

City of Milford



CITY COUNCIL AGENDA **Monday, October 28, 2019**

Joseph Ronnie Rogers Council Chambers
Milford City Hall, 201 South Walnut Street, Milford, Delaware

5:30 P.M. **SPECIAL COUNCIL MEETING**

Call to Order - Mayor Archie Campbell

EXECUTIVE SESSION

Motion to Recess into Executive Session

Pursuant to 29 Del. C. §10004 (b)(9) for the purpose of discussing personnel matters in which the names, competency and abilities of individual employees are discussed.

Pursuant to 29 Del. C. §10004(b)(4) Strategy sessions, including those involving legal advice or opinion from an attorney-at-law, with respect to collective bargaining or pending or potential litigation.

Return to Open Session

Personnel Matter

Potential Litigation

Adjournment

WORKSHOP

Council Retreat Follow-Up:

Public Comment at Meetings

Live Streaming of Meetings

Town Hall Meetings

Workshop Meetings

**7:00 P.M.
COUNCIL MEETING**

Call to Order - Mayor Archie Campbell

Invocation

Pledge of Allegiance

Recognition

Proclamation 2019-15/Extra Mile Day
Introduction/City Employees

Public Hearings ®

Community Development Block Grant Program
Kent & Sussex Counties
Adoption/Resolutions 2019-17, 18, 19, 20, 21

Adoption/Ordinance 2019-36/Change of Zone/Lands belonging to BSG III, LLC
Tax Map & Parcel(s) 1-30-3.11-055.00, -056.00, -057.00
1.41+/- Acres located at 0 Seabury Ave, 615 S DuPont Blvd & 0 S DuPont Blvd, Milford, DE
Current Zoning: OC-1 (Office Complex)/Proposed Zoning: C-3 (Highway Commercial)

Communication & Correspondence

Unfinished Business

New Business

Renewal/Kent Economic Partnership Agreement
Bid Award/City Road Resurfacing Project
Renewal/First State BMX Lease
Authorization/City of Lewes Affidavit

Adjournment

All items, other than those on a Workshop Session Agenda, are subject to a potential vote.

**SUPPORTING DOCUMENTS MUST BE SUBMITTED TO THE CITY CLERK IN ELECTRONIC FORMAT
NO LATER THAN ONE WEEK PRIOR TO MEETING; NO PAPER DOCUMENTS WILL BE ACCEPTED OR DISTRIBUTED
AFTER PACKET HAS BEEN POSTED ON THE CITY OF MILFORD WEBSITE.**

® Public Comment, up to three minutes per person, will be permitted.
Public Comment, per State and Local Laws, accepted on all Public Hearing Items.

081919 090919 091019 091819 100919 101019 101619 102119 102219 Agenda Order Adjusted 102519 Agenda Order Adjusted due to Info
Received after original agenda published.

Council Retreat Follow-Up

1-Public Comment at Meetings

2-Live Streaming of Meetings

3-Town Hall Meetings

4-Workshop Meetings

City of Milford



PROCLAMATION 2019-15 EXTRA MILE DAY

WHEREAS, the City of Milford is a community which acknowledges that a special vibrancy exists within the entire community when its individual citizens collectively “go the extra mile” in personal effort, volunteerism, and service; and

WHEREAS, Milford is a community which encourages its citizens to maximize their personal contribution to the community by giving of themselves wholeheartedly and with total effort, commitment, and conviction to their individual ambitions, family, friends, and community; and

WHEREAS, Milford is a community which chooses to shine a light on and celebrate individuals and organizations within its community who “go the extra mile” in order to make a difference and lift up fellow members of their community; and

WHEREAS, the City of Milford acknowledges the mission of Extra Mile America to create 550 Extra Mile cities in America and is proud to support “Extra Mile Day” on November 1, 2019.

NOW THEREFORE, I, Arthur Campbell, Mayor of the City of Milford do hereby proclaim November 1, 2019, to be Extra Mile Day and urge each individual in the community to take time on this day to not only “go the extra mile” in his or her own life, but to also acknowledge all those who are inspirational in their efforts and commitment to make their organizations, families, community, country, or world a better place.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Official Seal of the City of Milford to be affixed this 28th day of October in the Year of Our Lord, Two Thousand Nineteen.

Mayor Arthur Campbell

Attest:

City Clerk Teresa K. Hudson

PUBLIC HEARING

The **City of Milford, Delaware**, in cooperation with the Levy Court of Kent County, the Sussex County Council, and the Delaware State Housing Authority (DSHA), will hold a public hearing on **Monday, October 28, 2019 at 7:00 p.m. at the City Hall, 201 South Walnut St., Milford, Delaware** for the purpose of providing any interested citizens the opportunity to comment on the municipality's application for funds under the Delaware Community Development Block Grant (CDBG) Program. In accordance with the Section 106 Review Process established by the National Historic Preservation Act of 1966, as amended, comments are especially encouraged from interested agencies and individuals with respect to undertakings that may affect historic properties of significance to such agencies and individuals.

This Federally funded program will provide grants amounting to \$2,000,000. (funding level subject to change), to support Community Development Activities in eligible local governments in Kent and Sussex Counties. The public hearing will also include a status report for Milford's FY-19 projects.

For further information on this hearing, please contact the Kent County Department of Planning at 744-2480 or the Sussex County Department of Community Development at 855-7777.

City of Milford



RESOLUTION 2019-17 Sussex County

Councilmember _____ submitted to the Council the following Proposed Resolution:

ENDORISING PROJECT TO BE SUBMITTED TO THE DELAWARE STATE HOUSING AUTHORITY FOR FUNDING FROM THE UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT AUTHORIZING TODD F. LAWSON, SUSSEX COUNTY ADMINISTRATOR TO SUBMIT APPLICATION.

WHEREAS, the City of Milford resolves to apply for Community Development funds from the Delaware State Housing Authority in accordance with appropriate regulations governing Community Development Block Grants State of Delaware Program for Block Grants as contained in Sections 570.488-499 24 CFR U.S. Department of Housing and Urban Development; and

WHEREAS, the City of Milford has met the application requirements of (Attachment E Delaware Community Block Grant Program Policies and Procedures) Citizen Participation requirements; and

WHEREAS, Sussex County plans on accomplishing the requested projects with CDBG funds; and

WHEREAS, the City of Milford hereby agrees to allow Sussex County to accomplish the projects in the targeted areas of Milford; and

WHEREAS, the City of Milford and Sussex County are in agreement with this activity.

NOW, THEREFORE, BE IT RESOLVED by the City of Milford and Sussex County that they endorse and grant permission for the following activity:

APPLICATION: Rehabilitation/Infrastructure/Demolition

Total Infrastructure project cost is \$ _____, total CDBG grant request is \$ _____.
Matching funds in the amount of \$ _____ will be provided by the City of Milford general funds.

NOTE: To be used for Infrastructure projects only.

I DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE AND CORRECT COPY OF A RESOLUTION PASSED BY THE CITY OF MILFORD, SUSSEX COUNTY, ON THE 28th DAY OF OCTOBER 2019.

WE GIVE MAYOR AUTHORIZATION TO SIGN RESOLUTION:

Councilmembers

Daniel Marabello Owen Brooks Jr.
Mike Boyle Douglas Morrow
Lisa Ingram Peel Jason James Sr.
Todd Culotta Katrina Wilson

Arthur J. Campbell
Mayor

I DO HEREBY CERTIFY THAT THE FOREGOING TITLE OF RESOLUTION ADOPTED BY THE CITY OF MILFORD IS THE SAME TITLE OF RESOLUTION NO. _____ ADOPTED BY THE COUNTY COUNCIL OF SUSSEX COUNTY ON THE ____ DAY OF _____.

Robin A. Griffith
Clerk of the County Council

City of Milford



Resolution 2019-18 CITIZEN PARTICIPATION CERTIFICATE OF ASSURANCE Sussex County

It is hereby assured and certified to the Delaware State Housing Authority that Sussex County, Delaware, has met application requirements of (Attachment E Delaware Community Development Block Grant Program Policies and procedures) citizen participation requirements, and that Sussex County has:

- 1) made available information concerning the amount of funds that may be applied for;
- 2) made known the range of activities that may be undertaken with these funds;
- 3) made known the fact that more applications will be submitted to the State of Delaware than can be funded;
- 4) outlined the processes to be followed in soliciting and responding to the views and proposals of citizens, communities, nonprofit agencies and others in a timely manner; and
- 5) provided a summary of other important program requirements.

The City of Milford has held a Public Hearing on October 28, 2019 with required notice for all citizens, including low and moderate income persons, to have an opportunity to present their views and proposals.

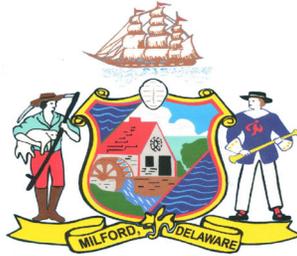
The City of Milford has by resolution and following a Public Hearing, endorsed this application.

Mayor Arthur J. Campbell

Attest _____

Adopted: October 28, 2019

City of Milford



RESOLUTION 2019-19 Requirement for Fair Housing Sussex County

WHEREAS, the City of Milford recognizes the importance of fair housing for the citizens of Milford; and

WHEREAS, the City of Milford supports the goals of the Federal Fair Housing Law.

NOW, THEREFORE, BE IT RESOLVED, that the City of Milford heartily encourages all parties involved in the renting, selling or financing of housing in the City of Milford to insure that no person shall, on the grounds of race, color, national origin or sex, be discriminated against or denied a fair and equal opportunity for housing; and

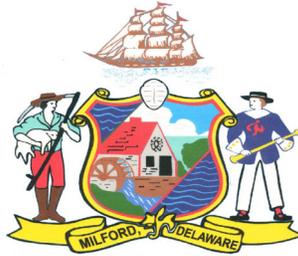
BE IT FURTHER RESOLVED, that the City of Milford, when acting as administrator of a Community Block Grant, is hereby authorized to take such actions as deemed necessary to affirmatively further fair housing in connection with the said Community Development Block Grant.

This RESOLUTION was passed by a majority of the Council of the City of Milford on October 28, 2019.

Mayor Arthur J. Campbell

Attest _____

City of Milford



RESOLUTION 2019-20 Authorizes Levy Court of Kent County to Submit Application

The City Council of Milford, Delaware, hereby authorizes its Mayor, Arthur J. Campbell, to submit the Fiscal Year 2020 Community Development Block Grant (CDBG) application and all understandings and assurances therein contained, and furthermore authorizes the Levy Court of Kent County to Act as the official representative of the City of Milford in connection with the submission of the Fiscal Year 2020 CDBG applicant and to provide such additional information as may be required. In the event the City of Milford's application is funded, the Levy Court of Kent County is hereby authorized to administer the funded application on behalf of the City of Milford.

This resolution was passed by a majority of the Council of the City of Milford on October 28, 2019.

Mayor Arthur J. Campbell

Attest _____

City of Milford



RESOLUTION 2019-21 Requirement for Fair Housing Kent County

WHEREAS, the City of Milford recognizes the importance of fair housing for the citizens of Milford; and

WHEREAS, the City of Milford supports the goals of the Federal Fair Housing Law.

NOW, THEREFORE, BE IT RESOLVED, that the City of Milford heartily encourages all parties involved in the renting, selling or financing of housing in the City of Milford to insure that no person shall, on the grounds of race, color, national origin or sex, be discriminated against or denied a fair and equal opportunity for housing; and

BE IT FURTHER RESOLVED, that the Kent County Levy Court, when acting as administrators of a Community Block Grant for the City of Milford, is hereby authorized to take such actions as deemed necessary to affirmatively further fair housing in connection with the said Community Development Block Grant.

This RESOLUTION was passed by a majority of the Council of the City of Milford on October 28, 2019.

Mayor Arthur J. Campbell

Attest _____

CITY OF MILFORD
NOTICE OF PUBLIC HEARINGS

Planning Commission Hearing: Tuesday, October 15, 2019 @ 7:00 p.m.
City Council Hearing: Monday, October 28, 2019 @ 7:00 p.m.

NOTICE IS HEREBY GIVEN the Planning Commission and City Council will hold Public Hearings in the Joseph Ronnie Rogers Council Chambers at Milford City Hall, 201 South Walnut Street to allow interested parties to participate in the discussion and consideration of the following zoning matter:

Ordinance 2019-36

Change of Zone/Lands belonging to BSG III, LLC
Tax Map & Parcel(s) 1-30-3.11-055.00, -056.00, -057.00
1.41+/- Acres located at 0 Seabury Ave, 615 S DuPont Blvd & 0 S DuPont Blvd, Milford, DE
Current Zoning: OC-1 (Office Complex)/Proposed Zoning: C-3 (Highway Commercial)

AN ORDINANCE OF THE CITY OF MILFORD, DELAWARE to amend the zoning map of the City of Milford by rezoning 1.41 +/- acres of real property from OC1 to C3 0 Seabury Ave, 615 S DuPont Blvd & 0 S DuPont Blvd, Milford, DE. Tax Map and Parcel(s): 1-30-3.11-055.00, -056.00, -057.00

WHEREAS, the City of Milford Planning Commission will consider the change of zone application and hold a Public Hearing on Tuesday, October 15, 2019; and

WHEREAS, Milford City Council will hold a Public Hearing on Monday, October 28, 2019 to allow for additional public comment and further review of the ordinance; and

WHEREAS, it is deemed in the best interest of the City of Milford to allow a change of zone as herein described.

NOW, THEREFORE, the City of Milford hereby ordains as follows:

Upon the adoption of this ordinance, tax map and parcels 1-30-3.11-055.00, -056.00, -057.00, owned by BSG III, LLC located at 0 Seabury Ave, 615 S DuPont Blvd & 0 S DuPont Blvd, Milford, DE, is hereby zoned C3.

Dates:

Planning Commission Public Hearing: October 15, 2019

City Council Introduction: October 14, 2019

City Council Public Hearing: October 28, 2019

Adoption: October 28, 2019

Effective: November 7, 2019

Additional information may be obtained by contacting the Planning Office at 302-424-8396 or by emailing rpierce@milford-de.gov.

Advertise: Beacon 09/25/19



DATA SHEET FOR BSG III, LLC

Planning Commission Meeting: October 15, 2019

Application Number / Name	:	19-030 / BSG III, LLC
Applicant	:	William Owen 400 Penn Center Boulevard, Buildint 4 Pittsburgh, PA 15235
Owner	:	BSG III, LLC 136 Chatenay Lane Centerville, DE 19807
Application Type	:	Change of Zone
Present Comprehensive Plan Map Designation	:	Commercial
Present Zoning District(s)	:	OC-1 (Office Complex)
Proposed Zoning District(s)	:	C-3 (Highway Commercial)
Present Use	:	Vacant
Proposed Use	:	Convenience Store with Gas Pumps
Size and Location	:	1.41 +/- acres of land located at the northeast corner of US Route 113 and Seabury Avenue.
Tax Map & Parcel(s)	:	1-30-3.11-55.00, 56.00 & 57.00

ENC: Staff Analysis Report
Exhibit A – Location & Zoning Map
Exhibit B – Survey



STAFF REPORT
September 27, 2019

Application Number / Name	:	19-030 / BSG III, LLC
Present Comprehensive Plan Designation	:	Commercial
Present Zoning District(s)	:	OC-1 (Office Complex)
Proposed Zoning District(s)	:	C-3 (Highway Commercial)
Present Use	:	Vacant
Proposed Use	:	Convenience Store with Gas Pumps
Size and Location	:	1.41 +/- acres of land located at the northeast corner of US Route 113 and Seabury Avenue.
Tax Map & Parcel(s)	:	1-30-3.11-55.00, 56.00 & 57.00

I. BACKGROUND INFORMATION:

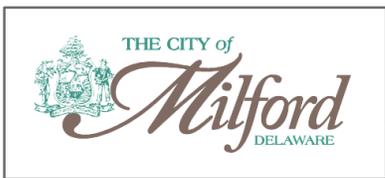
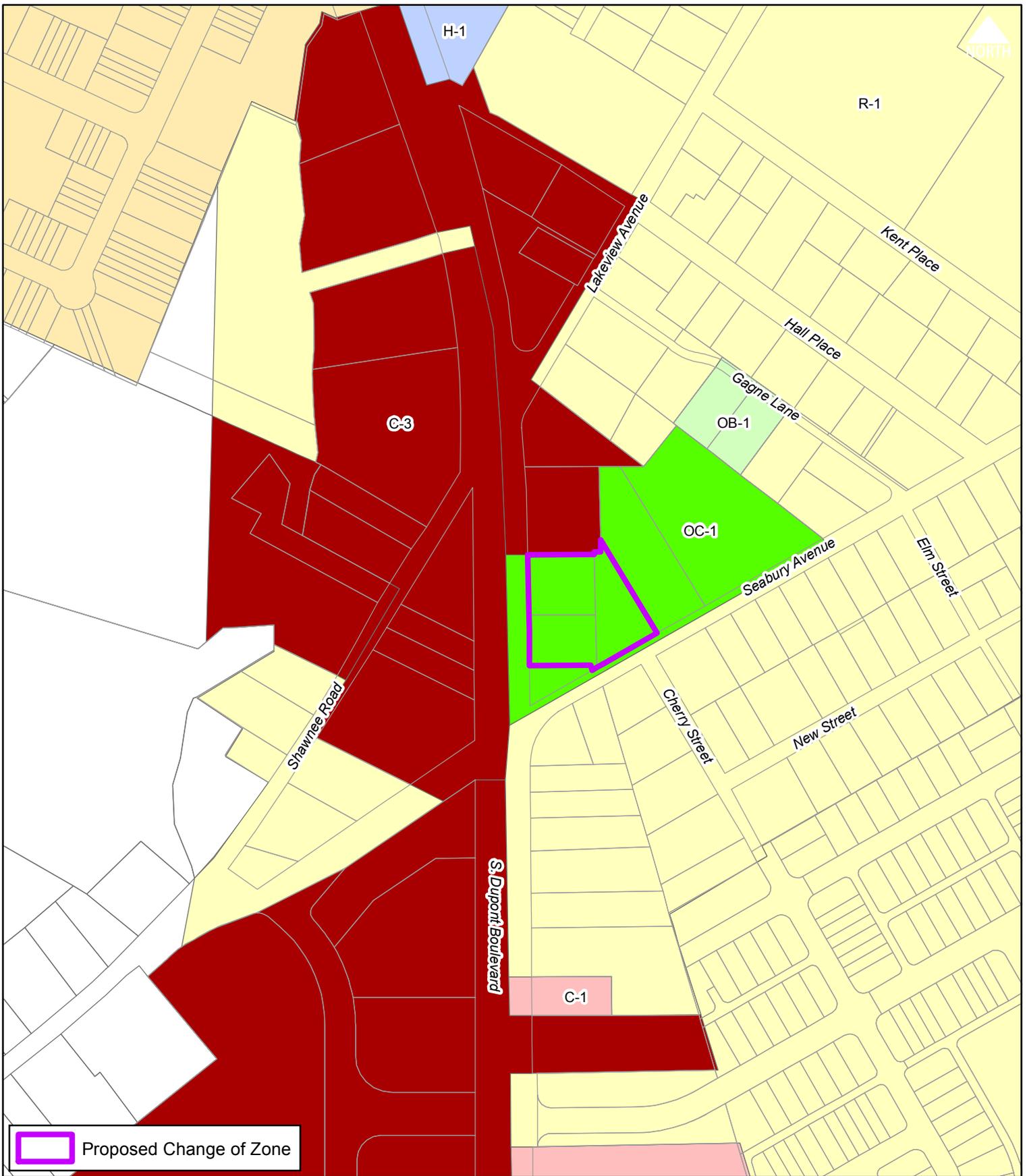
- The applicant proposes to change the zoning designation of the above referenced parcels from OC-1 (Office Complex) to C-3 (Highway Commercial) in order to construct a Convenience Store with Gas Pumps. The proposed use would require conditional use approval from City Council which would be reviewed during a separate public hearing if the property is rezoned to C-3. Development of the site would also be subject to the City's site plan review process, which would include two meetings with the Planning Commission.

II. STAFF ANALYSIS:

Based on the information presented, the City of Milford Code, and the Comprehensive Plan, staff submits the following regarding the request to amend the Zoning Map:

- The Change of Zone request is consistent with the 2018 Comprehensive Plan Future Land Use maps. The Future Land Use designation for the property is Commercial, for which C-3 (Highway Commercial) is a suitable zoning designation. The Comprehensive Plan states Highway Commercial zones should be located along major transportation routes, including DE 1, US 113, Route 14 and Business 1.

- According to Chapter 230, the purpose of the C-3 category is to provide for larger-scale commercial uses that may require large amounts of parking space or have a high traffic impact. These uses generally require locations on major arterial routes and serve both local and regional customers.
- US 113 (S. Dupont Boulevard) is a State Maintained roadway and is considered a principal arterial road according to DelDOT's functional classification map. Seabury Avenue is a State Maintained roadway and considered a major collector according to DelDOT's functional classification map. Site access and entrance improvements would be reviewed and approved by DelDOT as part of the site plan approval process.
- The property to the north is zoned C-3 (Highway Commercial) and contains a one-story medical office building. The properties to the east are zoned OC-1 (Office Complex) and contain a single-family dwelling converted into a professional office and a medical office complex. The properties to the south, across Seabury Avenue, are zoned R-1 (Single-family Residential District) and contain single-family dwellings.
- The proposed Convenience Store with Gas Pumps is a conditional use within the C-3 zoning category, which will require City Council approval under a separate public hearing. Any future use of the property must comply with Chapter 230 and the C-3 (Highway Commercial) zoning use and area regulations.

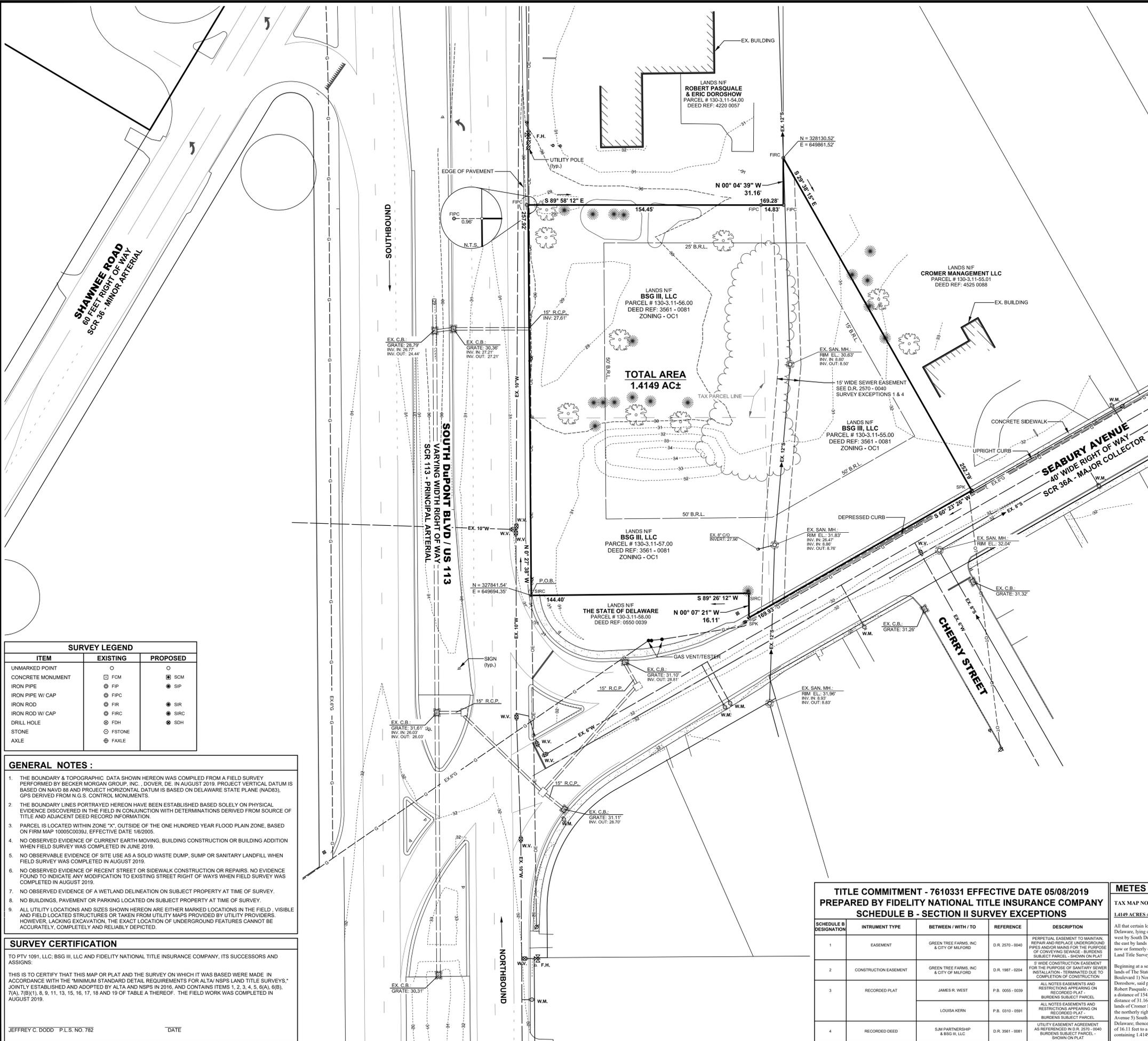
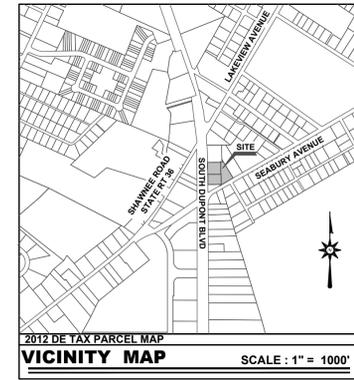


Scale: Feet
0 150 300

Drawn by: WRP Date: 09/06/19

Title:
Change of Zone
BSG III, LLC
Location & Zoning Map

Filepath: ChangeZone_BSGIII.mxd



SURVEY LEGEND		
ITEM	EXISTING	PROPOSED
UNMARKED POINT	○	○
CONCRETE MONUMENT	◻ FCM	◻ SCM
IRON PIPE	⊙ FIP	⊙ SIP
IRON PIPE W/ CAP	⊙ FIPC	⊙ SIPC
IRON ROD	⊙ FIR	⊙ SIR
IRON ROD W/ CAP	⊙ FIRC	⊙ SIRC
DRILL HOLE	⊙ FDH	⊙ SDH
STONE	⊙ FSTONE	⊙ SDH
AXLE	⊙ FAXLE	

- GENERAL NOTES :**
- THE BOUNDARY & TOPOGRAPHIC DATA SHOWN HEREON WAS COMPILED FROM A FIELD SURVEY PERFORMED BY BECKER MORGAN GROUP, INC., DOVER, DE, IN AUGUST 2019. PROJECT VERTICAL DATUM IS BASED ON NAVD 88 AND PROJECT HORIZONTAL DATUM IS BASED ON DELAWARE STATE PLANE (NAD83). GPS DERIVED FROM N.G.S. CONTROL MONUMENTS.
 - THE BOUNDARY LINES PORTRAYED HEREON HAVE BEEN ESTABLISHED BASED SOLELY ON PHYSICAL EVIDENCE DISCOVERED IN THE FIELD IN CONJUNCTION WITH DETERMINATIONS DERIVED FROM SOURCE OF TITLE AND ADJACENT DEED RECORD INFORMATION.
 - PARCEL IS LOCATED WITHIN ZONE "X", OUTSIDE OF THE ONE HUNDRED YEAR FLOOD PLAIN ZONE, BASED ON FIRM MAP 10005C0039J, EFFECTIVE DATE 1/6/2005.
 - NO OBSERVED EVIDENCE OF CURRENT EARTH MOVING, BUILDING CONSTRUCTION OR BUILDING ADDITION WHEN FIELD SURVEY WAS COMPLETED IN JUNE 2019.
 - NO OBSERVABLE EVIDENCE OF SITE USE AS A SOLID WASTE DUMP, SUMP OR SANITARY LANDFILL WHEN FIELD SURVEY WAS COMPLETED IN AUGUST 2019.
 - NO OBSERVED EVIDENCE OF RECENT STREET OR SIDEWALK CONSTRUCTION OR REPAIRS. NO EVIDENCE FOUND TO INDICATE ANY MODIFICATION TO EXISTING STREET RIGHT OF WAYS WHEN FIELD SURVEY WAS COMPLETED IN AUGUST 2019.
 - NO OBSERVED EVIDENCE OF A WETLAND DELINEATION ON SUBJECT PROPERTY AT TIME OF SURVEY.
 - NO BUILDINGS, PAVEMENT OR PARKING LOCATED ON SUBJECT PROPERTY AT TIME OF SURVEY.
 - ALL UTILITY LOCATIONS AND SIZES SHOWN HEREON ARE EITHER MARKED LOCATIONS IN THE FIELD, VISIBLE AND FIELD LOCATED STRUCTURES OR TAKEN FROM UTILITY MAPS PROVIDED BY UTILITY PROVIDERS. HOWEVER, LACKING EXCAVATION, THE EXACT LOCATION OF UNDERGROUND FEATURES CANNOT BE ACCURATELY, COMPLETELY AND RELIABLY DEPICTED.

SURVEY CERTIFICATION

TO PTV 1091, LLC, BSG III, LLC AND FIDELITY NATIONAL TITLE INSURANCE COMPANY, ITS SUCCESSORS AND ASSIGNS:

THIS IS TO CERTIFY THAT THIS MAP OR PLAT AND THE SURVEY ON WHICH IT WAS BASED WERE MADE IN ACCORDANCE WITH THE "MINIMUM STANDARD DETAIL REQUIREMENTS FOR ALTA/ NSPS LAND TITLE SURVEYS," JOINTLY ESTABLISHED AND ADOPTED BY ALTA AND NSPS IN 2016, AND CONTAINS ITEMS 1, 2, 3, 4, 5, 6(A), 6(B), 7(A), 7(B)(1), 8, 9, 11, 13, 15, 16, 17, 18 AND 19 OF TABLE A THEREOF. THE FIELD WORK WAS COMPLETED IN AUGUST 2019.

JEFFREY C. DODD P.L.S. NO. 782 DATE

SITE DATA	
1. OWNER OF RECORD:	BSG III, LLC 136 CHATENAY LANE CENTERTVILLE, DE 19807
2. PROPERTY ADDRESS:	615 SOUTH DuPONT BLVD MILFORD, DE 19983
3. ENGINEER / SURVEYOR:	BECKER MORGAN GROUP INC. 309 SOUTH GOVERNORS AVE. DOVER, DELAWARE 19904 302-734-7950
4. PROPERTY LOCATION:	LAT: N 38° 54' 02.25" WRS80 - NAD83 (2011) LONG.: W 075° 26' 20.02" WRS80 - NAD83 (2011)
5. PROPERTY MAP NUMBERS:	130-3.11-55.00, 130-3.11-56.00 & 130-3.11-57.00
6. DEED REF. SUMMARY:	3561 - 0081
7. SITE AREA:	1.4149 AC±
8. ZONING CLASSIFICATION:	OC1 - OFFICE COMPLEX DISTRICT
9. BULK STANDARDS:	BUILDING: STREET YARD: 50 FEET SIDE YARD: 15 FEET/40 AGGREGATE REAR YARD: 25 FEET MAX HEIGHT: 70 FEET MAXIMUM LOT COVERAGE: 75% MINIMUM LOT AREA: 1 AC. MINIMUM LOT WIDTH: 100 FEET
10. PRESENT USE:	VACANT PARCEL
11. ROAD CLASSIFICATION:	SOUTH DuPONT BLVD / US 113 - PRINCIPAL ARTERIAL SPEED LIMIT - 50 M.P.H. SEABURY AVENUE - MAJOR COLLECTOR SPEED LIMIT - 25 M.P.H.
12. SURVEY DATUM:	NGS MONUMENTS VERTICAL: NAVD 88 - Y2 HORIZONTAL: NAD 83 (2011) - CORS
13. MONUMENTATION:	4 FOUND 4 SET
14. SURVEY CLASSIFICATION:	SUBURBAN SURVEY
15. SURVEY UNIT:	LINEAR: US SURVEY FOOT ANGULAR: DEGREES MINUTES SECONDS (DMS) COORDINATE TYPE: GROUND
16. UTILITIES:	SEWER - CITY OF MILFORD WATER - CITY OF MILFORD ELECTRIC - CITY OF MILFORD GAS - CHESAPEAKE UTILITIES

*INFORMATION SHOWN HEREON FOR ITEMS 8 & 9 ARE FROM CITY OF MILFORD MUNICIPAL CODE. NO ZONING REPORT WAS PROVIDED TO CONFIRM DATA.

TITLE COMMITMENT - 7610331 EFFECTIVE DATE 05/08/2019
PREPARED BY FIDELITY NATIONAL TITLE INSURANCE COMPANY
SCHEDULE B - SECTION II SURVEY EXCEPTIONS

SCHEDULE B DESIGNATION	INSTRUMENT TYPE	BETWEEN / WITH / TO	REFERENCE	DESCRIPTION
1	EASEMENT	GREEN TREE FARMS, INC & CITY OF MILFORD	D.R. 2570 - 0040	PERPETUAL EASEMENT TO MAINTAIN, REPAIR AND REPLACE UNDERGROUND PIPES AND/OR MANS FOR THE PURPOSE OF CONVEYING SEWAGE, BURDENS SUBJECT PARCEL - SHOWN ON PLAT
2	CONSTRUCTION EASEMENT	GREEN TREE FARMS, INC & CITY OF MILFORD	D.R. 1987 - 0204	5' WIDE CONSTRUCTION EASEMENT FOR THE PURPOSE OF SANITARY SEWER INSTALLATION - TERMINATED DUE TO COMPLETION OF CONSTRUCTION
3	RECORDED PLAT	JAMES R. WEST	P.B. 0055 - 0039	ALL NOTES EASEMENTS AND RESTRICTIONS APPEARING ON RECORDED PLAT - BURDENS SUBJECT PARCEL
		LOUISA KERN	P.B. 0310 - 0591	ALL NOTES EASEMENTS AND RESTRICTIONS APPEARING ON RECORDED PLAT - BURDENS SUBJECT PARCEL
4	RECORDED DEED	SJM PARTNERSHIP & BSG III, LLC	D.R. 3561 - 0081	UTILITY EASEMENT AGREEMENT AS REFERENCED IN D.R. 2570 - 0040 BURDENS SUBJECT PARCEL - SHOWN ON PLAT

METES AND BOUNDS DESCRIPTION

TAX MAP NO.: 130-3.11-55.00, 130-3.11-56.00 & 130-3.11-57.00
1.4149 ACRES±

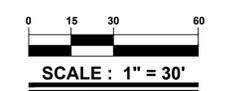
All that certain lot, piece or parcel of land with improvements thereon erected, situated in the City of Milford, Sussex County, State of Delaware, lying on the northeast corner of the intersection of South DuPont Boulevard (US 113) and Seabury Avenue, being bounded on the west by South DuPont Boulevard (varying width right of way), on the north by lands now or formerly of Robert Pasquale & Eric Doroshow, on the east by lands now or formerly of Cromer Management LLC and on the south in part by Seabury Avenue (40' wide right of way) and lands now or formerly of The State of Delaware and being all of the parcel as shown on a Survey entitled "Lands of BSG III, LLC - ALTA / NSPS Land Title Survey" as prepared by Becker Morgan Group, Inc., dated August 20, 2019 and being more particularly described as follows to wit:

Beginning at a set iron rod with cap in line with the easterly right of way line of South DuPont Boulevard and at a corner for this parcel and the lands of The State of Delaware; thence leaving said point of beginning and running with the easterly right of way line of South DuPont Boulevard 1) North 00°27'38" West a distance of 257.92 feet to a point at a corner for this parcel and the lands of Robert Pasquale & Eric Doroshow, said point being South 89°58'21" East a distance of 0.96 feet from a found iron pipe with cap; thence running with the lands of Robert Pasquale & Eric Doroshow the following two courses and distances 2) South 89°58'21" East passing over a found iron pipe with cap at a distance of 154.45 feet and continuing for a total distance of 169.28 feet to a found iron pipe with cap; thence 3) North 00°04'56" West a distance of 31.16 feet to a found iron rod with cap at a corner for this parcel and the lands of Cromer Management LLC; thence running with the lands of Cromer Management LLC 4) South 29°38'15" East a distance of 252.79 feet to a set PK nail at a corner for this parcel and in line with the northerly right of way line of Seabury Avenue; thence running with said northerly right of way line of Seabury Avenue 5) South 60°23'26" West a distance of 169.93 feet to a set PK nail at a corner for this parcel and the lands of The State of Delaware; thence running with the lands of The State of Delaware the following two courses and distances 6) North 00°07'21" West a distance of 16.11 feet to a set iron rod with cap; thence 7) South 89°26'12" West a distance of 144.40 feet to the point and place of beginning and containing 1.4149 acres of land, be the same more or less.

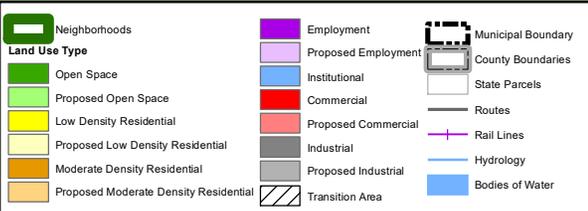
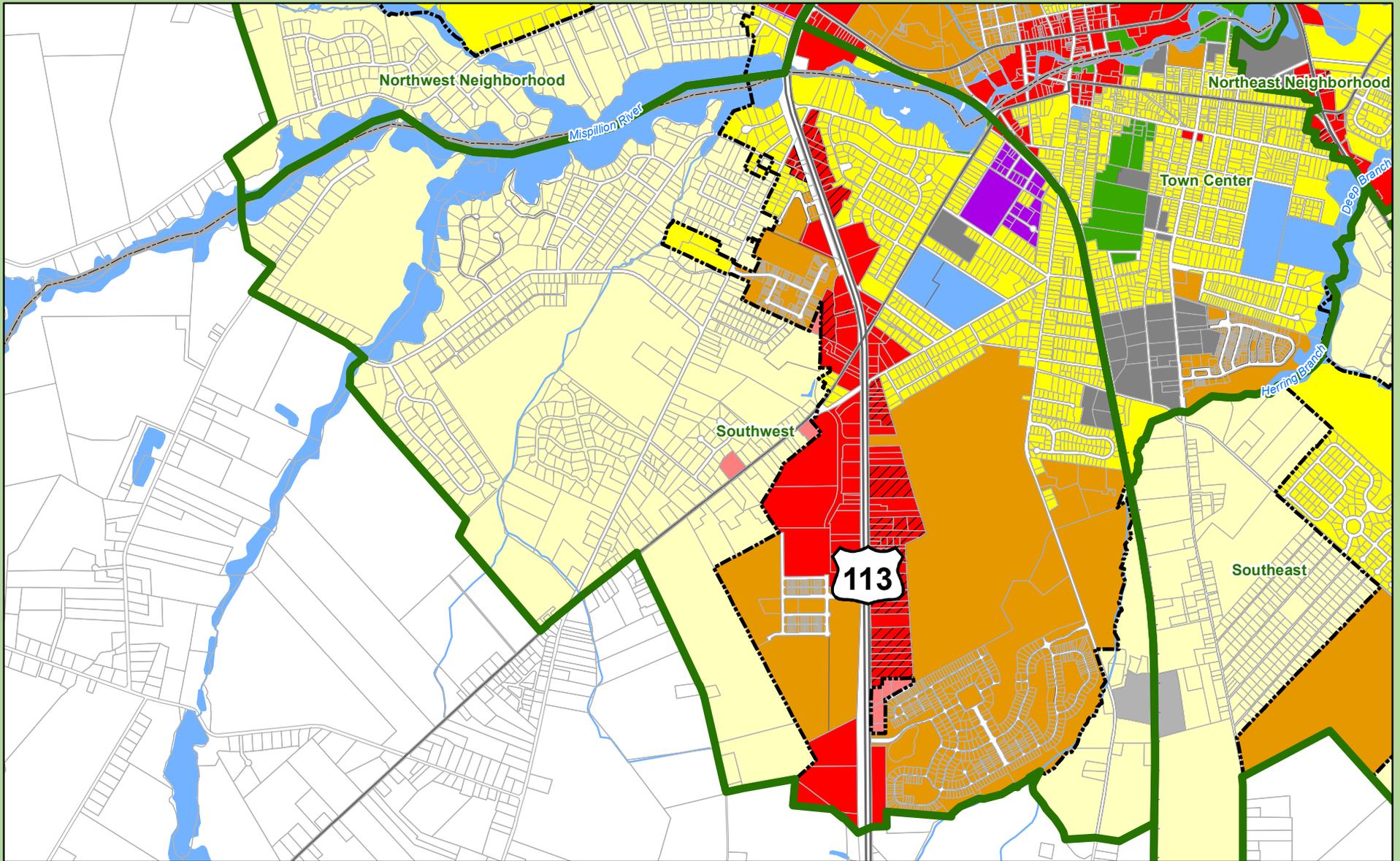
PROJECT TITLE
LANDS OF BSG III, LLC

SOUTH DuPONT BLVD & SEABURY AVENUE
CITY OF MILFORD
SUSSEX COUNTY, DE

SHEET TITLE
ALTA / NSPS
LAND TITLE
SURVEY



MARK	DATE	DESCRIPTION
LAYER STATE	SURVEY 15	
PROJECT NO.: 2019090.00		
DATE: 08/23/2019		
SCALE: 1" = 30'		
DRAWN BY: J.H.K. PROJ. MGR.: J.C.D.		
SHEET		
1 OF 1		



City of Milford, Delaware

Future Land Use

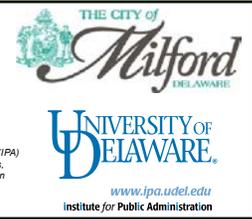
Southwest

Adopted Jan. 22, 2018, Certified May 2018



Sources:
 Municipal Boundaries - Delaware Office of State Planning Coordination, FirstMap 10/17.
 DRAFT Future Landuse - City of Milford, Delaware 01/18.
 Road and Rail Network - Delaware Department of Transportation, FirstMap 01/18.
 Hydrology - USGS and EPA, FirstMap 01/18.

Note: This map is provided by the University of Delaware, Institute for Public Administration (IPA) solely for display and reference purposes and is subject to change without notice. No claims, either real or assumed, as to the absolute accuracy or precision of any data contained herein are made by IPA, nor will IPA be held responsible for any use of this document for purposes other than which it was intended.



- Purchase of Land – In the interest of Milford City Council to protect our recharge areas, funding could be used to protect our recharge areas and preserve open space.

10-4b. Land Use and Zoning Link

The link between land use and zoning is important because Title 22, Section 702(c) of the Delaware Code requires that Milford:

“...within 18 months of the adoption of a comprehensive development plan or revision thereof, amend its official zoning map to rezone all lands within the municipality in accordance with the uses of land provided for in the comprehensive development plan.”

Table 27 shows the link between the future land use designations depicted on the *Future Landuse and Urban Growth Boundary* map and the zoning districts summarized in Table 28. Table 27 provides guidance as to the zoning districts that would be considered consistent with each land use designation.

Table 27. Land Use and Zoning Link

Future Land Use Designation	Corresponding Zoning District(s)
Employment	H-1 – Institutional Development
	IM – Institutional Medical
	IS – Institutional Service
Commercial	C-1 – Community Commercial
	C-2 – Central Business
	C-2A – Riverfront Development
	C-3 – Highway Commercial
	OC-1 – Office Complex
	BP – Business Park
	H-1 – Institutional Development
Industrial	I-1 – Limited Industrial
	I-2 – General Industrial
Institutional	Institutional uses may be permitted or conditionally permitted in residential, commercial, and employment zones

§ 230-14. - C-3 Highway Commercial District.

In a C-3 District no building or premises shall be used and no building shall be erected or altered which is arranged, intended or designed to be used except for one or more of the following uses and complying with the requirements so indicated.

- A. Purpose. The purpose of the C-3 District is to provide for larger-scale commercial uses that may require large amounts of parking space or have a high traffic impact. These uses generally require locations on major arterial routes and serve both local and regional customers.
- B. Permitted uses. Permitted uses for the C-3 District shall be as follows:
 - (1) Those uses permitted in the C-2 District.
 - (2) Warehouses.
 - (3) Large retail outlets.
 - (4) Indoor storage accessory building.
 - (5) Fast-food restaurants and drive-in restaurants.
 - (6) Supermarkets.
 - (7) Truck and trailer rentals.
 - (8) Roadside produce market.
 - (9) Memorial stone shop.
 - (10) Outdoor commercial recreational facilities, not motorized vehicles.
 - (11) Swimming club.
 - (12) Indoor facility for amusement or assembly.
 - (13) Bus station.
- C. Conditional uses subject to special requirements. The following uses are permitted subject to receiving a conditional use permit by the City Council as provided in Article IX of this chapter:
 - (1) Motels or hotels with a minimum lot size of three acres.
 - (2) Commercial greenhouse.
 - (3) Wholesale establishment.
 - (4) Newspaper publishing or printing establishment.
 - (5) Contractors', craftsmen's or general service shops, including welding and similar shops.
 - (6) Laboratory, testing and research.
 - (7) Car repair shops.
 - (8) Used car lots.
 - (9) Telephone central office or television cable central office.
 - (10) Service station, automobile sales agency, public garage, parking garage or lot, but not including storage of wrecked cars, subject to the following special requirements:
 - (a) All facilities shall be located and all services shall be conducted on the lot.
 - (b) All repair work shall be conducted within an entirely enclosed building.
 - (c) No equipment for the service of gasoline or oil shall be placed closer to any street or property line than 20 feet.

- (d) No portion of such structure or its equipment shall be located within 500 feet of the premises of any school, hospital, church or public recreation building.
 - (e) No service station shall be located within 800 feet of another service station on the same side of the street within the same block.
 - (f) Any such use shall be permitted only where it is determined that it will not materially interfere with the main pedestrian movement in conjunction with a compact retail area.
- (11) Shopping center, subject to site plan review and the following site requirements:
- (a) The total shall not be less than one acre.
 - (b) The site must be served by public water, sewer and electricity.
 - (c) Stormwater drainage. The facilities shall be provided by the developer to handle the increase in stormwater runoff, and he shall make contributions towards the cost of off-site facilities of the shopping center.
 - (d) Traffic and parking.
 - [1] The internal circulation of traffic shall be separated from the external street system, and pedestrian and vehicular traffic shall be separated through traffic control devices and appropriate site design.
 - [2] Access to state highways shall be controlled by the State Department of Transportation.
 - [3] The minimum distance between accessways and a residential district shall be 50 feet.
 - [4] Spacing of accessway.
 - [a] From adjoining property: 50 feet.
 - [b] From minor intersections: 50 feet.
 - [c] From major intersections: 100 to 150 feet.
 - [5] Five and one-half parking spaces shall be provided per 1,000 feet of leasable area.
 - [6] Parking lots shall be attractively landscaped as shown on the general site plan.
 - (e) Setback.
 - [1] From street right-of-way: 15 feet.
 - [2] From nonresidential districts: 15 feet.
 - [3] From residential districts: 100 feet.
 - (f) Buffering and landscaping.
 - [1] There shall be a minimum of a ten-foot landscaped buffer along all lot lines. The screening shall be six feet high near residential districts.
 - [2] Ten percent of the site shall be landscaped and may include features such as pedestrian walking or rest areas and courtyards.
- (12) Day-care centers, with site plan required.
- (13) Car wash, all types (staffed, automatic, self-service, etc.).
- (14) Convenience stores with gas pumps.**
- (15) Community residential treatment program.
- (16) All dwellings other than single-family with a maximum density of 12 units per acre.
- (17) Business, commercial or industrial uses that do not adversely affect neighboring properties.

(18) Billboard, subject to the following:

(a) Shall be constructed and maintained in accordance with the Delaware Code, Title 17-Highways, Chapter 11-Regulations of Outdoor Advertising, Subchapter 1-General Provisions.

(19) Aquarium.

D. Area regulations.

(1) Minimum lot area shall be one acre.

(2) Maximum lot coverage shall be 80%.

(3) Minimum lot width shall be as follows: for an interior lot 150 feet and for a corner lot 170 feet.

(4) Height of buildings shall not exceed three stories or 35 feet, with the following exception: a motel, hotel, or aquarium may be erected to a height of over three stories, but not over five stories, and not exceeding 60 feet.

(5) Minimum building setback shall be 30 feet.

(6) Side yards shall be provided as follows: each lot shall have two side yards a minimum of 20 feet with a minimum aggregate width of two side yards of 50 feet.

(7) Minimum rear yard shall be 50 feet.

(8) Parking shall comply with the requirements provided in Article IV of this chapter.

(9) Landscape screening shall comply with the requirements provided in Article V of this chapter.

(10) Signs shall comply with the requirements provided in Article VI of this chapter.

ARTICLE XII - Amendments

§ 230-58. - Procedure.

A. The City Council may, from time to time, on its own motion or the motion of the Planning Commission or on petition by an owner, amend, supplement, change, modify or repeal the zoning regulations, restrictions and boundaries in a manner in accordance with the procedure provided.

B. All proposals for amending, supplementing, changing, modifying or repealing the zoning regulations, restrictions or boundaries, before being acted upon by the City Council, except those originating on motion of the Planning Commission, shall be referred to the Planning Commission for consideration and recommendation. The Planning Commission shall study all proposals, whether originating with the Commission or otherwise, conduct a public hearing, after having given notice required for the agenda of the Commission, and report its findings and recommendations to the City Council.

C. The Planning Commission is granted the authority to require, as a condition to consideration of any proposal other than one originating with the City Council, that a petition be submitted accompanied by such maps, charts, sketches and other information as the Commission deems necessary for the proper and effective consideration of such proposal and to refuse to consider any proposal not complying with such requirement.

D. No proposed amendment, change, modification or repeal of any zoning regulation, restriction or boundary shall become effective until after a public hearing shall have been held by the City Council at which parties in interest and citizens shall have an opportunity to be heard. At least 15 days' notice of the time and place of such hearing shall be published in a newspaper of general circulation in the City of Milford. In case of an unfavorable report or recommendation for denial by the Planning Commission, such amendment or change shall not become effective except by a favorable vote of 3/4 of the City Council.

- E. In the event of a protest against such changes signed by 20% or more of property owners within 200 feet of the proposed change, such amendment shall not become effective except by the favorable vote of 3/4 of all the members of the City Council.
- F. If, after due consideration, a proposal is denied, such proposal shall not be eligible for reconsideration for a period of one year after final action by the City Council, except upon the favorable vote of 3/4 of the Planning Commission or City Council.

§ 230-59. - Hearing; notice required.

No change or amendment shall become effective until after a public hearing at which parties in interest and citizens shall have had an opportunity to be heard. At least 15 days' notice of the time and place of such hearing shall be published in an official paper or a paper of general circulation in the City of Milford. In all cases in which a proposed amendment would change the Zoning Map, notice of the amendment shall be sent by mail to all property owners of record whose property is proposed to be changed by the amendment and all property owners within 200 feet of the proposed change.



Sussex County Association of Towns

20 W Fourth Street, Blades, Delaware 19973

S.C.A.T. Dinner for Wednesday, November 6, 2019

Town of Bethany Beach

Town of Bethel

Town of Blades

Town of Bridgeville

Town of Dagsboro

Town of Delmar

Town of Dewey Beach

Town of Ellendale

Town of Fenwick Island

Town of Frankford

Town of Georgetown

Town of Greenwood

Town of Henlopen Acres

Town of Laurel

City of Lewes

City of Milford

Town of Millsboro

Town of Millville

Town of Milton

Town of Ocean View

City of Rehoboth Beach

City of Seaford

Town of Selbyville

Town of Slaughter Beach

Town of South Bethany

Sussex County Council

LOCATION: Bridgeville Volunteer Fire Department
315 Market Street
Bridgeville, DE 19933

TIME: 6:00 pm – Cash Bar
6:30 pm – Dinner

HOST: Town of Bridgeville

SPEAKER: Secretary Robert Coupe
Delaware Department of Safety & Homeland Security

COST: \$25.00 per person

MENU: Roast Beef/Dumplings
Fried Chicken
Mashers/Gravy
Winter Mix Vegetables
Cole Slaw
Baked Pineapple
Yeast Rolls
Baby Cheesecake/Topping
Tea or Coffee

PLEASE RSVP TO CHRISTINE NO LATER THAN 10/29

For those bringing guests, please make checks payable to:
Town of Bridgeville



choosecentraldelaware.com

What is the KEP?

**Kent County Levy
Court**

**Municipalities in
Kent County**

**A Public Private
Partnership:**

**Greater Kent
Committee**

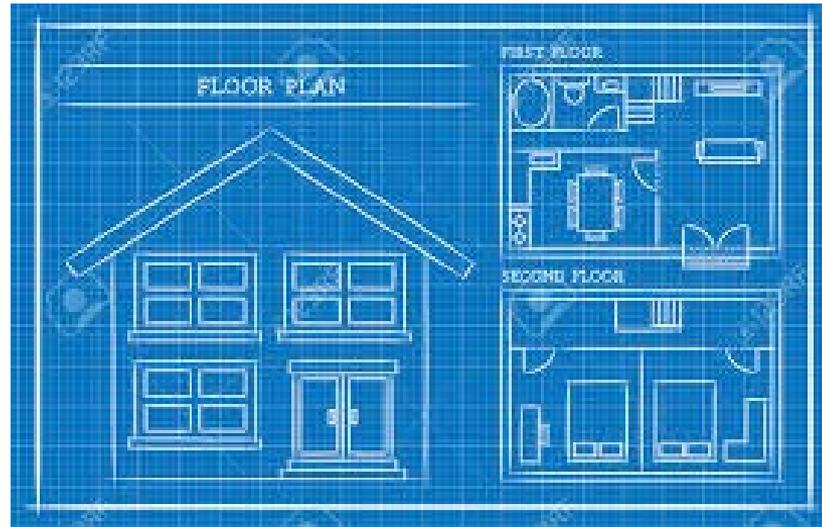
Business Leaders

Economic Update

- **GKC Commissions Economic Analysis Study of Kent County**



Blueprint



Targeted Industries

- Health Care
- Distribution-Logistics
- Business & Legal Services



Key Subsectors (w Kent imports)

- Offices of Physicians (\$75 million)
- Outpatient Care Facilities (\$40 million)
- Nursing & Community Care (\$23 million)
- Medical & Diagnostic Labs (\$9 million)

Case for Kent



Health Care Cluster

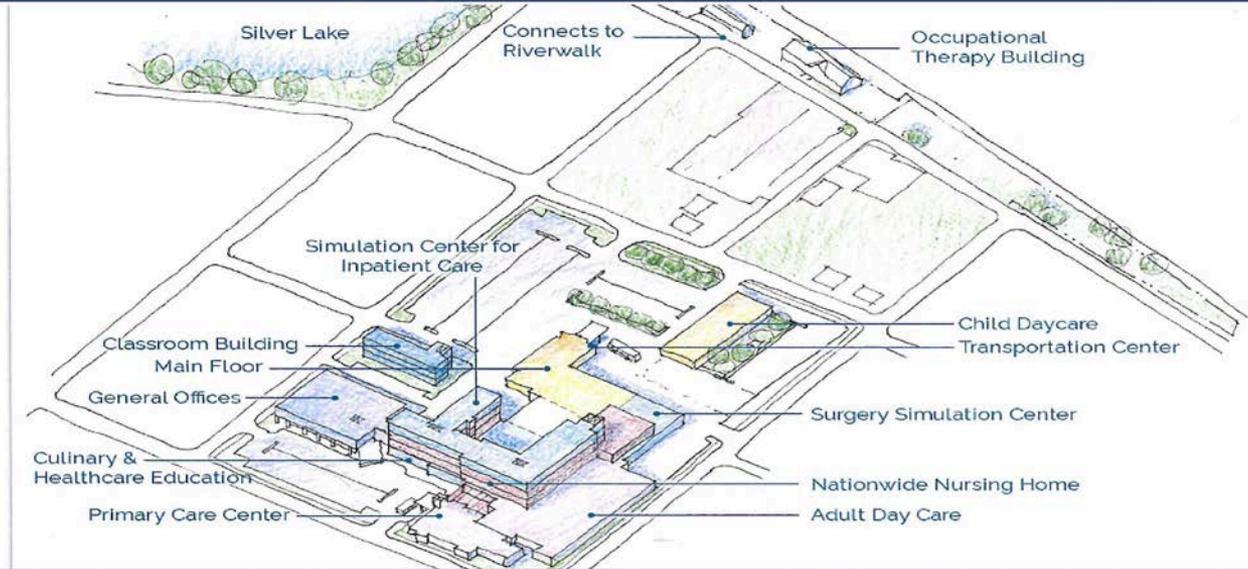
- Demand \$1.1 billion
- Imports \$158 million
- 1,000+ high-paying jobs
- Quality of Life
- Average wages \$54,000
- Small Business



Health Care

Milford Wellness Village

21 West Clark Avenue, Milford, DE 19963



R&R Commercial Realty ♦ 46 South State Street, Dover, DE 19901 ♦ 302-674-3400 ♦ www.randcommercialrealty.com

All information contained herein is believed to be accurate, however was obtained from third parties and R & R Commercial Realty, Inc. does not warrant as to the accuracy submitted, subject to changes or modification without notice. Listing Broker represents the sellers interest.



Health Care



Bayhealth Sussex Campus

Health Care



Nemours Southern Campus

Distribution Warehousing Logistics





Recommended Targets: Distribution, Warehousing, Logistics

Key Subsectors (w Kent imports)

- Wholesale Trade (\$296 million), especially Communications, Commercial, Medical, Industrial Equipment & Supplies
- Logistics & Trucking (\$82 million)
- Warehousing & Storage +\$68 million

Case for Kent



- Demand \$756 million
- Imports \$310 million
- 2,300 jobs
- Average salary \$54,000
- Existing warehousing activity dominated by self-storage & agriculture. New DWL firms can serve both local and regional markets.
- Size small-to-mid business
- Lower land costs a Kent advantage.



Identified and Potential Sites

Distribution-Logistics



Identified and Potential Sites

Distribution-Logistics

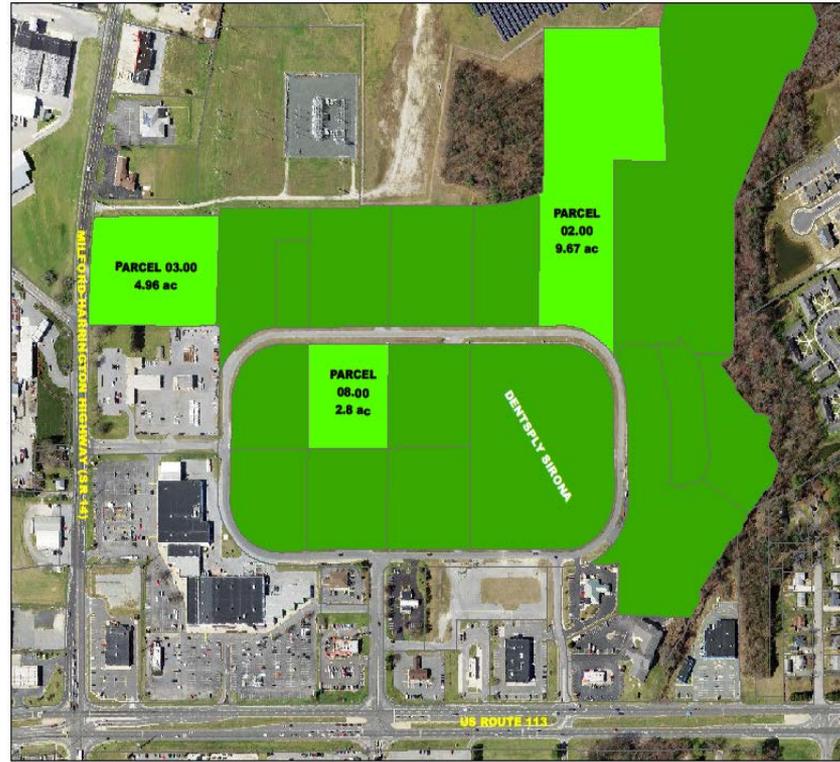


Lighthouse Pad Sites

Warehousing Distribution



Warehousing Distribution



Transportation Study

- East West Freight Route for Kent County
- Study should be completed 2020





Recommended Targets: Business & Legal Services

Key Subsectors (w Kent imports)

- Computer design & programming (\$144 million)
- Scientific, R&D Services (\$118 million)
- Employment/HR Services (\$108 million)
- Advertising/PR (\$104 million)
- Legal Services (\$58 million)
- Accounting Services (\$44 million)
- Building Services (\$52 million)

Case for Kent



- Demand \$1.6 billion.
- Imported \$775 million
- Could create 4,500 jobs
- Average wage \$80,000
- Small Businesses





Recommended Targets: Education & Skills Development

Key
Subsectors
(w Kent imports)

- Computer & Management Training, Technical Schools (\$7million)
- Educational Support Services
- Elementary & Secondary Ed (\$16million)
- Scientific, Research & Development Services
- Child Day Care Services



Education & Skills
Creation Cluster

Case
for Kent

- Holistic approach dictates elevation to Target status. Closely linked to Quality of Life.
- Data suggests Kent has sufficient traditional college & university supply. Greater need is technical & specialized skills.
- Latest data suggests only 1 small vocational/technical training firm in Kent
- Education/Training's contributes to rising productivity and wages of all Kent and DE sectors

Education/Workforce Committee

- Tony Allen- Chair
- Michelle Taylor- Co-Chair
- Secondary School Superintendents
- Technical Schools
- All Higher Learning Facilities in the County





Key Subsectors (w Kent imports)

- Restaurants & Catering (\$22M)
- Underserved Retail (\$51M) clothing, sports, grocery, other
- Arts, Cultural, Recreation (\$54M)
- Non Gaming Entertainment (\$32M)



Quality of Life
Cluster

Case
for
Kent

- Holistic approach dictates elevation to Target status
- All Kent businesses face this challenge
- Success brings benefits to Kent residents as well
- Coordinated effort of cultural, arts, recreational, tourism, chambers, and other community groups
- Further integrates & leverages DE Turf success
- Dovetails with ongoing tourism development efforts

Quality of Life Committee

- Scott Becker – Chair
- Majority Millennials
- Projects to improve quality of life
- One project involves water access-Kayaking

Quality of Life Committee

Created a Map of existing waterways access points in Central Delaware

Update area realtors on the assets of our county

Identify similarities between communities that have helped them advance their work at attracting and retaining citizens and employers.



EXCELLENCE
IN EDUCATION
CENTRAL DELAWARE'S ECONOMIC EDGE



Highlight the Central Delaware Schools

- **DSN- Publication & Event Nov.13**
- **Tonda Parks- Lead**
- **Tell our story about positives throughout the county**
- **Grant Component for programs**

Ready in 6

- **Study State Permitting Procedures**
- **Evaluate County & Municipality Processes**
- **Calculate the Economic Loss**
- **Identify Best Practices**
- **5 attainable goals**

Hosted Planners Meetings

- Standardize forms between the municipalities
- Standardize the procedures between the municipalities
- More communication between the County and municipalities

Town Managers Meetings

- Marketing & Graphics
- Social Media
- Grant Writing
- USDA
- UD IPA
- Retail
- Food
- Commercial



Business Retention and Expansion

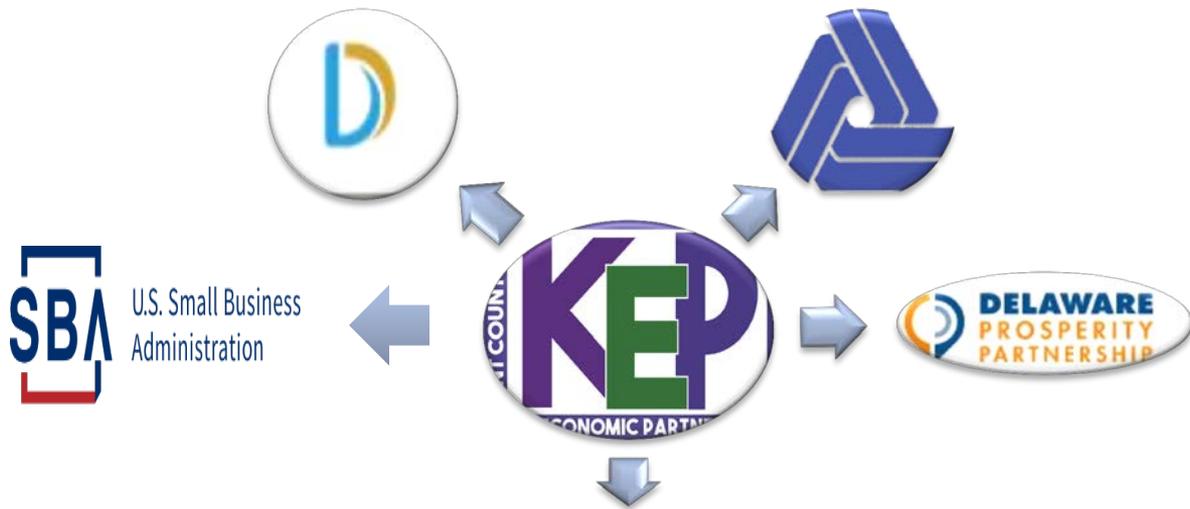
- Continued site visits to existing companies
- Assess needs
- Identify potential suppliers as targets

1 Challenge

- Talent Attraction



Resources



U.S. Small Business Administration



Small Business Development Center



Technology

- Zoom Prospector- Loop net back end
- Crittenden- Retail
- Hoovers- Company information D & B
- Costar- Commercial real estate

Retail/Commercial Opportunities

For Sale Or Ground Lease

3 Commercial Lots
6.68 +/- Total Acres
Rt 1 & NE 10th Street
Milford, DE 19963

Keith
Walpole
302-236-7053
keithwalpole@yahoo.com



46 South State Street
Dover, Delaware 19901
302-674-3400

www.randrcommercialrealty.com



Property Information

- ⇒ Prime Location off Route 1 in Milford
- ⇒ 6.68 +/- Total Acres
- ⇒ 3 Pad Sites
- ⇒ Sale Prices from \$370,370-\$694,120
- ⇒ Additional contiguous commercial acreage is available
- ⇒ Ground Lease also available
- ⇒ Water & Sewer available

All information contained herein is believed to be accurate, however was obtained from third parties and R & R Commercial Realty, Inc. does not warrant as to the accuracy submitted, subject to changes or modification without notice. Listing Broker represents the seller's interest.



Leads

- Responded to numerous leads

Marketing

- Trade Shows
- Site Selector Magazine
- Numerous articles



MOVE WITH US



INCENTIVES

Low Taxes
Great Incentives
Outstanding
Business Climate



LOCATION

Located in the
Heart of the
Mid-Atlantic Region
Minutes Away
From Major
Population Centers



INFRASTRUCTURE

Quality
Infrastructure
Shovel Ready
Industrial Sites



POPULATION

Available Workforce
Top Notch School
Systems



**CHOOSE
CENTRAL
DELAWARE**
ChooseCentralDelaware.com

302-678-3057
Lparkowski@ccded.com



choosecentraldelaware.com

How do we target?

- **Trade Shows:**
 - National Air Cargo
 - Logistics Development Forum
 - National Logistics-Warehousing
 - Site Selector Conferences
 - Deal Makers



How do we target?

- **Website: Complete Rebuild with identified ready sites**
- **Targeted Marketing**
- **Social Media**
- **Earned Media**
- **Site Selectors Events**





WAREHOUSING & DISTRIBUTION OPPORTUNITIES IN CENTRAL DE

Here are some of the Properties Central Delaware has available for your business



DOVER - 51 ac, Bldg total 176,853 sf
163,853 sf Manufacturing/Industrial bldg
+/- 13,000 sf office bldg



HARRINGTON - 130 ac
Bldg 100,000 sf



DOVER - Over 100 ac



MILFORD - 23.62 ac



SMYRNA - 206 ac



Located Within 4 Hours
of 4 Major Cities



- NO SALES TAX
- Shovel Ready Sites
- Low Land Cost
- Low Property Taxes

- No Red Tape
- Incentive Programs
- Access to Rail
- Skilled Workforce

Less Than 1 Days Drive of
60% of the US Population



choosecentraldelaware.com

for more info contact
Lparkowski@ccded.com
302-678-3057



ChooseCentralDelaware.com



SHOVEL READY SITES



DOVER - Over 100 ac



MILFORD - 23.62 ac



SMYRNA - 206 ac



HARRINGTON - 130 ac ; Bldg 100,000 sf



NO SALES TAX
Developable Within One Year
Low Land Cost
Low Property Taxes
No Red Tape
Incentive Programs



Access to Rail



Located Less Than 1 Days Drive of 60% of the US Population



Located Within 3 Hours of 4 Major Cities



choosecentraldelaware.com



ChooseCentralDelaware.com

for more info: 302-678-3057
Lparkowski@ccded.com



OPPORTUNITY ZONES IN CENTRAL DELAWARE



DOVER



SMYRNA - CLAYTON

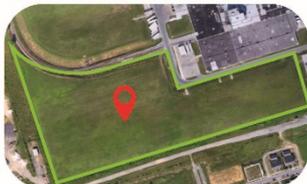


MILFORD

HERE ARE SOME OF THE PROPERTIES CENTRAL DELAWARE HAS AVAILABLE FOR YOUR BUSINESS:



SMYRNA 12.2 AC Lot 173,146 SF BLDG



DOVER 16.39 AC Lot



MILFORD 74.6 AC Lot

WANT TO SAVE ON CAPITAL GAINS?

Opportunity Zones offer options for mixed-use, commercial, rental, infrastructure, social impact or traditional projects.

CENTRAL DELAWARE HAS SITES AVAILABLE IN OPPORTUNITY ZONES!



OPPORTUNITIES & INCENTIVES

Fast-Track Permitting and Licensing
Stackable Tax Credits
No Sales Tax

Low Land Cost
Low Property Taxes
Incentive Programs
Business Friendly



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ChooseCentralDelaware.com

for more info: Lparkowski@ccded.com 302-678-3057



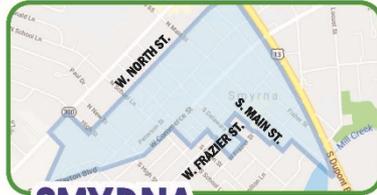
CENTRAL DELAWARE DOWNTOWN DEVELOPMENT DISTRICTS



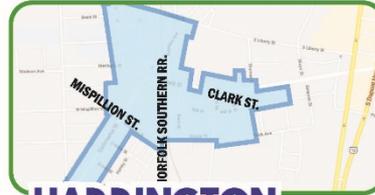
DOVER



MILFORD



SMYRNA



HARRINGTON

- DEVELOPERS
- HOMEOWNERS
- PROPERTY OWNERS
- BUSINESS PEOPLE

DO YOU WANT TO GET PAID FOR IMPROVEMENTS ON YOUR SITE?

KENT COUNTY MATCHING GRANTS:

SINGLE-FAMILY HOUSING PROJECTS

Kent County will match every \$1 of State Grant Funds with \$0.50 up to a maximum of \$1,500.

OTHER DDD-FUNDED PROJECTS

Kent County will match every \$1 of State Grant Funds with \$0.50 up to a maximum of \$10,000.

Approved construction projects within the identified Downtown Development Districts may be eligible for grants up to 20% of your capital construction costs.

You may also qualify for additional state and local development incentives. Grant funds to investors are administered by the Delaware State Housing Authority (DSHA)

FOR MORE INFORMATION:

- stateplanning.delaware.gov/ddd/Incentives/Jurisdictions.shtml
- stateplanning.delaware.gov/ddd/resources.shtml
- stateplanning.delaware.gov/about/ddd.shtml



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**CHOOSE
CENTRAL
DELAWARE**

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2019 Economic Profile

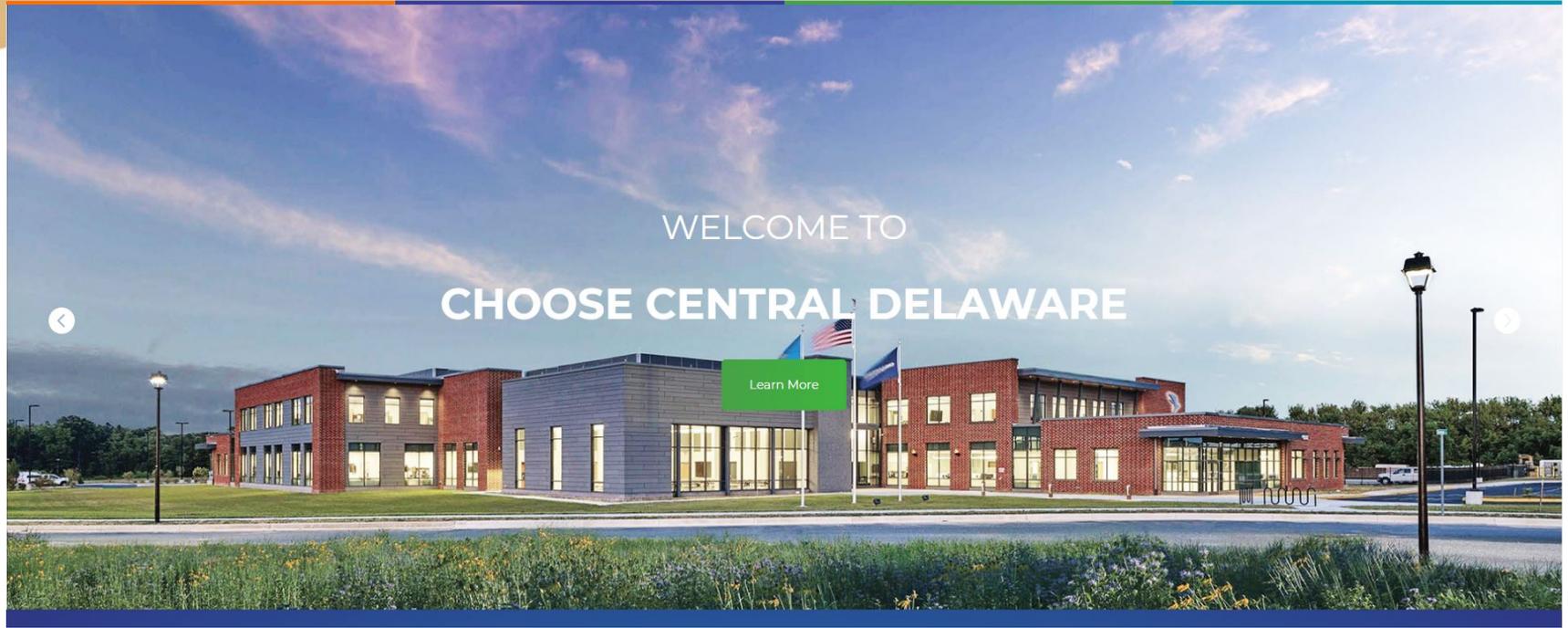
**CHOOSE
CENTRAL
DELAWARE**

2019 ECONOMIC PROFILE

Published by **Delaware State News**



[Request a Consultation](#)



WELCOME TO CHOOSE CENTRAL DELAWARE

[Learn More](#)



Milford

Milford | Choose Central Delaware

Explore the Milford, Delaware business offerings, employers, school district and more.

Milford is located on the banks of the Misippion River and lies in both central and southern Delaware. As a former ship building hub, it has since transformed into a vibrant area packed with galleries, small businesses, special events, and public open space. The town includes three National Register of Historic Places Historic Districts, a local museum located in a former Post Office, the landmark Parson Thorne Mansion, and the recently restored Vineyard Shipyard. In November 2018, Milford was selected by the Kent County Tourism Corporation as the 2018 Village of the Year.

Milford's proximity to the Delaware beaches and designated as a Downtown Development District (DDD) has enabled the city to experience exponential growth. Additionally, the City is nestled between Route 1 and US Route 113 making it an attractive location for industries and businesses serving not only Delaware, but also Pennsylvania, New Jersey, New York,

Municipalities

- Cost of Living
- Economic Profile (Demographics)
- Higher Education
- Major Employers
- Quality of Life
- History
- Utilities
- Municipalities
 - Camden
 - Clayton
 - Dover
 - Felton



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- <https://www.instagram.com/ChooseCentralDE/>



- <https://twitter.com/ChooseCentralDE>



- <https://www.linkedin.com/company/kent-economic-partnership/about/>



Projects

- **Actively working 8 projects**
- **Potential for 355 new jobs**
- **Over \$ 120 Million in new investment**

Questions?



choosecentraldelaware.com



choosecentraldelaware.com

AGREEMENT FOR ECONOMIC DEVELOPMENT SERVICES

THIS AGREEMENT, made and entered into the 8th day of Oct, 2018, by and between **THE CITY OF MILFORD, DELAWARE**, a Delaware Municipal Corporation (herein after called "City") located within both Kent and Sussex Counties and whose mailing address is 201 South Walnut Street, Milford, Delaware 19963, organized and existing pursuant to the laws of the State of Delaware and the Kent Economic Partnership, a non-profit organization (herein after called "KEP") whose mailing address is 555 Bay Road, Dover, Delaware 19901.

WITNESSETH THAT:

WHEREAS, the City desires to acquire certain services from KEP in lieu of hiring additional permanent staff and expending additional City funds to accomplish these services; and

WHEREAS, the KEP and its member organizations desire to expand the economic prosperity of Kent County and Milford through a public-private partnership model that includes funding from private sources, other municipalities and Kent County Levy Court; and

WHEREAS, KEP will in the coming year develop services and resources to serve the economic development needs of the entire Milford community;

NOW, THEREFORE, the parties hereto have agreed and do agree as follows:

I. PURPOSE AND INTENT

The purpose of this Agreement is to procure certain economic development-related services for the City as hereinafter described and set out; to establish the methods, procedures, terms and conditions governing payment by the City for such services; and, to establish other duties, responsibilities, terms and conditions mutually undertaken and agreed to by the parties hereto in consideration of the services to be performed and monies paid.

II. SCOPE OF SERVICES

In consideration for the payment of \$30,000 in accordance with Section III, the KEP shall provide the following economic development related services to the City and Kent County during the term of this agreement:

- a. KEP agrees to provide City with the ability to participate in decision making, including at least one seat on the KEP Board of Directors and additional representation on other KEP committees, task forces and teams;
- b. KEP agrees to provide City with a breakdown of how the monies paid by the City to KEP is being used; The monthly KEP Financial Report will be provided to the KEP Board and included in the minutes and a copy of minutes of each Board meeting will be sent to the City Manager;
- c. KEP agrees to develop a system for managing, tracking and communicating leads on economic development-related activities and share access to this system with City;

101 1110 411 6841

- d. City and KEP agree to work collaboratively with other partners to create and share a database of available commercial and industrial properties, buildings and sites.
- e. KEP agrees to hold regular meetings between municipal and county Planners, Town and City Managers, local commercial real estate brokers, and other groups as may be determined for the purpose of encouraging economic development in Kent County and within partnering municipalities;
- f. City and KEP agree to hold quarterly meetings between the KEP Executive Director and the City Manager to provide status updates and get feedback;
- g. KEP's Executive Director will provide a quarterly report to City detailing publicly available information on KEP activity, leads, wins and plans for the upcoming period;
- h. KEP will provide City with quarterly financial reports and, when requested, presentations on KEP activity to the City Council.
- i. KEP and City will jointly evaluate grants/loans/incentives related to economic development in Milford that will benefit both Kent County and the entire City.

III. CITY RESPONSIBILITIES

As KEP provides the economic development related services outlined above, the City will support the work of KEP in the following ways:

- a. City will provide a prompt response to KEP related to inquiries/leads, requests for information, and all other communications;
- b. City will provide assistance with applying for grants/loans/incentives related to economic development activities when there is a clear benefit for Kent County and the entire City, as determined by the City Manager and/or City Council;
- c. City will provide tours of available land, properties, etc. to KEP, prospective businesses, sites selectors and/or community stakeholders for the purpose of encouraging economic development;

IV. METHOD OF PAYMENT

Payment for services will be made by the City in one (1) lump sum payment, payable on or before November 15, 2018. The maximum total amount payable by the City under this agreement is \$30,000 as detailed in the SCOPE OF SERVICES (Section II of this contract), and no greater amount shall be paid. KEP will make available all receipts if requested by the City.

V. DURATION AND EXTENSION

This Agreement shall be effect from November 1, 2018, until November 30, 2019. If mutually agreeable to City Council and KEP, this Agreement may be extended. Such extension will be documented by written amendment, duly signed and dated by both parties. However, either party may terminate this contract due to non-fulfillment with 30 day's prior written notice.

VI. REQUIREMENTS

- a. **Non-Discrimination:** KEP will not discriminate against any employee, business, prospective business or investor because of race, creed, color, religion, citizenship status, gender, age, national origin, ancestry, disability, sexual orientation, gender identity or expression, marital status, pregnancy, military veteran status, political beliefs or affiliation, genetic history, or other characteristic protected by law. These protections apply to all areas of employment, including recruitment, hiring, training and development, promotion, transfer, dismissal, layoff, compensation, benefits, social and recreational programs.
- b. **Compliance with Law:** All parties shall comply with all applicable federal, state and local laws, ordinances, codes and regulations.
- c. **Conflicts of Interest / Political Activity:**
 - i. The elected officials, public officials, employees and agents of the City shall comply with all applicable laws and regulations relating to conflicts of interest with regard to the work and compensation covered by this Agreement.
 - ii. The board members, officials, employees and agents of KEP shall comply with all applicable laws and regulations relating to conflicts of interest with regard to the work and compensation covered by this Agreement.
 - iii. KEP shall not use the compensation paid through this Agreement for political activities or legislative activities. For the purpose of this Agreement, the terms "political activities" and "legislative activities" shall have the meanings ascribed to them by the Internal Revenue Service.
- d. KEP is not authorized or empowered to make any commitments or incur any obligation on behalf of the City, but merely to provide the services provided for herein as an independent contractor.

VII. TERMINATION

Either party may terminate this Agreement, with or without cause, upon 60 written notice to the other party.

VIII. INDEMNITY

City shall indemnify, defend, and hold harmless KEP from any and all suits, claims, demands, or actions arising from actions taken in connection with City's agreement for economic development related services. KEP shall indemnify, defend, and hold harmless the City from any and all suits, claims, demands, or actions arising from actions taken in connection with KEP's agreement to provide economic development related services.

IX. NOTICE

All notices, requests, demands and other communications, required or permitted under this Agreement shall be in writing, signed by or on behalf of the person giving such notice and shall be addressed to the following persons:

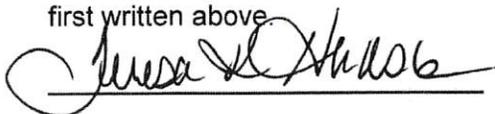
CITY:

Eric Norenberg, City Manager
201 South Walnut Street
Milford, DE 19963

KENT ECONOMIC PARTNERSHIP:

Linda Parkowski, Executive Director
555 Bay Road
Dover, DE 19901

IN WITNESS WHEREOF, the parties hereto have executed this AGREEMENT the day and year first written above.



Attest
CITY CLERK



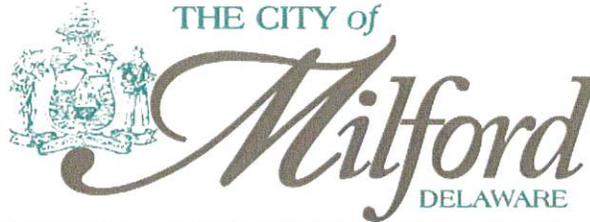
Arthur J. Campbell, Mayor
CITY OF MILFORD



Witness



Gregg Moore, Board chair
KENT ECONOMIC PARTNERSHIP



PUBLIC WORKS DEPARTMENT
180 Vickers Drive
Milford, DE 19963

PHONE 302.422.1110
FAX 302.422.1117
www.cityofmilford.com

To: Eric Norenberg, City Manager
From: Mark A. Whitfield, Public Works Director
Subject: 2019 Road Rehabilitation Project - A
Date: October 23, 2019

Based on a Pavement Condition Report completed in 2017, streets rated in Poor, Very Poor or Serious Condition were identified to be rehabilitated over a five-year period. The project was identified in the 2018-2022 Capital Improvement Program and in the 2019 Budget. Funds in 2018 were for the following streets:

Mispillion Street	Columbia to Marshall
Fisher Avenue	SE 2nd Street to SE 3rd Street
Roosa Road	Airport Road to Dupont Blvd
Masten Circle	NW Front to Masten Intersection
Masten Circle	957 Masten to 1001 Masten
Plum Street	Jefferson to Clark
SE 5 th Street	Marshall to Bridgeham
McColley Street	Mispillion to SE Front
Marshall Street	SE Front to Deadend

KCI Technologies completed design specifications for the 2019 Road Rehabilitation Project – A, Contract 2020-ST-002 which included the resurfacing of **Masten Circle, Fisher Avenue and Roosa Road**. On October 16, 2019, at 2:00pm, bids for the project were to be opened in the City Hall Council Chambers. Two bids were received:

<u>Contractor</u>	<u>Bid Amount</u>
David A. Bramble, Inc.	\$206,642.00
George & Lynch	\$215,170.00

The engineer’s estimate for the project was \$227,780.

David A. Bramble, Inc. is the apparent low bidder and has sufficient experience in road rehabilitation work. David A. Bramble, Inc. has a very good local reputation for work similar to this project; and they have performed several successful projects with KCI as the lead engineer for nearby municipalities in the past.

Funds allocated for the project in the 2018 Budget included \$183,000 from Municipal Street Aid and \$757,000 from Real Estate Transfer Tax Reserves. Sufficient funds are available for the project.

The remaining streets will be completed under a separate contract as they require concrete work (curbs, ADA ramps, storm inlets, etc), drainage, and subbase work.

Recommendation: I recommend Council award Contract #2020-ST-002 for the 2019 Road Rehabilitation Project - A to David A. Bramble, Inc. of Chestertown, MD in the amount of \$206,642 with funding from Municipal Street Aid.



ISO 9001:2015 CERTIFIED

ENGINEERS • PLANNERS • SCIENTISTS • CONSTRUCTION MANAGERS

614 N. Dupont Highway • Dover, DE 19901 • Phone 302-747-5999

October 23, 2019

Public Works Department
Attn: Mr. Mark Whitfield, Public Works Director
180 Vickers Drive
Milford, DE 19963

**RE: 2019 Road Rehabilitation – A
Contract No. 2020-ST-002
KCI Job No. 131803632.19A**

Dear Mr. Whitfield:

Bids for the 2019 Road Rehabilitation – A Project were opened and read on October 16, 2019 at 2:00 PM. One (1) bid package was complete and the bid result is listed below:

<u>Contractor</u>	<u>Bid Amount</u>
David A. Bramble, Inc.	\$206,642.00
George & Lynch	\$215,170.00

Analysis of Bids

David A. Bramble, Inc. is the apparent low bidder and has sufficient experience in road rehabilitation work. David A. Bramble, Inc. has a very good local reputation for work similar to this project; and they have performed several successful projects with KCI as the lead engineer for nearby municipalities in the past.

KCI has reviewed the bid package and found that David A. Bramble, Inc. has met all the requirements.

Please refer to the enclosed bid tabulation for a summary of all the pricing itemized by bid item. The Base Bid Total amount from David A. Bramble for \$206,642.00 was 9.28% lower than the engineer's estimate.

As expected with cost estimates, several bid items were lower and several were higher than the engineer's estimate. In viewing each of these in detail, there are no concerns or follow up analysis needed to award this bid.

Project Funding

Funding for the project is coming from Real Estate Transfer Tax Reserves and Municipal Street Aid.

Recommendation

KCI recommends David A. Bramble, Inc. be awarded the 2019 Road Rehabilitation – A project.

Please feel free to contact us at 302-318-1124 if you have any questions.

Sincerely,

KCI Technologies, Inc.

A handwritten signature in black ink, appearing to read 'Daniel R. String', with a long horizontal flourish extending to the right.

Daniel R. String, PE
Sr. Project Manager

Encl: Bid Tabulation with Engineer's Estimate
Contractor Bid Forms

SECTION 00300

BID FORM

Proposal of David A. Bramble, Inc. (hereafter called "BIDDER"), organized and existing under the laws of the State of Maryland doing business as a corporation (Insert "a corporation", "a partnership", or "an individual" as applicable) to the City of Milford (hereinafter called "OWNER").

In compliance with the INVITATION TO BIDDERS, BIDDER hereby proposes to perform all WORK for 2019 ROAD REHABILITATION - A, CONTRACT No. 2020-ST-002., in strict accordance with the CONTRACT DOCUMENTS, within the time set forth herein, and at the prices stated below.

By submission of this BID, each BIDDER certifies that this BID has been arrived at independently, without consultation, communication, or agreement as to any matter relating to this BID with any other BIDDER or with any competitor.

BIDDER hereby agrees to commence WORK under this CONTRACT on or before a date to be specified in the NOTICE TO PROCEED and to fully complete the PROJECT within 45 CONSECUTIVE CALENDAR DAYS thereafter. BIDDER further agrees to pay, as liquidated damages, an amount of \$500.00 PER CALENDAR DAY as defined in the GENERAL CONDITIONS.

BIDDER acknowledges receipt of the following ADDENDA:

- Addendum 1 dated 10/11/19
- _____
- _____
- _____

BIDDER'S ACKNOWLEDGEMENT OF CITY'S ABILITY TO ADJUST QUANTITIES	INITIAL BELOW
BIDDER acknowledges the estimated quantities listed below may be increased or decreased at the sole discretion of the City.	DCB

This BID includes sales tax and all other applicable taxes and fees. BIDDER agrees to perform all the WORK described in the CONTRACT DOCUMENTS for the following unit prices or lump sum:

ITEM NO. & DESCRIPTION	UNIT	ESTIMATED QUANTITY	UNIT PRICE	TOTAL PRICE
1. Mobilization/Demobilization (Max 3% of Total Bid)	LS	1	\$3,000.00	\$3,000.00
2. Pavement Milling Operations	SY	14,600	\$2.50	\$36,500.00
3. Furnish and Install Hot Mix Asphalt Paving, Type "C"	Ton	1,660	\$86.70	\$143,922.00
4. Traffic Control (MOT)	LS	1	\$22,250.00	\$22,250.00
5. 5" wide Permanent Striping	LF	1,300	\$.40	\$520.00
6. Stop Bar	EA	2	\$225.00	\$450.00

Total Base Bid (Bid items 1-6) \$ 206,642.00

CONTINGENT ITEMS (TO BE COMPLETED AT DIRECTION OF ENGINEER)					
ITEM NO. & DESCRIPTION	UNIT	ESTIMATED QUANTITY	UNIT PRICE	TOTAL PRICE	
7. Hot Mix Patching - 6" Patch	SY	40	\$140.00	\$5,600.00	
8. Hot Mix Patching- 12" Patch	SY	40	\$190.00	\$7,600.00	
9. Undercut	CY	30	\$ 60.00	\$1,800.00	

Total Contingent Bid Items (bid items 7-9) \$ 15,000.00

Total Bid (Base Bid and Contingent Items) \$ 221,642.00

SUBCONTRACTOR and SUPPLIER LIST

In accordance with Title 29, Chapter 69, §6962 (d) (10) b. of the Delaware Code, the following SUBCONTRACTOR and SUPPLIER listing must accompany the BID submittal. The name and address (City and State only) of all major material SUPPLIERS and SUBCONTRACTORS must be listed for each category where the BIDDER intends to use a SUPPLIER or SUBCONTRACTOR to perform that category of WORK. In order to provide full disclosure and acceptance of the BID by the OWNER, it is required that BIDDERS list themselves as being the SUBCONTRACTOR or SUPPLIER for all categories where he/she is qualified and intends to perform such WORK.

SUBCONTRACTORS				
	CATEGORY	COMPANY NAME	ADDRESS (CITY, STATE)	
1.	Line Striping	Wilkison's Marking Service, Inc.	22 Stevens Street, Dover, DE	

2.				
3.				
4.				
5.				

SUPPLIERS				
	CATEGORY	COMPANY NAME	ADDRESS (CITY, STATE)	
1.	Supply Material (HMA)	Tri-County Materials, LLC	3701 bay Road, Dover, DE	
2.				
3.				
4.				
5.				

BIDDER Please Note:

The OWNER reserves the right to accept or reject any or all BIDS. The OWNER may elect to delete some or all portions of any BID item, shown above and described in the CONTRACT DOCUMENTS, or accept any or all alternate BID items, in any order, such that the best interests of the OWNER are served.

By submission of this BID, BIDDER certifies that: (1) he is licensed, or has initiated the license application, as required by Title 30, Chapter 25, §2502 of the Delaware Code; (2) he has not, either directly or indirectly, entered into any agreement, participated in any collusion or otherwise taken any action in restraint of free competitive bidding in connection with this submitted proposal; and (3) he comprehends the bidding requirements set forth in the CONTRACT DOCUMENTS and herein and is thoroughly familiar with the provisions of the CONTRACT DOCUMENTS.

Upon receipt of written notice of the acceptance of this BID, BIDDER will execute the formal CONTRACT, attached to said notice, within twenty (20) days and deliver a Surety BOND or BONDS as required by the INFORMATION FOR BIDDER.

The BID security attached in the sum of \$ 10% of Total Bid, representing ten percent (10%) of the total Project BID, is to become the property of the OWNER in the event the CONTRACT and BONDS are not executed within the time above set forth, as liquidated damages for the delay and additional time expense to the OWNER caused thereby.

Respectfully submitted:



Signature David C. Bramble

10/16/19

Date

President

Title

P.O. Box 419

Address

DE License No. 1992837508

License Number (If applicable)

Chestertown, MD 21620

Address (cont'd)

Seal - (if bid is by a corporation)

END OF SECTION

SECTION 00370

BID BOND

KNOW ALL MEN BY THESE PRESENTS, that we, the Undersigned,
David A. Bramble, Inc., as PRINCIPAL, and
Liberty Mutual Insurance Company, as SURETY, are hereby
held and firmly bound unto the City of Milford, as OWNER, the penal sum of
Ten Percent (10%) of the total amount of the Bid, (\$ 10%) for the
payment of which, well and truly to be made, we hereby jointly and severally bind ourselves,
successors and assigns.

Signed, this 16th day of October, 2019.

The condition of the above obligation is such that whereas the PRINCIPAL has submitted to the City of Milford a certain BID, attached hereto and hereby made a part hereof to enter into a CONTRACT in writing, for the **2019 ROAD REHABILITATION - A, CONTRACT NO. 2020-ST-002.**

NOW, THEREFORE,

- A. If said BID shall be rejected, or
- B. If said BID shall be accepted and the PRINCIPAL shall execute and deliver a CONTRACT in the form of CONTRACT attachment hereto (properly completed in accordance with said BID) and shall furnish a BOND for faithful performance of said CONTRACT, and for the payment of all persons performing labor and furnishing materials in connection therewith, and shall in all other respects perform the agreement created by the acceptance of said BID, then this obligation shall be void, otherwise the same shall remain in force and effect; it being expressly understood and agreed that the liability of the SURETY for any and all claims hereunder shall, in no event, exceed the penal amount of this obligation as herein stated.

The SURETY, for value received, hereby stipulates and agrees that the obligations of said SURETY and its BOND shall be in no way impaired or affected by any extension of the time within which the OWNER may accept such BID; and said SURETY does hereby waive notice of any extension.

In WITNESS WHEREOF, the PRINCIPAL and the SURETY have hereunto set their hands and seals, and such of them as are corporations have caused their corporate seals to be hereto affixed and these presents to be signed by their proper officers, the day and year first set forth above. SURETY executing BONDS shall be a licensed agent in the State of Delaware.

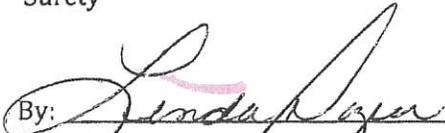
David A. Bramble, Inc.

 (L.S.)

Principal David C. Bramble, President

Liberty Mutual Insurance Company

Surety

By: 
Linda Dozier, Attorney-in-Fact

IMPORTANT - SURETY companies executing BONDS must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in the state where the project is located.

END OF SECTION



This Power of Attorney limits the acts of those named herein, and they have no authority to bind the Company except in the manner and to the extent herein stated.

Liberty Mutual Insurance Company
The Ohio Casualty Insurance Company
West American Insurance Company

Certificate No: 8201167-019014

POWER OF ATTORNEY

KNOWN ALL PERSONS BY THESE PRESENTS: That The Ohio Casualty Insurance Company is a corporation duly organized under the laws of the State of New Hampshire, that Liberty Mutual Insurance Company is a corporation duly organized under the laws of the State of Massachusetts, and West American Insurance Company is a corporation duly organized under the laws of the State of Indiana (herein collectively called the "Companies"), pursuant to and by authority herein set forth, does hereby name, constitute and appoint, Kevin P. Adams; Patrick Bucalo; Kevin Connolly; Linda Dozier; Michael J. Mitchell; Martin J. Purcell

all of the city of Philadelphia state of PA each individually if there be more than one named, its true and lawful attorney-in-fact to make, execute, seal, acknowledge and deliver, for and on its behalf as surety and as its act and deed, any and all undertakings, bonds, recognizances and other surety obligations, in pursuance of these presents and shall be as binding upon the Companies as if they have been duly signed by the president and attested by the secretary of the Companies in their own proper persons.

IN WITNESS WHEREOF, this Power of Attorney has been subscribed by an authorized officer or official of the Companies and the corporate seals of the Companies have been affixed thereto this 30th day of April, 2019.



Liberty Mutual Insurance Company
The Ohio Casualty Insurance Company
West American Insurance Company

By: David M. Carey
David M. Carey, Assistant Secretary

Not valid for mortgage, note, loan, letter of credit, currency rate, interest rate or residual value guarantees.

State of PENNSYLVANIA ss
County of MONTGOMERY

On this 30th day of April, 2019 before me personally appeared David M. Carey, who acknowledged himself to be the Assistant Secretary of Liberty Mutual Insurance Company, The Ohio Casualty Company, and West American Insurance Company, and that he, as such, being authorized so to do, execute the foregoing instrument for the purposes therein contained by signing on behalf of the corporations by himself as a duly authorized officer.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my notarial seal at King of Prussia, Pennsylvania, on the day and year first above written.



COMMONWEALTH OF PENNSYLVANIA
Notarial Seal
Teresa Pastella, Notary Public
Upper Merion Twp., Montgomery County
My Commission Expires March 28, 2021
Member, Pennsylvania Association of Notaries

By: Teresa Pastella
Teresa Pastella, Notary Public

This Power of Attorney is made and executed pursuant to and by authority of the following By-laws and Authorizations of The Ohio Casualty Insurance Company, Liberty Mutual Insurance Company, and West American Insurance Company which resolutions are now in full force and effect reading as follows:

ARTICLE IV – OFFICERS: Section 12. Power of Attorney.

Any officer or other official of the Corporation authorized for that purpose in writing by the Chairman or the President, and subject to such limitation as the Chairman or the President may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Corporation to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact, subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Corporation by their signature and execution of any such instruments and to attach thereto the seal of the Corporation. When so executed, such instruments shall be as binding as if signed by the President and attested to by the Secretary. Any power or authority granted to any representative or attorney-in-fact under the provisions of this article may be revoked at any time by the Board, the Chairman, the President or by the officer or officers granting such power or authority.

ARTICLE XIII – Execution of Contracts: Section 5. Surety Bonds and Undertakings.

Any officer of the Company authorized for that purpose in writing by the chairman or the president, and subject to such limitations as the chairman or the president may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Company by their signature and execution of any such instruments and to attach thereto the seal of the Company. When so executed such instruments shall be as binding as if signed by the president and attested by the secretary.

Certificate of Designation – The President of the Company, acting pursuant to the Bylaws of the Company, authorizes David M. Carey, Assistant Secretary to appoint such attorneys-in-fact as may be necessary to act on behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations.

Authorization – By unanimous consent of the Company's Board of Directors, the Company consents that facsimile or mechanically reproduced signature of any assistant secretary of the Company, wherever appearing upon a certified copy of any power of attorney issued by the Company in connection with surety bonds, shall be valid and binding upon the Company with the same force and effect as though manually affixed.

I, Renee C. Llewellyn, the undersigned, Assistant Secretary, The Ohio Casualty Insurance Company, Liberty Mutual Insurance Company, and West American Insurance Company do hereby certify that the original power of attorney of which the foregoing is a full, true and correct copy of the Power of Attorney executed by said Companies, is in full force and effect and has not been revoked.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seals of said Companies this 16 day of October 2019



By: Renee C. Llewellyn
Renee C. Llewellyn, Assistant Secretary

To confirm the validity of this Power of Attorney call 1-610-832-8240 between 9:00 am and 4:30 pm EST on any business day.



LIBERTY MUTUAL INSURANCE COMPANY
FINANCIAL STATEMENT — DECEMBER 31, 2018

Assets		Liabilities	
Cash and Bank Deposits	\$464,341,712	Unearned Premiums	\$7,851,429,449
*Bonds — U.S Government	2,259,714,810	Reserve for Claims and Claims Expense	20,165,209,300
*Other Bonds	11,864,776,740	Funds Held Under Reinsurance Treaties	384,795,327
*Stocks	16,527,715,226	Reserve for Dividends to Policyholders	1,111,529
Real Estate	255,809,551	Additional Statutory Reserve	62,866,000
Agents' Balances or Uncollected Premiums	5,817,927,234	Reserve for Commissions, Taxes and Other Liabilities	3,999,822,802
Accrued Interest and Rents	108,139,840	Total	\$32,465,234,407
Other Admitted Assets	11,532,139,744	Special Surplus Funds	\$43,108,583
Total Admitted Assets	<u>\$48,830,564,857</u>	Capital Stock	10,000,000
		Paid in Surplus	10,044,912,727
		Unassigned Surplus	6,267,309,139
		Surplus to Policyholders	16,365,330,449
		Total Liabilities and Surplus	<u>\$48,830,564,856</u>



* Bonds are stated at amortized or investment value; Stocks at Association Market Values.
 The foregoing financial information is taken from Liberty Mutual Insurance Company's financial statement filed with the state of Massachusetts Department of Insurance.

I, TIM MIKOLAJEWSKI, Assistant Secretary of Liberty Mutual Insurance Company, do hereby certify that the foregoing is a true, and correct statement of the Assets and Liabilities of said Corporation, as of December 31, 2018, to the best of my knowledge and belief.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Corporation at Seattle, Washington, this 22nd day of March, 2019.

T. Mikolajewski

 Assistant Secretary

ENGINEERING COST ESTIMATE

Item No. & Description	Unit	Estimated Quantity	Estimated Unit Price	Estimated Total Price
1 Mobilization/Demobilization (Max 3% of Total Bid)	LS	1		\$ 6,630.00
2 Pavement Milling Operations	SY	14600	\$ 3.00	\$ 43,800.00
3 Furnish and Install Hot Mix Asphalt Paving, Type "C"	Ton	1660	\$ 90.00	\$ 149,400.00
4 Traffic Control (MOT)	LS	1	\$ 25,000.00	\$ 25,000.00
5 5" wide Permanent Striping	LF	1300	\$ 1.50	\$ 1,950.00
6 Stop Bar	EA	2	\$ 500.00	\$ 1,000.00

\$ 227,780.00

D. Bramble Unit Price	D. Bramble Estimated Total
\$ 3,000.00	\$ 3,000.00
\$ 2.50	\$ 36,500.00
\$ 86.70	\$ 143,922.00
\$ 22,250.00	\$ 22,250.00
\$ 0.40	\$ 520.00
\$ 225.00	\$ 450.00

\$ 206,642.00

George and Lynch Unit Price	George and Lynch Estimated Total
\$ 6,750.00	\$ 6,750.00
\$ 2.91	\$ 42,486.00
\$ 85.90	\$ 142,594.00
\$ 20,000.00	\$ 20,000.00
\$ 1.60	\$ 2,080.00
\$ 630.00	\$ 1,260.00

\$ 215,170.00

CONTINGENT ITEMS (TO BE COMPLETED AT DIRECTION OF ENGINEER)				
Item No. & Description	Unit	Estimated Quantity	Estimated Unit Price	Estimated Total Price
5 Undercut, Furnish, Install & Compact GABC (#57 Stone)	CY	50	\$ 60.00	\$ 3,000.00
6 Undercut, Furnish, install & Compact Select Fill	CY	50	\$ 80.00	\$ 4,000.00
7 Furnish & Install Hot Mix Asphalt Paving, Type "B"	Ton	40	\$ 100.00	\$ 4,000.00

ALLOWANCES				
Item No. & Description	Unit	Estimated Quantity	Estimated Unit Price	Estimated Total Price
8 Overtime Inspection Fees	HR	100	\$ 100.00	\$ 10,000.00

GROUND LEASE

City of Milford & First State BMX, Incorporated

THIS GROUND LEASE is made and executed on this _____ day of _____, 2019 by and between the City of Milford, 201 South Walnut Street, Milford, Delaware 19963 (Lessor) and First State BMX, Incorporated (Lessee)

The parties agree as follows:

SECTION ONE

DEMISE, DESCRIPTION AND USE OF PREMISES

- A. Lessor leases to Lessee and Lessee hires Lessor, for the purpose on conducting in and on such premises a bicycle dirt race track for operation by Lessee for the benefit of young people under supervision of Lessee and for no other purpose, those certain premises with the appurtenances, situated in the City of Milford, County of Kent, State of Delaware, and more particularly described in the schedule attached to and made a part of this Lease Agreement as Exhibit "A".
- B. As used in this Lease Agreement, the term "premises" refers to the real property above described and to any improvements located on the property from time to time during the term of this Lease Agreement.

SECTION TWO

TERM

- A. The term of this lease shall be for five (5) years, commencing November 1, 2019 and ending on October 31, 2024.
- B. Negotiations on extension or a new lease shall begin no later than six (6) months prior to expiration of this agreement.
- C. As used in this Lease Agreement, the expression "term of this Lease Agreement" refers to the initial term and to any renewal of this Lease Agreement as provided below.

SECTION THREE

RENT

The rent shall be One Dollar and No Cents (\$1.00) per year.

SECTION FOUR

WARRANTIES OF TITLE AND QUIET POSSESSION

Lessor covenants that Lessor is seized of the demised premises in fee simple and has full right to make and enter into this Lease and that Lessee shall have quiet and peaceable possession of the demised premises during the term of this Lease Agreement.

SECTION FIVE
USES PROHIBITED

- A. Lessee shall not use, or permit the demised premises, or any part of the demised premises, to be used, for any purpose or purposes other than the purpose or purposes for which the demised premises are leased under this Lease Agreement.
- B. Lessee shall, at its sole cost, comply with all requirements, pertaining to the demised premises, of any insurance organization or company, necessary for the maintenance of insurance, as provided in this Lease Agreement, covering any building and appurtenances at any time located on the demised premises.

SECTION SIX
WASTE AND NUISANCE PROHIBITED

- A. During the term of this Lease, Lessee shall comply with all applicable laws affecting the demised premises, the breach of which might result in any penalty on Lessor or forfeiture of Lessor's title to the demises premises.
- B. Lessee shall not commit, or suffer to be committed, any waste on the demised premises, or any nuisance.

SECTION SEVEN
ABANDONMENT OF PREMISES

Lessee shall not vacate or abandon the premises at any time during the term of this Lease Agreement. If Lessee abandons, vacates, or surrenders the demised premises, or is dispossessed by process of law, or otherwise, any personal property belonging to Lessee and left on the premises shall be deemed to be abandoned, at the option of Lessor, except such property as may be encumbered to Lessor.

SECTION EIGHT
LESSOR'S RIGHT OF ENTRY

Lessee shall permit Lessor and the agents and employees of Lessor to enter into and upon the demised premises at all reasonable times for the purpose of inspecting the premises.

SECTION NINE
SUBLETTING AND ASSIGNMENT

- A. Lessee may not sublet the premises in whole or in part without Lessor's prior written consent.
- B. Lessee shall not assign or transfer this Lease Agreement, or any interest in this Lease Agreement, without the prior written consent of Lessor.
- C. Neither this Lease Agreement nor the leasehold estate of Lessee nor any interest of Lessee under this Lease Agreement in the demised premises or any buildings or improvements on the demised premises shall be subject to involuntary assignment, transfer, or sale, or to assignment, transfer, or sale by operation of law in any manner whatsoever. Any such attempted involuntary assignment, transfer, or sale shall be void and of no effect and shall, at the option of Lessor, terminate this Lease Agreement.

SECTION TEN
NOTICE

- A. All notices, demands, or other writings in this Lease Agreement provided to be given or made or sent, or which may be given or made or sent, by either party to the other, shall be deemed to have been fully given or made or sent when made in writing and deposited in the United States mail, registered and postage prepaid, and addressed as stated in the first section of this Lease.
- B. The address to which any notice, demand, or other writing may be given or made or sent to any party as above provided may be changed by written notice given by such party as above provided.

- 1. Lessor: City of Milford
201 South Walnut Street
Milford, DE 19963
- 2. Lessee: First State BMX, Incorporated
1045 N. Walnut Street
Milford, DE 19963

SECTION ELEVEN
IMPROVEMENTS

Plans and Specifications: Lessee shall, at Lessee's sole expense, prepare plans and specifications for all improvements including ground work on the premises. Such plans and specifications shall be submitted to Lessor for Lessor's written approval or any revisions required by Lessor. Lessor shall not unreasonably withhold such approval.

SECTION TWELVE
REPAIRS AND DESTRUCTION OF IMPROVEMENTS

- A. Maintenance Of Improvements: Lessee shall, throughout the term of this Lease Agreement, at its own cost, and without any expense to Lessor, keep and maintain the premises, including all buildings and improvements of every kind that may be a part of the premises, and all appurtenances to the premises, including sidewalks adjacent to the premises, in good, sanitary and neat order, condition and repair and except as specifically provided in this Lease Agreement, restore and rehabilitate any improvements of any kind that may be destroyed or damaged by fire, casualty or any other cause whatsoever.
- B. No Obligation by Lessor to Make Improvements: Lessor shall not be obligated to make any repairs, replacements or renewals of any kind, nature or description whatsoever to the demised premises or any buildings or improvements in the demised premises.
- C. Lessee's Compliance With Laws: Lessee shall also comply with and abide by all federal, state, county, municipal and other governmental statutes, ordinances, laws and regulations affecting the demised premises, the improvements on or any activity or condition on or in the premises.
- D. Damage To and Destruction of Improvements: The damage, destruction or partial destruction of any building or other improvements that is a part of the demised premises shall not release Lessee from any obligation under this Lease Agreement, except as expressly provided below. In case of damage to or destruction of any such building or improvement, Lessee shall at its own expense promptly repair and restore it to a condition as good or better than that which existed prior to the damage or destruction. Without limiting the obligations of Lessee, it is agreed that the proceeds of any insurance covering damage or destruction shall be made available to Lessee for repair or replacement.

- E. Upon the termination, cancellation or surrender of this Lease, Lessee at its expense shall restore the premises to similar condition as existed upon the commencement of the Lease including grading, seeding and landscaping.

SECTION THIRTEEN
UTILITIES

Lessee shall fully and promptly pay for all water, gas, heat, light, power, telephone service and other public utilities of every kind furnished to the premises throughout the term of this Lease Agreement, and all other costs and expenses of every kind whatsoever of or in connection with the use, operation and maintenance of the premises and all activities conducted on the premises and Lessor shall have no responsibility of any kind for any such utilities.

SECTION FOURTEEN
DESCRIPTION OF EASEMENTS IN REGARDS TO MILFORD SCHOOL DISTRICT

- A. District grants to Lessor a non-exclusive permanent easement and right-of-way for purpose of vehicular and pedestrian access, ingress and egress over the lands of District between the North Walnut Street entrance and the Lessee facility as depicted on the aforesaid LOT LINE ADJUSTMENT AND EASEMENT PLAN and identified thereon by diagonal line markings.
- B. District grants to Lessor and the users and guests of the Lessee facility a non-exclusive blanket easement for overflow parking upon and within established parking areas located on lands of District (Parcel 51).

SECTION FIFTEEN
INDEMNIFICATION OF LESSOR

Lessor shall not be liable for any loss, injury, death or damage to persons or property that at any time may be suffered or sustained by Lessee or by any person whosoever may at any time be using or occupying or visiting the demised premises or be in, on or about the demised premises, whether the loss, injury, death or damage shall be caused by or in any way result from or arises out of any act, omission or negligence of Lessee or of any occupant, subtenant, visitor or user of any portion of the premises, or shall result from or be caused by any other matter or thing whether of the same kind as or of a different kind than the matters or things above set forth. Lessee shall indemnify and hold harmless Lessor against any and all claims, liability, and loss or damage whatsoever on account of any such loss, injury, death or damage. Lessee waives all claims against Lessor for damages to the building and improvements that are now on or hereafter placed or built on the premises and to the property of Lessee in, on or about the premises and for injuries to persons or property in or about the premises, from any cause arising at any time. The two preceding sentences shall not apply to loss, injury, death or damage arising by reason of the negligence or misconduct of Lessor, its agents or employees.

SECTION SIXTEEN
INSURANCE

- A. Personal Injury Liability Insurance: Lessee shall maintain in *effect* throughout the term of this Lease personal injury liability insurance covering the premises and its appurtenances and the sidewalks fronting on them in the amount of One Million Dollars and No Cents (\$1,000,000.00) for injury to or death of any one person or for injury to or death of any number of persons in one occurrence and property damage liability insurance in the amount of Ten Thousand Dollars and No Cents (\$10,000.00). Such insurance shall specifically insure Lessee against a liability assumed by it under this Lease Agreement, as well as liability imposed by law and shall insure both Lessor and Lessee but shall be so endorsed as to create the same liability on the part of the insurer as though separate policies had been written for Lessor and Lessee.

- B. Lessor's Right to Pay Premiums On Behalf Of Lessee: All of the policies of insurance referred to in this section shall be written in a form satisfactory to Lessor and by insurance companies satisfactory to Lessor. Lessee shall pay all of the premiums for insurance and deliver policies, or certificates of policies, to Lessor. In the event of the failure of Lessee, either to effect insurance in the names called for in the Lease Agreement or to pay the premiums for the insurance or to deliver the policies, or certificates of the policies, to Lessor, Lessor shall be entitled, but shall have no obligation, to effect such insurance and pay the premiums for the insurance, which premiums shall be repayable to Lessor with the next installment of rental. Failure to repay the same shall carry with it the same consequence as failure to pay any installment of rental. Each insurer mentioned in the section shall agree, by endorsement on the policy or policies issued by it, or by independent instrument furnished to Lessor, that it will give to Lessor ten (10) days' written notice before the policy or policies in question shall be altered or canceled. Lessor agrees that it will not unreasonably withhold its approval as to the form or to the insurance companies selected by Lessee.

SECTION SEVENTEEN NOTICE OF DEFAULT

- A. Lessee shall not be deemed to be in default under this Lease Agreement in the payment of rent or the payment of any other moneys as required or in the furnishing of any bond or insurance policy when required in this Lease Agreement unless Lessor shall first give to Lessee ten (10) days' written notice of the default and Lessee fails to cure the default within five (5) days.
- B. Except as to the provisions or events referred to in the preceding paragraph of this section, Lessee shall not be deemed to be in default under this Lease Agreement unless Lessor shall first give to Lessee thirty (30) days' written notice of the default, and Lessee fails to cure the default within the thirty (30) day period, or if the default is of such a nature that it cannot be cured within thirty (30) days, Lessee fails to commence to cure the default within the period of thirty (30) days or fails thereafter to proceed to the curing of the default with all possible diligence.

SECTION EIGHTEEN DEFAULT

In the event of any breach of this Lease Agreement by Lessee, Lessor, in addition to the other rights or remedies it may have, shall have the immediate right of re-entry and may remove all persons and property from the demised premises. The property may be removed and stored in a public warehouse or elsewhere at the cost and for the account of Lessee. Should Lessor elect to re-enter, as provided in this Lease Agreement, or should it take possession pursuant to legal proceedings or pursuant to any notice provided for by law, Lessor may either terminate this Lease Agreement or it may from time to time, without terminating this Lease Agreement, re-let the demised premises or any part of the demised premises for such term or terms (which may be for a term extending beyond the term of this Lease Agreement) and at such rental or rentals and on such other terms and conditions as Lessor in the sole discretion of Lessor may deem advisable with the right to make alterations and repairs to the demised premises.

SECTION NINETEEN SURRENDER OF LEASE

The voluntary or other surrender of this Lease Agreement by Lessee, or a mutual cancellation of this Lease Agreement, shall not work a merger, and shall, at the option of Lessor, terminate all or any existing subleases or sub tenancies, or may, at the option of Lessor, operate as an assignment to it of any or all such subleases or sub tenancies.

SECTION TWENTY
EFFECT OF LESSEE'S HOLDING OVER

Any holding over after the expiration of the term of this Lease Agreement, with the consent of Lessor, shall be construed to be a tenancy from month-to-month, at the same monthly rental as required to be paid by Lessee for the period immediately prior to the expiration of the term of this Lease Agreement, and shall otherwise be on the terms and conditions specified in this Lease Agreement, so far as applicable.

SECTION TWENTY-ONE
PARTIES BOUND

The covenants and conditions contained in this Lease Agreement shall, subject to the provisions as to assignment, transfer and subletting, apply to and bind the heirs, successors, executors, administrators and assigns of all of the parties to the Lease Agreement. All of the parties shall be jointly and severally liable under this Lease Agreement.

SECTION TWENTY-TWO
TIME OF THE ESSENCE

Time is of the essence of this Lease Agreement, and of each and every covenant, term, condition and provision of this Lease Agreement.

SECTION TWENTY-THREE
SECTION CAPTIONS

The captions appearing under the section number designations of this Lease Agreement are for convenience only and are not a part of this Lease Agreement and do not in any way limit or amplify the terms and provisions of this Lease Agreement.

SECTION TWENTY-FOUR
GOVERNING LAW

It is agreed that this Lease Agreement shall be governed by, construed and enforced in accordance with the laws of the State of Delaware.

SECTION TWENTY-FIVE
ENTIRE AGREEMENT

This Lease Agreement shall constitute the entire agreement between the parties. Any prior understanding or representation of any kind preceding the date of this Lease Agreement shall not be binding upon either party except to the extent incorporated in this Agreement.

SECTION TWENTY-SIX
MODIFICATION OF AGREEMENT

Any modification of this Lease Agreement or additional obligation assumed by either party in connection with this Lease Agreement shall be binding only if evidence is in a writing signed by each party or an authorized representative of each party.

SECTION TWENTY-SEVEN
NON-DISCRIMINATION PROVISIONS

Lessee will not discriminate against any person or entity because of race, creed, color, religion, citizenship status, gender, age, national origin, ancestry, disability, sexual orientation, gender identity or expression, marital status, pregnancy, military veteran status, political beliefs or affiliation, genetic history, or other characteristic protected by law in any event, program, training, class or activity for which it uses the premises.

Signed, sealed and delivered in the presence of:

FIRST STATE BMX, INCORPORATED

Attest _____ (SEAL)

Print Name

Title

Sworn to and subscribed before me this ___ day of _____, 2019.

Notary Public _____
Date Commission Expires

CITY OF MILFORD

Attest/City Clerk _____ (SEAL)
Mayor Arthur J. Campbell

Sworn to and subscribed before me this ___ day of _____, 2019.

Notary Public _____
Date Commission Expires

knowledge as well as facts and information that I have gathered in my capacity as Mayor for the City of Milford.

3. The City of Milford provides utility services and since January 1, 2016 has maintained a practice of requiring property owners seeking to connect to Milford utility services for property outside of the City of Milford, to agree, as a condition to receiving services to enter into an agreement (an “Annexation Agreement”) with the City of Milford. The Annexation Agreement binds the property owner and any successors to consent to the annexation of the property into the City of Milford if the property becomes contiguous with the City boundary, subject to the request of the City.

4. The practice of requiring an Annexation Agreement protects and advances important interests of the City of Milford. The Annexation Agreement allows the City of Milford to ensure that growth in areas adjacent to and near the City’s boundary is coordinated. The City Council of Milford and I have expressed concern and believe that without Annexation Agreements, the City’s utility systems could be used to fuel and encourage growth just beyond the City’s boundary, resulting in greater use of City services (*e.g.*, streets, traffic, police and fire), without a corresponding increase in the City’s tax base. Over time, without Annexation Agreements, such growth and development could cause a decline in quality and/or an increase in costs of services provided by the City of Milford. The

City Council and I also have expressed and believe that Annexation Agreements help to avoid inequities that could result if substantially similar neighborhoods and properties enjoy City utility services and other services, but only one segment of such population supports City services with payment of property taxes. To that end, the City Council for the City of Milford and I are concerned the arguments put forth by the BPW in the above-referenced case, if adopted by the Court, will have a material impact on the City of Milford and its ability to properly manage development and the allocation of City services.

Arthur J. Campbell, Mayor

SWORN TO AND SUBSCRIBED BEFORE ME, this ____ day of October,
2019.

Notary Public

My Commission Expires: _____

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

BOARD OF PUBLIC WORKS)	
OF THE CITY OF LEWES,)	
)	
Plaintiff,)	
)	Case No. S19C-07-021 ESB
v.)	
)	
CITY OF LEWES,)	
)	
Defendant.)	

[PROPOSED] ORDER

Plaintiff, the Board of Public Works of the City of Lewes (“BPW”), having moved for the entry of an order granting summary judgment in its favor (“Motion”), and the Court having considered the Motion and having found good cause shown therefore;

IT IS HEREBY ORDERED, this ___ day of _____, 2019, that:

1. The Motion is GRANTED;
2. The City of Lewes (“City”) lacks authority to direct and control the BPW except where specifically authorized in the BPW’s Charter;
3. The City lacks authority to direct and control the BPW with respect to the enforcement of Resolution Nos. 07-002 and 13-004;
4. The City lacks authority to enforce Resolution Nos. 07-002 and 13-004 or to otherwise enforce the Pre-Annexation Agreement policy (as defined in the Motion);

5. The Pre-Annexation Agreement policy as outlined in Resolution Nos. 07-002 and 13-004 is unenforceable; and
6. The City is not entitled to any relief from the BPW for the BPW's refusal to enforce Resolution Nos. 07-002 and 13-004

The Honorable E. Scott Bradley

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

BOARD OF PUBLIC WORKS)
OF THE CITY OF LEWES,)
)
Plaintiff,)
) Case No. S19C-07-021 ESB
v.)
)
CITY OF LEWES,)
)
Defendant.)

NOTICE OF MOTION

VIA FILE & SERVE XPRESS

Thomas P. McGonigle, Esq.
Joseph C. Schoell, Esq.
Renée M. Dudek, Esq.
222 Delaware Avenue, Suite 1410
Wilmington, DE 19801

PLEASE TAKE NOTICE that Plaintiff, the Board of Public Works of the City of Lewes Motion for Summary Judgment, will be presented at the convenience of the Court.

FOX ROTHSCHILD LLP

Of Counsel:

Michael J. Hoffmann
Tarabicos Grosso, LLP
One Corporate Commons
100 W. Commons Blvd., Suite 415
New Castle, DE
Telephone: (302) 757-7811
mike@tarabicosgrosso.com

Dated: October 7, 2019

/s/ Sidney S. Liebesman

Sidney S. Liebesman (Bar No. 3702)
E. Chaney Hall (Bar No. 5491)
Citizens Bank Center
919 N. Market St., Suite 300
Wilmington, DE 19801
Telephone: (302) 654-7444
sliebesman@foxrothschild.com
chall@foxrothschild.com

*Attorneys for Plaintiff the Board of
Public Works of the City of Lewes*

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

BOARD OF PUBLIC WORKS)
OF THE CITY OF LEWES)
)
Plaintiff,)
) C.A. No.: S19C-07-021 ESB
v.)
)
CITY OF LEWES,)
)
Defendant.)

**PLAINTIFF’S OPENING BRIEF IN SUPPORT OF
ITS MOTION FOR SUMMARY JUDGMENT**

Of Counsel:

Michael J. Hoffmann (Bar No. 5349)
TARABICOS GROSSO, LLP
One Corporate Commons
100 W. Commons Blvd., Suite 415
New Castle, DE
Telephone: (302) 757-7811
mike@tarabicosgrosso.com

FOX ROTHSCHILD LLP
Sidney S. Liebesman (Bar No. 3702)
E. Chaney Hall (Bar No. 5491)
Citizens Bank Center
919 N. Market St., Suite 300
Wilmington, DE 19801
Telephone: (302) 654-7444
sliebeman@foxrothschild.com
chall@foxrothschild.com

*Attorneys for Plaintiff the Board of
Public Works of the City of Lewes*

Dated: October 7, 2019

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INTRODUCTION

The mission of the Board of Public Works of the City of Lewes (“BPW” or “Plaintiff”) is to provide critical utility services to residents located within the BPW’s service area (“Service Area”). The Service area includes properties located both in and outside the municipal limits/jurisdiction of the City of Lewes (“City” or “Defendant”). The BPW takes great pride in its service to the community at large. No other company is as integrated into the homes and daily lives of customers; the BPW is responsible for providing water, power, and sewer services. The BPW’s work quite literally turns the lights on and keeps them on, among other, very critical services.

This dispute seeks a declaration from the Court as to: (1) the respective rights and duties of two government entities, the BPW, and the City; and (2) the lawfulness of the City’s proposed policy to require property owners outside of City limits to agree to annexation into the city as a condition to receiving BPW-provided utilities. As the City acknowledges in its Motion for Leave to Present Briefing on Motion to Dismiss (“Motion for Leave”): “The issues raised by the Complaint (and the documents referred to and/or incorporated in the Complaint) are legal issues.” *See* Dkt. No. 3, ¶ 3. These questions are ripe for summary judgment.

The BPW opposes the City’s pre-annexation condition because it is unlawful. The City’s policy, if enforced, would require the BPW to unlawfully discriminate

against BPW rate-payers; i.e., the BPW would be required to deny utility services to non-municipal residents. These residents cannot obtain electric services from any other provider, thus, they are forced to agree to annexation to access electricity.

Notwithstanding the BPW's opposition, the City has adopted a City law requiring the pre-annexation condition. The BPW seeks a declaration from this Court to protect the BPW's authority against incursion by the City. The BPW also seeks a declaration that the pre-annexation condition is unlawful. There are no material facts in dispute and no reason to delay the Court's resolution of the parties' dispute.¹

¹ Subsequent to the filing of this action, the City has been attempting to fabricate a record suggesting it has a voice in the services provided by BPW by interfering with the BPW's business. For example, for the first time in the 100 year history of the BPW, the City intervened in a BPW's application before the Public Service Commission ("Commission") and has asked the Commission to dismiss the BPW's application based upon the same legal issues that have been presented to this Court in this action. The City's attempt to collaterally attack this action in the Commission demonstrates the need for a speedy resolution of this action.

STATEMENT OF FACTS

A. The BPW's Purpose and Authority

In March 1901, the General Assembly adopted an Act establishing the BPW and granting to the BPW authority, responsibility, supervision, and control of utility systems within the BPW's service area ("Service Area"). Am. Compl. ¶ 2; *see also* BPW Charter (defined below). Since at least 1963, the Service Area has included areas outside of the City's corporate limits. *See 22 Del. Laws ch. 196; 54 Del. Laws ch. 211 (1963).*

The General Assembly specified the authority, duties, and responsibilities of the BPW in the BPW's Charter ("Charter" or "BPW Charter"). A true and correct copy of the Charter is attached hereto as Exhibit A. *See also* Am. Compl. ¶ 6. Under the Charter, the BPW is "authorized to continue, subject to the jurisdiction, authority and responsibilities provided by [the] Charter, to establish, to control, and to regulate Utility Systems . . . and other future additional systems and utilities which may be established for the City of Lewes." Charter, Preamble. The Charter further provides that the BPW "may cause any such utility systems to be laid, in its sound discretion, anywhere within the Service Area . . . in such manner and under such terms as the [BPW] deems proper and of such material as the [BPW] may deem proper . . ." *Id.* at § 4.1. Moreover, the BPW is empowered to adopt such rules and regulations as it deems proper. Charter, §§ 4.10; 4.20.

The BPW provides three types of utilities: sewer, water, and power. Sewer services are provided through an agreement with Sussex County.

Unlike public utilities that provide water and power services, municipal utilities are not regulated by the Public Service Commission. *See 26 Del. C. § 202.* Municipal utilities are, however, required to obtain a Certificate of Public Convenience and Necessity (“CPCN”) before they provide water service to an area outside of the municipal corporate limits. *See 26 Del. C. § 203.* A CPCN affords the applicant an exclusive franchise to provide water services to the area at issue. *See id.* The BPW seeks a CPCN for each property to which it extends water services. Another provider of water services could seek and obtain a CPCN within the Service Area.

The Public Service Commission also establishes electric service boundaries for municipal utilities, including the BPW. On July 20, 1993, the Commission established the BPW’s boundaries for providing electric services. *See Exhibit B.* The BPW is the exclusive provider of electric services within its boundaries. *See id.* These boundaries extend beyond the municipal limits of the City. *See id.* Thus, the BPW is required to provide electric services within its Service Area.

B. BPW Structure and Operations

The BPW is a distinct legal entity from the City. As noted above, the BPW has its own Charter that was adopted by the General Assembly. Under the Charter,

the BPW is composed of five elected directors and one ex-officio person appointed by the Mayor of the City. Charter, § 2.1. Each Director serves for three years. *Id.* The directors are elected from all rate-payers within the Service Area, which includes areas outside of the City. The Mayor has an ex-officio seat on the BPW's Board of Directors ("Board of Directors"), but that seat has no voting power.

The BPW employs and manages its own employees. BPW employees do not report to the City Manager or the City Council. Am. Compl. ¶ 20. The BPW has its own personnel policies (including an employee handbook) that are not reviewed, revised, or impacted by the City Manager or City Council. *Id.* The BPW independently posts job listings, conducts interviews, and performs employee onboarding in the BPW's offices. All training is conducted in house by either the employee's supervisor or another authorized BPW representative. *Id.* City and BPW employees occasionally will receive joint training through the State of Delaware. *Id.*

BPW employees enjoy a different compensation structure than that provided to City employees; specifically, BPW employees receive merit- and performance-based pay raises, as opposed to the lockstep pay raises that City employees receive. Am. Compl. ¶ 21. The Board of Directors approves the budget for all employee raises and other compensation. *Id.* Payroll is made through a payroll company; the BPW uses a different payroll company than the City. *Id.* The BPW and the City

maintain separate employee health and life insurance plans and separate employee retirement and defined benefit plans. *Id.* Employee reviews and evaluations are conducted by the employee's supervisor. *Id.* The BPW makes its own determinations regarding employee discipline and termination. *Id.* The City does not have any input into employee compensation, benefits, hiring, termination, or training for the BPW's employees. *Id.*

The BPW's day-to-day administration is separate from the City. The BPW leases its office space in the City of Lewes Municipal Building. Am. Compl. ¶ 16. Additionally, the BPW is responsible for maintaining its computer, software, and other operational systems. *Id.* All software used by the BPW is licensed in the name of the BPW and does not include the City. *Id.* The BPW has its own information technology personnel, consultants, and vendors to maintain its technology systems. *Id.* The BPW and the City use different systems, maintain separate servers, have separate websites, and use different IT personnel and vendors. *Id.* The only shared system between the BPW and the City is called a "Code Red" public notification system, and even with respect to this shared system, the BPW and the City maintain separate databases. *Id.*

The BPW is an active participant in its local community. The BPW is integrally involved in local administration within its Service Area. Am. Compl. ¶ 15. For example, the BPW has an ex-officio seat on Lewes's Planning Commission.

Id. Additionally, the BPW and the City make separate contributions to the Lewes Fire Department. *Id.*

The BPW can sue and be sued in its own right. *See, e.g.*, BPW Charter, § 7.1 (“The BPW shall indemnify, from the general funds of its treasury, to the extent not otherwise covered by the appropriate insurance, any person who is a party to or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigate (other than an action by or in the right of the BPW itself). . . .”). The BPW has been a party to litigation that does not involve the City. *See, e.g.*, *Bd. of Public Works v. Greener*, 2005 WL 1249039 (Del. Super. Ct. May 25, 2005); *Barcroft Co. v. Bd. of Public Works of the Town of Lewes*, 1980 WL 81867 (Del. Ch. Mar. 11, 1980).

The BPW maintains its own bank accounts and books and records. Am. Compl. ¶ 14. The City does not have access to or authorization over the BPW’s bank accounts. The BPW has the authority, under the Charter, to borrow funds in its own name. Charter, § 4.14. The Board of Directors manages the BPW’s revenues. Am. Compl. ¶ 14. The BPW contributes 5% of its revenues to the City in lieu of a franchise fee. *Id.* Additionally, the BPW’s auditors conduct reviews and issue reports for the BPW, which the Board of Directors reviews and approves. *Id.* The City Council does not approve or otherwise take action on the audit and has no input in the preparation of the audit. *Id.* The BPW provides a copy of its annual

audit to the City Council for informational purposes. *Id.* Additionally, the BPW has its own EIN and tax exemption numbers. *Id.*

The BPW owns and maintains its own property. All BPW vehicles and other personal property are owned by the BPW. Am. Compl. ¶ 17. The BPW and the City jointly own the real property on which utility lines are located. *Id.* The City cannot use the BPW's property, services, or other information without authorization or compensation. *Id.* at ¶ 18. For example, the City and the BPW recently entered into an agreement whereby the City makes improvements to certain BPW property, and the BPW must compensate the City if the property is returned to the BPW. *Id.* Additionally, the City pays the BPW for utility services. *Id.* Further, the City cannot access the BPW's records regarding customer information, and the BPW does not share customer information with the City. *Id.*

The BPW maintains its own insurance policies. The City is insured through the State of Delaware's insurance coverage. Am. Compl. ¶ 19. By contrast, the BPW carries a separate general liability insurance policy through Selective Insurance. *Id.* The BPW's property insurance is in its own name and does not list the City as an additional insured on the relevant policies. *Id.* at ¶ 17. The City is not listed as an additional insured on the BPW's liability or property insurance. *Id.* at ¶¶ 17, 19. The BPW also maintains its own worker's compensation insurance policy. *Id.* at ¶ 19.

The City of Lewes Comprehensive Development Plan (“Comprehensive Plan”) also acknowledges the BPW’s independence from the City concerning authority over utilities in the Service Area. The Comprehensive Plan was adopted by the Mayor and Lewes City Council on October 16, 2017. The Comprehensive Plan was certified by the State of Delaware on February 14, 2018. *See* Comprehensive Plan, Am. Compl., Ex. A.

The Comprehensive Plan describes the governance of services and utilities as follows: “In addition to and separate from the City is the Lewes Board of Public Works (BPW). The BPW is authorized by an act of the General Assembly under a separate charter to establish, control, and regulate an electric light plan, water works, and sewer system. The BPW has its own board elected by BPW rate-payers and operates on the same fiscal year as the City.” Am. Compl. Ex. A, p. 8.

The Comprehensive Plan also addresses the relationship between the City and the BPW with respect to annexation. “Lewes continues to work with the Board of Public Works to provide adequate infrastructure to residents and to the proposed annexation area.” Am. Compl. Ex. A, p. 14. “Lewes will continue to work with the BPW to provide adequate facilities to residents and the proposed annexation area and will seek to protect its wellfield. Only the Board of Public Works can implement recommendations related to electricity, stormwater management, drinking water, and wastewater in Lewes.” Am. Compl. Ex. A, p. 14 (emphasis added).

In short, the BPW is the steward of the utility systems within its Service Area and, accordingly, takes care to ensure that current and future customers have access to safe, reliable, and affordable services. The BPW intends to have only lawful conditions in connection with the services it provides.

C. The BPW Does Not Require Property Holders to Agree to Annexation into the City as a Condition of Receiving BPW Utilities

Over the years, the BPW has expanded its utilities within its Service Area to areas located outside the City limits. At the same time, the City has expanded its efforts to enlarge the City municipal limits, and thereby increase the City's tax base and regulatory control over land use decisions. The BPW's desire to expand utilities outside of the municipal limits before annexation can make future annexation less expensive for the City. However, the City has identified the availability of BPW utilities as critical leverage to incentivize otherwise unmotivated property owners to "voluntarily" annex their property into the City.

For more than ten years, the BPW has been able to condition the provision of utility services outside City limits upon the property owner's agreement ("Pre-Annexation Condition") allowing the City to annex the property if and when the City so decided. This procedure was reflected in BPW Resolution No. 07-002 ("Resolution No. 07-002"), adopted March 27, 2007, titled "A Resolution of the Board of Public Works of the City of Lewes to Establish a Procedure for Application for Utility Services for Areas Beyond the Limits of the City of Lewes." On

December 4, 2013, the BPW slightly modified the procedure set forth in Resolution No. 07-002 when it adopted Resolution No. 13-004 (“Resolution No. 13-004”) titled “A Resolution of the Board of Public Works of the City of Lewes, Delaware to Amend the Procedure for Application for Utility Services for Areas Beyond the Limits of the City of Lewes.” Resolution No. 13-004 does not disturb the requirement that a property owner must enter into a Pre-Annexation Condition in order to obtain BPW-supplied utility services.

In recent years, the BPW expressed concerns about the enforceability of the Pre-Annexation Condition. On October 27, 2016, the City Solicitor for the City of Lewes, Glenn C. Mandalas, Esq., acting at the time in his capacity as counsel to the BPW, wrote a memorandum (“Mandalas Memorandum”) to the Board of Directors for the BPW providing a legal review of the policy adopted by Resolution No. 13-004. (The Mandalas Memorandum is attached to the Am. Compl. at Ex. C and is attached hereto at Ex. C.) The Mandalas Memorandum expresses doubt as to whether the imposition of a Pre-Annexation Condition would withstand judicial scrutiny. *See id.* at p. 4. In part based upon the Mandalas Memorandum, the BPW decided to abandon the Pre-Annexation Condition. Am. Compl. ¶ 29.

The City objected to the BPW’s decision. Am. Compl. ¶ 29. Given the City’s concerns, the BPW deferred its decision to completely abandon the Pre-Annexation Condition. *Id.* at ¶ 30. Instead, the BPW opted to consider Pre-Annexation

Condition waiver requests from affected property owners on a case-by-case basis. *Id.*

Since that time, the BPW has granted waivers of the Pre-Annexation Condition. In early 2018, a property owner of certain real property comprising approximately 3.2 acres within the Service Area (“Property”) requested an exemption from the Pre-Annexation Condition. Am. Compl. ¶ 31. On June 27, 2018, the Board of Directors held a meeting to discuss, among other things, the requested waiver. *Id.* During the meeting, the Board of Directors voted to grant the requested waiver and adopted Resolution No. 18-003 (“Resolution No. 18-003”) to memorialize that decision. *Id.* The City did not object. *Id.*

On March 11, 2019, a then-contract purchaser of certain real property within the Service Area (the “Development”) also requested an exemption from the Pre-Annexation Condition. Am. Compl. ¶ 32. On May 22, 2019, the Board of Directors held a meeting to discuss, among other things, the requested exemption for the Development. *Id.* The owner of the Development wishes to proceed with developing the property as soon as possible. *See id.*

The BPW wishes to grant the requested waiver for the Development and to abandon the Pre-Annexation Condition altogether. The City objects. The BPW and the City have engaged in extensive discussions regarding the BPW’s intention to abandon the Pre-Annexation Condition policy. Am. Compl. ¶ 33. The City opposes

the BPW's position and has directed the BPW to maintain the Pre-Annexation Condition policy. *Id.*

On June 24, 2019, the City adopted a Resolution of the Mayor and City Council of the City of Lewes, Delaware, Directing the Board of Public Works of the City of Lewes to Require Annexation or an Executed Pre-Annexation Condition as a Prerequisite to Providing Utility Services (the "June 24 Resolution"). In the June 24 Resolution, the Mayor and the City, among other things, chose to "direct that the Board of Public Works shall not provide utility services, including water and sewer to areas beyond the City limits unless the applicant for such services has first annexed the property into the City or executed a Pre-Annexation Condition with the City of Lewes." *Id.* at p. 3.

Also on June 24, 2019, the City adopted An Ordinance to Amend Chapter 191, Water and Sewer Connections, Article I, Water Meters; Article II, Sewer Lateral Installation, Maintenance and Repair, of the Municipal Code of the City of Lewes, Delaware by Amending Sections 191-2 and 191-12 Relating to Annexation and Water and Sewer Connections (the "June 24 Ordinance"). The June 24 Ordinance amended the Lewes municipal code to codify the Pre-Annexation Condition policy as City law.

On June 26, 2019, the BPW held a meeting of its Board of Directors to discuss, among other things, the June 24 Resolution and the June 24 Ordinance. Am. Compl.

¶ 37. During the meeting, the BPW unanimously rejected the City's authority to adopt the June 24 Resolution and the June 24 Ordinance. *Id.*

In July 2019, prior to the filing of the complaint, counsel for the City and the BPW exchanged a series of emails relating to this dispute. Am. Compl. ¶ 38. Counsel agreed by email to jointly submit this dispute to the Court for resolution. *See* email exchange among counsel attached to the Am. Compl. at Ex. H. Counsel for the City said that he had authority to draft the lawsuit to initiate the proceedings that the BPW ended up initiating first by filing the action *sub judice*. *Id.* This litigation ultimately resulted from the BPW's and City's dispute.

NATURE AND STAGE OF PROCEEDINGS

On July 17, 2019, the BPW filed its Complaint for Declaratory Judgment (“Complaint”). (Dkt. No. 1). The Complaint was served on August 28, 2019. (Dkt. No. 10) On August 29, 2019, the BPW filed its Verified First Amended Complaint for Declaratory Judgment (“Amended Complaint”). (Dkt. No. 8).

On August 15, 2019, the City submitted a Motion for Leave to Present Briefing on Motion to Dismiss (“Motion for Leave”). (Dkt. No. 3). On August 30, 2019, the BPW responded to the Motion for Leave. (Dkt. No. 11). In the response, the BPW requested that the City’s forthcoming motion to dismiss and the City’s forthcoming motion for summary judgment be briefed simultaneously because the motions are, in effect, two sides of the same coin.

On September 6, 2019, the Court entered an order allowing the motions to proceed together. (Dkt. No. 16). This is the BPW’s Opening Brief in Support of Its Motion for Summary Judgment.

ARGUMENT

I. LEGAL STANDARD

Summary judgment “should be granted when there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law.” *M&T Bank LLC v. Kowinsky Farm, LLC*, 2013 WL 123716, at *2 (Del. Super. Ct. Jan. 8, 2013) (citation omitted). The moving party bears the initial burden of proof and, once that burden is met, the burden shifts to the non-moving party to show that a material issue of fact exists. *DeLuca v. Hyatt Corp.*, 2019 WL 479229, at *1 (Del. Super. Ct. Feb. 6, 2019) (citations omitted). A party seeking a declaratory judgment may file a motion for summary judgment any time after 20 days following the filing of the complaint. Super. Ct. Civ. R. 56(a).

A party opposing a motion for summary judgment may present an affidavit explaining that additional discovery is needed (*see* Super. Ct. Civ. R. 56(f)), but such affidavit must be made in good faith, not solely for the purpose of delay, or the party making the affidavit is subject to sanctions (*see* Super. Ct. Civ. R. 56(g)).

II. THE PRE-ANNEXATION CONDITION IS IMPERMISSIBLE

The BPW undoubtedly has the right to provide utility services to areas outside of the City’s corporate limits. It also has the authority to impose conditions on the provision of its utility services. As explained by Mr. Mandalas in his memorandum to the BPW, “The issue, therefore, is not *whether* the BPW may impose conditions, but instead *what* conditions may the BPW impose and *when* in the process of

expanding service the conditions may be imposed, i.e. whether or not a CPCN has been granted for the area in which the BPW seeks to provide service.” Ex. C; Am. Compl. Ex. C, Mandalas Memorandum p. 2.

Case law in Delaware and in other jurisdictions provides guidance regarding the restrictions the BPW may impose to govern its provision of utility services. A public, municipal utility like the BPW is subject to the same requirements as a private utility. *Delmarva Enterprises, Inc. v. City of Dover*, 282 A.2d 601, 602 (Del. 1971). A public utility may impose reasonable conditions on service for “utility-related” reasons. *See Town of Rocky Mount v. Wenco of Danville, Inc.*, 506 S.E.2d 17, 20 (Va. 1998); *Allen’s Creek Props., Inc. v. City of Clearwater*, 679 So.2d 1172 (Fla. 1996). For example, a municipal utility need not provide utilities to parcels that are not contiguous with city limits. *See Brown v. City of Huntsville*, 891 So.2d 295 (Ala. 2004).

As a public utility, the BPW must provide services in a non-discriminatory manner and “shall make its facilities available to all alike.” *Delmarva Enterprises, Inc.*, 282 A.2d at 602; *see also* 94 Corpus Juris Secundum Waters § 702 (Sept. 2019 Update) (“Where a municipality, authorized to do so, extends its water system beyond its corporate limits, it must supply water to all along its mains without discrimination to those similarly situated”) (citations omitted). *Delmarva Enterprises, Inc.*, 282 A.2d at 602. Where a municipal utility, acting as a public

utility, “is providing similar services to other non-city residents within the service zone it created . . . its refusal to provide the same services to [other non-residents] is discriminatory as a matter of law.” *City of Dover v. Delmarva Enters., Inc.*, 301 A.2d 276, 277 (Del. 1973). “Supplying water service to some nonresidents while refusing to supply water to others similarly situated is discriminatory and actionable.” 94 Corpus Juris Secundum Waters § 702 (Sept. 2019 Update) (citing *Schroeder v. City of Grayville*, 520 N.E.2d 1032 (Ill. 1988)).

In *Delmarva Enterprises*, the City and County governments entered into an agreement creating a buffer zone around the city’s corporate limits in which the County would not provide utility services and the city would have the exclusive right to obtain services. *Delmarva Enterprises, Inc.*, 282 A.2d at 601. Plaintiff’s property was located in the buffer, and so Plaintiff sought utility services from the City. *Id.* The City denied the request. *Id.* The Court determined that the City was operating a public utility and could not discriminate against Plaintiffs. *Id.* at 602. The Court noted that the water and sewer lines were in place because the City had extended services to similarly-situated properties in the past. *Id.* at 603. The Court concluded that the City’s decision to refuse the request was discriminatory and the City was required to provide the requested services. *Id.*

Courts in other jurisdictions have considered disputes concerning pre-annexation agreements. Like the *Delmarva Enterprises* Court, courts in other states

have found that a municipal utility will be required to provide utility services outside its corporate limits, and without requiring annexation, if the municipality holds itself as a public utility. *See, e.g., Allen's Creek Props., Inc. v. City of Clearwater*, 679 So.2d 1172 (Fl. 1996) (“through its conduct a municipality may assume the legal duty to provide reasonably adequate services for reasonable compensation to all of the public in an unincorporated area.”); *Yakima County Fire Protection District No. 12 v. City of Yakima*, 858 P.2d 245 (Wash. 1993); *Town of Rocky Mount*, 506 S.E.2d at 17. The city can only require annexation if the annexation condition is reasonable and is applied equally to all similarly-situated non-residents. *See id.*

The analysis set forth in these cases counsels finding that the BPW cannot lawfully condition utility services upon a Pre-Annexation Condition. First, the BPW is undoubtedly acting as a public utility. The BPW has expressly manifested a desire to provide utility service to areas in its Service Area and outside the City’s municipal boundary.

Second, the BPW has consistently provided utility services to areas outside of the City’s corporate limits. The BPW has obtained CPCNs for properties outside of the City’s boundaries. It negotiated a sewer agreement with Sussex County. It operates within its Commission-established electric service area. The BPW has also granted a waiver of the Pre-Annexation Condition in the past. Given these past actions, the BPW cannot now change course. The BPW cannot legally discriminate

against landowners outside of the City's limits. The City's efforts to force the BPW to discriminate against potential customers is unlawful and also exposes the City and BPW to the risk of litigation from property owners. *See* 94 Corpus Juris Secundum Waters § 702 (Sept. 2019 Update) (citation omitted).

Finally, neither the City nor BPW can state a reasonable basis to condition utility services upon annexation. The BPW has its own rate-payers who pay for BPW utilities. Indeed the BPW does not share its customer list or information with the City. Am. Compl. ¶ 18. Unlike the cases cited above, the City's taxpayers would not pay for utility services for non-taxpayers. Thus, the City's pre-annexation requirement does not represent an effort to protect its tax base and is not a valid exercise its police powers (or other powers). Neither the City nor the BPW can articulate a utility-related reason to condition the provision of utilities upon a pre-annexation agreement. Accordingly, the Pre-Annexation Condition is unlawful and cannot be enforced.

III. THE CITY LACKS AUTHORITY TO DIRECT AND CONTROL THE BPW OR TO ENFORCE THE PRE-ANNEXATION CONDITION OVER THE BPW'S OBJECTION

When construing a statute, the Court first determines "whether the statute under consideration is ambiguous." *Taylor v. Diamond State Port Corp.*, 14 A.3d 536, 538 (Del. 2011) (citation omitted). A statute is ambiguous if it is "susceptible of two reasonable interpretations." *Id.* "If it is unambiguous, then [the Court] give[s]

the words in the statute their plain meaning.” *Id.* The Court also “ascribe[s] a purpose to the General Assembly’s use of statutory language, construing it against surplusage, if reasonably possible.” *Id.* Statutory construction principles apply equally to charters. *See, e.g., Harvey v. City of Newark*, 2010 WL 4240625, at *6 (Del. Ch. Oct. 20, 2010); *Kelley v. City of Dover*, 300 A.2d 31, 36 (Del. Ch. 1972).

The intent of the General Assembly in enacting the BPW’s Charter is clear. If the City believes the authority of the BPW should be limited in any manner it is addressing any such argument “to the wrong branch of government.” *See Palecki v. Gornik*, 920 A.2d 413, 422-23 (Del. Ch. 2007). As then Vice Chancellor Strine stated in *Palecki*: “I cannot accept [Defendant’s] invitation to become a de facto member of the General Assembly and rewrite the Delaware Code. Rather, ‘it is the Legislature and not the Judiciary who must initiate . . . change in the statute and enunciate the statutory provisions.’” *Id.* at 423 (noting that “[a]lthough much has changed in the three decades since those statutes were enacted, the General Assembly has never seen fit to substantively change them”). As the Delaware Supreme Court stated:

[This Court does not] sit as a super legislature to eviscerate proper legislative enactments. If the policy or wisdom of a particular law is questioned as unreasonable or unjust, then only the elected representatives of the people may amend or repeal it. Judges must take the law as they find it, and their personal predilections as to what the law should be have no place in efforts to override properly stated legislative will.

Leatherbury v. Greenspun, 939 A.2d 1284, 1292 (Del. 2007); *see also Hanson v. Delaware State Public Integrity Commission*, 2012 WL 3860732 (Del. Super. Ct. Aug. 30, 2012).

The BPW enjoys a broad grant of statutory authority from the General Assembly. Am. Compl. ¶ 6; *see also* Charter, Preamble (“to establish, to control, and to regulate Utility Systems . . . and other future additional systems and utilities which may be established for the City of Lewes”). The General Assembly specifically outlined this authority in the BPW’s Charter. *See id.*; *see generally* Charter. The BPW has been fulfilling this role for over one hundred years. In all that time, the City has not attempted to interfere with the BPW’s business until now.

The Charter clearly and unambiguously grants the BPW broad authority over the provision of utilities in its Service Area. *Id.* The General Assembly also was clear that it did not grant the City the right to control or limit the BPW or its Board of Directors with respect to the provision of utility services.² To the contrary, the

² The General Assembly limited the BPW Board’s otherwise broad authority only in certain situations, such as the purchase of real property (Charter, Section 4.8) and when borrowing money and issuing bonds or certificates of indebtedness (Charter,

General Assembly specifically directed the City to “continue” the BPW and further directed the BPW (not the City) “to continue, subject to the jurisdiction, authority and responsibilities provided by this Charter, to establish, to control, and to regulate Utility Systems . . . for the City of Lewes.” Charter, Preamble. This provision limited the otherwise broad authority granted to the City by shifting the supervision, control, and management of utilities to the BPW. To find otherwise would render the Charter a surplusage. Such result cannot stand.

The BPW’s authority originates with the General Assembly and any limitation on that authority must similarly be authorized by the General Assembly. No such additional limitation was authorized by the General Assembly, and the City cannot prove otherwise. The BPW has the right to continue to pursue its statutorily-granted mission free from intrusion by the City.

CONCLUSION

For the reasons set forth herein, the Board of Public Works of the City of Lewes respectfully requests that the Court enter summary judgment in its favor.

Section 4.14.1.1, Section 4.13.3). The BPW also provides financial reports to the Mayor and City Council (Charter, Section 4.17), but the BPW need not obtain approval on these reports from the City.

FOX ROTHSCHILD LLP

Of Counsel:

Michael J. Hoffmann (Bar No. 5349)
TARABICOS GROSSO, LLP
One Corporate Commons
100 W. Commons Blvd., Suite 415
New Castle, DE
Telephone: (302) 757-7811
mike@tarabicosgrosso.com

/s/ Sidney S. Liebesman

Sidney S. Liebesman (Bar No. 3702)
E. Chaney Hall (Bar No. 5491)
Citizens Bank Center
919 N. Market St., Suite 300
Wilmington, DE 19801
Telephone: (302) 654-7444
sliebesman@foxrothschild.com
chall@foxrothschild.com

*Attorneys for Plaintiff the Board of
Public Works of the City of Lewes*

Dated: October 7, 2019

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

BOARD OF PUBLIC WORKS)
OF THE CITY OF LEWES,)
)
Plaintiff,)
) Case No. S19C-07-021 ESB
v.)
)
CITY OF LEWES,)
)
Defendant.)

**CERTIFICATE OF COMPLIANCE WITH TYPEFACE REQUIREMENT
AND TYPE-VOLUME LIMITATION**

1. This brief complies with the typeface requirement of Super. Ct. Civ. R. 107(b) because it has been prepared in Times New Roman 14-point typeface using Microsoft Word 2016.

2. This brief complies with the type-volume limitation of Super. Ct. Civ. R. 107(h)(1) because it contains 5,368 words, which were counted by Microsoft Word 2016.

FOX ROTHSCHILD LLP

Of Counsel:

Michael J. Hoffmann
Tarabicos Grosso, LLP
One Corporate Commons
100 W. Commons Blvd., Suite 415
New Castle, DE
Telephone: (302) 757-7811
mike@tarabicosgrosso.com

/s/ Sidney S. Liebesman
Sidney S. Liebesman (Bar No. 3702)
E. Chaney Hall (Bar No. 5491)
Citizens Bank Center
919 N. Market St., Suite 300
Wilmington, DE 19801
Telephone: (302) 654-7444
sliebesman@foxrothschild.com
chall@foxrothschild.com

Dated: October 7, 2019

*Attorneys for Plaintiff the Board of
Public Works of the City of Lewes*

CERTIFICATE OF SERVICE

I, Sidney S. Liebesman, hereby certify that, on October 7, 2019, a true and correct copy of the foregoing documents were served via File and ServeXpress upon the following:

Thomas P. McGonigle (Bar No. 3162)
Joseph C. Schoell (Bar No. 3133)
Renée M. Dudek (Bar No. 6623)
222 Delaware Avenue, Suite 1410
Wilmington, DE 19801
(302) 467-4200

Dated: October 7, 2019

FOX ROTHSCHILD LLP

/s/ Sidney S. Liebesman

Sidney S. Liebesman (DE Bar No. 3702)
E. Chaney Hall (Bar No. 5491)
Citizens Bank Center
919 N. Market Street, Suite 300
Wilmington, Delaware 19801
Tel.: (302) 654-7444
Fax.: (302) 656-8920
E-mail: sliebesman@foxrothschild.com
Email: chall@foxrothschild.com

*Attorneys for Plaintiff the Board of Public
Works of the city of Lewes*

Exhibit A

CHAPTER 10
FORMERLY
HOUSE BILL NO. 33

AN ACT TO REINCORPORATE THE CHARTER OF THE BOARD OF PUBLIC WORKS OF THE CITY OF LEWES, CHAPTER 196, VOLUME 22, LAWS OF DELAWARE, AS AMENDED, ENTITLED "AN ACT TO AUTHORIZE THE COMMISSIONERS OF LEWES TO APPOINT A BOARD OF PUBLIC WORKS FOR THE TOWN OF LEWES WHICH SHALL ESTABLISH, CONTROL AND REGULATE AN ELECTRIC LIGHT PLANT, WATER WORKS AND A SEWER SYSTEM FOR SAID TOWN; PRESCRIBING THE POWERS AND DUTIES OF SAID BOARD OF PUBLIC WORKS AND PROVIDING FOR THE ELECTION OF THEIR SUCCESSORS".

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Two-thirds of all members elected to each house thereof concurring therein):

WHEREAS, it is deemed desirable that the Charter of the Board of Public Works of the City of Lewes, being Chapter 196, Volume 22, Laws of Delaware, as amended, be consolidated into one complete Act and in certain respects amended and revised.

NOW THEREFORE:

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Two-thirds of all members elected to each house thereof concurring therein):

Section 1. Amend the Charter of the Board of Public Works of the City of Lewes, Chapter 196, Volume 22, Laws of Delaware, as amended, by substituting in its entirety, to read as follows:

"AN ACT TO REINCORPORATE THE BOARD OF PUBLIC WORKS
OF THE CITY OF LEWES

The Mayor and City Council of the City of Lewes, as operator of public utilities through its Board of Public Works of the City of Lewes, is hereby authorized and directed to continue the Board of Public Works of the City of Lewes ('BPW') and the BPW is hereby authorized to continue, subject to the jurisdiction, authority and responsibilities provided by this Charter, to establish, to control and to regulate Utility Systems comprised of an electric generation, transmission, and distribution system; water works and distribution system; wastewater collection, treatment facility, and sewer system; storm water drainage system; and other future additional systems and utilities which may be established for the City of Lewes.

SECTION 1—DEFINITIONS.

The following words, terms and phrases, when used in this Charter, shall have meanings ascribed to them in this section:

1. 'Additional Systems' shall include, but are not limited to, systems for the purpose of furnishing steam, manufactured gas, natural gas, heat, heating oil, energy generation systems, and wired and wireless telecommunications or other communication services and any other utility system which may be established for the City of Lewes.
2. 'Board' shall mean the Board of Directors of the Board of Public Works as established pursuant to this Charter.
3. 'BPW' shall mean the Board of Public Works of the City of Lewes.
4. 'City' shall mean the City of Lewes, Sussex County, Delaware.
5. 'Mayor and City Council' shall mean the Mayor and City Council of the City of Lewes, Sussex County, Delaware.
6. 'Service Area' shall mean the corporate limits of the City of Lewes, the territory beyond such limits authorized in this Charter, and any franchised service area.
7. 'Utility System' shall mean and include electric generation, transmission, and distribution system; water works and distribution system, wastewater collection, treatment facility, and sewer system; storm water drainage system; and other future Additional Systems and utilities which may be established for the City of Lewes.

SECTION 2—BOARD, ELECTIONS AND APPOINTMENTS; OFFICERS.

2.1. Board. The administration of the Board of Public Works shall be by a Board of Directors. The Board shall be composed of five (5) elected Directors and one ex-officio person appointed by the Mayor of the City. The terms of each Director

shall be for a period of two (2) years commencing at the annual meeting of the BPW following his or her election and continuing until his or her successor is duly elected and qualified.

2.2. Annual Election and Term of Office.

2.2.1. On the second Saturday in May annually, successors to the Directors shall be chosen by the voters, qualified as hereinafter provided. At each of said annual elections the qualified voters shall in like manner elect a Director or Directors to serve for the unexpired term or terms of any Director or Directors whose office shall have been rendered vacant in any manner whatsoever.

2.2.2. The annual election shall be called by the President of the Board.

2.2.3. The Board shall designate the place for the annual election which shall be held on the second Saturday of May of each year from 8:00 o'clock in the morning, prevailing time, until 6:00 o'clock in the evening, prevailing time.

2.2.4. A plurality of votes shall elect.

2.2.5. In the event of a vacancy in the office of a Director of the Board, the President of the Board shall appoint a person holding the same qualifications for Director to fill such vacancy until the next annual election of Directors of the Board. Prior approval of such appointment shall be by a majority of the Mayor and City Council. No appointment of Directors of the Board, either originally or to fill vacancies, shall be made from members of the Mayor and City Council; but no person shall be disqualified for election as a Director of the Board at any annual election by reason of holding the office of Council member.

2.3. Qualifications of Directors of the Board.

2.3.1. A qualified voter who is a resident for at least three hundred sixty-five (365) days next preceding the date of the Annual Election for Directors of the Board.

2.3.2. At least twenty-one (21) years of age on the date of the annual election for Directors of the Board.

2.3.3. No member of the City Council or the Mayor may serve concurrently on the Board and as Mayor or City Councilperson.

2.3.4. Disqualification. If any Director during his or her term of office shall be found guilty of any crime or misdemeanor and sentenced to imprisonment for any term whatever or shall for any reason cease to be a resident, freeholder or leaseholder of the City, he or she shall forthwith be disqualified to act as a Director, and his or her office shall be deemed vacant and shall be filled as aforesaid.

2.4. Filing of Intent to be a Candidate.

No person shall be voted upon as a candidate for the office of a Director of the Board unless he or she shall notify the General Manager of the BPW in writing of his or her candidacy for the office, or five (5) or more persons qualified to vote in the Annual Election may file the name of the candidate for the office of the Director of the Board with the General Manager, provided that the candidate endorses his or her written consent thereon. Such notification shall be filed no later than twenty (20) days prior to Election Day.

2.5. Definition of Freeholder or Leaseholder. For purposes of determining whether a Director of the Board is a freeholder or a leaseholder, the following definitions shall be applicable:

2.5.1. A freeholder shall mean any person who holds fee simple title within the corporate limits of the City and said title is of record in the Office of the Recorder of Deeds, in and for Sussex County.

2.5.2. A resident leaseholder shall mean any person who holds public lands under a valid lease from the State of Delaware or from the Mayor and City Council and who has erected on said land an improvement pursuant to the Charter of the City of Lewes.

2.6. Qualifications of Voters. At the annual election for Directors of the Board, qualifications for voters shall be as follows:

2.6.1. Resident: Every person, male or female, who is a bona fide citizen of the United States and of the State of Delaware and a bona fide resident of the City or on the public lands under the jurisdiction of the City for at least thirty (30) days next preceding the date of the Annual Election; or

2.6.2. Nonresident freeholder or leaseholder: Every person, male or female, who is a bona fide citizen of the United States and who is a freeholder or leaseholder for at least thirty (30) days immediately preceding the date of the Annual Election; or

2.6.3. Other: Every person, male or female, who is a bona fide citizen of the United States and who is a customer of any available utility of the Board of Public Works for at least thirty (30) days immediately preceding the date of the Annual Election; and

2.6.4. At least eighteen (18) years of age on the date of the annual election.

2.7. Voter Registration, 'Books'

2.7.1. Resident voters shall be registered on the Book of Resident Voters of the BPW. In the case of nonresident freeholders or leaseholders, they shall be registered on the Book of Non-Resident Voters. In the case of other voters, they shall be registered on the Book of Other Voters.

2.7.2. The Book of Resident Voters shall contain the following information: the names of the registered voters arranged in alphabetical order, the address of the voter, acknowledgment of age qualification, the date the voter became a resident and any other pertinent information.

2.7.3. The Book of Non-Resident Voters shall contain the following information: the names of the non-resident voters arranged in alphabetical order, the permanent address of the voter, the local address of the voter, acknowledgment of age qualification, the date the voter became a freeholder or leaseholder of the City and any other pertinent information.

2.7.4. The Book of Other Voters shall contain the following information: the names of the other voters arranged in alphabetical order, the permanent address of the voter, the local address of the voter, acknowledgment of age qualification, the date the voter became a customer of any available utilities and any other pertinent information.

2.7.5. No person shall be registered upon any Book of Voters unless he or she will have acquired the qualifications to vote in the Annual Election for Directors of the Board for the year in which such person registers.

2.7.6. A person shall be required to register only one (1) time; provided, however, that if a registered voter fails to vote in two (2) consecutive Annual Elections in which there is a contest for Directorship on the Board, his or her name shall be removed from the applicable Book of Voters, and notice sent to said registered voter at his or her last known address by registered or certified mail, with return receipt requested, advising that his or her name has been removed from the applicable Book of Voters, and that it will be necessary to register again in order to vote in the Annual Election.

2.7.7. The Books of Voters shall be maintained in the Office of the General Manager of the BPW and shall be conclusive evidence of a right of any person to vote at the Annual Election.

2.7.8. A person may register at the Office of the BPW during the regular business hours of such office until the close of business of such office on the 15th day prior to the date of the Annual Election for Directors of the Board by completing such forms as may be required.

2.7.9. The Board may provide by resolution for the BPW's office to be open on one (1) Saturday and/or one (1) evening within the thirty (30) day period immediately preceding the date of the Annual Election for the purpose of permitting persons to register to vote in such Annual Election.

2.8. Absentee Ballot. The City Council may, by Ordinance, provide for any voter registered to vote in the Annual Election for a Director of the Board to cast an absentee ballot if such person is unable to appear and cast his or her ballot in person. The BPW shall comply with the provisions of such Ordinance in its Annual Election.

2.9. Manner of Holding Annual Election. The procedure for holding the Annual Election shall be as follows and the Board may refer for guidance to the State of Delaware Election Law for Municipalities, Title 15, Chapter 75, Subchapter IV of the Delaware Code.

2.9.1. The Annual Election shall be conducted by a Board of Election consisting of an Inspector and two (2) Judges together with such alternates and other election officials as are determined by the President of the Board to be necessary, all of whom shall be appointed by the President of the Board with the concurrence of a majority of the Directors of the Board at a regular meeting of the Board prior to the date of the Annual Election. The Board of Election shall determine who is and who is not entitled to vote thereat, taking reasonable steps to see that the law pertaining to the Annual Election receives compliance and for the purpose of counting the votes and certifying the result to all the Board. The Board of Election shall keep a list of all persons who vote at such Annual Election.

2.9.2. In the event that no person files or is nominated for each office for which an election is to be held within the time set forth in this Charter, the incumbent shall be deemed to be re-elected for a full term, and it shall not be necessary to hold an election.

2.9.3. In the event that only one (1) person files or is nominated for each office for which an election is to be held within the time set forth in this Charter, the person who files or who is nominated shall be deemed to be elected for a full term, and it shall not be necessary to have an election.

2.9.4. No person other than the Board of Election, election officials and others permitted by state law, and persons actually voting shall be admitted within the voting place without the consent of the Inspector.

2.9.5. Each candidate may appoint some suitable person to act as a challenger who may be within the voting place. Each challenger shall be protected in the discharge of his or her duty by the Board of Election.

2.9.6. No person other than the Board of Election, election officials and others permitted by state law, shall remain within fifty (50) feet of the entrance to the building except for the purpose of offering his or her vote; provided, however, that a physically-handicapped person shall be permitted to bring into the election room an elector or two (2) electors if the nature of the disability, in the opinion of the Inspector, such as total disability to walk to the election room, requires it in order to render the necessary assistance.

2.9.7. No person shall electioneer or engage in any political discussion within the building during the hours of election or during the counting of the ballots.

2.9.8. No more than one (1) person shall be permitted to occupy any voting booth at any one time except as otherwise provided in this Section.

2.9.9. No person shall remain in or occupy a voting booth longer than is necessary to prepare his or her ballot and in no event longer than three (3) minutes.

2.9.10. Upon the close of the election, the votes shall be read and counted publicly and the persons having the highest number of votes shall be declared to be elected.

2.9.11. The Board of Election shall enter in a book to be provided for that purpose minutes of the election containing the names of the persons so elected. They shall subscribe the same and shall make and deliver to the person elected certificates of their election. The book containing such minutes, the ballots and the list of those persons who voted shall be secured by the Board of Election who shall preserve the same and shall be evidence in any court of law or equity.

2.9.12. If two (2) or more candidates for the office of Director of the Board shall receive an equal number of votes so that there shall not be an election of a Director, the incumbent Director shall continue in Office until the runoff election as herein provided is held. The Board of Election shall declare the election a tie and shall report that result to the Board which shall, within twenty (20) days after receipt of the report of the Board of Election, hold a Special Election between those candidates where a tie resulted under the same rules as hereinbefore set forth. No person shall be

permitted to register to vote following the Annual Election and before the Special Election in order to vote at the Special Election.

SECTION 3: ORGANIZATION.

The Board of Directors, at its annual meeting, held in the same month as the election but not less than seven (7) days after the election, shall swear in newly-elected Directors and organize by the election, from among the Directors of the Board, of a President, Vice-President, Secretary, Treasurer and Assistant Treasurer, each to serve for one (1) year and until their successors are chosen. Directors of the Board may receive pay or emolument, and be allowed compensation for his or her services and for expenses incurred while executing official duties. The Board shall meet at a date and time it may establish. The Board may establish its rules of procedure. It shall be the duty of the Vice President to preside at all the meetings of the Board of Directors in the event that the President is unable to preside, and to perform such other duties and have such other powers of the President as are prescribed in this Charter or in any rules of procedure established by the Board in the event that the President is unable to serve.

SECTION 4—POWERS AND DUTIES.

4.1. The BPW shall have the supervision and control of all the utility systems, and private sanitary sewerage, storm water drainage, water, and electric systems, as established or to be established within the Service Area, and may alter, condemn, repair or remove the same, and may cause new facilities for the utility systems to be made and opened. The BPW may cause any such utility systems to be laid, in its sound discretion, anywhere within the Service Area and in, on or over any of the streets, rights of way, lanes or alleys of the said City and Service Area in such manner and under such terms and conditions as the BPW deems proper and of such material as the BPW may deem proper, and may make proper outlets for the sewer and drainage into any of the streams, creeks, ponds, canals or other waters within the limits of the City or into the Delaware Bay or any of its tributaries or estuaries from any property within the corporate limits of the City; and for the purpose of improving the sewerage and drainage of the City may enter upon and deepen any part of the channel of said waterways, subject to applicable federal and state law.

4.2. The BPW may, in its discretion, manage and operate, as the sole provider or in conjunction with any person, firm, association, corporation or entity, one or more utility systems within its Service Area. The BPW shall have the power to enter into contracts in its name.

4.3. The BPW shall pay to the City a minimum of two percent (2%) to a maximum of five percent (5%) of the monthly adjusted revenues for utility services (gross revenues for utility services less adjustments made to customer accounts), in lieu of franchise fees, no later than thirty (30) days after the utility bills are mailed to customers each month. The City shall pay monthly out of the general fund of the City to the BPW for utility services, including street lighting, such sum as the BPW may prescribe by tariff.

4.4. The BPW shall make rules regulating the public utility systems and the tapping of public electric distribution, water mains and pipes, sewers, drains, and any other utility established by the Board of Public Works, by the owners of abutting lands and shall provide for the granting of permits for the same and for the payment of such tapping or other fees, including but not limited to front-foot assessments, impact fees, and rents, as the Board may deem proper, and it shall prescribe the material of all such private electric lines, water mains and pipes, sewers, storm water and/or drainage systems, or other utility which shall hereafter enter into any public utility system, and shall direct the manner in which they shall be laid or installed.

4.5. The BPW is hereby authorized and empowered to do all things necessary for the location, erection, construction, equipment, maintenance and operation of its utility systems as established by the BPW and to provide for the care and maintenance of the same, and to purchase machinery, equipment, and all such apparatus as may be necessary for the purpose of establishing such utility plants or facilities and, to effect this object, shall have the power to lay pipes or other apparatus under or along any public right-of-way, street, land or alley of said City and Service Area or any public roads adjacent thereto.

4.6. The BPW may sell its products and services to public and private persons, firms, associations, corporations or entities.

4.7. The BPW is hereby authorized to acquire by gift, devise, purchase, exchange or any other method of acquiring real property or any estate, interest, or right therein, provided that such acquisition shall not be made through an exercise of the power of eminent domain.

4.8. Whenever the BPW shall deem it necessary and expedient to acquire lands, easements or rights-of-way for any purpose connected with the utility systems, plants or facilities, and such lands, easements or rights-of-way cannot be acquired by agreement between the owner or owners thereof and the BPW, the Board shall direct its Secretary to notify the Mayor and City Council, and thereupon the said Mayor and City Council shall take such lands for the purpose or purposes aforesaid in the same manner and subject to the same conditions and proceedings as are or shall be from time to time provided by law for condemning and taking lands for the purpose of laying out and opening new streets in said City. No petition or application of citizens shall be necessary, but the notice as aforesaid from the Secretary of the BPW shall be ample authority to the Mayor and City Council to proceed as herein provided.

4.9. The BPW may enter into contracts and agreements with any public or private person, firm, association, corporation or entity both inside and outside the boundaries of the City and the State:

4.9.1. For joint use of property belonging either to the BPW or to the other contracting party or jointly to both parties; and

4.9.2. For the joint acquisition of real and personal property, rights, and franchises, and the joint financing, construction and operation of plants, transmission and distribution lines and other facilities.

4.10. The BPW may enact and adopt such rules and regulations as the BPW deems proper in order to supply utilities or regulate the connection and/or access of public utility services or facilities by owners or lessees of abutting properties. Such rules and regulations as shall be adopted in conformity with the provisions of this Charter shall be printed and kept in the office of the BPW for distribution to persons or corporations that make application to connect with, lay or repair any public or private utility system as aforesaid.

4.11. The BPW shall fix rates, assessments, and fees for utility systems. Rates shall be competitive, fair, reasonable, compensatory, and with no undue preference or discrimination. Such rates shall be sufficient to provide for conducting and operating the said utility systems and for payment of debt service incurred pursuant to this Charter. The BPW may require reasonable deposits as security for the payment of charges for utility services and may provide for the return of deposits when satisfactory consumer credit has been established.

4.12. All utility rents, fees, rates, or assessments laid, imposed or assessed by the BPW for the City remaining unpaid and in arrears for thirty (30) days after they become due, shall be and constitute a lien of five (5) years upon the premises (whether leasehold rights or fee simple title in real estate) to which the utility facilities were connected, or, in the case of front-footage assessments, upon the properties subject to such assessments as hereinafter provided, and all such liens shall have preference and priority to all liens of recognizance, mortgage and judgment on such premises, created or suffered by said owner, although such other lien or liens shall be of a date prior to the time of the attaching of such lien for utility rents, fees and assessments. In case of the sale under execution process of any lands and premises or leasehold interests upon which such liens for utility rent, fees, rates, and assessments shall exist, such lien shall be transferred to the fund arising from such sale in the hands of the officer making the same and the said real estate or leasehold interest so sold shall be discharged therefrom.

4.12.1. The lien of any assessment for repayment of long term debt shall remain a lien for a period of as long as the term of the underlying debt and no longer, dating from the expiration of thirty (30) days after the date on which said assessment becomes due and payable.

4.12.2. The BPW shall have the authority to require any or all premises within the corporate limits of the City or Service Area, to be and to remain connected to the municipal utility systems. In any instance in which the owner has refused or failed to make the connection within one hundred twenty (120) days after formal notice from the BPW ordering the property to be connected, the BPW shall have the authority to cause the said connection or connections to be made and to assess all of the expense thereof upon the premises in question. All such costs for tapping fees and

connection shall be and constitute a lien upon the premises, dating from the date on which the said work was completed, the lien to be and to endure in accordance with the terms of the provisions applicable to sewer rents, fees, and rates.

4.12.3 Liens on real property for the non-payment of utility rents, fees, rates, assessment charges or any other charge, or fee imposed pursuant to this Section may be recorded in the Office of the Recorder of Deeds, in and for Sussex County, in the following manner. A certificate signed by the President of the BPW attested by the General Manager of the BPW and under the seal of the BPW shall be prepared, containing therein the name of the owner or lessee of the real property and the last known post office address of the said owner or lessee, a description of the property subject to the lien sufficient to identify it, an itemization of the fees or charges constituting the lien, the amount of the fees or charges in arrears and the year or years for which the fees or charges were levied, the date from which interest is to be calculated, and the date when an itemized bill of such fees or charges was sent to the said property owner or lessee. The certificate, when completed, as aforesaid, shall be recorded in the Office of the Recorder of Deeds, in and for Sussex County in the Mortgage Records of the said County and shall be properly indexed by the Recorder. If the said Certificate is recorded, the amount of any fees or charges together with any interest or penalty shall be collected by foreclosure of the lien in the same manner and by the same procedure and subject to the same Rules of the Superior Court relating to pleading and practice as are provided for the foreclosure of a mortgage on real property, or, in the alternative, the BPW may use the monition method used for collection of such rents, fees, rates, assessment or other charge as established for Sussex County and authority is hereby established for it to do so and with the same costs and charges, together with a collection charge not to exceed five per centum (5%) of the amount of the lien with interest.

4.13. All revenues from utilities shall be directed to the provision of utility services and not applied to the general fund of the City, unless the transfer of revenues constitutes a payment of a fixed rental or in lieu of franchise fees or taxes. Any shared BPW/City funds or services shall be accounted for directly and explicitly.

4.14. Borrowing.

4.14.1. Subject to applicable State laws and the City's Charter, the BPW may authorize the issuance and sale of revenue bonds or other types of indebtedness necessary to finance the acquisition, construction, and improvements for the utility systems and facilities including facilities owned or operated jointly with others.

4.14.1.1. The Board shall have the authority to borrow money and issue bonds or certificates of indebtedness and to secure the payment thereof by pledging the revenues derived from the operation of any project for which bonds are issued pursuant to this Section. The Board shall obtain the prior consent of the Mayor and City Council for such borrowing.

4.14.1.2. The funds derived from the sale of bonds issued pursuant to this Section may be used for the acquisition, construction, reconstruction, repair, alteration, improvement, extension, financing or refinancing of any utility system and equipment therefor, including transaction costs, redemption premium, interest during construction and working capital for the project, provided that the issuance of such bonds pursuant to this Section shall not constitute a debt of the City nor a pledge of its credit or taxing power and the bonds shall contain on the face thereof a statement to the following effect.

'Neither the faith and credit nor the taxing power of the City of Lewes is pledged to the payment of the principal of, premium, if any, or interest on this bond, nor is the City of Lewes in any manner obligated to make any appropriation for payment thereof.'

4.14.1.3. All bonds issued pursuant to this Section shall be deemed to be legal investments by any bank, trust company, insurance company, executor, administrator, curator, trustee or any other fiduciary.

4.14.1.4. The interest on any bonds issued pursuant to this Section shall be exempt from all taxation by the State of Delaware or by any political subdivision or agency thereof.

4.14.1.5. The bonded indebtedness to be issued pursuant to this Section shall not at any time exceed in the aggregate the total sum of two (2) times the net assets of the BPW, and the indebtedness created by any

bonds issued pursuant to this Section shall not be used in computing the maximum bonded indebtedness which may be created by the City pursuant to its Charter, nor shall the City be required to levy taxes to pay the principal of or interest on any bonds issued pursuant to this section.

4.14.1.6. The bonds to be issued pursuant to this Section shall be authorized by resolution of the Board which shall determine that the issuance of such bonds shall be in the best interest of the BPW. The bond shall bear such date or dates, mature at such time or times not exceeding forty (40) years from their respective dates, bear interest at a rate or rates per annum, be in such denominations, be in such form either coupon or registered, carry such registration privileges, be executed in such manner, be payable in lawful money of the United States of America, at such place or places and be subject to such terms of redemption, as such resolution or resolutions may provide. Bonds of the BPW issued by the Board pursuant to the provisions of this Section may be sold at either public or private sale at such place and interest rates as may be determined by the Board.

4.14.1.7. Any resolution or resolutions authorizing any bonds or securing any issue of bonds may contain provisions which shall be part of a contract with the holders of the bonds thereby authorized as to any matter relating to the repayment of the bonds, the security therefor, the operation of the project and any other matter or course of conduct that affect the foregoing.

4.14.1.8. Neither the Board nor any person executing the bonds or other obligations shall be personally liable on the bonds or other obligations or be subject to any personal liability or accountability by reason of the issuance thereof.

4.14.1.9. In the discretion of the Board, the bonds may be secured by a trust indenture by and between the Board and a corporate trustee which may be any trust company or bank having the powers of a trust company. Such trust indenture may contain such provisions for protecting and enforcing the rights and remedies of the bondholders as may be determined by the Board.

4.14.2. The BPW shall have the power to borrow temporarily from time to time on the anticipated revenues of the BPW in order to provide for the expenses of maintenance, replacement and operation of the utility systems. Such sum or sums shall not exceed the average revenue of the BPW for the preceding twelve (12) month period in any one (1) fiscal year, when, in the opinion of a majority of the Board, the needs of the BPW demand it. The Board may secure said sum or sums of money so borrowed by promissory notes of the BPW and attested by the Secretary, either with or without the seal of the BPW affixed as is requested by the bank or person advancing the money on said notes, and no officer or Director shall be personally liable for the payment of such notes because they are signed by them as officers of the BPW and are authorized by resolution of the Board; provided, however that any sum of money borrowed on the faith and credit of the BPW, as aforesaid, in any fiscal year shall be paid out of the revenue of the BPW, at the minimum rate of ten percent (10%) per fiscal year and shall be completely paid at the end of ten (10) fiscal years following the first fiscal year which said money was borrowed with interest thereon.

4.14.3. Use of general obligation bonds shall require approval by the Mayor and City Council and shall be subject to the procedures of the City's charter.

4.15. The BPW may authorize reasonable expenditures to acquaint the public with the policies, operations, programs and plans of the BPW.

4.16. The BPW may invest surplus funds of the BPW in securities that are safe and authorized pursuant to the BPW's investment policies and by Board resolution.

4.17. The BPW, in addition to the reports and accounting it may otherwise be required by law to make, shall forward to the Mayor and City Council its annual financial report which shall include a balance sheet and a statement of operations, showing the financial condition of the BPW, prepared according to generally accepted public utility accounting principles. The funds and accounts of the BPW shall be audited annually by a certified public accountant, and shall be open to public inspection. The BPW

shall also annually prepare a budget forecast for the next fiscal year and furnish a copy to the Mayor and City Council. The fiscal year of the BPW shall be the same as that of the City.

4.18. While the Board must retain certain powers to itself, i.e. budget approval, rate setting and long-term indebtedness, it may from time to time delegate in writing other powers to officers or employees responsible to it, as necessary.

4.19. It shall be unlawful for the BPW to make or enter into any contract in excess of the amount established by State law, City charter or ordinance for materials, supplies, work or labor for the benefit and use of the BPW with any Director of the Board, member of City Council or the Mayor or with any partnership in which any Director of the Board, member of City Council or the Mayor is a general partner or with any corporation in which any Director of the Board, member of City Council or the Mayor is a director or controlling stockholder or with any firm or company which any Director of the Board, member of City Council or the Mayor is pecuniarily interested, provided that if all the disinterested Directors of the Board shall vote to enter into such contract, then the Board may enter into such a contract. Any such contract executed without such unanimous vote shall be absolutely null and void.

4.20. The BPW is hereby authorized and permitted to supply utility services of any utility system to those properties which are located within two (2) miles of the corporate limits of the City as presently constituted or hereafter extended under such terms and conditions as the Board shall deem proper. The Board is hereby authorized and permitted to enact and adopt such rules and regulations as the said Board may deem proper in order to supply said utility services.

4.21. Any property, real or personal, tangible or intangible, purchased with funds of the BPW shall be titled in the name of the BPW and, for real property, shall also be titled jointly with the City.

SECTION 5—ENFORCEMENT.

The BPW is authorized to provide for penalties for violations of its rules and regulations, not exceeding One Thousand Dollars (\$1,000.00) per violation for each day of violation, as well as the BPW's costs and expenses, including its reasonable attorney's fees, which penalties may be imposed and collected by the BPW administratively or in a court of competent jurisdiction, and to provide that such fine or penalty may be applied to each and every violation for each and every day of violation. However, before such penalty may be imposed administratively, there shall be notice and an opportunity to be heard afforded the alleged violator. Such procedures shall be adopted as rules and regulations of the BPW.

SECTION 6—ADMINISTRATION.

6.1. The Board is authorized to appoint a general manager and regulate his or her duties, and shall provide for such other employees as may from time to time be necessary

6.2. The Board is authorized to engage the services of agents and servants as the said Board may deem proper and necessary for the work herein devolved upon it.

SECTION 7—INDEMNIFICATION.

7.1. Indemnification; Defense to be Provided. The BPW shall indemnify, from the general funds of its treasury, to the extent not otherwise covered by the appropriate insurance, any person who is a party to or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigate (other than an action by or in the right of the BPW itself), by reason of the fact that he or she is or was a Director or other duly elected or appointed Board official or arising out of actions taken by each or any of them in connection with the performance of their official duties, against expenses (including attorney's fees), judgments, fines, and amounts paid in settlement, actually and reasonably incurred by him or her in connection with such actions, suit or proceeding, if he or she acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the BPW, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his or her conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction or upon a plea of *nolo contendere* or its equivalent shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he or she reasonably believed to be in or not opposed to the best interests of the Board of Public Works and, with respect to any criminal action or proceeding, had reasonable cause to believe that his or her conduct was unlawful.

7.2. Monetary Settlement To Be Approved. In the event of a monetary settlement, the Board shall first approve the amount and terms of the settlement before the right to indemnification shall vest.

7.3. Determination of Board. Indemnification, as provided in this chapter, shall be made by the Board only as authorized in the specific case upon a determination that indemnification of the BPW and/or officer or official is proper in the circumstances because he or she met the applicable standards of conduct set forth above. Such determination shall be made:

7.3.1. By a majority vote of a quorum of the Board consisting of the Directors who were not parties to such action, suit or proceeding; or

7.3.2. If such a quorum is not obtainable, by independent legal counsel in a written opinion.

SECTION 8—ACTIONS OR SUITS.

No action, suit or proceeding shall be brought or maintained against the City on behalf of the BPW for damages, either compensatory or punitive, on account of any physical injury or injuries, death or injury to property by reason of the negligence, simple, gross, willful or wanton conduct of the said Board, or any of its divisions, officers, agents, servants or employees thereof, unless the person by or on behalf of whom such claim or demand is asserted, within one (1) year from the happening of said injury or the suffering of such damages shall notify the President of the Board and the Mayor of the City in writing of the time, place, cause, character and extent of the injury sustained, so enrolled or damages suffered. Such notice shall be directed to the President of the Board and the Mayor of the City by certified mail with return receipt requested and postage prepaid.

SECTION 9—SURVIVAL OF POWER AND VALIDATING SECTION.

9.1. This Charter shall operate to amend, revise and consolidate an Act, entitled: An Act To Authorize the Commissioners of Lewes to Appoint a Board of Public Works for the Town of Lewes Which Shall Establish, Control And Regulate an Electric Light Plant, Water Works And a Sewer System For Said Town; Prescribing the Powers and Duties of Said Board of Public Works and Providing For The Election Of Their Successors” being Chapter 196, Volume 22, Laws of Delaware, and the various amendments and supplements thereto, and to repeal all such parts of said Act and its amendments and supplements as are manifestly inconsistent with the provisions of this Charter.

9.2. All powers conferred upon or vested in the Board of Public Works of the Commissioners of Lewes by any Act of Law of the State of Delaware not in conflict with the provisions of this charter are hereby expressly conferred upon and vested in the Board of Public Works of the City precisely as if each of the said powers was expressly repeated in this Charter. All resolutions and regulations adopted by the Board of Public Works and in force at the time of the approval of this Charter shall continue in full force and effect until the same or any of them shall be repealed, modified or altered by the Board of Public Works under the provisions of this Charter; all the acts and doings of the Board of Public Works or any officers or employees of the Board of Public Works, lawfully done or performed under the provisions of any law of this state or of any ordinance of the City or any rule or regulation of the said Board of Public Works, prior to the approval of this Charter, are hereby ratified and confirmed.

9.3. All debts due from the BPW shall be deemed due and the same shall remain unimpaired until paid; and the power right and authority to collect rents, assessments, and fees imposed under the provisions of this Charter, and the processes which may be employed hereunder, shall be deemed to apply and to extend to all unpaid rents, assessments and fees imposed under the Charter of the Board of Public Works established by the Commissioners of Lewes and all amendments and supplements thereto.

9.4. The bonds given by or on account of any official of the BPW shall not be impaired by or affected by the provisions of this Charter, but the BPW shall succeed to the benefits of said bonds.

9.5. All valid rules and regulations, acts and resolutions heretofore passed relating to or concerning the BPW or authorizing the borrowing of money or relating to the issuance of bonds relating to the payment thereof by the BPW shall be and remain valid and good as heretofore and be unaffected and unimpaired by this Charter.

9.6. The Mayor and City Council shall have no authority to cease to operate, or to sell, lease, abandon, or in any other way dispose of any public utility owned by it, without first holding a public hearing during which the City’s financial advisor shall present a report to the Mayor and City Council concerning the revenue that has been earned by the BPW throughout the

City's ownership and an analysis of the revenues to be lost by the City through the proposed sale of the utility. There shall be two (2) Council votes at least 12 months apart to call a referendum election concerning sale of the utility. The City will hold a referendum election which must be passed by a majority of the voters, qualified as for a Board election, voting at the election, to approve said sale.

9.7. If any part of this Charter shall be held unconstitutional, such holding shall not in any way invalidate the remaining provisions of this Charter. This Charter shall be deemed and known to be a public act.

9.8. Effective Date of this Charter. The Charter shall take effect one hundred and twenty days (120 days) from and after its passage.”.

Approved April 09, 2009

CHAPTER 397
FORMERLY
SENATE BILL NO. 249
AS AMENDED BY
SENATE AMENDMENT NO. 1

AN ACT TO AMEND THE CHARTER OF THE BOARD OF PUBLIC WORKS OF THE CITY OF LEWES, TO EXPAND THE PERIOD OF TIME FOR NOMINATIONS TO THE BOARD OF PUBLIC WORKS AND TO MODIFY THE PROCEDURES FOR THE BOARD TO CEASE TO OPERATE, SELL, LEASE, ABANDON OR DISPOSE OF ANY PUBLIC UTILITY.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Two-thirds of all members elected to each house thereof concurring therein):

WHEREAS, it is deemed desirable that the Charter of the Board of Public Works of The City of Lewes, being Chapter 10, Volume 77, Laws of Delaware, as amended, be amended to clarify certain provisions in the recent reincorporation of the Board of Public Works of the City of Lewes; and

WHEREAS, the present Charter of the Board of Public Works of The City of Lewes was reincorporated in 2009 with an effective date of August 7, 2009; and

WHEREAS, inconsistencies and limitations have become apparent which should be resolved in favor of more flexibility in the election process and for management decisions for the Board of Public Works; and

WHEREAS, the Board of Public Works has determined that the election process, especially the timing for filing of notice of candidacy, should be the same as required by the filing provision for candidates for the Mayor or City Council in the City of Lewes; and

WHEREAS, the BPW and the Mayor and City Council have determined that the requirements imposed by the Charter on the Mayor and City Council prior to ceasing to operate or otherwise selling, leasing or disposing of any utility system owned by the City are exceedingly burdensome and lengthy resulting in the very possible effect of preventing any such action to be taken.

NOW, THEREFORE:

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Two-thirds of all members elected to each house thereof concurring therein):

Section 1. The Charter of the Board of Public Works of the City of Lewes, Volume 77, Chapter 10, Laws of Delaware, as amended, Section 2.4, Filing of Intent to be a Candidate, be and is hereby amended by striking the last sentence thereof and substituting in lieu thereof the following:

“All such notifications of candidacy shall be filed in the office of the General Manager during the regular business hours of the Board of Public Works not earlier than the opening of business on February 1 and prior to 4:30 p.m., prevailing time, on the first Thursday in April.”.

Section 2. The Charter of the Board of Public Works of the City of Lewes, Volume 77, Chapter 10, Laws of Delaware, as amended, Section 9.6, be and is hereby amended by striking it in its entirety and substituting in lieu thereof the following:

“9.6 The Mayor and City Council shall have no authority to cease to operate, or to sell, lease, abandon or in any other way dispose of any public utility owned by it, without a Council vote to call a referendum election concerning sale of the utility. The City will hold a referendum election no sooner than ninety (90) days and within one hundred twenty (120) days which must be passed by a majority of the voters, qualified as for a Board election, voting at the election, to approve said sale.”.

Approved July 15, 2010

Exhibit B

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF DELAWARE

IN THE MATTER OF THE ESTABLISHMENT)
OF SERVICE TERRITORIES FOR MUNICI-)
PALLY OWNED ELECTRIC UTILITIES OR) PSC REGULATION DOCKET NO. 34
MUNICIPAL ELECTRIC COMPANIES)
FORMED PURSUANT TO 22 DEL. C.)
CHAPTER 13)

ORDER NO. 3641

AND NOW, to-wit, this 20th day of July, A.D. 1993;

WHEREAS, pursuant to the provisions of 26 Del. C. §203B, the Public Service Commission of Delaware ("the Commission") is empowered and required, after notice and hearing, to establish boundaries throughout the State within which all public utilities providing retail electric service shall have both the obligation and the authority to provide exclusive retail electric service;

AND WHEREAS, pursuant to such authorization, and after duly noticed public hearings and upon consideration of the Report of the Hearing Examiner thereon, attached to the original of this Order as Exhibit "A", the Commission has determined to adopt said Report and the recommendations contained therein concerning the establishment of boundaries or service territories of the municipalities identified in said Report within which they shall be authorized and obligated to provide retail electric service; now, therefore,

IT IS ORDERED:

1. That the Commission hereby adopts and incorporates herein the report of the Hearing Examiner, attached hereto as Exhibit "A".

2. Pursuant to the provisions of 26 Del. C. §203B and effective with the date of this Order, the Commission hereby issues the maps, designated in the aforesaid Report as Exhibits 3 through 11, and certifies that these maps depict the retail electric service territories of and for the municipalities identified thereon as recommended in the aforesaid Report of the Hearing Examiner as the same have been modified to include the territory annexed by the City of New Castle on May 11, 1993.

3. That in accordance with the provisions of 26 Del. C. §203B(g), and subject to the provisions of 26 Del. C. §203B(a), and effective with the date of this Order, the public utilities identified on Exhibits 3 through 11 shall henceforth be statutorily authorized and obligated to provide retail public utility electric service to all electric consuming facilities located within the herein assigned and certificated service territories and, except as otherwise provided by law, shall not furnish, make available, render, or extend its retail electric service to a consumer for use in electric consuming facilities located within the certificated territory(ies) of another retail electric supplier. Retail electric service providers, other than municipalities, providing service to customers within the boundaries of municipality as of the date of this Order shall also be authorized

and obligated to continue to provide service to those customers.

4. That no adjustment or modification to the herein assigned exclusive retail electric service territories shall be made except as provided by 26 Del. C. §203B(a) or (f).

5. That the Commission reserves the jurisdiction and authority to enter such further Orders in this matter as may be deemed necessary or proper.

BY ORDER OF THE COMMISSION:

/s/ Nancy M. Norling
Chairman

/s/ Donald D. Phillips
Commissioner

/s/ Robert W. Hartley
Commissioner

Commissioner

Commissioner

ATTEST:

/s/ Robert J. Kennedy, III
Executive Director

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF DELAWARE

IN THE MATTER OF THE ESTABLISHMENT)
OF SERVICE TERRITORIES FOR MUNICI-)
PALLY OWNED ELECTRIC UTILITIES OR) PSC REGULATION DOCKET NO. 34
MUNICIPAL ELECTRIC COMPANIES)
FORMED PURSUANT TO 22 DEL. C.)
CHAPTER 13)

REPORT OF THE HEARING EXAMINER

DATED: MAY 5, 1993

G. ARTHUR PADMORE
Hearing Examiner

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BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF DELAWARE

IN THE MATTER OF THE ESTABLISHMENT)
OF SERVICE TERRITORIES FOR MUNICI-)
PALLY OWNED ELECTRIC UTILITIES OR) PSC REGULATION DOCKET NO. 34
MUNICIPAL ELECTRIC COMPANIES)
FORMED PURSUANT TO 22 DEL. C.)
CHAPTER 13)

REPORT OF THE HEARING EXAMINER

I. BACKGROUND

1. On July 2, 1992, the Governor signed into law Senate Bill ("S.B.") No. 423, which was enacted by the Delaware General Assembly on June 16, 1992. This legislation authorizes and directs the Commission, after notice and hearing, to establish service territories within which all public utilities that provide retail electric service within the State of Delaware shall have the obligation and authority to serve.

2. By Order No. 3442 dated August 4, 1992, the Commission established this rulemaking proceeding to implement the legislative directive. By the same Order, the Commission designated this Hearing Examiner to convene forthwith a prehearing conference in this matter in order to determine a procedure for the conduct of subsequent public evidentiary hearings.

3. Pursuant to the Commission's Order, a prehearing conference

was conducted in the Commission's Dover office on August 26, 1992.

At the prehearing conference, proposed guidelines for the mapping process were approved, and a subsequent prehearing conference/status review was scheduled to be conducted on November 20, 1992.

4. In addition, at the August 26, 1992 conference, representatives of the City of Seaford and the Town of Smyrna raised an issue concerning the effect of S.B. No. 423 on provisions of their respective charters which authorize these municipalities to serve up to one-half mile outside their municipal boundaries. Counsel for Delmarva Power and Light Company ("Delmarva") took the position that S.B. No. 423 superseded the charter provisions. (Tr. at 26.) In order to afford all interested participants an opportunity to fully address this issue, the Hearing Examiner established a briefing schedule.

5. By letter dated September 3, 1992, Smyrna conceded that S.B. No. 423 overrode the provision of its charter concerning electric service outside its municipal boundaries. Seaford filed Initial and Reply Briefs; and Delmarva and Delaware Electric Cooperative, Inc. ("DEC") filed Answering Briefs. No other participant filed any brief.

6. Seaford argued essentially that for purposes of establishing its service territory, the Commission must consider as part of Seaford's mapped service territory all of its actual statutory existing service territory, *i.e.*, the area that lies within its existing municipal boundary plus an additional one-half mile

extra-boundary area as provided by the Seaford charter. Delmarva and DEC contended that Seaford's claims to the one-half mile service territory should be rejected because the Seaford charter does not obligate it to serve everyone within one-half mile of its borders and because such an obligation is essential to the concept of service territory under Delaware law. After considering the briefs, the Hearing Examiner rejected the Seaford position and concluded:

"[A]s a matter of law and for purposes of this proceeding, a service territory is defined as the area within which all electric utilities in Delaware shall have the obligation and authority to provide retail electric service. Thus, in this proceeding, the primary factor in determining municipal service territories will be the municipal boundaries as well as the locations of the customers beyond such boundaries to whom any municipal utility is lawfully providing retail electric service." Hearing Examiner's Determination on the Preliminary Issue of the Effect of 26 Del. C. §203B (Senate Bill No. 423) on Municipal Charters Granting Electric Service Territories at 9 (November 9, 1992).

7. At the November 20, 1992 prehearing conference, Seaford accepted the Hearing Examiner's ruling. (Tr. at 7)¹ Delmarva representative Elmer Short reported that proposed boundary lines had been established for and agreed to by Newark, Lewes, Milford, Smyrna, Clayton, Middletown, and New Castle. (Id. at 5-6.)¹ In

¹See also, Letter to the Hearing Examiner, dated November 13, 1992, from Delmarva Counsel Inskip.

addition, Mr. Short reported that maps depicting proposed boundary lines for Dover have been completed and have been presented to municipal authorities for review. (Id. at 6.) Moreover, Mr. Short stated that he would forthwith commence preparing maps depicting proposed boundary lines for Seaford and would present these maps to Seaford authorities for review. (Id.)

8. In accordance with the procedural schedule established at the November 20, 1992 conference, on February 19, 1993, Mr. Short submitted maps depicting proposed boundary lines for all municipally owned and operated public utilities providing retail electric service in Delaware. A duly publicized (Exh. 1) public hearing was conducted on the morning of March 19, 1993 in the Commission's Dover office with the following persons in attendance:

Representing the Delaware Public Service Commission, Ann Massey Badmus, Esquire, and Malak

S. Michael, the Commission's Administrative Engineer;

Representing Delmarva Power & Light Company, Gregory A. Inskip, Esquire and Elmer T. Short,

Manager, Resale Services;

Representing Delaware Electric Cooperative, Inc., John Terence Jaywork, Esquire and Wayne W.

Johnson, Assistant General Manager;

Representing the City of Dover, William W. Pepper, Esquire, Deputy City Solicitor, and Denise D.

Johnson, Transmission and Distribution Engineer, Dover Electric Company;

Representing the City of Newark, Thomas G. Hughes, Esquire, City Solicitor, and Patrick E.

McCullar, City of Newark Finance Department; and

Representing Eagle Group - Metal Masters ("Metal Masters"), Michael J. Malkiewicz, Esquire.²

² The Public Advocate attended the August 26, 1992 prehearing conference but did not otherwise participate in this docket. Representatives of the Town of Smyrna and City of Seaford attended both prehearing conferences but neither attended nor participated in the March 19, 1993 public hearing. Although notified in writing, Clayton, Lewes, Middletown, Milford, and New Castle did not attend nor actively participate in the prehearing conferences or the public

Members of the public present: Mr. Edwin Bauer and Mr. Charles Sears, both of whom made brief comments for the record.³

9. Mr. Short described for the record the packets of maps he had submitted in the February 19, 1993 filing. (Tr. at 15-17.) He testified that these maps depict the proposed boundary lines for all municipally owned and operated utilities providing retail electric service within the State of Delaware.⁴ (Id.)

10. In addition, at the March 19 hearing, Counsel for Metal Masters presented oral and written comments (Exh. 2) requesting that the proposed boundary lines for the service territory of the Town of Smyrna be amended so as to remove the Metal Masters plant, located near Smyrna, from Smyrna's proposed service territory and designate it as within territory served by Delmarva.

11. At the conclusion of the public hearing, the record consisted of 11 exhibits and a 91-page *verbatim* transcript of the prehearing conferences and the March 19, 1993 hearing. In view of the issue raised by Metal Masters, all participants were afforded an opportunity to file responsive comments to the material filed by Metal Masters. The City of Dover and the Town of Smyrna filed such comments, recommending that the Commission deny Metal Masters' request.⁵ I have considered the entire record of this rulemaking proceeding. Based thereon, I submit this Report with recommendations for the Commission's consideration.

II. THE METAL MASTERS ISSUE

12. As previously noted, Metal Masters is requesting the hearing even though their service territories will be determined by this proceeding.

³These comments are fully set forth in the transcript at pages 33-38.

⁴These maps have been entered into the record as Exhibits 3 through 11.

⁵These submissions are cited, respectively, as "(Dover at ___)" and "(Smyrna at ___)".

Commission to designate its plant, located near Smyrna, as part of Delmarva's service territory. (Tr. at 31-32.) Metal Masters contends that its request is reasonable and is supported by the provisions of 26 Del. C. §203B. (Exh. 2 at 1.)

13. First, Metal Masters asserts that "[o]bviously, [Delmarva] was the first to furnish retail service to the area where the plant is located because without [Delmarva] being present . . . there would be no electricity running to the Town of Smyrna, which then resells the electricity it purchases from Delmarva." (Id.) Thus, according to Metal Masters, under the provisions of 26 Del. C. §203B(b)(2), the Commission should take this factor into consideration and allow Delmarva to provide service to Metal Masters.

14. Second, Metal Masters argues that under 26 Del. C. §203B(b)(3), the Commission must consider which utility can "install and/or upgrade its facilities to furnish service to the plant with the smaller amount of additional investment." (Id.) Metal Masters asserts that Delmarva could provide service to its plant with "very little, if any additional investment." (Id.) Furthermore, Metal Masters contends, the Commission must also consider which utility is demonstrably able to provide adequate and reliable to the area where the Metal Masters plant is located. Metal Masters points to the fact that since Smyrna is a reseller of Delmarva's electric service, it follows that the "adequacy and reliability [of Delmarva's service] cannot be questioned." (Exh. 2 at 2.)

15. In addition, Metal Masters argues that 26 Del. C. §203B(d) is not applicable to the issue now under consideration. (Id. at 3; Tr. at 25-26, 28.) Subsection (d) provides:

"In establishing service territory boundaries under this section, the Commission shall provide that any customer which, as of the date such boundaries are set, was receiving retail electric service from a public utility other than the public utility within whose service territory such customer is located, shall continue to receive such service from the same public utility unless both public utilities agree that service shall be provided by the public utility to whom that service territory has been allocated."

Metal Masters also contends that because the Delaware General Assembly did not amend subsection (d) to include language specifically referring to a "municipal electric utility" or a "municipal electric company", that subsection can be interpreted to apply only to situations involving electric service from an investor-owned, Commission-regulated public utility. (Exh. 2 at 3.) Moreover, Metal Masters argues, it is unreasonable to conclude that the General Assembly intended to authorize municipally owned or operated utilities, such as Smyrna, "to be able to demand that a company such as [Metal Masters] be part of its electric service territory." (Id.)

Thus, Metal Masters suggests, the Commission is empowered, under 26 Del. C. §203B, to direct that Metal Masters be reassigned to the

Delmarva service territory. (See discussion, Tr. at 27-28.)

16. As previously noted, Dover and Smyrna filed comments contending that the Metal Masters request should be denied.

17. I have reviewed the record of this proceeding, and based thereon, I make the following findings of fact and conclusions of law:

- a) The Commission has jurisdiction over this matter. 22 Del. C. §1309; 26 Del. C. §§202(a), 203B.
- b) Metal Masters owns and operates a manufacturing facility, located outside the municipal boundaries of the Town of Smyrna. (Exh. 2 at 2.)
- c) That as of July 1, 1992, the electric utility operated by the Town of Smyrna had distribution facilities in nearest proximity to the Metal Masters facility. (Letter dated March 30, 1993 from Mr. Malkiewicz to the Hearing Examiner.)
- d) That the electric utility operated by the Town of Smyrna currently provides, and for at least the past 14 years has provided, retail electric service to the Metal Masters facility. (Exh. 2 at 2; Tr. at 23.)
- e) That there is no need to install additional facilities and/or upgrade existing facilities to furnish service to the Metal Masters plant. (Exh. 2 at 2.)
- f) That there has been no demonstration that the Smyrna utility

located outside currently existing municipal boundaries; and (c) descriptions of legal boundaries of the municipalities to the extent such descriptions were available. (Tr. at 15-16.)

21. Other than the issue raised by Metal Masters, no objections have been entered by Staff, any other customer or entity concerning establishment of the proposed service territories for municipal utilities. The maps submitted appear to be in good order and, as evidenced by the Certificates of Concurrence, are acceptable to all municipal participants in this proceeding. Moreover, Staff Administrative Engineer Michael testified that he has inspected the maps and finds them to be acceptable. (Tr. at 17.) In addition, there is nothing in this record that would suggest that any aspect of Regulation Docket No. 19 has been invalidated. Thus, it would appear that the requirements of §203B(b) have been fully met. Based upon the foregoing, I find and recommend that it would be appropriate and in the public interest for the Commission to formally establish as the exclusive service territories of the municipal electric utilities the areas depicted on the maps, marked Exhibits 3 through 11, in accordance with the boundary lines drawn on the aforesaid maps and shown in more particularity on the detail maps which form part of those exhibits.ⁱⁱ

IV. RECOMMENDATIONS

22. In summary, for the reasons set forth above, I propose and recommend the following to the Commission:

- a) That the Commission deny the request of Metal Masters to reassign it to Delmarva's service territory;
- b) That pursuant to 26 Del. C. §203B, the Commission formally establish as the exclusive service territories of the municipal electric utilities the areas depicted on the maps, marked Exhibits 3 through 11, in accordance with the boundary lines drawn on the aforesaid maps and shown with more particularity on the detail maps which form part of these exhibits.

23. A proposed form of Order which will effect the foregoing recommendations is attached for the Commission's consideration.

Respectfully submitted,

/s/ G. Arthur Padmore
G. Arthur Padmore
Hearing Examiner

Dated: May 5, 1993

Exhibit C



**BAIRD
MANDALAS
BROCKSTEDT**

Glenn C. Mandalas
Dover Office
glenn@bmbde.com
www.bmbde.com

October 27, 2016

PRIVILEGED AND CONFIDENTIAL

Board of Directors
Lewes Board of Public Works
107 Franklin Ave.
Lewes, Delaware 19958

RE: Legal Review of BR 13-004

Dear members of the Board and General Manager Gordon:

The City of Lewes Board of Public Works ("BPW") previously adopted a "Policy on providing Board of Public Works utility services outside the Lewes city limits," and last revised this policy on December 4, 2013 by Board Resolution 13-004. This policy requires, in part, that, "[t]he property owner of the premises to be served by the Board of Public Works shall sign an agreement with the City of Lewes, prior to the start of construction, which provides for annexation to the City upon request by the City."¹ It also requires the property owner to bear the cost of constructing the infrastructure required for utility service and to ensure that the infrastructure is constructed to BPW specifications.

This memorandum provides a legal review of the policy adopted by Board Resolution 13-004.

Municipal Water Service

The BPW has been authorized to provide water and sewer service to its citizens since the early twentieth century and to areas outside of the City's corporate limits since at least 1963.² Municipal utilities are not regulated by the Public Service Commission like other public utilities in the state.³ They are, however, still required to obtain a Certificate of Public Convenience and Necessity ("CPCN") before providing utility service to an area outside of the municipal corporate limits.⁴

When granted, a CPCN affords the BPW an exclusive franchise to provide water service to the area at issue. In order to obtain this CPCN, the BPW has to establish that it is **willing and able** to provide safe, adequate, and reliable water service to existing customers.⁵

¹ See BPW Board Resolution 13-004, Exhibit A (adopted August 22, 2012 and revised December 4, 2013).

² See 22 Del. Laws ch 196; 54 Del. Laws ch. 211 (1963); and Charter of the Board of Public Works.

³ See 26 Del. C. § 202.

⁴ See 26 Del. C. § 203.

⁵ See 26 Del. C. § 203(C)(f).

City of Lewes BPW Policy on Providing Water Services Outside of Lewes City Limits

The Delaware Supreme Court has previously held that where a municipal utility supplies water service to an area located outside of its corporate limits, it is operating in a proprietary capacity and, as a result, cannot discriminate among its customers.⁶ While a municipal utility may not discriminate among its customers, it may impose reasonable conditions on service for “utility-related” reasons.⁷

This BPW policy on providing utility services outside of the Lewes city limits has historically been enforced through the execution of an Annexation and Utility Service Agreement. Through this Annexation and Utility Service Agreement, the parties memorialize their understanding of their individual rights and responsibilities concerning the extension of the BPW’s infrastructure. In addition to outlining construction specifications, this agreement has also historically addressed the method of reimbursing a developer for that portion of the infrastructure utilized by future properties to connect to the BPW system (the “latecomer charge”). It has proven to be an important agreement in that it outlines and clarifies the relationship of the affected parties going forward. This type of agreement has been upheld in other jurisdictions as reasonable.

Enforceability of Annexation Condition

There is no question that the BPW has the right to provide water service to areas outside of the City’s corporate limits. Indeed, the BPW essentially has an exclusive franchise to provide such service when it holds a CPCN for said area. And because it has this franchise, the BPW is obligated to provide water service to the area in a non-discriminatory manner. The crux of the concern, however, is whether the BPW may uniformly condition water service outside of the City’s corporate limits on an agreement to annex the subject property at some future date.

To be clear, the BPW certainly has the authority to impose conditions on its utility service to areas outside of the City’s corporate limits.⁸ The issue, therefore, is not *whether* the BPW may impose conditions, but instead *what* conditions may the BPW impose and *when* in the process of expanding service the conditions may be imposed, i.e. whether or not a CPCN has been granted for the area in which the BPW seeks to provide service.

In *Delmarva Enterprises, Inc. v. Mayor and City Council of the City of Dover*, an owner of property located outside of the Dover city limits sought an order compelling the city to furnish water and sewer service.⁹ The City of Dover argued that it would only extend water and sewer

⁶ *Delmarva Enterprises, Inc. v. Mayor and Council of the City of Dover*, 282 A.2d 601, 602 (Del. 1971).

⁷ *See Town of Rocky Mount v. Wenco of Danville, Inc.*, 506 S.E.2d 17, 20 (Va. 1998).

⁸ *See* Charter of the Lewes Board of Public Works at § 4.20; *see generally*, Charter of the City of Lewes at § 3(m).

⁹ 282 A.2d 601 (Del. 1971).

service to property annexed to the City.¹⁰ The City further maintained that it was not obligated to provide such service and, as a result, that it could rely on the terms, charges, and conditions established for such service and authorized by its charter.¹¹ The Delaware Supreme Court disagreed.

The Court held that, “[a]s a public utility, the City [of Dover] is subject to the same requirements of the law as a private utility[; and] [o]ne of the prime requirements laid on a public utility is that in the operation of its existing facilities it shall not discriminate among customers, but shall make its facilities available to all alike.”¹² The Court relied largely on the fact that the City had previously permitted others to tap into the existing lines without being annexed. As a result, the Court concluded that, “[t]o refuse [the property owner’s] request . . . is discriminatory against [the property owner].”¹³ Notably, the Court drew a clear distinction between the case before it and cases compelling the expansion of infrastructure: “[t]he authorities relied on by the City are not on point in this case . . . ; they are cases seeking to compel the extension of a utility line, and not the prevention of a discriminatory refusal to permit tapping.”¹⁴

In *Yakima County Fire Protection District No. 12 v. City of Yakima*, property owners of land outside of the city limits sought to invalidate a city requirement that utility service be conditioned on an agreement to sign any future annexation petition.¹⁵ The *Yakima* court upheld the City’s annexation requirement.¹⁶ However, the Court expressly distinguished its holding on the following crucial fact: “to the extent that the City held itself out as willing to provide service, it made clear that it was willing to do so only if the landowner accepted its future annexation condition.”¹⁷ And materially, this requirement was expressly identified in the agreement that made the City the exclusive utility supplier.¹⁸

In *Town of Rocky Mount v. Wenco of Danville, Inc.*, a property owner of land outside of the Town limits challenged the fees charged by the Town to connect to the system.¹⁹ The Court upheld the fees, but only after it concluded that the Town never entered into an agreement to provide sewer service to a general service area.²⁰ The Court opined that the “holding out” exception that prohibits a municipal corporation from denying service to properties within a prescribed service area except for “utility-related” reasons did not apply because the Town never entered into an agreement to provide service to a prescribed service area.²¹

¹⁰ *Id.* at 602.

¹¹ *Id.*

¹² *Id.*

¹³ *Id.* at 603.

¹⁴ *Id.*

¹⁵ 858 P.2d 245 (Wash. 1993).

¹⁶ *Id.*

¹⁷ *Id.* at 252.

¹⁸ *Id.*

¹⁹ 506 S.E.2d 17 (Va. 1998).

²⁰ *Id.* at 20.

²¹ *Id.*

Given this legal authority, the BPW's ability to legally condition water service for an outside area on said area's agreement to future annexation will largely depend on whether the annexation requirement was known and understood as a requirement of service when the relevant CPCN was issued or was subsequently imposed on property owners already within the geographic area covered by the CPCN. In addition, enforceability will likely depend on whether the annexation requirement has been uniformly applied and enforced. Moreover, the reasonableness of the annexation condition will depend on the policy basis supporting the requirement. These are fact-based questions, such that the result of a court's ultimate analysis is currently difficult to predict.

Effect on City of Lewes and BPW Utility Service

Unfortunately, a decision by the BPW to waive an annexation requirement for one property would likely undermine future application of the annexation requirement. Again, the enforceability of the requirement depends largely on its uniform application. If a waiver were granted such that the requirement would no longer be uniformly applied, future property owners may argue that the BPW is discriminating against customers. Such a waiver would further undermine any legitimate policy basis currently supporting the requirement.

Summary

The enforceability of the annexation condition has not been addressed in Delaware. As a result, it is difficult for me to confidently gauge our chance of success if this issue were litigated. But candidly, there are some difficult hurdles for the City and BPW to clear, not the least of which is the fact that the BPW holds an exclusive franchise to provide service to the relevant areas outside of the City's corporate limits and in turn, also holds a duty to provide service absent a valid "utility-related" reason. Whether annexation is a valid utility-related reason will largely depend on the court's interpretation of the relevant facts.

Respectfully submitted,



Glenn C. Mandalas, Esq.
City Solicitor

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

BOARD OF PUBLIC WORKS)	
OF THE CITY OF LEWES)	
)	
Plaintiff,)	
)	C.A. No.: S19C-07-021 ESB
v.)	
)	
CITY OF LEWES,)	
)	
Defendant.)	

PLAINTIFF’S MOTION FOR SUMMARY JUDGMENT

Plaintiff the Board of Public Works of the City of Lewes (“BPW” or “Plaintiff”), by and through its undersigned counsel, respectfully moves this Court for an order granting summary judgment in Plaintiff’s favor. The grounds for this motion are set forth in Plaintiff’s Opening Brief In Support of its Motion for Summary Judgment, which is submitted contemporaneously herewith.

FOX ROTHSCHILD LLP

Of Counsel:

Michael J. Hoffmann (Bar No. 5349)
TARABICOS GROSSO, LLP
One Corporate Commons
100 W. Commons Blvd., Suite 415
New Castle, DE
Telephone: (302) 757-7811
mike@tarabicosgrosso.com

/s/ Sidney S. Liebesman
Sidney S. Liebesman (Bar No. 3702)
E. Chaney Hall (Bar No. 5491)
Citizens Bank Center
919 N. Market St., Suite 300
Wilmington, DE 19801
Telephone: (302) 654-7444
sliebesman@foxrothschild.com
chall@foxrothschild.com

*Attorneys for Plaintiff the Board of
Public Works of the City of Lewes*

Dated: October 7, 2019