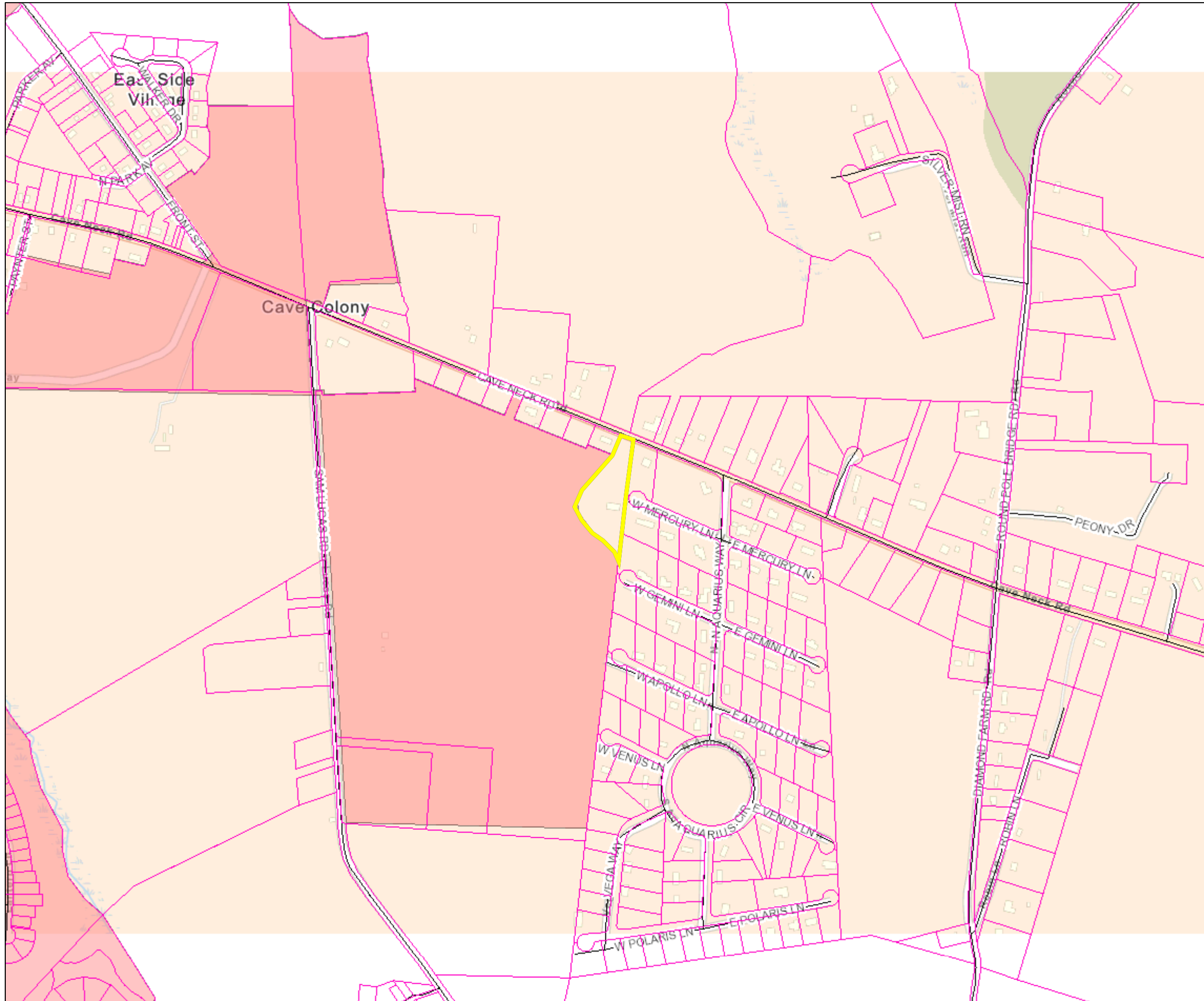


PIN:	235-21.00-48.00
Owner Name	MARKHAM-DIMICHELE ASHLEY E
Book	4389
Mailing Address	26182 CAVE NECK ROAD
City	MILTON
State	DE
Description	S/RT 88 FR
Description 2	OVERBROOK TO MILTON
Description 3	N/A
Land Code	

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



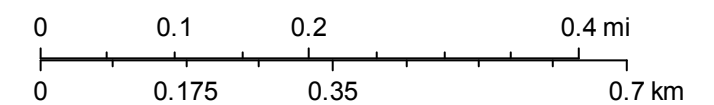
Sussex County

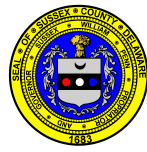


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- polygonLayer**
- Override 1
- polygonLayer**
- Override 1
 - Tax Parcels
 - Streets
 - County Boundaries
 - Municipal Boundaries

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Sussex County

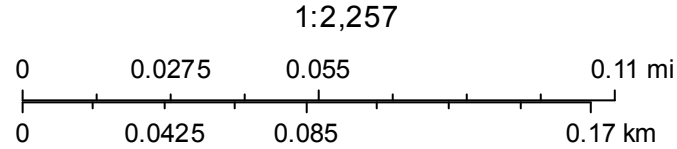


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- polygonLayer

Override 1
- polygonLayer

Override 1
- Tax Parcels
- 911 Address
- Streets



Introduced: 1/25/22

**Council District 3: Mr. Schaeffer
Tax I.D. No. 235-21.00-48.00
911 Address: 26182 Cave Neck Road, Milton**

ORDINANCE NO. ____

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A TOURIST HOME TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BROADKILL HUNDRED, SUSSEX COUNTY, CONTAINING 2.831 ACRES, MORE OR LESS

WHEREAS, on the 24th day of April 2021, a conditional use application, denominated Conditional Use No. 2285 was filed on behalf of Ashley DiMichele; and

WHEREAS, on the ____ day of _____ 2021, a public hearing was held, after notice, before the Planning and Zoning Commission of Sussex County and said Planning and Zoning Commission recommended that Conditional Use No. 2285 be _____; and

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

NOW, THEREFORE, THE COUNTY OF SUSSEX HEREBY ORDAINS:

Section 1. That Chapter 115, Article IV, Subsection 115-22, Code of Sussex County, be amended by adding the designation of Conditional Use No. 2285 as it applies to the property hereinafter described.

Section 2. The subject property is described as follows:

ALL that certain tract, piece or parcel of land, lying and being situate in BroadKill Hundred, Sussex County, Delaware, and lying on the south side of Cave Neck Road (S.C.R. 88), approximately 0.43 mile west of Diamond Farm Road (S.C.R. 257), and being more particularly described in the attached deed prepared by Bonnie M. Benson P.A., said parcel containing 2.831 acres, more or less.

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



Memorandum

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

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

CC: Everett Moore, County Attorney

Date: December 6, 2023

RE: County Council Report for Ord 23-11 Relating to the Future Land Use Map Element of the Comprehensive Plan (Tax Parcel 234-6.00-6.02)

On July 11, 2023, the County Council introduced an Ordinance to consider a potential amendment of the Future Land Use Map element of the Comprehensive Plan in relation to Tax Parcel No. 234-6.00-6.02 for a change from the low-density area designation to the Coastal Area designation. The parcels are located on the west side of Beaver Dam Road (Rt. 23), approximately 0.50 mile north of Hopkins Road (SCR 286). The 911 address is 30857 Saddle Ridge Way, Lewes.

The Planning & Zoning Commission held a Public Hearing on the Ordinance on August 10, 2023. At the meeting of September 14, 2023, the Planning & Zoning Commission recommended adoption of the Ordinance for the 10 reasons as outlined within the motion (copied below).

The Ordinance was subject to a Public Hearing before the County Council at its meeting of September 19, 2023. At the conclusion of the public hearing, action on the application was deferred for further consideration, leaving the record open to receive a copy of the recommendation from the Planning & Zoning Commission. Below is a copy of the minutes of the Council Council meeting of September 19, 2023.

[Link to the Minutes of the September 19, 2023 County Council Meeting](#)

Below are the minutes from the Planning & Zoning Commission meeting of August 10, 2023, and September 14, 2023.



Minutes of the August 10, 2023, Planning & Zoning Commission Meeting

ORD 23-11

AN ORDINANCE TO AMEND THE FUTURE LAND USE MAP OF THE COMPREHENSIVE PLAN IN RELATION TO TAX PARCEL NO. 234-6.00-6.02. The property is lying on the west side of Beaver Dam Road (Rt. 23), approximately 0.50 mile north of Hopkins Road (S.C.R. 286). 911 Address: 30857 Saddle Ridge Way, Lewes. Tax Map Parcel: 234-6.00-6.02.

Mr. Whitehouse advised the Commission that the Ordinance request is to amend the Future Land Use Map element of the Comprehensive Plan from a Low-Density Area to a Coastal Area. Mr. Whitehouse stated that the Commission previously considered a Conditional Use application for the property at a previous public hearing; that at the time, the Commission deferred the Conditional Use application to allow for the Ordinance to be introduced to the County Council and proceed through the process; that the Application was submitted to PLUS; that the PLUS comments had not yet been received by staff, and he was happy to provide the Commission a verbal update with what happened during the PLUS meeting if not presented within the Applicant's presentation.

The Commission found that Ms. Mackenzie Peet, Esq. with Saul Ewing, LLP, spoke on behalf of the Applicant, Beaver Dam Enterprises, LLC; that also present was Mr. Anton Balakin on behalf of the Applicant. Ms. Peet stated that on March 23rd, 2023, the Applicant appeared before the Commission to present its request for a Conditional Use of land for the conversion of an existing pole building, currently existing on the property; that the Applicant request to convert the existing pole building into two multifamily units, with each unit to be rented on an annual basis; that after the public hearing, the Applicant learned, despite an understanding to the contrary, the Application could not proceed without an amendment to the Future Land Use Map; that former Commissioner Kim Hoey-Stevenson, motioned at the meeting of April 20, 2023, to defer a decision to allow for the Applicant to pursue the required Future Land Use Map amendment; that since the public hearing on March 23, 2023, the Applicant has worked with the Planning & Zoning office to seek an amendment to the Future Land Use Map that designates the property from Low Density to Coastal Area; that as part of the request, the Application was also put through the PLUS process; that they anticipate to receive the PLUS comments within the next month, and should be received prior to the public hearing scheduled for September 19, 2023, before County Council; that the property is 2.144 acres, being located along Saddle Ridge Way in Lewes; that the property is located on the west side of Beaver Dam Rd., being approximately .5 mile north of Hopkins Rd.; that the property is accessed from Beaver Dam Rd.; that the property is located within the AR-1 (Agricultural Residential) Zoning District; that the property is located adjacent to other properties located within AR-1, GR (General Residential) and MR (Medium-Density Residential); that the area is largely developed with residential units in a number of surrounding communities; that §115-22 of the Code provides that multifamily dwelling structures may be permitted as Conditional Uses; that the Code requires, in part, that multifamily dwelling units in AR-1, the applicable zoning district are located in designated growth areas, including Town Center, Developing Area, or Coastal Area, as described within the land use element and shown on the Future Land Use Plan, provided in the Comprehensive Plan, specifically; that due to this, the Applicant seeks a Future Land Use Map amendment from Low Density to Coastal Area; that the Coastal Area is a designated Growth Area, which will permit the use of the existing pole building as a two unit multifamily dwelling, with the intent of renting each unit on an annual basis; that she believed it was common knowledge that in Sussex County, especially in the Rehoboth and Lewes area, people are seeking rental properties; that the proposed use is only for two units, however, it is proposed for an

already existing pole building; that the property is extremely well manicured; that there is certainly a demand for the Applicant's proposed use; that the use will otherwise comply with the requirements of the Code; that the request is supported by the Conditional Use Plan that was submitted as Exhibit B, as part of the Future Land Use Map Application submission; that the Conditional Use Plan provides significant vegetative buffers and open space; that the existing pole building makes up a very small portion, being approximately 7% of the site; that the undeveloped and forested area make up 70% of the site; that the remaining areas of the site are comprised of the pervious gravel driveway and parking area, which make up the remaining 23% of the site; that as part of the Conditional Use submission, the Applicant proffered Conditions of Approvals, which proposed to limit the use to two units within the Conditional Use area; that the proposed conditions proposed that the Developer will provide for the perpetual maintenance of the streets, roads, stormwater management, etc.; that the common areas will contain a stormwater management system, that will meet or exceed the requirements of the Code; that all entrances will conform with the DelDOT requirements; that the project will be served by central water and sewer; that any hours of construction improvements be limited in nature; that for the Conditional Use application, there was a four-signature petition from the surrounding property owners submitted in support of the Application; that Mr. Anton Balakin owns other property adjacent to the site as well; that the property is currently located within the Low Density area according to the Future Land Use Map of the Comprehensive Plan; that the Applicant is requesting to amend the Future Land Use Map to allow the property to be located within the Coastal Area; that the Coastal Area permits for a range of housing types, including multifamily units, such as what it is proposed; that the plan confirms that Sussex County's base density of two units per acre is appropriate in the Coastal Area; that the proposed use is less than that of the allowable base density; that the proposed two units would be located on 2.144 acres; that the Applicant is not proposing medium to higher density for the project, however the plan does support medium to higher density development, in the Coastal Area, where central water and sewer are available, sufficient commercial uses and employment centers are located, where the use is in keeping with the character of the area, located along a main road, and/or is located along a major intersection, where there is an adequate level of service, or where other considerations exist that are relevant to the requested project and density; that the Comprehensive Plan also encourages the preservation of natural resources or open space in the Coastal Area; that all of which is encouraged by the proposed plan, and evidenced within Exhibit B; §4.4.2.1 of the Comprehensive Plan entitled, Growth Areas, provides that the County should consider the following to help determine where Growth Areas should be located; that consideration should be given to the proximity to incorporated municipality or municipal annexation, the location on or near a major road or intersection, the character and intensity of the surrounding development, including proposed development, the location relative to major preserved lands, location of water bodies, location of agriculture, protected easements, the areas environmental character, the areas ranking according to the Delaware Strategies for State Spending map, and the presence of existing public water and sewer; that for the proposed project, the County is to provide public sewer service within five years; that the proposed Future Land Use Map Amendment to the Coastal Area would be consistent with the area and the Comprehensive Plan, because multifamily units are permitted in the area; that AR-1 is an applicable Zoning District in the Coastal Area; that the use is less than Sussex County's base density of two units per acre; that the use is therefore compatible with the nearby residential communities; that the use proposes the maintenance of existing and proposed open space areas and vegetative buffers; that public utilities are available to the site; that access to the site is located off an easement, being located off Beaver Dam Rd.; that through DelDOT's Service Level Evaluation, provided that the use will generate fewer than 50 trips per day; that the Office of State Planning commented regarding the sites location within Investment Level 4, and the properties location not being immediately adjacent to other Coastal Area designated properties; that the property is located

within Investment Level 4, however, the surrounding area is developed along Beaver Dam Rd. with residential properties; that the request is to use an existing structure on the site; that the Applicant is attempting to use, what he considers to be, the best use for the property; that when review the Future Land Use Map in general for Sussex County, there are other isolated pockets of Coastal Area throughout the County, being surrounding by, adjacent to, or within the vicinity of the Low Density Area; that an example of this would be a property located down the street, at the Conley's Chapel Rd. and Beaver Dam Rd. intersection; that there are also properties located in the Selbyville area, owned by Mountaire, and properties on and near Camp Arrowhead Rd.; that she noted, Chairman Wheatley previously mentioned concern regarding a potential flood of similar request beginning, if the project were to receive a recommendation of approval; that the subject property is unique; that the property is situated in the residential area, with an existing structure on the site; that the property is located within the immediate vicinity of other properties that are classified as being within the Coastal Area, located across Beaver Dam Rd.; that she understood, there is a separation of properties located within Low Density, but she requested the Commission focus on the intended use, being for a two unit rental within the existing pole building; that the property provides significant open space and vegetative buffers, all of which are in character, not only with the AR-1 Zoning District, but the Coastal Area as well; that in the event the Applicant would ever want to seek a use outside of the scope proposed, and otherwise not permitted within AR-1, the Applicant would be required to make a new Application and appear back before the Planning & Zoning Commission and/or County Council; that a new land use submission would require the Applicant to proceed through the Site Plan process and any other approvals; that the Conditional Use request will be subject to the Conditions of Approval, and for all the reasons provided on the record and at the previous Conditional Use hearing, which she requested to incorporate by reference, the Applicant requests the Commission recommend approval of not only the Conditional Use request, but also the current amendment to the Future Lands Use Map from Low Density to Coastal Area.

The Commission found that no one was present in support of or in opposition to the Application.

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

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

In relation to Ord. 23-11 requesting to amend the Future Land Use Map of the Comprehensive Plan in relation to Tax Parcel No. 234-6.00-6.02. Motion by Mr. Collins to defer action for further consideration, seconded by Ms. Wingate and carried unanimously. Motion carried 4-0.

Minutes of the September 14, 2023, Planning & Zoning Commission Meeting

The Commission discussed the Ordinance application which had been deferred since August 10, 2023.

Ms. Wingate moved that the Commission recommend approval of Ordinance No. 23-11 to change the Future Land Use Designation of Parcel # 234-6.00-6.02 from its current designation as being within the Low-Density Area to being within the Coastal Area within the County's Future Land Use Map based on the record made during the public hearing and for the following reasons:

1. The property is currently designated as a "Low-Density Area" within the County's Future Land Use Map.

2. The Future Land Use Map designates the property on the opposite side of Beaver Dam Road as “Coastal Area” and there is some existing “Coastal Area” land mapped on the same side of Beaver Dam Road.
3. There was no opposition to this proposed amendment to the Future Land Use Map.
4. This property is located along Beaver Dam Road in an area that has developed with multiple large subdivisions around it. Presumably, since these subdivisions preceded the current Future Land Use Map, there was no consideration about mapping them to direct their future development and they were left within the Low-Density Area. However, they are also consistent with the Coastal Area designation and could have been given that designation at the time the current Future Land Use Map was drafted and approved.
5. For all of these reasons, it is appropriate to recommend that Parcel No. 234-6.00-6.02 be changed to the “Coastal Area” on the Future Land Use Map.
6. In addition, in recognition of the existing development in this area and the nearby mapping, it would be appropriate for the County Council to separately consider changing all of the land in this triangle between Fisher Road, Hopkins Road, and Beaver Dam Road to the Coastal Area in our Future Land Use Map.
7. For all of these reasons, I move that the Commission recommend approval of Ordinance No. 23-11.

Motion by Ms. Wingate, seconded by Mr. Mears and carried unanimously to recommend approval of Ord. 23-11 to amend the Future Land Use Map of the Comprehensive Plan in relation to Tax Parcel No. 234-6.00-6.02, for the reasons stated in the motion. Motion carried 5-0.

Vote by roll call: Mr. Butler – yea, Mr. Collins – yea, Mr. Mears – yea, Ms. Wingate, Chairman Wheatley – yea

ORDINANCE NO. _____

AN ORDINANCE TO AMEND THE FUTURE LAND USE MAP OF THE COMPREHENSIVE PLAN IN RELATION TO TAX PARCEL NO. 234-6.00-6.02

WHEREAS, on May 28th, 2023, the Sussex County Planning and Zoning Office received an application for a requested Comprehensive Plan Amendment to amend the Future Land Use Map element of the Comprehensive Plan to change the Area designation of Sussex County Parcel No. 234-6.00-6.02 from the Low Density Area to the Coastal Area; and

WHEREAS, the Parcel is comprised of 2.14 acres of land, lying and being within Lewes & Rehoboth Hundred, and are located on the west side of Beaver Dam Road (Route 23) approximately 0.5 miles north of the intersection of Beaver Dam Road (Route 23) and Hopkins Road (S.C.R. 286).

WHEREAS, The Property is designated as being within the Low Density Area as set forth in the Future Land Use Map identified as Figure 4.5-1 in the 2018 Comprehensive Plan for Sussex County.

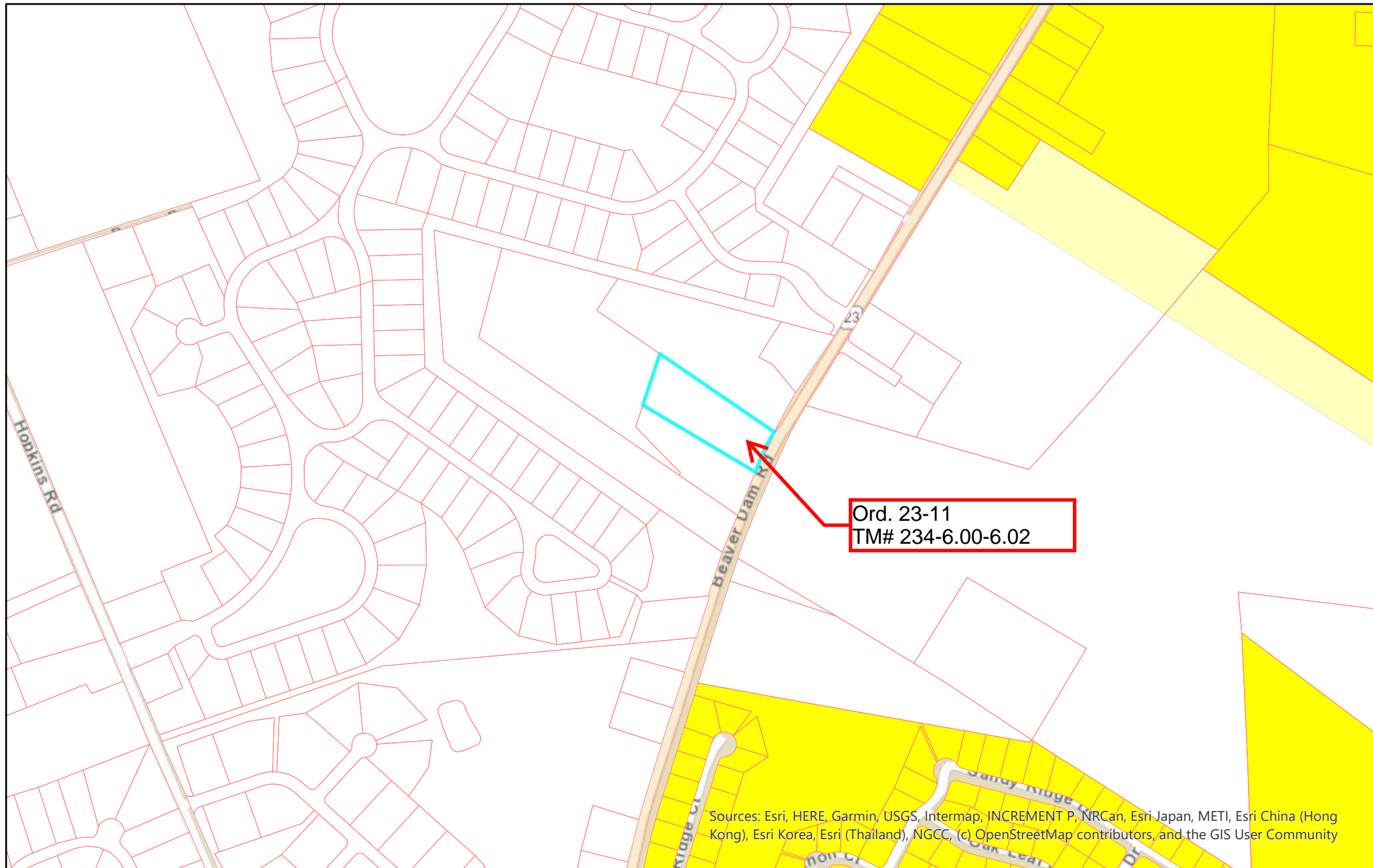
WHEREAS, Sussex County Council desires to adopt this Ordinance amending the Future Land Use Map of the Plan with minor amendments; and

WHEREAS, in accordance with the required process for public hearings on ordinances such as this one, both Sussex County Council and the Sussex County Planning & Zoning Commission will hold public hearings on this Ordinance, but limited in scope to this specific proposed amendment to the Future Land Use Map contained in the Plan.

NOW, THEREFORE, THE COUNTY OF SUSSEX HEREBY ORDAINS:

Section 1. The Future Land Use Map identified as Figure 4.5-1 of the Sussex County Comprehensive Plan is hereby amended to change the area designation of Sussex County Parcel No. 234-6.00-6.02 from the Low Density Area to the Coastal Area. The entirety of Sussex County Parcel No. 234-6.00-6.02 so changed is identified in Exhibit A, attached hereto, and incorporated herein.

Section 2. This Ordinance shall also take effect following its adoption by majority vote of all members of the County Council of Sussex County, Delaware, and upon certification by the State of Delaware.



Sources: Esri, HERE, Garmin, USGS, Intermap, INCREMENT P, NRCan, Esri Japan, METI, Esri China (Hong Kong), Esri Korea, Esri (Thailand), NGCC, (c) OpenStreetMap contributors, and the GIS User Community

Current FLUM Classification Map
Ordinance No. 23-11 FLUM Amendment
Beaver Dam Enterprises (A. Balakin)
Proposed: Low Density to Coastal Area
P&Z Meeting - 08/10/2023

2019 Future Land Use

Low Density
Coastal Area
Commercial

Developing Area
Existing Development Area
Industrial
Municipalities
Town Center

0 250 500 1,000 Feet





Memorandum

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

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

CC: Everett Moore, County Attorney

Date: December 6, 2023

RE: County Council Report for C/U 2350 filed on behalf of Beaver Dam Enterprises, LLC

The Planning and Zoning Department received an application (C/U 2350 filed on behalf of Beaver Dam Enterprises, LLC) for a Conditional Use for parcel 234-6.00-6.02 for multi-family (2 units). The property is located at 30857 Saddle Ridge Way, Lewes. The parcel size is 2.14 acres +/-.

The Planning & Zoning Commission held a Public Hearing on the application on March 23, 2023. At the meeting of April 20, 2023, the Planning & Zoning Commission deferred action on the application to allow for an Ordinance to be prepared and introduced to enable the Commission to consider a potential amendment to the Future Land Use Map element of the Comprehensive Plan.

A Public Hearing was held before the County Council on September 19, 2023. At the conclusion of the Public Hearing, a motion was made and passed to defer action on the application, holding the record open to receive a recommendation from the Planning & Zoning Commission and, once a recommendation was received, the public shall have a period of 5 days to submit additional written comments. Below is a link to the minutes of the County Council meeting of September 19, 2023.

[Link to the Minutes of the September 19, 2023 County Council Meeting](#)

On September 28, 2023, the Planning & Zoning Commission recommended approval of application C/U 2350 for the 7 reasons stated and subject to the 13 recommended conditions as outlined in the motion. This recommendation was reported to County Council at its meeting of October 10, 2023.

At the County Council meeting of October 24, 2023, the County Council closed the Public Record and deferred action on the application for further consideration.



Below are the minutes from the Planning & Zoning Commission meeting of March 23, 2023, April 20, 2023, and September 28, 2023.

Minutes of the March 23, 2023, Planning & Zoning Commission Meeting

C/U 2350 Beaver Dam Enterprises, LLC

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR MULTI-FAMILY (2 UNITS) TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 2.144 ACRES, MORE OR LESS.

The property is lying on the west side of Beaver Dam Road (Rt. 23), approximately 0.50 mile north of Hopkins Road (S.C.R. 286). 911 Address: 30857 Saddle Ridge Way, Lewes. Tax Map Parcel: 234-6.00-6.02.

Mr. Whitehouse advised the Commission that submitted into the record were the Applicant's Conceptual Site Plan, the Applicant's Exhibit Booklet, the Staff Analysis, a letter received from the Sussex County Engineering Department Utility Planning Division, a letter from the U.S. Army Corp of Engineers, and the DelDOT Service Level Evaluation Response. Mr. Whitehouse advised the Commission that a four-signature petition was received in support of the Application.

The Commission found that Ms. Mackenzie Peet, Esq. with Baird Mandalas Brockstedt Federico & Cardea spoke on behalf of the Applicant, Beaver Dam Enterprises, LLC; that also present were Mr. Anton Balakin, on behalf of the Applicant, and Mr. Kenneth Christenbury, P.E., President of Axiom Engineering, LLC. Ms. Peet stated the Applicant previously met with Director Jamie Whitehouse for his pre-submittal meeting on January 12th, 2022, where it was determined his proposed use could proceed as a Conditional Use; that subsequently, the Applicant submitted a Conditional Use application on February 4th, 2022; that the request is for a Conditional Use of land within the AR-1 (Agricultural Residential) Zoning District to convert an existing pole building into two residential units; that the property consist of 2.144 acres, located on Saddle Ridge Way in Lewes; that the property is accessed from Beaver Dam Rd.; that adjacent properties are zoned AR-1 (Agricultural Residential), GR (General Residential) and MR (Medium-Density Residential); that the surrounding area has largely been developed with single-family residential units and number of surrounding subdivisions; that the GR and MR zoned properties are at the location of Oak Crest Farms; that there are other scattered existing residential developments near the property; that there are many Conditional Uses approved in the area, as confirmed by the Planning & Zoning Map and the Office of Planning & Zoning Memorandum; that the Applicant submitted a number of exhibits, consisting of the Conditional Use Application and deed, property information and updated legal description; that within Exhibit 3, a Minor Subdivision Plan for Iron Horse Ranch was submitted; that the subdivision plan includes the construction plan and site distance triangle; that the plan shows access to the site from Beaver Dam Rd, by a gravel road easement, which continues to the existing pole building; that the existing pole building makes up about seven percent of the .135 acre site; that the undeveloped forest area make up approximately 1.577 acres (70%) of the site; that the gravel driveway and gravel parking area consist of the remaining .432 acre (23%) of the site; that also submitted were the Sussex County aerial maps and images of the property; that the photos reflect that the property is very well maintained and currently in good condition; that Exhibit 7 contains the determination from the U.S. Army Corp of Engineers, confirming that no wetlands are located on the site; that Exhibit A contains proposed Conditions of Approval; that the Future Land Use Map indicates the property is located within the Low Density Area; that all properties within the immediate vicinity are also located within the Low

Density Area; that Low Density Areas are considered to be rural areas, in contrast to growth areas; that as of 2018, all lands designated as Low Density Areas according to the Comprehensive Plan, are also zoned AR-1 (Agricultural Residential); that the Comprehensive Plan provides guidelines that should be applied to future growth in Low Density Areas; that residential growth is expected, with the intent to maintain the rural landscape; that the Applicant believes the proposed Conditional Use plan does meet the requirements with the significant amount of undeveloped area; that the proposed use may be permitted as a Conditional Use when approved in accordance with Article 24 of the Code, when the purposes of the AR-1 Chapter are more fully met; that the purpose of the AR-1 District is to provide a full range of agricultural activities and to protect agricultural lands, as one of the County's most valuable natural resources from the depreciating effect of objectionable hazardous and unsightly uses; that the Applicant should also protect established agricultural operation and activities; that these districts are also intended for protection of watershed, water resources, forest areas, and scenic views, while providing low density residential development; that §115-171 details the purpose of Article 24 relating to Conditional Uses, to provide for certain uses which cannot be well adjusted to their environment in particular locations with full protection offered to surrounding properties by rigid application of the district; that these uses are generally of public or semi-public character; that the uses are essential and desirable for the general convenience and welfare, but because of the nature of the use, the importance of the relationship to the Comprehensive Plan and the possible impact not only on neighboring properties, but on a large section of the County; that this requires the exercise of planning judgement on location and site plan; that the proposed use is of semi-public character, as it proposes a low density development, at less than one unit per acre, with two units proposed on a 2.14 acre parcel with 70% of the site being undeveloped; that each unit will consist of three bedrooms and two bathrooms; that the Applicant intends to rent the units on an annual basis; that there is a significant demand for rental units in Lewes and Rehoboth areas, especially rental units offered on an annual basis in Sussex County; that the proposed use is compatible with surrounding residential uses, with lower density in comparison to the single-family residential uses nearby being mostly constructed at two units to the acre or as a cluster subdivision; that public utilities are available to the site; that the units will be served by public water, provided by Tidewater and sewer, provided by Artesian; that access to the site is by an easement off Beaver Dam Rd.; that DelDOT's response to the Service Level Evaluation Request provided that the use will generate fewer than 50 vehicle trips per day; that DelDOT considers the development's traffic to be diminutive; that Code compliant parking will be provided with four spaces, provided parking is proposed towards the rear of the property; that the use is not anticipated to adversely impact neighboring properties as the site has an existing vegetative buffer screening the proposed use from adjacent properties; that one letter supporting the Application was also submitted; that there are a number of more intensive uses located within the surrounding area; that the Office of Planning & Zoning's Memorandum reflects 23 Conditional Uses in the area, as well as confirmed the proposed use is consistent with the design and land uses in the area and for the reasons stated, the Applicant respectfully requested the Commission's recommendation of approval for the proposed Application.

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

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

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

In relation to C/U 2350 Beaver Dam Enterprises, LLC. Motion by Mr. Mears to defer action for

further consideration, seconded by Ms. Stevenson and carried unanimously. Motion carried 3-0.

Minutes of the April 20, 2023, Planning & Zoning Commission Meeting

The Commission discussed the Application which had been deferred since March 23, 2023.

Ms. Stevenson moved that the Commission to defer this Application to allow the Applicant to apply for a Future Land Use Map Amendment because a conditional use for multi-family dwellings in the AR-1 District is not permitted in an area designated as the “Low-Density Area” on the Sussex County Future Land Use Map.

Motion by Ms. Stevenson, seconded by Ms. Wingate and carried unanimously to defer C/U 2350 Beaver Dam Enterprises, LLC for the reasons and conditions stated in the motion. Motion carried 4-0.

Minutes of the September 28, 2023, Planning & Zoning Commission Meeting

The Commission discussed the Application which had been deferred since April 20, 2023, with the Public Hearing being held at the prior meeting of March 23, 2023.

Ms. Wingate moved that the Commission recommend approval of C/U 2350 Beaver Dam Enterprises, LLC, for 2 Multi-Family Units based upon the record made during the public hearing and for the following reasons:

1. The property is zoned AR-1 Agricultural Residential. Multi-Family conditional uses can be appropriate in the AR-1 District when the land is located in the Coastal Area according to the Future Land Use Map in Sussex County’s Comprehensive Plan. This Commission has recommended approval of a change to the Future Land Use Map to designate this land as being within the Coastal Area.
2. The property is in the vicinity of other residential developments and land that is zoned AR-1, GR, and MR. This conditional use is consistent with other zoning and development in the area.
3. DelDOT has reviewed the proposed project and has determined that the development’s traffic impact will be “diminutive”. This development will also be required to comply with all roadway and entrance improvements mandated by DelDOT.
4. This small multi-family conditional use meets the purpose of the Zoning Code since it promotes the orderly growth of the County in an appropriate location.
5. The proposed use is consistent with the County’s Comprehensive Land Use Plan. It will be in the Coastal Area according to the Plan, which is a Growth Area. The Plan states that medium and higher densities can be appropriate where, like here, there are features such as central water and sewer and nearby commercial uses and employment centers. The Plan also states that a range of housing types should be permitted in the Coastal Area, including single-family homes, townhouses, and multifamily units.
6. There is no evidence that this project will adversely affect the neighboring properties, area roadways, or community facilities.
7. There was no opposition to this Application and there was one letter in support from the site’s neighbors.
8. This recommendation is subject to the following conditions:

- A. There shall be no more than 2 Units within the development.
- B. All entrances, intersections, roadways, and multimodal improvements required by DelDOT shall be completed by the applicant in accordance with DelDOT's determination.
- C. Central sewer shall be provided to the development.
- D. The development shall be served by a central water system providing adequate drinking water and fire protection.
- E. Stormwater management and erosion and sediment control shall be constructed in accordance with applicable State and County requirements, and the project shall utilize Best Management Practices to construct and maintain these fixtures. The Final Site Plan shall contain the approval of the Sussex Conservation District.
- F. The trash receptacles shall be standard roll-out residential containers assigned to each unit. They shall be stored in an enclosed area. No dumpsters shall be permitted.
- G. Construction, site work, and deliveries shall only occur on the site between the hours of 7:30 a.m. through 7:00 p.m., Monday through Friday, and between 8:00 a.m. and 2:00 p.m. on Saturdays. No Sunday hours are permitted. A 24-inch by 36-inch "NOTICE" sign confirming these hours in English and Spanish shall be prominently displayed at the site entrance during construction.
- H. As required by Section 115-22 of the Zoning Code regarding Multi-Family conditional uses in the AR-1 District, a 75-foot-wide vegetated buffer shall be installed along the perimeter of the development. This buffer area shall utilize existing trees and other vegetation to the fullest extent, with infill planting as needed to comply with the buffer requirements Section G (1) through (5) of Section 115-22 of the Zoning Code addressing AR-1 multi-family conditional uses.
- I. The Final Site Plan shall include a landscape plan for the development showing the forested areas to be preserved, the proposed tree and shrub landscape design, and the buffer areas. The existing trees and other vegetation that will not be disturbed shall be clearly shown on the Final Site Plan and marked on the site itself so that they are not disturbed during construction.
- J. All lighting on the site shall be shielded and downward screened so that it does not shine on neighboring properties or roadways.
- K. The Final Site Plan shall contain the approval of the Sussex Conservation District for the design and location of all stormwater management areas and erosion and sedimentation control facilities.
- L. This recommendation is contingent upon County Council approving the amendment to the Future Land Use Map designating this property as being within the Coastal Area.
- M. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning & Zoning Commission.

Motion by Ms. Wingate, seconded by Mr. Mears and carried unanimously to recommend approval of C/U 2350 Beaver Dam Enterprises, LLC for the reasons and the conditions stated in the motion. Motion carried 4-0.

Vote by roll call: Mr. Mears: Yea, Mr. Collins, Yea, Ms. Wingate: Yea, Chairman Wheatley Yea. Motion carried. 4-0.

PLANNING & ZONING COMMISSION

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



Sussex County

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

PLANNING AND ZONING AND COUNTY COUNCIL INFORMATION SHEET

Planning Commission Public Hearing Date: March 23, 2023

Application: CU 2350 Beaver Dam Enterprises, LLC

Applicant: Beaver Dam Enterprises, LLC
PO Box 555
Nassau, DE 19969

Owner: Anton Balakin
30862 Saddle Ridge Way
Lewes, DE 19958

Site Location: West side of Beaver Dam Road (Rt. 23), approximately 0.50 mile north
of Hopkins Road (S.C.R. 286)

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

Proposed Use: 2 Unit Multifamily

Comprehensive Land
Use Plan Reference: Low Density

Councilmanic
District: Mr. Rieley

School District: Cape Henlopen School District

Fire District: Lewes Fire Company

Sewer: Artesian

Water: On-site well

Site Area: 2.144 acres +/-

Tax Map ID.: 234-6.00-6.02





Memorandum

To: Sussex County Planning Commission Members
From: Mx. Jesse Lindenberg, Planner I
CC: Mr. Vince Robertson, Assistant County Attorney and Applicant
Date: March 23, 2023
RE: Staff Analysis for C/U 2350 Beaver Dam Enterprises, LLC

This memo is to provide background and analysis for the Planning Commission to consider as a part of application C/U 2350 Beaver Dam Enterprises, LLC to be reviewed during the March 23, 2023, Planning Commission Meeting. This analysis should be included in the record of this application and is subject to comments and information that may be presented during the public hearing.

The request is for a Conditional Use for Tax Parcel: 234-6.00-6.02 to allow for a two-unit multifamily project. The property is located on the west side of Beaver Dam Road (Rt. 23), approximately 0.50 mile north of Hopkins Road (S.C.R. 286). The parcel is comprised of a total area of 2.144 acres +/-.

Comprehensive Plan Analysis

The 2018 Sussex County Comprehensive Plan Update (Comprehensive Plan) provides a framework of how land is to be developed. As part of the Comprehensive Plan, a Future Land Use Map is included to help determine how land should be zoned to ensure responsible development. The Future Land Use Map in the plan indicates that the parcel has a designation of "Low Density." The adjacent parcels to the north, south, west, and east (across Beaver Dam Rd) also have a designation of "Low Density."

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

Zoning Information

The subject property is zoned Agricultural Residential (AR-1) District. The adjacent properties to the north, south, west, and east (across Beaver Dam Rd) are also zoned Agricultural Residential (AR-1) District.



Existing Conditional Uses within the Vicinity of the Subject Site

Since 2011, there have been twenty-three (23) Conditional Use applications within a one (1) mile radius of the application site. These applications are outlined below.

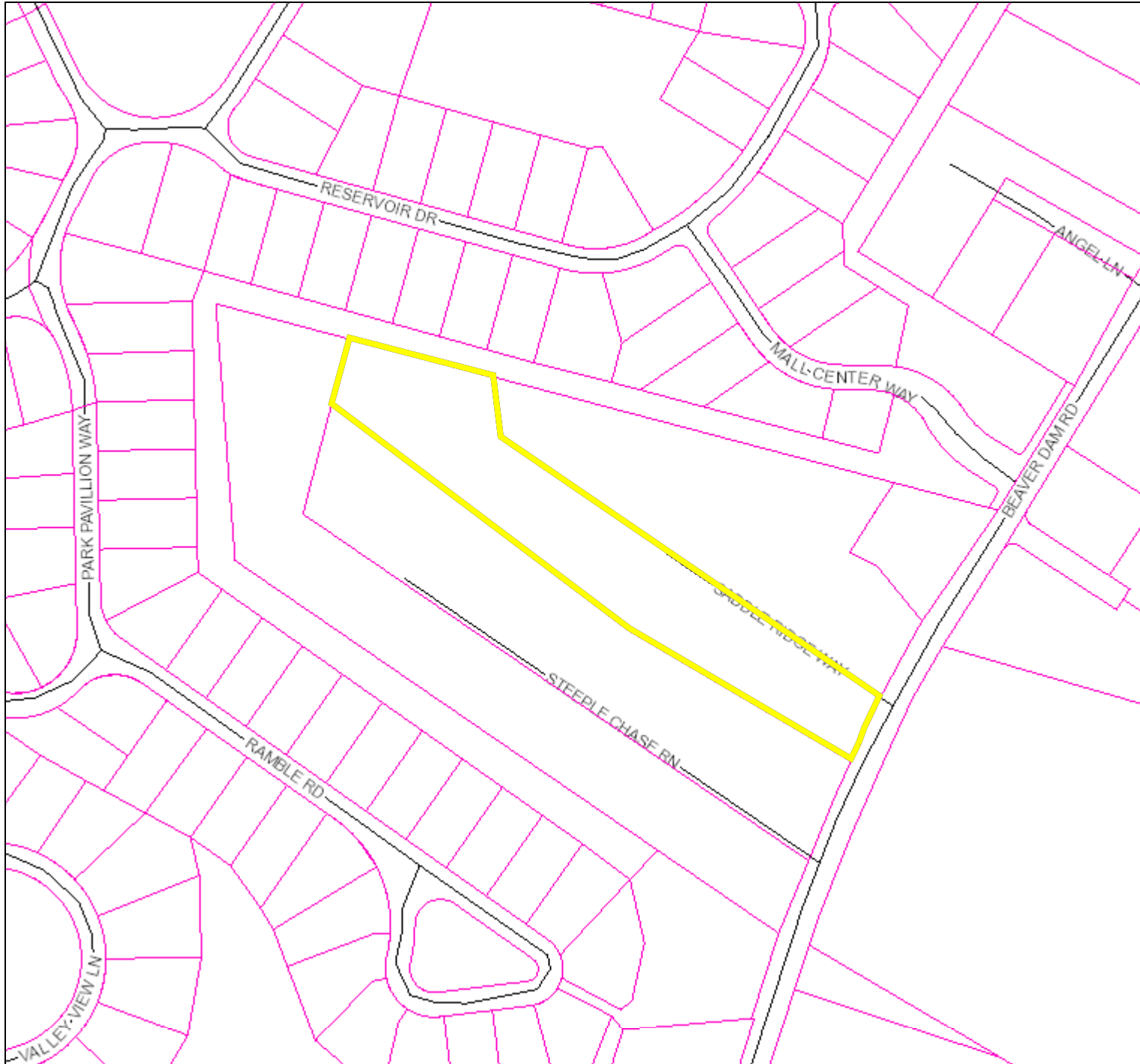
Conditional Use Number	APPLICANT	Current Zoning	Proposed Use	P&Z Decision	P&Z Decision Date	CC Decision	CC Decision Date	Ordinance Number
265	Leroy Lucas	AR-1	Manufactured Home Park	N/A	N/A	Approved	4/29/1975	N/A
272	Melvin Gollub & Ada	AR-1/GR	FM radio station & tower	N/A	N/A	Approved	6/10/1975	N/A
550	John & Barbara Clark	GR	Upholstery shop/antique & used furniture sales	N/A	N/A	Approved	10/16/1979	N/A
616	John R. Metcalf	GR/AR-1	Manufactured Home Park	N/A	N/A	Withdrawn	N/A	N/A
1017	Townsend Inc.	AR-1	Sludge Application to Forested Land	Recommended Denial	10/22/1992	Withdrawn	N/A	N/A
1568	Douglas W. Brockway	AR-1	Boat repair & accessory	Recommended Approval	11/18/2004	Approved	3/15/2005	1759
1635	Thomas N. & Marion L. Rossi	AR-1	Landscaping	Recommended Approval	1/26/2006	Approved	2/14/2006	1825
1718	Artesian Water Co., Inc.	AR-1	Sewer Treatment Facility	Recommended Approval	11/30/2006	Approved	12/5/2006	1881
1756	Artesian Water Company, Inc. (Heron Bay)	AR-1	Water Utility	Recommended Approval	7/26/2007	Approved	8/14/2007	1928
1932	Tanya Gibbs & Kimwuan Gibbs	GR	Automotive Sales Lot	Recommended Denial	8/23/2012	Denied	1/15/2013	
2006	Thomas/Laura Kucharik	AR-1	Seasonal farm stand/garden center	Recommended Approval	1/22/2015	Approved	3/10/2015	2388
2014	Jay Beach	AR-1	Landscaping and Site Work Business	Recommended Approval	4/23/2015	Approved	10/13/2015	2420
2082	Tidewater Utilities	AR-1	Withdrawn	Withdrawn	N/A	Withdrawn	N/A	N/A
2138	Walker Construction Inc.	AR-1	Site contracting excavating services, with storage, repair and maintenance and light material storage with office	Recommended Approval	8/9/2018	Approved	8/21/2018	2596
2177	Ingrid Hopkins	AR-1	Events venue	Recommended Approval	7/18/2019	Approved	7/30/2019	2670
2216	Kenneth Dominic Alton Drummond	AR-1	Storage & residence for manager Quality Care Homes	Recommended Approval	8/13/2020	Approved	8/25/2020	2735

2232	Covered Bridge Inn, LLC	AR-1	Wedding Event Space	Recommended Approval	8/13/2020	Withdrawn	12/29/2020	N/A
2247	Hillary Brock	AR-1	Mini Spa	Recommended Approval	11/19/2020	Approved	12/1/2020	2757
2273	Michael Parsons	AR-1	Delivery of Commercial Part for Off-Site Sales	Recommended Approval	11/18/2021	Approved	11/30/2021	2815
2280	Covered Bridge Inn, LLC	AR-1	Wedding Event Space (Resubmitted)	Recommended Approval	6/10/2021	Approved	7/13/2021	2790
2379	Lewes Saddle Ridge Solar 1, LLC	AR-1	Solar Farm	N/A	N/A	N/A	N/A	N/A
2382	Consolidated Edison Development, Inc.	AR-1/GR	Solar Farm	N/A	N/A	N/A	N/A	N/A

Based on the analysis provided, the Conditional Use to allow for a two-unit multifamily project in this location could be considered as being consistent with the land use, area zoning and surrounding uses, subject to considerations of scale and impact.



Sussex County






PIN:	234-6.00-6.02
Owner Name	BEAVER DAM ENTERPRISES LLC
Book	5518
Mailing Address	PO BOX 555
City	NASSAU
State	DE
Description	IRONHORSE RANCH
Description 2	PARCEL 3
Description 3	N/A
Land Code	

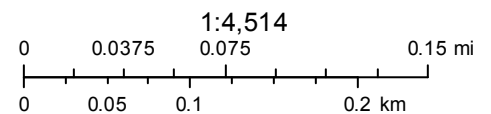
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Override 1

-  Tax Parcels
-  Streets
-  County Boundaries





Sussex County






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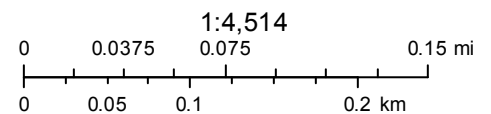
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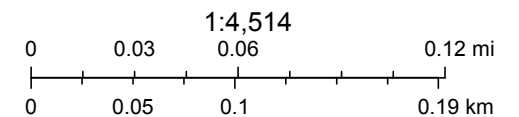
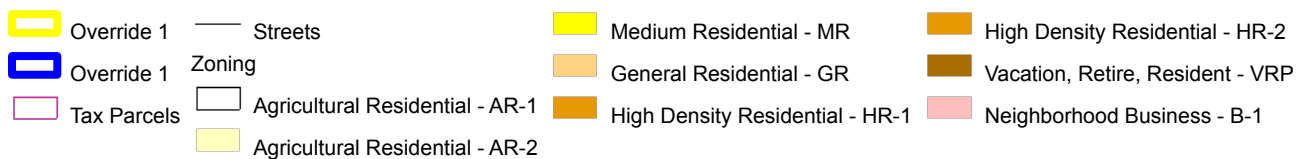
-  Tax Parcels
-  Streets
-  County Boundaries



Sussex County



February 20, 2023



Sussex County. Sources: Esri, Airbus DS, USGS, NGA, NASA, CGIAR, N Robinson, NCEAS, NLS, OS, NMA, Geodatastyrelsen, Rijkswaterstaat, GSA,

To Be Introduced: 03/29/22

**Council District 3: Mr. Schaeffer
Tax I.D. No.: 234-6.00-6.02 (part of)
911 Address: 19464 Beaver Dam Road, Lewes**

ORDINANCE NO. ____

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR MULTI-FAMILY (2 UNITS) TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 1.84 ACRES, MORE OR LESS

WHEREAS, on the 11th day of February 2022, a conditional use application, denominated Conditional Use No. 2350 was filed on behalf of Beaver Dam Enterprises, LLC; and

WHEREAS, on the ____ day of _____ 2022, a public hearing was held, after notice, before the Planning and Zoning Commission of Sussex County and said Planning and Zoning Commission recommended that Conditional Use No. 2350 be _____; and

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

NOW, THEREFORE, THE COUNTY OF SUSSEX HEREBY ORDAINS:

Section 1. That Chapter 115, Article IV, Subsection 115-22, Code of Sussex County, be amended by adding the designation of Conditional Use No. 2350 as it applies to the property hereinafter described.

Section 2. The subject property is described as follows:

ALL that certain tract, piece or parcel of land, lying and being situate in Indian River Hundred, Sussex County, Delaware, and lying on west side of Beaver Dam Road (Rt. 23), approximately 0.50 mile north of Hopkins Road (S.C.R. 286), and being more particularly described in the attached legal description prepared by Hudson, Jones, Jaywork & Fisher, said parcel containing 1.84 acres, more or less.

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



Memorandum

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

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

CC: Everett Moore, County Attorney

Date: December 6, 2023

RE: County Council Report for C/U 2379 filed on behalf of Lewes Solar Ridge Solar 1, LLC

The Planning and Zoning Department received an application (C/U 2379 filed on behalf of Lewes Solar Ridge Solar 1, LLC) for a solar farm to be located at tax parcels 234-6.00-6.02, 6.03, and 6.04. The property is located at 30857 & 30862 Saddle Ridge Way, Lewes. The parcel size is 15.97 acres +/-

The Planning & Zoning Commission held a Public Hearing on the application on August 24, 2023. At the meeting of September 14, 2023, the Planning & Zoning Commission recommended approval of the application for the 9 reasons stated and subject to the 11 recommended conditions as outlined within the motion (copied below).

The County Council held a Public Hearing on the application at its meeting on October 10, 2023. At the conclusion of the Public Hearing the Council closed the Public Record and deferred action on the application for further consideration. Below is a link to the minutes of the County Council meeting of October 10, 2023.

[Link to the Minutes of the October 10, 2023, County Council Meeting](#)

Below are the minutes from the Planning & Zoning Commission meeting of August 24, 2023, and September 14, 2023.

Minutes of the August 24, 2023, Planning & Zoning Commission Meeting

C/U 2379 Lewes Saddle Ridge Solar 1, LLC

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A SOLAR FARM TO BE LOCATED



ON A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 15.97 ACRES, MORE OR LESS. The properties are lying on the north and south sides of Saddle Ridge Way and the west side of Beaver Dam Road (S.C.R. 23), approximately 0.57-mile northeast of Hopkins Road (S.C.R. 286). 911 Address: 30857 & 30862 Saddle Ridge Way. Tax Map Parcels: 234-6.00-6.02, 6.03 & 6.04.

Mr. Whitehouse advised the Commission that submitted into the record were the Applicant's Exhibit Booklet, the Applicant's Preliminary Site Plan, a copy of the Jurisdictional Determination request letter, a copy of a letter from Environmental Resources, Inc., a copy of the property deed, the DelDOT Service Level Evaluation Response, a copy of the Applicant's Decommissioning Plan, a letter received from the Sussex County Engineering Department Utility Planning Division, and a copy of the Staff Analysis. Mr. Whitehouse stated a total of 75 comments had been received for the Application; that all submitted comments appear to be in opposition and that some comments appear to be duplicates.

The Commission found that Mr. James Fuqua, Esq., with Fuqua, Willard & Schab, P.A., spoke on behalf of the Applicant; that also present were Mr. Zac Meyer, Director of Development with Soltage, LLC, and Ms. Jennifer Oltman, P.E., Senior Project Manager with Kimley-Horn & Associates.

Mr. Fuqua stated both the current Application hearing and the following hearing involve applications requesting solar array facilities on behalf of the same company, Soltage, LLC; that he requested the Commission's permission to incorporate the general information provided in the first hearing, into the record for the second application hearing, in order to avoid repeating himself; that both the current Application, as well as the following Applicant, are companies owned by Soltage, LLC; that Soltage, LLC is a renewable power producer that develops, finances, and operates solar energy facilities throughout the United States; that they have developed more than 100 solar energy projects with more than 400 milliwatts of energy generating capacity; that community solar facilities are a fairly new concept for Sussex County; that within the last 18 months there has been a large number of community solar array applications filed in Sussex County; that the ability to request these applications was created by legislation passed by the Delaware Legislature in September 2021; that the legislation authorized community solar facilities to create renewable energy projects, with participation of the public that results in reduced energy costs to the people that subscribe to the project; that the bill creating community solar was signed by Governor Carney at a private solar array facility that was owned by Soltage, LLC, located just outside of Wilmington; that the Conditional Use application proposes a community facility on a 7.03 acre parcel of land that is owned by Beaver Dam Enterprises, Inc.; that the land is being leased to Soltage, LLC; that the site is located on Parcel 6.04; that the site is located 550 ft. west of Beaver Dam Rd.; that the solar facility will occupy approximately 6.26 acres of the 7.03 acres site, being the area that would be enclosed within the security fence; that the Application listed Parcel 6.02 and Parcel 6.03, being the parcels closer to the front; that those parcel will only involve an existing private driveway that straddles the boundary of the parcels; that the drive will provide the access road back to Parcel 6.04 from Beaver Dam Rd.; that the solar facility in its entirety is to be located only on Parcel 6.04, being a total of 7.03 acres; that the site borders a 4.81 acre parcel to the north, that is designated as Parcel 6.03; that the site also borders a portion of the forested buffer belonging to the Ridings of Rehoboth subdivision; that the Ridings of Rehoboth stretch of buffer is approximately 560 ft. in length; that this area also borders five properties within the Ridings of Rehoboth development; that to the west and the south of the site, the land is adjacent to an eight acre parcel called Iron Horse Ranch, owned by Mr. & Mrs. Danny Wilson; that that project only borders the Ridings of Rehoboth along the northern buffer; that the lands to the east, being Parcel

6.01, 6.02 are wooded; that Parcels 6.01, 6.02 and 6.03 are either owned by Beaver Dam Enterprises, a lessee, or the Applicant's LLC; that the site is being leased to Soltage, LLC; that the lease is for a 20 year term; that the lessee would have a three or five year option to extend the lease, with a four or five year option to extend the lease by mutual agreement of the parties; that the site and the surrounding lands are all zoned AR-1 (Agricultural Residential); that the site is designated as being within the Low Density area according to the Future Land Use Map section of the Comprehensive Plan; that solar array facilities are consistent with the Comprehensive Plan; that the utility elements, being Section 7, of the Comprehensive Plan provide that the County should encourage the development of renewable energy from a utility level standpoint in order to realize the potential for more prevalent uses of renewable energy; that a stated goal of the plan, being Goal 7.03.3 is to encourage the use of renewable energy options such as community solar facilities; that Parcel 6.04 comprised of unimproved grasslands; that little ground disturbance is proposed, except for the removal of a small area of trees that would interfere with the solar array operation; that there is a small sliver of non-tidal wetlands located in the extreme southeastern corner of the parcel; that the wetland area has been delineated; that the delineation was confirmed by an approved jurisdictional determination issued by the U.S. Army Corp of Engineers; that there will be a buffer of 25 ft. from the wetland line, which is to remain undisturbed; that access from the site will be provided by the existing private drive located from Beaver Dam Rd.; that after project construction is completed, there is very little traffic proposed for the site; that they estimate two vehicle trips per month, making traffic very minimal; that the only traffic to the site would be for periodic equipment maintenance and inspection, and routine property maintenance and grass cutting; that there are no employees proposed for the site; that the site equipment will be monitored remotely; that the DelDOT Service Level Evaluation response indicated that the traffic impact would be diminutive and no further study was required; that any entrance improvements required by DelDOT would be provided by the Applicant; that the project anticipates one unlit sign to be located at the entrance, which will no exceed 32 sq. ft. in area; that the solar array would be enclosed within a security fence; that they had proposed a six foot fence, however, the Applicant would have no issue providing whatever height standard the Commission saw fit; that the fence would have an emergency key box at the entrance gate; that the project would consist of ground mounted, fixed solar panels; that the panels would be oriented to maximize the panels exposure to sunlight; that the panels would convert the sunlight into electrical power; that the power generated by the array will be managed by inverters and other equipment that will be located on an equipment pad; that the equipment pad will be located away from the residential development surrounding the site; that the energy generated will be interconnected with the Delmarva Power lines existing overheard on Beaver Dam Rd. by an underground electric line; that the project is located within the Delmarva Power service area; that the site will be seeded with a pollinator seed mix, which will allow for slow growing, environmentally friendly ground mix; that no security lights are planned, except at the entrance gate; that if any security lighting should be required, the Applicant understands the lighting should be downward oriented; that there is no sewer or water impact with the facility or the operation; that there are no odors, dust, smoke or heat associated with the facility; that the only sound generated is minimal, being a low hum from the inverters; that there is minimal to no glare from the solar panels; that the solar panels are designated to absorb sunlight, not to reflect sunlight; that there will be a landscape buffer surrounding the site, as well as existing trees that already surround the site; that the site is located outside of the 100 Year Floodplain, being located within Flood Zone X, as designated by the FEMA Flood Zone Maps; that all stormwater management will comply with all State and County requirements, and will be reviewed and approved by the Sussex Conservation District; that to a large extent the site will remain pervious; that the solar panel equipment are on poles at are in the ground; that there is no paving on the site other than where the pad is located; that a forested buffer is proposed along the property line, and the areas adjacent to Parcel 6.03; that a buffer would also be located along

the property boundary adjacent to the Ridings of Rehoboth development's forested buffer, as well as along Parcel 6.00, back to the point where it meets the wetland buffer; that it is proposed there would be no buffer on the other two parcels, being Parcel 6.01 and 6.02, as they are existing wooded parcels which would not require a buffer; that the proposed buffer design has been modified and replaced with a denser design; that the buffer would consist of continuous Evergreen trees; that the Evergreen trees would be at least six feet in height when planted; that the trees would be planted in a staggered arrangement to effectively create a visual buffer; that the buffer will be 20 ft. wide; that for every 100 linear feet, there will be a minimum of 15 trees; that all of the trees would be guaranteed for a period of 12 months; that the facility is anticipated to generate 1.77 megawatt hours of electricity, which is the equivalent of the annual power needs of approximately 250 homes; that the anticipated production life of the facility is 35 to 40 years, which corresponds to the lease term; that as part of Final Site Plan approval, a Decommissioning Plan will be provided to the Planning & Zoning Commission, providing that upon the expiration of the lease, or earlier termination of the lease, all of the equipment materials will be removed from the site; that all equipment will be properly disposed of and that the site would return to a physical condition, similar to how it exists today; that the Decommissioning Plan also provides a security in the form of a Decommissioning Bond, to guarantee that the cost of restoration would be available; that the estimated amount in terms of the security, would be part of the Final Site Plan review and approval by the Planning & Zoning Commission; that there were many letters expressing questions and concerns received for the Ridings of Rehoboth development; that there were a couple individual emails received; that a large majority of the emails seemed to have been facilitated by the homeowners group, which they referred to themselves as the "Solar Farm Task Force", and then the drafted email was resent to the Planning & Zoning Department from multiple residents within the community; that the Applicant did attempt to communicate with the Ridings Homeowners Association; that the HOA is not under any obligation to communicate with the Applicant; that if there had been some communication, he believed the Applicant would have addressed at least some of the mentioned concerns; that the Applicant did provide by email, the project summary, the narrative summary, the Preliminary Site Plan, and information regarding Soltage, LLC to the development's community manager; that the community manager e-mailed back from stating he would forward the information to the Ridings of Rehoboth's HOA; that the Applicant subsequently submitted additional information, however, there was no further communication following that; that there was never any type of formal contact or communication made; that Mr. Meyer did acquire the name of the HOA President, Mr. Hempler, and was able to contact him by phone; that they had good conversation; that within the submitted Exhibit Booklet, there are letters from the adjacent property owners for Parcel 6.00, 6.01, 6.02 and 6.03, being all of the surrounding properties, other than the Ridings of Rehoboth's buffer; that those submitted letters express no objection to the project; that the Ridings of Rehoboth buffer, that borders the site, is about 560 ft. in length; that along the property lines there is an existing wooded buffer, with the exception of two areas; that there is a partial gap in the woods to rear of one lot, and another gap to the rear of a different lot, where there appears to be a fence installed; that he cannot confirm if landscape used to exist in those areas or if the landscaping has been removed; that there is a significant amount of existing woods; that the project proposes a buffer to be located adjacent to the existing woods; that the County recently enacted a Solar Farm Ordinance in April 2023; that the Application, lease, work and prepared design were performed long before the Ordinance was adopted; that the Application was submitted in June 2022, being 10 months prior to the Ordinance's adoption; that due to this, the Ordinance is not applicable to the Application; that a submitted opposition letter stated that 40% of the Ridings of Rehoboth homes are located as close as 50 ft. to 200 ft. from the solar farm; that the statement is inaccurate; that the only portion of the Ridings of Rehoboth that borders the subject property is the 560 ft. section previously mentioned; that they identified the closest homes as being the five homes which have provided support letters;

that the closest distance between a dwelling and a solar array panel is 187.9 ft.; that the recently adopted Solar Ordinance requires 200 ft.; that the Preliminary Site Plan was prepared 10 months before the new Ordinance was adopted or even proposed; that to his knowledge there are only two dwellings that are located less than 200 ft. from the solar array panels; that another point of objection raised stated that normally solar farms are located in isolated, rural areas, not near residential areas; that the statement may be true for large industrial style solar facilities, which require large acreage for farmland for the array fields; that in contrast, the current Application is for a community solar facility; that community solar facilities are new in Delaware, as it was only authorized by Delaware Legislature in September 2021; that community solar is for public benefit, to encourage renewable energy, reduce fossil fuel use, and is a goal of the Sussex County Comprehensive Plan; that Mr. Meyer will speak to a site that Soltage, LLC is currently developing in Wicomico County, which is adjacent to a residential development; that the requested to refer to Conditional Use No. 2346, which was a solar farm application, located along the northside of Dorothy Rd., south of Laurel and north of Delmar; that the site was 27 acres in size, with residential lots located adjacent to it; that the site had a moderate size residential subdivision located directly across Dorothy Rd. and a large residential development, Country Grove, located just west of it; that the Commission did recommend approval of C/U 2346, and it was approved by County Council on June 20, 2023; that within the decision, both the Commission and County Council's findings were that the information in the record found that solar facilities do not have a negative impact upon adjacent property values, and with the conditions imposed, the use would not have any adverse impact on the neighborhood; that he felt those statements have been consistent in most solar applications the Commission has dealt with so far; that a propose community solar facility is a passive use, as there is no negative impact, no noise, and no traffic; that there are other agricultural uses the land could provide; that under the Sussex County Zoning Ordinance, an AR-1 (Agricultural Residential) District cluster subdivision is permitted; that the solar farm use will be present for 35 to 40 years, and then be removed, returning the site to an open field; that the proposed community solar facility is authorized and subject to the laws of Delaware, specifically being Title 26 of the Delaware Code, which regulates generating facilities and renewable energy; that the facility would be operated in compliance with the State law; that in conclusion, the proposed solar facility meets the purpose of a Conditional Use, since it is of a public character, it is essential and desirable for the general convenience and welfare, and it is consistent with the goals of the County's Comprehensive Plan; that this was created by Delaware Legislature; that it was not created to harm people or to cause problems; that the use is a safe operation and a passive use; that there are no nuisances associated with it; that the use will not interfere with other people's uses; that there are only five homes within the Ridings of Rehoboth that are considered within close proximity to the site and/or border the site; that the two closest dwellings are almost 200 ft. away from the solar array. Mr. Fuqua requested to submit proposed findings and conditions for the record.

The Commission found that Mr. Zac Meyer, Director of Development with Soltage, LLC, spoke on behalf of the Application. Mr. Meyer stated they are committed to being good neighbors; that they have projects all over the county, being within 16 states and counting; that he, himself, had developed a number of those projects; that his line is always open to anyone, being the Commission and the public; that he did have some good conversation with Mr. Hempler; that the general purpose of community solar is to bring the benefits of solar energy and their associated guaranteed savings to people who want it, but cannot place solar on their own property; that this includes low and moderate income residents; that the Delaware Community Solar Program requires that 15% of the projects output be dedicated to low income residents, and this will be the case for the proposed project as well; that the residents within the Ridings of Rehoboth may sign up if they wish; that many opposition letters mentioned concerns regarding lithium ion batteries; that the project does not propose to have

any batteries on the site; that they understand, should they every wish to place a batter on the site, they would be required to return before the Commission through a separate Conditional Use request; that Soltage, LLC does not use solar panels that contain cadmium for the proposed type of project; that as part of the application for C/U 2342, a the property value study was performed in 2022 by technical advisory firm, CohnReznick; that “these studies found little to no measurable or consistent difference in value between the test area sales and the control area sales, attributed to the proximity to existing solar farms”; that the study noted that “solar energy uses are generally considered a compatible use”; that the study also stated, “our conclusions, also consider interviews with over 45 county and township assessors who have at least one solar farm in their jurisdiction and in which they have determined that solar farms have not negatively affected adjacent property values”; that “it is noted proximity to the solar farms has not deterred sales of nearby agricultural land and residential single-family homes, nor has it deterred the development of new single-family homes on adjacent land”; that “this report also includes two, before and after, analysis, in which sales that occurred prior to the announcement and construction of the solar farm project were compared with the sales that occurred after the completion of the solar farm project for both adjoining and non-adjoining properties”; that “no measurable impact on property values was demonstrated”; that this study was conducted within Delaware, Maryland and New Jersey; that in relation to electromagnetic fields, he requested to defer to the experts by quoting a publication from North Carolina State University, from 2017, by Tommy Cleveland, entitled “Health & Safety Impacts of Solar Photovoltaics”; that “at times we were exposed to much higher ELF [Extreme Low Frequency] magnetic fields. For example, when standing three feet from a refrigerator, the ELF magnetic field is six milligauss, and when standing three feet from a microwave oven, the field is about 50 milligauss. Researchers in Massachusetts measured magnetic fields at photovoltaic projects and found the magnetic fields dropped to very low levels of 0.5 milligauss or less, and in many cases, to less than background levels, which is 0.2 milligauss at distances of no more than nine feet from residential and inverter, and 150 ft. from utility-scale inverters. Even when measured within a few feet of the utility-scale inverters, the ELF magnetic fields were well below the International Commission on Non-Ionizing Radiation Protections. Recommended magnetic field level exposure limit for the general public, which is 2,000 milligauss.”; that the same report later states, “Anyone relying on a medical device such as a pacemaker, or other implanted device, to maintain proper heart rhythm may have a concern about the potential for a solar project to interfere with the operation of his or her device. However, there is no reason for concern because the EMF [Electromagnetic Field], outside of the solar facilities fence is less than one thousandth of the level at which manufacturer’s test for EMF interference, which is 1,000 milligauss.”; that the solar panels are silent; that the only noise from the facility would come from the inverter transformer pad, which is the small rectangle, which was previously pointed out, and was intentionally placed further away from adjacent residential properties; that the only noise is the sound created by the fan which cools the transformer; that the fan noise should not be heard by any resident within the Ridings of Rehoboth, as it has a lower sound level than a typical air conditioning unit associated with residential central air conditioning; that some of opposition letters mentioned concerns regarding electric shock and arc flash; that they will comply with the National Electric Code requirements, appropriate protections and warnings; that these regulations are regarding the fence and the warnings; that these requirements are not solar specific; that these are required for any electrical equipment, such as combiner boxes, disconnect switches, or transformers, being the standard equipment that is located all around us, in our homes, on telephone poles and ground located transformers; that he developed a project, which recently began construction in Wicomico County, Maryland; that the project is another community solar facility; that distributed generation, being small to mid-scale projects, are commonly located within residential areas around the country; that there are hundreds; that the project he recently developed within Wicomico County, Maryland is located adjacent to eight or more

residential properties and dwellings; that the particular project is located south of Hebron on Quantico Rd.

Mr. Butler questioned the types of panels proposed for the project.

Mr. Meyer stated the project is proposed to use Crystalline Silicon, which is used in the majority of community solar projects.

Ms. Wingate stated her only question was the proximity to the closest home within the Ridings of Rehoboth, which was answered at 187.9 ft.

Mr. Fuqua stated the closest dwelling is the lot where the fence is located to the rear lot; that the closest solar array is located 197 ft. to the corner of the house; that there is an accessory structure or accessory pad located on the property; that the closest solar array is located 187 ft. from that structure and/or pad.

Mr. Collins questioned how the project would be impacted if the small, wooded area was required to be retained.

Mr. Fuqua stated the trees would adversely impact the way the sun goes across the arrays, interfering with the flow of the sunlight; that the trees are isolated trees located in the middle of the field; that are not significant and not considered mature.

Mr. Butler stated in his experience, the solar panels shed a lot of water, and he questioned if there would be any potential for flooding onto adjacent properties.

Mr. Fuqua stated the only water impacting the adjacent neighbors, would be the same water that would currently hit the field without the project being there; that currently the site is an open field with no stormwater management review; that the project will have to comply with the stormwater management requirements, therefore there should not be any issues, and if anything should be an improvement.

The Commission found there was no one who wished to speak in support and five people who wished to speak in opposition to the Application.

Mr. Thomas Chucta spoke in opposition to the Application. Mr. Chucta stated he is a current resident of the Ridings of Rehoboth; that he had concerns regarding drainage, as there is already a lot of water coming from the site currently; that they recently invested approximately \$60,000 to pitch the roads differently; that the noise created by the inverters is subjective; that he had concerns as to the potential noise of the inverters impacting the hearing of animals in the area and they had a town meeting with two fireman, who stated fires caused by batteries could clear a mile radius.

Mr. Richard Zilg spoke in opposition to the Application. Mr. Zilg stated he is a current resident of the Ridings of Rehoboth; that based on the research the community performed, the proposed project will impact more than just the five adjacent homes; that the World Health Organization recommends that no residences should be within a 1.25-mile radius of any solar farm due to the dangers of electromagnetic fields, potential contaminants, noise and other factors; that an article within The Journal of Energy Policy mentioned that in New Jersey, being second in solar for the Country behind

California, there was a reduction of 5.6% in property values in relation to the proximity near solar farms; that properties located within ¼ mile saw a reduction of 2.5% and 1.5% reduction in properties located within a half mile; that approximately 1,000 homes are located within 1.25 mile of the proposed site; that he expressed concerns to the exposure of cadmium from the cells; that the silicon cells do contain cadmium, lead and copper; that when he researched the solar farms approved previously by the Commission, none of the solar farms appeared to be proposed in a residential area similar to theirs; that the Ridings of Rehoboth wraps around the solar farm on three sides; that New Jersey has approximately 90 solar farms; that those solar farms are located on landfills, brownfields, parking lots and military bases, with the remainder located predominantly located in rural areas; that in his research he could not located any previously approved solar farms that were approved to be located on anything less than 20 acres; that he questioned if the power grids can take on any additional solar installations; that Clean Energy USA, a solar installation provider, advised that both Delmarva Power and Delaware Electric Cooperative are eliminating the installation of new solar connections because the grid is being overloaded; that there is an existing drainage problem with water runoff from the site; that the clearing of vegetation will exacerbate the runoff issues; that any herbicides uses to clear the land, could potentially run off onto the adjacent properties; that he is concerned about the potential dust, odor and disturbance caused during construction of the project; that the Ridings of Rehoboth derive no benefit from the proposed solar farm, only being left with any problems the project may create, and he requested the Commission deny the application until additional evidence, based on similar conditions, can be obtained.

Mr. Meyer stated they would welcome subscribers in the Delmarva Power and Light territory, as the proposed project is an interconnected project with Delmarva Power; that they are able to service the Ridings at Rehoboth, as well as any other home located within Delmarva Power and his territory; that he is required by State law to reserve 15% of the project to assist low-income residents; that he offered the residents of the Ridings at Rehoboth an exclusivity period for them to sign up; that the project will sell out with subscriptions; that he does understand the concern of not benefitting from an adjacent project; that they already have an Interconnection Agreement, that is pending signature, with Delmarva Power and Light; that they already conducted an Interconnection Study, which took many months to complete and Delmarva Power confirmed, that subject to Soltage, LLC paying for certain upgrades, which benefits the surrounding grid, they are permitted to interconnect with Delmarva Power and Light.

Ms. Jennifer Oltman, P.E., Senior Project Manager with Kimley-Horn & Associates spoke regarding stormwater management for the project. Ms. Oltman stated that the design is required to be approved by Sussex County Conservation District (SCD); that they would proceed through the Conservation District's protocols, limit of disturbance requirements, and erosion control requirements during construction; that the site is labeled as agricultural; that every site has a runoff curve number, which reflects the amount of water that comes off the site; that pavement has a very high runoff curve number; that the runoff curve number decreases with a meadow mix, which would be considered the lowest; that the current agricultural topsoil will be removed, and a meadow mix would be implanted; that their calculations identify a better runoff curve number and better infiltration rate on the site with the project and should help the existing water issues.

Ms. Bernadette Bennett spoke in opposition to the Application. Ms. Bennett stated she is a resident of the Ridings at Rehoboth; that she understood that solar is new and it will enhance the existing energy resources; that she purchased her dream home after retirement, in a lovely rural area, where she can enjoy the natural resources and beauty; that she does not approve of being subjected to the

intrusion of this proposed industrial, commercial grade electrical grid solar farm; that she had lived within the Ridings at Rehoboth for 13 years; that the proposed use is a commercial enterprise; that the area is a residential agricultural area; that a solar farm has no business being located in a residential, low density, area; that many communities are located within a mile of the site; that with the concerns expressed by health authorities, she has concerns; that she questioned the Commission how they would feel if it was their children or their elderly parents living next to a solar farm and she stated solar is new, and no one yet knows the long term impacts.

Ms. Bennett requested to read an opposition letter written by Ms. Carol Brumley, a resident of the Ridings at Rehoboth, who was unable to attend the meeting. Ms. Brumley's letter expressed concerns regarding drainage issues and requested a denial of the Application.

Mr. Frank Himpler spoke in opposition to the Application. Mr. Himpler stated that Soltage, LLC did not reach out to the Ridings at Rehoboth's Homeowners Association, but rather, the property management company; that the provided information was not communicated back to the HOA; that the first contact he had with Soltage, LLC, was when Mr. Meyer called him; that after considering all of the relevant information, he requested, should the Commission approve the solar farm, that an increased vegetated buffer be placed along the fence lines that border the north and east side; that he proposed the vegetated buffer be comprised of 12 Evergreen trees and 10 shrubs per 100 ft.; that he believed the vegetated landscape buffer would mitigate any concerns regarding possible impacts to the Ridings at Rehoboth's property values and health effects and he stated the information provided by Mr. Meyer with Soltage, LLC was helpful.

Mr. Whitehouse did question if Mr. Himpler had any knowledge of the reasoning for the gaps shown in the Ridings at Rehoboth's landscape buffer.

Mr. Himpler stated the landscape buffer gaps predated his homeownership; that anecdotally, he was told that the area was removed by the homeowner, and he did not have any historical background on the property with the vinyl fence.

Chairman Wheatley stated the Ridings at Rehoboth's landscape buffer is part of the lands belonging to the HOA; that the landscape buffer is not lands belonging to the individual property owner; that the property owner destroyed property that did not belong to them and unfortunately, the HOA will be responsible for restoring the landscape buffer.

Mr. Himpler stated his comments were on behalf of him as a homeowner and not on behalf of the HOA board for the Ridings at Rehoboth.

Ms. Wingate requested to share information gathered by Planning & Zoning staff upon her request. Ms. Wingate stated there have been 13 solar farm applications that have completed the complete process through the Planning & Zoning Commission and County Council; that of the 13 applications, all 13 were approved; that two applications were approved within .25 mile of a village (like Roxana or Lincoln); that four applications were approved within ¼ mile of a subdivision; that two applications were approved within ¼ mile of town limits; that three approved applications share boundaries with subdivisions; that only two or more are located ¼ mile or more away from a residential community and that there are more solar farms located closer to subdivisions than she realized.

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

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

In relation to C/U 2379 Lewes Saddle Ridge Solar 1, LLC. Motion by Ms. Wingate to defer action for further consideration, seconded by Mr. Collins and carried unanimously. Motion carried 5-0.

Minutes of the September 14, 2023, Planning & Zoning Commission Meeting

The Commission discussed the Application which had been deferred since August 24, 2023.

Ms. Wingate moved that the Commission recommend approval of C/U 2379 Lewes Saddle Ridge Solar I, LLC for a solar farm in the AR-1 District based on the record made during the public hearing and for the following reasons:

1. The proposed facility is a public utility use under the Sussex County Zoning Code, and it meets the purposes of a Conditional Use because it has a public or semi-public character that is essential and desirable for the general convenience and welfare of Sussex County residents.
2. This is an adaptive use of undeveloped land that will preserve it from more intensive development. The solar array will be located on approximately 6.26 acres of a larger 7.06-acre tract.
3. The proposed facility promotes Goal 7.3 of the Sussex County Comprehensive Plan which encourages the use of renewable energy options such as solar arrays. There was testimony that this solar array would benefit residential, business, and municipal subscribers with lower power costs.
4. There were concerns stated during the hearing about this solar array facility having negative impacts on the surrounding properties and property owners. These concerns are not supported by substantial or well-defined evidence in the record. Instead, the information supplied by the Applicant's experts suggests that the solar array will not adversely affect the neighborhood, and there are solar array facilities throughout not only the United States but also here in Sussex County that indicate that locations such as this are appropriate for this type of use. According to Planning & Zoning Staff:
 - There have been 51 approved solar array applications in Sussex County; of these 13 have received final approval from County Council.
 - Of these 13 sites:
 - 2 of them are within 1/4 of a mile of a village like Roxana or Lincoln.
 - 4 of them are within 1/4 of a mile of a subdivision.
 - 3 of them are within 1/4 of a mile of a town boundary.
 - 2 of them share the boundaries of a subdivision.
5. Based on the evidence and with the conditions imposed in this recommendation the proposed use will not have any adverse impact on the neighborhood.
6. The proposed solar generation facility will not result in any noticeable increase in traffic on area roadways. There are no regular employees at the site, only periodic visits for inspections, maintenance, or repair of the solar panels.

7. The Applicant has included a Decommissioning Plan in the record for when their solar farm is no longer in use.
8. Based on the record there is no significant noise, glare, dust, or odor that will be generated by the facility.
9. There will be a buffer of planted vegetation along the boundary of this site along adjacent Parcels 6.03 and part of Parcel 6.00 as well as the entire Ridings Development to screen it from view as shown on the Preliminary Site Plan.
10. The proposed use provides a renewable energy source that is a benefit to the residents and businesses of Sussex County.
11. This recommendation is subject to the following conditions:
 - A. The use shall be for a ground-mounted solar array. No other types of electric generation shall be permitted at the site.
 - B. The Final Site Plan shall clearly show the limits of the Conditional Use area for this solar array as well as the remaining acreage that is not part of this Conditional Use.
 - C. Any lighting on the facility shall only consist of perimeter lighting needed for security purposes. All lighting shall be downward screened so that it does not shine on neighboring properties or roadways.
 - D. One unlit sign, not to exceed 32 square feet in size, shall be permitted. The sign shall identify the operator of the solar array and shall provide contact information in case of emergency.
 - E. The site shall be secured by gated fencing with interwoven screening and a “Knox Box” or similar device to accommodate emergency access by the local fire company or other emergency responders. The fence line and type of screening shall be shown on the Final Site Plan.
 - F. The location of all transformers or similar equipment or structures shall be shown on the Final Site Plan.
 - G. The entire site, including the area outside the fence, shall be maintained so that it does not become overgrown.
 - H. Stormwater management and erosion and sedimentation control facilities shall be constructed in accordance with all applicable State and County requirements. These facilities shall be operated using Best Management Practices.
 - I. There shall be a forested buffer along the boundary of the parcel adjacent to Parcels 6.03, the Ridings development buffer, and Parcel 6.00 to the point where the 25-foot wetlands setback begins. No buffer is required for Parcels 6.01 and 6.02. The buffer shall consist of continuous evergreen trees at least 6-feet in height, planted in a staggered arrangement to effectively achieve a visual buffer. The buffer shall be 20 feet wide and for every 100 linear feet, there shall be a minimum of 15 trees. All new trees shall be guaranteed throughout the existence of this conditional use. This shall be shown, with the requirements stated, on the Final Site Plan.
 - J. The Final Site Plan shall include a Decommissioning Plan that includes a financial security to ensure that funds are available for decommissioning and removal of the solar farm in its entirety throughout the life of the Conditional Use.

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

Motion by Ms. Wingate, seconded by Mr. Mears and carried unanimously to recommend approval of C/U 2379 Lewes Saddle Ridge Solar 1, LLC for the reasons and conditions stated in the motion.

Motion carried 5-0.

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

PLANNING & ZONING COMMISSION

ROBERT C. WHEATLEY, CHAIRMAN
SCOTT COLLINS
BRIAN BUTLER
J. BRUCE MEARS
HOLLY J. WINGATE



Sussex County

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JAMIE WHITEHOUSE, AICP, MRTPI
DIRECTOR OF PLANNING & ZONING

Mn.00

PLANNING AND ZONING AND COUNTY COUNCIL INFORMATION SHEET

Planning Commission Public Hearing Date: August 24th, 2023

Application: CU 2379 Lewes Saddle Ridge Solar 1, LLC

Applicant: Lewes Saddle Ridge Solar 1, LLC
333 Washington St. Suite 401
Jersey City, NJ 07302

Owner: Beaver Dam Enterprises
PO Box 555
Nassau, DE 19958

Site Location: Lying on the west side of Beaver Dam Road (S.C.R. 23) approximately 0.57-mile northeast of Hopkins Road (S.C.R. 286).

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

Proposed Use: Solar Farm

Comprehensive Land
Use Plan Reference: Low Density Area

Councilmanic
District: Mr. Rieley

School District: Cape Henlopen School District

Fire District: Lewes Fire Co.

Sewer: Private Septic

Water: Private Well

Site Area: 15.97 acres +/-

Tax Map ID: 234-6.00-6.02, 6.03, & 6.04





Memorandum

To: Sussex County Planning and Zoning Commission Members
From: Elliott Young, Planner I
CC: Mr. Vince Robertson, Assistant County Attorney and Applicant
Date: August 16, 2023
RE: Staff Analysis for CU 2379 Lewes Saddle Ridge Solar 1, LLC

The purpose of this memo is to provide background and analysis for the Planning and Zoning Commission to consider as a part of Application CU 2379 (Lewes Saddle Ridge Solar 1, LLC) to be reviewed during the August 24th, 2023, Planning and Zoning Commission Meeting. This analysis should be included in the record of this application and is subject to comments and information that may be presented during the public hearing.

The request is for a Conditional Use for Tax Parcels: 234-6.00-6.02, 6.03 & 6.04 to allow for a solar array farm. The property is lying on the west side of Beaver Dam Road (S.C.R. 23), approximately 0.57-miles northeast of Hopkins Road (S.C.R. 286). The applicant is applying for 15.97 acres +/- to be included in the Conditional Use area.

Site Considerations

The DelDOT Service Level Evaluation Response indicates that the proposed use will generate fewer than 50 vehicle trips per day and that the development's traffic impact is considered "diminutive" in the context of DelDOT's agreement with the County regarding land development coordination. Therefore, no TIS is required for this proposal.

It should be further noted that the subject property is not located within any established Transportation Improvement Districts.

Additionally, the County's Online Mapping System confirms that the site is located within Flood Zone "X" – Areas determined to be outside the 1% annual chance flood and outside the 500-year floodplain.

Comprehensive Plan Analysis

The 2018 Sussex County Comprehensive Plan Update (Comprehensive Plan) provides a framework of how land is to be developed. As part of the Comprehensive Plan, a Future Land Use Map is included to help determine how land should be zoned to ensure responsible development. The Future Land Use Map in the plan indicates that the parcels have a designation of "Low Density." All adjoining parcels to the north, east, and west also have a Future Land Use Map designation of "Low Density."

As outlined in the 2018 Sussex County Comprehensive Plan, Low Density Areas are intended to support agricultural uses and low-density single-family housing. Specifically, the Comprehensive Plan states that single family homes may have a density of up to two dwelling units to the acre. It

is envisioned that the Low-Density Areas allow for businesses that support nearby residents and the agricultural economy. More intense commercial uses should be limited in scale and impact. While residential growth is expected, the Comprehensive Plan intends for the rural landscape to be maintained and for farmland to be preserved in select locations.

Staff would like to further note that parcel 234-6.00-6.02 has a Future Land Use Map Amendment application currently on-going within the County under Ordinance 23-11. This application proposes the change from “Low Density” to “Coastal Area”.

Zoning Information

The subject property is zoned Agricultural Residential (AR-1) District. All adjacent parcels to the north, south, west, and east of the subject property are zoned Agricultural Residential (AR-1) District.

Existing Conditional Uses within the Vicinity of the Subject Property

Since 2011, there have been six (6) Conditional Use applications within a half (0.5) mile radius of the Application Site. Of these Applications, two (2) have since been approved by the Sussex County Council, two (2) have been withdrawn, one (1) has been denied by the Sussex County Council, and one (1) has yet to be heard by the Sussex County Council.

A Supplemental Table has been provided which contains further information regarding the abovementioned Conditional Use Applications which are located within a 0.5-mile radius of the Application site.

CU	Applicant	Proposed Use	CC Decision Date	Decision	Ordinance No.
1932	Tanya & Kimwuan Gibbs	Automotive Sales Lot	1/15/2013	Denied	N/A
2082	Tidewater Utilities	N/A	N/A	Withdrawn	N/A
2204	Quality Care Home (C/O Kenneth Drummond)	Home remodeling & repair services; storage repair & maintenance; light building material & storage and general office	N/A	Withdrawn	N/A
2216	Kenneth Drummond	Storage & residence for manager Quality Care Homes	8/25/2020	Approved	2735

2273	Michael Parsons	Delivery of commercial parts for off-site sales	11/30/2021	Approved	2815
2350	Beaver Dam Enterprises, LLC	Multi-Family Dwelling	N/A (CC hearing scheduled 9/19/2023)	N/A	N/A

Based on the analysis provided, the Conditional Use to allow for solar farm in this location could be considered as being consistent with the surrounding land use, zoning, and uses, subject to considerations of scale and impact.



Sussex County



PIN:	234-6.00-6.04	
Owner Name	BEAVER	DAM
	ENTERPRISES LLC	
Book	Text	
Mailing Address	PO BOX 555	
City	NASSAU	
State	DE	
Description	NW/ BEAVER DAM RD	
Description 2	LOT 5	
Description 3		
Land Code		

polygonLayer

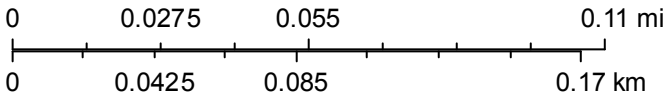
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Override 1

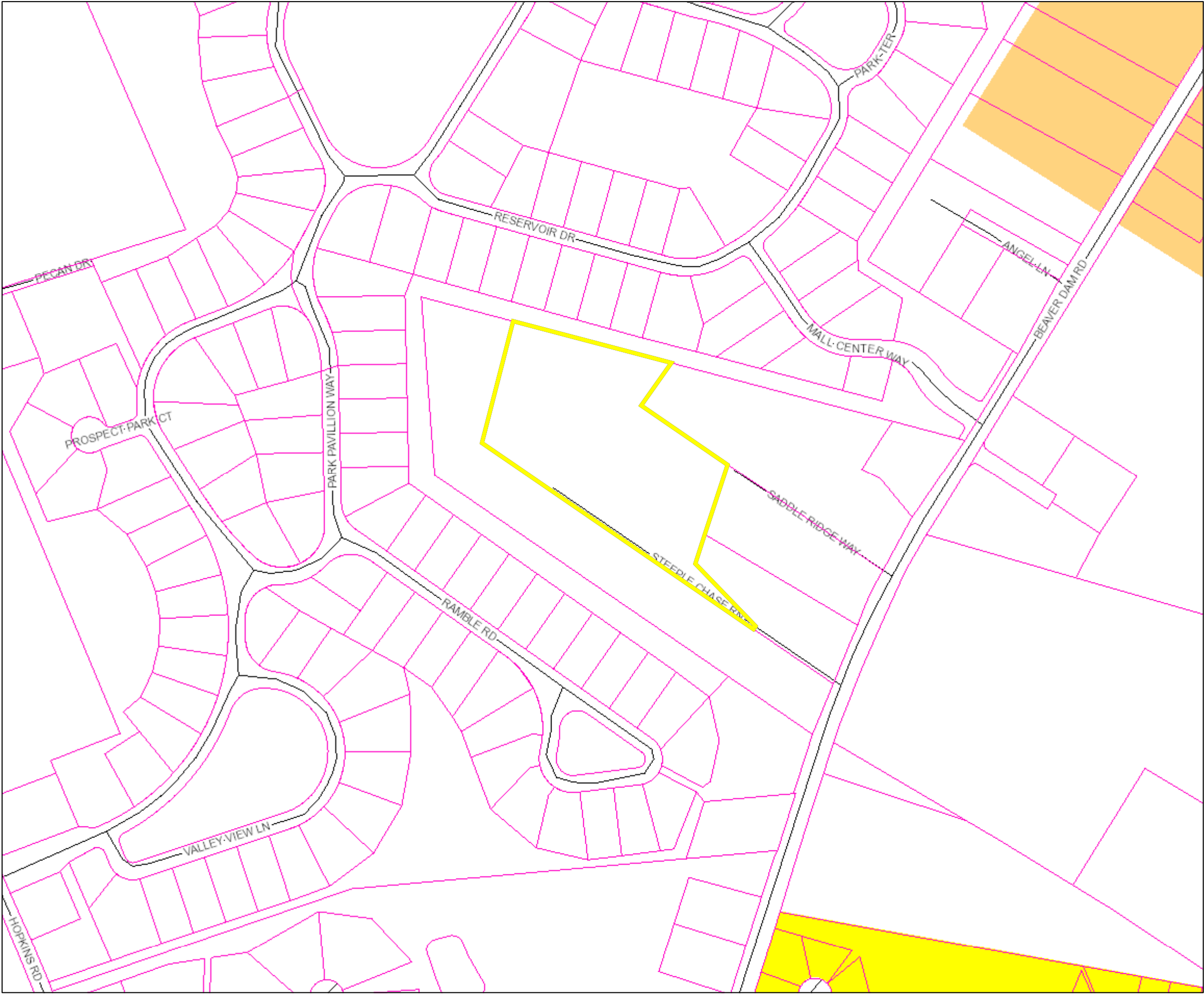
- ⋮ Tax Parcels
- 911 Address
- Streets

1:2,257





Sussex County



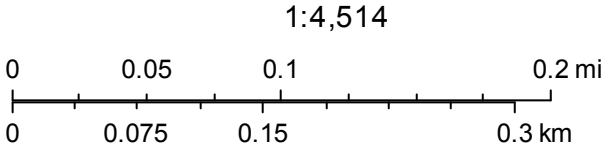
PIN:	234-6.00-6.04	
Owner Name	BEAVER ENTERPRISES LLC	DAM
Book	Text	
Mailing Address	PO BOX 555	
City	NASSAU	
State	DE	
Description	NW/ BEAVER DAM RD	
Description 2	LOT 5	
Description 3		
Land Code		

- polygonLayer

Override 1
- polygonLayer

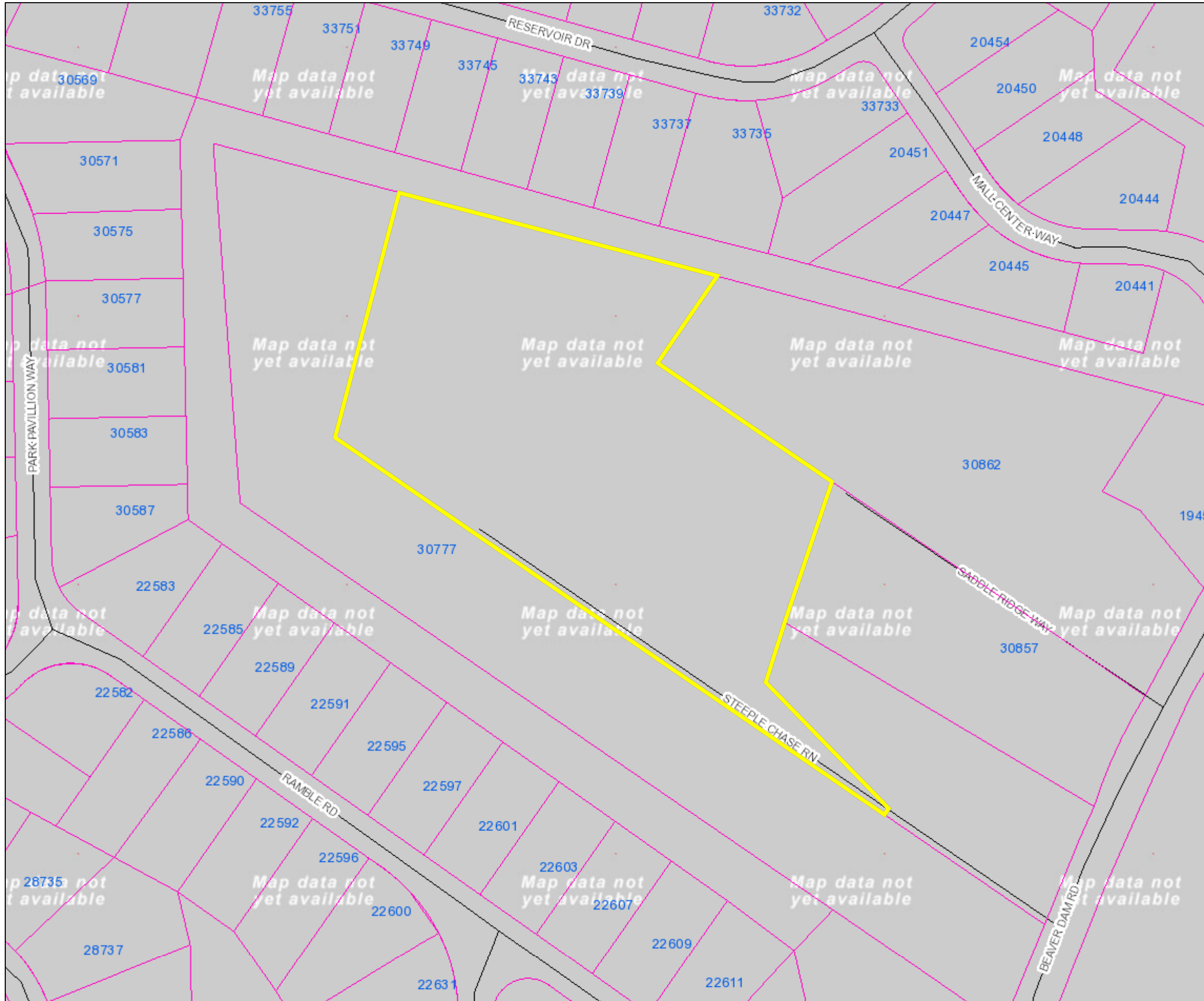
Override 1
- Tax Parcels

Streets





Sussex County

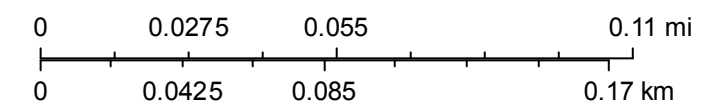


PIN:	234-6.00-6.04	
Owner Name	BEAVER	DAM
	ENTERPRISES LLC	
Book	Text	
Mailing Address	PO BOX 555	
City	NASSAU	
State	DE	
Description	NW/ BEAVER DAM RD	
Description 2	LOT 5	
Description 3		
Land Code		

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Override 1

polygonLayer
Override 1
Tax Parcels
911 Address
Streets

1:2,257



Introduced: 02/07/23

Council District 5: Mr. Rieley

Tax I.D. No.: 234-6.00-6.01, 6.02, & 6.03

911 Address: N/A, 30857 & 30862 Saddle Ridge Way, Lewes

ORDINANCE NO. ____

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A SOLAR FARM TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 15.97 ACRES, MORE OR LESS

WHEREAS, on the 28th day of June 2022, a conditional use application, denominated Conditional Use No. 2379 was filed on behalf of Lewes Saddle Ridge Solar 1, LLC; and

WHEREAS, on the ____ day of _____ 2023, a public hearing was held, after notice, before the Planning and Zoning Commission of Sussex County and said Planning and Zoning Commission recommended that Conditional Use No. 2379 be _____; and

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

NOW, THEREFORE, THE COUNTY OF SUSSEX HEREBY ORDAINS:

Section 1. That Chapter 115, Article IV, Subsection 115-22, Code of Sussex County, be amended by adding the designation of Conditional Use No. 2379 as it applies to the property hereinafter described.

Section 2. The subject property is described as follows:

ALL that certain tract, piece or parcel of land, lying and being situate in Indian River Hundred, Sussex County, Delaware, and lying on the north and south side of Saddle Ridge Way and on the west side of Beaver Dam Road (S.C.R. 23) approximately 0.57 mile northeast of Hopkins Road (S.C.R. 286) and being more particularly described in the attached legal description prepared by Hudson, Jones, Jaywork & Fisher, said parcel containing 15.97 acres, more or less.

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



Memorandum

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

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

CC: Everett Moore, County Attorney

Date: December 6, 2023

RE: County Council Report for C/U 2380 filed on behalf of Dagsboro Thorogoods Solar 1, LLC

The Planning and Zoning Department received an application (C/U 2380 filed on behalf of Dagsboro Thorogoods Solar 1, LLC) for a solar farm to be located at Tax Parcel 233-5.00-187.00. The property is located at 30561 Thorogoods Road, Dagsboro. The parcel size is 28.81 acres +/-

The Planning & Zoning Commission held a Public Hearing on the application on August 24, 2023. At the meeting of September 14, 2023, the Planning & Zoning Commission recommended approval of the application for the 11 reasons stated and subject to the 11 recommended conditions as outlined within the motion (copied below).

The County Council held a Public Hearing on the application at its meeting on October 10, 2023. At the conclusion of the Public Hearing the Council closed the Public Record and deferred action on the application for further consideration. Below is a link to the minutes of the County Council meeting of October 10, 2023.

[Link to the Minutes of the October 10, 2023, County Council Meeting](#)

Below are the minutes from the Planning & Zoning Commission meeting of August 24, 2023 and September 14, 2023.

[Minutes of the August 24, 2023, Planning & Zoning Commission Meeting](#)

C/U 2380 Dagsboro Thorogoods Solar 1, LLC

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A SOLAR FARM TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN DAGSBORO HUNDRED,



SUSSEX COUNTY, CONTAINING 28.81 ACRES, MORE OR LESS. The property is lying on the east side of Thorogoods Road (S.C.R. 333), approximately 0.41-mile northeast of Dagsboro Road (Rt. 20). 911 Address: 30561 Thorogoods Road, Dagsboro. Tax Map Parcel: 233-5.00-187.00.

Mr. Whitehouse advised the Commission that submitted into the record were a copy of the

Applicant's Preliminary Site Plan, comments received from the Sussex County Engineering Department, comments from the Historic Preservation Office, the Staff Analysis, the Applicant's Exhibits, a copy of a letter from DelDOT, a copy of the Applicant's Decommissioning Plan, the PLUS Review comments and a copy of the property deed. Mr. Whitehouse stated that three mail returns and zero comments had been received for the Application.

The Commission found that Mr. James Fuqua, Esq., with Fuqua, Willard & Schab, P.A., spoke on behalf of the Applicant; that also present were Mr. Zac Meyer, Director of Development with Soltage, LLC, and Ms. Jennifer Oltman, P.E., Senior Project Manager with Kimley-Horn & Associates.

Mr. Fuqua stated that the current Application was similar to the last Application, as it is requesting a Conditional Use for a community solar facility; that the Applicant is a company that is owned by Soltage, LLC, which is also the owner of the Applicant company of the prior Application; that due to this he requested to incorporate the relevant information presented for the previous Application, into the record for the current solar Application; that the subject parcel is owned by Ina W. Cordrey Trustee, and is being leased to Soltage, LLC; that Ms. Ina Cordrey had passed away, and Mr. Jack Cordrey is now one of the Co-Trustees of the property; that Mr. Jack Cordrey is the previous Chairman of the Alcoholic Beverage Control Commission; that the parcel is designated as Parcel No. 187, being a corner property on the south side of Thorogoods Rd.; that the property has approximately 1,100 ft. of road frontage; that the site is a short distance east of Rt. 20 and Rt. 113; that the Tax Map listed the acreage of the parcel as 28.81 acres; that Soltage, LLC did perform a survey, which confirmed the acreage to be 30.36 acres; that facility will occupy 26.23 acres of the 30.36-acre site, which will be the area located within the proposed security fence; that there is a mixture of residential, agricultural, and industrial uses and woodlands in the area; that to the west of the site, fronting along Thorogoods Rd. there is a residential property located on the corner, as well as residences located along Thorogoods Road, running west; that being that area, there is farmland and woodland; that to the rear of the site, the site borders forested areas; that on the east of the site, railroad tracks run along the entire eastern boundary of the site; that railroad tracks are former Conrail Tracks, which are now operated by Maryland Delaware Railroad Company; that to the north, across Thorogoods Rd. from the site, there are residential uses and some industrial uses, such as Dagsboro Materials, River Asphalt and Thorogoods Concrete Plant; that the subject site is zoned AR-1 (Agricultural Residential); that the site is designated as being within the Coastal Area under the Future Land Use Map of the Comprehensive Plan; that the land across from the site is zoned AR-1 (Agricultural Residential) and H-1 (Heavy Industrial); that almost all of the land on the north side of the road is designated as Industrial under the Future Land Use Map designation; that the Application was reviewed as part of the PLUS process; that a PLUS comment letter, dated December 16, 2022, was submitted into the record; that the letter stated there was no objection to the Application; that the site is located within Investment Level 2 and 3, which are areas where growth is anticipated by both State and County land use plans; that the land is being leased to Soltage, LLC; that the lease would be for a 25 year term with two, five year options to extend the term, and one, five year mutual option; that the site is mostly cleared, agricultural lands; that there is a wooded area, with a deteriorated cement home and several deteriorated cement agricultural use-type outbuildings located toward the center of the site; that the

intention is to demolish and remove the buildings from the site; that the buildings are surrounded by a wooded area, which is to be cleared as not to interfere with the solar array operation; that there is a old, small, family cemetery on the site; that the cemetery will be excluded from the leased area and from the solar facility; that the Applicant retained the firm of Richard Grubb and Associates to perform an Archaeological Survey of the cemetery to confirm the exact boundaries of the cemetery; that this was performed by ground penetrating radar; that the boundaries of the cemetery will be established and fenced; that there will be an eight foot wide access path from the western side of the property to access the cemetery; that the access would not be for the use of vehicles; that Mr. Daniel C. Parsons, Sussex County Historical Preservation Planner had inquired about the cemetery, but also about potential historical significance regarding the house; that Mr. Parsons requested the opportunity to investigate the house located on the site, and he was granted permission; that Mr. Parsons had already performed his investigation prior to the current public hearing; that no portion of the solar array area will be located within the Hundred Year Floodplain; that no wetlands will be impacted by the proposed facility; that access to the site will utilize the existing access road of the property; that the access road would enter the site, and would intersect with the service road, being the straight road, located in the middle of the property; that generated traffic would be minimal; that the site would be limited to periodic inspections and routine maintenance; that DelDOT, similar to the previous Application, indicated a diminutive traffic impact; that the entrance would be built to build out requirements; that there would be a 30-ft. buffer surrounding the perimeter of the property; that a landscape buffer would be placed along Thorogoods Rd, and around the turning corners of the property on the east and west; that the landscape buffer is proposed to be spruce trees at 20 ft. intervals, as shown on the Site Plan; that the remaining areas are located adjacent to existing woodlands or the railroad tracks, therefore they do not believe there is a need for a landscape buffer in those areas; that the only residents that would be directly affected by the project are located within the northwest corner; that the Applicant is willing to enhance the buffer in that area adjacent to the residence; that along the road nearest to the industrial site, they did not feel it was necessary to provide a thickened buffer next to a solar field; that similar to the previously provided information, there will be one unlit sign at the entrance of the site; that the sign will not exceed 32 sq. ft.; that the facility will be enclosed with a six foot chain-link fence, with an emergency key box; that the area will be seeded with the seed mix previously mentioned; that the site will be properly maintained; that the facility will utilize a single axis tracking system, being the type of panels that move with the sun; that the equipment transmits the current generated to be interconnected with Delmarva Power at Thorogoods Rd., where it will then connect to the grid; that the pad is internal; that there is no sewer or water impact; that the project will have to comply with all stormwater management regulations; that a Decommissioning Plan will be prepared and submitted as part of the Final Site Plan review, along with the financial security as will be deemed appropriate from the study performed to remove the equipment; that the facility will operate in compliance with Title 26; that the facility is proposed to generate 3.5 megawatts of electricity, equaling an annual power required for approximately 700 homes; that the production life of the facility would be 35 to 40 years, corresponding roughly to the lease, and he requested to submit prepared proposed findings and conditions, similar to the previous Application.

The Commission found that one person wished to provide comment on the Application.

Mr. Oliver Burton spoke with a neutral comment regarding the Application. Mr. Burton stated that his property is the only residential property located adjacent to the site; that his only concern was regarding the proposed buffer; that following the presentation, he now understood the landscape buffer is proposed to be 30 ft., and now that his question has been answered he had no opposition to the Application.

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

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

In relation to C/U 2380 Dagsboro Thorogoods Solar 1, LLC. Motion by Mr. Mears to defer action for further consideration, seconded by Ms. Wingate and carried unanimously. Motion carried 5-0.

Minutes of the September 14, 2023, Planning & Zoning Commission Meeting

The Commission discussed the Application which had been deferred since August 24, 2023.

Mr. Mears moved that the Commission recommend approval of C/U 2380 Dagsboro Thorogoods Solar I, LLC for a solar farm in the AR-District based on the record made during the public hearing and for the following reasons:

1. The proposed facility is a public utility use under the Sussex County Zoning Code, and it meets the purposes of a Conditional Use because it has a public or semi-public character that is essential and desirable for the general convenience and welfare of Sussex County residents.
2. This is an adaptive use of farmland that will preserve it from more intensive development. The solar array will be located on approximately 26.23 acres of a larger 30.36-acre tract.
3. The proposed facility promotes Goal 7.3 of the Sussex County Comprehensive Plan which encourages the use of renewable energy options such as solar arrays. There was testimony that this solar array will benefit residential, business, and municipal subscribers with lower power costs.
4. This Application was submitted prior to the adoption of Ordinance No. 2920 regarding solar arrays. However, it materially complies with the requirements of that Ordinance.
5. With the conditions imposed in this recommendation, the proposed use will not have any adverse impact on the neighborhood.
6. The proposed solar generation facility will not result in any noticeable increase in traffic on area roadways. There are no regular employees at the site, only periodic visits for inspections, maintenance, or repair of the solar panels.
7. The Applicant has included a Decommissioning Plan in the record for when their solar farm is no longer in use.
8. Based on the record there is no significant noise, glare, dust, or odor that will be generated by the facility.
9. There will be a buffer of planted vegetation along the boundary of this site facing Thorogoods Road and the east and west front corners of the site to screen it from view as shown on the Preliminary Site Plan.
10. The proposed use provides a renewable energy source that is a benefit to the residents and businesses of Sussex County.
11. There was no opposition to this Application.
12. This recommendation is subject to the following conditions:

- A. The use shall be for ground-mounted solar array. No other types of electric generation shall be permitted at the site.
- B. The Final Site Plan shall clearly show the limits of the Conditional Use area for this solar array as well as the remaining acreage that is not part of this Conditional Use.
- C. Any lighting on the facility shall only consist of perimeter lighting needed for security purposes. All lighting shall be downward screened so that it does not shine on neighboring properties or roadways.
- D. One unlit sign, not to exceed 32 square feet in size, shall be permitted. The sign shall identify the operator of the solar farm and shall provide contact information in case of emergency.
- E. The site shall be secured by gated fencing with interwoven screening and a “Knox Box” or similar device to accommodate emergency access by the local fire company or other emergency responders. The fence line and type of screening shall be shown on the Final Site Plan.
- F. The location of all transformers or similar equipment or structures shall be shown on the Final Site Plan.
- G. The entire site, including the area outside the fence, shall be maintained so that it does not become overgrown.
- H. Stormwater management and erosion and sedimentation control facilities shall be constructed in accordance with all applicable State and County requirements. These facilities shall be operated using Best Management Practices.
- I. There shall be a 30-foot-wide buffer of planted vegetation along the boundary of this site facing Thorogoods Road and the east and west front corners of the site as shown on the Preliminary Site Plan. This buffer shall consist primarily of spruce trees spaced at 20-foot intervals within this buffer area. These areas shall be clearly shown on the Final Site Plan. The Final Site Plan shall include a landscape plan showing the proposed tree and shrub landscape design in the buffer area.
- J. The Final Site Plan shall include a Decommissioning Plan that includes a financial security to ensure that funds are available for decommissioning and removal of the solar farm in its entirety throughout the life of the Conditional Use.
- K. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning & Zoning Commission.

Motion by Mr. Mears, seconded by Ms. Wingate and carried unanimously to recommend approval of C/U 2380 Dagsboro Thorogoods Solar 1, LLC for the reasons and the conditions stated in the motion. Motion carried 5-0.

Vote by roll call: Mr. Butler – yea, Mr. Collins – yea, Mr. Mears – yea, Ms. Wingate, Chairman Wheatley – yea

PLANNING & ZONING COMMISSION

ROBERT C. WHEATLEY, CHAIRMAN
SCOTT COLLINS
BRIAN BUTLER
J. BRUCE MEARS
HOLLY J. WINGATE



Sussex County

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JAMIE WHITEHOUSE, AICP, MRTPI
DIRECTOR OF PLANNING & ZONING

PLANNING AND ZONING AND COUNTY COUNCIL INFORMATION SHEET

Planning Commission Public Hearing Date: August 24th, 2023

Application: CU 2380 Dagsboro Thorogoods Solar 1, LLC

Applicant: Dagsboro Thorogoods Solar 1, LLC
333 Washington St. Suite 401
Jersey City, NJ 07302

Owner: Cordrey Ina W Trustee
PO Box 686
Millsboro, DE 19966

Site Location: Lying on the east side of Thoroughgoods Road (S.C.R. 333)
approximately 0.41-mile northeast of Dagsboro Road (Rt. 20).

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

Proposed Use: Solar Farm

Comprehensive Land
Use Plan Reference: Coastal Area

Councilmanic
District: Mr. Hudson

School District: Central School District

Fire District: Dagsboro Fire Co.

Sewer: Private Septic

Water: Private Well

Site Area: 28.81 acres +/-

Tax Map ID: 233-5.00-187.00





Memorandum

To: Sussex County Planning and Zoning Commission Members
From: Elliott Young, Planner I
CC: Mr. Vince Robertson, Assistant County Attorney and Applicant
Date: August 16, 2023
RE: Staff Analysis for CU 2380 Dagsboro Thorogoods Solar 1, LLC

The purpose of this memo is to provide background and analysis for the Planning and Zoning Commission to consider as a part of Application CU 2380 (Dagsboro Thorogoods Solar 1, LLC) to be reviewed during the August 24th, 2023, Planning and Zoning Commission Meeting. This analysis should be included in the record of this application and is subject to comments and information that may be presented during the public hearing.

The request is for a Conditional Use for Tax Parcels: 233-5.00-187.00 to allow for a solar array farm. The property is lying on the east side of Thorogoods Road (S.C.R. 333), approximately 0.41-miles northeast of Dagsboro Road (Rt. 20). The applicant is applying for 28.81 acres +/- to be included in the Conditional Use area.

Site Considerations

The DelDOT Service Level Evaluation Response indicates that the proposed use will generate fewer than 50 vehicle trips per day and that the development's traffic impact is considered "diminutive" in the context of DelDOT's agreement with the County regarding land development coordination. Therefore, no TIS is required for this proposal.

It should be further noted that the subject property is not located within any established Transportation Improvement Districts.

Additionally, the County's Online Mapping System confirms that the site is located within Flood Zone "X" – Areas determined to be outside the 1% annual chance flood and outside the 500-year floodplain.

Comprehensive Plan Analysis

The 2018 Sussex County Comprehensive Plan Update (Comprehensive Plan) provides a framework of how land is to be developed. As part of the Comprehensive Plan, a Future Land Use Map is included to help determine how land should be zoned to ensure responsible development. The Future Land Use Map in the plan indicates that the parcel has a designation of "Coastal Area." The Adjoining Parcels to the east, west and south also have the Future Land Use Map designation of "Coastal Area." The parcels to north across Thorogoods Road have the Future Land Use Map Designation of "Industrial" as well as "Developing Area."

As outlined in the 2018 Sussex County Comprehensive Plan, Coastal Areas are areas that can accommodate development provided that special environmental concerns are addressed. A range

of housing types should be permitted in Coastal Areas, including single-family homes, townhouses, and multi-family units. Retail and office uses are appropriate, but larger shopping centers and office parks should be confined to selected locations with access along arterial roads. Appropriate mixed-use development should all be allowed. In doing so, careful mixtures of homes with light commercial, office and institutional uses can be appropriate to provide for convenient services and to allow people to work close to home. Major new industrial uses are not proposed in these areas. (Sussex County Comprehensive Plan, 4-15).

Zoning Information

The subject property is zoned Agricultural Residential (AR-1) District. All adjacent parcels to the west, south, and southeast of the subject property are zoned Agricultural Residential (AR-1) District. The parcels to the east across the Delaware & Maryland Railroad tracks are zoned General Residential (GR), while the parcels north of the subject parcel are zoned Heavy Industrial (HI-1).

Existing Conditional Uses within the Vicinity of the Subject Property

Although there have been several applications in this area, since 2011, there has been three (3) Conditional Use applications within a one (1) mile radius of the Application Site. Of these applications, one (1) was approved by the Sussex County Council through Ordinance 2330 and two (2) have yet to be heard.

A Supplemental Table has been provided which contains further information regarding the abovementioned Conditional Use Applications which are located within a 1-mile radius of the Application site.

CU	Applicant	Proposed Use	CC Decision Date	Decision	Ordinance No.
1972	Harry G. Miller	Auto Repair Shop	12/3/2013	Approved	2330
2404	Elk Development, LLC	Solar Farm	N/A (No hearing dates scheduled)	N/A	N/A
2405	Elk Development, LLC	Solar Farm	N/A (No hearing dates scheduled)	N/A	N/A

Based on the analysis provided, the Conditional Use to allow for solar farm in this location could be considered as being consistent with the surrounding land use, zoning, and uses, subject to considerations of scale and impact.



Sussex County



PIN:	233-5.00-187.00		
Owner Name	CORDREY	INA	W
	TRUSTEE		
Book	416		
Mailing Address	PO BOX 686		
City	MILLSBORO		
State	DE		
Description	BRASURE FARM		
Description 2	TRACT XII PARCELS A		
Description 3	B C S/RD 333		
Land Code			

polygonLayer

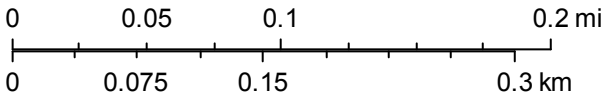
Override 1

polygonLayer

Override 1

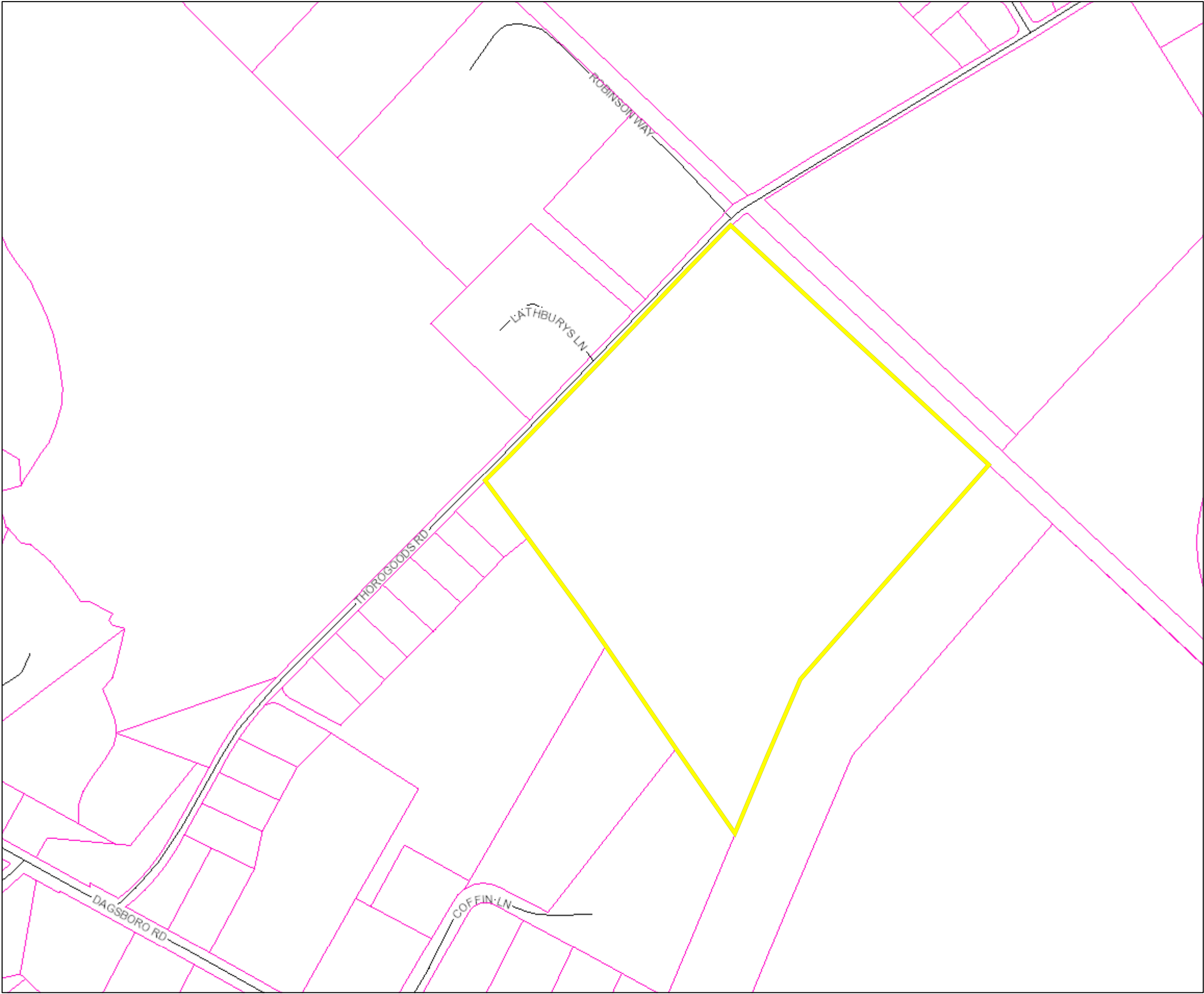
- ⋯ Tax Parcels
- Streets
- ⋯ County Boundaries

1:4,514





Sussex County

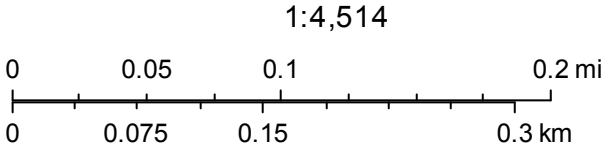


PIN:	233-5.00-187.00		
Owner Name	CORDREY	INA	W
	TRUSTEE		
Book	416		
Mailing Address	PO BOX 686		
City	MILLSBORO		
State	DE		
Description	BRASURE FARM		
Description 2	TRACT XII PARCELS A		
Description 3	B C S/RD 333		
Land Code			

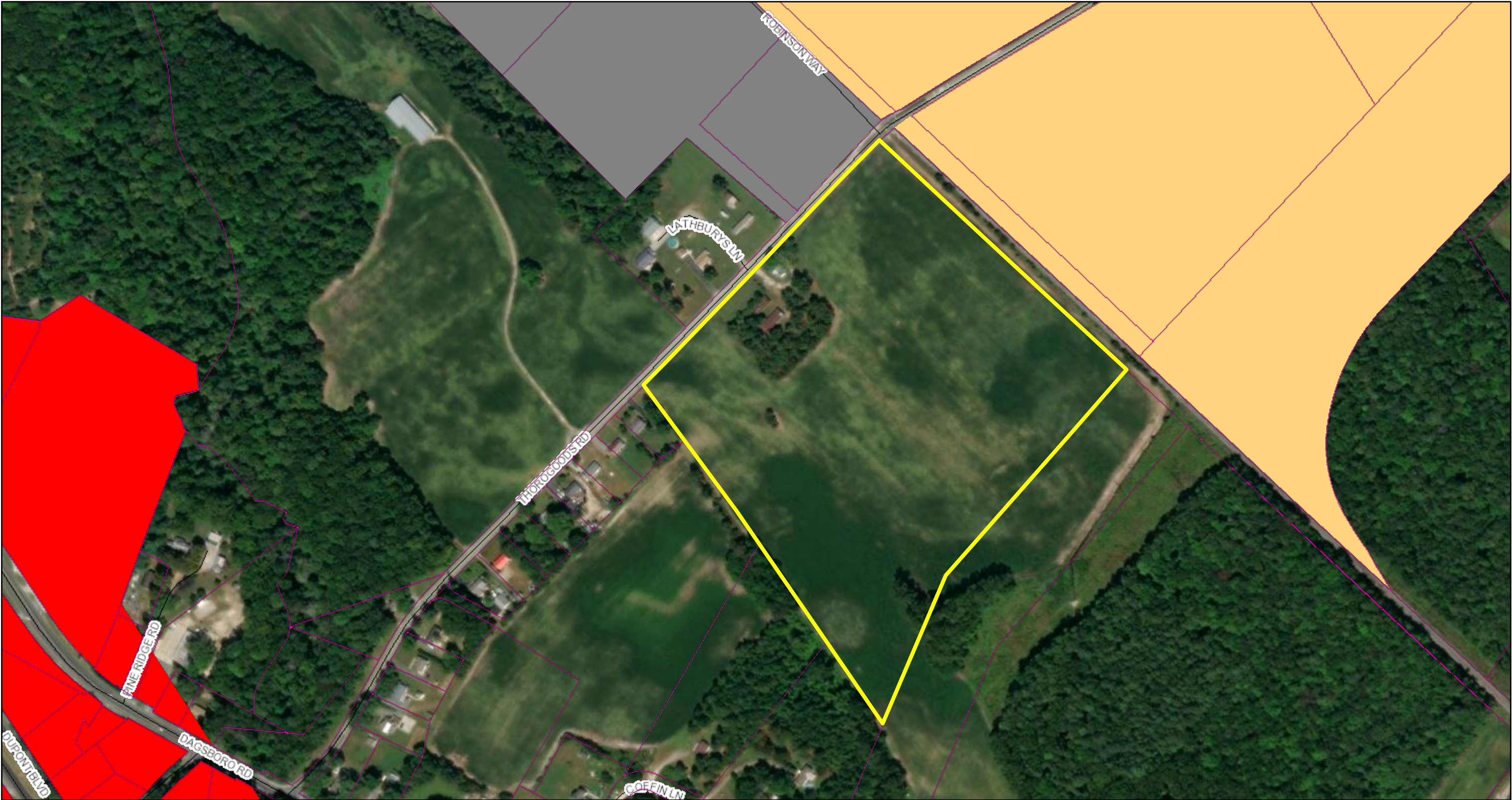
- polygonLayer

Override 1
- polygonLayer

Override 1
- Tax Parcels
- Streets
- County Boundaries



Sussex County



July 11, 2023

- Override 1

Override 1

Tax Parcels

Streets

Zoning

Agricultural Residential - AR-1
- Agricultural Residential - AR-2

Medium Residential - MR

General Residential - GR

High Density Residential - HR-1

High Density Residential - HR-2

Vacation, Retire, Resident - VRP
- Neighborhood Business - B-1

Neighborhood Business - B-2

Business Research - B-3

General Commercial - C-1

General Commercial - C-2

General Commercial - C-3
- General Commercial - C-4

General Commercial - C-5

Commercial Residential - CR-1

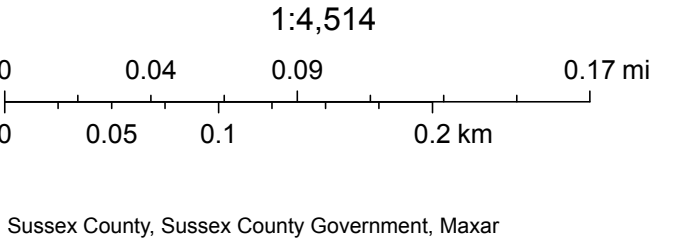
Institutional - I-1

Marine - M

Limited Industrial - LI-1
- Light Industrial - LI-2

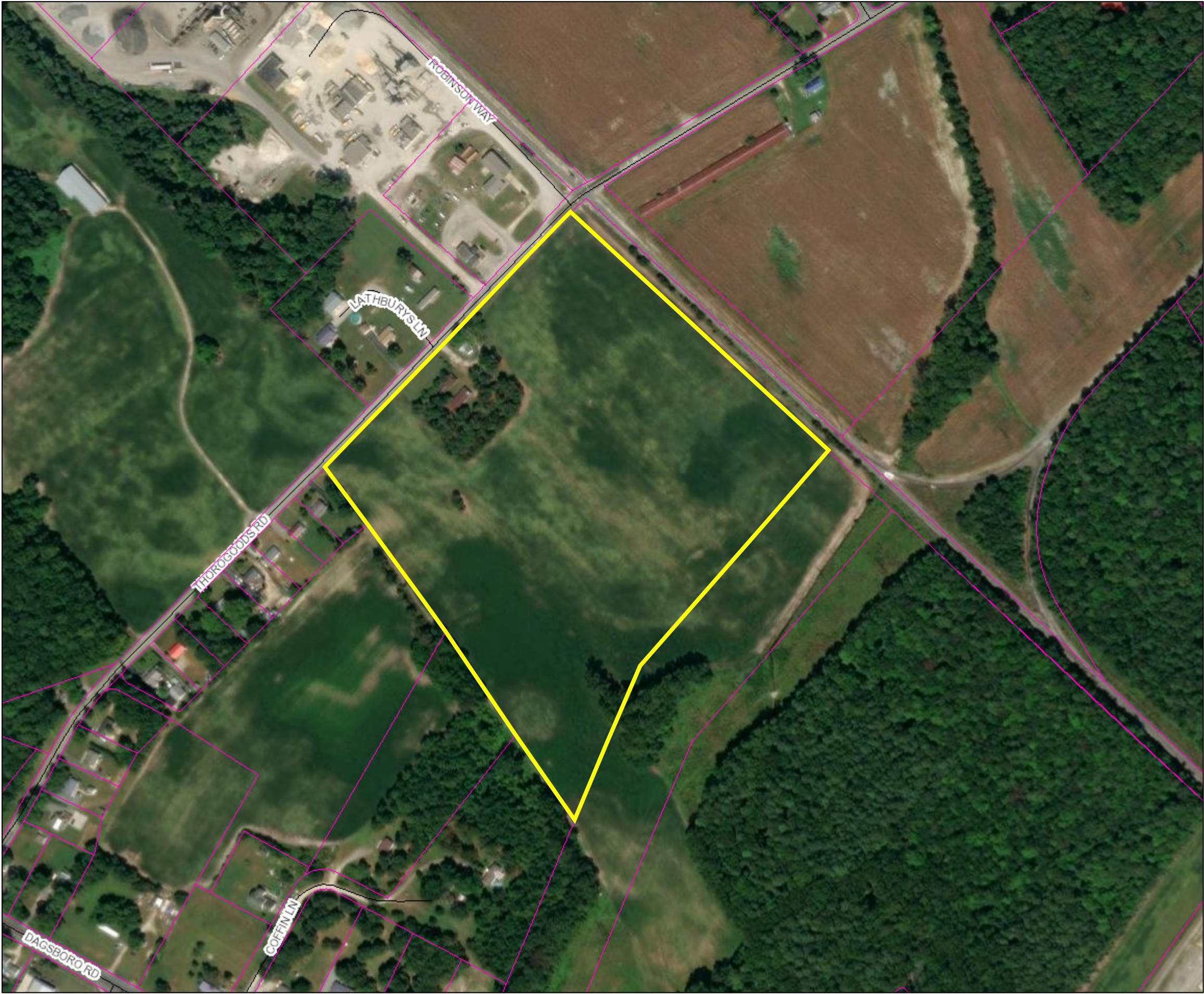
Heavy Industrial - HI-1

County Boundaries





Sussex County



PIN:	233-5.00-187.00		
Owner Name	CORDREY	INA	W
	TRUSTEE		
Book	416		
Mailing Address	PO BOX 686		
City	MILLSBORO		
State	DE		
Description	BRASURE FARM		
Description 2	TRACT XII PARCELS A		
Description 3	B C S/RD 333		
Land Code			

- polygonLayer**
Override 1

Tax Parcels
- polygonLayer**
Override 1

Streets
- County Boundaries
- Tax Ditch Segments**
 Tax Ditch Channel

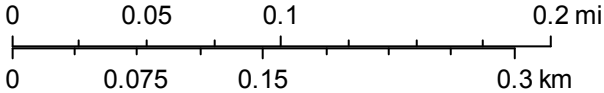
DeIDOT Maintained
- HOA Maintained

Pipe - DeIDOT
- Pipe - Tax Ditch

Pipe - Private
- Pond Feature

Special Access ROW
- Extent of Right-of-Way

1:4,514



Introduced: 02/07/23

Council District 4: Mr. Hudson

Tax I.D. No.: 233-5.00-187.00

911 Address: 30561 Thorogoods Road, Dagsboro

ORDINANCE NO. ____

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A SOLAR FARM TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN DAGSBORO HUNDRED, SUSSEX COUNTY, CONTAINING 28.81 ACRES, MORE OR LESS

WHEREAS, on the 28th day of June 2022, a conditional use application, denominated Conditional Use No. 2380 was filed on behalf of Dagsboro Thorogoods Solar 1, LLC; and

WHEREAS, on the ____ day of _____ 2023, a public hearing was held, after notice, before the Planning and Zoning Commission of Sussex County and said Planning and Zoning Commission recommended that Conditional Use No. 2380 be _____; and

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

NOW, THEREFORE, THE COUNTY OF SUSSEX HEREBY ORDAINS:

Section 1. That Chapter 115, Article IV, Subsection 115-22, Code of Sussex County, be amended by adding the designation of Conditional Use No. 2380 as it applies to the property hereinafter described.

Section 2. The subject property is described as follows:

ALL that certain tract, piece or parcel of land, lying and being situate in Dagsboro Hundred, Sussex County, Delaware, and lying on the east side of Thorogoods Road (S.C.R. 333) approximately 0.41 mile northeast of Dagsboro Road (Rt. 20) and being more particularly described in the attached legal description prepared by Jack Cordrey, said parcel containing 28.81 acres, more or less.

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

SCHOFFER.
yes. 12/4

Casey Hall

From: notifications=d3forms.com@mg.d3forms.com on behalf of Sussex County DE
<notifications@d3forms.com>
Sent: Friday, December 1, 2023 5:11 PM
To: Casey Hall
Subject: Sussex County DE - Council Grant Form: Form has been submitted

CAUTION: This email originated from outside of the organization. Do not click links, open attachments, or reply unless you recognize the sender and know the content is safe. Contact the IT Helpdesk if you need assistance.

Council Grant Form

**Legal Name of
Agency/Organization**

Greater Lewes Foundation ✓

Project Name

3rd. Annual Rally For Our First Responders

Federal Tax ID

51-0400365 ✓

Non-Profit

Yes

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

No

**Organization's
Mission**

To come together as a Community and Give Thanks and
Help Raise Money for Our Local First Responders.

Address

P.O. Box 110

City

Lewes

State

DE

Zip Code

19958

Contact Person

Michael Rawl

Contact Title	Director
Contact Phone Number	302-644-0107
Contact Email Address	tcolegrove@horizonphilanthropic.com
Total Funding Request	\$5,000
Has your organization received other grant funds from Sussex County Government in the last year?	No
If YES, how much was received in the last 12 months?	N/A
Are you seeking other sources of funding other than Sussex County Council?	Yes
If YES, approximately what percentage of the project's funding does the Council grant represent?	5
Program Category (choose all that apply)	Health and Human Services
Primary Beneficiary Category	Other

Beneficiary Category	First Responders
Other	
Approximately the total number of Sussex County Beneficiaries served, or expected to be served, annually by this program	12
Scope	<p>The Shaffer Family Foundation, a Fund under the Greater Lewes Foundation holds an annul event called Rally for Our First Responders.</p> <p>The Shaffer Family Foundation has donated a total of \$158,000 in 2 years. We have given \$10,000 just to the Sussex County Paramedics Assoc.</p> <p>This will be our 3rd Annual County Wide Event. As you can see Sussex County is growing and growing and with that comes an even larger need for our First Responders, especially in the summer months. All proceeds from the event go to local non-profits:</p> <p>Sussex County Paramedics Assoc., Local Fire Departments - <u>Lewes</u>, <u>Milton</u>, <u>Georgetown</u>, Indian River and Rehoboth Beach. Delaware C.O.P.S, Crime Stoppers, Fit 4 Duty Foundation, Beebe Medical Foundation, Camp Barnes and 1SP1970.</p> <p>Ex: Fire Departments receive little money from the state and rely on donations to keep their stations going. We need to as a Community give Thanks and help Raise Money for Our First Responders who Help Keep us Safe.</p>
Please enter the current support your organization receives for this project (not entire organization	0.00

revenue if not
applicable to request)

Description	Event Insurance
Amount	950.00
Description	Stage/Bands/Sound
Amount	10,500.00
Description	Tickets/Flyers/Signs/Banners
Amount	2,440.00
Description	Porta Potties/trash cans/fencing
Amount	2,780.00
Description	Tent Tables/Tents/Chairs
Amount	1,300.00
Description	Paramedic on standby
Amount	1,000.00
Description	Misc.
Amount	400.00
TOTAL EXPENDITURES	19,370.00
TOTAL DEFICIT FOR PROJECT OR ORGANIZATION	-19,370.00
Name of Organization	Shaffer Family Foundaion, LLC.

**Applicant/Authorized
Official** Kyle Shaffer

Date 11/29/2023

**Affidavit
Acknowledgement** Yes

SCHAEFFER.
YES. 12/4

Casey Hall

From: notifications=d3forms.com@mg.d3forms.com on behalf of Sussex County DE
<notifications@d3forms.com>
Sent: Thursday, November 30, 2023 10:27 AM
To: Casey Hall
Subject: Sussex County DE - Council Grant Form: Form has been submitted

CAUTION: This email originated from outside of the organization. Do not click links, open attachments, or reply unless you recognize the sender and know the content is safe. Contact the IT Helpdesk if you need assistance.

Council Grant Form

Legal Name of Agency/Organization Southern Delaware Alliance For Racial Justice ✓

Project Name Black Voices Magazine Project

Federal Tax ID EIN: 81-2430422 ✓

Non-Profit Yes

Does your organization or its parent organization have a religious affiliation? (If yes, fill out Section 3B.) No

Organization's Mission The Southern Delaware Alliance for Racial Justice is a grassroots 501(c) 3 nonprofit organization dedicated to eradicating racial injustice through education, advocacy, and community engagement. Our mission, since 2015, has been to create a more inclusive, equitable, and just society where everyone has the opportunity to thrive regardless of their racial background. Since inception, we have self-funded our mission, and now are laying plans for major expansion. To meet our goals we now turn to seeking additional foundation grants to meet our targets. Project Description:

We are seeking \$25,000 grant funding to expand the Black Voices Magazine distribution.

Address	P.O. Box 306
City	Lewes
State	Delaware
Zip Code	19958
Contact Person	jack buccioni
Contact Title	Grant Writer Steering Committee Member
Contact Phone Number	3022000580
Contact Email Address	SDAR grants@gmail.com
Total Funding Request	25,000
Has your organization received other grant funds from Sussex County Government in the last year?	No
If YES, how much was received in the last 12 months?	N/A
Are you seeking other sources of funding other than Sussex County Council?	Yes

If YES, approximately what percentage of the project's funding does the Council grant represent?	28
Program Category (choose all that apply)	Cultural Educational Fair Housing Health and Human Services Infrastructure
Primary Beneficiary Category	Minority
Approximately the total number of Sussex County Beneficiaries served, or expected to be served, annually by this program	21000
Scope	anyflip.com/ouzib/krwc/ Current edition of the Black Voices Magazine Current short film describing the SDARJ components Narrative: Please click the link to a PDF:
Religious Components	N/A
Please enter the current support your organization receives for this project (not entire organization revenue if not applicable to request)	0.00
Description	Advertising

Amount 29,316.00

Description Office Expense

Amount 6,473.00

Description T&A

Amount 757.00

Description Program expense

Amount 6,490.00

Description Taxes

Amount 25.00

Amount 0.00

TOTAL EXPENDITURES 43,061.00

**TOTAL DEFICIT FOR
PROJECT OR
ORGANIZATION** -43,061.00

Name of Organization Southern Delaware Alliance For Racial Justice

**Applicant/Authorized
Official** Charlotte King

Date 11/30/2023

**Affidavit
Acknowledgement** Yes

GREEN.
yes. 12/5

Casey Hall

From: notifications=d3forms.com@mg.d3forms.com on behalf of Sussex County DE
<notifications@d3forms.com>
Sent: Thursday, November 30, 2023 3:17 PM
To: Casey Hall
Subject: Sussex County DE - Council Grant Form: Form has been submitted

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Council Grant Form

Legal Name of Agency/Organization	NEW COVERDALE OUTREACH MISSION ✓
Project Name	NEW COVERDALE OUTREACH MISSION INC ✓
Federal Tax ID	31-1695369
Non-Profit	Yes
Does your organization or its parent organization have a religious affiliation? (If yes, fill out Section 3B.)	Yes
Organization's Mission	WARM CLOTHING FOR THE YOUTH FOR CHRISTMAS .
Address	22215 COVERDALE RD
City	SEAFORD
State	DE
Zip Code	19973
Contact Person	DIANE LOFLAND

Contact Phone Number	302-629-3036
Contact Email Address	Cutiepie14k@gmail.com
Total Funding Request	\$3,500
Has your organization received other grant funds from Sussex County Government in the last year?	Yes
If YES, how much was received in the last 12 months?	1100
Are you seeking other sources of funding other than Sussex County Council?	Yes
If YES, approximately what percentage of the project's funding does the Council grant represent?	85
Program Category (choose all that apply)	Health and Human Services
Primary Beneficiary Category	Low to Moderate Income
Approximately the total number of Sussex County	150

**Beneficiaries served,
or expected to be
served, annually by
this program**

Scope

THERE ARE SOME UNDERPRIVILEGED FAMILIES THAT NEEDS WARM CLOTHING ASSISTANCE FOR THEIR CHILDREN . DO NOT QUALIFY FOR FOOD ASSISTANCE SO WE TRY TO PURCHASE TURKEYS, DEER MEAT AND OTHER HEALTHY FOODS.

*

**Religious
Components**

NO ONE IS REFUSED BECAUSE OF RELIGION, NOR IS RELIGION TAUGHT DURING ANY EVENTS.

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

500.00

Description

ELECTRIC

Amount

7,000.00

Description

BUILDING INSURANCE

Amount

3,600.00

Description

ALARM SYSTEM

Amount

650.00

Description

PURCHASE OF TURKEYS AND OTHER FOODS

Amount

2,000.00

Description

TELEPHONE

Amount 1,200.00

TOTAL EXPENDITURES 14,450.00

**TOTAL DEFICIT FOR
PROJECT OR
ORGANIZATION** -13,950.00

Name of Organization NEW COVERDAL EOUTREACH MISSION INC

**Applicant/Authorized
Official** DIANE LOFLAND

Date 11/30/2023

**Affidavit
Acknowledgement** Yes

Rieley
YES. 12/5.

Casey Hall

From: notifications=d3forms.com@mg.d3forms.com on behalf of Sussex County DE
<notifications@d3forms.com>
Sent: Friday, October 6, 2023 1:40 PM
To: Casey Hall
Subject: Sussex County DE - Council Grant Form: Form has been submitted

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Council Grant Form

Legal Name of Agency/Organization	Historic Georgetown Association ✓
Project Name	Educational/Disability
Federal Tax ID	51-0368948 ✓
Non-Profit	Yes
Does your organization or its parent organization have a religious affiliation? (If yes, fill out Section 3B.)	No
Organization's Mission	The mission of the Historic Georgetown Association is to promote historical, cultural, and educational issues concerning the citizens of Georgetown. Historic Georgetown Association is committed to preserving Georgetown's rich history by restoring & renovating historic structures and working with community leaders to present that history to future generations.
Address	140 Layton Avenue
City	Georgetown

State	Delaware
Zip Code	19947
Contact Person	Lynn Moore
Contact Title	Executive Vice President
Contact Phone Number	302-745-6595
Contact Email Address	lynnwmoore@aol.com
Total Funding Request	\$15,000
Has your organization received other grant funds from Sussex County Government in the last year?	No
If YES, how much was received in the last 12 months?	N/A
Are you seeking other sources of funding other than Sussex County Council?	Yes
If YES, approximately what percentage of the project's funding does the Council grant represent?	5

Program Category (choose all that apply)	Cultural Educational
Primary Beneficiary Category	Disability & Special Needs
Approximately the total number of Sussex County Beneficiaries served, or expected to be served, annually by this program	300
Scope	HGA would like to install a chair lift to the second floor of the Georgetown Train Station so as to allow access to those with disabilities. The chair lift and installation will cost approximately \$15,000. The Georgetown Train Station has a museum on the first floor and offices on the second floor. Any assistance we can receive for this project is appreciated.
Please enter the current support your organization receives for this project (not entire organization revenue if not applicable to request)	0.00
Description	Chair lift to second floor of Georgetown Train Station
Amount	15,000.00
Amount	0.00
TOTAL EXPENDITURES	15,000.00

**TOTAL DEFICIT FOR
PROJECT OR
ORGANIZATION** -15,000.00

Name of Organization Historic Georgetown Association

**Applicant/Authorized
Official** Lynn Wilson Moore

Date 10/06/2023

**Affidavit
Acknowledgement** Yes

Rieley.
Yes. 12/5

Casey Hall

From: notifications=d3forms.com@mg.d3forms.com on behalf of Sussex County DE
<notifications@d3forms.com>
Sent: Monday, December 4, 2023 11:52 AM
To: Casey Hall
Subject: Sussex County DE - Council Grant Form: Form has been submitted

CAUTION: This email originated from outside of the organization. Do not click links, open attachments, or reply unless you recognize the sender and know the content is safe. Contact the IT Helpdesk if you need assistance.

Council Grant Form

**Legal Name of
Agency/Organization**

Clothing Our Kids ✓

Project Name

Clothe A Kid

Federal Tax ID

45-4382079 ✓

Non-Profit

Yes

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

No

**Organization's
Mission**

The mission of Clothing Our Kids (COK) is to improve the lives of at-risk preschool, elementary and middle school children by providing them with appropriate new school clothing. Lacking appropriate clothing has a negative impact on the child's self esteem, school attendance, ability to learn and can lead to bullying. Our goal is to help these children have an equal start in their early education and to help them become successful students, offering an opportunity for every child to achieve excellence. COK never wants to say no to a child with needs due to a lack of resources.

Address

26582 John J. Williams Highway Suite 2

City	MILLSBORO
State	Delaware
Zip Code	19966
Contact Person	Peter Thomas
Contact Title	Grant Coordinator
Contact Phone Number	4842694890
Contact Email Address	pt19610@gmail.com
Total Funding Request	5000
Has your organization received other grant funds from Sussex County Government in the last year?	Yes
If YES, how much was received in the last 12 months?	2380
Are you seeking other sources of funding other than Sussex County Council?	Yes
If YES, approximately what percentage of the project's funding does the Council grant represent?	3

Program Category (choose all that apply)	Health and Human Services
Primary Beneficiary Category	Youth
Approximately the total number of Sussex County Beneficiaries served, or expected to be served, annually by this program	3500
Scope	<p>Project Clothe a Kid provides new school clothing to children in need in Sussex County. Clothing Our Kids serves every school district in this county as well as a number of head start programs. COK also provides clothing on an emergency basis at the requests of police or fire departments. Importantly, COK is now providing service to middle schools and will continue to expand that mission. IMPORTANT FINANCIAL NOTE; Clothing for middle school children is much more expensive. Although the budget for clothing purchases did not change, in fact expenditures for clothing have doubled in recent months. Consequently, we anticipate a bigger deficit than that shown in the budget numbers below.</p> <p>The population served are families living in poverty in Sussex County. School personnel, primarily school nurses, identify a child in need and contact COK. A package is created with 5 tops, 5 bottoms, a hoody, underwear, PJ's and, in winter, hats gloves and a scarf if available. All the work is done by volunteers, we have no paid staff. Volunteers then deliver the package to the school for the child.</p>
Religious Components	N/A

Please enter the current support your organization receives for this project (not entire organization revenue if not applicable to request) 176,000.00

Description Clothing Purchases

Amount 100,000.00

Description Operating Expenses

Amount 79,030.00

Description Personnel

Amount 0.00

TOTAL EXPENDITURES 179,030.00

TOTAL DEFICIT FOR PROJECT OR ORGANIZATION -3,030.00

Name of Organization Clothing Our Kids

Applicant/Authorized Official Bob Blouin

Date 12/04/2023

Affidavit Acknowledgement Yes

To Be Introduced: 12/12/23

**Council District 4: Mr. Hudson
Tax I.D. No.: 234-29.00-274.02
911 Address 32404 Hersel Davis Road, Millsboro**

ORDINANCE NO. ____

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN GR GENERAL RESIDENTIAL DISTRICT FOR A BUSINESS FOR THE STORAGE AND HAULING OF DIRT AND GRAVEL, AND THE STORAGE OF WORK EQUIPMENT AND TRUCKS TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 2.31 ACRES MORE OR LESS

WHEREAS, on the 4th day of April, 2023, a conditional use application, denominated Conditional Use No. 2436 was filed on behalf of Toney & Charletta Floyd; and

WHEREAS, on the ____ day of _____ 2024, a public hearing was held, after notice, before the Planning and Zoning Commission of Sussex County and said Planning and Zoning Commission recommended that Conditional Use No. 2436 be _____; and

WHEREAS, on the ____ day of _____ 2024, a public hearing was held, after notice, before the County Council of Sussex County and the County Council of Sussex County determined, based on the findings of facts, that said conditional use is in accordance with the Comprehensive Development Plan and promotes the health, safety, morals, convenience, order, prosperity and welfare of the present and future inhabitants of Sussex County, and that the conditional use is for the general convenience and welfare of the inhabitants of Sussex County.

NOW, THEREFORE, THE COUNTY OF SUSSEX HEREBY ORDAINS:

Section 1. That Chapter 115, Article VI, Subsection 115-39, Code of Sussex County, be amended by adding the designation of Conditional Use No. 2436 as it applies to the property hereinafter described.

Section 2. The subject property is described as follows:

ALL that certain tract, piece or parcels of land lying and being situate in Indian River Hundred, Sussex County, Delaware, and lying on the northeast side of Hershel Davis Road approximately 0.42 mile northeast of Oak Orchard Road (Rt. 5) and being more particularly described in the attached legal description prepared by Moore & Rutt, P.A. said parcels containing 2.31 ac., more or less.

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

To Be Introduced: 12/12/23

Council District 2: Mrs. Green

Tax I.D. No.: 330-11.00-70.00

911 Address: 6521 Coastal Highway, Milford

ORDINANCE NO. ____

AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A C-4 PLANNED COMMERCIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN CEDAR CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 41.15 ACRES, MORE OR LESS

WHEREAS, on the 26th day of January 2023, a zoning application, denominated Change of Zone No. 2004 was filed on behalf of Key Properties Group, LLC; and

WHEREAS, on the ____ day of _____ 2024, a public hearing was held, after notice, before the Planning and Zoning Commission of Sussex County and said Planning and Zoning Commission recommended that Change of Zone No. 2004 be _____; and

WHEREAS, on the ____ day of _____ 2024, a public hearing was held, after notice, before the County Council of Sussex County and the County Council of Sussex County has determined, based on the findings of facts, that said change of zone is in accordance with the Comprehensive Development Plan and promotes the health, safety, morals, convenience, order, prosperity and welfare of the present and future inhabitants of Sussex County,

NOW, THEREFORE, THE COUNTY OF SUSSEX HEREBY ORDAINS:

Section 1. That Chapter 115, Article II, Subsection 115-7, Code of Sussex County, be amended by deleting from the Comprehensive Zoning Map of Sussex County the zoning classification of [AR-1 Agricultural Residential District] and adding in lieu thereof the designation C-4 Planned Commercial District as it applies to the property hereinafter described.

Section 2. The subject property is described as follows:

ALL that certain tract, piece or parcel of land lying and being situate in Cedar Creek Hundred, Sussex County, Delaware, and lying on the northeast side of Coastal Highway (Rt. 1) approximately 860 ft. northwest of Cedar Neck Road (S.C.R. 206) and being more particularly described in the attached legal description prepared by _____., said parcel containing 41.15 ac., more or less.

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

To Be Reintroduced: 12/12/23

Council District 2: Mrs. Green

Tax I.D. No.: 235-13.00-29.01

911 Address: 14742 Gravel Hill Road, Milton

ORDINANCE NO. ____

AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A C-2 MEDIUM COMMERCIAL DISTRICT FOR CERTAIN PARCELS OF LAND LYING AND BEING IN BROADKILL HUNDRED, SUSSEX COUNTY, CONTAINING 2.99 ACRES, MORE OR LESS

WHEREAS, on the 19th day of September 2022, a zoning application, denominated Change of Zone No. 1992 was filed on behalf of Reed Properties, LLC; and

WHEREAS, on the ____ day of _____ 2023, a public hearing was held, after notice, before the Planning and Zoning Commission of Sussex County and said Planning and Zoning Commission recommended that Change of Zone No. 1992 be _____; and

WHEREAS, on the ____ day of _____ 2024, a public hearing was held, after notice, before the County Council of Sussex County, and the County Council of Sussex County has determined, based on the findings of facts, that said change of zone is in accordance with the Comprehensive Development Plan and promotes the health, safety, morals, convenience, order, prosperity and welfare of the present and future inhabitants of Sussex County,

NOW, THEREFORE, THE COUNTY OF SUSSEX HEREBY ORDAINS:

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

Section 2. The subject property is described as follows:

ALL that certain tract, piece, or parcel of land lying and being situate in Broadkill Hundred, Sussex County, Delaware, and lying on the west side of Gravel Hill Road (Rt. 30) approximately 300 ft. south of Milton Ellendale Highway (Rt. 16) and the south side of Milton Ellendale Highway (Rt. 16) approximately 300 ft. west of Gravel Hill Road (Rt. 30) and being more particularly described in the attached legal description prepared by Tunnell & Raysor, P.A., said parcels containing 2.99 ac., more or less.

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



Memorandum

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

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

CC: Everett Moore, County Attorney

Date: December 7, 2023

RE: County Council Report for C/U 2471 filed on behalf of Epworth UMC

The Planning and Zoning Department received an application (C/U 2471 filed on behalf of Epworth UMC) to allow for an on-premises electronic message center sign to be located at Tax Parcel 334-13.00-325.47. The property is located at 19285 Holland Glade Road, Rehoboth Beach. The parcel size is 8.19 acres +/-.

The Planning & Zoning Commission held a Public Hearing on the application on October 26, 2023. At the meeting of October 26, 2023, the Planning & Zoning Commission recommended approval of the application for the 6 reasons as outlined within the motion (copied below).

Below are the minutes from the Planning & Zoning Commission meeting of October 26, 2023.

Minutes of the October 26, 2023, Planning & Zoning Commission Meeting

C/U 2471 Epworth UMC

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO ALLOW FOR AN ON-PREMISES ELECTRONIC MESSAGE CENTER SIGN TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES & REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 8.19 ACRES, MORE OR LESS. The property is lying on the southeast side of Holland Glade Road (S.C.R. 271), approximately 950 ft. northeast of Coastal Highway (Rt. 1). 911 Address: 19285 Holland Glade Road, Rehoboth Beach. Tax Map Parcel: 334-13.00-325.47.

Mr. Whitehouse advised the Commission that submitted into the record were the Applicant's Conceptual Site Plan, the Applicant's Exhibits, and a letter from the Sussex County Engineering



Department Utility Planning Division. Mr. Whitehouse stated that no comments had been received for the Application.

The Commission found that Mr. Lynn Rogers with Rogers Sign Co., Inc. spoke on behalf of the Applicant. Mr. Rogers stated that due to the way the Ordinance is written, an electronic message center is not by-right permitted on AR-1 land; that churches have similar activities to commercial properties, such as weddings, funerals, fundraisers and activity halls; that the sign already exists; that the church is proposing to replace the current wooden sign with a full color electronic message center, in smaller dimensions than the existing sign; that electronic signs are capable of displaying computer generated images and text communication in various message from Epworth Church to the community; that the sign will be in compliance with the Sussex County Sign Ordinance as it is written to govern electronic message centers; that the site is comprised of large acreage; that the sign is located along the road; that the existing sign structure will not change; that the wooden part of the sign, currently 48 in. by 96 in. will be removed; that the new electronic message center portion will be 48 in by 72 in; that the sign will be double sided; that the name of the church will be located on the header panel above, in non-illuminated letters; that as required, the sign has a light sensor meter on it, which keeps the ambient light down; that the sign will light approximately 35% of 100%; that these signs are not appealing, as well as, it is not beneficial to the electronic if the ambient is set to 100%; that his office controls the ambient setting, and is the only setting the clients do not control in an effort in ensure they do not go against the County Ordinance; that when the Ordinance was written and passed, the inspectors regulated this requirement with light meters, and they do not want the sign to be a distraction.

The Commission found that one person spoke in support, and no one spoke in opposition to the Application.

Ms. Linda Kauffman spoke in support of the Application. Ms. Kauffman stated that she chaired the governing board for Epworth United Methodist Church, and she was in support of the Application request, as it would allow the church to better facilitate their information to the public in a timelier fashion than the static sign they have currently.

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

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

Mr. Collins moved that the Commission recommend approval of C/U 2471 Epworth UMC to allow an on-premises electronic message center sign based on the record made during the public hearing and for the following reasons:

1. This is an application for a Conditional Use to install an on-premises electronic message display sign. This type of application is permitted under Section 115-161.1 A. (3) of the Zoning Code.
2. The sign will be located on the Epworth United Methodist Church property, and it will be used to display information about the Church and its various activities and events.
3. This sign will replace the existing window static-display sign on the site that is on the Church property.
4. The sign will be required to comply with all of the sign regulations in the Zoning Code, including brightness and motion.

5. The sign will not adversely affect neighboring properties or area roadways and traffic.
6. A final site plan showing the location of the sign on the site shall be submitted to the Sussex County Planning & Zoning Commission for approval.

Motion by Mr. Collins, seconded by Mr. Butler and carried unanimously to recommend approval of C/U 2471 Epworth UMC for the reasons and conditions stated in the motion. Motion carried 4-0.

Vote by roll call: Mr. Mears – yea, Mr. Collins – yea, Mr. Butler – yea, Chairman Wheatley – yea.

PLANNING & ZONING COMMISSION

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



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JAMIE WHITEHOUSE, MRTPI, AICP
DIRECTOR OF PLANNING & ZONING

PLANNING AND ZONING AND COUNTY COUNCIL INFORMATION SHEET

Planning Commission Public Hearing Date: October 26^h, 2023

Application: CU 2471

Applicant: Epworth UMC
19285 Hilland Glade Road
Rehoboth Beach, DE 19971

Owner: Epworth UMC
19285 Hilland Glade Road
Rehoboth Beach, DE 19971

Site Location: Located on the southeast side of Holland Glade Road (S.C.R. 271),
approximately 950 ft. northeast of Coastal Highway (Rt. 1).

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

Proposed Use: An on-premises Electronic Message Center

Comprehensive Land
Use Plan Reference: Commercial Area

Councilmanic
District: Mr. Schaeffer

School District: Cape Henlopen School District

Fire District: Rehoboth Beach Fire Co.

Sewer: N/A

Water: N/A

Site Area: 40,386 square feet

Tax Map ID.: 334-13.00-325.47 (p/o)





Memorandum

To: Sussex County Planning and Zoning Commission Members
From: Ann Lepore, Planner I
CC: Mr. Vince Robertson, Assistant County Attorney and Applicant
Date: October 25, 2023
RE: Staff Analysis for CU 2471 Epworth UMC

The purpose of this memo is to provide background and analysis for the Planning and Zoning Commission to consider as a part of Application CU 2471 (Epworth UMC) to be reviewed during the October 26th, 2023, Planning and Zoning Commission Meeting. This analysis should be included in the record of this application and is subject to comments and information that may be presented during the public hearing.

The request is for a Conditional Use for Tax Parcel: 334-13.00-325.47 to allow for an on-premises electronic message center (sign). The property is lying on the southeast side of Holland Glade Road (S.C.R. 271), approximately 950 ft. northeast of Coastal Highway (Rt. 1). The property is 8.19 acres approximately.

Comprehensive Plan Analysis

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

As outlined in the 2018 Sussex County Comprehensive Plan, Commercial Areas include concentrations of retail and service uses that are mainly located along arterials, and highways. As opposed to small, traditional downtown areas that are often historic and pedestrian-friendly, Commercial Areas include commercial corridors, shopping centers, and other medium and large commercial vicinities geared towards vehicular traffic. In addition to primary shopping destinations, this area would also be the appropriate place to locate hotels, motels, car washes, auto dealerships, and other medium and larger scale commercial uses not primarily targeted to the residents of immediately adjacent residential areas. These more intense uses should be located along main roads or near major intersections. Institutional and commercial uses may be appropriate depending on surrounding uses. Mixed-use buildings may also be appropriate for these areas (2018 Sussex County Comprehensive Plan, 4-17).

The Coastal Area are "areas that can accommodate development provided special environmental concerns are addressed" (2018 Sussex County Comprehensive Plan, 4-15). The Plan also states that a range of housing types "should be permitted" to include "townhouses and multifamily units" (2018 Sussex County Comprehensive Plan 4-15). The Plan further states that "medium density

could be supported in areas where there is central water and sewer, near sufficient commercial uses and employment centers, where it is in keeping with the character of the area, where it is along a main road or at/near a major intersection, where there is adequate Level of Service or where other considerations exist that are relevant to the requested project and density” (2018 Sussex County Comprehensive Plan, 4-16).

Zoning Information

The subject property is within the Agricultural Residential (AR-1) Zoning District. The principal use of a church/place of religious worship and congregation is a permitted use in this AR-1 Zoning District. The properties to the north, east, and west are also within the AR-1 Zoning District. The properties to the south are within the CR-1 and C-1 Zoning Districts.

Existing Conditional Uses within the Vicinity of the Subject Site

There have been several major Conditional Use applications within a one-mile radius in the past 25 years.

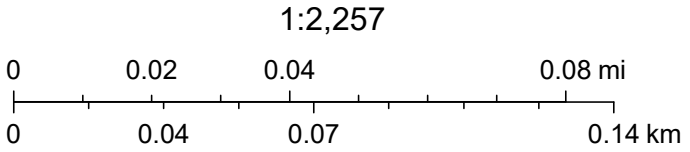
Based on the analysis provided, the Conditional Use to allow for an electronic message center (sign) could be consistent with the surrounding land uses, zoning, and general environment given considerations of scale and impact.

Sussex County



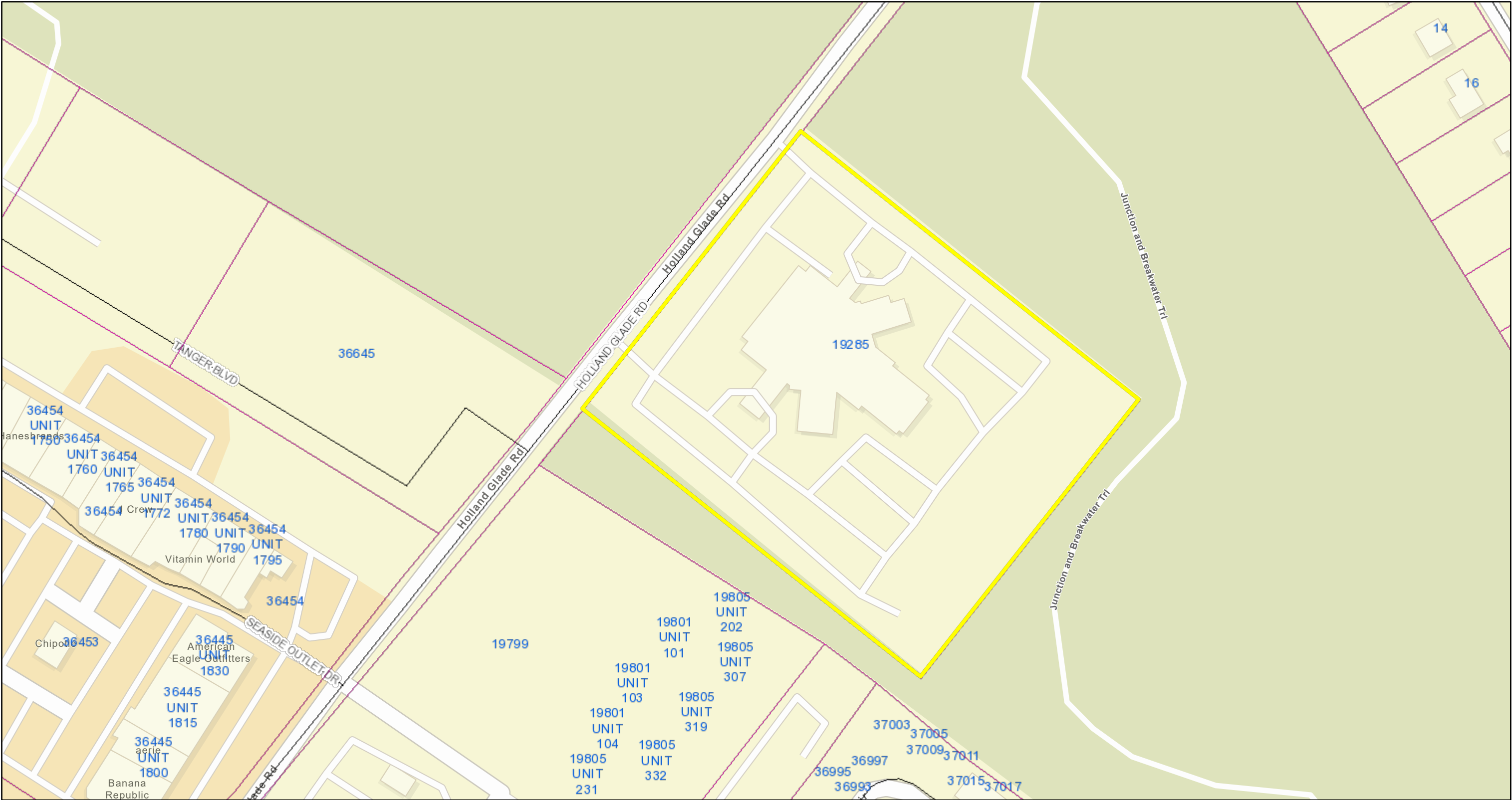
September 29, 2023

- Override 1
- Tax Parcels
- Streets
- Override 1
- 911 Address
- County Boundaries



Delaware Department of Education, Wetland mapping is supported with funding provided by the Environmental Protection Agency., Delaware Geological Survey, U.S. Geological Survey, Maxar, Microsoft, Delaware Public Service Commission, FEMA, DNREC, Division of Watershed Stewardship, Drainage Program,

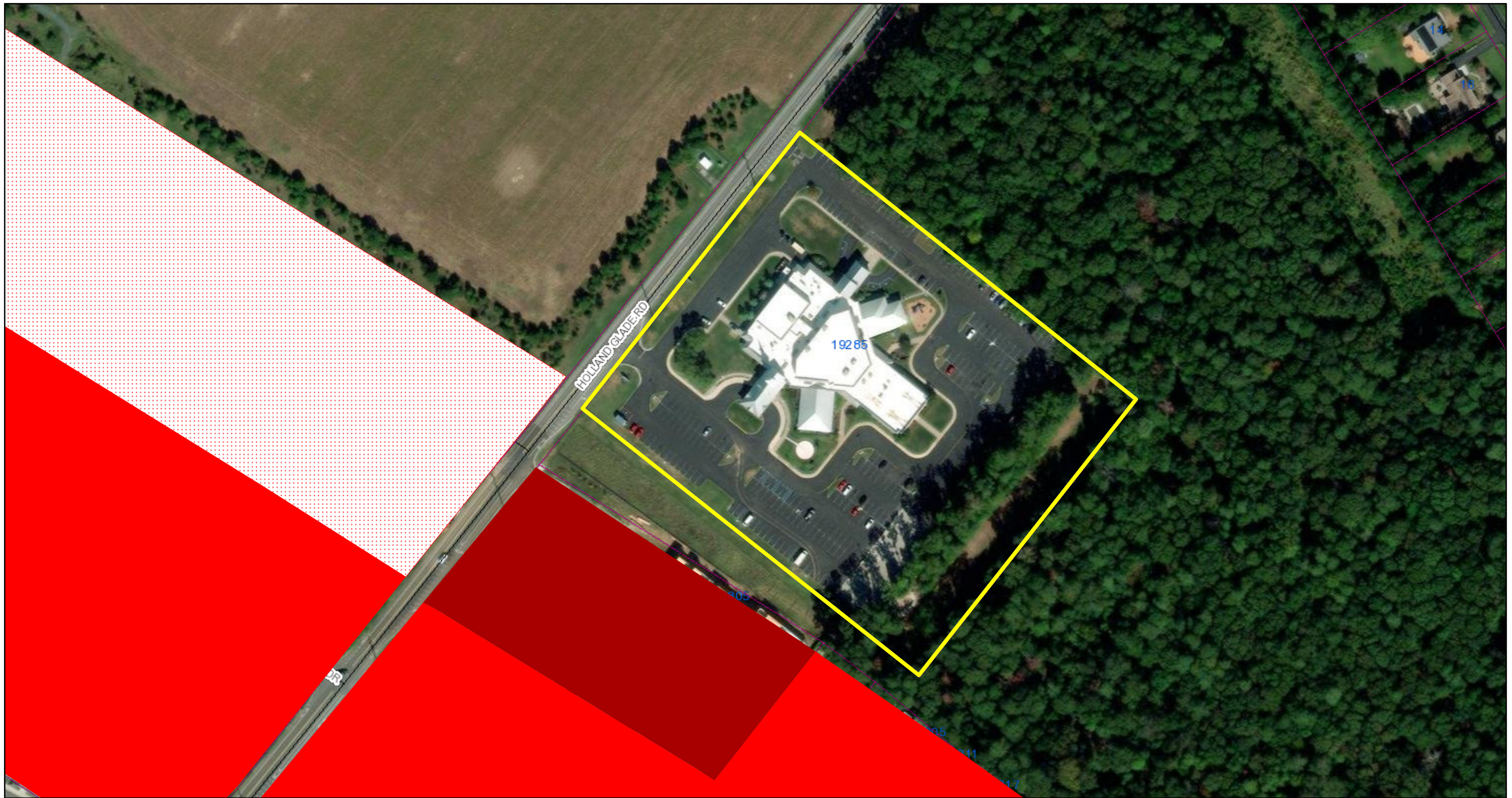
Sussex County



September 29, 2023

- Override 1
- Tax Parcels
- Streets
- Override 1
- 911 Address
- County Boundaries

Sussex County



September 29, 2023

polygonLayer

☐ Override 1

 Override 2

Zoning

General Commercial - C-1

 General Commercial - C-3

 Commercial Residential - CR-1

 Tax Parcels

911 Address

— Streets

 County Boundaries

World Imagery

Low Resolution 15m Imagery

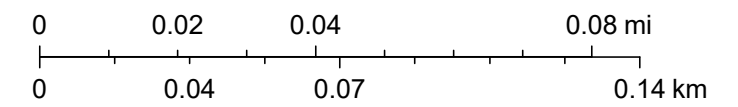
High Resolution 60cm Imagery

High Resolution 30cm Imagery

Citations

60cm Resolution Metadata

1:2,257



Maxar, Microsoft, Sussex County Government

Introduced: 10/10/23

Council District 3: Mr. Schaeffer

Tax I.D. No. 334-13.00-325.47

911 Address 19285 Holland Glade Road, Rehoboth Beach

ORDINANCE NO. ____

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO ALLOW FOR AN ON-PREMISES ELECTRONIC MESSAGE CENTER SIGN TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES & REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 8.19 ACRES, MORE OR LESS

WHEREAS, on the 24th day of July 2023, a conditional use application, denominated Conditional Use No. 2471 was filed on behalf of Epworth UMC; and

WHEREAS, on the ____ day of _____ 2023, a public hearing was held, after notice, before the Planning and Zoning Commission of Sussex County and said Planning and Zoning Commission recommended that Conditional Use No. 2471 be _____; and

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

NOW, THEREFORE, THE COUNTY OF SUSSEX HEREBY ORDAINS:

Section 1. That Chapter 115, Article IV, Subsection 115-22, Code of Sussex County, be amended by adding the designation of Conditional Use No. 2471 as it applies to the property hereinafter described.

Section 2. The subject property is described as follows:

ALL that certain tract, piece or parcel of land, lying and being situate in Lewes & Rehoboth Hundred, Sussex County, Delaware, and lying on southeast side of Holland Glade Road (S.C.R. 271), approximately 950 ft. northeast of Coastal Highway (Rt. 1), and being more particularly described in the attached deed prepared by Tunnell & Raysor, P.A., said parcel containing 8.19 acres, more or less.

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



Memorandum

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

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

CC: Everett Moore, County Attorney

Date: December 7, 2023

RE: County Council Report for C/Z 1996 filed on behalf of McKee Builders, LLC

The Planning and Zoning Department received an application (C/Z 1996 filed on behalf of McKee Builders, LLC) for a change of zone from an AR-1 Agricultural Residential District to MR Medium Density Residential Zoning District for Tax Parcels 134-19.00-13.00 & 13.04. The property is located at 24434 Central Avenue, Frankford. The parcel size is 51.23 acres +/-

The Planning & Zoning Commission held a Public Hearing on the application on October 26, 2023. At the meeting of November 9, 2023, the Planning & Zoning Commission recommended approval of the application for the 7 reasons as outlined within the motion (copied below).

Below are the minutes from the Planning & Zoning Commission meeting of October 26, 2023, and November 9, 2023.

Minutes of the October 26, 2023, Planning & Zoning Commission Meeting

Chairman Wheatley granted the request to consolidate the public hearings for C/Z 1996 and C/U 2402 McKee Builders, LLC as the Applications were related to the same properties by the same Applicant.

C/Z 1996 McKee Builders, LLC

AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A MR MEDIUM DENSITY RESIDENTIAL DISTRICT FOR CERTAIN PARCELS OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 51.23 ACRES, MORE OR LESS. The properties lie on the west side of Central Avenue (Rt. 84) approximately 0.25 mile east of Peppers Corner Road (S.C.R. 365). 911 Address: 34428 & 34434 Central



Avenue, Frankford. Tax Map Parcels: 134-19.00-13.00 & 13.04.

Mr. Whitehouse advised the Commission that submitted into the record were the Staff Analysis, the Applicant's Environmental Assessments, the DelDOT Area Wide Study Fee letter, a letter from the Sussex County Engineering Department Utility Planning Division, and the PLUS comments. Mr. Whitehouse stated that two letters in support and one letter in opposition had been received for the Application.

The Commission found that Mr. James Fuqua, Esq. with Fuqua, Willard & Schab, P.A. spoke on behalf of the Applicant, McKee Builders, LLC for both C/Z 1996 and C/U 2402 applications, also present were Mr. Jason Palkewicz, Professional Engineer with Solutions IPEM, and Mr. Mick Kenny on behalf of McKee Builders, LLC. Mr. Fuqua stated there was an Exhibit Booklet, PLUS comments and responses, Environmental Assessment and a §99-9C report; that the proposed use is not a subdivision, however it does provide similar information; that there were two application submitted for the property; that the Change of Zone application is requesting a change in zoning from AR-1 (Agricultural Residential) to MR (Medium-Density Residential); that the Conditional Use application proposes 174 multifamily townhouse units; that the property consists of a 51.23 acre site, located south of Ocean View; that the site has frontage on the west side of Central Ave.; that is also has frontage on the northside of Lizard Hill Rd.; that the majority of the property along the frontage of Central Ave. is cleared farmland; that there is a portion of the Beaver Dam Canal prong tax ditch that crosses the southern portion of the property; that along the frontage of Lizard Hill Rd. the site is mostly wooded; that there is an area of Federally regulated non-tidal wetlands located in that wooded area; that both sides of Central Ave. have been fairly well developed with single-family and multifamily residential communities; that located about a half mile north of the site are the developments of Fairway Village and Bear Trap Dunes; that on the east side of Central Ave. near the site are the developments of Forest Landing and Friendship Creek; that Friendship Creek was approved by Sussex County in 2018, as a Conditional Use for 133 multifamily units to be located on a 47 acre parcel, within the GR (General Residential) Zoning District; that south of Friendship Creek, just past Central Ave. at the intersection with Lizard Hill Rd. is a 14 acre parcel, referred to as Seaway; that this parcel was rezoned from AR-1 to MR in February 2023, as Conditional Use for 57 multifamily units; that across from Seaway, there is the Wilson Property, that is zoned C-1 (General Commercial), and is being used commercially at this time; that C-1 Zoning does permit 12 units to the acre; that on the northside of Lizard Hill Rd.. bordering the property to the west, is Milos Haven, which was approved in 2019 as a GR-RPC with 179 units, 41 single-family lots and 138 townhouse units located on 71.75 acres in the GR District; that the Applications were reviewed as part of the PLUS process about a year ago; that as noted within the PLUS comment letter, the site is located in both Investment Levels 3 and 4 according to the State Strategies Investment Map; that the development is concentrated in the Investment Level 3 portion of the site, which is a Growth Area, and where growth is anticipated by the State and County; that also in the PLUS comments is a note that the development Site Plan shows minimal disturbance to the wooded and wetland areas on the site; that they are requesting a rezoning to the MR Zoning District; that the MR District provides for medium-density residential development in areas which are expected to be urban in character, particularly where central water and sewer are available; that multifamily dwellings, such as townhouses are authorized as a Conditional Use in the MR District, subject to County Council approval; that their requests are in character with the surrounding area; that the site is adjacent to Milos Haven, Friendship Creek and Forest Landing; that MR Zoning or GR Zoning surround the majority of the site; that both the MR and GR Zoning Districts permit the same density at 4.35 units to the acre; that the Application proposes 174 townhouse units to be located on 51.23 acres results in a density of 3.39 units per acre, being significantly less than the maximum that could be requested, which would be 223 townhomes; that the Sussex County Comprehensive Plan designates the property as being within the

Coastal Area, which is Growth Area; that the Comprehensive Plan states that it seeks to encourage the most concentrated forms of new development in the Growth Areas, including higher density residential developments; that the Comprehensive Plan recognizes that a range of housing types should be permitted, including townhomes; that the Comprehensive Plan recognizes that medium and higher density development of four to 12 units per acre can be appropriate in certain locations, where central water and sewer are available, and the proposed use is in keeping with the character of the area; that based on those factors, they believe the proposed Applications are consistent with the State Investment Levels map; that the Applications are in character with the existing uses and zoning designations of the surrounding area; that the Applications are in accordance with the goals of the current Comprehensive Plan; that Tidewater Utilities will provide central water for domestic use and fire protection; that Tidewater also holds the CPCN to serve the area and are already serving the area; that the site will be served by the Sussex County Sewer; that Sussex County Engineering Department has indicated that adequate sewer capacity is available for the proposed development; that there will be an onsite sewer pump station on the site; that stormwater management facilities will be designed and constructed in compliance with DNREC regulations; that they will be reviewed by Sussex Construction District; that all stormwater management facilities will meet or exceed current stormwater regulations, including management of water quantity and quality; that Geotechnology Associates, Inc. performed a Subsurface Soil Exploration Study of the site to determine recommendations for the most appropriate locations for the stormwater facilities; that DelDOT indicated that in accordance with the Development Coordination Manual, DelDOT would accept an Area Wide Study Fee in lieu of a Traffic Impact Study (TIS); that DelDOT will require the Applicant to improve Central Ave. along the site's frontage, to provide 11-ft. travel lanes with five foot shoulders; that the Applicant will provide a shared use path on the Central Ave. frontage, and will dedicate additional right of way need on Central Ave. to provide a 40 ft. right of way from Central Ave. and on Lizard Hill Rd.; that there will be improvements to the road to provide 11 ft. travel lanes, and five foot shoulders, with a dedication to provide a 30 ft. right of way from the center line; that the development entrance will be designed and constructed in accordance with DelDOT requirements; that the development design was based on the superior design criteria for cluster subdivisions, by identifying areas on the property that are most appropriate for preservation due to natural features such as wetlands, wooded areas and water ways; that they then identified the most appropriate areas for development to minimize impact on the areas that were identified as containing natural features that were worthy of preservation; that the site consists of mostly cleared farmland, with some wooded areas, containing pockets of wetlands; that there is a home and some agricultural outbuildings on the property; that the site borders the tax ditch and a prong that bisects the property; that the southern portion of the site is wooded, containing wooded uplands and non-tidal wetlands; that there was a Wetland Delineation performed by Environmental Resources, Inc.; that the study indicated that the site contained 5.9 acres of Federally regulated non-tidal wetlands, being the land located along the tax ditch and the prong; that additionally, there were three pockets of wetlands located in the wooded area; that the portion of the parcel proposed for development is located within Flood Zone X according to the FEMA Flood Maps; that the townhouse development is proposed to be located on the cleared agricultural lands located on the northern portion of the site; that the entire southern portion of the site, fronting on Lizard Hill Rd., contains the wooded uplands and wetlands; that this area will remain in a natural state and will be permanently preserved; that there will be a 50-ft. resource buffer provided adjacent to the Beaver Dam Canal Tax Ditch , which is classified as a perennial stream; that there will be a 30 ft. resource buffer provided adjacent to other non-tidal wetlands; that the non-tidal wetlands will be undisturbed, except for any necessary road and utility crossings, which will comply with all U.S. Army Corp of Engineers regulations and permitting requirements; that there are 10.04 acres of existing woodlands on the property; that the vast majority of the woodlands are located on the southern portion of the site; that the proposed site design will preserve 9.47 acres (97%) of the existing woodlands; that the community open space will

total 29.78 acres (58.1%) of the site; that the development entrance will be from Central Ave., and will be designed and constructed in accordance with DelDOT requirements; that the 174 townhouse units will be located as shown of the Site Plan; that there is a mixture of three, four and five unit buildings; that the proposed density is 3.39 units per acre, being less than the maximum density permitted in the MR District; that each unit will have two off street parking spaces, which will provide for the 345 required spaces; that there will also be an additional 67 parking spaces located at the recreational center, as well as other locations through the community; that there will be a centrally located recreational facility that will consist, at minimum, of a clubhouse, an outdoor swimming pool, a deck and open space; that there may be other amenities provided, but will be determined based on the demand; that there will be a fenced community dog park located toward the north of the site; that they have proposed that the recreation area and dog park be completed and open for use before the issuance of the 90th residential building permit; that a school bus stop will be located near the development entrance is desired by the school district; that the exact location will be coordinated with the Indian River School District office; that there will be a central mailbox facility that will be located near the entrance or at the recreational area; that the development streets will be private, and built to County standards; that there will be sidewalks on both sides of the streets; that street lighting will be non-intrusive and downward screened; that there is a dead-end street connection located on the west side of the development, adjacent to Milos Haven development for possible future connection; that there is no road or pedestrian access provided into the wooded uplands and wetlands located on the southern portion of the site, as the intention is for those to remain permanently preserved in their natural state; that there will be a 20 ft. landscape buffer along the boundary of the site adjacent to the Rickers property and Milos Haven; that the community will be attractively landscape with native trees and plants; that a detailed Landscape Plan will be submitted as part of the Final Site Plan review process; that there will be a Condominium Association created, which will initially be comprised of the Developer, and subsequently comprised of the future residents; that the Condominium Association will be responsible for the enforcement of the restrictions, collection of assessments, and the maintenance and repair of all the community, property and facilities; that he requested to submit Findings of Fact for the Change of Zone application, and Findings & Proposed Conditions for the Conditional Use application for the record; that the development complies with the applicable land use regulations; that the project is designed to preserve the environmental features of the site, and the project is in character with the nature of the area, the zoning and the surrounding uses, particularly with the fact that townhouses are located adjacent to the site within Milos Haven, and across the site at Friendship Creek.

Mr. Collins questioned if there were any proposed provisions for affordable or workforce housing for the project.

Mr. Fuqua stated the subject project does not propose any workforce housing; that it is not part of the Sussex County Rental Program, and that the project would be similar to the other developments in the surrounding area.

Mr. Robertson questioned if the project had taken into account the required tax ditch easements located on both sides of the tax ditch and any resource buffer requirements.

Mr. Fuqua stated the tax ditches to have maintenance easement right of ways; that he believed there would be a petition requested to reduce the current tax ditch right of way setback requirements; and that currently the site is farmland with agricultural ditches located on it; that if the project is approved the site would have a stormwater facility that would be reviewed and approved by Sussex Conservation District; that with the stormwater facility the drainage ditches would no longer be needed and there are buffers

provided from the main tax ditch and the prong.

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

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

In relation to C/Z 1996 McKee Builders, LLC. Motion by Mr. Mears to defer action for further consideration, seconded by Mr. Collins and carried unanimously. Motion carried 4-0.

Minutes of the November 9, 2023, Planning & Zoning Commission Meeting

The Commission discussed the Application which had been deferred since October 26, 2023.

Mr. Collins moved that the Commission recommend approval of C/Z 1996 McKee Builders, LLC for a change in zone from AR-1 to MR based upon the record made during the public hearing and for the following reasons:

1. This Application seeks a change in zone from AR-1 to MR. The purpose of the MR zone is to provide medium-density housing in an area that is expected to become urban in character and where central water and sewer are available.
2. The stated purpose of the MR District is satisfied for this site. Both central water and central sewer will be available.
3. The proposed MR Zoning meets the purpose of the Zoning Ordinance in that it promotes the orderly growth of the County in an appropriate location.
4. This location is appropriate for MR Zoning. The properties to the west and across from this one are zoned GR with approved multi-family developments. There is also a 5.6-acre parcel across Lizzard Hill Road from this site that permits a wide variety of commercial uses and multi-family residential development with a density of up to 12 units per acre. This property is also in close proximity to the Town of Ocean View. This rezoning is consistent with other zoning and land uses in the area.
5. The site is located within the Coastal Area according to the Sussex County Comprehensive Plan. The Coastal Area is a “Growth Area”, and MR Zoning is appropriate in this Area according to the Plan.
6. The Comprehensive Plan suggests that higher densities such as those permitted in the MR District can be appropriate where there is water and sewer available, there are appropriate roadways to handle the density, and there are nearby commercial or employment centers. All of those factors are satisfied with regard to this application.
7. For all of these reasons, MR zoning is appropriate for this site.

Motion by Mr. Collins, seconded by Ms. Wingate and carried unanimously to recommend approval of C/Z 1996 McKee Builders, LLC for the reasons stated in the motion. Motion carried 4-0.

Ms. Wingate stated she was not in attendance at the Planning & Zoning Commission meeting of October 26, 2023, however, she did listen to the public hearings online and reviewed all submitted documentation and therefore was eligible to vote.

Vote by roll call: Ms. Wingate – yea, Mr. Collins – yea, Mr. Butler – yea, Chairman Wheatley – yea

PLANNING & ZONING COMMISSION

ROBERT C. WHEATLEY, CHAIRMAN
BRIAN BUTLER
GREGORY SCOTT COLLINS
J. BRUCE MEARS
HOLLY WINGATE



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JAMIE WHITEHOUSE
DIRECTOR

PLANNING AND ZONING AND COUNTY COUNCIL INFORMATION SHEET

Planning Commission Public Hearing Date: October 26th, 2023

Application: C/Z 1996 McKee Builders, LLC

Applicant: McKee Builders, LLC (Attn: Mr. Kevin McLaughlin)
940 West Sproul Road, Suite 301
Springfield, PA 19064

Owner: Wayne E. Hickman, Gary O. Hickman & Cinda S. Richards, Trustees
34434 Central Avenue
Frankford, DE 19945

Site Location: The properties are lying on the west side of Central Avenue (Route 84), approximately 0.25 mile east of Peppers Corner Road (S.C.R. 365) in Frankford, Delaware.

Current Zoning: Agricultural Residential (AR-1) District

Proposed Zoning: Medium Density Residential (MR) District

Proposed Use: Multifamily Dwellings (174 Units) (accompanying Application for C/U 2402).

Future Land Use Map Designation: Coastal Area

Councilmanic District: Mr. Hudson

School District: Indian River School District

Fire District: Millville Fire Company/District

Sewer: Sussex County Public Works

Water: Tidewater

Site Area: 51.23 acres +/-

Tax Map IDs: 134-19.00-13.00 & 13.04



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Sussex County

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Memorandum

To: Sussex County Planning Commission Members
From: Ms. Lauren DeVore, AICP Planner III
CC: Mr. Vince Robertson, Assistant County Attorney and Applicant
Date: October 24th, 2023
RE: Staff Analysis for C/Z 1996 McKee Builders, LLC (Lilyvale)

This memo is to provide background and analysis for the Planning Commission to consider as a part of the Application for Change of Zone No. 1996 McKee Builders, LLC (Lilyvale) to be reviewed during the October 26th, 2023, Planning Commission Meeting. This analysis should be included in the record of this application and is subject to comments and information that may be presented during the public hearing.

The request is for a Change of Zone for Tax Parcel IDs: 134-19.00-13.00 and 13.04 from an Agricultural Residential (AR-1) District to a Medium Density Residential (MR) District to allow one-hundred and seventy-four (174) multifamily units (townhomes) and related side improvements to be located within a Medium Density Residential (MR) District. The properties are lying on the west side of Central Avenue (Route 84), approximately 0.25-mile east of Peppers Corner Road (S.C.R. 365). The properties are located at 34428 and 34434 Central Avenue in Frankford, Delaware.

Further Site Considerations

Staff note that the property is part of the Beaver Dam Canal Tax Ditch Area. There appear to be multiple related Tax Ditch Rights-Of-Way on the property running primarily on the perimeter of the Parcels, but also bisecting Parcel 13.00 north to south. Several of these Tax Ditch Rights-Of-Way have already been reduced through a Court Order Change (COC #12). It should further be noted that the entirety of Parcel 13.04 is comprised of a Tax Ditch ROW measured 120-ft from the Top of Bank of the Tax Ditch. No structures or improvements may be placed in these areas without written approval from the DNREC Tax Ditch Program.

Further, staff note that the properties lie within Flood Zone "X" – Areas determined to be outside the 1% annual chance flood zone and outside the 500-year floodplain and Flood Zone "AE" – Areas subject to inundation by the 1% annual chance flood where base flood elevations are determined. Any structures to be placed within Flood Zones will require the submittal of an Elevation Certificate issued by FEMA.

DNREC's Flood Planning Tool indicates that the properties are within the Little Assawoman Bay Subwatershed, that the approximate Base Flood Elevation (BFE) Range at the Parcel is 4-ft and that the Ground Elevation Height at the Parcel is anywhere between 1 to 19 feet. The County's Online Mapping System also indicates the presence of terrene and lotic wetland areas on the Site. The property is not located within any established Transportation Improvement Districts (TIDs). DelDOT stated as part of the Service Level Evaluation Response that the project is anticipated to



generate more than 50 vehicle trips per peak hour or 500 vehicle trips per day, meaning that the project would have a Minor impact within the context of the County's MOU with DelDOT. DelDOT has provided an Area Wide Study Fee (AWSF) Memo for the project which has been included in the Commission's packet this evening.

Comprehensive Plan Analysis

The 2018 Sussex County Comprehensive Plan Update (Comprehensive Plan) provides a framework of how land is to be developed. As part of the Comprehensive Plan, a Future Land Use Map is included to help determine how land should be zoned to ensure responsible development. The Future Land Use Map in the plan indicates that the parcel has a designation of "Coastal Area." The adjoining parcels to the north, south, east and west also have a Future Land Use Map designation of "Coastal Area." The Parcels border Central Avenue (Route 84) on the easternmost side and Parcel 13.00 fronts on Lizzard Hill Road (S.C.R. 367A) on the south side.

As outlined in the 2018 Sussex County Comprehensive Plan, the Coastal Area are "areas that can accommodate development provided special environmental concerns are addressed" (2018 Sussex County Comprehensive Plan, 4-15). The Plan also states that a range of housing types "should be permitted" to include "townhouses and multifamily units" (2018 Sussex County Comprehensive Plan 4-15). The Plan further states that "medium density could be supported in areas where there is central water and sewer, near sufficient commercial uses and employment centers, where it is in keeping with the character of the area, where it is along a main road or at/near a major intersection, where there is adequate Level of Service or where other considerations exist that are relevant to the requested project and density" (2018 Sussex County Comprehensive Plan, 4-16).

Zoning Information

The subject properties are zoned Agricultural Residential (AR-1) District and are located approximately 1-mile south of the incorporated town limits of the Town of Millville. The properties to the south which front along Lizzard Hill Road (S.C.R. 367A) and to the east along Central Avenue (Route 84) are also zoned Agricultural Residential (AR-1) District. The property immediately to the west of the subject site is zoned General Residential (GR) District and consists of the Milos Haven Residential Planned Community. The properties on the opposite side of Central Avenue are also zoned General Residential (GR) District and include to the northeast, the Friendship Creek multifamily development.

It is worth noting that there exists a related Application, Conditional Use No. 2402 McKee Builders, LLC (Lilyvale) to allow for the establishment of the multifamily units on the property under the provisions of §115-

Table 4.5-2 "Zoning Districts Applicable to Future Land Use Categories" in the 2018 Sussex County Comprehensive Plan notes that the Medium Density Residential (MR) District is an applicable Zoning District within the "Coastal Area" Future Land Use Map Designation

Applicability to Comprehensive Plan

The 2018 Sussex County Comprehensive Plan outlines Zoning Districts by their applicability to each Future Land Use category. Under Table 4.5-2 "Zoning Districts Applicable to Future Land

Use Categories,” the Medium Density Residential (MR) District is listed as an Applicable Zoning District within the Coastal Area Future Land Use Map designation (Sussex County Comprehensive Plan, 4-25).

Changes of Zone Applications within the Vicinity of the Subject Site

Staff confirms that there has been one (1) Change of Zone Application within a 0.25-mile radius of the Application Site. This Application was for Change of Zone No. 1969 Ron Sutton for a Change of Zone from an Agricultural Residential (AR-1) District to a Medium Density Residential (MR) District for the establishment of sixty (60) multifamily units. Please find further information regarding this Application in the Table provided below:

Change of Zone Applications (w/in a 0.25-mile radius of the subject site)*								
Application Number	Applicant Name	Zoning	Proposed Zoning	P&Z Date	P&Z Recommendation	CC Date	CC Decision	Ordinance No.
C/Z 1969	Ron Sutton	AR-1	MR	11/17/2022	Recommended Approval	2/21/2023	Approved	2902

Based on the analysis of the land use, surrounding zoning and uses, a Change of Zone to Medium Density Residential (MR) District for the development of one-hundred and seventy-four (174) multifamily units (townhomes) and related site improvements, subject to considerations of scale and impact, could be considered as being consistent with the land use, area zoning and surrounding uses.



CU 2402 & CZ 1996 McKee Builders, LLC
Tax Parcel IDs: 134-19.00-13.00 & 13.04
Aerial Map



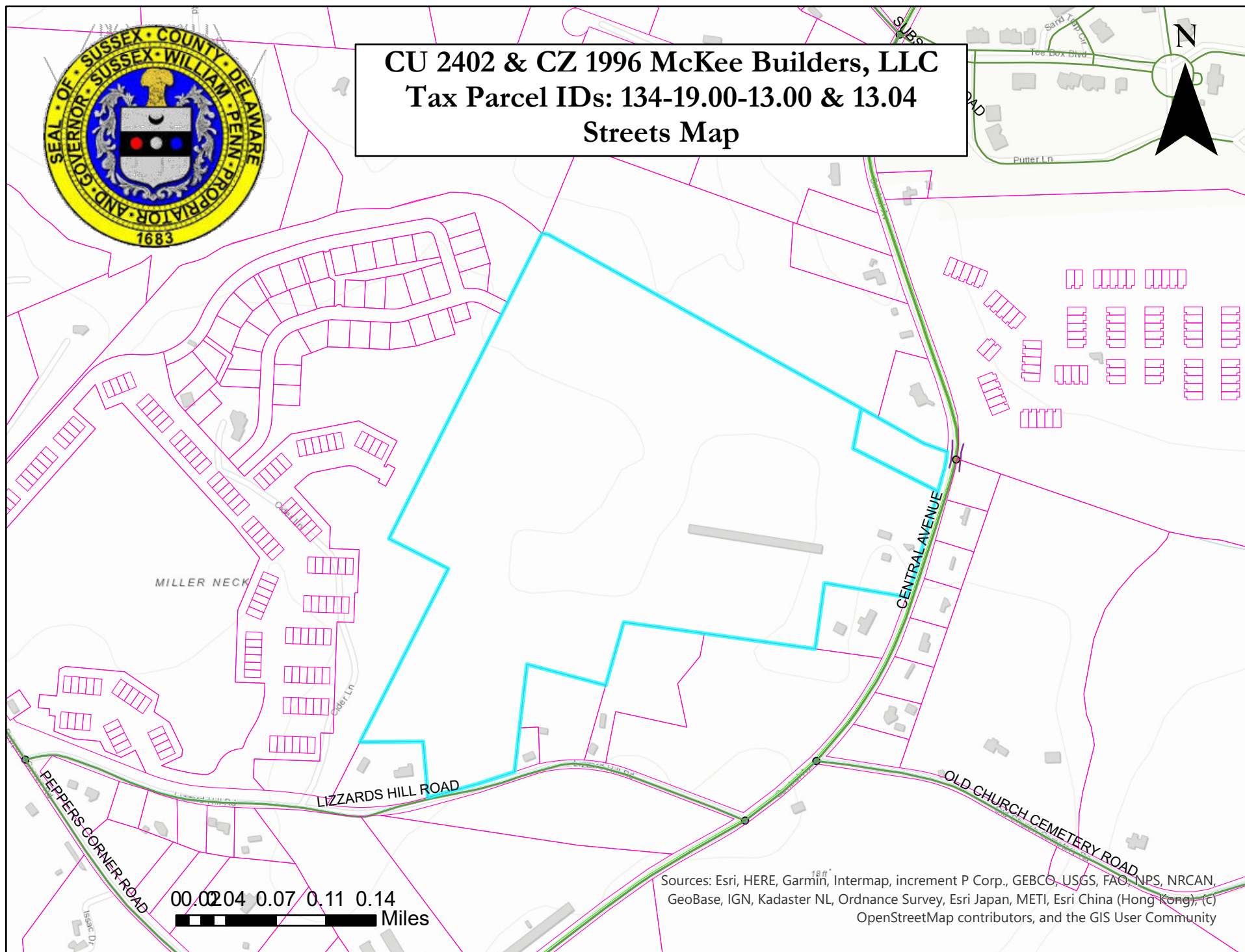
0.00 0.02 0.04 0.07 0.11 0.14
Miles

Source: Esri, Maxar, Earthstar Geographics, and the GIS User Community



CU 2402 & CZ 1996 McKee Builders, LLC
Tax Parcel IDs: 134-19.00-13.00 & 13.04
Streets Map

N



Sources: Esri, HERE, Garmin, Intermap, increment P Corp., GEBCO, USGS, FAO, NPS, NRCAN, GeoBase, IGN, Kadaster NL, Ordnance Survey, Esri Japan, METI, Esri China (Hong Kong), (C) OpenStreetMap contributors, and the GIS User Community



CU 2402 & CZ 1996 McKee Builders, LLC
Tax Parcel IDs: 134-19.00-13.00 & 13.04
Zoning Map

N



0.02 0.04 0.07 0.11 0.14
Miles

Sources: Esri, HERE, Garmin, Intermap, increment P Corp., GEBCO, USGS, FAO, NPS, NRCAN, GeoBase, IGN, Kadaster NL, Ordnance Survey, Esri Japan, METI, Esri China (Hong Kong), (C) OpenStreetMap contributors, and the GIS User Community

Introduced: 10/10/23

Council District 4: Mr. Hudson

Tax I.D. No.: 134-19.00-13.00 & 13.04

911 Address: 34428 & 34434 Central Avenue, Frankford

ORDINANCE NO. ____

AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENIAL DISTRICT TO AN MR MEDIUM DENSITY RESIDENTIAL DISTRICT FOR CERTAIN PARCELS OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 51.23 ACRES, MORE OR LESS

WHEREAS, on the 27th day of October, 2022, a zoning application, denominated Change of Zone No. 1996 was filed on behalf of McKee Builders, LLC; and

WHEREAS, on the ____ day of _____ 2023, a public hearing was held, after notice, before the Planning and Zoning Commission of Sussex County and said Planning and Zoning Commission recommended that Change of Zone No. 1996 be _____; and

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

NOW, THEREFORE, THE COUNTY OF SUSSEX HEREBY ORDAINS:

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

Section 2. The subject property is described as follows:

ALL that certain tract, piece or parcels of land lying and being situate in Baltimore Hundred, Sussex County, Delaware, and lying on the west side of Central Avenue (Rt. 84) approximately 0.25 mile east of Peppers Corner Road (S.C.R. 365) and being more particularly described in the attached legal description prepared by Solutions Integrated Planning & Engineering Management, LLC said parcels containing 51.23 ac., more or less.

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



Memorandum

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

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

CC: Everett Moore, County Attorney

Date: December 7, 2023

RE: County Council Report for C/U 2402 filed on behalf of McKee Builders, LLC

The Planning and Zoning Department received an application (C/U 2402 filed on behalf of McKee Builders, LLC) for multi-family dwelling units (174 units) to be located at Tax Parcels 134-19.00-13.00 & 13.04. The property is located at 24434 Central Avenue, Frankford. The parcel size is 51.23 acres +/-.

The Planning & Zoning Commission held a Public Hearing on the application on October 26, 2023. At the meeting of November 9, 2023, the Planning & Zoning Commission recommended approval of the application for the 7 reasons and subject to the 18 recommended conditions as outlined within the motion (copied below).

Below are the minutes from the Planning & Zoning Commission meeting of October 26, 2023, and November 9, 2023.

Minutes of the October 26, 2023, Planning & Zoning Commission Meeting

Chairman Wheatley granted the request to consolidate the public hearings for C/Z 1996 and C/U 2402 McKee Builders, LLC as the Applications were related to the same properties by the same Applicant.

C/U 2402 McKee Builders, LLC

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN MR MEDIUM DENSITY RESIDENTIAL DISTRICT FOR MULTI-FAMILY (174 UNITS) TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 51.23 ACRES, MORE OR LESS. The properties lie on the west side of Central Avenue (Rt. 84) approximately 0.25 mile east of Peppers Corner



Road (S.C.R. 365). 911 Address: 34428 & 34434 Central Avenue, Frankford. Tax Map Parcels: 134-19.00-13.00 & 13.04.

Mr. Whitehouse advised the Commission that submitted into the record were the Applicant's Exhibit Booklet, the Applicant's Geotechnical Report within the Exhibit Booklet, the Applicant's Conceptual Site Plan, the Staff Analysis, the DelDOT Area Wide Study Fee letter, the Applicant's Environmental Assessments and Public Facilities Evaluation Report, the PLUS comments and the Applicant's response to the PLUS comments, and a letter from the Sussex County Engineering Department Utility Planning Division. Mr. Whitehouse stated that two letters in support and one letter in opposition had been received for the Application.

The Commission found that Mr. James Fuqua, Esq. with Fuqua, Willard & Schab, P.A. spoke on behalf of the Applicant, McKee Builders, LLC for both C/Z 1996 and C/U 2402 applications, also present were Mr. Jason Palkewicz, Professional Engineer with Solutions IPEM, and Mr. Mick Kenny on behalf of McKee Builders, LLC. Mr. Fuqua stated there was an Exhibit Booklet, PLUS comments and responses, Environmental Assessment and a §99-9C report; that the proposed use is not a subdivision, however it does provide similar information; that there were two application submitted for the property; that the Change of Zone application is requesting a change in zoning from AR-1 (Agricultural Residential) to MR (Medium-Density Residential); that the Conditional Use application proposes 174 multifamily townhouse units; that the property consists of a 51.23 acre site, located south of Ocean View; that the site has frontage on the west side of Central Ave.; that is also has frontage on the northside of Lizard Hill Rd.; that the majority of the property along the frontage of Central Ave. is cleared farmland; that there is a portion of the Beaver Dam Canal prong tax ditch that crosses the southern portion of the property; that along the frontage of Lizard Hill Rd. the site is mostly wooded; that there is an area of Federally regulated non-tidal wetlands located in that wooded area; that both sides of Central Ave. have been fairly well developed with single-family and multifamily residential communities; that located about a half mile north of the site are the developments of Fairway Village and Bear Trap Dunes; that on the east side of Central Ave. near the site are the developments of Forest Landing and Friendship Creek; that Friendship Creek was approved by Sussex County in 2018, as a Conditional Use for 133 multifamily units to be located on a 47 acre parcel, within the GR (General Residential) Zoning District; that south of Friendship Creek, just past Central Ave. at the intersection with Lizard Hill Rd. is a 14 acre parcel, referred to as Seaway; that this parcel was rezoned from AR-1 to MR in February 2023, as Conditional Use for 57 multifamily units; that across from Seaway, there is the Wilson Property, that is zoned C-1 (General Commercial), and is being used commercially at this time; that C-1 Zoning does permit 12 units to the acre; that on the northside of Lizard Hill Rd.. bordering the property to the west, is Milos Haven, which was approved in 2019 as a GR-RPC with 179 units, 41 single-family lots and 138 townhouse units located on 71.75 acres in the GR District; that the Applications were reviewed as part of the PLUS process about a year ago; that as noted within the PLUS comment letter, the site is located in both Investment Levels 3 and 4 according to the State Strategies Investment Map; that the development is concentrated in the Investment Level 3 portion of the site, which is a Growth Area, and where growth is anticipated by the State and County; that also in the PLUS comments is a note that the development Site Plan shows minimal disturbance to the wooded and wetland areas on the site; that they are requesting a rezoning to the MR Zoning District; that the MR District provides for medium-density residential development in areas which are expected to be urban in character, particularly where central water and sewer are available; that multifamily dwellings, such as townhouses are authorized as a Conditional Use in the MR District, subject to County Council approval; that their requests are in character with the surrounding area; that the site is adjacent to Milos Haven, Friendship Creek and Forest Landing; that MR Zoning or GR Zoning surround the majority of the site; that both the MR and GR Zoning Districts permit the same density at 4.35 units to the acre; that

the Application proposes 174 townhouse units to be located on 51.23 acres results in a density of 3.39 units per acre, being significantly less than the maximum that could be requested, which would be 223 townhomes; that the Sussex County Comprehensive Plan designates the property as being within the Coastal Area, which is Growth Area; that the Comprehensive Plan states that it seeks to encourage the most concentrated forms of new development in the Growth Areas, including higher density residential developments; that the Comprehensive Plan recognizes that a range of housing types should be permitted, including townhomes; that the Comprehensive Plan recognizes that medium and higher density development of four to 12 units per acre can be appropriate in certain locations, where central water and sewer are available, and the proposed use is in keeping with the character of the area; that based on those factors, they believe the proposed Applications are consistent with the State Investment Levels map; that the Applications are in character with the existing uses and zoning designations of the surrounding area; that the Applications are in accordance with the goals of the current Comprehensive Plan; that Tidewater Utilities will provide central water for domestic use and fire protection; that Tidewater also holds the CPCN to serve the area and are already serving the area; that the site will be served by the Sussex County Sewer; that Sussex County Engineering Department has indicated that adequate sewer capacity is available for the proposed development; that there will be an onsite sewer pump station on the site; that stormwater management facilities will be designed and constructed in compliance with DNREC regulations; that they will be reviewed by Sussex Construction District; that all stormwater management facilities will meet or exceed current stormwater regulations, including management of water quantity and quality; that Geotechnology Associates, Inc. performed a Subsurface Soil Exploration Study of the site to determine recommendations for the most appropriate locations for the stormwater facilities; that DelDOT indicated that in accordance with the Development Coordination Manual, DelDOT would accept an Area Wide Study Fee in lieu of a Traffic Impact Study (TIS); that DelDOT will require the Applicant to improve Central Ave. along the site's frontage, to provide 11-ft. travel lanes with five foot shoulders; that the Applicant will provide a shared use path on the Central Ave. frontage, and will dedicate additional right of way need on Central Ave. to provide a 40 ft. right of way from Central Ave. and on Lizard Hill Rd.; that there will be improvements to the road to provide 11 ft. travel lanes, and five foot shoulders, with a dedication to provide a 30 ft. right of way from the center line; that the development entrance will be designed and constructed in accordance with DelDOT requirements; that the development design was based on the superior design criteria for cluster subdivisions, by identifying areas on the property that are most appropriate for preservation due to natural features such as wetlands, wooded areas and water ways; that they then identified the most appropriate areas for development to minimize impact on the areas that were identified as containing natural features that were worthy of preservation; that the site consists of mostly cleared farmland, with some wooded areas, containing pockets of wetlands; that there is a home and some agricultural outbuildings on the property; that the site borders the tax ditch and a prong that bisects the property; that the southern portion of the site is wooded, containing wooded uplands and non-tidal wetlands; that there was a Wetland Delineation performed by Environmental Resources, Inc.; that the study indicated that the site contained 5.9 acres of Federally regulated non-tidal wetlands, being the land located along the tax ditch and the prong; that additionally, there were three pockets of wetlands located in the wooded area; that the portion of the parcel proposed for development is located within Flood Zone X according to the FEMA Flood Maps; that the townhouse development is proposed to be located on the cleared agricultural lands located on the northern portion of the site; that the entire southern portion of the site, fronting on Lizard Hill Rd., contains the wooded uplands and wetlands; that this area will remain in a natural state and will be permanently preserved; that there will be a 50-ft. resource buffer provided adjacent to the Beaver Dam Canal Tax Ditch , which is classified as a perennial stream; that there will be a 30 ft. resource buffer provided adjacent to other non-tidal wetlands; that the non-tidal wetlands will be undisturbed, except for any necessary road and utility crossings, which will comply with all U.S. Army Corp of Engineers

regulations and permitting requirements; that there are 10.04 acres of existing woodlands on the property; that the vast majority of the woodlands are located on the southern portion of the site; that the proposed site design will preserve 9.47 acres (97%) of the existing woodlands; that the community open space will total 29.78 acres (58.1%) of the site; that the development entrance will be from Central Ave., and will be designed and constructed in accordance with DelDOT requirements; that the 174 townhouse units will be located as shown on the Site Plan; that there is a mixture of three, four and five unit buildings; that the proposed density is 3.39 units per acre, being less than the maximum density permitted in the MR District; that each unit will have two off street parking spaces, which will provide for the 345 required spaces; that there will also be an additional 67 parking spaces located at the recreational center, as well as other locations through the community; that there will be a centrally located recreational facility that will consist, at minimum, of a clubhouse, an outdoor swimming pool, a deck and open space; that there may be other amenities provided, but will be determined based on the demand; that there will be a fenced community dog park located toward the north of the site; that they have proposed that the recreation area and dog park be completed and open for use before the issuance of the 90th residential building permit; that a school bus stop will be located near the development entrance is desired by the school district; that the exact location will be coordinated with the Indian River School District office; that there will be a central mailbox facility that will be located near the entrance or at the recreational area; that the development streets will be private, and built to County standards; that there will be sidewalks on both sides of the streets; that street lighting will be non-intrusive and downward screened; that there is a dead-end street connection located on the west side of the development, adjacent to Milos Haven development for possible future connection; that there is no road or pedestrian access provided into the wooded uplands and wetlands located on the southern portion of the site, as the intention is for those to remain permanently preserved in their natural state; that there will be a 20 ft. landscape buffer along the boundary of the site adjacent to the Rickers property and Milos Haven; that the community will be attractively landscape with native trees and plants; that a detailed Landscape Plan will be submitted as part of the Final Site Plan review process; that there will be a Condominium Association created, which will initially be comprised of the Developer, and subsequently comprised of the future residents; that the Condominium Association will be responsible for the enforcement of the restrictions, collection of assessments, and the maintenance and repair of all the community, property and facilities; that he requested to submit Findings of Fact for the Change of Zone application, and Findings & Proposed Conditions for the Conditional Use application for the record; that the development complies with the applicable land use regulations; that the project is designed to preserve the environmental features of the site, and the project is in character with the nature of the area, the zoning and the surrounding uses, particularly with the fact that townhouses are located adjacent to the site within Milos Haven, and across the site at Friendship Creek.

Mr. Collins questioned if there were any proposed provisions for affordable or workforce housing for the project.

Mr. Fuqua stated the subject project does not propose any workforce housing; that it is not part of the Sussex County Rental Program, and that the project would be similar to the other developments in the surrounding area.

Mr. Robertson questioned if the project had taken into account the required tax ditch easements located on both sides of the tax ditch and any resource buffer requirements.

Mr. Fuqua stated the tax ditches to have maintenance easement right of ways; that he believed there would be a petition requested to reduce the current tax ditch right of way setback requirements; and that

currently the site is farmland with agricultural ditches located on it; that if the project is approved the site would have a stormwater facility that would be reviewed and approved by Sussex Conservation District; that with the stormwater facility the drainage ditches would no longer be needed and there are buffers provided from the main tax ditch and the prong.

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

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

In relation to C/U 2402 McKee Builders, LLC. Motion by Mr. Mears to defer action for further consideration, seconded by Mr. Collins and carried unanimously. Motion carried 4-0.

Minutes of the November 9, 2023, Planning & Zoning Commission Meeting

The Commission discussed the Application which had been deferred since October 26, 2023.

Mr. Collins moved that the Commission recommend approval of C/U 2402 McKee Builders, LLC for 174 Multi-Family Units based upon the record made during the public hearing and for the following reasons:

1. The purpose of the MR zone is to provide housing in an area that is expected to become urban in character and where central water and sewer are available. This conditional use application for multi-family units is in compliance with the purposes of the MR zone.
2. This site is located along Central Avenue, where other residential and commercial properties were developed, including other GR, MR, and C-1 zoning and development. The site is also in close proximity to the Town of Ocean View.
3. A satisfactory Environmental Assessment and Public Facilities Evaluation Report was submitted by the Applicant and is part of the record for this Application.
4. The proposed multi-family conditional use meets the purpose of the Zoning Ordinance in that it promotes the orderly growth of the County in an appropriate location.
5. The proposed use is consistent with the County's Comprehensive Land Use Plan. It is in the Coastal Area according to the Plan, which is a Growth Area. The Plan states that medium and higher densities can be appropriate where, like here, there are features such as central water and sewer and nearby commercial uses and employment centers. The Plan also states that a range of housing types should be permitted in the Coastal Area, including single-family homes, townhouses, and multifamily units.
6. No parties appeared in opposition to this Application and there is no evidence that this project will adversely affect the neighboring properties, area roadways, or community facilities.
7. Non-tidal wetland buffers will be provided and approximately 97% of the woods on the site will be permanently preserved. Also, approximately 29.78 acres or 58.1% of the site will remain as open space.
8. All entrance and road improvements will be constructed as directed by DelDOT.
9. The project will be served by central water and central sewer.
10. This recommendation is subject to the following conditions:
 - a. There shall be no more than 174 Units within the development.
 - b. Approximately 29.78 acres or 58.1% of the site shall remain as open space.

- c. All entrances, intersections, roadways, and multimodal improvements required by DelDOT shall be completed by the applicant in accordance with DelDOT's determination.
- d. All recreational amenities including the pool, deck, clubhouse, and dog park shall be completed in accordance with the Sussex County Zoning Code.
- e. Central sewer shall be provided to the development. The developer shall comply with all requirements and specifications of the Sussex County Engineering Department.
- f. The development shall be served by a central water system providing adequate drinking water and fire protection as required by applicable regulations.
- g. Approximately 97% of the existing woodlands on the site shall be preserved. These areas shall be marked on the Final Site Plan clearly as "Non-Disturbance Areas" on the site itself.
- h. Stormwater management and erosion and sediment control shall be constructed in accordance with applicable State and County requirements, and the project shall utilize Best Management Practices to construct and maintain these fixtures. The Final Site Plan shall contain the approval of the Sussex Conservation District.
- i. Interior street design shall comply with or exceed Sussex County standards.
- j. Road naming and addressing shall be subject to the review and approval of the Sussex County Geographic Information Department.
- k. The developer shall consult with the local school district's transportation manager to determine if a school bus stop is necessary. If it is, the location of the bus stop shall be shown on the Final Site Plan.
- l. Construction, site work, and deliveries shall only occur on the site between the hours of 7:30 a.m. through 7:00 p.m., Monday through Friday, and between 8:00 a.m. and 2:00 p.m. on Saturdays. No Sunday hours are permitted. A 24-inch by 36-inch "NOTICE" sign confirming these hours in English and Spanish shall be prominently displayed at the site entrance during construction.
- m. The Final Site Plan shall include a landscape plan for the development showing the proposed tree and shrub landscape design, including the buffer areas. The landscape plan shall identify all "Limits of Disturbance" within the site and these "Limits of Disturbance" shall be clearly marked on the site itself. The landscape plan shall also include a planting schedule for all buffer areas.
- n. The Applicant shall form a Homeowners or Condominium Association that shall be responsible for the maintenance of all interior roadways and parking areas, buildings, buffers, stormwater management areas, recreational amenities, and open space.
- o. All lighting on the site shall be downward screened so that it does not shine on neighboring properties or roadways.
- p. The recorded Final Site Plan and recorded condominium documents (including the Declaration Plan) shall state that hunting activities exist on nearby properties.
- q. There is a Tax Ditch with Tax Ditch Easements that runs through this site. The developer shall verify that it is in compliance with all existing or modified Tax Ditch easements and other requirements.
- r. The Final Site Plan shall depict or note these conditions of approval and it shall be subject to the review and approval of the Sussex Planning & Zoning Commission.

Motion by Mr. Collins, seconded by Ms. Wingate and carried unanimously to recommend approval of C/U 2402 McKee Builders, LLC for the reasons and the conditions stated in the motion. Motion carried 4-0.

Vote by roll call: Ms. Wingate – yea, Mr. Collins – yea, Mr. Butler – yea, Chairman Wheatley – yea

PLANNING & ZONING COMMISSION

ROBERT C. WHEATLEY, CHAIRMAN
BRIAN BUTLER
GREGORY SCOTT COLLINS
J. BRUCE MEARS
HOLLY WINGATE



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JAMIE WHITEHOUSE
DIRECTOR

PLANNING AND ZONING AND COUNTY COUNCIL INFORMATION SHEET

Planning Commission Public Hearing Date: October 26th, 2023

Application: C/U 2402 McKee Builders, LLC

Applicant: McKee Builders (Attn: Mr. Kevin McLaughlin)
940 West Sproul Road, Suite 301
Springfield, PA 19064

Owner: Wayne E. Hickman, Gary O. Hickman & Cinda S. Richards, Trustees
34434 Central Avenue
Frankford, DE 19945

Site Location: The properties are lying on the west side of Central Avenue (Route 84), approximately 0.25 mile east of Peppers Corner Road (S.C.R. 365) in Frankford, Delaware.

Current Zoning: Agricultural Residential (AR-1) District

Proposed Zoning: Medium Density Residential (MR) District (accompanying Application for C/Z 1996.)

Proposed Use: Multifamily Dwellings (174 Units)

Future Land Use Map Designation: Coastal Area

Councilmanic District: Mr. Hudson

School District: Indian River School District

Fire District: Millville Fire Company/District

Sewer: Sussex County Public Works

Water: Tidewater

Site Area: 51.23 acres +/-

Tax Map IDs: 134-19.00-13.00 & 13.04





Memorandum

To: Sussex County Planning and Zoning Commission Members
From: Lauren DeVore, AICP Planner III
CC: Mr. Vince Robertson, Assistant County Attorney and Applicant
Date: October 23rd, 2023
RE: Staff Analysis for C/U 2402 McKee Builders, LLC (Lilyvale)

The purpose of this memo is to provide background and analysis for the Planning and Zoning Commission to consider as a part of Application C/U 2402 McKee Builders, LLC (Lilyvale) to be reviewed during the October 26th, 2023, Planning and Zoning Commission Meeting. This analysis should be included in the record of this application and is subject to comments and information that may be presented during the public hearing.

The request is for a Conditional Use for Tax Parcels: 134-19.00-13.00 and 13.04 to allow for one-hundred and seventy-four (174) multifamily units (townhomes) and related site improvements to be located within a Medium Density Residential (MR) District. The properties are lying on the west side of Central Avenue (Route 84), approximately 0.25-mile east of Peppers Corner Road (S.C.R. 365). The properties are located at 34428 and 34434 Central Avenue in Frankford, Delaware.

Further Site Considerations

Staff note that the property is part of the Beaver Dam Canal Tax Ditch Area. There appear to be multiple related Tax Ditch Rights-Of-Way on the property running primarily on the perimeter of the Parcels, but also bisecting Parcel 13.00 north to south. Several of these Tax Ditch Rights-Of-Way have already been reduced through a Court Order Change (COC #12). It should further be noted that the entirety of Parcel 13.04 is comprised of a Tax Ditch ROW measured 120-ft from the Top of Bank of the Tax Ditch. No structures or improvements may be placed in these areas without written approval from the DNREC Tax Ditch Program.

Further, staff note that the properties lie within Flood Zone "X" – Areas determined to be outside the 1% annual chance flood zone and outside the 500-year floodplain and Flood Zone "AE" – Areas subject to inundation by the 1% annual chance flood where base flood elevations are determined. Any structures to be placed within Flood Zones will require the submittal of an Elevation Certificate issued by FEMA.

DNREC's Flood Planning Tool indicates that the properties are within the Little Assawoman Bay Subwatershed, that the approximate Base Flood Elevation (BFE) Range at the Parcel is 4-ft and that the Ground Elevation Height at the Parcel is anywhere between 1 to 19 feet. The County's Online Mapping System also indicates the presence of terrene and lotic wetland areas on the Site.

The property is not located within any established Transportation Improvement Districts (TIDs). DelDOT stated as part of the Service Level Evaluation Response that the project is anticipated to generate more than 50 vehicle trips per peak hour or 500 vehicle trips per day, meaning that the project would have a Minor impact within the context of the County's MOU with DelDOT.



DelDOT has provided an Area Wide Study Fee (AWSF) Memo for the project which has been included in the Commission's packet this evening.

Comprehensive Plan Analysis

The 2018 Sussex County Comprehensive Plan Update (Comprehensive Plan) provides a framework of how land is to be developed. As part of the Comprehensive Plan, a Future Land Use Map is included to help determine how land should be zoned to ensure responsible development. The Future Land Use Map in the plan indicates that the parcel has a designation of "Coastal Area." The adjoining parcels to the north, south, east and west also have a Future Land Use Map designation of "Coastal Area." The Parcels border Central Avenue (Route 84) on the easternmost side and Parcel 13.00 fronts on Lizzard Hill Road (S.C.R. 367A) on the south side.

As outlined in the 2018 Sussex County Comprehensive Plan, the Coastal Area are "areas that can accommodate development provided special environmental concerns are addressed" (2018 Sussex County Comprehensive Plan, 4-15). The Plan also states that a range of housing types "should be permitted" to include "townhouses and multifamily units" (2018 Sussex County Comprehensive Plan 4-15). The Plan further states that "medium density could be supported in areas where there is central water and sewer, near sufficient commercial uses and employment centers, where it is in keeping with the character of the area, where it is along a main road or at/near a major intersection, where there is adequate Level of Service or where other considerations exist that are relevant to the requested project and density" (2018 Sussex County Comprehensive Plan, 4-16).

Zoning Information

The subject properties are zoned Agricultural Residential (AR-1) District and are located approximately 1-mile south of the incorporated town limits of the Town of Millville. The properties to the south which front along Lizzard Hill Road (S.C.R. 367A) and to the east along Central Avenue (Route 84) are also zoned Agricultural Residential (AR-1) District. The property immediately to the west of the subject site is zoned General Residential (GR) District and consists of the Milos Haven Residential Planned Community.

The properties on the opposite side of Central Avenue are also zoned General Residential (GR) District and include to the northeast, the Friendship Creek multifamily development.

It is worth noting that there exists a related Application, Change of Zone No. 1996 McKee Builders, LLC (Lilyvale) to amend the current zoning of the property from an Agricultural Residential (AR-1) District to a Medium Density Residential (MR) District.

Applicability to Comprehensive Plan

Table 4.5-2 "Zoning Districts Applicable to Future Land Use Categories" in the 2018 Sussex County Comprehensive Plan notes that the Medium Density Residential (MR) District is an applicable Zoning District within the "Coastal Area" Future Land Use Map Designation.

Existing Conditional Uses within the Vicinity of the Subject Property

Although there have been multiple applications in this area, there have been four (4) Conditional Use Applications within a 0.25-mile radius of the Application Site. All four (4) Applications were recommended approval by the Planning and Zoning Commission and approved by the Sussex County Council.

A Supplemental Table has been provided below showing further information regarding these Applications.

Conditional Use Applications (w/in a 0.25-mile radius of the subject site)*								
Application Number	Applicant Name	Zoning	Proposed Use	P&Z Date	P&Z Recommendation	CC Date	CC Decision	Ordinance No.
C/U 1254	Bethany Beach Kennels	AR-1	Pet Crematory	8/27/1998	Recommended Approval	12/8/1998	Approved	1275
C/U 2142	RH Orr, LLC c/o Ribera Development, LLC (John Stomato)	GR	135 multifamily units (townhomes)	10/11/2018	Recommended Approval	11/13/2018	Approved	2612
C/U 2324	Zachary Bedell	AR-1	Automotive Repair Shop including boats	10/27/2022	Recommended Approval	12/13/2022	Approved	2897
C/U 2339	Ron Sutton	MR	Multifamily (60 units)	11/17/2022	Recommended Approval	2/21/2023	Approved - Revised Condition "A"	2903

Based on the analysis provided, the Conditional Use to allow for a multifamily development to consist of one-hundred and seventy-four (174) units in this location, could be considered as being consistent with the surrounding land use, zoning, and uses, subject to considerations of scale and impact.



CU 2402 & CZ 1996 McKee Builders, LLC
Tax Parcel IDs: 134-19.00-13.00 & 13.04
Aerial Map



0.00 0.02 0.04 0.07 0.11 0.14
Miles

Source: Esri, Maxar, Earthstar Geographics, and the GIS User Community



CU 2402 & CZ 1996 McKee Builders, LLC
Tax Parcel IDs: 134-19.00-13.00 & 13.04
Zoning Map

N



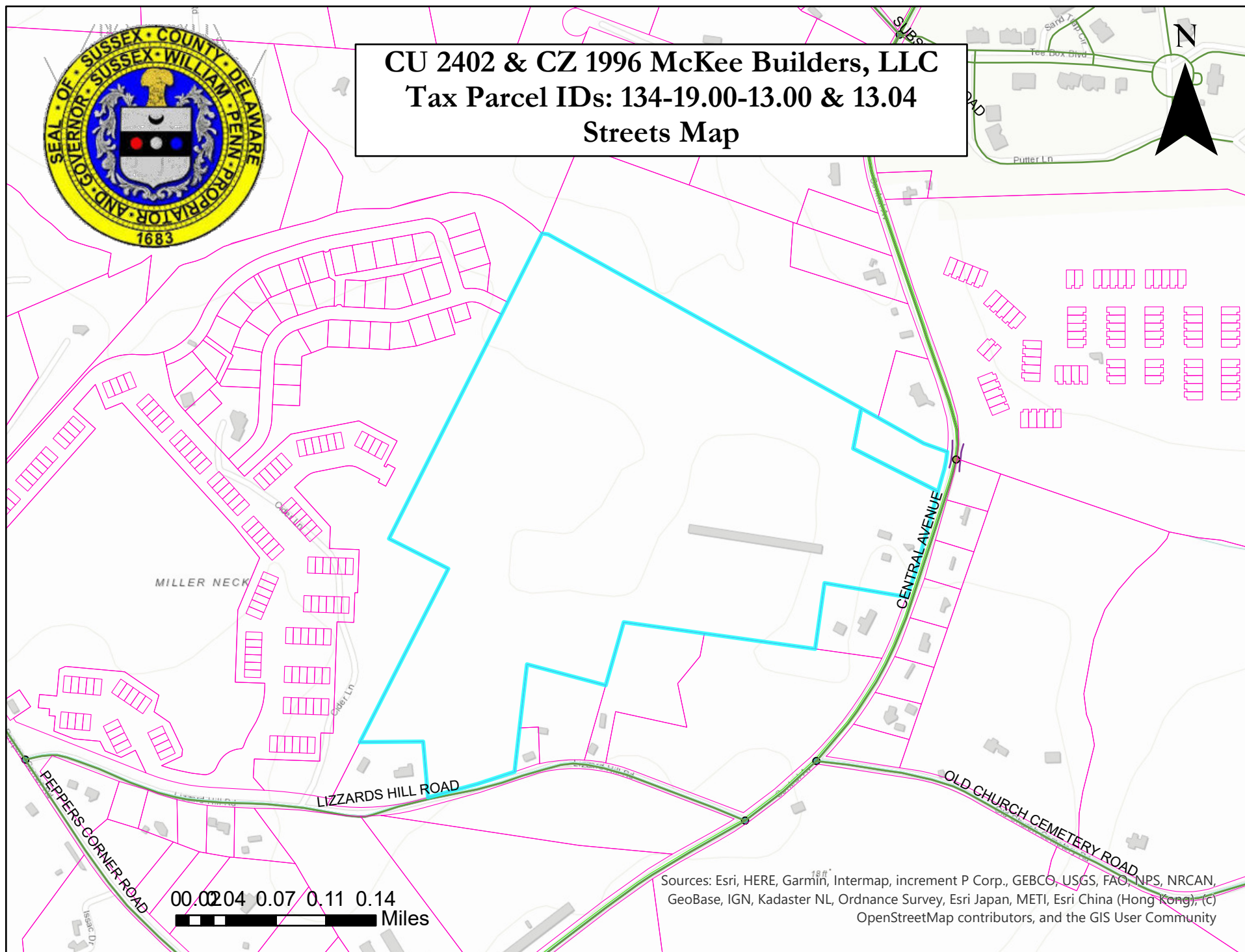
0.02 0.04 0.07 0.11 0.14
Miles

Sources: Esri, HERE, Garmin, Intermap, increment P Corp., GEBCO, USGS, FAO, NPS, NRCAN, GeoBase, IGN, Kadaster NL, Ordnance Survey, Esri Japan, METI, Esri China (Hong Kong), (C) OpenStreetMap contributors, and the GIS User Community



CU 2402 & CZ 1996 McKee Builders, LLC
Tax Parcel IDs: 134-19.00-13.00 & 13.04
Streets Map

N



Sources: Esri, HERE, Garmin, Intermap, increment P Corp., GEBCO, USGS, FAO, NPS, NRCAN, GeoBase, IGN, Kadaster NL, Ordnance Survey, Esri Japan, METI, Esri China (Hong Kong), (C) OpenStreetMap contributors, and the GIS User Community

Introduced: 10/10/23

**Council District 4: Mr. Hudson
Tax I.D. No. 134-19.00-13.00 & 13.04
911 Address 34428 & 34434 Central Avenue, Frankford**

ORDINANCE NO. ____

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN MR MEDIUM DENSITY RESIDENTIAL DISTRICT FOR MULTI-FAMILY (174 UNITS) TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 51.23 ACRES, MORE OR LESS

WHEREAS, on the 27th day of October 2022, a conditional use application, denominated Conditional Use No. 2402 was filed on behalf of McKee Builders, LLC; and

WHEREAS, on the ____ day of _____ 2023, a public hearing was held, after notice, before the Planning and Zoning Commission of Sussex County and said Planning and Zoning Commission recommended that Conditional Use No. 2402 be _____; and

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

NOW, THEREFORE, THE COUNTY OF SUSSEX HEREBY ORDAINS:

Section 1. That Chapter 115, Article V, Subsection 115-31, Code of Sussex County, be amended by adding the designation of Conditional Use No. 2402 as it applies to the property hereinafter described.

Section 2. The subject property is described as follows:

ALL that certain tract, piece or parcels of land lying and being situate in Baltimore Hundred, Sussex County, Delaware, and lying on the west side of Central Avenue (Rt. 84) approximately 0.25 mile east of Peppers Corner Road (S.C.R. 365) and being more particularly described in the attached legal description prepared by Solutions Integrated Planning & Engineering Management, LLC said parcels containing 51.23 ac., more or less.

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



Memorandum

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

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

CC: Everett Moore, County Attorney

Date: December 7, 2023

RE: County Council Report for C/U 2388 filed on behalf of Rifle Range Solar, LLC

The Planning and Zoning Department received an application (C/U 2388 filed on behalf of Rifle Range Solar, LLC) for a solar farm to be located at Tax Parcel 131-15.00-51.00. The property is located on the south side of Rifle Range Road (SCR 545), approximately 1.14 mile east of Sussex Highway (Rt.13). The parcel size is 93.66 acres +/-.

The Planning & Zoning Commission held a Public Hearing on the application on October 26, 2023. At the meeting of October 26, 2023, the Planning & Zoning Commission recommended approval of the application for the 10 reasons and subject to the 10 recommended conditions as outlined within the motion (copied below).

Below are the minutes from the Planning & Zoning Commission meeting of October 26, 2023.

Minutes of the October 26, 2023, Planning & Zoning Commission Meeting

In relation to the following six Conditional Use applications regarding solar array uses, Chairman Wheatley stated, *"Sussex County is fully aware of the benefits and operation of these community solar facilities at this point having seen and acted on so many of them. For that reason, the Commission will take that into account and presenters do not need to establish that. Instead, please focus on your specific property, the surrounding area, and how your proposed solar facility may impact the surrounding area. The Commission will also take into account all of the written information that is already in the record on each of these applications."*

C/U 2388 Rifle Range Road Solar, LLC

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A SOLAR FARM ON A CERTAIN



PARCEL OF LAND LYING AND BEING IN NORTHWEST FORK HUNDRED, SUSSEX COUNTY, CONTAINING 93.66 ACRES, MORE OR LESS. The property is lying on the south side of Rifle Range Road (S.C.R. 545), approximately 1.14 mile east of Sussex Highway (Rt. 13). 911 Address: N/A. Tax Map Parcel: 131-15.00-51.00 (p/o).

Mr. Whitehouse advised the Commission that submitted into the record were the Applicant's Site Plan, the Applicant's Survey, a letter received from the DelDOT Service Level Evaluation Response, a letter from the Sussex County Engineering Department Utility Planning Division, and the Staff Analysis. Mr. Whitehouse stated that five public comment letters had been received on behalf of the Application.

The Commission found that Mr. Shawn Tucker, Esq. with Barnes & Thornburg, LLP spoke on behalf of the Applicant; that also present were Mr. Steve Gorski, Civil Engineer with Verdantas, LLC, and Mr. Tim Horner, Landscape Architect with Verdantas, LLC. Mr. Tucker stated that the total size of the parcel is approximately 93.66 acres; that the Conditional Use area is proposed to be 36.65 acres of the total acreage; that the advertisement did include the whole parcel acreage, however only a portion of the site is proposed for the use; that there will be no water supply or sewer supply needed for the proposed use, and neither supply is currently available to the site; that the site is located within an Investment Level 4 area; that there will be a fence, as required, around the entire facility, being at least seven feet in height; that there will be a Knox box for the lock on the gate; that all adjacent properties were notified by certified mail; that he and the Applicant have met with adjacent neighbors twice in the past month regarding the project; that there were modifications made to the plan as a result of those meetings, which address the concerns expressed by the adjacent neighbors, and the property is zoned AR-1 (Agricultural Residential). Mr. Tucker requested Mr. Steven Gorski, Civil Engineer with Verdantas, LLC to provide further information regarding the project.

Mr. Steve Gorski, P.E. with Verdantas, LLC spoke on behalf of the Application. Mr. Gorski stated he had prepared the landscape renderings for the project; that along the northside of the property, along Rifle Range Rd., the solar array setbacks vary from 70 ft. to 75 ft. in the northeast corner; that the setback is 20 ft. on the northwest corner; that from the east the minimum setback is 75 ft. and from the south the setback is roughly 350 ft.; that the distance from the road varies from 775 ft. to about 920 ft.; that the project does exceed the 100 ft. requirement from the street; that the project exceeds to the 50 ft. requirement from parcel boundaries; that there will be a seven foot fence surrounding the property; that there is a sign proposed to be located at the entrance of the solar project, containing all contact information as required; that the proposed sign will meet the maximum criteria set forth in Ordinance No. 2920, being no more than 32 sq. ft.; that there are wetlands located on the site; that the small pocket of wetlands, being a small swale, will not be disturbed, as the project is located 200 ft. away from the wetland area; that DelDOT's approval comments have been received; that the State Fire Marshal's office reviewed the original plan, which reflected the solar array to be located on the west side of the site, closer to the road; that the State Fire Marshal's Office had not yet reviewed the revised Site Plan currently being present to the Planning Commission; that all the elements of the previous approval as still in place, being a 14-ft. gravel road with a turn-around area and a Knox box on the gate; that they had pulled the solar arrays back from the road, to address some of the concerns from adjacent neighbors; that with the redesigned plan, the plan still met the criteria required by the State Fire Marshal's Office; that the solar array is located a minimum of 200 ft. from any dwelling not located on the property; that a Decommissioning Plan will be provided prior to applying for building permits, and they are willing to provide the Decommissioning Plan earlier should the Commission desire it.

Mr. Tim Horner, Landscape Architect with Verdantas, LLC spoke on behalf of the Application. Mr. Horner stated he had prepared the landscape plan for the project; that the plan provides a 25 ft. wide landscape buffer along the north and east sides of the property, located adjacent to the road right of way, as well as residential dwellings located to the north; that additionally, they added a 25 ft. landscape buffer to the east side adjacent to a residential dwelling; that they did not provide the buffer to the south and west; that the south side has a wooded area and wetlands, which will be protected and will remain; that to the west, there is an agricultural field with no residential dwellings; that due to this, they chose to leave the area as is, with native evergreen shrubs supplemented with deciduous understory trees; that they have 363 Evergreen trees; that these will be supplemented with 36 deciduous flowering trees to provide color; that they use native White Pines, American Hollies, Eastern Red Cedars, Eastern Redbuds, and Serviceberry to provide a variety of native trees and shrubs; that the proposed landscape does meet the intent and requirements of the Code; that they are in current discussions with the Cash Family, being adjacent neighbors to the site, regarding the landscaping, and they propose if adjacent neighbors would desire other types of plantings to be supplemented, they are willing to do that.

Mr. Tucker stated that the Applicant has no intention of increasing the number of solar panels from what is currently on the Site Plan; that this has been a previous concern of an adjacent neighbor; that the solar arrays will not be placed any closer to Rifle Range Rd. than what is shown on the plan; that the project was originally located closer to the road but was pulled back to address the community's concern, and the only caveat to this would be in the circumstance, they are required to by the Commission, County Council or some other agency.

Mr. Butler questioned the distance provided between the driveway and the solar panels.

Mr. Gorski stated they have proposed a 14 ft. wide gravel driveway.

Mr. Butler questioned if there was any possibility to extend the driveway to make a loop or turn-around on the property.

Mr. Gorski stated, and pointed out for the Commission, the proposed turn-around area provided, as it was required by the State Fire Marshal Office.

The Commission found that three people spoke in support, and no one spoke in opposition to the Application.

Mr. Edward Adams spoke in support of the Application. Mr. Adams stated that he and his mother are the current landowners of the property; that his mother is currently in her 80s; that it is his job to monetize the property the best he can for her, and that the proposed use will allow her to keep as much farmland as she can.

Mr. David Gibbons spoke in support of the Application. Mr. Gibbons stated that he was in support of the project as it will help the green energy survive.

Mr. Randall Cash spoke in support but presented with questions about the Application. Mr. Cash stated he and his wife reside approximately 250 ft. from the solar arrays; that upon first hearing about the proposed use, he was concerned; that he and his wife's greatest concerns were their future quality

of life, and their health; that the Applicant has been very attentive to their expressed concerns; that the Applicant has assured them that there will be no lights in the evenings that may interrupt their sleep; that there would be no motors near the their house to create noise; that the Applicant has ensured them that they will make the buffer as full as possible to screen any negative visual impact; that in regards to their health concerns, they have found solace in the County Code Ordinance 2920, which ensures that the regulations will promote and protect the health and safety of the residents of Sussex County; that they were assured at a community meeting that there was no cadmium panels; that the Applicant provided them with handouts ensure them they do not need to worry about toxicity or electromagnetic forcefields; that with the Applicant's word and information, as well as the County Code requirements he has no objection to the Application; that he does keep bees on his property; that this was discussed with the Applicant, and he was told the groundcover for the solar arrays will be native pollinating plants which will provide a food source for his bees.

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

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

Mr. Robertson advised the Commission he had prepared a motion, which he read into the record per Mr. Butler's request.

Mr. Butler moved that the Commission recommend approval of C/U 2388 Rifle Range Road Solar, LLC for a solar farm in the AR-1 District, based on the record made during the public hearing and for the following reasons:

1. The proposed facility is a public utility use under the Sussex County Zoning Code, and it meets the purposes of a Conditional Use because it has a public or semi-public character that is essential and desirable for the general convenience of and welfare of Sussex County residents.
2. This is an adaptive use of farmland that will preserve it from more intensive development. The solar array will be located on approximately 36.65 acres of a larger 93-acre parcel.
3. The proposed facility promotes Goal 7.3 of the Sussex County Comprehensive Plan, which encourages the use of renewable energy options such as solar arrays. There was testimony that this solar array would benefit residential, business, and municipal subscribers with lower power costs.
4. The proposed solar array is set back approximately 775 feet from Rifle Range Road, and the land is designated as being within the "Low-Density Area" according to Sussex County's Future Land Use Map. This is an appropriate location for this solar array.
5. This Application generally complies with Ordinance No. 2920 regarding solar arrays. Therefore, specific conditions regarding its operation and screening are not necessary.
6. The solar array is located in an area that primarily consists of agricultural land. With the conditions imposed by the operation of Ordinance No. 2920 including separation distances and buffering, the proposed use will not have any adverse impact on the surrounding property.
7. The proposed solar generation facility will not result in any noticeable increase in traffic on area roadways. There are no regular employees at the site, only periodic visits for inspections, maintenance, or repair of the solar panels.
8. Based on the record there is no significant noise, glare, dust, or odor that will be generated by the facility.
9. The proposed use provides a renewable energy source that is a benefit to the residents and businesses of Sussex County.

10. Several people spoke in support of the Application and there was no opposition to this Application.
11. This recommendation is subject to the conditions set forth in Ordinance No. 2920 and the following additional conditions:
 - A. The use shall be for ground-mounted solar arrays. No other types of electric generation shall be permitted at the site. The arrays shall be set back at least 775 feet from Rifle Range Road.
 - B. The Final Site Plan shall clearly show the limits of the Conditional Use area for this solar array, as well as the remaining acreage that is not part of the Conditional Use.
 - C. All required fencing shall include interwoven screening. The fence location and type of screening shall be shown on the Final Site Plan.
 - D. Any lighting at the facility shall only consist of perimeter lighting needed for security purposes. Any lighting shall be downward screened so that it does not shine on neighboring properties or roadways.
 - E. One unlit sign, not to exceed 32 square feet in size, shall be permitted. The sign shall identify the operator of the solar farm and shall provide contact information in case of an emergency.
 - F. The location of all transformers or similar equipment or structures shall be shown on the Final Site Plan.
 - G. Stormwater management and erosion and sedimentation control facilities shall be constructed in accordance with all applicable State and County requirements. These facilities shall be operated using Best Management Practices.
 - H. The Final Site Plan shall include a Decommissioning Plan that includes a financial security to ensure that funds are available for decommissioning and removal of the solar farm in its entirety throughout the life of the Conditional Use.
 - I. The Final Site Plan shall contain a Landscape Plan for all of the buffer areas as stated during the public hearings.
 - J. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning & Zoning Commission.

Motion by Mr. Butler, seconded by Mr. Collins and carried unanimously to recommend approval of C/U 2388 Rifle Range Road Solar, LLC for the reasons and the conditions stated in the motion. Motion carried 4-0.

Vote by roll call: Mr. Mears – yea, Mr. Collins – yea, Mr. Butler – yea, Chairman Wheatley – yea.

PLANNING & ZONING COMMISSION

ROBERT C. WHEATLEY, CHAIRMAN
HOLLY J. WINGATE, VICE-CHAIRMAN
J. BRUCE MEARS
GREGORY SCOTT COLLINS
BRIAN BUTLER



Sussex County

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JAMIE WHITEHOUSE, AICP MRTPI
PLANNING & ZONING DIRECTOR

PLANNING AND ZONING AND COUNTY COUNCIL INFORMATION SHEET

Planning Commission Public Hearing Date: October 26th, 2023

Application: CU 2388 2388 Rifle Range Road Solar, LLC

Applicant: 2388 Rifle Range Road Solar, LLC
47 Bow Street
Portsmouth, NH 03801

Owner: Joan R Cottee Adams, Edward Russell Adams,
Cottee Adams-Russell Family Trust
2111 Othoson Avenue
Wilmington, DE 19808

Site Location: Lying on the south side of Rifle Range Road (S.C.R. 545) approximately
(1.14) miles east of Sussex Highway (Route 13).

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

Proposed Use: Solar Farm consisting of photovoltaic electric generation facility on a
(42.74) acre +/- portion of the parcel.

Comprehensive Land
Use Plan Reference: Low Density Area

Councilmanic
District: Ms. Green

School District: Woodbridge School District

Fire District: Bridgeville Fire Department

Sewer: N/A

Water: N/A

Site Area: 93.66 acres +/- (p/o 42.74 acres +/-)

Tax Map ID: 131-15.00-51.00



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Sussex County

DELAWARE
sussexcountye.gov

Memorandum

To: Sussex County Planning Commission Members
From: Mr. Michael Lowrey, Planner III
CC: Mr. Vince Robertson, Assistant County Attorney and Applicant
Date: September 25th, 2023
RE: Staff Analysis for C/U 2388 Rifle Range Road Solar, LLC

This memo is to provide background and analysis for the Planning Commission to consider as a part of Application C/U 2388 Rifle Range Road Solar, LLC to be reviewed during the October 26th, 2023 Planning Commission Meeting. This analysis should be included in the record of this application and is subject to comments and information that may be presented during the public hearing.

Please note that the following staff analysis is for informational purposes only and does not prejudice any decision that the Sussex County Planning & Zoning Commission or Sussex County Council may wish to make as part of any Application submitted to the Department.

Tax Parcel ID(s): 131-15.00-51.00

Proposal: The request is for a Conditional Use for Tax Parcel 131-15.00-51.00 to allow for a solar array facility. The site is lying on the south side of Rifle Range Road (S.C.R. 545) approximately (1.14) miles east of Sussex Highway (Route 13). The improvements are proposed on a (42.74) acre portion of the parcel which is comprised of a total of 93.66 acres +/-

Zoning: The property is zoned Agricultural Residential (AR-1) District. The parcels immediately adjacent to the north, south, east, and west of the subject property are all zoned Agricultural Residential (AR-1) District.

Future Land Use Map Designation w/in Comprehensive Plan: Low Density Area

Applicability to Comprehensive Plan: The 2018 Sussex County Comprehensive Plan Update (Comprehensive Plan) provides a framework of how land is to be developed. As part of the Comprehensive Plan, a Future Land Use Map is included to help determine how land should be zoned to ensure responsible development. The Future Land Use map in the plan indicates that the subject property is designated as a Rural Area and has a land use categorization of "Low Density Area." All properties surrounding the subject site contain the Future Land Use Map designation of "Low Density Area." As outlined in the 2018 Sussex County Comprehensive Plan, Low Density Areas are areas that the County envisions as "a predominantly rural landscape where farming co-exists with appropriate residential uses and permanently preserved property" (Sussex County Comprehensive Plan, 4-18). The Plan also notes that commercial uses "should be limited in their location, size and hours of operation" and "more intense commercial uses should be avoided" and commercial uses "may be appropriate depending on surrounding uses" (Sussex County Comprehensive Plan, 4-19).



Further Site Considerations:

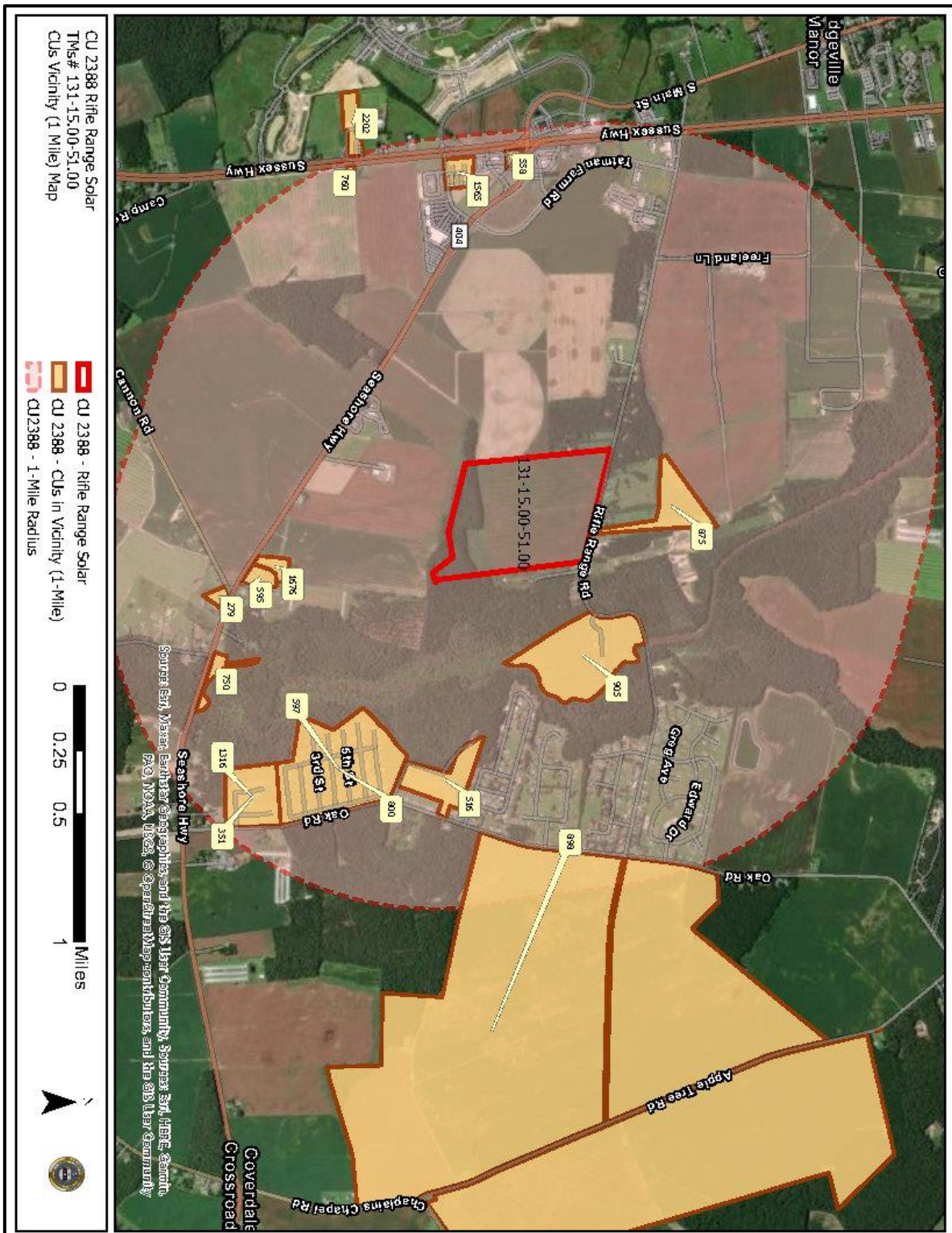
- **Density:** N/A
- **Open Space Provisions:** N/A
- **Agricultural Areas:** The site is within the vicinity of active agricultural lands. Several Agricultural Preservation District Easements are present in the vicinity across Rifle Range Road extending to the north.
- **Interconnectivity:** N/A
- **Transportation Improvement District (TID):** N/A
- **Forested Areas:** The portion of parcel proposed to be improved includes existing forest at the rear and southern portions of the Parcel. The Plan shows no tree removal in this area with the forested portions of the Parcel to remain forested.
- **Wetlands Buffers/Waterways:** N/A
- **Other Site Considerations (ie: Flood Zones, Tax Ditches, Groundwater Recharge Potential, etc.):** The property is located within Flood Zone AE across a small portion of at the southern boundary of the Parcel. The Parcel is within areas of “Good” and “Fair” Groundwater Recharge Potential. The site is not located in a Wellhead Protection Area.

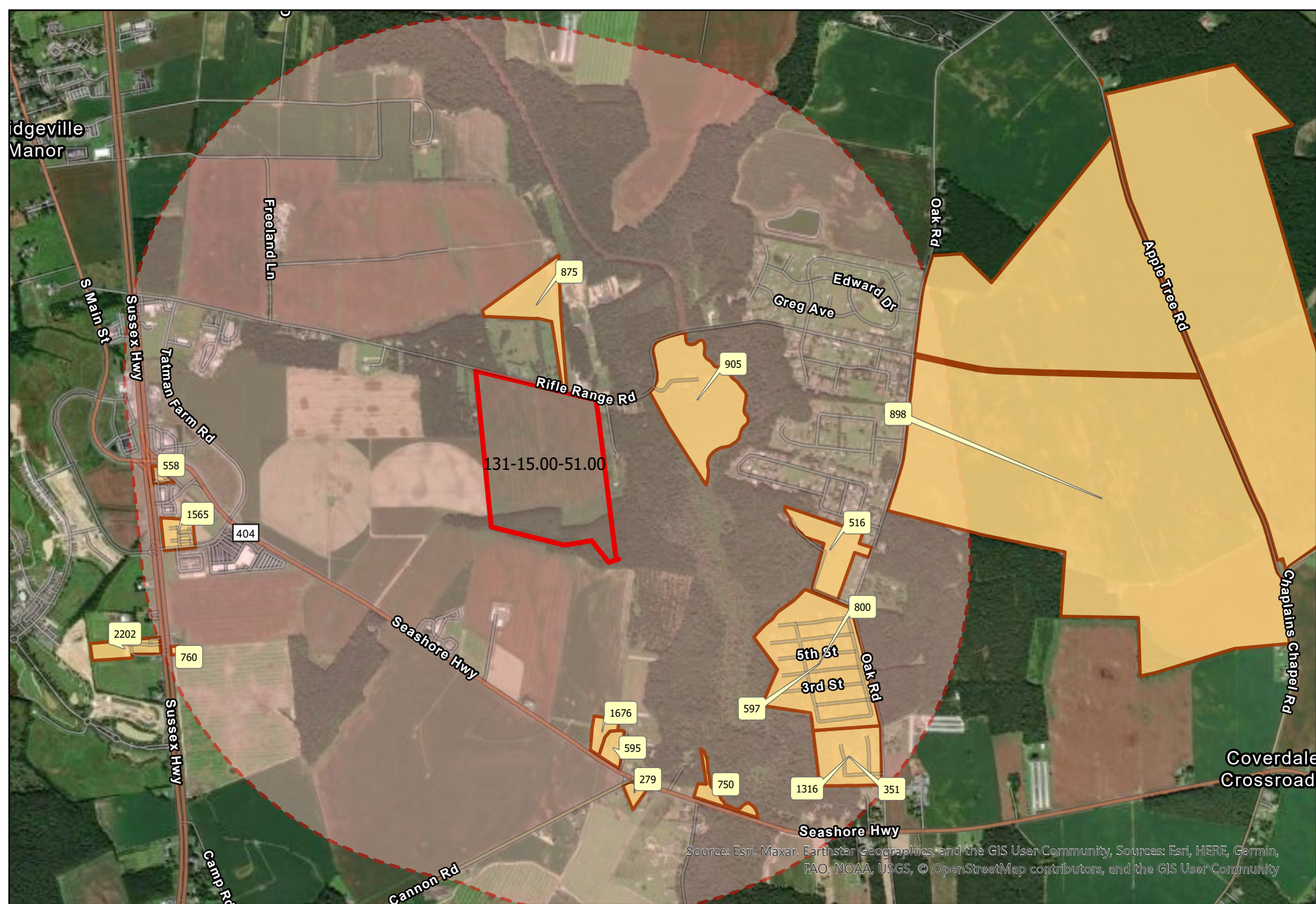
Based on the analysis of the land use, surrounding zoning and uses, a Conditional Use Application to allow for a solar facility, subject to considerations of scale and impact, could be considered as being consistent with the land use, area zoning, and surrounding uses.

Existing Conditional Uses within the Vicinity of the Subject Site: A Data Table and Supplemental Map have been supplied which provide further background regarding the approval status of Applications in the area, including the location of all other Conditional Use Applications that are less than 1 mile distance from the subject site.

Conditional Use Applications (Within a 1-mile radius of the subject site)						
Application Number CU #	Application Name	Zoning District	Proposed Use	CC Decision	CC Decision Date	Ordinance Number
122	Calloway, Farnell & Moore Inc	AR-1	Sales Office	Approved	4/24/1973	N/A
279	Donna's Candle Shop	AR-1	Candle Shop	Approved	7/1/1975	N/A
351	Earth Movers Inc	GR	Borrow Pitt	Approved	6/1/1976	N/A
516	Darl Chaffinch	AR-1	Borrow Pit	Approved	1/30/1979	N/A
558	James & Gretta Faye Willey	AR-1	Antique & New Furnishing Sales	Approved	12/18/1979	N/A
595	Carla Tucker	AR-1	Produce Stand & Bar-Be-Que Pit	Approved	9/16/1980	N/A
597	Junior E. Armiger	GR	Manufactured Home Park	Approved	N/A	N/A
750	Richard Huey	AR-1	Tv Repair Shop & Sales	Approved	9/13/1983	470
760	John C. Street	AR-1	Retail Produce Stand	Approved	11/8/1983	591
800	Junior E. Armiger	GR	Extension To CU 597	Approved	7/31/1984	1357

			Mobile Home Park			
875	Wheatley Farms, Inc.	AR-1	Borrow Pit	Approved	11/24/1987	470
898	Dover Radio Page, Inc.	AR-1	400 Ft Radio Tower	Approved	2/14/1989	560
905	Cedars Academy	AR-1	Private Boarding School	Approved	6/13/1989	591
1316	Walker's Mill LLC	GR	Mobile Home Park	Approved	1/11/2000	1357
1565	State of Delaware/Facilities Management	C-1	Helipad	Approved	5/18/2004	1693
1676	Peter J. Goebel	AR-1	Craft Sales	Approved	1/9/2007	1884
2202	John Passwaters	AR-1	Landscaping Business	Approved	2/4/2020	2705



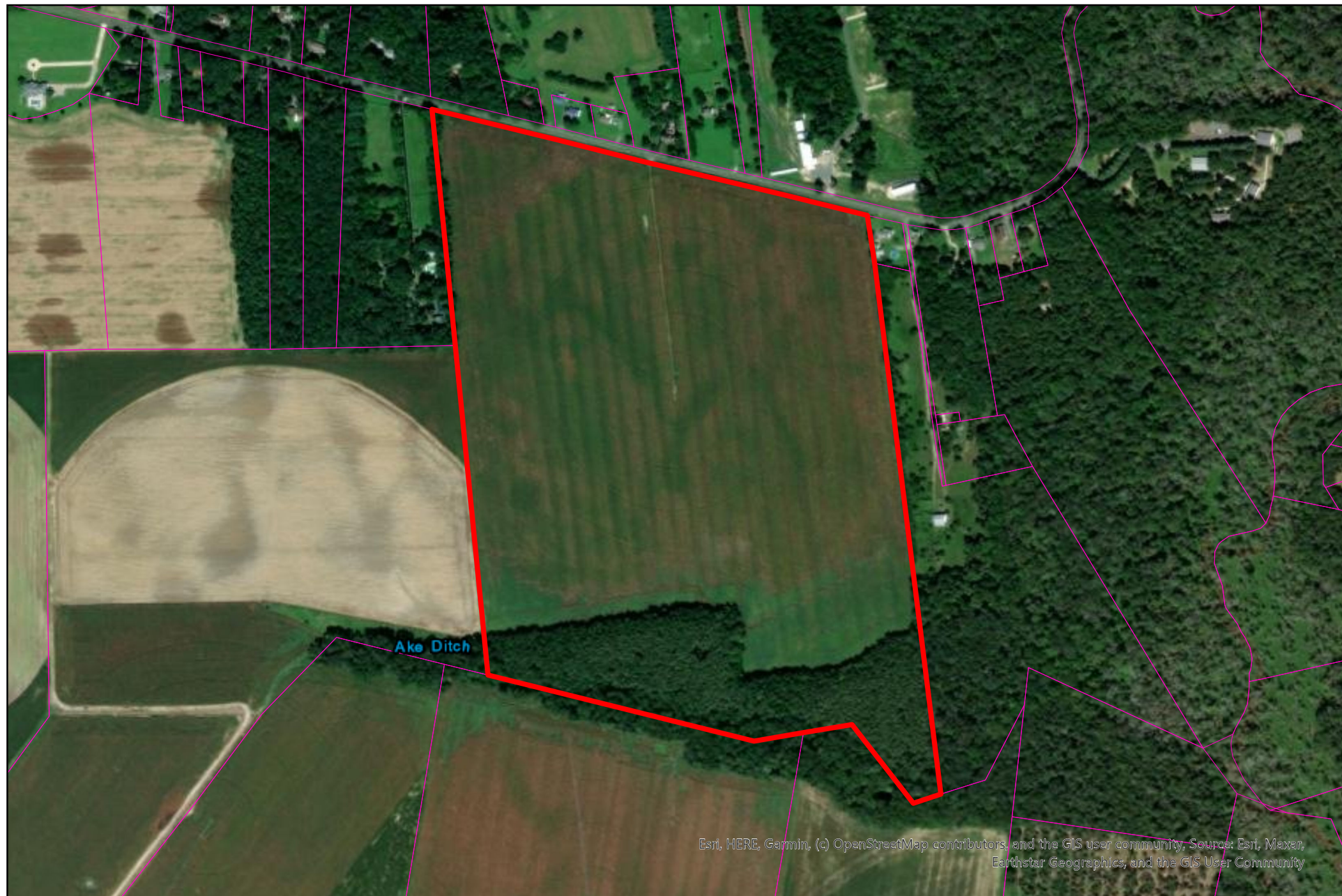


CU 2388 Rifle Range Solar
 TMs# 131-15.00-51.00
 CUs Vicinity (1 Mile) Map

- CU 2388 - Rifle Range Solar
- CU 2388 - CUs in Vicinity (1-Mile)
- CU2388 - 1-Mile Radius

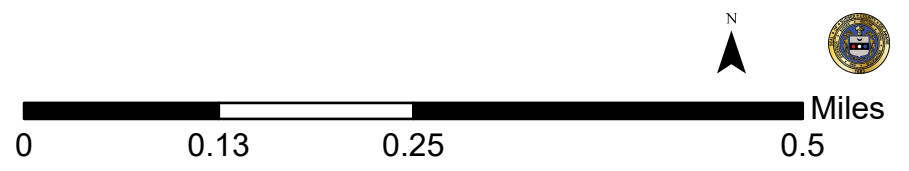
0 0.25 0.5 1 Miles

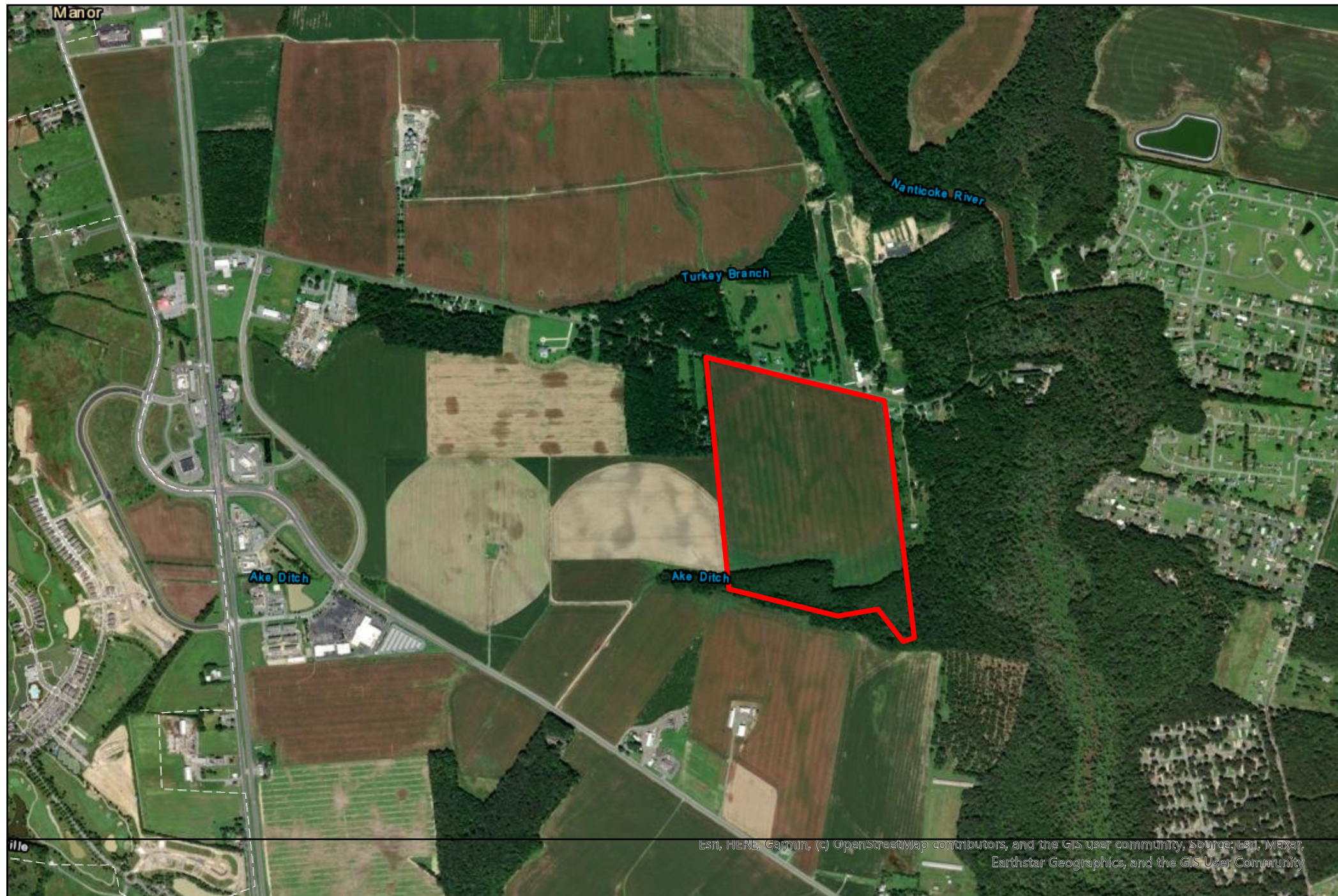




CU 2388 Rifle Range Road Solar, LLC
TM# 131-15.00-51.00
Aerial Map


 CU 2388 - TM# 131-15.00-51.00



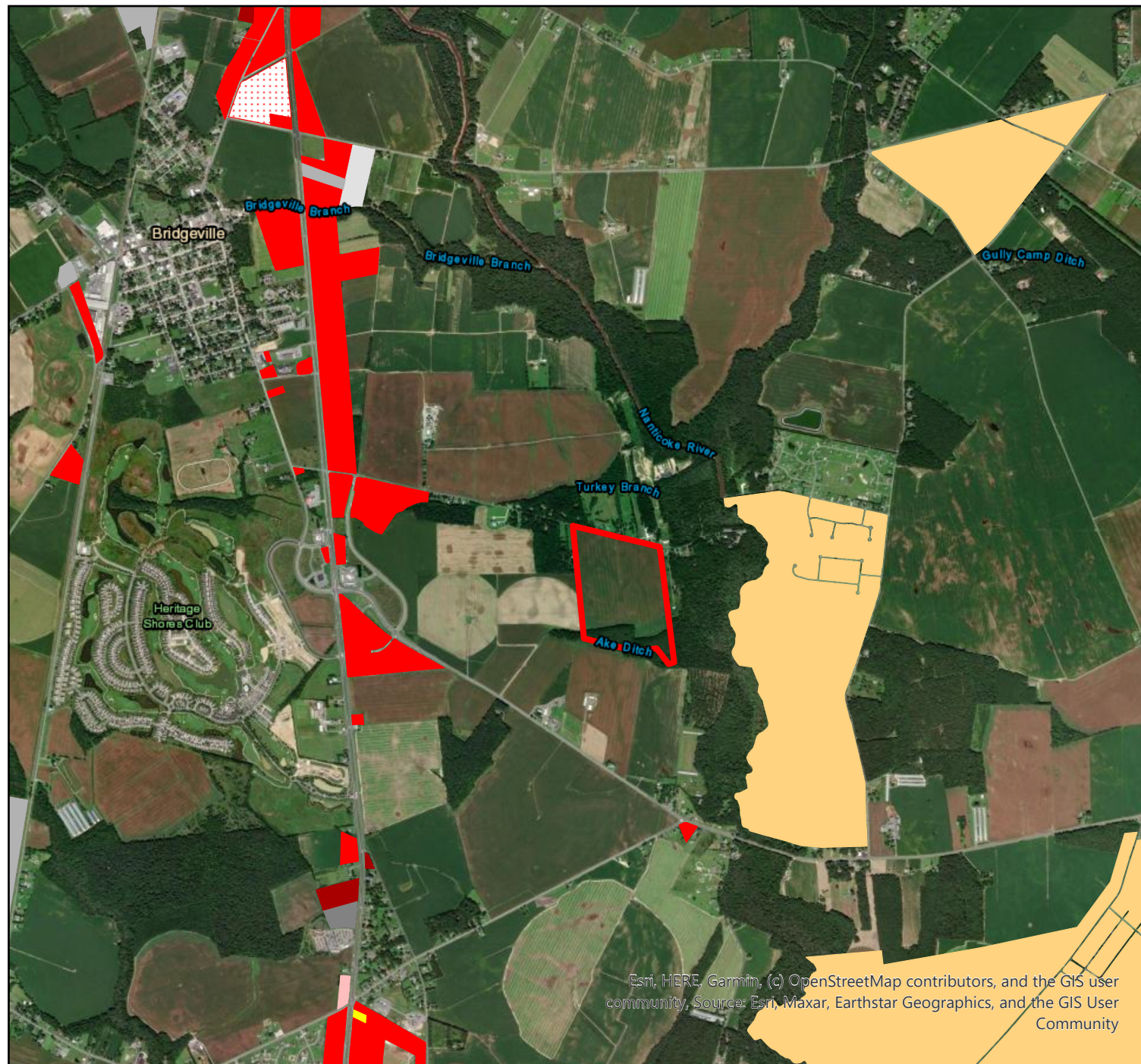


CU 2388 Rifle Range Road Solar, LLC
TM# 131-15.00-51.00
Aerial Map

 CU 2388 - TM# 131-15.00-51.00

 Miles
0 0.15 0.3 0.6





Zoning

- Agricultural Residential - AR-1
- Agricultural Residential - AR-2
- Medium Residential - MR
- General Residential - GR
- High Density Residential - HR-1
- High Density Residential - HR-2
- Vacation, Retire, Resident - VRP
- Neighborhood Business - B-1
- Neighborhood Business - B-2
- Business Research - B-3
- General Commercial - C-1
- General Commercial - C-2
- General Commercial - C-3
- General Commercial - C-4
- General Commercial - C-5
- Commercial Residential - CR-1
- Institutional - I-1
- Marine - M
- Limited Industrial - LI-1
- Light Industrial - LI-2
- Heavy Industrial - HI-1

CU 2388 Rifle Range Road Solar, LLC
 TM# 131-15.00-51.00
 Zoning Map

CU 2388 - TM# 131-15.00-51.00



0 0.5 1 2 Miles



Introduced: 11/15/22

Council District 2: Mrs. Green

Tax I.D. No.: 131-15.00-51.00

911 Addresses: N/A

ORDINANCE NO. ____

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A SOLAR FARM ON A 29.29 ACRE, PORTION, MORE OR LESS, OF A CERTAIN PARCEL OF LAND LYING AND BEING IN NORTHWEST FORK HUNDRED, SUSSEX COUNTY, CONTAINING 93.66 ACRES, MORE OR LESS

WHEREAS, on the 1st of July 2022, a conditional use application, denominated Conditional Use No. 2388 was filed on behalf of Rifle Range Road Solar, LLC; and

WHEREAS, on the ____ day of _____ 2023, a public hearing was held, after notice, before the Planning and Zoning Commission of Sussex County and said Planning and Zoning Commission recommended that Conditional Use No. 2388 be _____; and

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

NOW, THEREFORE, THE COUNTY OF SUSSEX HEREBY ORDAINS:

Section 1. That Chapter 115, Article IV, Subsection 115-22, Code of Sussex County, be amended by adding the designation of Conditional Use No. 2388 as it applies to the property hereinafter described.

Section 2. The subject property is described as follows:

ALL that certain tract, piece, or parcel of land, lying and being situate in Northwest Fork Hundred, Sussex County, Delaware, and lying on the south side of Rifle Range Road (S.C.R. 545), approximately 1.14 mile east of Sussex Highway (Rt. 13), and being more particularly described in the attached legal description prepared by Sergovic, Carmean, Weidman, McCartney & Owens P.A., containing 93.66 acres, more or less.

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



Memorandum

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

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

CC: Everett Moore, County Attorney

Date: December 7, 2023

RE: County Council Report for C/U 2390 filed on behalf of Taylor Mill Road Solar, LLC

The Planning and Zoning Department received an application (C/U 2390 filed on behalf of Taylor Mill Road Solar, LLC) for a solar farm to be located at Tax Parcel 232-7.00-3.00. The property is located on the south side of Taylor Mill Road (S.C.R. 467B), the west side of Fire Tower Road (S.C.R. 479), and the east side of County Seat Highway (Rt. 9), at the intersection of County Seat Highway (Rt. 9) and Fire Tower Road (S.C.R. 467)). The parcel size is 79.59 acres +/-.

The Planning & Zoning Commission held a Public Hearing on the application on October 26, 2023. At the meeting of October 26, 2023, the Planning & Zoning Commission recommended approval of the application for the 9 reasons and subject to the 10 recommended conditions as outlined within the motion (copied below).

Below are the minutes from the Planning & Zoning Commission meeting of October 26, 2023.

Minutes of the October 26, 2023, Planning & Zoning Commission Meeting

In relation to the following six Conditional Use applications regarding solar array uses, Chairman Wheatley stated, *"Sussex County is fully aware of the benefits and operation of these community solar facilities at this point having seen and acted on so many of them. For that reason, the Commission will take that into account and presenters do not need to establish that. Instead, please focus on your specific property, the surrounding area, and how your proposed solar facility may impact the surrounding area. The Commission will also take into account all of the written information that is already in the record on each of these applications."*

C/U 2390 Taylor Mill Road Solar 1, LLC

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1



AGRICULTURAL RESIDENTIAL DISTRICT FOR A SOLAR FARM TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BROAD CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 79.59 ACRES, MORE OR LESS. The property is lying on the south side of Taylor Mill Road (S.C.R. 467B), the west side of Fire Tower Road (S.C.R. 479), and the east side of County Seat Highway (Rt. 9), at the intersection of County Seat Highway (Rt. 9) and Fire Tower Road (S.C.R. 467). 911 Address: N/A. Tax Map Parcel: 232-7.00-3.00 (p/o).

Mr. Whitehouse advised the Commission that submitted into the record were the Applicant's Site Plan, the Applicant's Exhibits, the DelDOT Service Level Evaluation Response, a letter received from the Sussex County Engineering Department Utility Planning Division, and the Staff Analysis. Mr. Whitehouse stated one letter in support had been received for the Application.

The Commission found that Ms. Claire Habel, with New Leaf Energy, spoke on behalf of the Applicant; that also present was Mr. Shawn Brandt, P.E. with New Leaf Energy, and Mr. Richard Roseberry, P.E. with Colliers Engineering & Design. Ms. Habel stated that in addition to Mr. Brandt and herself, Mr. Jett Dickey, P.E. with New Leaf Energy, had also played an integral part in the proposed Application, however, he unfortunately could not be present; that New Leaf Energy is a new name, however is not a new company; that New Leaf Energy stems from a company called Borrego Solar, who has been in business for 40 years; that New Leaf Energy split off from the company to be their own standalone development company; that New Leaf has tons of experience; that they have staff from all the same operations, and the only change is a new name, which does not mean they are new to the business.

Mr. Habel stated that the site is located outside of Laurel, across the crossroads of Rt. 9 and Taylor Mill Rd.; that Fire Town Rd. also encompasses the lot; that the site is located adjacent to the Laurel Fire Department Station Sycamore No. 2; that surrounding the site are mostly agricultural uses, such as chicken houses and farming, with some residential homes; that the property is owned by the Givens family; that it has been in their family for over 50 years; that the property is currently owned by Mr. Minos Givens, who did provide a letter of support and his motivation for wanting to lease his land for the use of solar; that the main points of interest for Mr. Givens was securing long term income for generations to come, and keeping the land in the Givens name, while still earning income, without the need for some other kind of development; that the site is just shy of 80 acres; that they are proposing to utilize just short of 20 acres of the entire site for the solar facility; that currently the land is being used for parking; that they intend to keep farming on the remaining parcel; that the proposed site is particularly beneficial for the use of solar; that not only is solar a great neighbor, as the use is quiet, it pays taxes and maintain good lawn maintenance; that this site is located adjacent to a fire house; that the site does have three phase powerlines located nearby, which is a necessity for the proposed project's size; that the project will connect to the grid and transmit the energy to a substation; that the substation is also located nearby, being only two miles away; that there are no wetlands located on the site; that there were no existing conditions they needed to plan or design around; that the site is flat, dry and a perfect location for solar; that they had conducted neighbor engagement, where they reached out to 16 adjacent neighbors; that these neighbors received written notice via FedEx; that she additionally made phone calls to those neighbors as well; that she was about to verbally speak to three neighbors, with one of the neighbors being Mr. Jeff Hill – Laurel Fire Chief; that the two residential neighbors she spoke with live along Taylor Mill Rd. with housing facing the proposed project; that both residential neighbors did not have any negative comments regarding the proposed project, and one of the neighbors submitted a letter of support, as they were pleased they had incorporated a

vegetative buffer allowing them a more pleasant view from their windows. Ms. Habel requested Mr. Brandt to speak on the project design and compliance with the Ordinance.

Mr. Shawn Brandt, P.E. with New Leaf Energy spoke on behalf of the Application. Mr. Brandt stated the Conditional Use application was submitted in July 2022; that the project layout had changed some to accommodate compliance to the recently adopted Ordinance; that they have ensured all setback requirements have been met in the Ordinance; that they have added a vegetated buffer to completely surround the project; that they have been in communication with DelDOT; that they did receive DelDOT's Service Level Evaluation Response; that recently DelDOT questioned why the project entrance was proposed from Rt. 9; that they are in discussions to move the entrance to be off Fire Tower Rd., as it is the less busy road; that this relocation would be an easy design fix, however the current plan does not yet reflect that change as they are still in discussions with DelDOT, and the plan design meets all the buffer requirements, as well as the roadway, fence and lock requirements.

Ms. Habel presented to the Commission visual renderings, from various angles, to showcase what the viewshed might look like with the placement of the proposed solar facility and provided contact information for the Commission and the public's use.

Mr. Butler questioned the distance from the driveway to the solar arrays and if the entrance gate would have a knox box for emergency personnel.

Ms. Habel stated a knox box would be installed; that there would be 30 ft. between the driveway and the solar panels, and the plan had not yet been submitted to the State Fire Marshal's Office.

Mr. Robertson questioned if the remainder of the parcel would be farmed and if the point of connection would be with Delmarva Power.

Ms. Habel stated they intended to keep some agricultural activity on the remainder of the parcel, which is the reason they designed the project to be tucked back in a corner of the site and the point of connection will be with Delmarva Power.

The Commission found that no one wished to speak in support of, and two people wished to speak in opposition to the Application.

Mr. Ronald Conaway spoke in opposition to the Application with concerns regarding runoff, chemical pollution from the runoff, the potential of an increase in the number of solar arrays in the future, and a potential decrease in his property value, and he questioned how the Application would benefit him.

Ms. Habel stated the project could benefit the surrounding residents; that the project is intended to be part of Delmarva Power's Community Solar Program; that the Community Solar Program is designed to increase access to clean energy and to provide cost savings to those who wish to subscribe to the program; that this program does require a customer to register or subscribe to a community solar program, at no additional cost, to receive cost savings; that they estimate about 10% cost savings on the bill; that there are other utilities that have green programs where one pays an additional fee per month to say that their power comes from green energy; that the proposed project's program is not like those, as the program is subscribing to a power that is from a clean energy source and the public are welcome to contact them regarding subscription or with questions.

Mr. Rick Roseberry, P.E. with Colliers Engineering & Design stated there would be no mass grading performed on the property, and that the site would have a meadow mix to provide better ground cover, which would provide less runoff.

Mr. Shawn Donaway spoke in opposition to the Application with concerns regarding noise, the impact of his view, safety in relation to the location of the project, and the presence of bald eagles on the site.

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

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

Mr. Robertson stated he had prepared a motion, which he read into the record per Mr. Mears' request.

Mr. Mears moved that the Commission recommend approval of C/U 2390 Taylor Mill Road Solar, LLC for a solar farm in the AR-1 District based on the record made during the public hearing and for the following reasons:

1. The proposed facility is a public utility use under the Sussex County Zoning Code, and it meets the purposes of a Conditional Use because it has a public or semi-public character that is essential and desirable for the general convenience of and welfare of Sussex County residents.
2. This is an adaptive use of farmland that will preserve it from more intensive development. The solar array will be located on approximately 18.64 acres of a larger 79.5-acre parcel.
3. The proposed facility promotes Goal 7.3 of the Sussex County Comprehensive Plan, which encourages the use of renewable energy options such as solar arrays. There was testimony that this solar array would benefit residential, business, and municipal subscribers with lower power costs.
4. The proposed solar array is located outside of the Town of Laurel, next to one of Laurel's Fire Stations and agricultural uses. The land is designated as being within the "Low-Density Area" according to Sussex County's Future Land Use Map. This is an appropriate location for this solar array.
5. This Application generally complies with Ordinance No. 2920 regarding solar arrays. Therefore, specific conditions regarding its operation and screening are not necessary.
6. The solar array is located in an area that primarily consists of agricultural land. With the conditions imposed by the operation of Ordinance No. 2920 including separation distances and buffering, the proposed use will not have any adverse impact on the surrounding property.
7. The proposed solar generation facility will not result in any noticeable increase in traffic on area roadways. There are no regular employees at the site, only periodic visits for inspections, maintenance, or repair of the solar panels.
8. Based on the record there is no significant noise, glare, dust, or odor that will be generated by the facility.
9. The proposed use provides a renewable energy source that is a benefit to the residents and businesses of Sussex County.
10. This recommendation is subject to the conditions set forth in Ordinance No. 2920 and the following additional conditions:
 - A. The use shall be for ground-mounted solar arrays. No other types of electric generation shall be permitted at the site.
 - B. The Final Site Plan shall clearly show the limits of the Conditional Use area for this

solar array, as well as the remaining acreage that is not part of the Conditional Use.

- C. All required fencing shall include interwoven screening. The fence location and type of screening shall be shown on the Final Site Plan.
- D. Any lighting at the facility shall only consist of perimeter lighting needed for security purposes. Any lighting shall be downward screened so that it does not shine on neighboring properties or roadways.
- E. One unlit sign, not to exceed 32 square feet in size, shall be permitted. The sign shall identify the operator of the solar farm and shall provide contact information in case of an emergency.
- F. The location of all transformers or similar equipment or structures shall be shown on the Final Site Plan.
- G. Stormwater management and erosion and sedimentation control facilities shall be constructed in accordance with all applicable State and County requirements. These facilities shall be operated using Best Management Practices.
- H. No chemicals or herbicides shall be applied to the land where the solar arrays will be located.
- I. The Final Site Plan shall include a Decommissioning Plan that includes a financial security to ensure that funds are available for decommissioning and removal of the solar farm in its entirety throughout the life of the Conditional Use.
- J. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning & Zoning Commission.

Motion by Mr. Mears, seconded by Mr. Collins and carried unanimously to recommend approval for C/U 2390 Taylor Mill Road Solar 1, LLC for the reasons and conditions stated in the motion. Motion carried 4-0.

Vote by roll call: Mr. Mears – yea, Mr. Collins – yea, Mr. Butler – yea, Chairman Wheatley – yea.

PLANNING & ZONING COMMISSION

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



Sussex County

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

PLANNING AND ZONING AND COUNTY COUNCIL INFORMATION SHEET

Planning Commission Public Hearing Date: October 26th, 2023

Application: CU 2390 Taylor Mill Road Solar 1, LLC

Applicant: Taylor Mill Road Solar 1, LLC
55 Technology Drive, Suite 102
Lowell, MA 01851

Owner: Minos Givens
8266 93rd Ave.
Vero Beach, FL 32967

Site Location: Located on the southeast corner of the intersection of Taylor Mill Road
(S.C.R. 467) and County Seat Highway (Rt. 9)

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

Proposed Use: 20.23-Acre Solar Farm

Comprehensive Land
Use Plan Reference: Low Density

Councilmanic
District: Mr. Vincent

School District: Laurel School District

Fire District: Laurel Fire Department

Sewer: None

Water: None

Site Area: 79.59 acres +/- (20.23-acre portion being proposed for use)

Tax Map ID.: 232-7.00-3.00





Memorandum

To: Sussex County Planning and Zoning Commission Members
From: Christin Scott, Planner II
CC: Mr. Vince Robertson, Assistant County Attorney and Applicant
Date: October 19, 2023
RE: Staff Analysis for CU 2390 Taylor Mill Road Solar 1, LLC

The purpose of this memo is to provide background and analysis for the Planning and Zoning Commission to consider as a part of Application CU 2390 (Taylor Mill Road Solar 1, LLC) to be reviewed during the October 26th, 2023, Planning and Zoning Commission Meeting. This analysis should be included in the record of this application and is subject to comments and information that may be presented during the public hearing.

The request is for a Conditional Use for Tax Parcel: 232-7.00-3.00 to allow for a solar array. The property is lying on the south side of Taylor Mill Road (S.C.R. 467), the west side of Fire Tower Road (S.C.R. 479), and the east side of County Seat Highway (Rt. 9) at the intersection of County Seat Highway (Rt. 9) and Fire Tower Road (S.C.R. 467). The applicant is applying 20.23-acres +/- out of 79.59-acres +/- to be included in the Conditional Use area.

Comprehensive Plan Analysis

The 2018 Sussex County Comprehensive Plan Update (Comprehensive Plan) provides a framework of how land is to be developed. As part of the Comprehensive Plan, a Future Land Use Map is included to help determine how land should be zoned to ensure responsible development. The Future Land Use Map in the plan indicates that the parcel has a designation of "Low Density." All adjoining parcels to the north, south, and west also have a Future Land Use Map designation of "Low Density." Adjoining properties to the west have a Future Land Use Map designation of "Developing Area."

As outlined in the 2018 Sussex County Comprehensive Plan, Low Density Areas are areas that the County envisions as "a predominantly rural landscape where farming co-exists with appropriate residential uses and permanently preserved property" (Sussex County Comprehensive Plan, 4-18). The Plan also notes that commercial uses "should be limited in their location, size and hours of operation" and "more intense commercial uses should be avoided" and commercial uses "may be appropriate depending on surrounding uses" (Sussex County Comprehensive Plan, 4-19).

Zoning Information

The subject property is zoned Agricultural Residential (AR-1) District. All adjacent properties to the north, south, east, and west of the subject parcels are also zoned Agricultural Residential (AR-1) District.



Existing Conditional Uses within the Vicinity of the Subject Property

Although there have been multiple applications in this area, since 2011, there has been one (1) Conditional Use applications within a one (1) mile radius of the Application Site.

CU	Applicant	Proposed Use	CC Decision Date	Ordinance No.
1879	Laurel Fire Dept., Inc.	Fire Substation		

Based on the analysis provided, the Conditional Use to allow for a solar array in this location could be considered as being consistent with the surrounding land use, zoning, and uses, subject to considerations of scale and impact.



Sussex County



PIN:	232-7.00-3.00
Owner Name	GIVENS MINOS E & NORMA C
Book	0
Mailing Address	8266 93RD AVE
City	VERO BEACH
State	FL
Description	SE LAUREL TO
Description 2	GEORGETOWN
Description 3	N/A
Land Code	

- Municipal Boundaries

Tax Parcels

Streets

County Boundaries

Tax Ditch Segments

Tax Ditch Channel

DeIDOT Maintained

HOA Maintained

Pipe - DeIDOT

Pipe - Tax Ditch

Pipe - Private
- Pond Feature

Special Access ROW

Extent of Right-of-Way

World Imagery

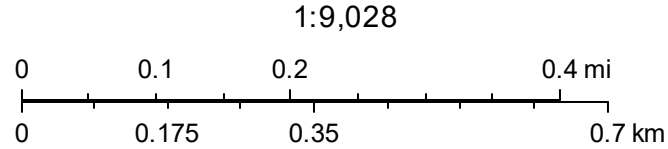
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High Resolution 60cm Imagery

High Resolution 30cm Imagery

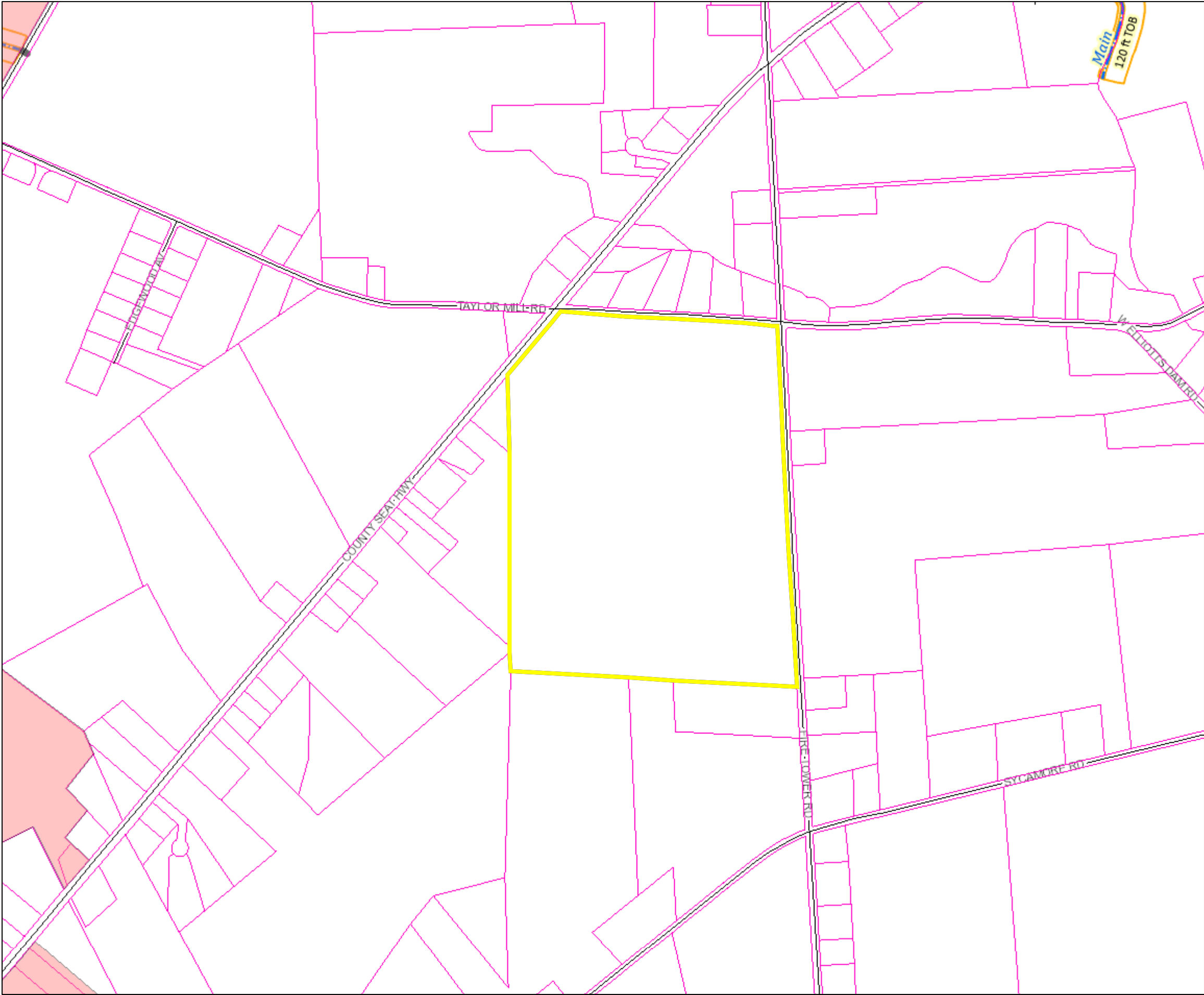
Citations

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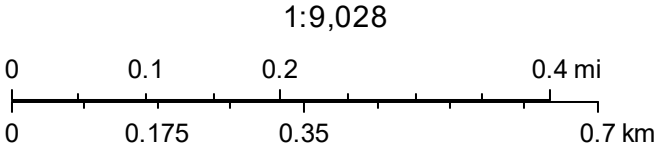


Sussex County



PIN:	232-7.00-3.00
Owner Name	GIVENS MINOS E & NORMA C
Book	0
Mailing Address	8266 93RD AVE
City	VERO BEACH
State	FL
Description	SE LAUREL TO
Description 2	GEORGETOWN
Description 3	N/A
Land Code	

- Municipal Boundaries
- Tax Parcels
- Streets
- County Boundaries
- Tax Ditch Segments
- Tax Ditch Channel
- DeIDOT Maintained
- HOA Maintained
- Pipe - DeIDOT
- Pipe - Tax Ditch
- Pipe - Private
- Pond Feature
- Special Access ROW
- Extent of Right-of-Way



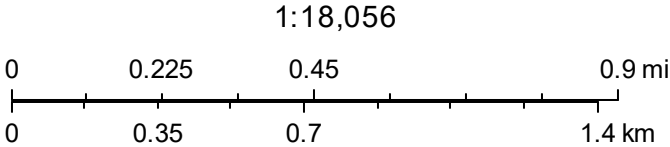


Sussex County



PIN:	232-7.00-3.00
Owner Name	GIVENS MINOS E & NORMA C
Book	0
Mailing Address	8266 93RD AVE
City	VERO BEACH
State	FL
Description	SE LAUREL TO
Description 2	GEORGETOWN
Description 3	N/A
Land Code	

Municipal Boundaries	Pond Feature
Tax Parcels	Special Access ROW
Streets	Extent of Right-of-Way
County Boundaries	World Imagery
Tax Ditch Segments	Low Resolution 15m Imagery
Tax Ditch Channel	High Resolution 60cm Imagery
DelDOT Maintained	High Resolution 30cm Imagery
HOA Maintained	Citations
Pipe - DelDOT	4.8m Resolution Metadata
Pipe - Tax Ditch	
Pipe - Private	



Introduced: 02/21/23

Council District 1: Mr. Vincent

Tax I.D. No.: 232-7.00-3.00

911 Address: N/A

ORDINANCE NO. ____

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A 20.23-ACRE SOLAR FARM TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BROAD CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 79.59 ACRES, MORE OR LESS

WHEREAS, on the 18th day of July 2022, a conditional use application, denominated Conditional Use No. 2390 was filed on behalf of Taylor Mill Road Solar 1, LLC; and

WHEREAS, on the ____ day of _____ 2023, a public hearing was held, after notice, before the Planning and Zoning Commission of Sussex County and said Planning and Zoning Commission recommended that Conditional Use No. 2390 be _____; and

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

NOW, THEREFORE, THE COUNTY OF SUSSEX HEREBY ORDAINS:

Section 1. That Chapter 115, Article IV, Subsection 115-22, Code of Sussex County, be amended by adding the designation of Conditional Use No. 2390 as it applies to the property hereinafter described.

Section 2. The subject property is described as follows:

ALL that certain tract, piece or parcel of land, lying and being situate in Broad Creek Hundred, Sussex County, Delaware, and lying on south side of Taylor Mill Road (S.C.R. 467), the west side of Fire Tower Road (S.C.R. 479), and the east side of County Seat Highway (Rt. 9) at the intersection of County Seat Highway (Rt. 9) and Fire Tower Road (S.C.R. 467) and being more particularly described in the attached legal description prepared by Tunnell & Raysor, said parcel containing 79.59 acres, more or less.

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



Memorandum

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

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

CC: Everett Moore, County Attorney

Date: December 7, 2023

RE: County Council Report for C/U 2393 filed on behalf of Sunrise Solar, Inc

The Planning and Zoning Department received an application (C/U 2393 filed on behalf of Sunrise Solar, Inc.) for a solar array to be located at Tax Parcel 532-6.00-8.00. The property is located at 10198 R & R Lane, Delmar. The parcel size is 134.61 acres +/-.

The Planning & Zoning Commission held a Public Hearing on the application on October 26, 2023. At the meeting of October 26, 2023, the Planning & Zoning Commission recommended approval of the application for the 10 reasons and subject to the 9 recommended conditions as outlined within the motion (copied below).

Below are the minutes from the Planning & Zoning Commission meeting of October 26, 2023.

Minutes of the October 26, 2023, Planning & Zoning Commission Meeting

In relation to the following six Conditional Use applications regarding solar array uses, Chairman Wheatley stated, *"Sussex County is fully aware of the benefits and operation of these community solar facilities at this point having seen and acted on so many of them. For that reason, the Commission will take that into account and presenters do not need to establish that. Instead, please focus on your specific property, the surrounding area, and how your proposed solar facility may impact the surrounding area. The Commission will also take into account all of the written information that is already in the record on each of these applications."*

C/U 2393 Sunrise Solar, Inc.

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A GR GENERAL RESIDENTIAL DISTRICT FOR A SOLAR ARRAY TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LITTLE CREEK HUNDRED, SUSSEX



COUNTY, CONTAINING 134.61 ACRES, MORE OR LESS. The property is lying on the north and south sides of R & R Lane, approximately 0.38 mile west of BiState Boulevard (Rt. 13A). 911 Address: 10198 R & R Lane, Delmar. Tax Map Parcel: 532-6.00-8.00 (p/o).

Mr. Whitehouse advised the Commission that submitted into the record were the Applicant's Conceptual Site Plan, the Staff Analysis, a letter received from the Sussex County Engineering Department Utility Planning Division, and the DelDOT Service Level Evaluation Response. Mr. Whitehouse stated that no comments were received for the Application.

The Commission found that Mr. Julian Pellegrini, Project Engineer with the PELSA Company, Inc. spoke on behalf of the Applicant. Mr. Pellegrini stated that also present was a representative from the operations and management company, Standard Solar; that Standard Solar is owned by the well-known Brookfield Renewables, which has numerous solar projects in over 22 states across the Country; that additionally, there was a representative from Sunrise Solar present; that Sunrise Solar has worked alongside Standard Solar, and has 15 ongoing projects with them in Delaware currently; that the project proposes a 4.455-megawatt community solar field, which would be able to power about 390 homes; that the project will take access, with a gravel road, from an existing driveway on the property; that within the solar area, the property will be maintained by typical mowing operations or agrovoltaic farming, which involves sheep or other similar livestock to manage the grass height within the solar field, and the property would include a pollinator mix.

Mr. Robertson stated the total acreage of the parcel was 134 acres and he questioned the acreage that the solar project is proposed to be located on.

Mr. Pellegrini stated the solar project is proposed to be located on 22 acres (17%) of the entire parcel.

The Commission found there was no one who wished to speak in support of or in opposition to the Application.

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

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

Mr. Robertson stated he had a prepared motion, which he read into the record per Mr. Mears' request.

Mr. Mears moved that the Commission recommend approval of C/U 2393 Sunrise Solar, LLC for a solar farm in the GR District based on the record made during the public hearing and for the following reasons:

1. The proposed facility is a public utility use under the Sussex County Zoning Code, and it meets the purposes of a Conditional Use because it has a public or semi-public character that is essential and desirable for the general convenience of and welfare of Sussex County residents.
2. This is an adaptive use of farmland that will preserve it from more intensive development. The solar array will be located on approximately 22 acres of a larger 134.61-acre parcel.
3. The proposed facility promotes Goal 7.3 of the Sussex County Comprehensive Plan, which encourages the use of renewable energy options such as solar arrays. There was testimony that this solar array would benefit residential, business, and municipal subscribers with lower power costs.

4. The proposed solar array is located in a rural area, which is largely surrounded by tilled lands and forest. The land is designated as being within the “Existing Development Area” according to Sussex County’s Future Land Use Map. This is an appropriate location for this solar array.
5. This Application generally complies with Ordinance No. 2920 regarding solar arrays. Therefore, specific conditions regarding its operation and screening are not necessary.
6. The solar array is located in an area that primarily consists of agricultural land. With the conditions imposed by the operation of Ordinance No. 2920 including separation distances and buffering, the proposed use will not have any adverse impact on the surrounding property.
7. The proposed solar generation facility will not result in any noticeable increase in traffic on area roadways. There are no regular employees at the site, only periodic visits for inspections, maintenance, or repair of the solar panels.
8. Based on the record there is no significant noise, glare, dust, or odor that will be generated by the facility.
9. The proposed use provides a renewable energy source that is a benefit to the residents and businesses of Sussex County.
10. There was no opposition to this Application.
11. This recommendation is subject to the conditions set forth in Ordinance No. 2920 and the following additional conditions:
 - A. The use shall be for ground-mounted solar arrays. No other types of electric generation shall be permitted at the site.
 - B. The Final Site Plan shall clearly show the limits of the Conditional Use area for this solar array, as well as the remaining acreage that is not part of the Conditional Use.
 - C. All required fencing shall include interwoven screening. The fence location and type of screening shall be shown on the Final Site Plan.
 - D. Any lighting at the facility shall only consist of perimeter lighting needed for security purposes. Any lighting shall be downward screened so that it does not shine on neighboring properties or roadways.
 - E. One unlit sign, not to exceed 32 square feet in size, shall be permitted. The sign shall identify the operator of the solar farm and shall provide contact information in case of an emergency.
 - F. The location of all transformers or similar equipment or structures shall be shown on the Final Site Plan.
 - G. Stormwater management and erosion and sedimentation control facilities shall be constructed in accordance with all applicable State and County requirements. These facilities shall be operated using Best Management Practices.
 - H. The Final Site Plan shall include a Decommissioning Plan that includes a financial security to ensure that funds are available for decommissioning and removal of the solar farm in its entirety throughout the life of the Conditional Use.
 - I. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning & Zoning Commission.

Motion by Mr. Mears, seconded by Mr. Collins and carried unanimously to recommend approval of C/U 2393 Sunrise Solar, Inc. for the reasons and the conditions stated in the motion. Motion carried 4-0.

Vote by roll call: Mr. Mears – yea, Mr. Collins – yea, Mr. Butler – yea, Chairman Wheatley – yea.

PLANNING & ZONING COMMISSION

ROBERT C. WHEATLEY, CHAIRMAN
SCOTT COLLINS
BRIAN BUTLER
J. BRUCE MEARS
HOLLY J. WINGATE



Sussex County

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

PLANNING AND ZONING AND COUNTY COUNCIL INFORMATION SHEET

Planning Commission Public Hearing Date: October 26th, 2023

Application: CU 2393 Sunrise Solar, Inc.

Applicant: Sunrise Solar, Inc.
6408 Church Hill Road
Chestertown, MD 21620

Owner: Sunrise Land Eastern Shore, LLC
P.O. Box 898
Chestertown, MD 21620

Site Location: Lying on the west side of Bi State Boulevard (Rt. 13A) approximately 0.38-miles west of the intersection of Bi State Boulevard and R and R Lane.

Current Zoning: General Residential (GR) Zoning District

Proposed Use: Solar Farm

Comprehensive Land
Use Plan Reference: Existing Development Area

Councilmanic
District: Mr. Vincent

School District: Delmar School District

Fire District: Delmar Fire Co.

Sewer: Private Septic

Water: Private Well

Site Area: 14.73 acres +/- (p/o)

Tax Map ID: 532-6.00-8.00





Memorandum

To: Sussex County Planning and Zoning Commission Members
From: Elliott Young, Planner I
CC: Mr. Vince Robertson, Assistant County Attorney and Applicant
Date: October 19, 2023
RE: Staff Analysis for CU 2393 Sunrise Solar, Inc.

The purpose of this memo is to provide background and analysis for the Planning and Zoning Commission to consider as a part of Application CU 2393 (Sunrise Solar, Inc.) to be reviewed during the October 26th, 2023, Planning and Zoning Commission Meeting. This analysis should be included in the record of this application and is subject to comments and information that may be presented during the public hearing.

The request is for a Conditional Use for Tax Parcel: 532-6.00-8.00 to allow for a solar array. The property is lying on the west side of R and R Lane a private road used to access the subject parcel, approximately 0.38-mile(s) west of the intersection of R and R Lane and Bi State Boulevard (Rt. 13A). The applicant is applying 14.73-acres +/- out of 134.61-acres +/- to be included in the Conditional Use area.

Comprehensive Plan Analysis

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

As outlined in the 2018 Sussex County Comprehensive Plan, Existing Development Area consists of primarily of existing residential development under the current General Residential and Medium Density Residential zoning districts, as well as some commercial uses. These areas are scattered throughout the County. These areas are surrounded by Low Density Areas, and this classification is simply being used to identify these existing scattered zoning areas that have no direct relation to their surrounding zoning and/or the Future Land Use Map. The full range of housing types allowed in the existing underlying zoning districts are appropriate in these residential areas, including single-family homes, townhouses, and multi-family units. Non-residential development consists of uses found in the neighborhood business districts and commercial districts.

Zoning Information

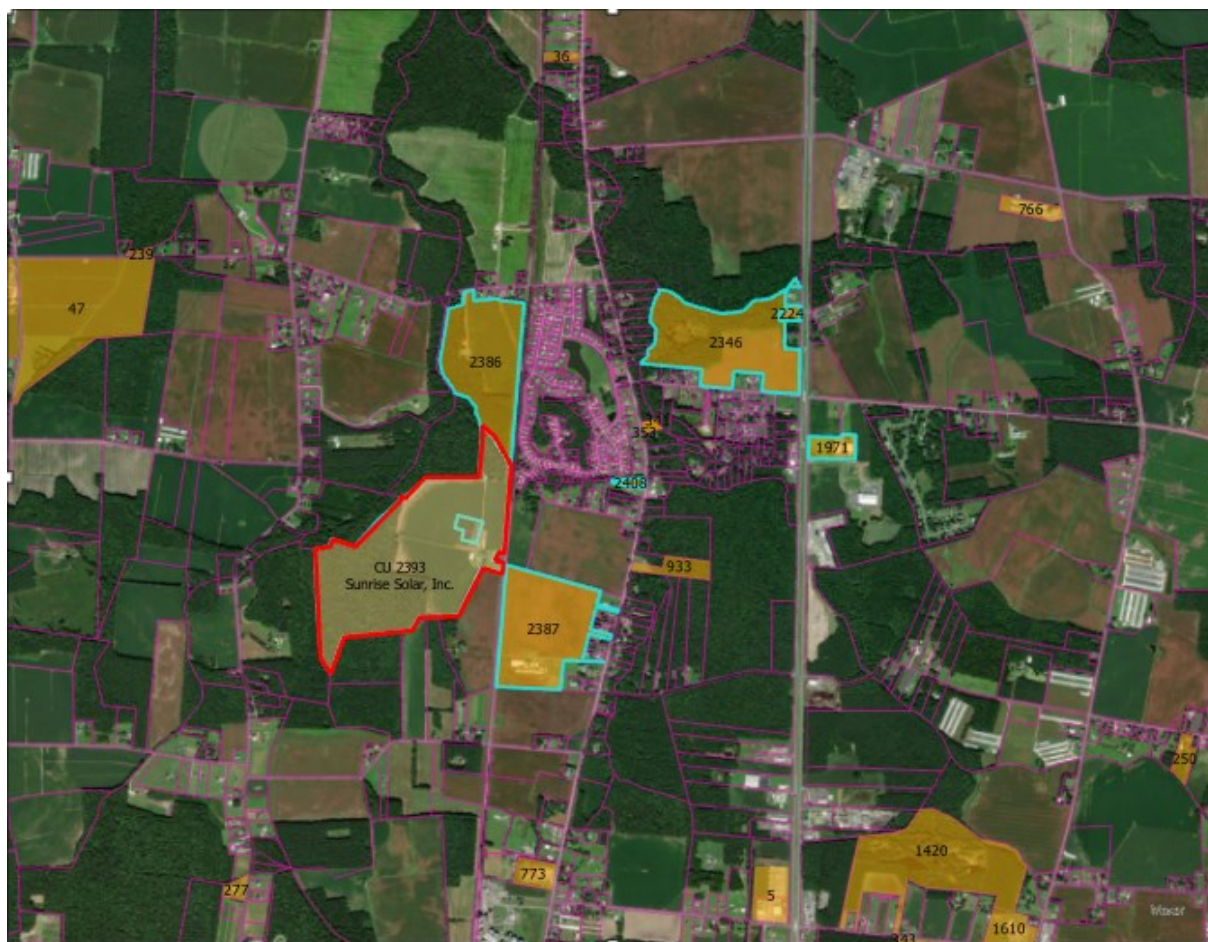
The subject property is zoned General Residential (GR) District. All adjacent properties to the north, south, east, and west of the subject parcels are also zoned General Residential (GR) District.



Existing Conditional Uses within the Vicinity of the Subject Property

Although there have been multiple applications in this area, since 2011, there have been six (6) Conditional Use applications within a one (1) mile radius of the Application Site.

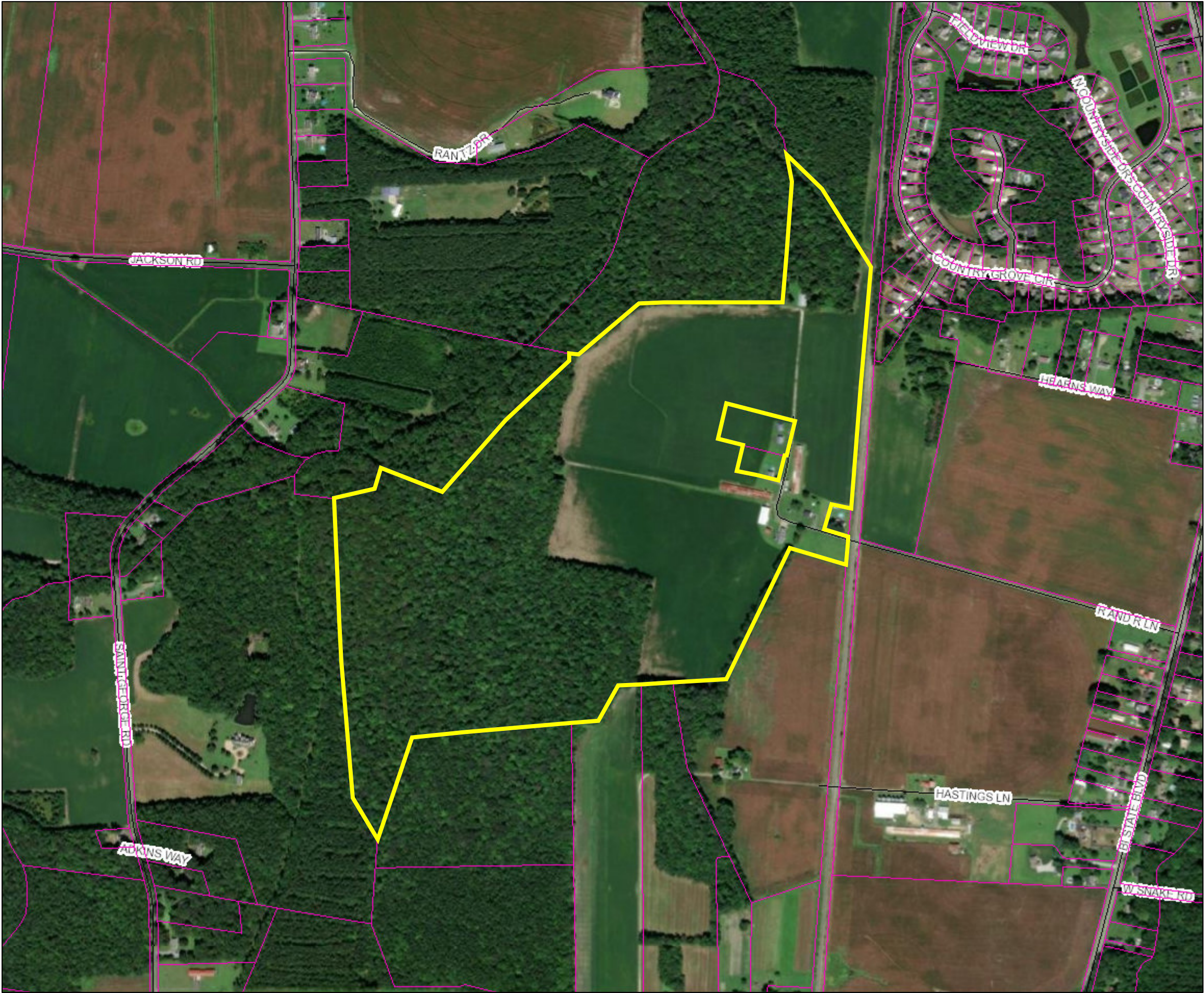
CU	Applicant	Proposed Use	CC Decision Date	Ordinance No.
1971	Greg N. Johnson	Countertop Manufacturing Business	12/3/2013	2329
2224	Pamela Price	Real Estate Office	6/9/2020	2714
2346	TPE DE SU114, LLC	Community Solar Facility	6/20/2023	2932
2386	Consolidated Edison Development, Inc.	Solar Farm	N/A (CC hearing date 12/5/2023)	N/A
2387	Consolidated Edison Development, Inc.	Solar Farm	N/A (CC hearing date 12/5/2023)	N/A
2408	Efren Fernando Acevedo	Car Dealership	N/A	N/A



Based on the analysis provided, the Conditional Use to allow for a solar array in this location could be considered as being consistent with the surrounding land use, zoning, and uses, subject to considerations of scale and impact.



Sussex County



PIN:	532-6.00-8.00	
Owner Name	SUNRISE LAND	EASTERN SHORE LLC
Book	5656	
Mailing Address	PO BOX 898	
City	CHESTERTOWN	
State	MD	
Description	W/PENN CENTRAL RR	
Description 2	2737' N/RD 503B	
Description 3	FX	
Land Code		

polygonLayer

Override 1

polygonLayer

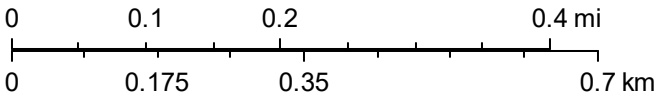
Override 1

Tax Parcels

Streets

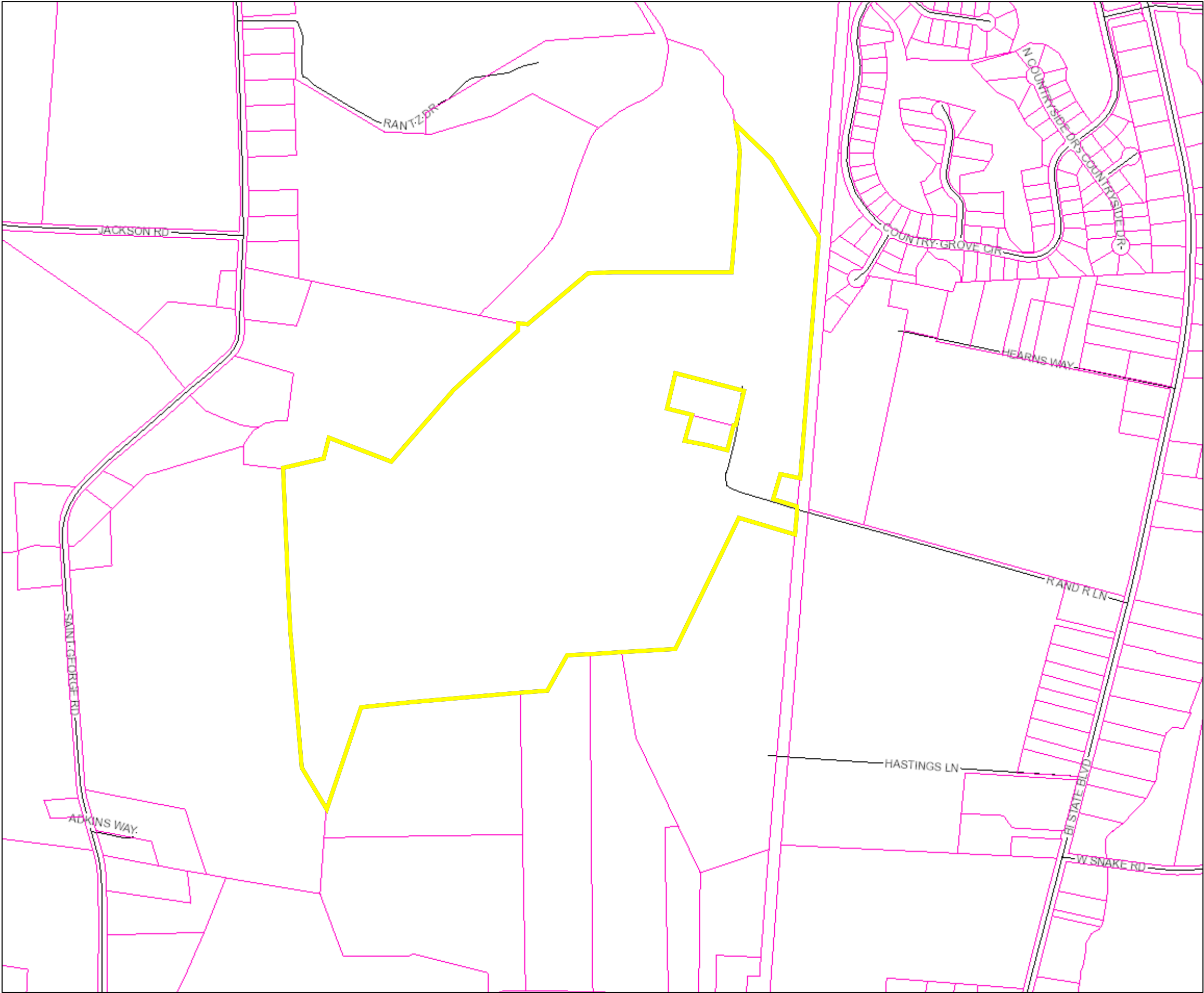
County Boundaries

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Sussex County

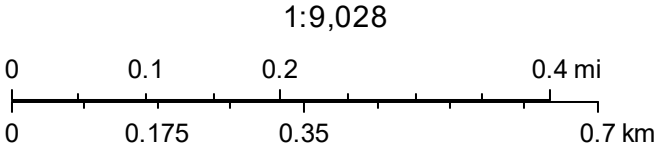


PIN:	532-6.00-8.00	
Owner Name	SUNRISE	LAND
	EASTERN SHORE LLC	
Book	5656	
Mailing Address	PO BOX 898	
City	CHESTERTOWN	
State	MD	
Description	W/PENN CENTRAL RR	
Description 2	2737' N/RD 503B	
Description 3	FX	
Land Code		

- polygonLayer

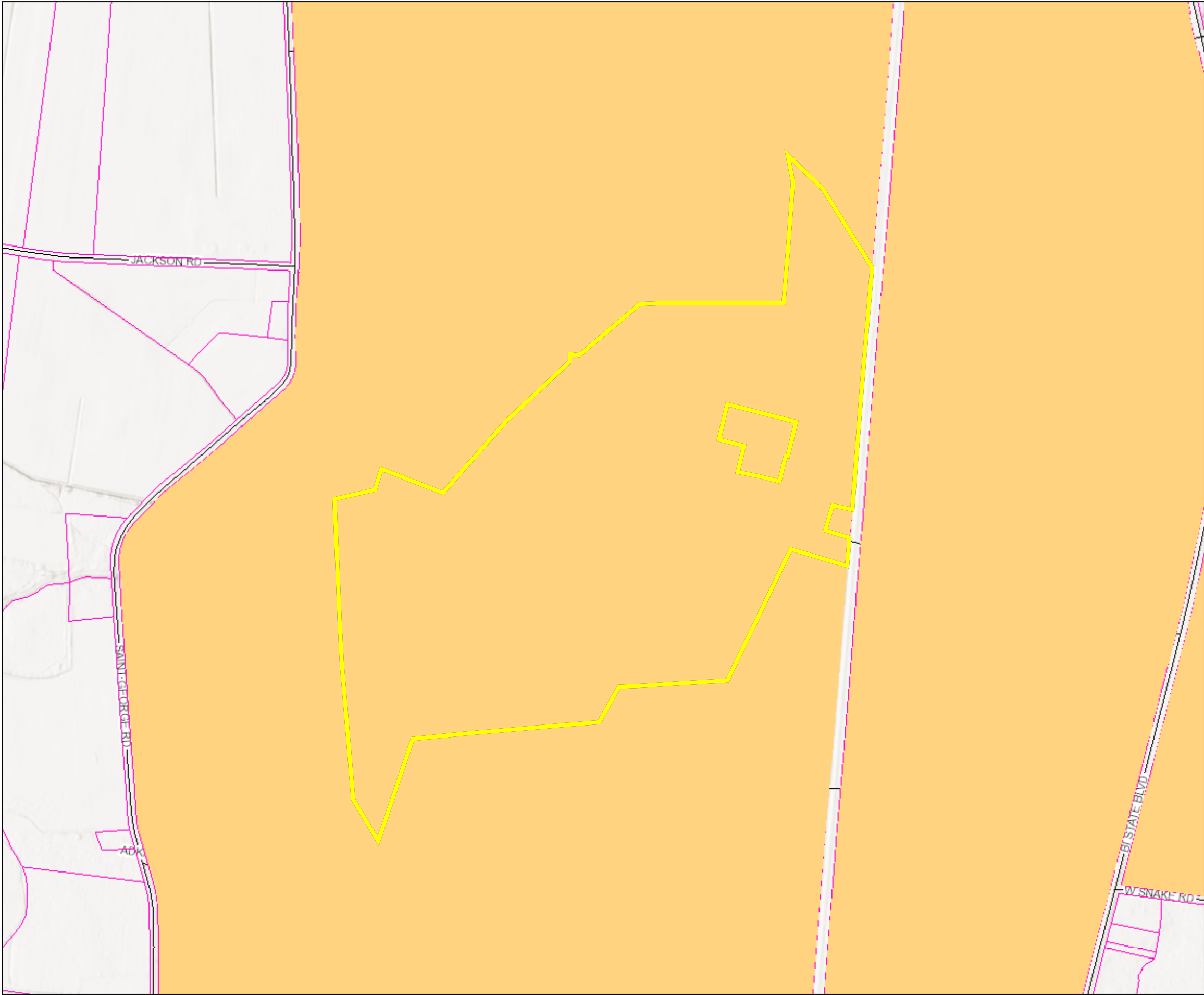
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- polygonLayer

Override 1
- Tax Parcels
- Streets
- County Boundaries





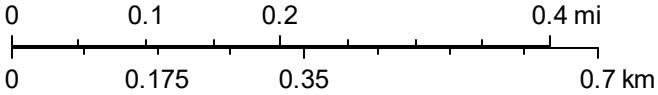
Sussex County



PIN:	532-6.00-8.00	
Owner Name	SUNRISE	LAND
	EASTERN SHORE LLC	
Book	5656	
Mailing Address	PO BOX 898	
City	CHESTERTOWN	
State	MD	
Description	W/PENN CENTRAL RR	
Description 2	2737' N/RD 503B	
Description 3	FX	
Land Code		

- Tax Parcels
- Streets
- County Boundaries
- World Hillshade

1:9,028



Introduced: 10/10/23

**Council District 1: Mr. Vincent
Tax I.D. No.: 532-6.00-8.00 (p/o)
911 Address: 10198 R & R Lane, Delmar**

ORDINANCE NO. ____

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A GR GENERAL RESIDENTIAL DISTRICT FOR A SOLAR ARRAY TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LITTLE CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 134.61 ACRES, MORE OR LESS

WHEREAS, on the 11th day of August 2022, a conditional use application, denominated Conditional Use No. 2393 was filed on behalf of Sunrise Solar, Inc.; and

WHEREAS, on the ____ day of _____ 2023, a public hearing was held, after notice, before the Planning and Zoning Commission of Sussex County and said Planning and Zoning Commission recommended that Conditional Use No. 2393 be _____; and

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

NOW, THEREFORE, THE COUNTY OF SUSSEX HEREBY ORDAINS:

Section 1. That Chapter 115, Article VI, Subsection 115-39, Code of Sussex County, be amended by adding the designation of Conditional Use No. 2393 as it applies to the property hereinafter described.

Section 2. The subject property is described as follows:

ALL that certain tract, piece or parcel of land, lying and being situate in Little Creek Hundred, Sussex County, Delaware, and lying on the north and south side of R & R Lane, approximately 0.38 mile west of BiState Boulevard (Rt. 13A) and being more particularly described in the attached legal description prepared by The Pelsa Company, said parcel containing 14.73 acres, more or less.

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



Memorandum

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

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

CC: Everett Moore, County Attorney

Date: December 7, 2023

RE: County Council Report for C/U 2397 filed on behalf of Mispillion Solar Farm, LLC

The Planning and Zoning Department received an application (C/U 2397 filed on behalf of Mispillion Solar Farm, LLC.) for a solar array to be located at Tax Parcel 130-3.00-63.00. The property is located at 7152 Shawnee Rd. Milford. The parcel size is 121.33 acres +/-.

The Planning & Zoning Commission held a Public Hearing on the application on October 26, 2023. At the meeting of October 26, 2023, the Planning & Zoning Commission recommended approval of the application for the 10 reasons and subject to the 9 recommended conditions as outlined within the motion (copied below).

Below are the minutes from the Planning & Zoning Commission meeting of October 26, 2023.

Minutes of the October 26, 2023, Planning & Zoning Commission Meeting

In relation to the following six Conditional Use applications regarding solar array uses, Chairman Wheatley stated, *"Sussex County is fully aware of the benefits and operation of these community solar facilities at this point having seen and acted on so many of them. For that reason, the Commission will take that into account and presenters do not need to establish that. Instead, please focus on your specific property, the surrounding area, and how your proposed solar facility may impact the surrounding area. The Commission will also take into account all of the written information that is already in the record on each of these applications."*

C/U 2397 Mispillion Solar Farm, LLC

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A SOLAR ARRAY TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN CEDAR CREEK



HUNDRED, SUSSEX COUNTY, CONTAINING 121.33 ACRES, MORE OR LESS. The property is lying on the northwest side of Shawnee Road (Rt. 36) approximately 0.20 mile southwest of Old Shawnee Road (S.C.R. 42). 911 Address: 7152 Shawnee Rd. Milford. Tax Map Parcel: 130-3.00-63.00 (p/o).

Mr. Whitehouse advised the Commission that submitted into the record were the Applicant's Conceptual Site Plan, the Staff Analysis, a letter from the Sussex County Engineering Department Utility Planning Division, and the DelDOT Service Level Evaluation Response. Mr. Whitehouse stated that no comments had been received for the Application.

The Commission found that Mr. Jeffrey Machiran, with EDF Renewables, Inc., spoke on behalf of the Applicant. Mr. Machiran stated the subject project is specifically being developed in conjunction with Delaware Electric Cooperative; that Delaware Electric is a nonprofit, owned by its members; that Delaware Electric serves about 108,000 meters in Kent and Sussex County; that the project is a four-megawatt project; that the project would be located about 1,700 ft. off Shawnee Rd. in Milford; that they will be tapping into the existing Kirby Substation, located a 1.5 mile north of the project site; that the site was selected specifically because there are existing trees surrounding the property; that the existing trees will enable them to keep the cost down by not having to plant additional trees; that on October 5th and 6th, 2023, they held a community outreach event for surrounding neighbors; that he believed they met with every adjoining neighbor, none of which seemed to have any issues with the proposed project, and with their coordination with Delaware Electric, all the power produced will go directly to the members of Delaware Electric.

Mr. Butler questioned if the plan had been reviewed by the Office of State Fire Marshal.

Mr. Machiran stated the plans had not yet been reviewed or approved by the State Fire Marshal's Office, but it would be required through the Site Plan Review process.

The Commission found there was no one who wished to speak in support of or in opposition to the Application.

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

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

Mr. Robertson stated he had a prepared motion, which he read into the record per Mr. Butler's request.

Mr. Butler moved that the Commission recommend approval of C/U 2397 Mispillion Solar Farm, LLC for a solar farm in the AR-1 District based on the record made during the public hearing and for the following reasons:

1. The proposed facility is a public utility use under the Sussex County Zoning Code, and it meets the purposes of a Conditional Use because it has a public or semi-public character that is essential and desirable for the general convenience of and welfare of Sussex County residents.
2. This is an adaptive use of farmland that will preserve it from more intensive development. The solar array will be located on approximately 30 acres of a larger 121.37-acre parcel.
3. The proposed facility promotes Goal 7.3 of the Sussex County Comprehensive Plan, which encourages the use of renewable energy options such as solar arrays. There was testimony that

this solar array would benefit residential, business, and municipal subscribers with lower power costs.

4. The proposed solar array is set back a significant distance from Shawnee Road and is surrounded by forest on two sides, as well as other agricultural lands. The land is designated as being within the “Low-Density Area” according to Sussex County’s Future Land Use Map. This is an appropriate location for this solar array.
5. This Application generally complies with Ordinance No. 2920 regarding solar arrays. Therefore, specific conditions regarding its operation and screening are not necessary.
6. The solar array is located in an area that primarily consists of agricultural land. With the conditions imposed by the operation of Ordinance No. 2920 including separation distances and buffering, the proposed use will not have any adverse impact on the surrounding property.
7. The proposed solar generation facility will not result in any noticeable increase in traffic on area roadways. There are no regular employees at the site, only periodic visits for inspections, maintenance, or repair of the solar panels.
8. Based on the record there is no significant noise, glare, dust, or odor that will be generated by the facility.
9. The proposed use provides a renewable energy source that is a benefit to the residents and businesses of Sussex County.
10. There was no opposition to this Application.
11. This recommendation is subject to the conditions set forth in Ordinance No. 2920 and the following additional conditions:
 - A. The use shall be for ground-mounted solar arrays. No other types of electric generation shall be permitted at the site.
 - B. The Final Site Plan shall clearly show the limits of the Conditional Use area for this solar array, as well as the remaining acreage that is not part of the Conditional Use.
 - C. All required fencing shall include interwoven screening. The fence location and type of screening shall be shown on the Final Site Plan.
 - D. Any lighting at the facility shall only consist of perimeter lighting needed for security purposes. Any lighting shall be downward screened so that it does not shine on neighboring properties or roadways.
 - E. One unlit sign, not to exceed 32 square feet in size, shall be permitted. The sign shall identify the operator of the solar farm and shall provide contact information in case of an emergency.
 - F. The location of all transformers or similar equipment or structures shall be shown on the Final Site Plan.
 - G. Stormwater management and erosion and sedimentation control facilities shall be constructed in accordance with all applicable State and County requirements. These facilities shall be operated using Best Management Practices.
 - H. The Final Site Plan shall include a Decommissioning Plan that includes a financial security to ensure that funds are available for decommissioning and removal of the solar farm in its entirety throughout the life of the Conditional Use.
 - I. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning & Zoning Commission.

Motion by Mr. Butler, seconded by Mr. Collins and carried unanimously to recommend approval of C/U 2397 Mispillion Solar Farm, LLC for the reasons and the conditions stated in the motion. Motion carried 4-0.

PLANNING & ZONING COMMISSION

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



Sussex County

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JAMIE WHITEHOUSE, MRTPI, AICP
DIRECTOR OF PLANNING & ZONING

PLANNING AND ZONING AND COUNTY COUNCIL INFORMATION SHEET

Planning Commission Public Hearing Date: October 26th, 2023

Application: CU 2397 Mispillion Solar Farm, LLC

Applicant: Mispillion Solar Farm, LLC
Suite 400 6940 Columbia Drive
Columbia, MD 21046

Owner: Raymond Robbins
16900 Robbins Nest Road
Ellendale, DE 19941

Site Location: 7152 Shawnee Road, Milford.

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

Proposed Use: 25.68-Acre Solar Farm

Comprehensive Land
Use Plan Reference: Low Density

Councilmanic
District: Mrs. Green

School District: Milford School District

Fire District: Carlisle Fire Department

Sewer: On-site Septic

Water: On-site Well

Site Area: 121.33 acres +/- (25.68-acre portion being proposed for use)

Tax Map ID.: 130-3.00-63.00





Memorandum

To: Sussex County Planning and Zoning Commission Members
From: Christin Scott, Planner II
CC: Mr. Vince Robertson, Assistant County Attorney and Applicant
Date: October 19, 2023
RE: Staff Analysis for CU 2397 Mispillion Solar Farm, LLC

The purpose of this memo is to provide background and analysis for the Planning and Zoning Commission to consider as a part of Application CU 2397 (Mispillion Solar Farm, LLC) to be reviewed during the October 26th, 2023, Planning and Zoning Commission Meeting. This analysis should be included in the record of this application and is subject to comments and information that may be presented during the public hearing.

The request is for a Conditional Use for Tax Parcel: 130-3.00-63.00 to allow for a solar array. The property is lying on the northwest side of Shawnee Road (Rt. 36), approximately 0.20-mile(s) southeast of Old Shawnee Road (Rt. 42). The applicant is applying 25.68-acres +/- out of 121.33-acres +/- to be included in the Conditional Use area.

Comprehensive Plan Analysis

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

As outlined in the 2018 Sussex County Comprehensive Plan, Low Density Areas are areas that the County envisions as "a predominantly rural landscape where farming co-exists with appropriate residential uses and permanently preserved property" (Sussex County Comprehensive Plan, 4-18). The Plan also notes that commercial uses "should be limited in their location, size and hours of operation" and "more intense commercial uses should be avoided" and commercial uses "may be appropriate depending on surrounding uses" (Sussex County Comprehensive Plan, 4-19).

Zoning Information

The subject property is zoned Agricultural Residential (AR-1) District. All adjacent properties to the north, south, east, and west of the subject parcels are also zoned Agricultural Residential (AR-1) District. With properties further east being zone Medium Density Residential (MR) District.



Existing Conditional Uses within the Vicinity of the Subject Property

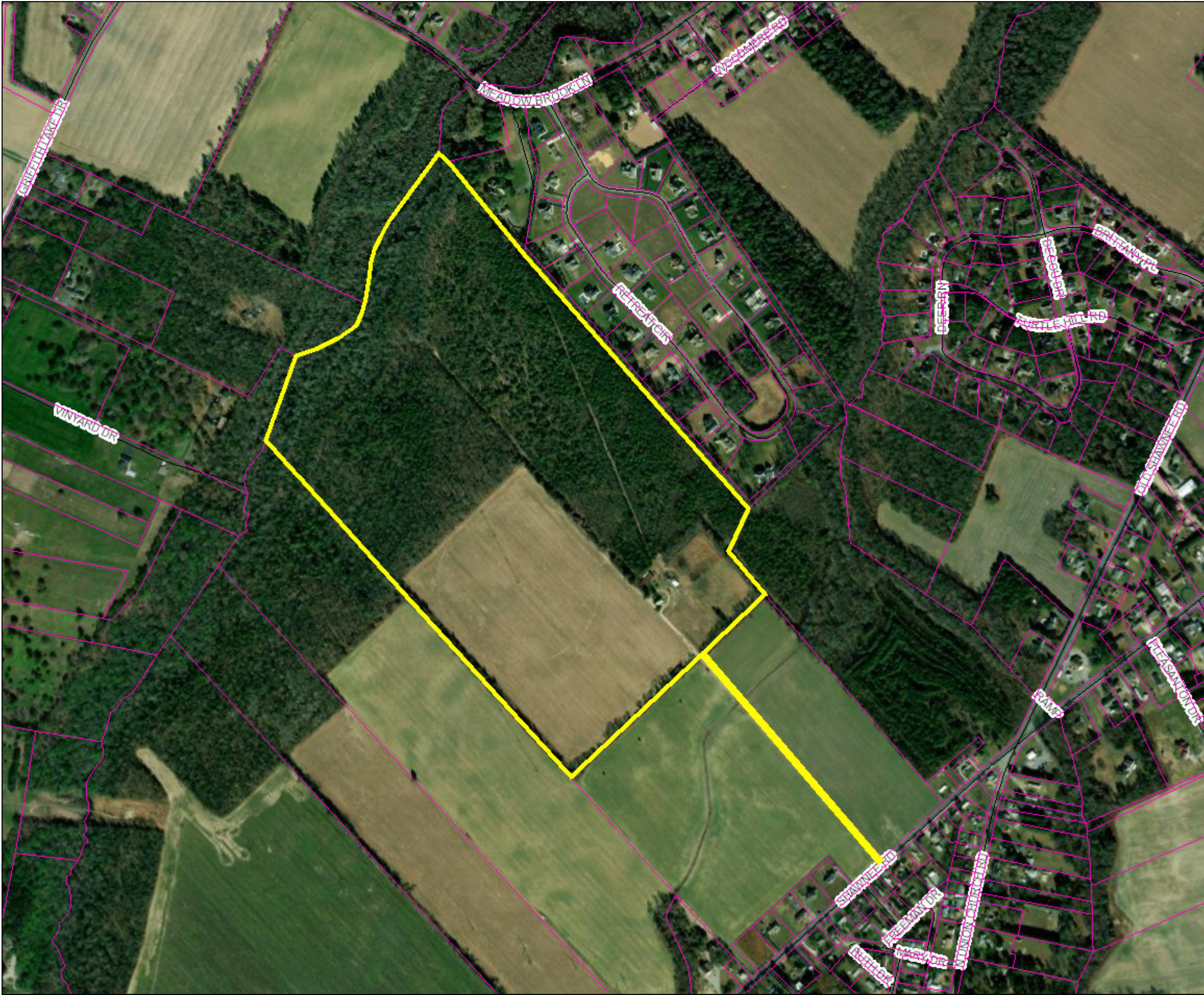
Although there have been multiple applications in this area, since 2011, there have been four (4) Conditional Use applications within a one (1) mile radius of the Application Site.

CU	Applicant	Proposed Use	CC Decision Date	Ordinance No.
2423	Jennifer C. Attix	Commercial Kitchen (for takeout only).	7/18/2023	2940
2298	Freeman Solar, LLC	Solar Farm - to include 75 MW AC photovoltaic electric generation facility.	6/14/2022	2864
2341	Caden Oplinger	Farm Tractor/Truck repair shop	6/7/2022	2858
1909	Thomas P. Collins	Beauty Salon	9/20/2011	2220

Based on the analysis provided, the Conditional Use to allow for a solar array in this location could be considered as being consistent with the surrounding land use, zoning, and uses, subject to considerations of scale and impact.



Sussex County



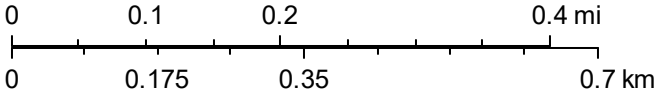
PIN:	130-3.00-63.00	
Owner Name	ROBBINS	RAYMOND E
Book	1910	
Mailing Address	16900 ROBINS NEST RD	
City	ELLENDALE	
State	DE	
Description	500' S/RT.634 2050'	
Description 2	E/RT.633	
Description 3	N/A	
Land Code		

- Tax Parcels
- Streets
- County Boundaries

Tax Ditch Segments

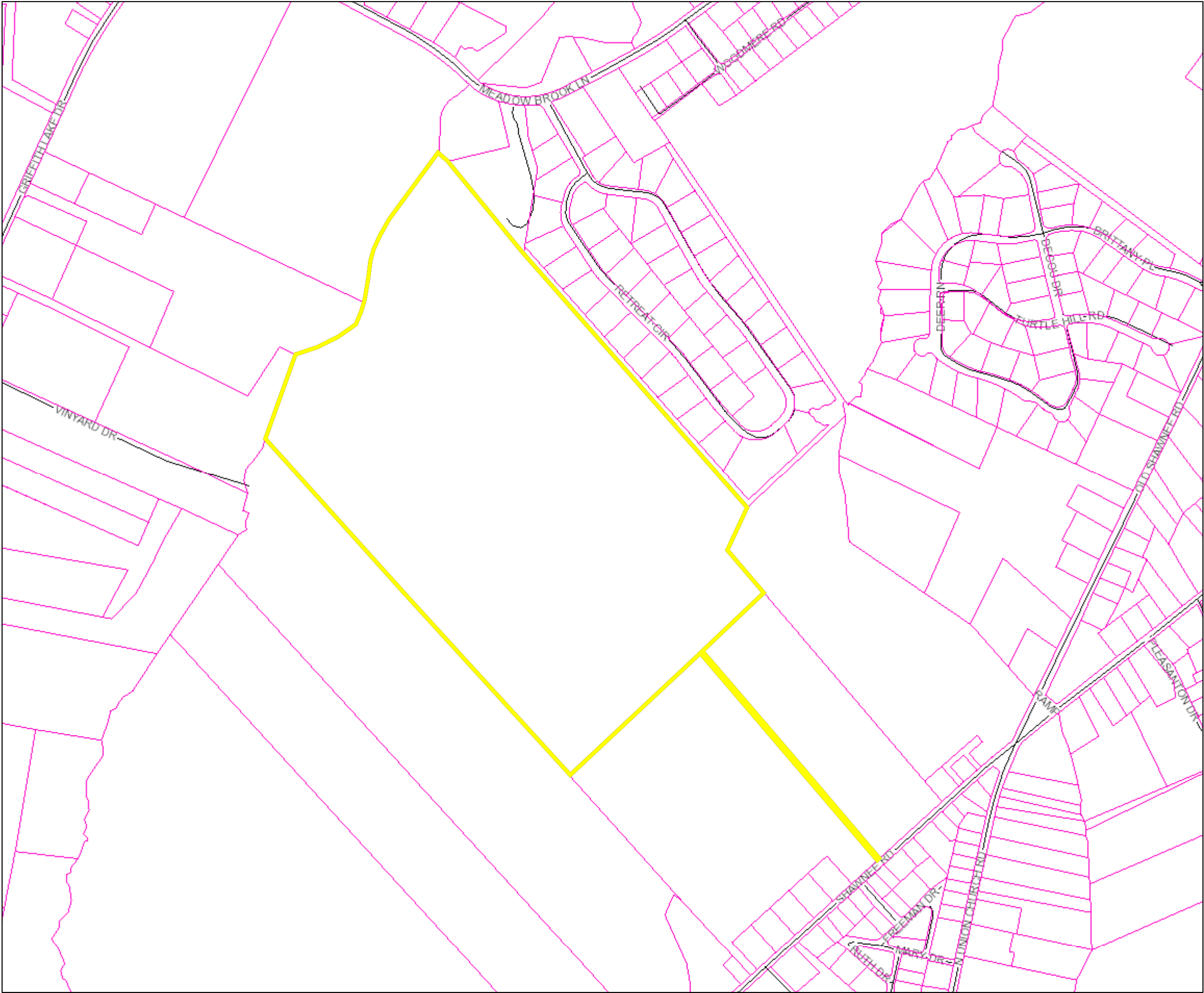
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- DeIDOT Maintained
- HOA Maintained
- Pipe - DeIDOT
- Pipe - Tax Ditch
- Pipe - Private
- Pond Feature
- Special Access ROW
- Extent of Right-of-Way
- World Imagery
- Low Resolution 15m Imagery
- High Resolution 60cm Imagery
- High Resolution 30cm Imagery
- Citations
- 2.4m Resolution Metadata

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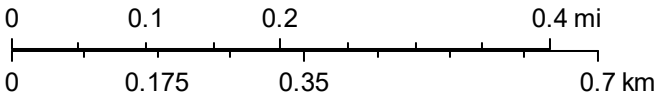
Sussex County

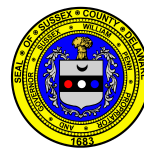


PIN:	130-3.00-63.00	
Owner Name	ROBBINS	RAYMOND E
Book	1910	
Mailing Address	16900 ROBINS NEST RD	
City	ELLENDALE	
State	DE	
Description	500' S/RT.634 2050'	
Description 2	E/RT.633	
Description 3	N/A	
Land Code		

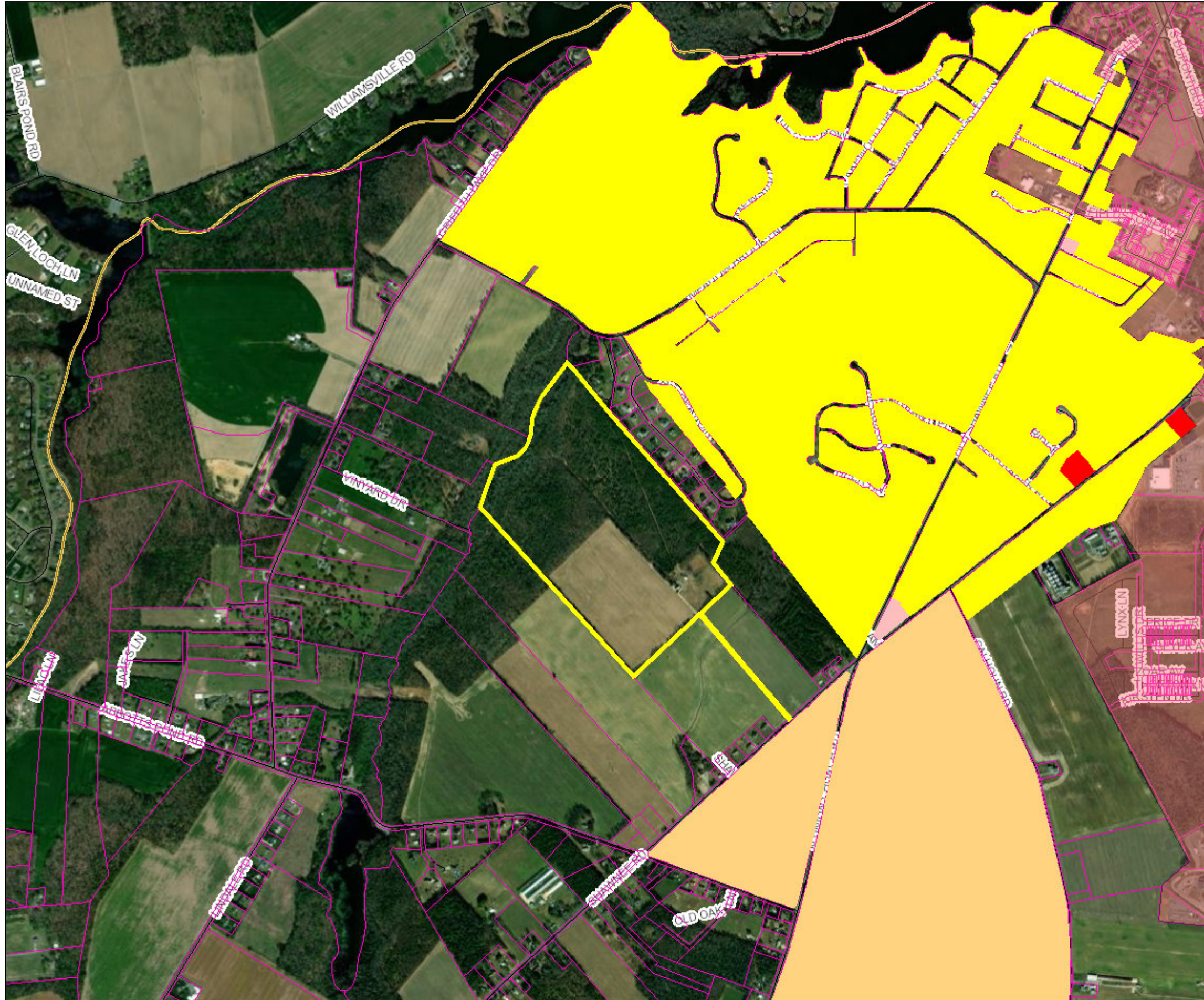
- Tax Parcels
- Streets
- County Boundaries
- Tax Ditch Segments
- Tax Ditch Channel
- DeIDOT Maintained
- HOA Maintained
- Pipe - DeIDOT
- Pipe - Tax Ditch
- Pipe - Private
- Pond Feature
- Special Access ROW
- Extent of Right-of-Way

1:9,028



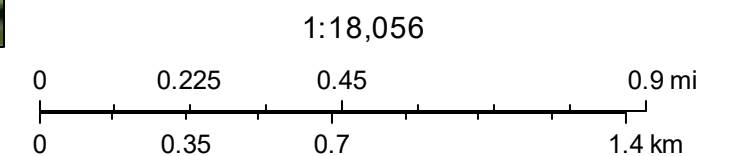


Sussex County



PIN:	130-3.00-63.00	
Owner Name	ROBBINS	RAYMOND E
Book	1910	
Mailing Address	16900 ROBINS NEST RD	
City	ELLENDALE	
State	DE	
Description	500' S/RT.634 2050'	
Description 2	E/RT.633	
Description 3	N/A	
Land Code		

	Municipal Boundaries		Pond Feature
	Tax Parcels		Special Access ROW
	Streets		Extent of Right-of-Way
	County Boundaries		World Imagery
Tax Ditch Segments			Low Resolution 15m Imagery
	Tax Ditch Channel		High Resolution 60cm Imagery
	DelDOT Maintained		High Resolution 30cm Imagery
	HOA Maintained		Citations
	Pipe - DelDOT		4.8m Resolution Metadata
	Pipe - Tax Ditch		
	Pipe - Private		



Introduced: 10/10/23

**Council District 2: Mrs. Green
Tax I.D. No.: 130-3.00-63.00 (portion of)
911 Address: 7152 Shawnee Road, Milford**

ORDINANCE NO. ____

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A SOLAR ARRAY TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN CEDAR CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 121.33 ACRES, MORE OR LESS

WHEREAS, on the 23rd day of September 2022, a conditional use application, denominated Conditional Use No. 2397 was filed on behalf of Mispillion Solar Farm, LLC; and

WHEREAS, on the ____ day of _____ 2023, a public hearing was held, after notice, before the Planning and Zoning Commission of Sussex County, and said Planning and Zoning Commission recommended that Conditional Use No. 2397 be _____; and

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

NOW, THEREFORE, THE COUNTY OF SUSSEX HEREBY ORDAINS:

Section 1. That Chapter 115, Article IV, Subsection 115-22, Code of Sussex County, be amended by adding the designation of Conditional Use No. 2397 as it applies to the property hereinafter described.

Section 2. The subject property is described as follows:

ALL that certain tract, piece, or parcel of land, lying and being situated in Cedar Creek Hundred, Sussex County, Delaware, and lying on the northwest side of Shawnee Road (Rt. 36) approximately 0.20 mile southwest of Old Shawnee Road (S.C.R. 42) and being more particularly described in the attached legal description prepared by Century Engineering, LLC, said parcel containing 121.33 acres, more or less.

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



Memorandum

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

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

CC: Everett Moore, County Attorney

Date: December 7, 2023

RE: County Council Report for C/U 2398 filed on behalf of Chaberton Energy (Blue Hen Solar)

The Planning and Zoning Department received an application (C/U 2398 filed on behalf of Chaberton Energy (Blue Hen Solar)) for a solar farm to be located at Tax Parcel 533-17.00-187.00. The property is located on the southeast side of Hudson Road (S.C.R. 387), approximately 0.61 mile south of the intersection of Lighthouse Road (Route 54) and Hudson Road (S.C.R. 387). The parcel size is 61.15 acres +/-.

The Planning & Zoning Commission held a Public Hearing on the application on October 26, 2023. At the meeting of October 26, 2023, the Planning & Zoning Commission recommended approval of the application for the 10 reasons and subject to the 9 recommended conditions as outlined within the motion (copied below).

Below are the minutes from the Planning & Zoning Commission meeting of October 26, 2023.

Minutes of the October 26, 2023, Planning & Zoning Commission Meeting

In relation to the following six Conditional Use applications regarding solar array uses, Chairman Wheatley stated, *"Sussex County is fully aware of the benefits and operation of these community solar facilities at this point having seen and acted on so many of them. For that reason, the Commission will take that into account and presenters do not need to establish that. Instead, please focus on your specific property, the surrounding area, and how your proposed solar facility may impact the surrounding area. The Commission will also take into account all of the written information that is already in the record on each of these applications."*

C/U 2398 Chaberton Energy (Blue Hen Solar)

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1



AGRICULTURAL RESIDENTIAL DISTRICT TO ALLOW FOR A SOLAR FARM TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 61.15 ACRES, MORE OR LESS. The property is lying on the southeast side of Hudson Road (S.C.R. 387), approximately 0.61 mile south of the intersection of Lighthouse Road (Route 54) and Hudson Road (S.C.R. 387). 911 Address: N/A. Tax Map Parcels: 533-17.00-187.00 (p/o).

Mr. Whitehouse advised the Commission that submitted into the record were the DelDOT Service Level Evaluation Response, the Applicant's Conceptual Site Plan, a copy of the Applicant's presentation, a letter from the Sussex County Engineering Department Utility Planning Division, and the Staff Analysis. Mr. Whitehouse stated no comments had been received for the Application.

The Commission found that Mr. Jon Falkowski, Civil Engineer with Becker Morgan Group, Inc. spoke on behalf of the Applicant, also present was Mr. Ryan Boswell, Director of Development with Chaberton Energy. Mr. Falkowski stated that the project is located within Selbyville, essentially at the Maryland line, located along West Line Rd.; that the site consists of 61.15 acres; that the solar area will consist of 20.50 acres; that the site is currently utilize for agricultural and farmland; that the area of the solar array will be located on the agricultural portion; that none of the existing woodlands will be cleared or disturbed for installation of the solar array; that the project will be accessed off West Line Rd.; that there was a Wetland Delineation performed on the site; that an area of non-tidal wetlands were found on the site; that there was tree harvesting performed at the rear of the site; that if there are existing trees, they will be retained; that if there are no trees, they will plant trees to provide a buffer; that they propose a full perimeter landscape buffer in all areas where there is not existing vegetation; that the site will have perimeter fencing and required site access; that there is a tax ditch with a 80 ft. right of way located on the site; that the tax ditch will not be disturbed and the remaining information has been submitted within the Exhibit Booklet for review by the Commission.

The Commission found that one person spoke in support of the Application, and no one spoke in opposition to the Application.

Mr. Richard McCabe spoke in support of the Application. Mr. McCabe stated he is the current property owner; that residential development is approaching his farmland; that he felt the project is a stopgap measure to preserve his land as a non-residential area; that he felt the area will need the electrical energy to help supply all the new residential homes, and the project will be a great source of income for him and his family.

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

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

Mr. Robertson stated he had a prepared motion, which he read into the record per Mr. Mears' request.

Mr. Mears moved that the Commission recommend approval of C/U 2398 Chamberton Energy (Blue Hen Solar) for a solar farm in the AR-1 District based on the record made during the public hearing and for the following reasons:

1. The proposed facility is a public utility use under the Sussex County Zoning Code, and it meets the purposes of a Conditional Use because it has a public or semi-public character that is

- essential and desirable for the general convenience of and welfare of Sussex County residents.
2. This is an adaptive use of farmland that will preserve it from more intensive development. The solar array will be located on approximately 61.65 acres. While there are some wetlands on the site, they are not impacted by this use. There is a Tax Ditch that will not be disturbed.
 3. The proposed facility promotes Goal 7.3 of the Sussex County Comprehensive Plan, which encourages the use of renewable energy options such as solar arrays. There was testimony that this solar array would benefit residential, business, and municipal subscribers with lower power costs.
 4. The proposed solar array is located along West Line Road and Hudson Road. The land is designated as being within the “Developing Area” according to Sussex County’s Future Land Use Map. This is an appropriate location for this solar array.
 5. This Application generally complies with Ordinance No. 2920 regarding solar arrays. Therefore, specific conditions regarding its operation and screening are not necessary.
 6. The solar array is located in an area that primarily consists of agricultural land. With the conditions imposed by the operation of Ordinance No. 2920 including separation distances and buffering, the proposed use will not have any adverse impact on the surrounding property.
 7. The proposed solar generation facility will not result in any noticeable increase in traffic on area roadways. There are no regular employees at the site, only periodic visits for inspections, maintenance, or repair of the solar panels.
 8. Based on the record there is no significant noise, glare, dust, or odor that will be generated by the facility.
 9. The proposed use provides a renewable energy source that is a benefit to the residents and businesses of Sussex County.
 10. One person spoke in favor of the Application and there was no opposition to this Application.
 11. This recommendation is subject to the conditions set forth in Ordinance No. 2920 and the following additional conditions:
 - A. The use shall be for ground-mounted solar arrays. No other types of electric generation shall be permitted at the site.
 - B. The Final Site Plan shall clearly show the limits of the Conditional Use area for this solar array, as well as the remaining acreage that is not part of the Conditional Use.
 - C. All required fencing shall include interwoven screening. The fence location and type of screening shall be shown on the Final Site Plan.
 - D. Any lighting at the facility shall only consist of perimeter lighting needed for security purposes. Any lighting shall be downward screened so that it does not shine on neighboring properties or roadways.
 - E. One unlit sign, not to exceed 32 square feet in size, shall be permitted. The sign shall identify the operator of the solar farm and shall provide contact information in case of an emergency.
 - F. The location of all transformers or similar equipment or structures shall be shown on the Final Site Plan.
 - G. Stormwater management and erosion and sedimentation control facilities shall be constructed in accordance with all applicable State and County requirements. These facilities shall be operated using Best Management Practices.
 - H. The Final Site Plan shall include a Decommissioning Plan that includes a financial security to ensure that funds are available for decommissioning and removal of the solar farm in its entirety throughout the life of the Conditional Use.
 - I. The Final Site Plan shall be subject to the review and approval of the Sussex County

Planning & Zoning Commission.

Motion by Mr. Mears, seconded by Mr. Collins and carried unanimously to recommend approval of C/U 2398 Chaberton Energy (Blue Hen Solar), for the reasons and the conditions stated in the motion. Motion carried 4-0.

Vote by roll call: Mr. Mears – yea, Mr. Collins – yea, Mr. Butler – yea, Chairman Wheatley – yea.

PLANNING & ZONING COMMISSION

ROBERT C. WHEATLEY, CHAIRMAN
BRIAN BUTLER
GREGORY SCOTT COLLINS
J. BRUCE MEARS
HOLLY WINGATE



Sussex County

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(302) 854-5079 F

JAMIE WHITEHOUSE
DIRECTOR

PLANNING AND ZONING AND COUNTY COUNCIL INFORMATION SHEET

Planning Commission Public Hearing Date: October 26th, 2023

Application: C/U 2398 Chaberton Energy (Blue Hen Solar)

Applicant: Chaberton Energy
11900 Parklawn Drive, Suite 406
North Bethesda, MD 20852

Owner: Richard H. McCabe Jr./Susan C. Arnold
8595 Shavox Church Road
Whaleyville, MD 21872

Site Location: The property is lying on the southeast side of Hudson Road (S.C.R. 387), approximately 0.61 mile south of the intersection of Lighthouse Road (Route 54) and Hudson Road (S.C.R. 387) in Selbyville, Delaware.

Current Zoning: Agricultural Residential (AR-1) District

Proposed Zoning: Agricultural Residential (AR-1) District

Proposed Use: Solar Energy System/Community Energy Generating Facility (Solar Farm)

Future Land Use Map Designation: Town Center

Councilmanic District: Mr. Hudson

School District: Indian River School District

Fire District: Selbyville Fire Company/District

Sewer: N/A

Water: N/A

Site Area: 61.15 acres +/-

Tax Map IDs: 533-17.00-187.00 (p/o)





Memorandum

To: Sussex County Planning and Zoning Commission Members
From: Lauren DeVore, AICP Planner III
CC: Mr. Vince Robertson, Assistant County Attorney and Applicant
Date: October 20th, 2023
RE: Staff Analysis for C/U 2398 Chaberton Energy (Blue Hen Solar)

The purpose of this memo is to provide background and analysis for the Planning and Zoning Commission to consider as a part of Application C/U 2398 Chaberton Energy (Blue Hen Solar) to be reviewed during the October 26th, 2023, Planning and Zoning Commission Meeting. This analysis should be included in the record of this application and is subject to comments and information that may be presented during the public hearing.

The request is for a Conditional Use for Tax Parcel: 533-17.00-187.00 to allow for a solar farm. The property is lying on the southeast side of Hudson Road (S.C.R. 387), approximately 0.61 mile south of the intersection of Lighthouse Road (Route 54) and Hudson Road (S.C.R. 387). The Site Plan for the Application indicates that a 12.50 acre +/- portion of the site will be utilized for the solar farm, which will be fenced, but that the entirety of the Conditional Use Array Area will consist of 31.83 acres out of the larger 61.15 acre +/- parcel.

Further Site Considerations

Staff note that the property is part of the Bunting Tax Ditch Area and contains a Tax Ditch ROW that runs through the western portion of the property of which the Right-Of-Way is measured 80-ft from the Top of Bank (TOB) of the Ditch. The County's Online Mapping System notes that the ditch was amended through Court order Change #14.

Additionally, staff would note that while the County's Online Mapping System does not appear to indicate the presence of regulated tidal wetlands on the property, that this system does note that the presence of lotic and terrene wetland areas on the site. The lotic areas appear to generally align with the Tax Ditch and the agricultural drainage ditches on the property.

The property is located within Flood Zone "X" – Areas determined to be outside the 1% annual chance flood zone and outside the 500-year floodplain. The property is not located within any established Transportation Improvement Districts (TIDs). According to the Delaware Department of Natural Resources and Environmental Control's (DNREC's) Flood Planning Tool, the property is located within the Inland Bays Watershed, the Assawoman Bay Subwatershed and has a Ground Elevation Height at the Parcel of approximately 16-31-ft. A Supplemental Map has been provided which details this information.

Comprehensive Plan Analysis

The 2018 Sussex County Comprehensive Plan Update (Comprehensive Plan) provides a framework of how land is to be developed. As part of the Comprehensive Plan, a Future Land Use

Map is included to help determine how land should be zoned to ensure responsible development. The Future Land Use Map in the plan indicates that the parcel has a designation of “Town Center Area.” The adjoining parcels to the north, east and west also have a Future Land Use Map designation of “Town Center.” The Parcel immediately borders West Line Road S.C.R. 396) to the south as well as the Delaware/Maryland State Line.

As outlined in the 2018 Sussex County Comprehensive Plan, Town Centers are areas that are “Part of areas that municipalities have formally designated as future annexation areas in their local Comprehensive Plans, where the municipality would be receptive to annexation requests in the future” (2018 Sussex County Comprehensive Plan, 4-13). The Plan notes that “Commercial uses should serve the daily needs of residents, workers and visitors” (2018 Sussex County Comprehensive Plan, 4-13).

Zoning Information

The subject property is zoned Agricultural Residential (AR-1) District. All adjacent properties to the east, and north and west on the opposite side of Hudson Road (S.C.R. 387) are also zoned Agricultural Residential (AR-1) District.

Table 4.5-2 “Zoning Districts Applicable to Future Land Use Categories” in the 2018 Sussex County Comprehensive Plan notes that the Agricultural Residential District is an applicable Zoning District within the “Low Density” Future Land Use Map Designation.

Existing Conditional Uses within the Vicinity of the Subject Property

Although there have been multiple applications in this area, there have been four (4) Conditional Use Applications within a 0.50-mile radius of the Application Site.

Three (3) of the Applications were approved by the Sussex County Council.

The first Application was Conditional Use No. 815 Showell Growers, Inc. to allow for a borrow pit/future fire protection pond within an Agricultural Residential (AR-1) District. The Application was approved by the Sussex County Council at their meeting of Tuesday, April 30th, 1985, and the change was established through Ordinance No. 244.

The second Application was Conditional Use No. 941 Edward Jiekman, Jr. to allow for an auto-repair shop to be located within an Agricultural Residential (AR-1) District. The Application was approved by the Sussex County Council at their meeting of Tuesday, July 10th, 1990, and the change was established through Ordinance No. 699.

The third Application was Conditional Use No. 2060 Shelby Trucking/Construction to allow for a heavy equipment storage, trucking and construction business to be located within an Agricultural Residential (AR-1) District. The Application was approved by the Sussex County Council at their meeting of Tuesday, November 29th, 2016 and the change was established through Ordinance No. 2477.

There was one (1) Application which was denied by the Sussex County Council.

This Application was for Conditional Use No. 1076 Georget & Martha Whitworth to allow for boat storage within an Agricultural Residential (AR-1) District. The Application was denied by the Sussex County Council at their meeting of Tuesday, May 31st, 1994.

Conditional Use Applications (w/in a 0.50-mile radius of the subject site)*								
Application Number	Applicant Name	Zoning	Proposed Use	P&Z Date	P&Z Recommendation	CC Date	CC Decision	Ordinance No.
C/U 815	Showell Growers, Inc.	AR-1	Borrow Pit/Future Fire Protection Pond	3/28/1985	Recommended Denial	4/30/1985	Approved	244
C/U 941	Edward Jiekman, Jr.	AR-1	Auto Repair Shop	6/14/1990	Recommended Denial	7/10/1990	Approved	699
C/U 1076	George & Martha Whitworth	AR-1	Boat Storage	5/12/1994	Recommended Denial	5/31/1994	Denied	
C/U 2060	Shelby Trucking/Construction	AR-1	Heavy equipment storage, trucking and construction business	10/27/2016	Recommended Approval	11/29/2016	Approved	2477

Based on the analysis provided, the Conditional Use to allow for a solar farm in this location could be considered as being consistent with the surrounding land use, zoning, and uses, subject to considerations of scale and impact.



CU 2398 Chaberton Energy (Blue Hen Solar)
Tax Parcel ID: 533-17.00-187.00
Aerial Map



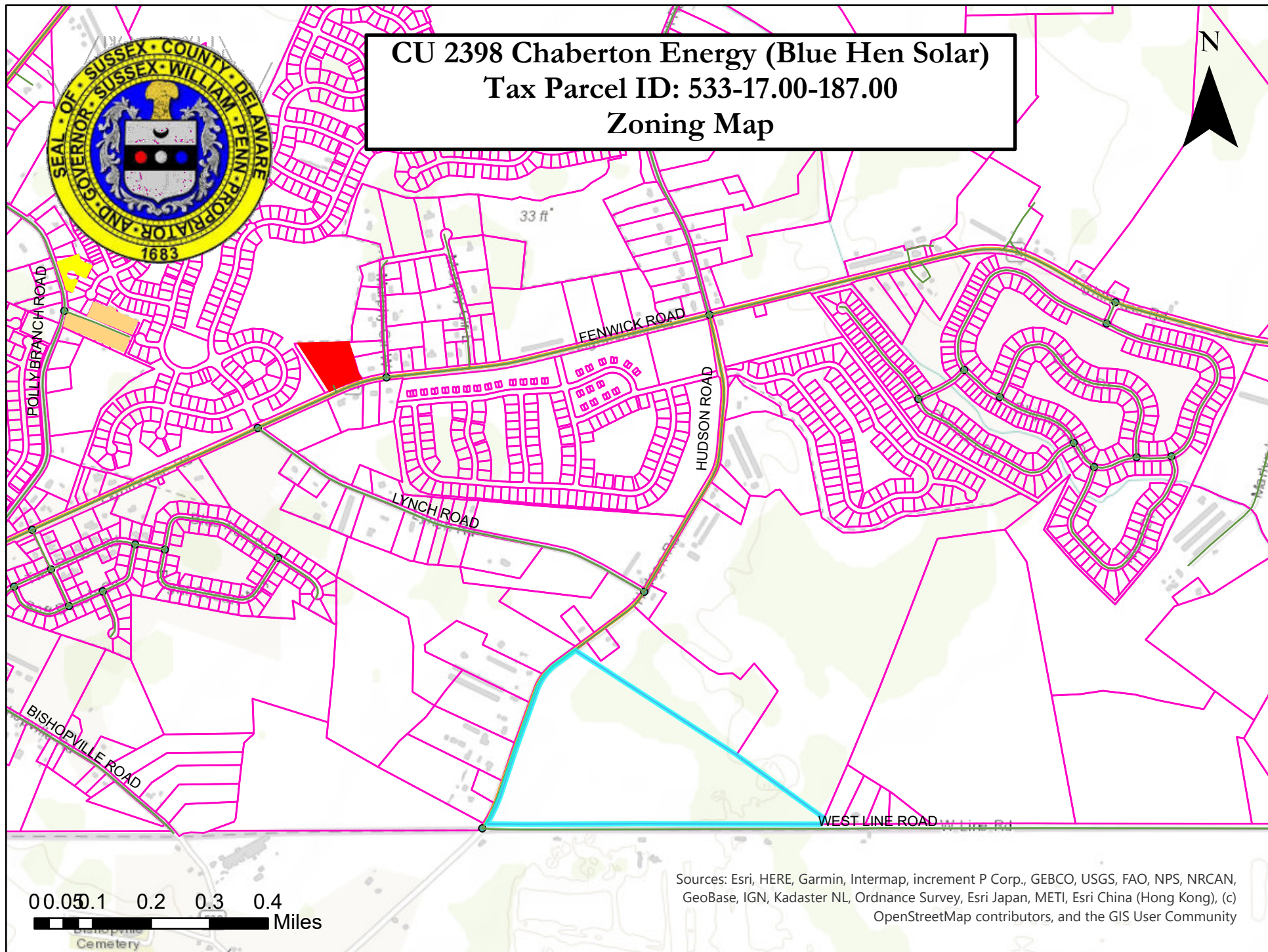
00.03.06 0.12 0.18 0.24
Miles

Source: Esri, Maxar, Earthstar Geographics, and the GIS User Community



CU 2398 Chaberton Energy (Blue Hen Solar)
Tax Parcel ID: 533-17.00-187.00
Zoning Map

N



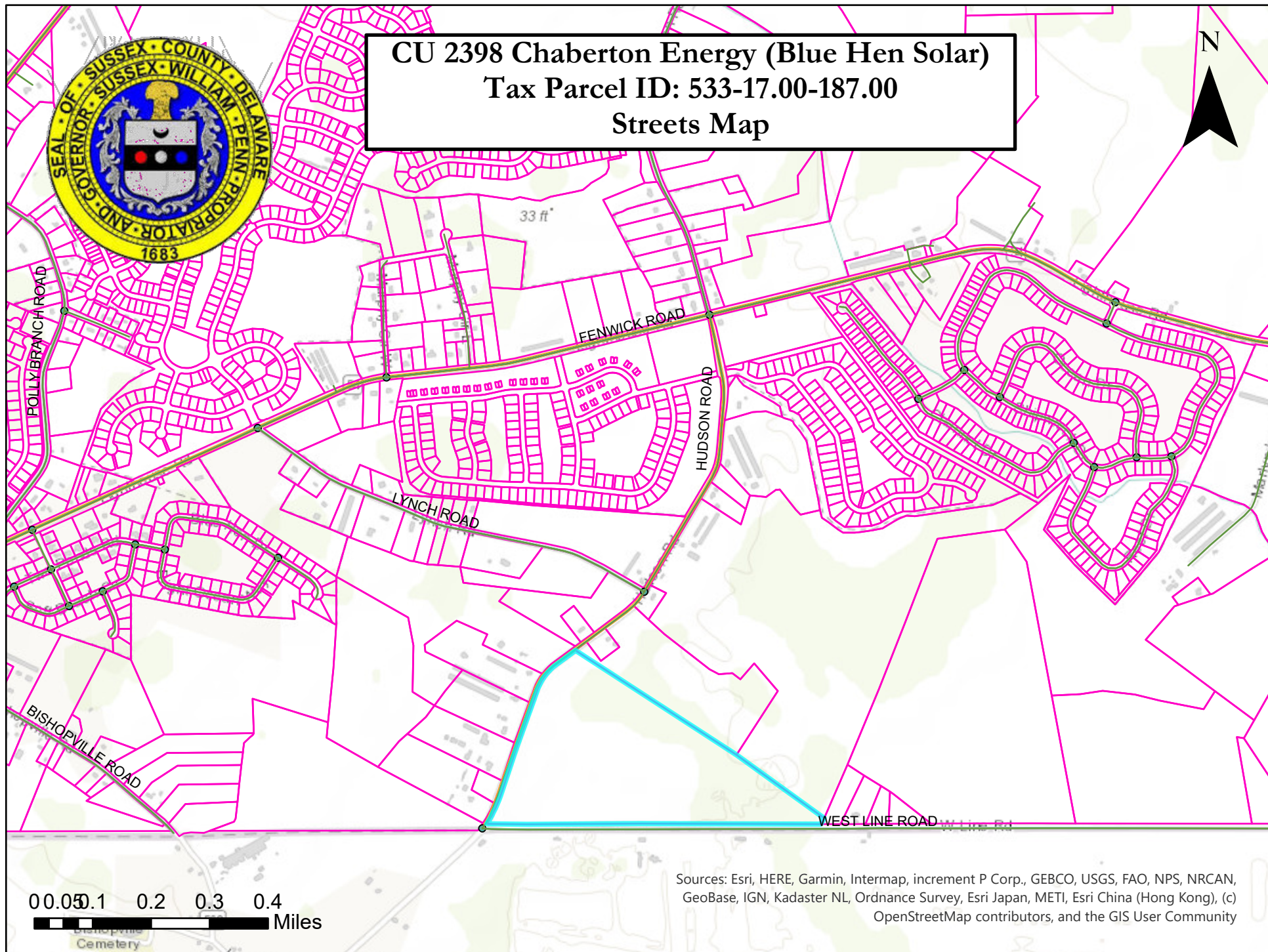
0.0 0.1 0.2 0.3 0.4
Miles

Sources: Esri, HERE, Garmin, Intermap, increment P Corp., GEBCO, USGS, FAO, NPS, NRCAN, GeoBase, IGN, Kadaster NL, Ordnance Survey, Esri Japan, METI, Esri China (Hong Kong), (c) OpenStreetMap contributors, and the GIS User Community



CU 2398 Chaberton Energy (Blue Hen Solar)
Tax Parcel ID: 533-17.00-187.00
Streets Map

N



Sources: Esri, HERE, Garmin, Intermap, increment P Corp., GEBCO, USGS, FAO, NPS, NRCAN, GeoBase, IGN, Kadaster NL, Ordnance Survey, Esri Japan, METI, Esri China (Hong Kong), (c) OpenStreetMap contributors, and the GIS User Community

Introduced: 03/21/23

**Council District: Mr. Hudson
Tax I.D. No.: 533-17.00-187.00
911 Address: N/A**

ORDINANCE NO. ____

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO ALLOW FOR A PROPOSED SOLAR FARM TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 61.15 ACRES, MORE OR LESS.

WHEREAS, on the 30th day of September 2022, a Conditional Use application, denominated Conditional Use No. 2398 was filed on behalf of Chaberton Energy (Blue Hen Solar); and

WHEREAS, on the ____ day of _____ 2023, a public hearing was held, after notice, before the Planning and Zoning Commission of Sussex County and said Planning and Zoning Commission recommended that Conditional Use No. 2398 be _____; and

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

NOW, THEREFORE, THE COUNTY OF SUSSEX HEREBY ORDAINS:

Section 1. That Chapter 115, Article IV, Subsection 115-22, Code of Sussex County, be amended by adding the designation of Conditional Use No. 2398 as it applies to the property hereinafter described.

Section 2. The subject property is described as follows:

ALL that certain tract, piece or parcel of land, lying and being situate in Baltimore Hundred, Sussex County, Delaware, and lying on southeast side of Hudson Road (S.C.R. 387), approximately 0.61 mile south of the intersection of Lighthouse Road (Route 54) and Hudson Road (S.C.R. 387), and being more particularly described in the attached legal description prepared by Becker Morgan Group, Inc., said parcel containing 61.15 acres, more or less.

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



Memorandum

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

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

CC: Everett Moore, County Attorney

Date: December 7, 2023

RE: County Council Report for C/U 2433 filed on behalf of Chaberton Solar

The Planning and Zoning Department received an application (C/U 2433 filed on behalf of Chaberton Solar) for a solar array to be located at Tax Parcel 533-18.00-39.00. The property is located at 38510 Marlyn Lane, Selbyville. The parcel size is 50.50 acres +/-.

The Planning & Zoning Commission held a Public Hearing on the application on October 26, 2023. At the meeting of October 26, 2023, the Planning & Zoning Commission recommended approval of the application for the 9 reasons and subject to the 9 recommended conditions as outlined within the motion (copied below).

Below are the minutes from the Planning & Zoning Commission meeting of October 26, 2023.

Minutes of the October 26, 2023, Planning & Zoning Commission Meeting

In relation to the following six Conditional Use applications regarding solar array uses, Chairman Wheatley stated, *"Sussex County is fully aware of the benefits and operation of these community solar facilities at this point having seen and acted on so many of them. For that reason, the Commission will take that into account and presenters do not need to establish that. Instead, please focus on your specific property, the surrounding area, and how your proposed solar facility may impact the surrounding area. The Commission will also take into account all of the written information that is already in the record on each of these applications."*

C/U 2433 Chaberton Solar

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A SOLAR ARRAY TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE



HUNDRED, SUSSEX COUNTY, CONTAINING 50.50 ACRES, MORE OR LESS. The property is lying on Marlyn Lane, on the south side of Lighthouse Road (Rt. 54), approximately 1.05 miles east of Hudson Road (S.C.R. 387). 911 Address: 38510 Marlyn Lane, Selbyville. Tax Map Parcel: 533-18.00-39.00.

Mr. Whitehouse advised the Commission that submitted into the record were the Applicant's Conceptual Site Plan, the Staff Analysis, a copy of the Applicant's Presentation, the DelDOT Service Level Evaluation Response, and a letter from the Sussex County Engineering Department Utility Planning Division. Mr. Whitehouse stated that no comments had been received for the Application.

Chairman Wheatley granted the request that information provided in the record for C/U 2398 Chaberton Solar (Blue Hen Solar) be incorporated into the record for C/U 2433 Chaberton Solar.

The Commission found that Mr. Jon Falkowski, Civil Engineer with Becker Morgan Group, Inc. spoke on behalf of the Applicant, also present was Mr. Ryan Boswell, Director of Development with Chaberton Energy. Mr. Falkowski stated that the project is located within Selbyville, that the entire site consists of 50.5 acres, located within AR-1 (Agricultural Residential); that the solar project is proposed to be located on 35.6 acres of the entire site; that the current property use is for agricultural purposes; that the project site is located just behind Lighthouse Lakes; that they have proposed additional buffering to bolster the landscape in that area; that they held a community meeting on November 6, 2023; that some changes were incorporated into as a result of the community meeting; that the changes consist of a larger buffer with more canopy trees to be added along the boundary with the subdivision; that a few residents had requested additional buffering to be provided on top of the provided landscape buffer; that Buffer A, is the typical standard buffer of 25 ft., which is to be located along the south and west sides of the site; that Buffer B provides the standard 25 ft. buffer, with an additional three canopy trees per 100 linear feet of the buffer where residents have requested it; that the project takes access from Lighthouse Rd. off an existing farm lane; that a tax ditch is located to the northern boundary of the site, and that the project is in compliance with all tax ditch right-of-way setback requirements, as well as all buffer requirements associated with Ordinance No. 2920.

The Commission found that no one wished to speak in support of the Application, and three people spoke in opposition to the Application.

Ms. Stephanie Johnson spoke with questions regarding the Application. Ms. Johnson stated she resides in Lighthouse Lakes; that she questioned how long the Conditional Use would be granted, how long the project lease is, what enforcement will take place if the property is not maintained, and if the energy would be provided for Delmarva Power.

Chairman Wheatley stated that approved Conditional Uses stay with the land; that the Applicant has three years to become substantially underway upon Final Site Plan approval; that if action is not taken within three years, the Conditional Use will sunset; that if the use is not operated for more than two years, the Conditional Use will sunset; if the Conditional Use sunsets, the Applicant would be required to return to the Commission through a separate Conditional Use application; that the project lease is not an area of concern for the Commission; that if property maintenance does not remain in compliance, a complaint may be filed with the Planning & Zoning or Constables departments and the energy will be provided to Delmarva Power.

Ms. Susan Montgomery spoke in opposition to the Application. Ms. Montgomery stated she resides

in Lighthouse Lakes, adjacent to the proposed project; that she felt most solar projects do not impact the number of residential dwellings the current project does; that she understood there is a 200 ft. buffer between dwellings and the solar array; that her house will be 180 ft. away from the project; that in addition to the tax ditch, there are several irrigation ditches; that it was her understanding that these ditches will be addressed with culverts; that there is currently drainage issues in that area, which she does not want to see worsen; that she does not want security lighting to be permitted due to the potential impact to her property; that she understood that 650 subscribers would be permitted for the project, and she felt there was a slim chance that some would be positively impacted financially, and even so, it would not be a significant amount.

Mr. Russell Shaw spoke in opposition to the Application. Mr. Shaw stated he resides in Lighthouse Lakes; that the irrigation ditches are located behind the properties of Lighthouse Lakes; that they are four to five feet across and fairly deep; that the water flow stops because of the uplands; that then the ditch fills with rain; that he previously has had six feet of water across his property and if the ditch is impacted, it could worsen the drainage issues causing flooding to their property.

Mr. Falkowski stated that they had surveyed the entire property; that there are a series of farm ditches throughout the property; that they will be contacting Sussex Conservation District for review and approval; that one of the methods for compliance is a conversion from agricultural land to pollinator mix, also known as meadow grass, will reduce runoff; that none of the farm ditches were considered Jurisdictional Wetlands; that the ditches are farm ditches, being non-regulated, but the ditches do hold water for brief periods with heavy rain; that they will mitigate this by reducing the runoff through the pollinator mix; that they will not plug up the ditches at all; that there may be a crossing with a culvert, but the culvert will be sized appropriately to handle anything that the ditch could handle and it would not impede or further back up any of the stormwater runoff.

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

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

Mr. Robertson stated he had a prepared motion, which he read into the record per Mr. Mears' request.

Mr. Mears moved that the Commission recommend approval of C/U 2433 Chaberton Solar for a solar farm in the AR-1 District based on the record made during the public hearing and for the following reasons:

1. The proposed facility is a public utility use under the Sussex County Zoning Code, and it meets the purposes of a Conditional Use because it has a public or semi-public character that is essential and desirable for the general convenience of and welfare of Sussex County residents.
2. This is an adaptive use of farmland that will preserve it from more intensive development. The solar array will be located on approximately 50.5 acres. There is also a Tax Ditch on the property that will not be disturbed by this use, as well as farm and drainage ditches that will not be disturbed by this use.
3. The proposed facility promotes Goal 7.3 of the Sussex County Comprehensive Plan, which encourages the use of renewable energy options such as solar arrays. There was testimony that this solar array would benefit residential, business, and municipal subscribers with lower power costs.
4. The proposed solar array is set back a significant distance from Lighthouse Road and with the

exception of one side of it, the use is surrounded by agricultural lands. The other side is adjacent to homes, and that common boundary will be buffered. The land is designated as being within the “Developing Area” according to Sussex County’s Future Land Use Map. This is an appropriate location for this solar array.

5. This Application generally complies with Ordinance No. 2920 regarding solar arrays. Therefore, specific conditions regarding its operation and screening are not necessary.
6. The solar array is located in an area that primarily consists of agricultural land. With the conditions imposed by the operation of Ordinance No. 2920 including separation distances and buffering, the proposed use will not have any adverse impact on the surrounding property.
7. The proposed solar generation facility will not result in any noticeable increase in traffic on area roadways. There are no regular employees at the site, only periodic visits for inspections, maintenance, or repair of the solar panels.
8. Based on the record there is no significant noise, glare, dust, or odor that will be generated by the facility.
9. The proposed use provides a renewable energy source that is a benefit to the residents and businesses of Sussex County.
10. This recommendation is subject to the conditions set forth in Ordinance No. 2920 and the following additional conditions:
 - A. The use shall be for ground-mounted solar arrays. No other types of electric generation shall be permitted at the site.
 - B. The Final Site Plan shall clearly show the limits of the Conditional Use area for this solar array, as well as the remaining acreage that is not part of the Conditional Use.
 - C. All required fencing shall include interwoven screening. The fence location and type of screening shall be shown on the Final Site Plan. In addition, vegetated buffering that is required by the Code shall be supplemented along the northwest and northeast boundaries adjacent to residential use with additional canopy trees as stated during the public hearing.
 - D. Any lighting at the facility shall only consist of perimeter lighting needed for security purposes. Any lighting shall be downward screened so that it does not shine on neighboring properties or roadways.
 - E. One unlit sign, not to exceed 32 square feet in size, shall be permitted. The sign shall identify the operator of the solar farm and shall provide contact information in case of an emergency.
 - F. The location of all transformers or similar equipment or structures shall be shown on the Final Site Plan.
 - G. Stormwater management and erosion and sedimentation control facilities shall be constructed in accordance with all applicable State and County requirements. These facilities shall be operated using Best Management Practices.
 - H. The Final Site Plan shall include a Decommissioning Plan that includes a financial security to ensure that funds are available for decommissioning and removal of the solar farm in its entirety throughout the life of the Conditional Use.
 - I. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning & Zoning Commission.

Motion by Mr. Mears, seconded by Mr. Collins and carried unanimously to recommend approval of C/U 2433 Chaberton Energy, for the reasons and the conditions stated in the motion. Motion carried 4-0.

Vote by roll call: Mr. Mears – yea, Mr. Collins – yea, Mr. Butler – yea, Chairman Wheatley – yea.

PLANNING & ZONING COMMISSION

ROBERT C. WHEATLEY, CHAIRMAN
SCOTT COLLINS
BRIAN BUTLER
J. BRUCE MEARS
HOLLY J. WINGATE



Sussex County

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JAMIE WHITEHOUSE, AICP, MRTPI
DIRECTOR OF PLANNING & ZONING

PLANNING AND ZONING AND COUNTY COUNCIL INFORMATION SHEET

Planning Commission Public Hearing Date: October 26th, 2023

Application: CU 2433 Chaberton Energy (Marlyn Lane)

Applicant: Chaberton Energy – c/o Kate Potapova
11900 Parklawn Dr., Suite 406
North Bethesda, MD 20852

Owner: Marth P. Whitworth
38510 Marlyn Lane
Selbyville, DE 19975

Site Location: Lying on the south side of Lighthouse Road (Rt. 54), approximately 0.26-miles west of the intersection of Lighthouse Road and Johnson Road (S.C.R. 390).

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

Proposed Use: Solar Farm

Comprehensive Land
Use Plan Reference: Developing Area

Councilmanic
District: Mr. Hudson

School District: Indian River School District

Fire District: Selbyville Fire Co.

Sewer: N/A

Water: N/A

Site Area: 35.00 acres +/- (p/o)

Tax Map ID: 533-18.00-39.00





Memorandum

To: Sussex County Planning and Zoning Commission Members
From: Elliott Young, Planner I
CC: Mr. Vince Robertson, Assistant County Attorney and Applicant
Date: October 19, 2023
RE: Staff Analysis for CU 2433 Chaberton Energy

The purpose of this memo is to provide background and analysis for the Planning and Zoning Commission to consider as a part of Application CU 2433 (Chaberton Energy) to be reviewed during the October 26th, 2023, Planning and Zoning Commission Meeting. This analysis should be included in the record of this application and is subject to comments and information that may be presented during the public hearing.

The request is for a Conditional Use for Tax Parcel: 533-18.00-39.00 to allow for a Community Energy Generating Facility. The property is lying on the south side of Lighthouse Road (Rt. 54), approximately 0.26-mile(s) west of the intersection of Lighthouse Road and Johnson Road (S.C.R. 390). The applicant is applying 35.00-acres +/- out of 50.50-acres +/- to be included in the Conditional Use area.

Comprehensive Plan Analysis

The 2018 Sussex County Comprehensive Plan Update (Comprehensive Plan) provides a framework of how land is to be developed. As part of the Comprehensive Plan, a Future Land Use Map is included to help determine how land should be zoned to ensure responsible development. The Future Land Use Map in the plan indicates that the parcel has a designation of "Developing Area." The adjoining parcels to the northeast and east of the subject parcel, also have the Future Land Use Designation of "Developing Area."

As outlined in the 2018 Sussex County Comprehensive Plan, "Developing Areas are newer, emerging growth areas that demonstrate the characteristics of developmental pressures" and are "adjacent to municipalities within or adjacent to potential future annexation areas of a municipality" (2018 Sussex County Comprehensive Plan, 4-14). The proposal is in proximity to and adjoins the Town of Georgetown.

The adjoining parcels to the northwest of the subject parcel have a Future Land Use Map designation of "Municipality", these parcels are located within the town jurisdiction of Selbyville, DE. Sussex County strongly favors directing development towards the municipalities that desire it (2018 Sussex County Comprehensive Plan, 4-14). The adjoining parcel to the west of the subject parcel has a Future Land Use Map designation of "Town Center".

Zoning Information

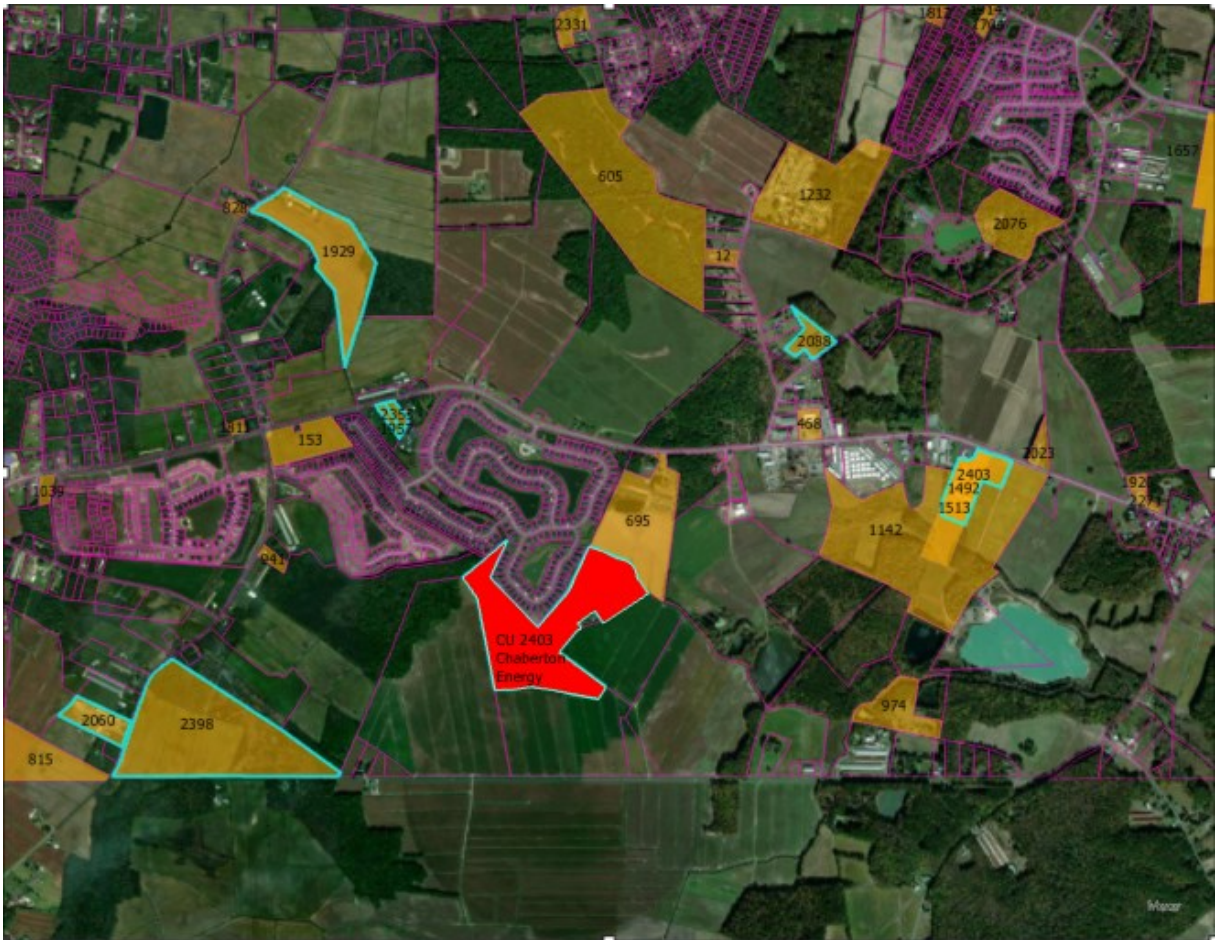
The subject property is zoned Agricultural Residential (AR-1) District. All adjacent properties to the northeast, south, east, and west of the subject parcels are also zoned Agricultural Residential

(AR-1) District. The adjoining parcels to the northwest are located within the town jurisdiction of Selbyville, DE.

Existing Conditional Uses within the Vicinity of the Subject Property

Although there have been multiple applications in this area, since 2011, there have been seven (7) Conditional Use applications within a one (1) mile radius of the Application Site.

CU	Applicant	Proposed Use	CC Decision Date	Ordinance No.
1929	Everett Dennis & David Harbin	Farm Tractor and Auto Repair	6/5/2012	2258
1957	George & Sandra VanFleet	Rental and Personal Storage Units	3/19/2013	Denied
2060	Shelby Trucking/Construction	Heavy Equipment Storage, Trucking and Construction Business	11/29/2016	2477
2088	Billy Banning Enterprises, LLC	Dance Studio	Withdrawn	Withdrawn
2355	Dan Velez & Maricrysts Birao	Physical Therapy Office	N/A (CC hearing held on 4/18/2023)	N/A
2398	Chaberton Energy (Blue Hen Solar)	Solar Farm	N/A (Commission on 10/26/2023)	N/A
2403	Beach Buggies, LLC	Retail Sales	8/1/2023	2945








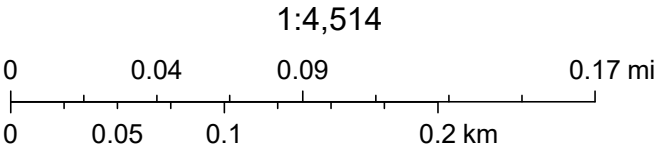
Based on the analysis provided, the Conditional Use to allow for a solar array in this location could be considered as being consistent with the surrounding land use, zoning, and uses, subject to considerations of scale and impact.

Sussex County



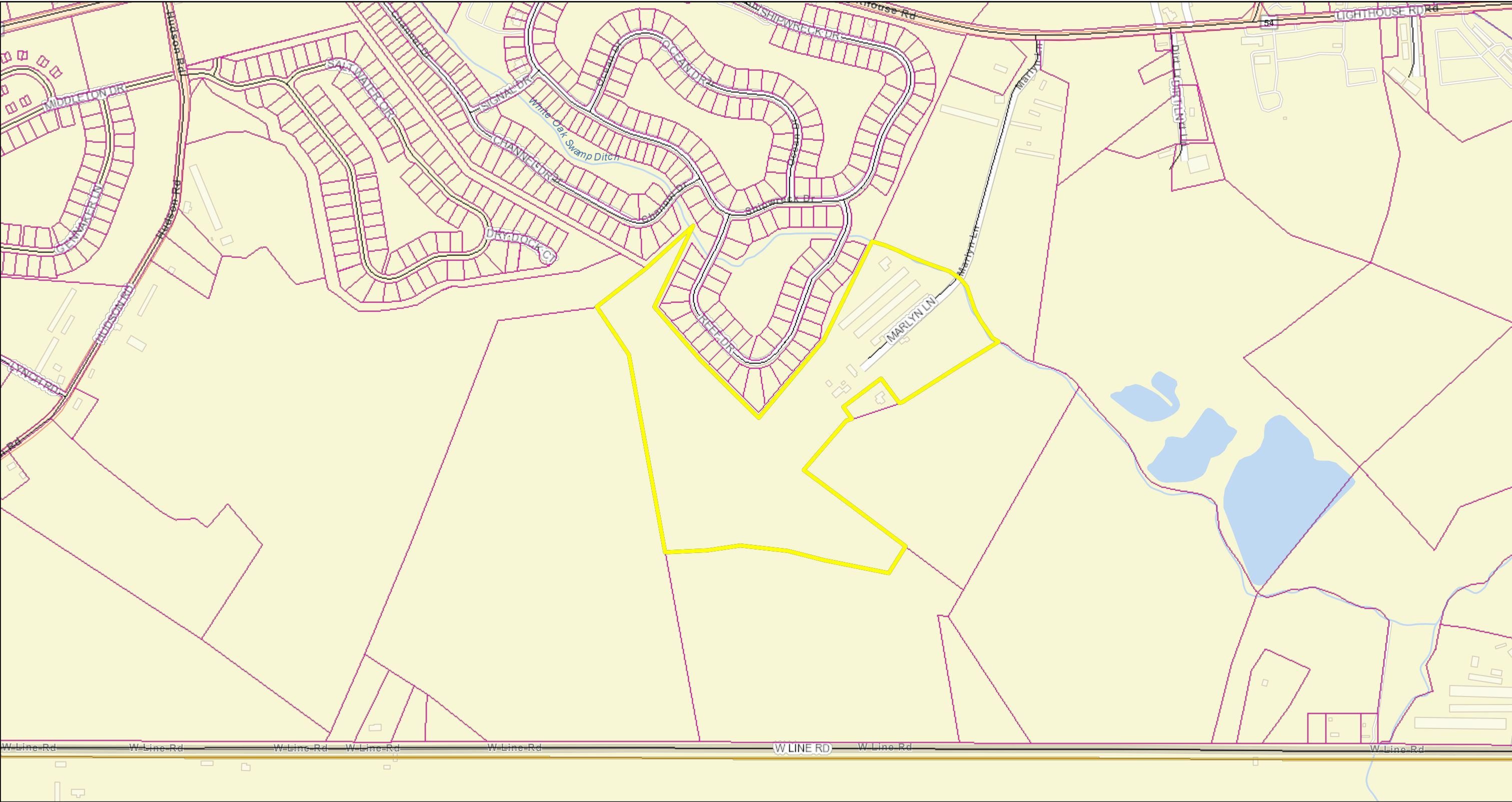
September 27, 2023

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








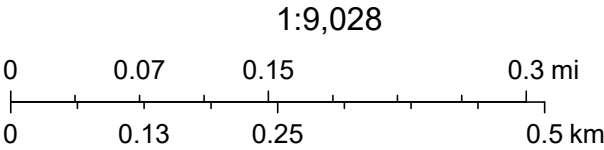
Delaware Department of Education, Wetland mapping is supported with funding provided by the Environmental Protection Agency., Delaware Geological Survey, U.S. Geological Survey, Delaware Public Service Commission, FEMA, DNREC, Division of Watershed Stewardship, Drainage Program, john.inkster@state.de.us, Sussex

Sussex County



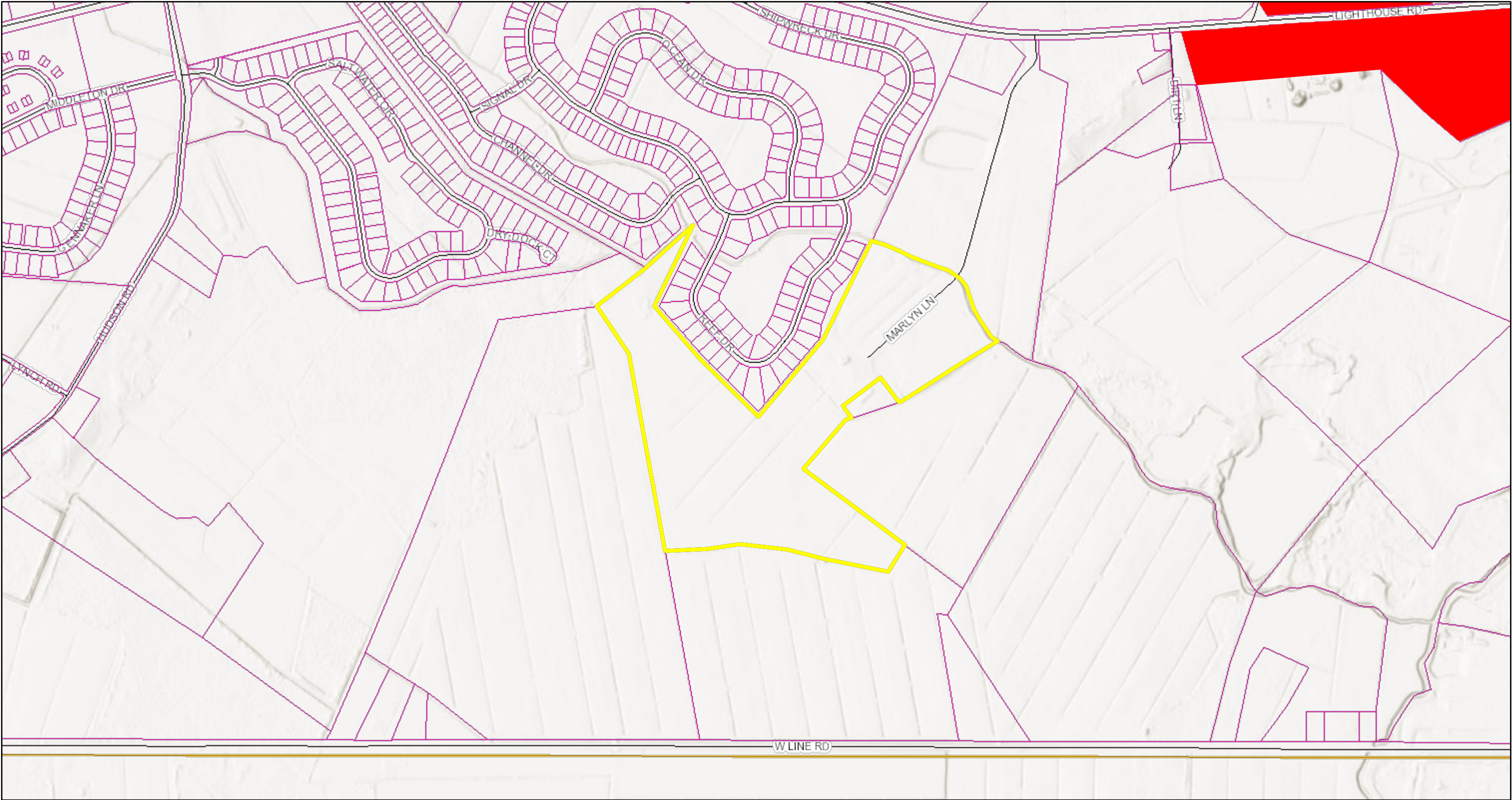
September 27, 2023

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



Sussex County Government, Esri Community Maps Contributors, County of Sussex, DE, Delaware FirstMap, VGIN, © OpenStreetMap, Microsoft, Esri, HERE, Garmin, SafeGraph, GeoTechnologies, Inc, METI/NASA, USGS, EPA, NPS, US Census Bureau, USDA

Sussex County



September 27, 2023

polygonLayer Zoning

Override 1

Override 2

General Commercial - C-1

Tax Parcels

Streets

County Boundaries

layer44

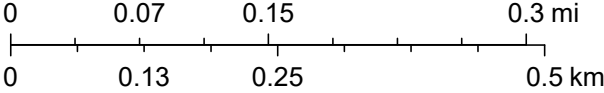
Red: Band_1

Green: Band_2

Blue: Band_3

World Hillshade

1:9,028



Esri, NASA, NGA, USGS, FEMA, Sussex County Government

Introduced: 10/10/23

**Council District 4: Mr. Hudson
Tax I.D. No.: 533-18.00-39.00 (p/o)
911 Address: 38510 Marlyn Lane, Selbyville**

ORDINANCE NO. ____

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A SOLAR ARRAY TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 50.50 ACRES, MORE OR LESS

WHEREAS, on the 27th day of March 2023, a conditional use application, denominated Conditional Use No. 2433 was filed on behalf of Chaberton Energy.; and

WHEREAS, on the ____ day of _____ 2023, a public hearing was held, after notice, before the Planning and Zoning Commission of Sussex County and said Planning and Zoning Commission recommended that Conditional Use No. 2433 be _____; and

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

NOW, THEREFORE, THE COUNTY OF SUSSEX HEREBY ORDAINS:

Section 1. That Chapter 115, Article IV, Subsection 115-22, Code of Sussex County, be amended by adding the designation of Conditional Use No. 2433 as it applies to the property hereinafter described.

Section 2. The subject property is described as follows:

ALL that certain tract, piece or parcel of land, lying and being situate in Baltimore Hundred, Sussex County, Delaware, and lying on Marlynn Lane on the south side of Lighthouse Road (Rt. 54) approximately 1.05 miles east of Hudson Road (S.C.R. 367) and being more particularly described in the attached Site Plan prepared by Becker Morgan Group., said parcel containing 50.50 acres, more or less.

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