



Sussex County Council Public/Media Packet

**MEETING:
January 6, 2015**

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



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Sussex County Council

A G E N D A

JANUARY 6, 2015

9:30 A.M. - Swearing-In Ceremony

10:00 A.M. – Regular Meeting

Call to Order

Approval of Agenda

Election of Council Officers

Council Member Appointments

Appointment of Legal Counsel

Adoption of Rules of Procedure

Approval of Minutes

Reading of Correspondence

Consent Agenda

1. Wastewater Agreement No. 685
Sussex County Project No. 81-04
The Overlook (AKA Bayville Pointe)
Fenwick Island Sanitary Sewer District
2. Wastewater Agreement No. 685-1
Sussex County Project No. 81-04
The Overlook (AKA Bayville Pointe), Phase 2A
Fenwick Island Sanitary Sewer District



3. **Wastewater Agreement No. 685-2**
Sussex County Project No. 81-04
The Overlook (AKA Bayville Pointe), Phase 2B
Fenwick Island Sanitary Sewer District
4. **Wastewater Agreement No. 1008**
Sussex County Project No. 81-04
Lands of Breakwater Partners, LLC
Angola Neck Sanitary Sewer District
5. **Wastewater Agreement No. 733-6**
Sussex County Project No. 81-04
Barrington Park – Phase 4A – AKA Coventry at Barrington Park
Millville Expansion of the Bethany Beach Sanitary Sewer District

Todd Lawson, County Administrator

1. **Recognition of Employee of the Year – Vanessa Pettyjohn**
2. **2015 Council Schedule**
3. **Farmland Preservation Advisory Board**
4. **Administrator's Report**

Gina Jennings, Finance Director

1. **Bank Account Resolutions**
2. **2014 Private Activity Bond Volume Cap Reassignment**

Michael Costello, Chief Constable

1. **Project Updates**

John Ashman, Director of Utility Planning

1. **Route 54 Expansion of the Fenwick Island Sanitary Sewer District**
 - A. **Permission to Prepare and Post Notices**

Old Business

Conditional Use No. 2001
Christina Abramowicz

Grant Requests

1. Nanticoke Health Services Foundation for Holiday Appeal.
2. Olde Tymers Softball League for operating expenses.
3. Ocean View Police Department for Naloxone Program.

Introduction of Proposed Zoning Ordinances

Executive Session – Job Applicants’ Qualifications, Personnel, and Land Acquisition pursuant to 29 Del. C. §10004(b)

Possible Action on Executive Session Items

Any Additional Business Brought Before Council

Adjourn

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

In accordance with 29 Del. C. §10004(e)(2), this Agenda was posted on December 30, 2014 at 4:30 p.m., and at least seven (7) days in advance of the meeting.

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

Agenda items listed may be considered out of sequence.

###

SUSSEX COUNTY COUNCIL - GEORGETOWN, DELAWARE, DECEMBER 9, 2014

A regularly scheduled meeting of the Sussex County Council was held on Tuesday, December 9, 2014, at 10:00 a.m., in the Council Chambers, Sussex County Administrative Office Building, Georgetown, Delaware, with the following present:

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

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

**Call to
Order**

Mr. Vincent called the meeting to order.

**M 567 14
Amend
and
Approve
Agenda**

A Motion was made by Mrs. Deaver, seconded by Mr. Phillips, to amend the Agenda by striking “Approval of Minutes” and by striking “Records Management Roof Replacement – Change Order No. 1 – Substantial Completion” under John Ashman, Director of Utility Planning, and to approve the Agenda, as amended.

Motion Adopted: 5 Yeas.

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

**Corre-
spondence**

Mr. Moore read the following correspondence:

**READING ASSIST INSTITUTE, WILMINGTON, DELAWARE.
RE: Letter in appreciation of Human Service Grant.**

**LAUREL COMMUNITY FOUNDATION, LAUREL, DELAWARE.
RE: Letter in appreciation of Human Service Grant.**

**LA ESPERENZA, GEORGETOWN, DELAWARE.
RE: Letter in appreciation of Human Service Grant.**

**CLOTHING OUR KIDS, MILLSBORO, DELAWARE.
RE: Letter in appreciation of Human Service Grant.**

**Corre-
spondence
(continued)**

LA RED HEALTH CENTER, GEORGETOWN, DELAWARE.

RE: Letter in appreciation of Human Service Grant.

INDIAN RIVER SENIOR CENTER, MILLSBORO, DELAWARE.

RE: Letter in appreciation of Human Service Grant.

ITN SOUTHERN DELAWARE, REHOBOTH, DELAWARE.

RE: Letter in appreciation of Human Service Grant.

EASTER SEALS, GEORGETOWN, DELAWARE.

RE: Letter in appreciation of Human Service Grant.

THE ARC OF DELAWARE, WILMINGTON, DELAWARE.

RE: Letter in appreciation of Human Service Grant.

**DELAWARE FOUNDATION REACHING CITIZENS WITH
INTELLECTUAL DISABILITIES, NEWARK, DELAWARE.**

RE: Letter in appreciation of Human Service Grant.

**Election
Year
Scholarship
Contest
Winners**

Mr. Lawson reported on the 2014 Election Year Scholarship Contest. Students ages 18 and younger were eligible to participate in the contest for chances to win \$200 and \$100 scholarships. Participants predicted the winners of the 22 national, state and local races in the November 4th general election. To break a tie, each entrant was asked to predict the total number of votes the winner of the State Treasurer's race would receive from Sussex County.

One winner and five runners-up were declared, based on their predictions and the tie-breaking question, from a field of 165 participants. The following students were recognized by the County Council:

- Trevor Beachboard, 16, a junior at Sussex Central High School (Winner)**
- David Lisiewski, 13, an eighth grader at Millsboro Middle School (First runner-up)**
- Ethan Ward 13, an eighth grader at Sussex Academy (Second runner-up)**
- Chase Monigle, 11, a fifth grader at Richard Shields Elementary School (Third runner-up)**
- Devan Hudson, 13, an eighth grader at Millsboro Middle School (Fourth runner-up)**
- Ethan Shuttleworth, 10, a fifth grader at Richard Shields Elementary School (Fifth runner-up)**

The winner of the contest won a \$200 scholarship and each of the five runners-up won a \$100 scholarship. Funding came from Councilmanic Grants, as well as from the law firm of Moore & Rutt.

**Adminis-
trator's
Report**

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

1. Caroling on The Circle

The Sussex County Council would like to thank the community for participating in the 31st annual Caroling on The Circle last night. We had a very successful night with hundreds of carolers and thus far have collected approximately 31,000 canned goods and nonperishable food items for our less fortunate neighbors. We would like to remind everyone that we are continuing to collect items until the end of the year, and will continue to distribute these goods to our local food pantries. We would like to thank all of our volunteers, local businesses, and schools for helping to collect the food over the last month and for making this year's Caroling on The Circle a huge success!

2. Projects Receiving Substantial Completion

Per the attached Engineering Department Fact Sheets, Millville by the Sea – Summerwind Village, Phase 1, and Bay Forest Club – Phase 3.1 received Substantial Completion effective December 4 and December 5, 2014, respectively.

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

**Dog
Control
Contract
Amendment**

Mrs. Jennings reported that staff is recommending an amendment to the County's Dog Control Contract with First State Animal Center and SPCA (formerly known as Kent County SPCA). The amendment extends the contract for a one-year period, January 1, 2015 to December 31, 2015. The amendment keeps both the service level and the price consistent with 2014. The annual cost is \$682,616. First State Animal Center requested to hire two additional staff to decrease response time; this would add \$80,000 to the contract. The current contract provides four full-time officers and one supervisor working from 8:00 a.m. to 8:00 p.m. seven days a week. Both Administration and the Constable's Office feel that the level of service is sufficient; therefore, no increase in the contract is recommended by County staff.

**M 568 14
Amend
Dog
Control
Contract**

A Motion was made by Mrs. Deaver, seconded by Mr. Phillips, that the Sussex County Council amends its contract with First State Animal Center and SPCA to extend services through December 31, 2015 in the amount of \$682,616.00.

Motion Adopted: 5 Yeas.

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

**Master
Facilities
Agreement
for Fiber
Service**

Tom Glenn, Director of Information Technology, discussed a proposed fiber project that was budgeted for in the current fiscal year. He stated that a fully redundant/diverse fiber ring connecting core Sussex County facilities is needed. Mr. Glenn reported that, on this date, he had hoped to present the selection of a vendor for the proposed project; however, during a legal review, the County's attorneys requested that the County do a RFP (Request for Proposals). For this reason, on this date, Mr. Glenn presented information on why the fiber project is needed. Mr. Glenn noted that other agencies, such as the Town of Georgetown and companies along the fiber ring could benefit from the fiber once it is constructed; it could offer other broadband options to businesses inside the Industrial Park; also, the fiber ring could act as a backbone for other wireless internet technologies to operate from. Additionally, the fiber ring could also be a launching board for other wired or wireless providers to provide service to surrounding communities. Mr. Glenn advised that the Department will be moving forward with a RFP in 2015.

**Old
Business/
CZ 1729**

Under Old Business, the Council discussed Change of Zone No. 1729 filed on behalf of Ida C. Faucett, Faucett Heirs, LLC and Massey's Landing Park, Inc. The Planning and Zoning Commission held a Public Hearing on this application on May 23, 2013 at which time action was deferred. On June 27, 2013 the Commission recommended approval of the application. The County Council held a Public Hearing on this application on June 18, 2013 at which time action was deferred.

Mr. Moore read proposed Findings of Fact and he noted that Findings are read in the affirmative:

- A. Based on the record, Sussex County Engineering Department, Utility Planning Division, stated that the site is located in the Long Neck Sanitary Sewer District; that the site will be served by central water and central sewer; and that the Sussex County Engineering Department has no objection to the rezoning to AR-1.
- B. The record reflects that Delaware Department of Transportation (DelDOT) had provided comments on January 28, 2013 in reference to the Traffic Impact Study and that DelDOT has not objected to the project or the traffic generated by it on area roadways.
- C. This is a downzoning and it will allow the Applicants to obtain approvals to construct a RV campground on the subject property; that the AR-1 zoning is necessary because a Conditional Use for a campground is not available in the MR zoning district; that both MR and AR-1 zonings are appropriate for this area under the County's Comprehensive Land Use Plan and the maps contained in the Plan since both districts permit residential use; that if the proposed Conditional Use for the property should be denied or should expire, the permitted residential density for the property would be less than what is currently permitted under the MR zoning classification; that the

**Old
Business/
CZ 1729
(continued)**

property is also surrounded by AR-1 zones; that AR-1 zoning is consistent with much of the zoning in the Long Neck and Massey's Landing area; that the proposed use as a campground is consistent with other uses in the Long Neck Road and Massey's Landing area; and that there are other campgrounds in the area that have been in existence for many years.

- D. The property was previously rezoned from AR-1 to MR-RPC in 2007 for a 120 unit residential development and this rezoning will void that approval and return the property to its prior AR-1 zoning.**
- E. The proposed use as a RV campground will be subject to the conditions and limitations established by that approval and also site plan review by the Sussex County Planning and Zoning Commission.**
- F. There is no basis in the record for a denial of this re-zoning application, and the Applicant has created a substantial record in support of the application.**
- G. Based on the record and recommendation of the Planning & Zoning Commission and the record created before Council, the Council approves this Application.**

**M 569 14
Adopt
Ordinance
No. 2377/
CZ 1729**

A Motion was made by Mr. Phillips, seconded by Mr. Wilson, to Adopt Ordinance No. 2377 entitled "AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM A MR MEDIUM DENSITY RESIDENTIAL DISTRICT TO AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 50.83 ACRES, MORE OR LESS" (Tax Map I.D. 2-34-25.00-31.01, 31.02 & 31.04) (Change of Zone No. 1729) filed on behalf of Ida C. Faucett, Faucett Heirs, LLC and Massey's Landing Park, Inc., based on the recommendation of the Planning and Zoning Commission and the Findings of Fact as read by County Attorney Everett Moore.

Motion Adopted: 4 Yeas, 1 Nay.

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

**Old
Business/
CU 1963**

Under Old Business, the Council discussed Conditional Use No. 1963 filed on behalf of Ida C. Faucett, Faucett Heirs, LLC and Massey's Landing Park, Inc. The Planning and Zoning Commission held a Public Hearing on this application on May 23, 2013 at which time action was deferred. On June 27, 2013 the Commission recommended approval of the application, with 20 condition (A-T). The County Council held a Public Hearing on this application on June 18, 2013 at which time action was deferred.

**Old
Business/
CU 1963
(continued)**

Mr. Moore read proposed Findings of Fact and Proposed Conditions, and he noted that Findings are read in the affirmative:

- A. Based on the record, the site is located in the Long Neck Sanitary Sewer District; that wastewater capacity is available; that Ordinance 38 construction is required; that conformity to the North Coastal Planning Study will be required; that connection to the sewer system is mandatory; that the County reserves the right to alter or provide additional comments upon submittal of information regarding flood zones; that the County requires design and construction of an on-site collection system to meet County Engineering Department Standards and Procedures; that coordination of existing public sewer with the project's design is required; that the County Engineer must approve connection points, and requires that a Sewer Concept Plan be submitted for review and approval; and that System Connection Charges will apply.**
- B. The record reflects that Delaware Department of Transportation (DelDOT) provided comments on January 28, 2013 in reference to the Traffic Impact Study (TIS), on April 10, 2013 on the Preliminary Site Plan, and on May 13, 2013 provided an Entrance Location Approval Only letter; that, while there were concerns expressed about traffic, DelDOT has not objected to the project or the traffic generated by it on area roadways; that a TIS was completed in 2005 and has been reviewed and accepted by DelDOT subject to certain recommendations in terms of improvements that the Applicant will be responsible for; that DelDOT found that conditions in the study area have not changed substantially since the 2005 TIS was done, that the development now proposed will be similar in its trip generation and therefore "our findings and recommendations based on the TIS contained in a letter dated November 4, 2005, are applicable to the current development proposals as well and a new TIS is not necessary"; and that the State considered Long Neck Road to be a Major Collector Road, which is an appropriate location for this type of use.**
- C. Based on the record, Applicant intends to develop the site with a campground/RV park; that the project is planned on both sides of Long Neck Road and is adjacent to State land, the boat ramp site, the existing Massey's Landing Manufactured Home Park and the existing Pot Nets Seaside Manufactured Home Park; and that the site contains 50.83 acres of land and does not include Mrs. Faucett's home.**
- D. Based on the record, all of the lands around the site have AR-1 Agricultural Residential zoning and are improved with manufactured home communities or water bodies; that the project will have 322 campsites with sewer, water, and electric hookups, bathhouses, laundry, general store, café, snack bar, and recreational and maintenance facilities, pavilions, an aquatic rental center (no motorized**

**Old
Business/
CU 1963
(continued)**

watercraft), concierge, golf cart rental center, welcome center/administrative offices, swimming pool, nature center/activity lodge, lodge meeting center/conference center, remote tenting area, DART bus stop, interior crabbing and fishing piers, and a dog park; that the recreational amenities support the use of the campground; that there will not be any lot sales; that employee parking will be provided; that Delaware Electric Cooperative will provide electricity; that the site is located in the Indian River Fire Company service area; that the streets within the project will be sized to accommodate the largest emergency vehicle of the Indian River Volunteer Fire Company; that they are proposing to install pervious pavement with filter strips, rather than impervious pavement; that they plan on utilizing green technologies and Best Management Practices; that there are no threatened/endangered species on site; and that the project will have controlled and gated access.

- E. The use as a campground is consistent with the other existing residential uses, campgrounds and manufactured housing communities that currently exist in the Long Neck Road and Massey's Landing areas; that campers and RVs are not something new in this neighborhood, so there is a reasonable expectation that RV and campground uses could be developed in the vicinity; and that the use is adjacent to developed Manufactured Home Parks on the west and south, and the bay and the State of Delaware boat launch on the north and east.
- F. Under the current Sussex County Comprehensive Plan, the site is located in the Environmentally Sensitive Developing Area, which is recognized as a development or growth area on the Future Land Use Map; that the area is almost fully developed and this project could be considered infill; that the development is consistent with the purposes and goals of the Sussex County Comprehensive Plan Update and is beneficial and desirable for the general convenience and welfare of Sussex County and its residents because it promotes tourism and related services, economic growth in a designated development area, full and part-time employment opportunities, significant economic benefits to area businesses, and is consistent with the character of the zoning and development in the area; that the site is an appropriate location for the proposed development since recreational and commercial uses exist in the Long Neck area; and that there will be no negative impact on schools or other similar public facilities since the development will operate only seasonally.
- G. The Applicant has created a sufficient record in support of the Conditional Use application.
- H. Based on the record and recommendation of the Planning & Zoning Commission and the record created before Council, the Conditional Use is approved subject to the following conditions which will serve to

**Old
Business/
CU 1963
(continued)**

minimize any potential impacts on the surrounding area and adjoining properties:

- 1. The maximum number of campground/RV sites shall be three hundred twenty-two (322).**
- 2. All entrance and roadway improvements and any other DelDOT requirements shall be completed as required by DelDOT. This includes the Developer's agreement to comply with DelDOT's request to enter into an agreement with DelDOT to fund an equitable portion of the installation of a single-lane roundabout at the intersection of Route 23 and Pot-Nets Road, and other similar improvements.**
- 3. The Development shall be served by the County's Long Neck Sanitary Sewer District. The Applicant shall comply with all Sussex County Engineering Department requirements regarding connection to, and service by, the District.**
- 4. The Development shall be served water for domestic use and fire protection by the Long Neck Water Company.**
- 5. Stormwater management and sediment and erosion control facilities shall be constructed in accordance with applicable State and County requirements and maintained using Best Management Practices. The Final Site Plan shall contain the approval of the Sussex Conservation District.**
- 6. The Applicant shall cooperate and coordinate with the State and County emergency preparedness offices to develop and implement an emergency evacuation plan.**
- 7. The Development shall be surrounded by a 50 foot landscaped buffer. This shall be installed as part of the 1st phase of the development's construction.**
- 8. The entire facility may open no earlier than April 1st each year and shall close no later than the first Sunday of November of each year.**
- 9. The campground/RV park shall remain vacant and no campers or RVs shall be stored on the campsites during the period that the campground is closed.**
- 10. There shall be no accessory buildings located on individual campsites.**
- 11. Campground restrictions shall be submitted as part of the site plan review.**

**Old
Business/
CU 1963
(continued)**

12. All units to be used for the purpose of human habitation on campsites shall be tents, travel trailers, recreational vehicles and equipment manufactured specifically for camping purposes.

13. The Developer shall plan the entrance design to accommodate a DART bus stop and turnabout in consultation and cooperation with DART.

14. One sign, not exceeding thirty-two (32) square feet per side with lighting, shall be permitted. The lighting for the sign shall not shine on any neighboring properties or roadways.

15. All lighting shall be downward screened so that it does not shine on neighboring communities or roadways.

16. All wetlands on the site shall be clearly marked on the site to avoid disturbance. The location and type of these markers shall be shown on the Final Site Plan.

17. The Applicant shall determine, after consulting with the County, whether there are any “dwellings” in the vicinity of the property that require a 400 foot buffer pursuant to Section 115-172H.(3) of the Sussex County Code (in effect at the time of the application). As part of the Final Site Plan review, the Developer shall include a note on the Plan describing its efforts to make this determination and show the location of any dwelling that would trigger the application of the 400 foot buffer.

18. All campsites must be 2,000 square feet in size according to the Sussex County Code. It does not appear that the campsites at the “Remote Tenting Area” shown on the Preliminary Site Plan comply with this size requirement, and this must be corrected on the Final Site Plan along with any other campsites that do not meet the appropriate dimensional requirements.

19. There shall be a notice at the entrance to the campground stating that it is located within a Flood Prone Area and that certain evacuation and/or relocation procedures are in place and must be followed by all campground visitors in the event of a weather emergency.

20. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.

Mr. Vincent turned over the gavel to Mr. Wilson for the purpose of making a Motion.

**M 570 14
Add
Condition**

A Motion was made by Mr. Vincent, seconded by Mrs. Deaver, to amend the Proposed Conditions for Conditional Use No. 1963 by adding a new Condition (No. 20) to state: There shall be a buffer of 200 feet from any

M 570 14 structure used for living space on property of lands other than the
Add Applicants; no activities or structures of this use shall be permitted in the
Condition/ 200 foot buffer. (The previous Condition No. 20 becomes Condition No. 21.)
CU 1963
(continued) **Motion Adopted: 5 Yeas.**

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

Recommend Mr. Cole recommended a new proposed condition: during the site plan
New approval process, the Planning and Zoning Commission shall determine the
Conditions/ number of (the percentage of) park models, cabins, RV sites, and
CU 1963 campground sites. Mr. Cole stated that his reasoning for this is because
campgrounds can change ownership and because he wants to make sure
there are transient sites available.

Vince Robertson, Assistant County Attorney, stated that he did not see a
problem with a breakdown of the percentages on the site plan.

Mr. Lank suggested the following wording for Mr. Cole's proposed
condition: The Planning and Zoning Commission shall determine the
number of park models, RVs, travel trailers and tent camping sites to be
established on the site; the number of transient sites shall also be
determined by the Planning and Zoning Commission.

Mr. Cole recommended another proposed condition, as proposed by the
Applicants: no sales of camping units or RV vehicles and no lot sales; lots
are for lease only.

Mr. Lank suggested the following wording for Mr. Cole's proposed
condition: There shall be no sales of campsites or camping units, i.e., park
models, RVs, travel trailers or cabins.

Mr. Cole recommended another proposed condition, as proposed by the
Applicants: no motorized watercraft available onsite.

Mr. Lank suggested the following wording for Mr. Cole's proposed
condition: There shall be no motorized watercraft for sale or lease from the
site and there shall be no launching of motorized watercraft from the site.

A discussion was held regarding (1) the Planning and Zoning Commission
determining the percentages and whether or not there is an appeal process
if the Applicant wishes to appeal the Commission's decision; (2) cabins; and
(3) the fact that the campground/RV park is to be vacant in the off-season.
In regards to cabins, Mr. Lank stated that no cabins (stick-built) are
proposed in this application; however, there are park models that look like
cabins.

M 571 14
Add
Condition/
CU 1963

A Motion was made by Mr. Cole, seconded by Mrs. Deaver, to add a condition which states that: The Planning and Zoning Commission shall determine the number of park models, RVs, travel trailers, and tent camping sites to be established on the site. The number of transient sites shall also be determined by the Commission.

Motion Adopted: 3 Yeas, 2 Nays.

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

M 572 14
Add
Condition/
CU 1963

A Motion was made by Mr. Cole, seconded by Mrs. Deaver, to add a condition which states that: There shall be no sales of campsites or camping units, i.e., park models, RVs, travel trailers or cabins.

Motion Adopted: 5 Yeas.

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

M 573 14
Add
Condition/
CU 1963

A Motion was made by Mr. Cole, seconded by Mrs. Deaver, to add a condition which states that: There shall be no motorized watercraft for sale or lease from the site and there shall be no launching of motorized watercraft from the site.

Motion Adopted: 5 Yeas.

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

Mr. Lank referenced a question about Condition No. 9 which states that: The campground/RV park shall remain vacant and no campers or RVs shall be stored on the campsites during the period that the campground is closed. He noted that a suggestion was made to delete the word “campsites” and replace it with “campground”.

M 574 14
Amend
Condition/
CU 1963

A Motion was made by Mr. Cole, seconded by Mrs. Deaver, to amend Condition No. 9 to read as follows: The campground/RV park shall remain vacant and no campers or RVs shall be stored on the campground during the period the campground is closed.”

Motion Adopted: 5 Yeas.

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

**M 575 14
Renum
Conditions/
CU 1963**

A Motion was made to renumber the conditions.

Motion Adopted: 5 Yeas.

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

**M 576 14
Adopt
Ordinance
No. 2378/
CU 1963**

A Motion was made by Mr. Cole, seconded by Mr. Phillips, to Adopt Ordinance No. 2378 entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A CAMPGROUND TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 50.83 ACRES, MORE OR LESS” (Conditional Use No. 1963) filed on behalf of Ida C. Faucett, Faucett Heirs, LLC and Massey’s Landing Park, Inc., with the following conditions, as amended:

- 1. The maximum number of campground/RV sites shall be three hundred twenty-two (322).**
- 2. All entrance and roadway improvements and any other DelDOT requirements shall be completed as required by DelDOT. This includes the Developer’s agreement to comply with DelDOT’s request to enter into an agreement with DelDOT to fund an equitable portion of the installation of a single-lane roundabout at the intersection of Route 23 and Pot-Nets Road, and other similar improvements.**
- 3. The Development shall be served by the County’s Long Neck Sanitary Sewer District. The Applicant shall comply with all Sussex County Engineering Department requirements regarding connection to, and service by, the District.**
- 4. The Development shall be served water for domestic use and fire protection by the Long Neck Water Company.**
- 5. Stormwater management and sediment and erosion control facilities shall be constructed in accordance with applicable State and County requirements and maintained using Best Management Practices. The Final Site Plan shall contain the approval of the Sussex Conservation District.**
- 6. The Applicant shall cooperate and coordinate with the State and County emergency preparedness offices to develop and implement an emergency evacuation plan.**
- 7. The Development shall be surrounded by a 50 foot landscaped buffer. This shall be installed as part of the 1st phase of the development’s construction.**

**M 576 14
Adopt
Ordinance
No. 2378
CU 1963
(continued)**

8. The entire facility may open no earlier than April 1st each year and shall close no later than the first Sunday of November of each year.

9. The campground/RV park shall remain vacant and no campers or RVs shall be stored on the campground during the period that the campground is closed.

10. There shall be no accessory buildings located on individual campsites.

11. Campground restrictions shall be submitted as part of the site plan review.

12. All units to be used for the purpose of human habitation on campsites shall be tents, travel trailers, recreational vehicles and equipment manufactured specifically for camping purposes.

13. The Developer shall plan the entrance design to accommodate a DART bus stop and turnabout in consultation and cooperation with DART.

14. One sign, not exceeding thirty-two (32) square feet per side with lighting, shall be permitted. The lighting for the sign shall not shine on any neighboring properties or roadways.

15. All lighting shall be downward screened so that it does not shine on neighboring communities or roadways.

16. All wetlands on the site shall be clearly marked on the site to avoid disturbance. The location and type of these markers shall be shown on the Final Site Plan.

17. The Applicant shall determine, after consulting with the County, whether there are any “dwellings” in the vicinity of the property that require a 400 foot buffer pursuant to Section 115-172H.(3) of the Sussex County Code (in effect at the time of this application). As part of the Final Site Plan review, the Developer shall include a note on the Plan describing its efforts to make this determination and show the location of any dwelling that would trigger the application of the 400 foot buffer.

18. All campsites must be 2,000 square feet in size according to the Sussex County Code. It does not appear that the campsites at the “Remote Tenting Area” shown on the Preliminary Site Plan comply with this size requirement, and this must be corrected on the Final Site Plan along with any other campsites that do not meet the appropriate dimensional requirements.

**M 576 14
Adopt
Ordinance
No. 2378/
CU 1963
(continued)**

19. There shall be a notice at the entrance to the campground stating that it is located within a Flood Prone Area and that certain evacuation and/or relocation procedures are in place and must be followed by all campground visitors in the event of a weather emergency.

20. There shall be a buffer of 200 feet from any structure used for living space on property of lands other than the Applicants; no activities or structures of this use shall be permitted in the 200 foot buffer.

21. The Planning and Zoning Commission shall determine the number of park models, RVs, travel trailers, and tent camping to be established on the site; the number of transient sites shall also be determined by the Commission.

22. There shall be no sales of campsites or camping units, i.e., park models, RVs, travel trailers or cabins.

23. There shall be no motorized watercraft for sale or lease from the site and there shall be no launching of motorized watercraft from the site.

24. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.

Motion Adopted: 4 Yeas, 1 Nay.

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

Recess

Mr. Vincent declared a short recess.

**Old
Business/
CZ 1725**

Under Old Business, the Council discussed Change of Zone No. 1725 filed on behalf of Jack Lingo Asset Management, LLC

The Planning and Zoning Commission held a Public Hearing on this application on January 24, 2013. On August 22, 2013, the Commission recommended that the application be approved.

The County Council held a Public Hearing on this application on February 19, 2013 at which time action was deferred.

Mr. Moore read proposed Findings of Fact and he noted that Findings are read in the affirmative:

A. This is an application to amend the Comprehensive Zoning Map from GR General Residential District to AR-1 Agricultural Residential District, to be located on a certain parcel of land lying and being in

**Old
Business/
CZ 1725
(continued)**

Lewes and Rehoboth Hundred, Sussex County, containing 74 acres, more or less, lying southwest of Ward Road (Road 283A) and southeast of Cedar Grove Road (Road 283), 2,400 feet southwest of Mulberry Knoll Road (Road 284) (Tax Map I.D. 3-34-12.00-16.00 Part of).

- B. The record reflects that, while not required, a Traffic Impact Study was submitted on January 11, 2013 and that DelDOT has not stated any objections to the project or the traffic generated by it on local roadways.**
- C. The Sussex County Engineering Department has no objection to the rezoning to AR-1 and that the site will be served by central water and central sewer.**
- D. Based on the record, this is a down-zoning and it will allow the Applicants to obtain approvals to construct a RV campground on the subject property; that the property is partly AR-1 Agricultural Residential and partly GR General Residential and this will bring the entire parcel under one common zoning classification; that the AR-1 zoning is necessary because a conditional use for a campground is not available in the GR General Residential Zoning District; that both GR General Residential and AR-1 Agricultural Residential zoning are appropriate for this area under the County's Comprehensive Land Use Plan and the maps contained in the Plan, since both districts permit residential use; that, if the proposed Conditional Use for the property should be denied or should expire, the permitted residential density for the property would be less than what is currently permitted under the GR General Residential Zoning classification; and that, under the Plan, it is in an area appropriate for development, the Environmentally Sensitive Developing District.**
- E. The proposed use as a RV campground will be subject to the conditions and limitations established by that approval, and also site plan review by the Sussex County Planning and Zoning Commission.**
- F. There is no basis in the record for a denial of this rezoning application, and the Applicant has created a substantial record in support of the application.**
- G. Based on the record and recommendation of the Planning & Zoning Commission and the record created before Council, the Council approves this Application.**

**M 577 14
Adopt
Proposed
Ordinance/
CZ 1725

DENIED**

A Motion was made by Mr. Cole, seconded by Mr. Wilson, to Adopt the Proposed Ordinance entitled "AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM A GR GENERAL RESIDENTIAL DISTRICT TO AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 74 ACRES, MORE OR LESS" (Change of Zone No. 1725) filed on behalf of Jack Lingo Asset Management, LLC.

Motion Denied: 3 Nays, 2 Yeas.

**M 577 14
(continued)**

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

**Reasons
for Denial/
CZ 1725**

Reasons for denial stated by Mrs. Deaver, Mr. Cole and Mr. Vincent included the following: this rezoning is part of an overall project to allow an RV campground. The rezoning is necessary to accomplish this goal, since an RV campground is not permitted as a residential use in a GR Zone; the proposed change in zone and the overall project do not promote the overall health, safety, convenience and general welfare of the neighborhood or community; Council received petitions containing 814 signatures in opposition to the project along with 252 letters and emails, some of which may be duplicates, expressing opposition to the project. These communications have come from parties who live in the surrounding communities. Finally, there were over 110 people present at the Planning and Zoning Commission public hearing and over 116 people present at the Council public hearing in opposition to the Application; the Applicant did not proffer any evidence to support why this land should be zoned AR-1, other than because it needs to be that way for the proposed project. However, the rezoning must stand on its own merits, and the AR-1 zoning would survive whether the proposed C/U project is approved or expires. There is no basis in the record or in the County Comprehensive Plan for the rezoning to AR-1; GR zoning allows a variety of housing types, including manufactured homes on smaller lots. The County seeks to promote affordable housing opportunities, and a change of zone to AR-1 would decrease the land zoned available for that type of use. The current amount of land zoned GR in Sussex County is limited. As a result, the GR zoning should be preserved. Additionally, the County does seek to promote affordable housing and the Change of Zone would decrease the amount of GR land that is available; that development trends in this area have been primarily for single family homes planned communities; and that the proposal is not consistent with the area.

**Old
Business/
CU 1951**

Under Old Business, the Council considered Conditional Use No. 1951 filed on behalf of Jack Lingo Asset Management, LLC.

The Planning and Zoning Commission held a Public Hearing on this application on January 24, 2013. On August 22, 2013, the Commission recommended that the application be approved, with conditions.

The County Council held a Public Hearing on this application on February 19, 2013 at which time action was deferred.

Mr. Vincent referenced the denial of Change of Zone 1725 and he stated that the Conditional Use application cannot be approved because the land is not zoned properly.

M 578 14
Adopt
Proposed
Ordinance/
CU 1951

DENIED

A Motion was made by Mr. Cole, seconded by Mrs. Deaver, to Adopt the Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A RV RESORT AND CAMPGROUND TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 162.424 ACRES, MORE OR LESS” (Conditional Use No. 1951) filed on behalf of Jack Lingo Asset Management, LLC.

Motion Denied: 5 Nays.

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

Reasons
for Denial

Reasons for denial were that the proposed use is not a permitted use in a GR District and that the underlying Change of Zone was denied.

Grant
Requests

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

M 579 14
Council-
manic
Grant

A Motion was made by Mr. Wilson, seconded by Mr. Cole, to give \$600.00 (\$400.00 from Mr. Vincent’s Councilmanic Grant Account, \$100.00 from Mr. Wilson’s Councilmanic Grant Account and \$100.00 from Mr. Phillips’ Councilmanic Grant Account) to the Eastern Shore AFRAM Festival for the MLK Day of Celebration.

Motion Approved: 5 Yeas.

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

M 580 14
Council-
manic
Grant

A Motion was made by Mr. Phillips, seconded by Mr. Wilson, to give \$2,000.00 (\$1,000.00 each from Mr. Phillips’ and Mr. Vincent’s Councilmanic Grant Accounts) to the Laurel Fire Department to upgrade the handicap entrance.

Motion Approved: 5 Yeas.

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

M 581 14
Council-
manic
Grant

A Motion was made by Mr. Cole, seconded by Mrs. Deaver, to give \$3,500.00 (\$2,500.00 from Mr. Cole’s Councilmanic Grant Account and \$1,000.00 from Mrs. Deaver’s Councilmanic Grant Account) to the West Rehoboth Community Land Trust for the purchase of property.

Motion Approved: 5 Yeas.

**M 581 14
(continued)**

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

**M 582 14
Council-
manic
Grant**

A Motion was made by Mr. Cole, seconded by Mrs. Deaver, to give \$2,500.00 from Mr. Cole's Councilmanic Grant Account to the Rehoboth Beach Historical Society Museum for building improvements.

Motion Approved: 5 Yeas.

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

**Introduction
of Proposed
Ordinances**

Mr. Phillips introduced the Proposed Ordinance entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR AN ELECTRICAL SUBSTATION TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LITTLE CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 4.0 ACRES, MORE OR LESS" (Conditional Use No. 2007) filed on behalf of Delaware Electric Cooperative, Inc. (Tax I.D. No. 532-11.00-25.00 (Part of) (911 Address: None Available).

Mr. Phillips introduced the Proposed Ordinance entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO OPERATE A TRUCKING BUSINESS AND PARKING OF VEHICLES TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN DAGSBORO HUNDRED, SUSSEX COUNTY, CONTAINING 35,011 SQUARE FEET, MORE OR LESS" (Conditional Use No. 2008) filed on behalf of John Martin (Tax I.D. No. 133-20.00-17.17) (911 Address: 30102 Millsboro Highway, Millsboro).

The Proposed Ordinances will be advertised for Public Hearing.

**Comment/
Grants**

Mrs. Deaver commented on the councilmanic grant program.

**M 583 14
Recess/
Go Into
Executive
Session**

At 12:15 p.m., a Motion was made by Mr. Wilson, seconded by Mr. Phillips, to recess and go into Executive Session.

Motion Approved: 5 Yeas.

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

Executive Session At 12:21 p.m., an Executive Session of the Sussex County Council was held in the Basement Caucus Room for the purpose of discussing matters relating to land acquisition. The Executive Session concluded at 12:35 p.m.

M 584 14 Reconvene Regular Session At 12:38 p.m., a Motion was made by Mrs. Deaver, seconded by Mr. Cole, to come out of Executive Session and to reconvene the Regular Session.

Motion Approved: 4 Yeas, 1 Absent.

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

Action There was no action on Executive Session matters.

Additional Business There was no Additional Business.

M 585 14 Recess At 12:39 p.m., a Motion was made by Mrs. Deaver, seconded by Mr. Wilson, to recess until 1:30 p.m.

Motion Approved: 5 Yeas.

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

M 586 14 Reconvene A Motion was made by Mrs. Deaver, seconded by Mr. Cole, to reconvene at 1:34 p.m.

Motion Approved: 5 Yeas.

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

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

Mr. Phillips joined the meeting during the first Public Hearing.

**Public Hearing/
CU 2002** A Public Hearing was held on the Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A C-1 GENERAL COMMERCIAL DISTRICT FOR A DISTILLERY WITH TOURS/TASTING/RETAIL TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 24,523 SQUARE FEET, MORE OR LESS” (Conditional Use No. 2002) filed on behalf of Beach Bum Distilling, c/o I3A (Tax Map I.D. No. 334-5.00-74.01) (911 Address 32191 Nassau Road, Lewes).

**Public
Hearing/
CU 2002
(continued)**

The Planning and Zoning Commission held a Public Hearing on this application on November 20, 2014 at which time action was deferred.

(See the minutes of the Planning and Zoning Commission dated November 20, 2014.)

Lawrence Lank, Director of Planning and Zoning, read a summary of the Commission's Public Hearing.

Mr. Lank distributed the survey/site plan for the proposed project.

The Council found that Dominick Schiavoni, an Associate of i3A Engineering Consultants, was present on behalf of Beach Bum Distilling (BBD). He stated in his presentation that BBD will operate as a Delaware Craft Distillery manufacturing a handcrafted product on premises; that the manufacturing process includes fermentation, distillation, barrel aging, and bottling; that fermentation and distillation will be done in small 50 gallon batches; that the distilled product will be hand bottled in batches of 30 gallons or smaller; that the distillery's products will be offered for sale exclusively in the retail space where tastings and limited tours will be available to the public; that their flagship product will be a family of rum spirits inspired by the area's maritime history and beaches; that BBD hopes to collaborate with other local businesses to create unique products; that the planned receiving hours are 8:00 a.m. to 4:00 p.m.; that small package deliveries are expected to increase by 2 or 3 per week from providers such as UPS and FedEx in their standard residential delivery vehicles; that pallet sized deliveries are expected to increase by no more than 2 per month by common carrier with lift gate service; that there are no plans for out-bound shipments; that their planned operating hours for the retail space are Monday through Thursday from Noon to 6:00 p.m., Friday from Noon to 7:00 p.m., Saturday from 11:00 a.m. to 7:00 p.m., and Sunday from 1:00 p.m. to 6:00 p.m.; that operating hours could be reduced seasonally; that there are no plans to extend hours; that they anticipate that the number of visitors to the distillery will be from 10 to 15 per day on Monday through Friday and 20 to 40 per day on Saturday and Sunday; that due to the size of the retail area, they anticipate that a maximum of 25 persons could be reasonably accommodated during any private function or event; that their three year business model projects the generation of approximately \$31,000 in State excise tax revenue and \$71,000 in Federal excise revenue; that the distillery is expected to create two full-time manufacturing jobs and two part-time retail jobs; that they received a Federal Distilled Spirits Plant permit on October 7, 2014; that they are in the process of creating a fire protection plan to submit for approval by the State Fire Marshal which will dictate how the operations are laid out and isolated within their space; that once conditional use for the distillery is approved then they can proceed to apply for a Delaware Craft Distillery license from the Delaware Alcoholic Beverage Control Commission; that they have secured a three-year lease for Unit No. 5, a 19,000 square foot space; that there are 4 different uses available in the building; that currently there are 2 vacant areas, an area

**Public
Hearing/
CU 2002
(continued)**

being used by an engineering firm, and an area being used by a bakery; that they propose to use one area and the other vacant area is to be used by DelDOT contractors; that there is an existing shared parking arrangement; and that in regards to the parking, 18 spaces will be needed and there are currently 19 spaces available

Mr. Schiavoni distributed two plans showing the parking layout and the floorplan of the building.

There were no public comments.

The Public Hearing and public record were closed.

**M 587 14
Defer
Action/
CU 2002**

A Motion was made by Mr. Cole, seconded by Mr. Wilson, to defer action on Conditional Use No. 2002 filed on behalf of Beach Bum Distilling, C/O I3A.

Motion Approved: 5 Yeas.

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

**Public
Hearing/
CU 2003**

A Public Hearing was held on the Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A RETAIL STORE TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 32,829 SQUARE FEET, MORE OR LESS” (Conditional Use No. 2003) filed on behalf of Thomas E. Lowe.

The Planning and Zoning Commission held a Public Hearing on this application on November 20, 2014 at which time the Commission recommended approval with the following conditions:

- A. Although the conditional use is for retail sales in general, a majority of the products sold on the premises must be related to home and garden and baked goods, as proposed by the Applicant.
- B. One lighted sign, not to exceed 32 square feet per side, shall be permitted on the premises.
- C. There shall be adequate parking on the site and the parking shall comply with the Sussex County Zoning Code parking requirements.
- D. Any and all dumpsters shall be screened from view of neighboring properties and roadways.
- E. Any security lighting shall be downward screened so that it does not shine on neighboring properties or roadways.
- F. The Applicant shall comply with all DelDOT requirements regarding entrances to the property.

**Public
Hearing/
CU 2003
(continued)**

- G. The hours of operation shall be from 9:00 a.m. until 5:00 p.m. Monday through Saturday, and Noon until 4:00 p.m. on Sundays.**
- H. The use shall be seasonal, open between April 1 and December 31 of each year.**
- I. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning and Zoning Commission.**

(See the minutes of the Planning and Zoning Commission dated November 20, 2014.)

Lawrence Lank, Director of Planning and Zoning, read a summary of the Commission's Public Hearing.

Mr. Lank distributed the survey/site plan for the proposed project.

The Council found that Thomas Lowe was present and he stated that he would like to establish a small home and garden store as an expansion to his small greenhouse and nursery business on Omar Road; that he has owned the business for 8 years; that he proposes a seasonal home and garden retail store from April 1 through Christmas; that he also sells nursery and plant stock; that his business hours are seasonally from 9:00 a.m. to 5:00 p.m. Monday through Saturday, and from 10:00 a.m. to 4:00 p.m. on Sundays; that he is flexible with the hours; that a small parking area would be dedicated for the store; that he currently has one full-time employee as well as part-time help as needed for the nursery; that he proposes to hire at least one more full-time employee and some part-time help; that he has received positive feedback from his neighbors; that the store would be 1,200 square feet; that there will be no negative impact on traffic; that he would like to add pottery, small yard art, Amish cakes and pies; garden furniture, silk flowers, gifts, wreaths, and similar items.

There were no public comments.

The Public Hearing and public record were closed.

**M 588 14
Modify
Conditions/
CU 2003**

A Motion was made by Mr. Cole, seconded by Mr. Wilson, to modify the conditions recommended by the Planning and Zoning Commission by deleting Conditions G and H, and to renumber the conditions.

Motion Approved: 5 Yeas.

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

**M 589 14
Adopt
Ordinance
No. 2379**

A Motion was made by Mr. Wilson, seconded by Mrs. Deaver, to Adopt Ordinance No. 2379 entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A RETAIL STORE TO BE LOCATED

**M 589 14
Adopt
Ordinance
No. 2379/
CU 2003
(continued)**

ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 32,829 SQUARE FEET, MORE OR LESS” (Conditional Use No. 2003) filed on behalf of Thomas E. Lowe, with the following conditions, as amended:

- A. Although the conditional use is for retail sales in general, a majority of the products sold on the premises must be related to home and garden and baked goods, as proposed by the Applicant.**
- B. One lighted sign, not to exceed 32 square feet per side, shall be permitted on the premises.**
- C. There shall be adequate parking on the site and the parking shall comply with the Sussex County Zoning Code parking requirements.**
- D. Any and all dumpsters shall be screened from view of neighboring properties and roadways.**
- E. Any security lighting shall be downward screened so that it does not shine on neighboring properties or roadways.**
- F. The applicant shall comply with all DelDOT requirements regarding entrances to the property.**
- G. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning and Zoning Commission.**

Motion Approved: 5 Yeas.

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

**Public
Hearing/
CZ 1762**

A Public Hearing was held on the Proposed Ordinance entitled “AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A CR-1 COMMERCIAL RESIDENTIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN LITTLE CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 23.37 ACRES, MORE OR LESS” (Change of Zone No. 1762) filed on behalf of Hale Trailer Brake & Wheel (Tax I.D. No. 532-13.00-78.00) (911 Address: None Available).

The Planning and Zoning Commission held a Public Hearing on this application on November 20, 2014 at which time the Commission recommended approval.

(See the minutes of the meeting of the Planning and Zoning commission dated November 20, 2014.)

Lawrence Lank, Director of Planning and Zoning, read a summary of the Commission’s Public Hearing.

Mr. Lank distributed an Exhibit Book previously provided by the Applicant.

**Public
Hearing/
CZ 1762
(continued)**

The Council found that Jeff Finney, Manager for Hale Trailer Brake and Wheel, was present with Dennis Schrader, Esq., and Ken Christenbury, Professional Engineer with Axiom Engineering, LLC. Mr. Schrader and Mr. Christenbury stated that the site is adjacent to U.S. Route 13 (Sussex Highway) and the already developed site of Hale Trailer Brake and Wheel; that the application is for the purpose of an expansion of a currently existing business; that this site is currently vacant; that a portion of the site has been cleared to allow for three phase electricity provided to the existing site where a new shop has been built; that three phase electricity install was not done in anticipation of any granting of a change of zone; that the intent of this application is to allow for the expansion of the adjacent facility; that the existing facility has 14 employees; that the site is located in a Low Density Area and a Level 4 Area according to the State Strategies; that the application did not require a PLUS review; that no structures are currently planned for this property, only the display of trailers, containers and related equipment for the expansion of the adjacent facility; that if the rezoning is approved, they will be submitting site plans for the display area and related features of the property; that the southerly third of the property contains wetlands; that they are not proposing any new entrances; that DelDOT is only going to allow entrance to the site from the adjacent facility; that no traffic studies were required; that the area for the displays will be graveled; that they are working with the Sussex Conservation District on the stormwater management plans; that there is a need for the expansion of the existing use; that the new building on the adjacent facility is almost completed creating a need for the additional display area; that there is ample area on this site to create a crossing over the ditch to provide the necessary access for the interconnection of the two parcels; that the rezoning would be an infill as everything south of the site is zoned Light Industrial; that there is no need for water or sewer as no buildings are proposed; and that the Exhibit Booklet contains some suggested Findings of Fact for consideration.

There were no public comments.

The Public Hearing and public record were closed.

**M 590 14
Adopt
Ordinance
No. 2380
CZ 1762**

A Motion was made by Mr. Cole, seconded by Mrs. Deaver, to Adopt Ordinance No. 2380 entitled “AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A CR-1 COMMERCIAL RESIDENTIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN LITTLE CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 23.37 ACRES, MORE OR LESS” (Change of Zone No. 1762) filed on behalf of Hale Trailer Brake & Wheel.

Motion Approved: 5 Yeas.

**M 590 14
(continued)**

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

**M 591 14
Adjourn**

**A Motion was made by Mr. Phillips, seconded by Mr. Cole, to adjourn at
2:19 p.m.**

Motion Approved: 5 Yeas.

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

Respectfully submitted,

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

SUSSEX COUNTY COUNCIL - GEORGETOWN, DELAWARE, DECEMBER 16, 2014

A regularly scheduled meeting of the Sussex County Council was held on Tuesday, December 16, 2014, at 10:00 a.m., in the Council Chambers, Sussex County Administrative Office Building, Georgetown, Delaware, with the following present:

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

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

**Call to
Order**

Mr. Vincent called the meeting to order.

**M 592 14
Amend
and
Approve
Agenda**

A Motion was made by Mr. Phillips, seconded by Mrs. Deaver, to amend the Agenda by striking “Executive Session – Land Acquisition pursuant to 29 Del. C. §10004(b)” and “Possible Action on Executive Session Items”; and to approve the Agenda, as amended.

Motion Adopted: 5 Yeas.

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

**Agenda
Item
Delayed**

Mr. Lawson announced that Bob Carey’s presentation on Delmarva Teen Challenge would be delayed until later in the meeting.

Minutes

The minutes of December 2, 2014 were approved by consent.

**Corre-
spondence**

Mr. Moore read the following correspondence:

**PRIMERSOS PASOS, INC., GEORGETOWN, DELAWARE.
RE: Letter in appreciation of Human Service Grant.**

**JOSEPH STOREHOUSE, DAGSBORO, DELAWARE.
RE: Letter in appreciation of Human Service Grant.**

**RONALD MCDONALD HOUSE OF DELAWARE, WILMINGTON,
DELAWARE.
RE: Letter in appreciation of Human Service Grant.**

**Corre-
spondence
(continued)**

READ ALOUD DELAWARE, GEORGETOWN, DELAWARE.

RE: Letter in appreciation of Human Service Grant.

**DELAWARE STATE POLICE TROOP 4 EXPLORERS PROGRAM,
GEORGETOWN, DELAWARE.**

RE: Letter in appreciation of Human Service Grant.

KENT SUSSEX INDUSTRIES, INC., MILFORD, DELAWARE.

RE: Letter in appreciation of Human Service Grant.

DELAWARE GUIDANCE SERVICES, WILMINGTON, DELAWARE.

RE: Letter in appreciation of Human Service Grant.

DELAWARE HOUSING COALITION, DOVER, DELAWARE.

RE: Letter in appreciation of Human Service Grant.

**DEC
Presen-
tation**

Bill Andrew, President and Chief Executive Officer of the Delaware Electric Cooperative (DEC), presented a check to the Sussex County Council representing capital credits that were earned in 1996 and retired, in excess of \$13,000.00.

**Procla-
mation/
Cape Field
Hockey**

The Council presented to the Cape Henlopen High School Field Hockey Team a Proclamation entitled “A PROCLAMATION TO HONOR THE CAPE HENLOPEN HIGH SCHOOL FIELD HOCKEY TEAM UPON WINNING THE 2014 DIAA CHAMPIONSHIP”.

**Adminis-
trator’s
Report**

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

1. Project Receiving Substantial Completion

Per the attached Engineering Department Fact Sheet, Del-Mar Subdivision, aka Rocks Bethany, received Substantial Completion effective December 10, 2014.

2. Christmas and New Year’s Holidays

Sussex County offices will be closed on December 24th, 25th and 26th to celebrate the Christmas holiday, and January 1st for the New Year’s holiday. In addition, the Sussex County Council will not meet on December 23rd or December 30th. The next regularly scheduled meeting of the Sussex County Council will be on Tuesday, January 6, 2015, at 10:00 a.m.

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

**Pension
Committee
Update
and
Recommen-
dations**

Mrs. Jennings presented the following pension performance update:

Summary of Pension Investment Analysis

- **Market value was \$70,246,309 as of September 30, 2014**
- **Year-to-date gain of \$4.3 million, or 6.1 percent, net of investment fees**
- **The fund's annual performance ranked in the top 1 percent for pension funds tracked by Peirce Park Group**

Summary of the OPEB Investment Analysis

- **Market value was \$29,814,550 as of September 30, 2014**
- **Year-to-date return of \$1 million or 3.2 percent, net of investment fees**
- **The fund's performance ranked in the top 6 percent this quarter**

Mrs. Jennings reported that the Pension Committee met on November 19, 2014 and recommended to replace Fidelity Low-Priced Stock. She stated that, while the fund has done well over the years, it has drifted away from its original investment style. The fund holds a material amount in large cap stocks and non-U.S. stocks. History has shown that mid cap stocks outperform large cap stocks over time.

Mrs. Jennings reported that the Pension Committee reviewed two options – a passive and an active option. Due to the increase in expense by 58 basis points and its performance from 2008 through 2013, the Committee recommended moving the remaining funds of approximately \$2.5 million to Vanguard Mid Cap Value Index. This change will save the fund approximately \$18,500 in fees annually. Mrs. Jennings noted that a complete analysis was included in the Council packets.

Michael Shone of Peirce Park Group, was in attendance to answer any questions.

**M 593 14
Transfer
Funds Out
of Fidelity
to Vanguard**

A Motion was made by Mrs. Deaver, seconded by Mr. Phillips, that the Sussex County Council transfer all funds out of the Fidelity Low Priced Stock Fund to the Vanguard Mid Cap Value Index Fund.

Motion Adopted: 5 Yeas.

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

**Pension
Committee
Update
and
Recommen-
dations
(continued)**

Mrs. Jennings stated that the Pension Committee looked at changing the Pension Investment Policy Statement. Approximately one year ago, the return assumption was lowered from 8.0% to 7.5% for both the Pension Fund and the OPEB Fund. As the County's auditors begin to review new accounting standards, they feel that 7.5% may be tough to reach in the OPEB Fund. Based on the advice of Michael Shone and the County's auditors, the Committee recommends increasing the equity target to 65% from 60% to

- (continued) make sure the 7.5% assumption is reached.
- M 594 14** **A Motion was made by Mrs. Deaver, seconded by Mr. Phillips, that the Sussex County Council amend the OPEB Plan's Investment Policy Statement by increasing the domestic equity target from 46% to 51% and decreasing the fixed income target from 39% to 34%.**
- Amend OPEB Plan's Investment Policy Statement**
- Motion Adopted: 5 Yeas.**
- Vote by Roll Call: Mrs. Deaver, Yea; Mr. Cole, Yea;
Mr. Phillips, Yea; Mr. Wilson, Yea;
Mr. Vincent, Yea**
- Pension Committee Update and Recommendations (continued)**
- Mrs. Jennings and Mr. Shone discussed the temporary agreement entered into in January 2014 for Consulting Plus Services (weekly review of the OPEB Fund) with Peirce Park Group whereby fees were deferred for one year. Mrs. Jennings recommended payment for the service in the amount of \$20,000. She reported that the County is looking at a \$2.5 million increase because of these services. However, Mrs. Jennings recommended that the services be discontinued as the County is now on a good path and she will continue to closely monitor the Fund's performance.**
- Mrs. Jennings noted that Mr. Shone of Peirce Park Group would still provide services and quarterly reports to the County but would not provide the extra added service of the weekly reports for the OPEB Fund.**
- M 595 14** **A Motion was made by Mrs. Deaver, seconded by Mr. Cole, that the Sussex County Council discontinue Consulting Plus Services and to compensate Peirce Park Group 7 basis points, approximately \$20,000.00, for Consulting Plus Services that were provided in 2014.**
- Compensate Peirce Park Group for Consulting Plus Services & Discontinue Service**
- Motion Adopted: 5 Yeas.**
- Vote by Roll Call: Mrs. Deaver, Yea; Mr. Cole, Yea;
Mr. Phillips, Yea; Mr. Wilson, Yea;
Mr. Vincent, Yea**
- Endowment Fund** **A discussion was held regarding the investment of funds in the fire company endowment fund of \$10 million.**
- Health Insurance RFP Process**
- Mrs. Jennings announced that the County will be soliciting bids for health insurance. She stated that this is a significant expense to the County and it is important to look into other options for health insurance. Currently, the County has a self-insurance plan that is administered by a third-party, Integra. This year, the County will be undertaking a comprehensive review of its health insurance plan and will be looking at both fully funded insured and self-insured options. The objectives of the process are: to conduct a comprehensive review of the County's benefits program including cost, benefit levels, level of service, funding method, and provider discounts; to**

Health Insurance RFP Process develop a strategy to control the growth in the employee benefit costs; and, to maintain a competitive benefits program allowing the County to attract and retain talent and maintain a high level of employee satisfaction. Mrs. Jennings stated that the process will take approximately three months to complete; the County will start to solicit bids in January.

Fair Housing Update Brandy Nauman, Housing Coordinator and Fair Housing Compliance Officer, presented the semi-annual update on the progress of the County's settlement requirements for the U.S. Department of Justice (DOJ) and U.S. Department of Housing & Urban Development (HUD) and the progress the County has made.

U.S. Department of Justice Consent Decree

- An affordable and Fair Housing Marketing Plan was done over a year ago; the County is still awaiting official approval from the DOJ. The County hosted the inaugural Sussex County Homebuyer Fair in September 2014 and has prepared and printed an outreach flyer for distribution to major employers and non-profit organizations throughout the County.
- There have been no housing discrimination complaints in the last six months.
- The County will be submitting its fourth annual compliance report by December 19, 2014 to HUD and the DOJ.
- The County holds Fair Housing Training annually and the next session will be held in the first quarter of 2015. All new employees affiliated with land use or housing are trained when hired.
- The County has created an affordable and fair housing webpage, which was launched in June 2013. Compliance reports, and any public hearings and other meetings, are posted on the site. The site is updated regularly to provide any news on affordable or fair housing.
- The County is required to send to the DOJ any updates regarding the County's zoning or land use laws pertaining to the moderately priced housing program or the rental program. The recent dwelling ordinance passed by the County shows the County's steps to update the Code to further comply with Federal and State Fair Housing Acts.

U.S. Department of Housing & Urban Development Voluntary Compliance Agreement

- The County had to do an Analysis of Impediments Evaluation and a Proposed Priority Fair Housing Plan (an analysis of the three different analysis of impediments from 1998, 2003 and 2011). The County is

**Fair
Housing
Update
(continued)**

continuing to work to address those impediments. The County has implemented several items: the Dwelling Definition Ordinance was adopted, and a new Human Service Grants application process has been implemented which will allow the County to identify and track organizations that use County funds to aid with affirmatively furthering fair housing. Also, the Community Development and Housing Department is actively submitting comments for PLUS through the Office of State Planning whereby they can encourage developers to provide affordable housing opportunities and affirmatively market their units to diverse populations.

- The County was required to perform an internal evaluation of ten different rural communities throughout the County (the Impacted Communities Study). Four communities have been added to the list; once the data is evaluated, the County will have a basis to prioritize investments and requests for federal funding based on infrastructure and service needs in those communities. The County was awarded \$50,000 from the Community Development Block Grant through the Delaware State Housing Authority in Fiscal Year 2013; although, as of this date, the funds have not been utilized. The Community Development and Housing Department did issue a RFP for help with the study, but the proposals came in very high. The Department is hoping to do the manual labor of the door to door surveys and then reissue the RFP to help with the data consolidation and presentation.

**EMS
Station 105/
Bid Results
and Award**

John Ashman, Director of Utility Planning, presented the bid results for EMS Station No. 105 (South Coastal Station). Eight bids were submitted. The project scope involves the site work and construction of a 3,400 square foot paramedic station. The contract term is 105 consecutive calendar days. State of Delaware wage rates will apply on this project. The lowest responsive bidder was RBCI Corporation of Easton, Maryland with a bid of \$497,660.00. The Engineer's estimate for the project was \$479,662.00. Mr. Ashman and Bobby Schoonover, EMS Technical Services Division Manager, responded to questions regarding the cost of the project.

**M 596 14
Award
EMS
Station 105
Bid**

A Motion was made by Mr. Phillips, seconded by Mr. Wilson, based upon the recommendation of the Sussex County Engineering Department, that Sussex County Project No. 14-05, Sussex County Emergency Medical Services, South Coastal Station #105, be awarded to RBCI, Corp. of Easton, Maryland at the bid amount of \$497,660.00.

Motion Adopted: 5 Years.

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

Records Management Roof Replacement	<p>John Ashman, Director of Utility Planning, presented Change Order No. 1 and a request to grant Substantial Completion for the Sussex County Records Management Roof Replacement Project (Project No. 14-08). The low bidder for the project was C.T.A. Roofing of Newark, Delaware, at \$107,000.00. Notice to Proceed was given on October 29, 2014 and Substantial Completion was granted on December 10, 2014. Change Order No. 1, in the amount of \$3,457.00, is for additional blocking for the new coping due to the additional thickness of the insulation and the poor condition of the pre-cast concrete caps. The Change Order amount of \$3,457.000 will bring the total contract amount to \$110,457.00, which is still under the Engineer's estimate of \$120,000.00.</p>
M 597 14 Records Management Roof Replacement/ Approve Change Order/ Grant Substantial Completion	<p>A Motion was made by Mrs. Deaver, seconded by Mr. Phillips, based upon the recommendation of the Sussex County Engineering Department, that Sussex County Council grant Substantial Completion effective December 10, 2014 for Sussex County Project No. 14-08, Sussex County Records Management Roof Replacement, to CTA Roofing, and that final payment be made and any retainage be held until the final balancing change order is approved and the punch-list completed in accordance with the terms and conditions of the contract documents.</p> <p>Motion Adopted: 5 Yeas.</p> <p>Vote by Roll Call: Mrs. Deaver, Yea; Mr. Cole, Yea; Mr. Phillips, Yea; Mr. Wilson, Yea; Mr. Vincent, Yea</p>
EMS Station 101 Lease Renewal	<p>Robert Stuart, Director of EMS, presented a proposal for a lease renewal for EMS Station No. 101 in Lincoln. The lease renewal is for a 5-year extension; the cost for the first year is \$1,074.000; the cost goes up 3% per year.</p>
M 598 14 Approve Lease Agreement/ EMS Station 101	<p>A Motion was made by Mr. Cole, seconded by Mrs. Deaver, that the Sussex County Council approves the Lease Agreement between the Lincoln Community Hall, Inc. and Sussex County, Delaware, for the use of a portion of the building owned by them, as described therein by Sussex County EMS as Paramedic Station 101.</p> <p>Motion Adopted: 5 Yeas.</p> <p>Vote by Roll Call: Mrs. Deaver, Yea; Mr. Cole, Yea; Mr. Phillips, Yea; Mr. Wilson, Yea; Mr. Vincent, Yea</p>
Poultry House Assessment	<p>Chris Keeler, Director of Assessment, presented a comparison and review of poultry house assessments. He reported that, currently, all poultry houses constructed since 1974 are priced at \$1.75 per square foot. This value was established in 1974 during Sussex County's last reassessment. In comparison, Kent County prices their poultry houses at \$2.96 per square</p>

**Poultry
House
Assessment
(continued)**

foot and New Castle County prices their poultry houses at \$5.00 a square foot. Worcester County, Maryland, prices their poultry houses at \$5.46 per square foot.

Mr. Keeler reviewed appraised values, total assessed values, and examples of tax bills for Sussex County and the other two counties in Delaware for comparison purposes.

Also discussed was the process of reducing the value of a chicken house if it is no longer up-to-date and no longer used. It was noted that the same thing is done on houses, if the house is in disrepair and no longer lived in.

Mr. Phillips stated that he asked for this report to be made to the Council as a result of a petition circulated and signed by hundreds of area poultry growers and those affected by the industry.

Charlie Hudson of Laurel was permitted to speak and he stated that the formula used to tax poultry houses needs to be changed and that other businesses are taxed by profit, not by their buildings, which is how poultry houses should be taxed. Mr. Hudson was advised that the County does not tax on profits/income; taxes are assessed on buildings; and further, the County does not control the amount of school taxes.

**Delmarva
Teen
Challenge
Presentation**

Bob Carey of Delmarva Teen Challenge presented information on their long-term residential program for men to combat addictions. Mr. Carey offered statistics about their work locally and he described Teen Challenge as faith-based rescue mission. Mr. Carey stated that Teen Challenge is the Number One rehabilitation program in the world with an 86 percent success rate. Mr. Carey announced Teen Challenge's plans for a similar program for women and he stated that he would like to present more information on this project at a future date.

Mr. Carey stated that the grant request from Delmarva Teen Challenge on Council's agenda on this date is for emergency grant funding to help subsidize the existing program for men; it costs them \$1,500 a month, per person, in order to get them the property training, counseling, medical care, etc.

**M 599 14
Council-
manic
Grant**

A Motion was made by Mr. Cole, seconded by Mrs. Deaver, to give \$10,000.00 (\$5,000.00 from Mr. Wilson's Councilmanic Grant Account, \$3,456.85 from Mr. Phillips' Councilmanic Grant Account, \$1,000.00 from Mr. Vincent's Councilmanic Grant Account, \$271.58 from Mrs. Deaver's Councilmanic Grant Account, \$271.57 from Mr. Cole's Councilmanic Grant Account.

Motion Adopted: 5 Yeas.

M 599 14 **Vote by Roll Call:** **Mrs. Deaver, Yea; Mr. Cole, Yea;**
(continued) **Mr. Phillips, Yea; Mr. Wilson, Yea;**
 Mr. Vincent, Yea

M 600 14 Council- manic Grant	A Motion was made by Mr. Phillips, seconded by Mr. Cole, to give \$1,000.00 from Mr. Phillips' Councilmanic Grant Account to Kiwanis International for the Sussex Tech Key Club for conference costs.
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Motion Adopted: 5 Yeas.

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

M 601 14 **A Motion was made by Mr. Phillips, seconded by Mr. Cole, to give \$500.00**
Council- **(\$100.00 from each Councilmanic Grant Account) to the Delaware State**
manic **University Alumni Association for a scholarship fundraiser.**
Grant

Motion Adopted: 4 Yeas, 1 Nay.

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

Old Business/
CU 1998

Under Old Business, the Council discussed Conditional Use No. 1998 filed on behalf of Todd Fisher.

The Planning and Zoning Commission held a Public Hearing on this application on October 23, 2014 at which time action was deferred. On December 11, 2014, the Commission recommended denial of the application.

The County Council held a Public Hearing on this application on November 18, 2014 at which time action was deferred.

<p>M 602 14</p> <p>Adopt</p> <p>Proposed</p> <p>Ordinance/</p> <p>CU 1998</p> <p>DENIED</p>	<p>A Motion was made by Mr. Cole, seconded by Mrs. Deaver, to Adopt the Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A SELF-STORAGE FACILITY TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 3.74 ACRES, MORE OR LESS” (Conditional Use No. 1998) filed on behalf of Todd Fisher.</p>
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Motion Denied: 5 Nays.

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

**Old
Business/
CU 1999**

Under Old Business, the Council discussed Conditional Use No. 1999 filed on behalf of Hopkins Farm Creamery, Inc.

The Planning and Zoning Commission held a Public Hearing on this application on October 23, 2014 at which time the application was denied due to the fact that the Applicant did not appear and due to the lack of a record of support.

The County Council held a Public Hearing on this application on November 18, 2014 at which time action was deferred to allow time for the preparation of proposed Findings of Fact and conditions of approval.

Mr. Moore read proposed Findings of Fact and Proposed Conditions and he noted that Findings are presented in the affirmative:

- A. This is the application of Hopkins Farm Creamery, Inc. to consider the Conditional Use of land in an AR-1 Agricultural Residential District for a BBQ vendor to be located on a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, containing 73 acres, more or less, land lying southwest corner of U.S. Route 9 (Lewes Georgetown Highway, aka Seashore Highway) and Road 261 (Dairy Farm Road) (911 Address: 18186 Dairy Farm Road, Lewes, DE) (Tax Map I.D. #3-34-10.00-51.00).**
- B. Council found that DelDOT commented that a Traffic Impact Study was not recommended and that the current Level of Service “B” of Sweetbriar Road from Beaver Dam Road to U.S. Route 9 may change to a Level of Service “C”.**
- C. Council found that the Sussex Conservation District commented that the Applicant will be required to follow recommended erosion and sediment control practices during any construction and to maintain vegetation after construction; that no storm flood hazard areas are affected; that no off-site drainage improvements will be necessary; that it is not likely that any on-site drainage improvements will be necessary; and that no tax ditches are affected.**
- D. Council found that the Sussex County Engineering Department, Utility Planning Division, commented that the site is located in the North Coastal Planning Area; that an on-site septic system is proposed; that conformity to the North Coastal Planning Study will be required; that the proposed use is not in an area where the County currently has a schedule to provide sewer service; and that a Concept Plan is not required.**
- E. Based on testimony at the public hearing before the Sussex County Council, Council found that Walter Hopkins, Jr. was present on behalf of the application of Hopkins Farm Creamery, Inc. and he stated that they plan to have a BBQ operation in conjunction with**

**Old
Business/
CU 1999
(continued)**

the ice cream operation at the dairy farm; that the BBQ operation will be located approximately 200 feet south of the ice cream operation in the parking lot; that they propose a food truck/trailer that would be mobile; that they do not propose to take it off site although they would have that option; that they propose to use the same entrance, same parking, and same hours of operation as the ice cream operation; and that they propose to serve lunch only.

- F. Council found that there is room for the use on the site; that there will also be room to pull off of Road 261 (Dairy Farm Road) to access the food vendor; that the use is appropriate in this location next to U.S. Route 9 (Seashore Highway) and Road 261 (Dairy Farm Road) and it is on property that is zoned AR-1 Agricultural Residential; that the Conditional Use is in accordance with the Comprehensive Development Plan and is for the general convenience and welfare of the inhabitants of Sussex County; and that the Conditional Use will not adversely affect neighboring properties, the community, or area roadways and traffic.**
- G. Council found that no parties appeared in opposition to this application.**
- H. Based on the record created before Council and from the agencies, the Conditional Use is approved subject to the following conditions which will serve to minimize any potential impacts on the surrounding area and adjoining properties:**

 - 1. The use shall comply with all setback and parking requirements, or obtain appropriate approvals from the Sussex County Board of Adjustment.**
 - 2. The Applicant shall comply with all DelDOT requirements, including an entrance to and from Road 261 (Dairy Farm Road).**
 - 3. Any trash containers associated with the use shall be screened from view of neighboring properties and roadways.**
 - 4. There shall be permitted one lighted sign, not to exceed 32 square feet in size.**
 - 5. Bathroom/sanitation facilities shall be provided on the site.**
 - 6. The hours of operation for the food truck shall be the same as, or less than, the hours of operation for the Hopkins Farm Creamery ice cream business which is located on the same site.**

**Old
Business/
CU 1999
(continued)**

- 7. The Applicant shall obtain all agency approvals for the food service operations prior to Final Site Plan approval.**
- 8. Since a food truck/trailer is proposed, it shall be subject to the review and approval of the Sussex County Board of Adjustment prior to the Commission's review of the Final Site Plan.**
- 9. The Final Site Plan for this use, including the location of the food truck, any bathroom/sanitation facilities, driveways, entrances and parking and picnic tables, shall be subject to the review and approval of the Sussex County Planning and Zoning Commission.**

**M 603 14
Adopt
Ordinance
No. 2381/
CU 1999**

A Motion was made by Mr. Phillips, seconded by Mr. Wilson, to Adopt Ordinance No. 2381 entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A BBQ VENDOR TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 73 ACRES, MORE OR LESS" (Conditional Use No. 1999) filed on behalf of Hopkins Farm Creamery, Inc., with the following conditions:

- 1. The use shall comply with all setback and parking requirements, or obtain appropriate approvals from the Sussex County Board of Adjustment.**
- 2. The Applicant shall comply with all DelDOT requirements, including an entrance to and from Road 261 (Dairy Farm Road).**
- 3. Any trash containers associated with the use shall be screened from view of neighboring properties and roadways.**
- 4. There shall be permitted one lighted sign, not to exceed 32 square feet in size.**
- 5. Bathroom/sanitation facilities shall be provided on the site.**
- 6. The hours of operation for the food truck shall be the same as, or less than, the hours of operation for the Hopkins Farm Creamery ice cream business which is located on the same site.**
- 7. The Applicant shall obtain all agency approvals for the food service operations prior to Final Site Plan approval.**
- 8. Since a food truck/trailer is proposed, it shall be subject to the review and approval of the Sussex County Board of Adjustment prior to the Commission's review of the Final Site Plan.**

- M 603 14**
Adopt
Ordinance
No. 2381/
CU 1999
(continued)
- 9. The Final Site Plan for this use, including the location of the food truck, any bathroom/sanitation facilities, driveways, entrances and parking and picnic tables, shall be subject to the review and approval of the Sussex County Planning and Zoning Commission.**
- Motion Adopted: 5 Yeas.**
- Vote by Roll Call: Mrs. Deaver, Yea; Mr. Cole, Yea;
Mr. Phillips, Yea; Mr. Wilson, Yea;
Mr. Vincent, Yea**
- Old**
Business/
CU 2000
- Under Old Business, the Council discussed Conditional Use No. 2000 filed on behalf of Jovid Venture, LLC.**
- The Planning and Zoning Commission held a Public Hearing on this application on November 13, 2014 at which time the Commission deferred action. On December 11, 2014, the Commission recommended approval of the application with conditions.**
- The County Council held a Public Hearing on this application on December 2, 2014 at which time action was deferred.**
- M 604 14**
Adopt
Proposed
Ordinance/
CU 2000
DENIED
- A Motion was made by Mr. Cole, seconded by Mr. Phillips, to Adopt the Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A FACILITY FOR WEDDING CEREMONIES AND RECEPTIONS TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 1.683 ACRES, MORE OR LESS” (Conditional Use No. 2000) filed on behalf of Jovid Venture, LLC.**
- Motion Denied: 4 Nays, 1 Yea.**
- Vote by Roll Call: Mrs. Deaver, Yea; Mr. Cole, Nay;
Mr. Phillips, Nay; Mr. Wilson, Nay;
Mr. Vincent, Nay**
- Reasons**
for Denial/
CU 2000
- Reasons for denial were that the site is located on Old Landing Road at a 4-way stop intersection that has high traffic counts and congestion; that the site is only 1.6 acres; that parking is available only for the Bed & Breakfast business; that the size of the property is not conducive to having large gatherings; that it would not be appropriate to rely on satellite parking and shuttling to accommodate the proposed use; and that the conditions recommended by the Planning and Zoning Commission are difficult to enforce, i.e. number of events, parking.**

**Old Business/
CU 2001** Under Old Business, the Council discussed Conditional Use No. 2001 filed on behalf of Christina Abramowicz.

The Planning and Zoning Commission held a Public Hearing on this application on November 13, 2014 at which time action was deferred. On December 11, 2014, the Commission recommended that the application be denied.

The County Council held a Public Hearing on this application on December 2, 2014.

Mr. Phillips asked that Council defer action to allow time for legal staff to write proposed Findings of Facts and proposed conditions.

**M 605 14
Defer
Action/
CU 2001** A Motion was made by Mr. Cole, seconded by Mrs. Deaver, to defer action (until January 6, 2015) on Conditional Use No. 2001 filed on behalf of Christina Abramowicz.

Motion Adopted: 3 Yeas, 2 Nays.

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

**Old Business/
CU 2002** Under Old Business, the Council discussed Conditional Use No. 2002 filed on behalf of Beach Bum Distilling.

The Planning and Zoning Commission held a Public Hearing on this application on November 20, 2014 at which time action was deferred. On December 11, 2014, the Commission recommended that the application be approved with conditions.

The County Council held a Public Hearing on this application on December 9, 2014 at which time action was deferred.

**M 606 14
Adopt
Ordinance
No. 2382/
CU 2002** A Motion was made by Mr. Cole, seconded by Mrs. Deaver, to Adopt Ordinance No. 2382 entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A C-1 GENERAL COMMERCIAL DISTRICT FOR A DISTILLERY WITH TOURS/TASTING/RETAIL TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 24,523 SQUARE FEET, MORE OR LESS" (Conditional Use No. 2002) filed on behalf of Beach Bum Distilling, with the following conditions:

A. The use shall be limited to a distillery with tours, tasting and retail sales to be located within the existing building on the site.

**M 606 14
Adopt
Ordinance
No. 2382/
CU 2002
(continued)**

- B. The proposed use shall comply with all parking requirements associated with it. The parking required by Sussex County Code shall be clearly depicted on the Final Site Plan.**
- C. The Final Site Plan shall clearly show the location for all shipping deliveries associated with the use. The location shall be placed so that it does not interfere with neighboring roadways or parking for this use or other uses on the property.**
- D. As stated by the Applicant's representative, there shall be no on-premises sales of alcoholic beverages, but tastings will be permitted. All sales shall be for off-premises consumption only.**
- E. Only alcoholic beverages distilled on the site can be sold at the site.**
- F. The use shall comply with all requirements of the State and County for distillery operations, including requirements of the Sussex County Engineering Department regarding wastewater collection, conveyance and disposal associated with the process.**
- G. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning and Zoning Commission.**

Motion Adopted: 3 Yeas, 1 Nay; 1 Abstention.

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

**Introduction
of Proposed
Ordinances**

Mr. Cole introduced the Proposed Ordinance entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A C-1 GENERAL COMMERCIAL DISTRICT FOR A FOOD TRUCK (VENDOR) TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 20,271 SQUARE FEET, MORE OR LESS" (Conditional Use No. 2009) filed on behalf of Josh Grapski. (Tax I.D. No. 334-13.00-325.02) (911 Address: 19406 Coastal Highway, Rehoboth Beach).

Mrs. Deaver introduced the Proposed Ordinance entitled "AN ORDINANCE TO MODIFY CONDITION NUMBERS 1, 4, 13, AND 17 IMPOSED ON ORDINANCE NO. 1770 FOR CHANGE OF ZONE NO. 1554, THE APPLICATION OF MARINE FARM, LLC FOR THE COASTAL CLUB, A MR-RPC MEDIUM DENSITY RESIDENTIAL DISTRICT – RESIDENTIAL PLANNED COMMUNITY, AND TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM A MR-RPC MEDIUM DENSITY RESIDENTIAL DISTRICT – RESIDENTIAL PLANNED COMMUNITY TO A MR MEDIUM DENSITY RESIDENTIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, FOR A 13.425 ACRES, MORE OR LESS, PORTION OF THE PROPERTY" (Change of Zone No. 1764) filed on behalf of Coastal Club, LLC.

The Proposed Ordinances will be advertised for Public Hearing.

**Additional
Business**

Paul Reiger addressed Council under Additional Business.

**Councilman
Phillips/
Last
Meeting**

Mr. Phillips commented on his last County Council meeting.

Mr. Vincent recognized and thanked Mr. Phillips for 16 years of service (elected in 1998) to the citizens of Sussex County.

**M 607 14
Adjourn**

A Motion was made by Mr. Cole, seconded by Mr. Wilson, to adjourn at 12:30 p.m.

Motion Adopted: 5 Yeas.

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

Respectfully submitted,

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

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

MICHAEL A. IZZO, P.E.
COUNTY ENGINEER

BRAD HAWKES
DIRECTOR OF UTILITY ENGINEERING

December 10, 2014

FACT SHEET

SUSSEX COUNTY PROJECT 81-04
THE OVERLOOK (AKA BAYVILLE POINTE)
AGREEMENT NO. 685

DEVELOPER:

Tom Natelli
Bayville Communitites LLC
506 Main Street
Gaithersburg, MD 20878

LOCATION:

Bayville Road, Fenwick Island
Southeast end CR 58B

SANITARY SEWER DISTRICT:

Fenwick Island Sanitary Sewer District

TYPE AND SIZE DEVELOPMENT:

Residential MR-RPC Development

SYSTEM CONNECTION CHARGES:

\$27,500.00

SANITARY SEWER APPROVAL:

Sussex County Engineering Department Plan Approval
07/25/14

Department Of Natural Resources Plan Approval
08/01/14

SANITARY SEWER CONSTRUCTION DATA:

Construction Days – 60
Construction Admin And Construction Inspection Cost – \$62,130.30
Proposed Construction Cost – \$414,202.00

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



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MICHAEL A. IZZO, P.E.
COUNTY ENGINEER

BRAD HAWKES
DIRECTOR OF UTILITY ENGINEERING

December 10, 2014

FACT SHEET

SUSSEX COUNTY PROJECT 81-04
THE OVERLOOK (AKA BAYVILLE POINTE), PHASE 2A
AGREEMENT NO. 685 - 1

DEVELOPER:

Tom Natelli
Bayville Communitites LLC
506 Main Street
Gaithersburg, MD 20878

LOCATION:

Bayville Road, Fenwick Island
Southeast end CR 58B

SANITARY SEWER DISTRICT:

Fenwick Island Sanitary Sewer District

TYPE AND SIZE DEVELOPMENT:

Residential MR-RPC Development

SYSTEM CONNECTION CHARGES:

\$148,500.00

SANITARY SEWER APPROVAL:

Sussex County Engineering Department Plan Approval
7/25/14

Department Of Natural Resources Plan Approval
08/01/14

SANITARY SEWER CONSTRUCTION DATA:

Construction Days – 30
Construction Admin And Construction Inspection Cost – \$15,643.65
Proposed Construction Cost – \$104,291.00

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

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MICHAEL A. IZZO, P.E.
COUNTY ENGINEER

BRAD HAWKES
DIRECTOR OF UTILITY ENGINEERING

December 10, 2014

FACT SHEET

SUSSEX COUNTY PROJECT 81-04
THE OVERLOOK (AKA BAYVILLE POINTE), PHASE 2B
AGREEMENT NO. 685 - 2

DEVELOPER:

Tom Natelli
Bayville Communitites LLC
506 Main Street
Gaithersburg, MD 20878

LOCATION:

Bayville Road, Fenwick Island
Southeast end CR 58B

SANITARY SEWER DISTRICT:

Fenwick Island Sanitary Sewer District

TYPE AND SIZE DEVELOPMENT:

Residential MR-RPC Development

SYSTEM CONNECTION CHARGES:

\$379,500.00

SANITARY SEWER APPROVAL:

Sussex County Engineering Department Plan Approval
7/25/14

Department Of Natural Resources Plan Approval
08/01/14

SANITARY SEWER CONSTRUCTION DATA:

Construction Days – 50
Construction Admin And Construction Inspection Cost – \$33,336.75
Proposed Construction Cost – \$222,245.00

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

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MICHAEL A. IZZO, P.E.
COUNTY ENGINEER

BRAD HAWKES
DIRECTOR OF UTILITY ENGINEERING

December 11, 2014

FACT SHEET

SUSSEX COUNTY PROJECT 81-04
LANDS OF BREAKWATER PARTNERS, L.L.C.
AGREEMENT NO. 1008

DEVELOPER:

Mr. Joe Reed
Breakwater Partners, L.L.C.
317 Rehoboth Ave.
Rehoboth Beach, DE 19971

LOCATION:

North Side of Angola Road (SCR 277) 0.5 Miles
East of Route 24

SANITARY SEWER DISTRICT:

Angola Neck Sanitary Sewer District

TYPE AND SIZE DEVELOPMENT:

Sanitary Sewer Plans for (6) Lot Subdivision

SYSTEM CONNECTION CHARGES:

\$20,500.00

SANITARY SEWER APPROVAL:

Sussex County Engineering Department Plan Approval
04/01/14

Department Of Natural Resources Plan Approval
05/22/14

SANITARY SEWER CONSTRUCTION DATA:

Construction Days – 5
Construction Admin And Construction Inspection Cost – \$1,886.10
Proposed Construction Cost – \$12,574.00

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



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MICHAEL A. IZZO, P.E.
COUNTY ENGINEER

BRAD HAWKES
DIRECTOR OF UTILITY ENGINEERING

December 16, 2014

FACT SHEET

SUSSEX COUNTY PROJECT 81-04
BARRINGTON PARK - PHASE 4 A/K/A - COVENTRY AT BARRINGTON PARK
(CONSTRUCTION RECORD)
AGREEMENT NO. 733 - 6

DEVELOPER:

Mr. Robert Harris
Tyre Farm, L.L.C.
27 Atlantic Avenue
Ocean View, DE 19970

LOCATION:

Southwest corner of Road 353 and Road 352
intersection

SANITARY SEWER DISTRICT:

Millville Expansion of the Bethany Beach Sanitary Sewer District

TYPE AND SIZE DEVELOPMENT:

8 Single Family Lots

SYSTEM CONNECTION CHARGES:

\$44,000.00

SANITARY SEWER APPROVAL:

Sussex County Engineering Department Plan Approval
07/27/07

Department Of Natural Resources Plan Approval
06/15/10

SANITARY SEWER CONSTRUCTION DATA:

Construction Days – 12
Construction Admin And Construction Inspection Cost – \$5,581.80
Proposed Construction Cost – \$37,212.00



TRIBUTE

*The Sussex County Council
presents this Tribute to*

VANESSA PETTYJOHN

in honor of being named the

***SUSSEX COUNTY
EMPLOYEE OF THE YEAR 2014***

*The Sussex County Council extends its
congratulations on this 6th day of January 2015.*



Michael H. Vincent, President

GINA JENNINGS
DIRECTOR OF ACCOUNTING
(302) 855-7853 T
(302) 855-7722 F
gjennings@sussexcountype.gov



Sussex County
DELAWARE
sussexcountype.gov

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

FROM: Gina A. Jennings
Finance Director

SUBJECT: **PRIVATE ACTIVITY BOND REASSIGNMENT**

DATE: January 2, 2015

We have received correspondence from the State Department of Finance requesting that any unused portion of the County's annual Private Activity Bond Volume Cap be reassigned to the State. The State plans to allocate it to the State Housing Authority.

Private Activity Bonds (PABs) are tax-exempt bonds issued by public entities to provide low-cost financing for private projects that serve a public purpose. Federal tax law imposes a number of restrictions and requirements on the issuance of PABs. These bonds are for private entities and have no impact on Sussex County government. Qualified purposes include exempt facilities, such as non-government owned airports, docks, water and sewer facilities, and solid waste facilities; qualified mortgage programs; and small issue manufacturing facilities. IRS requires state and local governments to serve as conduits for these tax-exempt bonds so they will be regulated properly. Since this is a new Council, I have attached an IRS publication that can be reviewed to give more information about PABs.

Typically, every year at this time, we reassign our unused portion to the State. Last year's Executive Order is attached showing each County's allocation back to the State. At the January 6, 2015 Council meeting, I will recommend that the County Council reassign the County's 2014 unused Private Activity Bond volume cap of \$29,600,000 to the State.

Sussex County's 2015 allocation is estimated to be about \$30,150,000, which represents 10 percent of the State's total allocation.

Please let me know if you have any questions.

pc: Mr. Todd F. Lawson

Attachments

Internal Revenue Service

Tax Exempt and Government Entities

Compliance Guide

from the office of
Tax Exempt Bonds

Know the federal tax rules and filing requirements applicable to qualified private activity bonds

Form 8038 (Rev. 1-2002)

Part IV Uses of Proceeds of Issue (including underwriters' discount)

22 Proceeds used for accrued interest

23 Issue price of entire issue (enter amount from line 21, column (b))

24 Proceeds used for bond issuance costs (including underwriters' discount)

25 Proceeds allocated to reasonably required refund prior issue (see instructions)

26 Proceeds used to advance refund prior issue (see instructions)

27 Proceeds used to advance refund prior issue (see instructions)

28 Add lines 24 through 27

29 Nonrefunding proceeds

30

Part V

Part I Reporting Authority

1 Issuer's name

2 Number and street (or P.O. box if mail is not delivered to street address)

3 City, town, or post office, state, and ZIP code

4 Name of issue

5 Name and title of officer or legal representative whom the IRS may call for more information

Part II Type of Issue (check the applicable box(es) and enter the issue price for each)

11a Exempt facility bond:

11b Airport facility bonds (sections 142(a)(1) and 142(c))

11c Docks and wharves (sections 142(a)(2) and 142(c))

11d Water furnishing facilities (sections 142(a)(4) and 142(c))

11e Sewage disposal facilities (section 142(a)(5))

11f Solid waste disposal facilities (section 142(a)(6))

11g Qualified residential rental projects (sections 142(a)(7) and 142(d))

11h Meeting 20-50 test (section 142(d)(1)(A))

11i Meeting 25-60 test (NYC only) (section 142(d)(1)(B))

11j Meeting 40-50 test (section 142(d)(1)(C))

11k Facilities for the local furnishing of electric energy or gas (sections 142(a)(8) and 142(f))

11l Facilities allowed under a transitional rule of the Tax Reform Act of 1986 (see instructions)

11m 1986 Act type

11n Qualified enterprise zone facility bonds (section 1394) (see instructions)

11o District of Columbia Enterprise Zone facility bonds (section 1394(f)) (see instructions)

11p Other Describe (see instructions)

11q Qualified mortgage bond (section 1400A) (see instructions)

11r Qualified municipal bond (section 1400B) (see instructions)

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2848 Power of Attorney and Declaration of Representative	

The office of Tax Exempt Bonds (TEB), of the Internal Revenue Service (IRS), Tax Exempt and Government Entities division, offers specialized information and services to the municipal finance community. Municipal bonds provide tax-exempt financing for the furtherance of governmental and qualified purposes including the construction of airports, hospitals, recreational and cultural facilities, schools, water infrastructure, road improvements, as well as facilities and equipment used in providing police, fire and rescue services.

This IRS Publication 4078, *Tax-Exempt Private Activity Bonds*, provides an overview for state and local government issuers and borrowers of bond proceeds of the general post-issuance rules under the federal tax law that apply to municipal financing arrangements commonly known as qualified private activity bonds. Certain exceptions or additional requirements to these rules, which are beyond the scope of this publication, may apply to different financing arrangements. All applicable federal tax law requirements must be met to ensure that interest earned by bondholders is not taxable under section 103 of the Internal Revenue Code (the “Code”).

For information regarding the general rules applicable to governmental bonds or qualified 501(c)(3) bonds, see IRS Publications 4079, *Tax-Exempt Governmental Bonds*, and 4077, *Tax-Exempt Bonds for 501(c)(3) Charitable Organizations*, respectively. TEB also provides detailed information on specific provisions of the tax law through IRS publications (available online) and through outreach efforts as noted on the TEB Web site at www.irs.gov/bonds.

Background

Tax-exempt bonds are valid debt obligations of state and local governments, commonly referred to as “issuers” — the interest on which is tax-exempt. This means that the interest paid to bondholders is not includable in their gross income for federal income tax purposes. This tax-exempt status remains throughout the life of the bonds provided that all applicable federal tax laws are satisfied. Various requirements apply under the Code and Income Tax Regulations (the “Treasury regulations”) including, but not limited to, information filing and other requirements related to issuance, the proper and timely use of bond-financed property, and arbitrage yield restriction and rebate requirements. The benefits of tax-exempt bond financing can apply to the many different types of municipal debt financing arrangements through which government issuers obligate themselves, including notes, loans, lease purchase contracts, lines of credit, and commercial paper.

Tax-Exempt Private Activity Bonds

Qualified private activity bonds are tax-exempt bonds issued by a state or local government, the proceeds of which are used for a defined qualified purpose by an entity other than the government issuing the bonds (the “conduit borrower”). For a private activity bond to be tax-exempt, 95% or more of the net bond proceeds must be used for one of the several qualified purposes described in sections 142 through 145, and 1394 of the Code. The general rules covered in this publication apply to the qualified purposes listed below. In addition, the general rules applicable to qualified private activity bonds financing 501(c)(3) exempt purposes (section 145) are covered in IRS Publication 4077, *Tax-Exempt Bonds for 501(c)(3) Charitable Organizations*. Publication 4077 can be downloaded from the TEB Web site at www.irs.gov/bonds.

Internal Revenue Code Sections and Corresponding Qualified Purposes:

■ Section 142 – exempt facilities such as: airports, docks and wharves, mass commuting facilities, facilities for the furnishing of water, sewage facilities, solid waste disposal facilities, qualified residential rental projects, facilities for the furnishing of local electric energy or gas, local district heating or cooling facilities, qualified hazardous waste facilities, high-speed intercity rail facilities, environmental enhancements of hydro-electric generating facilities, and qualified public educational facilities

Access FREE
online information and services
at the
Tax Exempt Bonds
Web site at
www.irs.gov/bonds

- Section 143 – qualified mortgages and qualified veterans’ mortgages
- Section 144 – qualified small issue manufacturing facilities, qualified small issue farm property, qualified student loans, and qualified redevelopment projects
- Section 1394 – qualified enterprise zone and empowerment zone facilities

While the bonds issued to finance these qualified purposes must comply with unique requirements applicable to each individually, the post-issuance federal tax rules covered in this publication are applicable to qualified private activity bonds generally. These rules fall into two basic categories: use of proceeds and financed property requirements; and arbitrage yield restriction and rebate requirements.

In order to comply with these and any other applicable requirements, issuers and conduit borrowers must ensure that the rules are met both at the time that the bonds are issued and throughout the term of the bonds. The IRS encourages issuers and beneficiaries of tax-exempt bonds to implement procedures that will enable them to adequately safeguard against post-issuance violations that result in a loss of the tax-exempt status of their bonds.

Requirements Related to Issuance

The following is an overview of several general rules related to the issuance of qualified private activity bonds.

Volume Cap Limit

The volume cap limit for certain qualified private activity bonds, as set forth in section 146 of the Code, limits an issuing authority to a maximum amount of tax-exempt bonds that can be issued to finance a particular qualified purpose during a calendar year. If, during a given year, an issuing authority issues qualified private activity bonds in excess of its applicable volume cap limit, the tax-exempt status of those bonds is jeopardized. The following types of qualified private activity bonds are either subject to or not subject to volume cap:

Qualified Private Activity Bonds

Subject to Volume Cap

- exempt facility bonds [mass commuting facilities, facilities for the furnishing of water, sewage facilities, solid waste disposal facilities, qualified residential rental projects, facilities for the local furnishing of electric energy or gas, local district heating or cooling facilities, qualified hazardous waste facilities, privately owned high-speed intercity rail facilities (only 25% of the bond proceeds), qualified enterprise zone and empowerment zone facilities]
- qualified mortgage revenue bonds
- qualified small issue bonds
- qualified student loan bonds
- qualified redevelopment bonds

Qualified Private Activity Bonds Not Subject to Volume Cap

- exempt facility bonds [airports, docks and wharves, environmental enhancements of hydro-electric generating facilities, qualified public educational facilities, governmentally owned solid waste disposal facilities, governmentally owned high-speed intercity rail facilities, privately owned high-speed intercity rail facilities (only 75% of the bond proceeds)]
- qualified veterans' mortgage revenue bonds
- qualified 501(c)(3) bonds

The amount of volume cap allocated to an issuing authority for qualified mortgage revenue bonds is reduced when that authority establishes a mortgage credit certificate program under section 25 of the Code.

Carryforward of Unused Volume Cap – An issuing authority may elect to carry any unused volume cap of a calendar year forward for three years. This election can be made for each of the qualified private activity bond purposes subject to volume cap except for the purpose of issuing qualified small issue bonds. This election is made by filing IRS Form 8328, *Carryforward Election of Unused Private Activity Bond Volume Cap*, by the earlier of February 15th following the year in which the unused amount arises or the date of issue of bonds pursuant to the carryforward election. Once Form 8328 is filed, the issuer may not revoke the carryforward election or amend the carryforward amounts shown on the form.

Public Approval Requirement

Generally, prior to issuance, qualified private activity bonds must be approved by the governmental entity issuing the bonds and, in some cases, each governmental entity having jurisdiction over the area in which the bond-financed facility is to be located. Public approval can be accomplished by either voter referendum or by an applicable elected representative of the governmental entity after a public hearing following reasonable notice to the public. Section 147(f) of the Code and section 5f.103-2 of the Treasury regulations define the specific rules for this requirement.

Section 1.147-2 of the Treasury regulations provides that issuers can use the remedial action rules under section 1.142-2 of the Treasury regulations (available to correct nonqualified uses of proceeds) to cure noncompliance with the public approval requirement (covered under **Qualified Use of Proceeds and Financed Property Requirements**, page 6).

Registration Requirement

Section 149(a) of the Code provides that any tax-exempt bond, including qualified private activity bonds, must be issued in registered form *if* the bonds are of a type offered publicly or issued, at the date of issue, with a maturity exceeding one year. For these purposes, “in registered form” is defined as follows:

In Registered Form – Section 5f.103-1(c) of the Treasury regulations provides that an obligation issued after January 20, 1987, pursuant to a binding contract entered into after January 20, 1987, is in registered form if:

- the obligation is registered as to both principal and any stated interest with the issuer (or its agent) *and* that the transfer of the obligation to a new holder may be effected only by surrender of the old instrument and either the reissuance by the issuer of the old instrument to the new holder or the issuance by the issuer of a new instrument to the new holder; or
- the right to the principal of, and stated interest on, the obligation may be transferred only through a book-entry system maintained by the issuer (or its agent); or

- the obligation is registered as to both principal and any stated interest with the issuer (or its agent) *and* may be transferred through both previous methods.

Information Return for Tax-Exempt Private Activity Bond Issues – Form 8038

At the time of issuance, issuers of qualified private activity bonds must comply with certain information filing requirements under section 149(e) of the Code by filing IRS Form 8038, *Information Return for Tax-Exempt Private Activity Bond Issues*.

Filing Requirements for Issuers of Qualified Private Activity Bonds

Information Return	Form 8038, <i>Information Return for Tax-Exempt Private Activity Bond Issues</i> . This form is included in this publication on page 15, and can also be downloaded from the Internet at www.irs.gov/bonds .
Due Date	Form 8038 is required to be filed by the 15th day of the second calendar month following the quarter in which the bonds were issued. For example, the due date of the return for bonds issued on February 15th is May 15th.
Where to File	Form 8038 must be filed with the IRS at the following address: Internal Revenue Service, Ogden Submission Processing Center, Ogden UT 84201-0027.
Requesting an Extension of Time to File	An issuer may request an extension of time to file Form 8038 so long as the failure to file the return on time was not due to willful neglect. To request an extension, the issuer must follow the procedures outlined in Revenue Procedure 2002-48, 2002-37 I.R.B. 531, published September 16, 2002. These procedures generally require that the issuer: 1) attach a letter to Form 8038 briefly explaining when the return was required to be filed, why the return was not timely submitted, and whether or not the bond issue is under examination; 2) enter on top of the letter "This Statement is Submitted in Accordance With Revenue Procedure 2002-48"; and 3) file this letter and the return with the IRS at the Ogden Submission Processing Center.

Qualified Use of Proceeds and Financed Property Requirements

Section 141 of the Code sets forth private activity bond tests for the purpose of limiting the volume of tax-exempt bonds that finance the activities of persons other than state and local governments. However, under section 141(e), tax-exempt qualified private activity bonds are distinguished from taxable private activity bonds based largely upon the bond proceeds being used, or allocated, for one of several listed qualified purposes. An overview of the basic rules applicable to all qualified private activity bonds that relate to the qualified use of proceeds and bond-financed property follows. In each instance, additional requirements or exceptions will apply that relate to the particular qualified use for which the bonds were issued to finance. These additional use requirements are beyond the scope of this publication.

Applicable Ninety-Five Percent Use Tests

As a general rule, qualified private activity bonds must satisfy a use test whereby 95% or more of the net proceeds of the bond issue must be used to finance the qualified purpose for which the bonds were issued. If the 95% use test applicable to a particular qualified purpose (as described under sections 142 through 145, and 1394 of the Code) is not satisfied, the result is a loss of the tax-exempt qualified status of the bond issue. Hence, the bonds become taxable private activity bonds. In applying these tests, the term “net bond proceeds” means the proceeds of a bond issue reduced by amounts allocated to a reasonably required reserve or replacement fund. Where bond proceeds are used to finance property, the use of such property is treated as a use of the bond proceeds.

With each qualified purpose, the law requires that 95% or more of the net bond proceeds must be used to finance that purpose. Each qualified purpose has a unique compliance regime required under its respective section of the Code. For information about these unique requirements, visit TEB’s Web site at www.irs.gov/bonds.

Costs Related to the Issuance of Bonds

Under section 147(g) of the Code, any amount of bond proceeds that may be applied to finance the costs associated with the issuance of qualified private activity bonds (both before and after the issue date) is limited to 2% of the proceeds of the bond issue. Issuance costs include: underwriters’ discount, counsel fees, financial advisory fees, rating agency fees, trustee fees, paying agent fees (bond registrar, certification, and authentication fees), accounting fees, printing costs for bonds and offering documents, public approval process costs, engineering and feasibility study costs, and guarantee fees other than for qualified guarantees.

In the case of an issue of qualified mortgage revenue bonds or qualified veterans’ mortgage revenue bonds, where the proceeds of the issue do not exceed \$20M, the issuance costs limitation is 3.5% of the proceeds of the issue. Qualified mortgage revenue bonds and qualified veterans’ mortgage revenue bonds are types of qualified private activity bonds issued to finance certain homeownership assistance programs.

Issuance costs financed with bond proceeds are treated as nonqualified use when applying the applicable 95% use test. Issuers can always finance issuance costs with funds other than the proceeds of the bond issue.

Failure to Properly Use Proceeds

A qualified private activity bond issue can lose its tax-exempt status if a failure to properly use proceeds occurs subsequent to the issue date, which results in sufficient nonqualified use to cause the issue to fail any of the applicable use requirements. Hence, the issue becomes a taxable private activity bond issue. Generally, a failure to properly use proceeds occurs when an action is taken which results in the bonds not being allocated to the qualified purpose for which they were issued. However, with respect to unspent proceeds, a failure to properly use those proceeds may occur as early as the date on which either the issuer or conduit borrower reasonably determines that the bonds will not be expended on the qualified purpose for which they were issued.

Remedial Actions for Nonqualified Use

Treasury regulations provide that certain prescribed remedial actions can be taken to cure nonqualified uses of proceeds that would otherwise cause qualified private activity bonds to lose their tax-exempt status. Such remedial actions can include the redemption or defeasance of bonds and, when the disposition of bond-financed property is exclusively for cash, the alternative use of such disposition proceeds to acquire replacement property within 6 months of the disposition date.

The following sections of the Treasury regulations provide remedial actions available for certain qualified private activity bonds. These Treasury regulations can be accessed through the Internet at <http://www.access.gpo.gov/nara/cfr-table-search.html>.

Sections of Treasury Regulations and Corresponding Qualified Private Activity Bonds

- Section 1.142-2 – exempt facility bonds
- Section 1.144-2 – qualified small issue bonds and qualified redevelopment bonds
- Section 1.145-2 – qualified 501(c)(3) bonds
- Section 1.1394-1(m)(4) – qualified enterprise zone facility bonds, qualified empowerment zone facility bonds, and District of Columbia enterprise zone facility bonds

Issuers and conduit borrowers may also be able to enter into a closing agreement under the TEB Voluntary Closing Agreement Program (VCAP) described in Notice 2001-60, 2001-40 I.R.B. 304. See VCAP under **TEB Information and Services**, page 14, in this publication.

Limitations on Acquisition of Land or Other Property

Under section 147(c) of the Code, a qualified private activity bond will lose its tax-exempt status if 25% or more of the net bond proceeds are used directly or indirectly to acquire real property or if any amount of the proceeds are used directly or indirectly to acquire real property for farming purposes. However, certain exceptions to this rule are available for first-time farming and environmental purposes. This rule does not apply to qualified mortgage revenue bonds, qualified veterans' mortgage revenue bonds, qualified public educational facility bonds, or qualified 501(c)(3) bonds.

Generally, a qualified private activity bond will not be tax-exempt if any amount of the net proceeds is used for the acquisition of existing property unless the purpose of the acquisition is the first such use of that property. However, section 147(d) of the Code provides an exception to this prohibition for certain rehabilitation expenditures. This rule does not apply to qualified mortgage revenue bonds, qualified veterans' mortgage revenue bonds, or qualified 501(c)(3) bonds.

Section 1.147-2 of the Treasury regulations provides that issuers can use the remedial action rules under section 1.142-2 of the Treasury regulations to cure noncompliance with respect to the exceptions noted above for rehabilitation expenditures and acquiring property for environmental purposes. Section 1.142-2 is referenced under **Remedial Actions for Nonqualified Use**, page 7, in this publication.

Allocation of Proceeds

The conduit borrower of the proceeds of a qualified private activity bond issue must allocate those proceeds among the various project expenditures in a manner demonstrating compliance with the qualified use requirements. These allocations must generally be consistent with the allocations made for determining compliance with the arbitrage yield restriction and rebate requirements as well as other federal tax filings. See **Arbitrage Yield Restriction and Rebate Requirements**, this page, for an overview of these rules.

Arbitrage Yield Restriction and Rebate Requirements

Tax-exempt bonds, including qualified private activity bonds, lose their tax-exempt status if they are arbitrage bonds under section 148 of the Code. In general, arbitrage is earned when the gross proceeds of an issue are used to acquire investments that earn a yield materially higher than the yield on the bonds of the issue. The earning of arbitrage does not, however, necessarily mean that the bonds are arbitrage bonds. Two general sets of requirements under the Code must be applied in order to determine whether qualified private activity bonds are arbitrage bonds: yield restriction requirements of section 148(a); and rebate requirements of section 148(f).

An issue may meet the rules of one of the above regimes yet fail the other. Even though interconnected, both sets of rules have their own distinct requirements and may result in the need for a payment to the U.S. Department of the Treasury in order to remain compliant. The following is an overview of the basic requirements of these two general rules. Additional requirements or exceptions, beyond the scope of this publication, may apply in certain instances.

Yield Restriction Requirements

The yield restriction rules of section 148(a) of the Code generally provide that the direct or indirect investment of the gross proceeds of an issue in investments earning a yield materially higher than the yield of the bond issue causes the bonds of that issue to be arbitrage bonds. While certain exceptions to these rules may be available, the term “materially higher” is generally applied to certain types of investments as follows:

Types of Investments	Materially Higher
general rule for purpose and nonpurpose investments	1/8 of one percentage point
investments in a refunding escrow	1/1000 of one percentage point
investments allocable to replacement proceeds	1/1000 of one percentage point
program investments	one and one-half percentage points
student loans	two percentage points
general rule for investments in tax-exempt bonds	no yield limitation
mortgage loans	must meet the requirements of section 143(g) of the Code

However, the investment of proceeds in materially higher yielding investments does not cause the bonds of an issue to be arbitrage bonds in the following three instances: 1) during a temporary period (i.e., generally,

3-year temporary period for capital projects and 13 months for restricted working capital expenditures); 2) as part of a reasonably required reserve or replacement fund; and 3) as part of a minor portion (an amount not exceeding the lesser of 5% of the sale proceeds of the issue or \$100,000).

In many instances, issuers are allowed to make “yield reduction payments” to the U.S. Department of the Treasury to reduce the yield on yield-restricted investments when the yield on those earnings is materially higher than the yield of the bond issue. See subsequent section on **Arbitrage Rebate/Yield Reduction Filing Requirements – Form 8038-T**, page 11, for information on how to file IRS Form 8038-T, *Arbitrage Rebate and Penalty in Lieu of Arbitrage Rebate*, to make yield reduction payments.

Reasonable Expectations – Typically, the determination of whether an issue consists of arbitrage bonds under section 148(a) of the Code is based on the issuer’s reasonable expectations as of the issue date regarding the amount and use of the gross proceeds of the issue.

Intentional Acts – A deliberate, intentional action to earn arbitrage taken by the issuer, the nongovernmental entity borrowing the bond proceeds, or any person acting on either the issuer or borrower’s behalf, after the issue date, will cause the bonds of an issue to be arbitrage bonds *if* that action, had it been reasonably expected on the issue date, would have caused the bonds to be arbitrage bonds. Intent to violate the requirements of section 148 of the Code is not necessary for an action to be intentional.

Rebate Requirements

The rebate requirements of section 148(f) of the Code generally provide that, unless certain earnings on nonpurpose investments allocable to the gross proceeds of an issue are paid to the U.S. Department of the Treasury, the bonds in the issue will be arbitrage bonds. The arbitrage that must be rebated is based on the excess (if any) of the amount actually earned on nonpurpose investments over the amount that would have been earned if those investments had a yield equal to the yield on the issue, plus any income attributable to such excess. Under section 1.148-3(b) of the

Treasury regulations, the future values (as of the computation date) of all earnings received and payments made with respect to nonpurpose investments are included in determining the amount of rebate due. There are, however, certain spending exceptions to the rebate requirements available for qualified private activity bonds.

Spending Exceptions –There are three spending exceptions to the rebate requirements as follows:

Spending Exceptions

Spending Period	Spending Exception
6-month spending exception	Section 1.148-7(c) of the Treasury regulations provides an exception to rebate if the gross proceeds of the bond issue are allocated to expenditures for governmental or qualified purposes that are incurred within 6 months after the date of issuance.
18-month spending exception	Section 1.148-7(d) of the Treasury regulations provides an exception to rebate if the gross proceeds of the bond issue are allocated to expenditures for governmental or qualified purposes that are incurred within the following schedule: 1) 15% within 6 months after the date of issuance; 2) 60% within 12 months after the date of issuance; and 3) 100% within 18 months after the date of issuance.
2-year spending exception	Section 1.148-7(e) of the Treasury regulations provides that an exception to rebate is available with respect to construction issues financing property to be owned by a governmental entity or 501(c)(3) organization when certain available construction proceeds are allocated to construction expenditures within the following schedule: 1) 10% within 6 months after the date of issuance; 2) 45% within 12 months after the date of issuance; 3) 75% within 18 months after the date of issuance; and 4) 100% within 24 months after the date of issuance.

Note: Issuers may still owe rebate on amounts earned on nonpurpose investments allocable to proceeds not covered by one of the spending exceptions, which may include earnings in a reasonably required reserve or replacement fund.

Arbitrage Rebate/Yield Reduction Filing Requirements – Form 8038-T

Issuers of tax-exempt bonds file IRS Form 8038-T, *Arbitrage Rebate and Penalty in Lieu of Arbitrage Rebate*, to make the following types of arbitrage payments: 1) yield reduction payments; 2) arbitrage rebate payments; 3) penalty in lieu of rebate payments; 4) the termination of the election to pay a penalty in lieu of arbitrage rebate; and 5) penalty for failure to pay arbitrage rebate on time. This form is included in this publication on page 21, and can also be downloaded from the Internet at www.irs.gov/bonds.

A yield reduction payment and/or arbitrage rebate installment payment is required to be paid no later than 60 days after the end of every 5th bond year throughout the term of a bond issue. The payment must be equal to at least 90% of the amount due as of the end of that 5th bond year. Upon redemption of a bond issue, a payment of 100% of the amount due must be paid no later than 60 days after the discharge date.

A failure to timely pay arbitrage rebate will be treated as not having occurred *if* the failure is not due to willful neglect and the issuer submits a Form 8038-T with a payment of the rebate amount owed, plus penalty and interest. The penalty may be waived under certain circumstances. For more information, see section 1.148-3(h)(3) of the Treasury regulations.

Request For Recovery of Overpayment of Arbitrage Rebate – Form 8038-R

In general, a request for recovery of overpayment of arbitrage rebate can be made when the issuer can establish that an overpayment occurred. An overpayment is the excess of the amount paid to the U.S.

Department of the Treasury for an issue under section 148 of the Code over the sum of the rebate amount for the issue as of the most recent computation date and all amounts that are otherwise required to be paid under section 148 as of the date the recovery is requested. The request can be made by completing and filing IRS Form 8038-R, *Request for Recovery of Overpayments Under Arbitrage Rebate Provisions*, with the IRS. This form is included in this publication on page 27, and can also be downloaded from the Internet at www.irs.gov/bonds.

Substantial User Prohibition

Section 147(a) of the Code provides that no person who is a substantial user of a facility financed with qualified private activity bonds, or any person related to such a user, can receive tax-exempt interest income as a holder of those bonds. Generally, a substantial user regularly uses a part of the bond-financed property in its trade or business. A complete definition of “substantial user” is set forth in section 1.103-11(b) of the Treasury regulations. This prohibition does not apply to qualified mortgage revenue bonds, qualified veterans’ mortgage revenue bonds, or qualified 501(c)(3) bonds.

Maturity Limitation

The average maturity of qualified private activity bonds may not exceed 120% of the average reasonably expected economic life of the financed facilities as determined under section 147(b) of the Code.

Prohibition Against Federal Guarantees

Section 149(b) of the Code provides that any tax-exempt bond, including a qualified private activity bond, will not be treated as tax-exempt if the payment of principal or interest is directly or indirectly guaranteed by the federal government or any instrumentality of the federal government. Exceptions to this general rule include guarantees by certain quasi-governmental entities administering federal insurance programs for home mortgages and student loans. Additional exceptions apply for the investment of bond proceeds in U.S. Treasury securities or investments in a bona fide debt service fund, a reasonably required reserve or replacement fund, or during a permitted initial temporary period.

Treatment of Hedge Bonds

Section 149(g) of the Code provides that bonds meeting the definition of hedge bonds will not be tax-exempt unless certain requirements are satisfied. A “hedge bond” is any part of a bond issue that meets the following two elements:

- The issuer reasonably expects that less than 85% of the net proceeds of the issue will be used to finance its qualified purpose within 3 years of the date the bonds are issued; and
- Over 50% of the proceeds of the issue are invested in nonpurpose investments having a substantially guaranteed yield for 4 or more years.

Section 149(g)(3)(B) provides an exception to the general definition of a hedge bond if at least 95% of the net proceeds of the issue are invested in tax-exempt bonds that are not subject to the alternative minimum tax. For this purpose, amounts held in either a bona fide debt service fund or for 30 days or less pending either reinvestment of the proceeds or bond redemption are treated as invested in tax-exempt bonds not subject to the alternative minimum tax. Additionally, a refunding bond issue does not generally consist of hedge bonds if the prior issue met the requirements for tax-exempt status and issuance of the refunding bonds furthers a significant governmental purpose (e.g. realize debt service savings, but not to otherwise hedge against future increases in interest rates).

Even if an issue consists of hedge bonds, it will generally still be tax-exempt if two requirements are satisfied. First, at least 95% of the reasonably expected legal and underwriting costs associated with issuing the bonds must be paid within 180 days after the issue

date, *and* the payment of such costs must not be contingent upon the disbursement of the bond proceeds. Second, the issuer must reasonably expect that the net proceeds of the issue will be allocated to expenditures for governmental or qualified purposes within the following schedule:

- 10% within 1 year after the date of issuance;
- 30% within 2 years after the date of issuance;
- 60% within 3 years after the date of issuance; and
- 85% within 5 years after the date of issuance.

Refunding of Qualified Private Activity Bonds

Under section 1.150-1(d)(1) of the Treasury regulations, a refunding bond issue is an issue the proceeds of which are used to pay principal, interest, or redemption price on the refunded issue (a prior issue), as well as the issuance cost, accrued interest, capitalized interest on the refunding issue, a reserve or replacement fund, or similar cost, if any, properly allocable to that refunding issue.

Current and advance refunding issues are distinguished as follows:

Current Refunding Issue	A refunding issue that is issued <i>not more than 90 days before the final payment of principal or interest (redemption) on the prior issue.</i>
Advance Refunding Issue	A refunding issue that is issued <i>more than 90 days before the final payment of principal or interest (redemption) on the prior issue.</i>

Qualified private activity bonds can be current refunded. However, with the exception of qualified 501(c)(3) bonds, section 149(d) of the Code disallows the advance refunding of qualified private activity bonds. Thus, with respect to the refunding of tax-exempt bond issues, governmental bonds and qualified private activity bonds are distinguished as follows:

	Current Refunding	Advance Refunding
Governmental Bonds	yes	yes
Qualified Private Activity Bonds, generally	yes	no
Qualified 501(c)(3) Bonds	yes	yes

Refunding bond issues derive their tax-exempt status from the original new money issues that they refund. As such, a refunding issue will generally not be tax-exempt if the refunded issue was not in full compliance with all applicable federal tax law requirements.

Record Retention Requirements

Section 6001 of the Code and section 1.6001-1(a) of the Treasury regulations generally provide that any person subject to income tax, or any person required to file a return of information with respect to income, must keep such books and records as are sufficient to establish the amount of gross income, deductions, credits, or other matters required to be shown by that person in any return. Answers to *Frequently Asked Questions* regarding record retention requirements

applicable to tax-exempt bonds are available on our Web site at www.irs.gov/bonds.

Abusive Tax Transactions

The IRS, including TEB, is engaged in extensive efforts to curb abusive tax shelter schemes and transactions. Information about abusive tax-exempt bond transactions, including a listing of emerging issues identified by TEB, is available on our Web site at www.irs.gov/bonds.

TEB Information and Services

The office of Tax Exempt Bonds (TEB) offers information and services through its voluntary compliance programs (including the Voluntary Closing Agreement Program) and its education and outreach programs. You can learn about these programs through our Web site at www.irs.gov/bonds.

Voluntary Closing Agreement Program (VCAP)

In Notice 2001-60, 2001-40 I.R.B. 304, published October 1, 2001, the IRS announced the TEB Voluntary Closing Agreement Program (TEB VCAP). This program provides remedies for issuers who voluntarily come forward to resolve a violation. Closing agreement terms and amounts may vary according to the degree of violation as well as the facts and circumstances surrounding the violation.

Requests for TEB VCAP closing agreements are administered by the TEB Outreach, Planning and Review staff. To encourage issuers and other parties to voluntarily come to the IRS to resolve problems,

TEB VCAP permits an issuer or its representative to initiate preliminary discussions of a closing agreement anonymously. For more information about this program or to submit a voluntary closing agreement request, contact Clifford Gannett, Manager of Tax Exempt Bonds, Outreach, Planning and Review, in Washington, DC, at (202) 283-9798. Notice 2001-60 is available through our Web site at www.irs.gov/bonds.

Customer Education and Outreach

TEB has reading materials about the tax laws applicable to municipal financing arrangements, tax forms and instructions, revenue procedures and notices, and TEB publications available on our Web site at www.irs.gov/bonds. For personal assistance, you can contact TEB directly at (202) 283-2999, or call our Customer Account Services toll-free at (877) 829-5500, Monday through Friday, 8:00 a.m. - 6:30 p.m. EST.

Telephone Information:

**The Voluntary Closing
Agreement Program (VCAP):**
(202) 283-9798

The Office of Tax Exempt Bonds:
(202) 283-2999

Customer Account Services, Toll Free:
(877) 829-5500

**Information Return for Tax-Exempt
Private Activity Bond Issues**
(Under Internal Revenue Code section 149(e))
► See separate instructions.

OMB No. 1545-0720

Part I Reporting Authority

Check if **Amended Return** ► ☐

1 Issuer's name		2 Issuer's employer identification number
3 Number and street (or P.O. box if mail is not delivered to street address)	Room/suite	4 Report number 1
5 City, town, or post office, state, and ZIP code		6 Date of issue
7 Name of issue		8 CUSIP number
9 Name and title of officer or legal representative whom the IRS may call for more information		10 Telephone number of officer or legal representative ()

Part II Type of Issue (check the applicable box(es) and enter the issue price for each)

Issue Price

11 Exempt facility bond:	
a <input type="checkbox"/> Airport (sections 142(a)(1) and 142(c))	11a
b <input type="checkbox"/> Docks and wharves (sections 142(a)(2) and 142(c))	11b
c <input type="checkbox"/> Water furnishing facilities (sections 142(a)(4) and 142(e))	11c
d <input type="checkbox"/> Sewage facilities (section 142(a)(5))	11d
e <input type="checkbox"/> Solid waste disposal facilities (section 142(a)(6))	11e
f <input type="checkbox"/> Qualified residential rental projects (sections 142(a)(7) and 142(d)), as follows:	11f
Meeting 20–50 test (section 142(d)(1)(A)) <input type="checkbox"/>	
Meeting 40–60 test (section 142(d)(1)(B)) <input type="checkbox"/>	
Meeting 25–60 test (NYC only) (section 142(d)(6)) <input type="checkbox"/>	
Has an election been made for deep rent skewing (section 142(d)(4)(B))? <input type="checkbox"/> Yes <input type="checkbox"/> No	
g <input type="checkbox"/> Facilities for the local furnishing of electric energy or gas (sections 142(a)(8) and 142(f))	11g
h <input type="checkbox"/> Facilities allowed under a transitional rule of the Tax Reform Act of 1986 (see instructions)	11h
Facility type.....	
1986 Act section.....	
i <input type="checkbox"/> Qualified enterprise zone facility bonds (section 1394) (see instructions)	11i
j <input type="checkbox"/> Qualified empowerment zone facility bonds (section 1394(f)) (see instructions)	11j
k <input type="checkbox"/> District of Columbia Enterprise Zone facility bonds (section 1400A) (see instructions)	11k
l <input type="checkbox"/> Qualified public educational facility bonds (sections 142(a)(13) and 142(k))	11l
m <input type="checkbox"/> Other. Describe (see instructions) ►.....	11m
12 <input type="checkbox"/> Qualified mortgage bond (section 143(a))	12
13 <input type="checkbox"/> Qualified veterans' mortgage bond (section 143(b)) ►	13
Check the box if you elect to rebate arbitrage profits to the United States <input type="checkbox"/>	
14 <input type="checkbox"/> Qualified small issue bond (section 144(a)) (see instructions). ►	14
Check the box for \$10 million small issue exemption <input type="checkbox"/>	
15 <input type="checkbox"/> Qualified student loan bond (section 144(b))	15
16 <input type="checkbox"/> Qualified redevelopment bond (section 144(c))	16
17 <input type="checkbox"/> Qualified hospital bond (section 145(c)) (attach schedule—see instructions)	17
18 <input type="checkbox"/> Qualified 501(c)(3) nonhospital bond (section 145(b)) (attach schedule—see instructions)	18
Check box if 95% or more of net proceeds will be used only for capital expenditures ► <input type="checkbox"/>	
19 <input type="checkbox"/> Nongovernmental output property bond (treated as private activity bond) (section 141(d))	19
20 <input type="checkbox"/> Other. Describe (see instructions) ►.....	20

Part III Description of Bonds (Complete for the entire issue for which this form is being filed.)

	(a) Final maturity date	(b) Issue price	(c) Stated redemption price at maturity	(d) Weighted average maturity	(e) Yield
21		\$	\$	years	%

STATE OF DELAWARE



EXECUTIVE DEPARTMENT
DOVER

**EXECUTIVE ORDER
NUMBER FORTY-THREE**

TO: HEADS OF ALL STATE DEPARTMENT AND AGENCIES

RE: (1) ALLOCATION AND SUB-ALLOCATION OF STATE PRIVATE ACTIVITY BOND VOLUME CAP FOR CALENDAR YEAR 2014 AND (2) REALLOCATION OF STATE PRIVATE ACTIVITY BOND VOLUME CAP FOR CALENDAR YEAR 2013

WHEREAS, the Internal Revenue Service issued Revenue Procedure 2013-35, which provides the State of Delaware (the "State") with \$296,825,000 in private activity bond volume cap ("Volume Cap") for 2014, and pursuant to 29 DEL. C. §5091(a), the State's 2014 Volume Cap is to be allocated among the various State and local government issuers; and

WHEREAS, the Governor hereby confirms the initial allocation of the 2014 Volume Cap as set forth in 29 DEL. C. § 5091(a) to various State and local government issuers; and

WHEREAS, pursuant to 29 DEL. C. §5091(b), the State's allocation of 2014 Volume Cap of \$148,415,000 is to be sub-allocated by the Governor between the Delaware State Housing Authority and the Delaware Economic Development Authority; and

WHEREAS, pursuant to 29 DEL. C. §5091(d), the Governor has the right, by Executive Order, to modify the allocations made under 29 DEL. C. §5091(a) provided that no such modification shall cause any obligation issued prior to the date of such modification to lose its qualification for tax-exempt treatment under the Internal Revenue Code of 1986, as amended; and

WHEREAS, the allocation of Volume Cap for 2013 in Executive Order Number Thirty-Seven is subject to modification by further Executive Order; and

WHEREAS, pursuant to Executive Order Number Thirty-Seven, \$145,935,000 of 2013 Volume Cap which had been allocated to the State of Delaware was further sub-allocated between the Delaware Economic Development Authority and the Delaware State Housing Authority; and

WHEREAS, also pursuant to Executive Order Number Thirty-Seven, \$145,940,000 of 2013 Volume Cap which had been allocated to local government issuers as described in 29 DEL. C. §5091(a) is hereby reassigned as follows:

- New Castle has reassigned \$51,080,000 of its unallocated Volume Cap for 2013 to the State of Delaware,
- Kent County has reassigned \$29,190,000 of its unallocated Volume Cap for 2013 to the State of Delaware,
- Sussex County has reassigned \$29,190,000 of its unallocated Volume Cap for 2013 to the State of Delaware,
- The City of Wilmington has reassigned \$36,480,000 of its unallocated Volume Cap for 2013 to the State of Delaware; and

WHEREAS, the Secretary of Finance recommends: (i) that the State's \$148,415,000 of 2014 Volume Cap be allocated between the Delaware State Housing Authority (\$74,207,500) and the Delaware Economic Development Authority (\$74,207,500); (ii) that the \$72,967,500 of unallocated 2013 Volume Cap previously sub-allocated to the Delaware Economic Development Authority be reassigned to the Delaware State Housing Authority for carry forward for use in future years; and (iii) that the \$145,940,000 of unallocated 2013 Volume Cap reassigned to the State of Delaware by local issuers be sub-allocated to the Delaware State Housing Authority for carry forward for use in future years; and

WHEREAS, the Chairperson of the Delaware Economic Development Authority and the Chairperson of the Delaware State Housing Authority concur in the recommendation of the Secretary of Finance.

NOW, THEREFORE, I, JACK A. MARKELL, by the authority vested in me as Governor of the State of Delaware, do hereby DECLARE and ORDER that:

1. The \$148,415,000 allocation to the State of Delaware of the 2014 Volume Cap is hereby sub-allocated: \$74,207,500 to the Delaware State Housing Authority and \$74,207,500 to the Delaware Economic Development Authority.
2. \$148,410,000 of the 2014 Volume Cap is hereby allocated to the various local government issuers as follows:
 - \$51,945,000 of the 2014 Volume Cap is hereby allocated to New Castle County, Delaware;
 - \$37,105,000 of the 2014 Volume Cap is hereby allocated to the City of Wilmington, Delaware;
 - \$29,680,000 of the 2014 Volume Cap is hereby allocated to Kent County, Delaware; and
 - \$29,680,000 of the 2014 Volume Cap is hereby allocated to Sussex County, Delaware.
3. The \$145,940,000 of unallocated 2013 Volume Cap that has been reassigned by New Castle County, Kent County, Sussex County and the City of Wilmington to the State of Delaware is hereby re-allocated to the Delaware State Housing Authority for carry forward use. In addition, the \$72,967,500 of 2013 Volume Cap previously sub-allocated to the Delaware Economic Development Authority under Executive Order Number Thirty-Seven is hereby re-allocated to the Delaware State Housing Authority for carry forward use. Furthermore, the \$72,967,500 of 2013 Volume Cap previously sub-allocated to the Delaware State Housing

Authority under Executive Order Number Thirty-Seven is to be carried forward for a total carry forward amount of \$291,875,000.

4. The aforesaid sub-allocations have been made with due regard to actions taken by other persons in reliance upon previous sub-allocations to bond issuers.



APPROVED this 11th day of February, 2014

A blue ink signature, appearing to be "JH", written over a horizontal line.

Governor

ATTEST:

A blue ink signature, appearing to be "J. B. [unclear]", written over a horizontal line.

Secretary of State

Route 54 Expansion of FISSD

Fact Sheet

- Expansion of the Fenwick Island Sanitary Sewer District to include parcels along Route 54 (Lighthouse Road) primarily from Zion Church Road to Williamsville Road as shown on the map in gray.
- Petition from approximately 17 landowners, some with multiple parcels.
- 2 letters and an email from land owners.
- Not all can be served by this expansion at this time, we run out of depth for sewer lines. May be able to annex in the future and pump into the new line.
- The project will install a main trunk line for sewer in Route 54 and serve the parcels on both sides.
- We are currently working to obtain financing and grants for the project.
- Property owners will be responsible for System Connection fees in the amount of \$5,500.00 per EDU.
- The tentative date for the Public Hearing is February 10, 2015 should the motion pass.

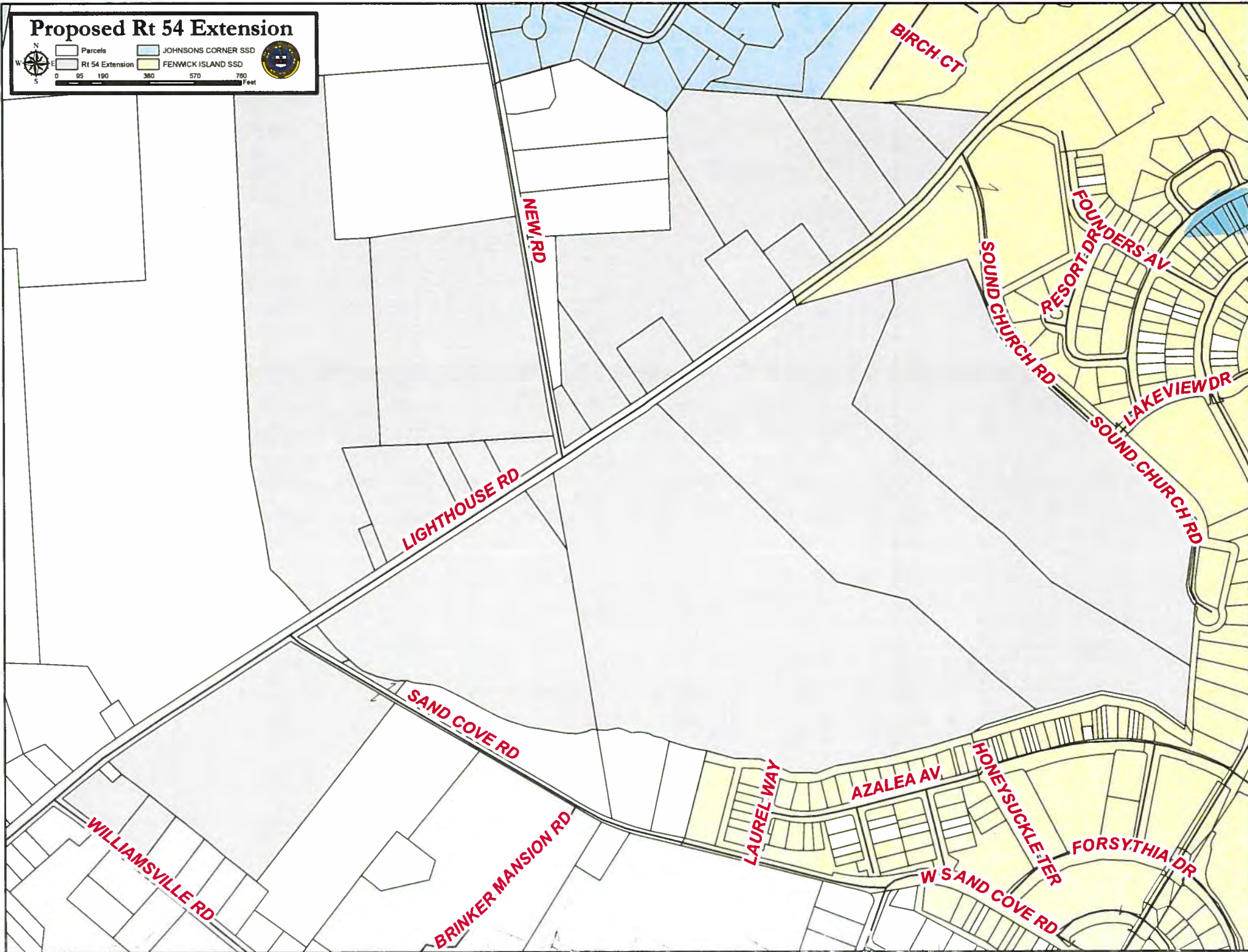
Proposed Rt 54 Extension



Parcels
Rt 54 Extension
JOHNSONS CORNER SSD
FENWICK ISLAND SSD



0 95 190 380 570 760 Feet



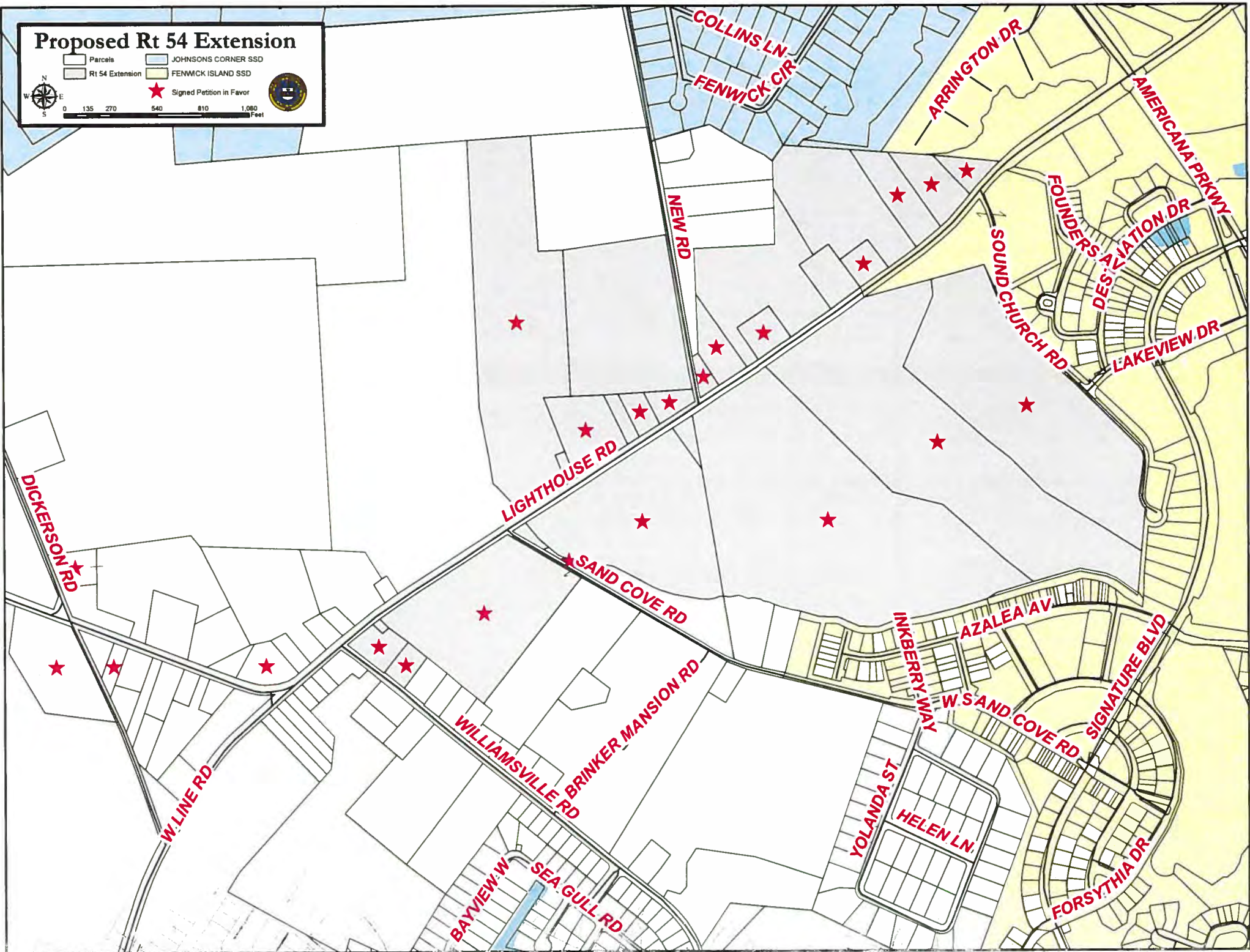
PETITION

Selbyville, Delaware Citizens for Sewer

We, the undersigned, do petition DNREC and Sussex County to extend sewerage service along Lighthouse Road to include our properties.

Name	House No.	Road	Date
Darryl Brasuer	35089	Lighthouse Rd	7/24/13
	35139	Lighthouse Rd	7/24/13
	36191	Lighthouse Rd	7/24/13
Don Brown	35131	Lighthouse Rd	7/24/13
	35119	Lighthouse Rd	7/24/13
Andrew Lewis		5.33 19.00 2.00 Light House Rd	7/24/13
Jacqueline Muffin		NE Lighthouse Rd. 999' SE/NEW Rd.	7/24/13
Anita E. Adkins	35051	Lighthouse Road	7/24/13
Jane A. Smith	35069	Lighthouse Road	7/25/13
Rebecca Snyder	38229	New Rd / Lighthouse Rd	7/25/13
Achrah Brasuer	35097	Lighthouse Road	7/28/13
Carol Brasuer	38187	TICKENSON 2nd BRASUERS	7/30/13
Jane Brasuer	33090	Light House Rd	7/30/13
Sharon Orbin	33116	Lighthouse Rd	7-30-13
Don O. Tacchetta	33195	Lighthouse Rd. - Williamsville Country Village	7/30/13
Robert Cooper	35465	Williamsville Rd	7/30/13
Andrew Cooper	(Rented)	Lighthouse Rd	7/30/13
Laurence R. Long		533-19.00-47.00 LIGHTHOUSE RD	7/30/13
Deborah R. Long		533-19.00-47.00 Lighthouse Rd	7/30/13
Furnwick Commons LLC John Furr, MGR		533-19.00-52.00 Lighthouse Rd / SAND COVE Rd and	7/31/13

Proposed Rt 54 Extension



FENWICK COMMONS, LLC
5901 Atlantic Avenue, #206
Ocean City, Maryland 21842
(443) 250-0092

February 14, 2014

Mr. Mike Izzo
Sussex County Engineer
Sussex County Administrative Building
3rd Floor
2 The Circle
P. O. Box 589
Georgetown, Delaware 19947



Re: Tax Parcel # 5-33-19.00-52.00
13.27 acres

Dear Mr. Izzo:

Please accept this letter of support of Fenwick Commons, LLC for the expansion of the Fenwick Island Sanitary Sewer District. Mrs. Anita Adkins has requested our letter of support.

Thank you.

Sincerely,

Joel M. Farr
Manager Member

**H. Wayne Tull
12045 Sheppards Crossing Road
Whaleyville Md 21872**

July 31, 2013

**Att: Darryl Breasure
Anita Adkins**

Fax # 302-436-4020

In reference to the partition to extend the sewer on Lighthouse Road, I am in favor of the extension. Please use this letter as my participation on the partition for the extension of sewer on Lighthouse Road.

My property tax parcel numbers are: 5-33-19.00-44.00 and 5-33-19.00-46.00.

Sincerely,

A handwritten signature in black ink, appearing to read 'H. Wayne Tull', written in a cursive style.

H. Wayne Tull

John J. Ashman

From: charles robino <chasrobino@yahoo.com>
Sent: Thursday, August 08, 2013 10:24 AM
To: John J. Ashman
Subject: Petition to Extend Sewer West on Lighthouse Road Beyond Williamsville, DE

Good Morning John

Hope you're doing well.

Please be advised that I support the above petition to extend sewer on Lighthouse Road beyond Williamsville, DE. I spoke to Mrs. Anita Adkins recently who's composed the petition and she has my groups (Rt 54 Partners, LLC) full support. We are the title holder of a 15 acre parcel on Lighthouse Road, tax map & parcel #5-33-19.00-50.00).

Should you have any questions concerning this matter please feel to contact me at any of the numbers below.

Regards,
Charles Robino
Member, 54 Partners, LLC

NAR - Development Company, LLC
102 Larch Avenue, Suite #301A
Wilmington, Delaware 19804
(302) 660-2017
(302) 660-2950 (Fax)
(302) 545-7700 (Cell)

OLD BUSINESS

January 6, 2015

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

Respectfully submitted:

COUNTY PLANNING AND ZONING
COMMISSION OF SUSSEX COUNTY

Lawrence B. Lank
Director of Planning and Zoning

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

Conditional Use #2001 – Christina Abramowicz

On November 13, 2014 the Planning and Zoning Commission held a public hearing on this application.

Application of **CHRISTINA ABRAMOWICZ** to consider the Conditional Use of land in an AR-1 Agricultural Residential District for a veterinary practice to be located on a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, containing 32,671 square feet, more or less, land lying southeast of Old Mill Road (Road 265-A), 1,900 feet northeast of Route One (Coastal Highway) (911 Address: 16403 Old Mill Road, Lewes, DE) (Tax Map I.D. #3-34-1.00-23.00).

The Commission found that the applicant provided a survey/site plan with her application.

The Commission found that DelDOT provided comments in the form of a Support Facilities Report on May 15, 2014 which reference that a Traffic Impact Study is not recommended; and that the Level of Service “A” of Old Mill Road will not change as a result of this application.

The Commission found that the Sussex Conservation District provided comments in the form of a memorandum on November 5, 2014 referencing that there is one soil type on the property; that the applicant will be required to follow recommended erosion and sediment control practices during any construction and to maintain vegetation; that there are no storm hazard areas affected; that it is not likely that off-site drainage improvements are necessary; that it is possible that any on-site drainage improvements will be necessary; and that there are no tax ditches affected.

The Commission found that the County Engineering Department Utility Planning Division provided comments on November 10, 2014 referencing that the site is located in the North Planning Area for the West Rehoboth Expansion; that central sewer service is not available at this time; that an on-site septic is proposed; that conformity to the North Coastal Area Planning Study will be required; that the parcel is located within a sewer planning area of the West Rehoboth Expansion of the Dewey Beach Sanitary Sewer District; that the County does not have a schedule to provide central sewer service to the parcel at this time; that when the County provides sewer service, it is required that the on-site system be abandoned and a connection made to the central sewer system; and that a concept plan is not required.

Mr. Lank advised the Commission that the Department has received 10 letters/emails in support and 36 letters/emails in opposition to this application; that there is some duplication since some writers have sent letters, emails and fax copies. Mr. Lank advised the Commission that he would make copies of the letters/emails available for the Commission to review.

The Commission found that Dr. Christina Abramowicz was present on behalf of her application for a veterinary practice; that she provides veterinary alternative care for dogs, cats, horses and some exotic animals; that her practice will serve a need for the community; that she treats the animals by appointment; that some visits last from one hour (1) to three (3) hours; that her practice is hands on, with no surgery, x-rays or medications; that her practice is considered holistic since she performs acupuncture, posture rehabilitation, some chiropractic, and uses Chinese and herbal medicines, medical massage and food therapy; that her current practice is considered mobile with services for acute illnesses, allergies, arthritis or hip dysplasia, behavior issues, cancer, chronic conditions, metabolic syndromes, musculoskeletal problems, and neurological issues; that pet owners have advised her that cost is a concern when she has to travel to the site of the pet owner; that she is proposing to serve a need for eastern Sussex County; that the closest veterinarian that performs acupuncture is in Seaford or Salisbury; that she has a website that provides details on her practice; that she would like approval for a small practice at her home; that her normal appointments take approximately 60 minutes; that there is adequate parking; that no additional buildings are proposed; that she does not perform any surgeries; that she has support from some of her neighbors and area community members; that she would not object to a restriction limiting the use to her practice only so that the conditional use could not transfer to another user; that currently she is exclusively mobile; that her primary intent is to remain mobile, but is requesting permission to allow pets to be brought to her home for treatment; that her typical hours are from 10:00 a.m. to 6:00 p.m. for mobile services six (6) days per week; that she would like to maintain the same hours from her home on certain days; that the pets that she would treat at home would be dogs, cats, and exotic pets; that she will not treat wild animals or large animals at the home; that he normally treats horses on Saturdays off-site and by appointment only; that all of her sessions are by appointment only; that she sees one client per hour; that she has no employees; that she does have a high school intern that studies under her; that emergencies are referred to other veterinary clinics; that she currently has 200 clients; that she would like to be able to erect a small marker type sign to label her location; that her back yard is partially fenced; that she has no plans for any kennels or any overnight housing of animals; that the living room would be converted to a waiting room and that she would have

an examination room and a treatment room; that bio-hazardous waste will be placed in trash containers and properly disposed of as needed; that she does not treat aggressive dogs; that she does deal with some dogs with anxiety and abnormal behaviors; and that she will have some retail sales of vitamins, herbs.

The Commission found that Dan Lynch of Delaware Equine was present in support of the application and stated that Dr. Abramowicz assisted him in caring for his horses; that he trains horses and that she has helped him rehabilitate several horses; that there is a need for this type of treatment in Sussex County; that he would have to travel to get holistic treatment for the horses; that there is a void in this area for this type of treatment; and that the use is an asset to the equine community.

The Commission found that Denise Dumont was present in support of the application and stated that the applicant has treated her dog; that she supports holistic veterinary treatment of animals; and that a need exists in the area for this type of service.

The Commission found that Vince Brady, Kathanna Billups, George Dellinger, Jim Wright, and Anita Hart were present in opposition expressing concerns that they oppose a veterinary practice in this residential neighborhood; that they are concerned about changes in the description of the proposed practice; that if the use is approved, there should be conditions of approval limiting hours and retail sales; that there is no upside for the business in this community; that approval would create a mixed use community with business, commercial and residential uses; that the use may impact and lower property values; that the majority of the residents along Old Mill Road are opposed to this application, and opposed to any type of commercial use in the area; that there are multiple veterinary practices in the general area; that no kennels or overnight housing of animals should be permitted; that the business could be expanded if approved; that the residents have no objection to the applicants mobile off-site activities; that the use is not appropriate in a residential area; that the application to DelDOT referenced a veterinary animal hospital; that the application for conditional use references a veterinary practice; that the Sussex Conservation District references that on site drainage improvements may possibly be necessary; that the applicants website references care for all types of animals, including dogs, cats, horses, exotics, and livestock; that the facility is proposed in the middle of a residential area and questioning what is a healthy separation between a clinic and living quarters; expressing concerns about the disposal of needles and swabs, used testing supplies, infected dressings, biological samples of infected animals; cadavers; questioning what the risks of contamination; that the majority of the residents of four (4) residential subdivisions along Old Mill Road are opposed to this application; that the use is not consistent with the Zoning Code, the Comprehensive Plan, or the community; that the use should not be considered a home occupation; that some types of diseases in animals may cause health hazards for the residents of the area; that animals may get loose causing concerns for the residents safety; that there is a concern that there is a lack of enforcement of conditions of approval, if granted, and referencing an example that landscaping for the boat yard to the north not having any landscaping; that Old Mill Road is a cul-de-sac road and that the residents of the communities oppose any business activity along Old Mill Road; and that the area residents request that the application be denied.

By a show of hands, the Commission found that there were four (4) parties present in support and 17 parties present in opposition.

The Commission found that Dr. Abramowicz responded to questions raised by the Commission that she has attempted to locate office space in the area and that due to the size of her business she could not afford such rentals; that she did oppose the proposed self-storage facility on the north side of Old Mill Road due to traffic; and that the self-storage facility would create more traffic than her proposal; and that she is only maintaining her property, not clearing it.

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

On November 13, 2014 there was a motion by Mr. Burton, seconded by Mr. Johnson, and carried unanimously to defer action for further consideration. Motion carried 5 – 0.

On December 11, 2014 the Commission discussed this application under Old Business.

Mr. Burton stated that he would move that the Commission recommend denial of Conditional Use #2001 for Christina Abramowicz for a veterinary practice based upon the record made during the public hearing and for the following reasons:

1. The site is located within an entirely residential location. The proposed use is inconsistent with the residential surroundings.
2. He does not want to start a trend of small businesses locating in this otherwise residential neighborhood. There are other locations for small businesses with the possibility of expansion on properties that are more appropriate for business uses or are already zoned for business use.
3. Many parties from the neighborhood appeared in opposition to the Conditional Use expressing concerns about the traffic generated by it, the incompatibility with the neighborhood, concerns about the number of animals that could be seen at the facility being incompatible with the residential area; concerns about the property losing its appearance as a residential structure within the otherwise residential neighborhood; and other issues. During the public hearing, 17 people were present in opposition to the application from the neighborhood. While there were people on the record in favor of the application, none of them were from the residential neighborhood surrounding the site.
4. While this could be a home occupation that does not require a conditional use, the information in the record does not clearly support that possibility. For example, the Applicant stated that she has an intern working with her which is not permitted as a home occupation. Also, based upon the Applicant's plans for the property, it was unclear whether she intended to reside there full time. The information that was provided about the Applicant's business plan was also unclear, with the possibility of business growth and expansion exceeding what is permitted as a home occupation.
5. To summarize, he is concerned that the approval of a Conditional Use for a veterinary practice at this site, even with conditions, would create problems in this residential neighborhood. Even if the Commission imposed restrictive conditions on the use, it would lead to future problems as a veterinary practice becomes more popular and expands. It is more appropriate for this use to be started in an appropriate location from

the beginning, where it can reasonably expand under appropriate zoning and a location that is suitable to future expansion.

Mr. Johnson stated that this application differs from some applications; there is a volunteer student intern, who is not paid; the lot is not in a subdivision; the lot fronts a public street; the use should qualify as a home occupation since the applicant is residing there and there are no employees; the use should be a low impact since there are no housed animals, and since it is a residential use.

Mr. Robertson advised the Commission that the definition of a home occupation references that the use shall be operated solely by a member or members of a family residing on the premise.

Mr. Smith agreed with Mr. Burtons comments.

Mr. Ross agreed that the Code must be complied with.

Mr. Wheatley agreed with Mr. Johnson referenced that the use could be considered as a home occupation, and also agreed with Mr. Burton that the Commission has had a long standing policy that conditional uses are not typically approved in subdivision.

Motion by Mr. Burton, seconded by Mr. Smith, and carried unanimously to forward this application to the Sussex County Council with the recommendation that the application be denied for the reasons stated. Motion carried 3 – 2, with Mr. Johnson and Mr. Wheatley opposing the motion.

Introduced 09/09/14

**Council District – Deaver - District No. 3
Tax I.D. No. 334-1.00-23.00
911 Address: 16403 Old Mill Road, Lewes**

ORDINANCE NO. ____

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A VETERINARY PRACTICE TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 32,671 SQUARE FEET, MORE OR LESS

WHEREAS, on the 19th day of August 2014, a conditional use application, denominated Conditional Use No. 2001 was filed on behalf of Christina Abramowicz; and

WHEREAS, on the ____ day of _____ 2014, 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. 2001 be _____; and

WHEREAS, on the ____ day of _____ 2014, 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. 2001 as it applies to the property hereinafter described.

Section 2. The subject property is described as follows:

ALL that certain tract, piece or parcel of land, lying and being situate in Lewes and Rehoboth Hundred, Sussex County, Delaware, and lying southeast of Old Mill Road (Road 265-A), 1,900 feet northeast of Route One (Coastal Highway) and being more particularly described in Deed Book 4274, Page 333, in the Office of the Recorder of Deeds in and for Sussex County, said parcel containing 32,671 square feet.

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

0

15

30

60

90

120

Feet

1 inch = 50 feet

144.97

144.93

148.66

98.15

10.44

10.44

10.44

50

71.71

152.75

122.99

450.01

447.93

200.62

131.74

82.66

110.55

47.23

90

30

110.7

Lands N/F of CARTA

Lands N/F of HART

Lands N/F of ALBRIGHT

Lands N/F of KARLIK

Lands N/F of NASSAU ACRES

Lands N/F of HUNT

Lands N/F of COHEN

Lands N/F of WOOD

Lands N/F of WITHAM

283

23

24

216

236

2

1.1

1.00

2

2

2

2

23

1.1

1.00

Ac.

144.97

144.93

148.66

98.15

10.44

10.44

10.44

50

71.71

152.75

122.99

450.01

447.93

200.62

131.74

82.66

110.55

47.23

90

30

110.7

Lands N/F of CARTA

Lands N/F of HART

Lands N/F of ALBRIGHT

Lands N/F of KARLIK

Lands N/F of NASSAU ACRES

Lands N/F of HUNT

Lands N/F of COHEN

Lands N/F of WOOD

Lands N/F of WITHAM

283

23

24

216

236

2

1.1

1.00

2

2

2

2

23

1.1

1.00

Ac.

Conditional Use Application #2001

Legend

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

0 15 30 60 90 120 Feet


1 inch = 50 feet

N
W
E
S

02955901,1801,7702,360

1 inch = 917 feet

Conditional Use
Application #2001



Legend

Parcels

Parcel Lines

Roads

Railroad

Municipal Boundaries

Agricultural - AR-1

Agricultural - AR-2

Medium Residential - MR

General Residential - GR

High Density Residential

Vacation, Retire, Resident - VRP

Neighborhood Business - B-1

General Commercial - C-1

Commercial Residential - CR-1

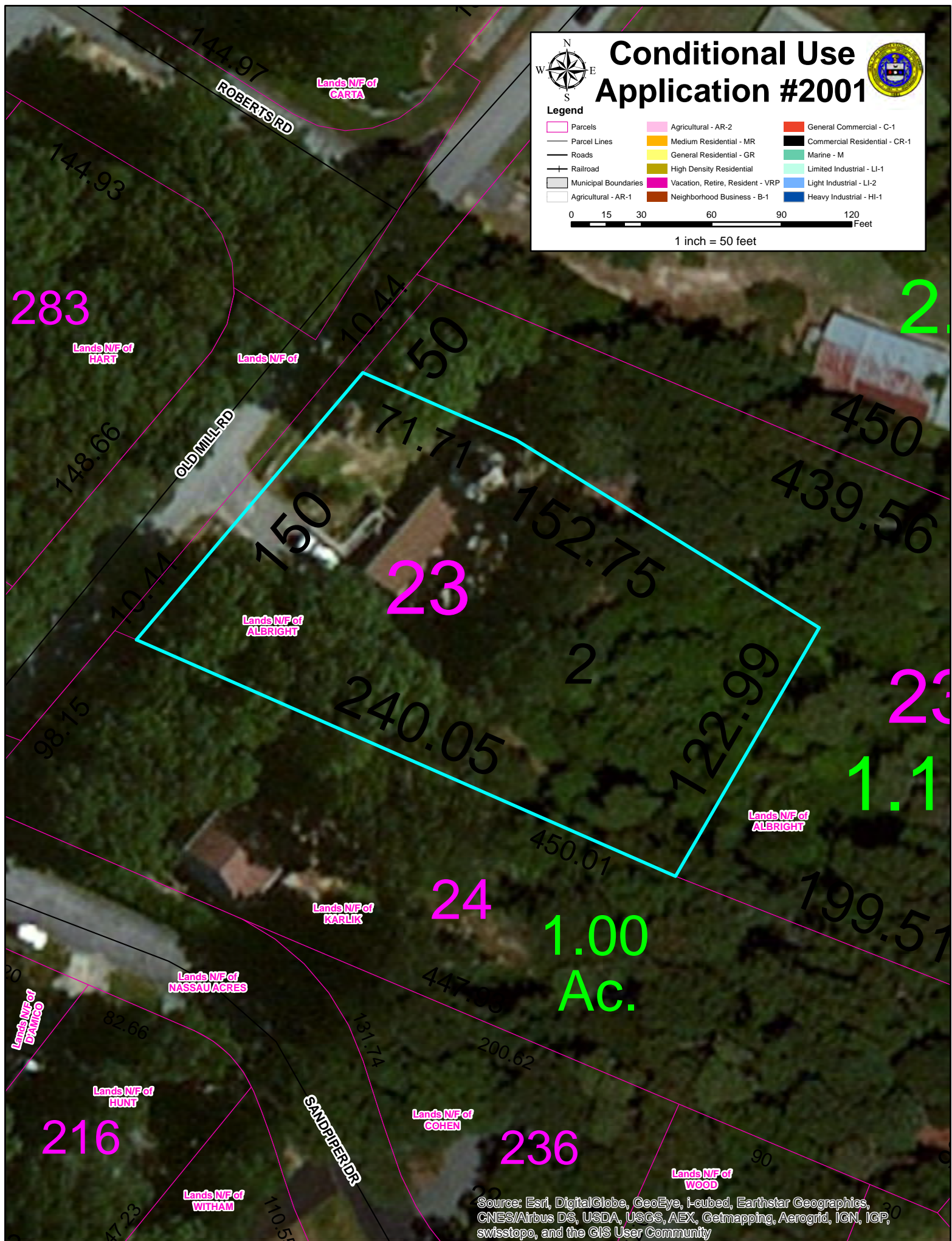
Marine - M

Limited Industrial - LI-1

Light Industrial - LI-2

Heavy Industrial - HI-1

This map displays a network of streets and land parcels. The streets shown include Willow Creek Rd, Wilson Ln, Greystone Dr, Mill Creek Ct, Essex Rd, Devon Rd, Point Dr, Bristol Rd, Minos Conaway Rd, Alsace Ct, Corvino Ct, Grenache Ct, Chablis Ln, Port Cir, Carneros Av, Janice Rd, Siham Rd, Unknown, Roberts Rd, Oak Dr, Broeders Dr, Old Mill Rd, Sandpiper Dr, Landon Rd, Christeen Ct, Coastal Hwy, Ramp, Nassau Rd, Nassau Commons Blvd, Queen Anne Way, Taramino Pl, Slipper Shell Way, Lewes Georgetown Hwy, Nicole Ln, Winery Way, New Rd, Minnesota St, Kansas Ct, Nassau Loop, Tulip Dr, and Towne Ct. The parcels are color-coded according to their conditional use designation: Agricultural - AR-1 (light pink), Agricultural - AR-2 (pink), Medium Residential - MR (orange), General Residential - GR (yellow), High Density Residential (dark yellow), Vacation, Retire, Resident - VRP (magenta), Neighborhood Business - B-1 (brown), General Commercial - C-1 (red), Commercial Residential - CR-1 (dark red), Marine - M (teal), Limited Industrial - LI-1 (light blue), Light Industrial - LI-2 (medium blue), and Heavy Industrial - HI-1 (dark blue). The map also shows parcel lines, roads, a railroad, and municipal boundaries. A scale bar at the bottom indicates distances from 0 to 2,360 feet, and a north arrow is located in the top right corner.





This holiday season, my gift will be to help others in the community by supporting Nanticoke Health Services. I wish my contribution to benefit:

☐ Prescription Drug Fund ☐ Area of Most Need

YES! I choose to give the gift of health this holiday and support my community hospital.
Enclosed is my 2014 gift of:

☐ \$1,000 ☐ \$500 ☐ \$250 ☐ \$100 ☐ \$ _____

With a gift of \$1,000 or more I become a member of the Nanticoke Society.

2014 HOLIDAY APPEAL

Mr. Michael Vincent, President
Sussex County Council
2 The Circle, P.O. Box 589
Georgetown, DE 19947-0589

To make a secure online donation,
please visit www.Nanticoke.org/WaysToGive/online-giving
Please make any needed changes in your name and address and enclose this
form with your tax-deductible gift in the envelope provided. Please make your
check payable to Nanticoke Health Services, 121 S. Front Street, Seaford, DE
19973. Please see other side to donate by credit card. Nanticoke Health
Services thanks you for your generosity!

Please complete reverse side and return to Nanticoke Health Services Foundation

November 18, 2014

Mr. Michael Vincent

President, Sussex County Council

Georgetown, Delaware, 19947

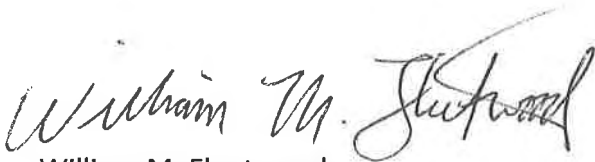
Dear Mr. Vincent,

In 2013, the Council donated to our OTS Delmarva Softball League \$1,000.00. It was greatly appreciated. We would again appreciate the Council approving another \$1,000.00 donation to our league. Unlike the Kent and New Castle Counties where the Olde Tymer's Softball Leagues are directly funded by the county they reside in, we have no direct funding. There are 163 players in our league from 55-85 years of age, and the league continues to grow.

Therefore, it is respectfully requested the Council give favorable consideration to our request. We are a 501c3 organization. I have enclosed our Non-Stock Non-Profit Corporation information for your perusal.

Check can be sent to our Secretary, Dick Mullins, at 31 Federal Hill, Berlin, MD 21811.

Respectfully,

A handwritten signature in dark ink, appearing to read "William M. Fleetwood". The signature is fluid and cursive, with the first name "William" and last name "Fleetwood" being the most legible parts.

William M. Fleetwood

OTS Member

Ocean View Police Department
201 Central Ave
Ocean View, DE 19970
302.539.1111
Fax: 302.537.3787



Kenneth M. McLaughlin
Chief of Police

DATED: 12/10/2014

TO: Councilman George Cole
Sussex County Council

FROM: Chief Kenneth McLaughlin
Ocean View Police Department

REF: Peace Officer Naloxone Program

On August 8th, 2014, Governor Markell signed legislation authorizing law enforcement officers to carry Naloxone (AKA Narcan), a prescription drug that counteracts the effects of opioid related overdoses. Subsequently, the Ocean View Police Department has included the Peace Officer Naloxone Program into its efforts to combat the on-going Heroin epidemic plaguing our community.

While the new legislation provided the needed authorization for police to obtain and administer this life-saving drug, no state funds were made available to purchase the drug. Like most municipal police departments in Sussex County, the Ocean View Police Department struggles to provide professional public safety services to a growing community. In order to continue with our Heroin reduction initiatives, we need financial support.

I respectfully request that consideration be given to provide county funds, in the amount of \$750.00, to reimburse the Ocean View Police Department for costs associated with the purchase of ten Nasal Naloxone kits.

Thank you for your consideration in this matter.

To Be Introduced 1/6/15

**Council District 3 - Deaver
Tax Map I.D. No. 334-1.00-5.00
911 Address: Not Available**

ORDINANCE NO. ____

AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A CR-1 COMMERCIAL RESIDENTIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 29,289 SQUARE FEET, MORE OR LESS.

WHEREAS, on the 17th day of November 2014, a zoning application, denominated Change of Zone No. 1765 was filed on behalf of Red Mill Pointe, LLC; and

WHEREAS, on the _____ day of _____ 2015, 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. 1765 be _____ ; and

WHEREAS, on the _____ day of _____, 2015, 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 COUNTY 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 CR-1 Commercial Residential District as it applies to the property hereinafter described.

Section 2. The subject property is described as follows:

All that certain tract, piece or parcel of land lying and being situated in Lewes and Rehoboth Hundred, Sussex County, Delaware, and lying northeast of Route One (Coastal Highway) across from Red Mill Pond and being more particularly described in Deed Book 4263 Page 60 in the Office of the Recorder of Deeds in and for Sussex County, Delaware, and containing 29,289 square feet, 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 1/6/15

**Council District 2 - Wilson
Tax Map I.D. No. 230-26.00-6.03
911 Address – Not Available**

ORDINANCE NO. ____

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AGRICULTURAL RESIDENTIAL DISTRICT FOR A CHRISTIAN ACADEMY/PRIVATE SCHOOL TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN CEDAR CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 9.55 ACRES, MORE OR LESS

WHEREAS, on the 20th day of November 2014, a conditional use application, denominated Conditional Use No. 2010 was filed on behalf of The Cross Christian Academy, Inc.; and

WHEREAS, on the _____ day of _____, 2015, 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. 2010 be _____; and

WHEREAS, on the _____ day of _____, 2015, 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. 2010 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 south of Route 16 (Beach Highway) 1020 feet west of Road 595A (Spruce Road) and north of Road 595A (Spruce Road) 1075 feet southwest of Route 16 (Beach Highway) and being more particularly described in Deed Book 4230 Page 232 in the Office of the Recorder of Deeds in and for Sussex County, Delaware, said parcel containing 9.55 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.