

# Exhibit I

# FUQUA, WILLARD, STEVENS & SCHAB, P.A.

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August 30, 2019

RECEIVED

## Email and Hand Delivery

Drew McKay, Chairman  
City of Lewes Planning Commission  
c/o Mr. Thomas West, City Planner  
City of Lewes  
P.O. Box 227  
114 Third Street  
Lewes, Delaware 19958

LEWES POLICE DEPT.

**RE: Fisher's Cove – Burke & Rutecki  
Preliminary Consent - Supplemental Record**

Dear Chairman McKay and Commissioners:

As counsel to Burke & Rutecki, LLC (the "Applicant"), please accept this letter and attachments as a supplement to the public record. The purpose of this letter is to supplement the record for the Fisher Cove Major Subdivision application to further clarify and rebut, as applicable, information or reports submitted in the record and to testimony provided during the August and June, 2019 public hearings.<sup>1</sup> The Application fully complies with the provisions of the City of Lewes Code of Ordinances (the "Code") § 170-19(E), and, therefore, the Planning Commission should recommend its approval to City Council. Further, as testified to by Jeff Bross, P.E., the proposed development will not exacerbate flooding and will, in fact, have a *positive* impact on drainage. The proposed development will not cause any retention of surface water on neighboring properties.<sup>2</sup>

<sup>1</sup> Part of that information was the AECOM Flood Study which was not available at the June Hearing. In addition, it should be noted that the opposition Counsel, as well as the public, gave testimony in February before the first Public Hearing was scheduled.

<sup>2</sup> See Exhibits A, B and C – Amended Proposed Findings, Karins and Duffield Letters.

### Standard of Review

At the outset, I would like to address a significant question posed by Commissioner Harris at the August 21 public hearing. His important question asked: What is the Commission's standard of review at the Preliminary Consent stage, § 170-19? Although your counsel may certainly advise the Commission on his opinion, since asked, here I will add to my response at the hearing.

To review and at the risk of being patronizing, the Commission's authority stems from Lewes's Charter, which gives Council the authority to regulate land use. Title 22, Chapters 3 and 7 of the Delaware Code give Council the authority to establish a Planning Commission and its function. Council has done so in Chapter 33 of the City of Lewes Code of Ordinances. Chapter 170 of this code, "Subdivisions," sets forth the standard and procedure for subdivision approvals, and where appropriate, Chapter 197 ("Zoning") informs the planning of subdivisions. For Subdivisions, the Commission is a recommending body—that is, their decision shall be a recommendation in the form of a report to Council suggesting what the final decision should be. Specifically, once a preliminary application is complete and public hearings closed, the Commission may recommend to Council approval, approval with conditions, or rejection. In so doing, § 170-19(E)(1–22) requires consideration of 22 factors.

To the extent these 19(E) factors are broad, I believe Commissioner Harris was probing to what extent the Commissioners should delve into the engineering details with regard to storm water and flood plain management. The answer, at the preliminary consent stage, is that Commission's review is *preliminary*. Therefore, speculation about technical information and conclusions, that will and must be gathered and considered after preliminary consent, is misguided, futile, and unfair. This review, however, does require production of a preliminary concept plan. In this case, the application has been prepared and presented by the Applicant's experts, and reviewed by the City's Board of Public Works Department, the City's Engineers, and the Lewes Parks and Recreation Committee.

The preliminary plan may raise issues that call for conditions that the Commission may include in their report to Council. These conditions guide the Applicant in the work to be done to reach final approval. In addition to the detail and responses already provided in this case, more data will be obtained, and more experts will evaluate detailed plans and, ultimately, report back to the Commission after preliminary consent is approved. If rejected by the Commission, the application for preliminary consent will be referred to Council, pursuant to § 170-19(F)(1).

The opposition Counsel offered bold, conclusory assertions about this site and storm water and flooding. This gross speculation from an attorney, not an engineer, about preliminary concept plans was an attempt to frighten the Commission and sow reasonable doubt in the feasibility of this plan. This effort is not the standard by which the Commission should consider a preliminary plan that is a permitted use.

How do we know how much information is to be considered or requested at Preliminary Consent? By what is required by code after approval of preliminary consent. The provisions of § 170-20 require the next submission to contain far greater engineering detail. In addition, this

second stage requires the Applicant to work with the City Engineer and the Public Works Department to develop the plan. A sampling of those requirements is set forth here.<sup>3</sup> By negative implication, since this detailed review is specifically and expressly addressed in the § 170-20 phase, it should not be imposed for Preliminary Consent. In addition, by law the Soil Conservation District, DNREC, FEMA and the Corps of Engineers must collaborate and approve the plans regarding storm water management, flood plains, and certain outfalls. Opposition Counsel said "If the plans are approved, they would be fine with it," but then seems to argue that they should not even be considered for approval by the experts and those responsible by law to do so. Perhaps he and the opposition realize that the Applicant may ultimately achieve full compliance at the proper stage.

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<sup>3</sup> § 170-20 Council approval.

A. Complete application.

(1) Upon receiving preliminary consent from the Planning Commission, the applicant shall arrange for further conferences with the Board of Public Works and City Engineer regarding preparation and submission of a complete major subdivision application which shall include the following:

- (a) Five stamped and sealed sets of subdivision site plans conforming with the plan requirements of this chapter, along with as many additional copies as required by the Building Official, including electronic versions.
- (b) Five stamped and sealed sets of improvement construction plans conforming with the requirements of this chapter, along with as many additional copies as required by the Building Official, including electronic versions.
- (c) Report of applicant's engineer.
- (d) Estimates of cost, including costs to be borne in whole or in part by the City during construction, if any.
- (e) Information required for the preparation of a legal description to the streets and other areas to be dedicated to public use.

B. Subdivision site plan. The subdivision site plan required by this section shall show the nature and extent of all contemplated improvements and lots and shall comply with the following:

- (g) Location and size of existing storm sewers, stormwater management system, watercourses, tax ditch, and drainage flow.
- (q) Tentative location and size of proposed storm sewers, drainage ditches, watercourses or stormwater management system.
- (t) Location of federal floodplains, federal wetlands and/or state wetlands.

C. Improvement construction plan. The improvement construction plan required by this section shall describe the improvements to be constructed and shall include the following:

(2) Sanitary sewers, storm drains and stormwater management system.

- (a) Horizontal plan.
  - [6] Location of all other drainage facilities and utilities.
  - [8] A grading plan showing the disposal of stormwater and surface water.
  - [10] Stormwater Structure Schedule describing the structure designation/name, rim elevation, and connected pipe invert in/invert out elevations.
  - [11] Stormwater Pipe Schedule describing the pipe designation/name, size, length, slope, and material of construction.
- (b) Profiles (sanitary sewers and storm drains).
  - [1] Profile of existing ground surface with elevations at top of manholes or inlets or lift station, if necessary, or flow line, if necessary.
  - [2] Profile of storm drain or sewer, showing size of pipe, grade, casing pipe (if any), manhole or inlet locations, and invert in/invert out elevations at manholes/inlets.

D. City Engineer and Board of Public Works second report. The Board of Public Works and City Engineer shall submit to the Planning Commission a report to inform the Planning Commission of findings and recommendations regarding the complete major subdivision application, including such comments as the Board of Public Works and City Engineer may deem appropriate. The City Engineer and Board of Public Works' report shall include:

- (1) A review with comments of the report of the applicant's engineer, the improvement construction plans, and subdivision site plans.

Occasionally, the final interpretations of how these standards should be interpreted rest with the courts. These opinions are not only helpful in guiding Commissions and councils as they consider subdivision applications should be considered, but establish the law. Specifically the law in *East Lake Partners v. City of Dover Planning Commission*, 655 A.2d 821 (Del. Supr. 1994) has held:

*“The Planning Commission may not reject a site plan for a permitted use on the grounds that the project would adversely affect the general neighborhood. When people purchase land zoned for a specific use, they are entitled to rely on the fact that they can implement that use provided the project complies with all of the specific criteria found in the ordinances and subject to reasonable conditions which the Planning Commission may impose in order to minimize any adverse impact on nearby land owners and residents.”*

*“To hold otherwise would subject a purchaser of land zoned for a specific use to the future whim or caprice of the Commission by clothing it with the ability to impose ad hoc requirements of the use of land not specified elsewhere anywhere in the ordinance. The result would be the imposition of uncertainty on all landowners respecting whether they can safely rely on the permitted uses conferred on their land under the zone ordinance.”*

*“Subdivision regulations must not be too general and must contain known and fixed standards that apply to all similar cases.” East Lake Partners v. City of Dover, Superior Court 1994.*

### The Plan

As a threshold matter, there appeared to be confusion amongst the Commission members towards the end of the August Hearing. It is necessary to clarify the record related to the Application. The plan that is currently before the Commission, first presented at the June hearing, is the plan for which the Applicant is seeking approval. As the record supports and as this letter will further support, that current plan before the Commission is complete and meets all of the standards for approval.

The August rebuttal testimony was intended to respond to concerns first raised in the AECOM report, which was not made available until *after* the June hearing and submission of the Application. The suggestions presented by the Applicant’s engineers at the August hearing illustrate how the Applicant’s final engineering design will meet or exceed all applicable regulations and will have no adverse flooding impact.

The purpose of the engineers’ testimony was to specifically address concerns raised from the opposition as a result of the AECOM report that the project would cause an increased flooding risk and exacerbate existing drainage problems. In response to those concerns, Mr. Bross, from Duffield Associates, Inc., and Mr. Sitaram, from Karins and Associates, identified additional potential options (a Park Road Culvert Improvement option and a Canal Outfall

option) which could be made during the final approval process. During the August hearing, Mr. Sitaram submitted a supplemental concept plan<sup>4</sup> illustrating these options, and both Messrs. Sitaram and Bross testified as to the options' efficacy. Mr. Bross has extensive experience in flood plain management, and was retained specifically to address the storm water and flood plain management aspects of the plan as a result of the AECOM report. The Applicant should not be penalized and subject to further delay because it is responding with potential solutions.

In short, the plan is complete and more than ready to enter the next phases of consideration.

### Flood Plain Management and Storm Water Drainage

The City Engineer and Staff have confirmed that the application is complete and subject to further review after preliminary consent approval. In fact, after reviewing the Applicant's plan, the City Engineer reported on May 10th that:

*3.a. All building lots (1-18) are suitable for subdivision as requested. The applicant's engineer's changes to the plans have ensured that all developments, lots, and properties are provided with a drainage system that is adequate to prevent undue retention of surface water on the site.*

In addition, the City's June 4th Staff Report maintains that:

#### *B. Sedimentation and Storm water Management*

*A detailed sediment and storm water plan will be required prior to any land disturbing activity taking place on the site. The plan review and approval as well as construction inspection will be coordinated through the Sussex Conservation District.*

*The most recent designs, as shown on the Conceptual Grading Plan, provide the basis for information required by the City Code in terms of identifying storm water management approach, however further evaluations of the systems are required to ensure they meet minimum standards and capable of controlling runoff and minimizing the potential for flooding. Those determinations ultimately require submittal of detailed grading and system designs, and review/approval by the Sussex County Conservation District or an authorized engineer acting in that capacity, an evaluation currently required as part on the Final Plan and Improvements Construction phase of the review process.*

#### *C. Flooding*

*[T]he Final Plan will need to demonstrate compliance with current City floodplain regulations and permits for development will need to be met for construction of residential structures within the flood plain...*

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<sup>4</sup> Exhibit D.

In an effort to further supplement the record, attached as Exhibit A is a letter from Mr. Bross, and attached as Exhibit B is a letter from Mr. Sitaram, both of which address many of the concerns raised by the opposition and further explain and clarify why the plan meets the standards for preliminary consent. In addition to explaining why the preliminary consent standards are met, the letters further identify certain design improvements which may be included in the final design, which could further alleviate flooding and drainage concerns. It is also important to note that DNREC, SCD, and FEMA approvals are all a condition of final approval for this plan and those approvals will be obtained by the applicant after preliminary consent.

In reference to the Planning Director's suggestion that SCD consider a preliminary review, the opposition and even Mr. Panetta specifically commented on the fact that the Applicant has not yet sought SCD approval for the Application, with Mr. Panetta rhetorically asking why the Applicant was resistant to seeking such approvals. To directly answer this question, the Applicant has not sought such approvals because that process occurs after the preliminary consent stage. No other applicant, to our knowledge, has been required to seek SCD approval prior to preliminary consent. In fact, on February 28, shortly after the Commission's February meeting on the Application, City Officials met with SCD staff to discuss the Application. Neither the Applicant, its engineers, nor its attorneys were notified of the meeting or invited to participate. On April 1st, Commissioner Panetta suggested in an email that the City should "influence" the SCD's review of the Application. Then, on April 8th, in an email to the Chair, City Manager Tom West states that "there seems to be a lot of strategizing to delay preliminary consent until [SWM info] is available." In short, in addition to the site visit and the AECOM report, this Applicant seems to be subject to unusual scrutiny at the preliminary consent stage.

The Applicant takes flooding and drainage concerns seriously and has hired, at significant expense, a storm water and flooding expert in Mr. Bross to specifically address any potential issues. It is important to note that other agencies also consider flooding and storm water a serious issue and, in connection with those concerns, legislative bodies have promulgated laws and regulations and created agencies to protect the public and the environment. Notwithstanding these laws and agencies, the opposition would urge this Application be denied because of flooding and drainage concerns. The Applicant's experts completely rebutted and addressed these concerns at the August hearing. What the opposition is encouraging the Commission to do is to ignore the law and to instead apply an amorphous standard which they have not yet clearly articulated. If the Commission were to make such a decision, it would be abrogating its duty as an administrative board, and would be creating *ad hoc* legislative standards for the Applicant, beyond the actual laws.

### Rodney Street

As I discussed in the August Hearing, Rodney Avenue is a deeded public right of way (1947, Book 371 Page 308) "to be used as a public street or highway." The Code encourages, if not requires, the use of streets such as Rodney Avenue for the future development of interior parcels. Section 170-27(a)(3) provides that "*Stub streets will be located or easements will be*

*granted so as to permit the future development of interior parcels.” Section 170-60 defines streets as “furnishing access to abutting properties and space for sewers and public utilities.”*

Further, it is important to note that the property subject to this Application is landlocked. There is an adjacent property under common ownership which separates the Fishers Cove parcel from Pilottown Road, but the existence of that separate tax parcel does not change the fact that Fishers Cove is landlocked. *Judge v. City of Rehoboth* (Del. Ch. Ct. 1993) is helpful guidance if not the law in this matter, as it states: “*A city may not effectively land lock a particular landowner by refusing access to a public street while allowing other favored landowners the right to access the city' public street.*”

The opposition vexingly cites a 1989 decision related to the Fishers Cove property as precedent for why the Application should be denied. The minutes of the May and the April 1989 decision actually end with uncertainty and inquiries as to whether other entrances exist. The Staff Report interpretation in this regard seems misleading. Much more importantly, however, these minutes are not a precedent, for it was rendered under a completely different zoning code with different subdivision procedures and laws. Any suggestion that the Commission is somehow bound by that decision as a matter of stare decisis is patently false.

The Fisher House should not be lost in the Applicant's effort to preserve this historic site. Even though access through that parcel is not being offered as an alternative, it should be noted that an access through the Fisher House property is not possible in a manner that would comply with the Code. The Code requires a total of 125 feet of frontage for a road from Pilottown to Fishers Cove directly. There is simply not enough frontage on Pilottown Road for that to be possible. As such, the Commission should not consider proposing an alternative, illegal access when a public street directly abuts the Fishers Cove property.

Finally, the opposition has painted a doomsday picture that 18 houses and the minimal amount of traffic caused by such a small development will somehow ruin the serene quality of the neighborhood, yet that same quality exists on neighboring Hoornkill Avenue, where there is roughly the same amount of homes serviced as there would be on Rodney Avenue were Fishers Cove to be approved. Furthermore, the insistence of the opposition to preserve their status quo, their street and the generous open space that borders some of them, is unfair to adjacent property owners, unrealistic, and contrary to the law.

### A Permitted Use

Lost in much of the discussion on issues raised by the opposition is the simple fact that the Application is for a permitted, or by-rights, use of the property that is below the density allowable by code. It adheres to the City's Comprehensive Plan for residential use and to the R-2 Zoning Districts. Furthermore, the dimensional requirements exceed those required.

In considering the record, the some language in *East Lake* is worth revisiting:

*When people purchase land zoned for a specific use, they are entitled to rely on the fact that they can implement that use provided the project complies with all*



*of the specific criteria found in the ordinances and subject to reasonable conditions which the Planning Commission may impose in order to minimize any adverse impact on nearby land owners and residents.*

*To hold otherwise would subject a purchaser of land zoned for a specific use to the future whim or caprice of the Commission by clothing it with the ability to impose ad hoc requirements of the use of land not specified elsewhere anywhere in the ordinance. The result would be the imposition of uncertainty on all landowners respecting whether they can safely rely on the permitted uses conferred on their land under the zone ordinance.*

### Conclusion

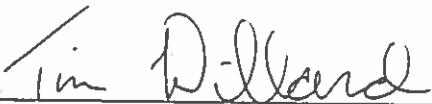
In addition to the Engineers' letters, an amended Proposed Findings is attached as Exhibit C to reflect the complete record to date.

The Commission has a mandate to consider the 22 factors for preliminary consent. The Application has provided ample support to show all of the factors are met, and has additionally provided ample information to rebut concerns raised by opponents of the project, despite those concerns not being ripe at this stage in the process. If preliminary consent is granted, as it should be, the Applicant will be back in front of this Commission with all of the technical data and designs required, together with approvals from SCD, DNREC and FEMA. Without those approvals, the Applicant cannot seek final approval.

Accordingly, we urge the Commission to fulfill its mandate and grant preliminary consent for this application, as all of the relevant factors are met. Thank you.

Respectfully Submitted,

FUQUA, WILLARD, STEVENS & SCHAB, P.A.

By   
Timothy G. Willard

pc: Burke & Rutecki, LLC  
Tom West, Director Planning  
Commission Members

AUGUST 30, 2019  
FISHERS COVE AMENDED PROPOSED FINDINGS  
PRELIMINARY CONSENT § 170-19E(1-22)<sup>1</sup>

**(1) Compliance with the provisions of this chapter, Chapter 197, Zoning, and any other applicable provisions of the Municipal Code of the City of Lewes.**

The Application complies with all applicable chapters and provisions of the City of Lewes Code of Ordinances (the "Code").

The site plan complies with the property's R-2 (Low Density Residential) zoning. Code § 197-26. All lot dimensions exceed the required minimums: the average lot size is 12,832 square feet, 29% greater than what is allowed. The City Engineer has concluded that the property is suitable for the proposed subdivision. The City Engineer has further concluded, with minor adjustments that will be addressed, that:

All building lots (1-18) are suitable for subdivision as requested. The applicant's engineer's changes to the plans have ensured that all developments, lots, and properties are provided with a drainage system that is adequate to prevent the undue retention of surface water on the site. The changes have also eliminated the previously proposed stormwater infiltration basins.

[ \* \* \* ]

Certification of the Plat Plan is complete and in full accordance with the subdivision regulations, as well as fits into a plan for orderly development of the City[.]

**(2) Integration of the proposed major subdivision into existing terrain and surrounding landscape.**

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<sup>1</sup> FOR EACH OF THE FACTORS TO CONSIDER IN § 170-19E(1-22): The Entire Record, the plans, testimony and exhibits and the attached letters from Duffield Associates, Inc. and Karins and Associates (Exhibits B and C herein) demonstrate that satisfaction of these factors has been met for preliminary consent approval.

The development's oversized lots, generous open space, and landscaped buffers ensure its integration into the existing terrain and surrounding landscape.

**(3) Minimal use of wetlands and floodplains.**

No wetlands will be disturbed by the proposed development. The Application further makes minimal use of floodplains to the maximum extent feasible, as further described in Exhibit B and C.

The Application will meet or exceed all applicable Sussex Conservation District, Department of Natural Resources and Environmental Control, Federal Emergency Management Act, and City of Lewes laws and regulations for permitting.

**(4) Preservation of natural and historical features.**

An arborist has prepared a report which confirms that there are no specimen trees in the location of the proposed development, and most trees on the property display less than twenty (20) years of growth. The proposed development will preserve all existing trees within non-tidal wetlands, and all existing trees within and south of the Open Space Parcel A. All trees on lots 8 through 18 will be preserved to the greatest extent practicable. The Application also calls for extensive landscaping.

If approved the Application preserves the historic Fisher House.

**(5) Preservation of open space and scenic views.**

The Application's oversized lots and planned walking path will preserve the property's scenic views, as described in the plans and testimony. The property boundary along the Great Marsh will be preserved in its natural condition, thereby preserving scenic views of the wetlands from the proposed lots and public roads.

**(6) Minimization of tree and soil removal and grade changes, except to ease flood concerns.**

Tree and soil removal will be minimized to the maximum extent feasible; as discussed above, the Application makes all efforts to preserve existing trees, where practicable. In addition tree planting will be required refer to plans and testimony.

**(7) Screening of objectionable features from neighboring properties and roadways.**

The Application maintains fifteen (15) foot landscaped buffers between adjacent properties and presents no objectionable features. The applicant shall submit a final landscape plan to the Parks and Recreation Committee for review.

**(8) Provision for water supply.**

Public water shall be provided by the City, and the water plan and design will meet or exceed the requirements of the State Fire Marshal's office.

**(9) Provision for sewage disposal.**

The Application adequately provides for sewage disposal by gravity to a pump station within the City, which will discharge to sewer provided by the City.

**(10) Prevention of pollution of surface water and groundwater.**

The Application prevents pollution of surface water and groundwater, and complies with all applicable stormwater management regulations and requisite water quality measures.

**(11) Minimization of erosion and sedimentation, minimization of changes in groundwater levels, minimization of increased rates of runoff, minimization of potential for flooding and design of drainage so that groundwater recharge is maximized.**

The Application minimizes erosion, sedimentation, changes in groundwater levels, increased rates of runoff, and potential for flooding, as well as includes drainage design which maximizes groundwater recharge. The Application complies with all stormwater management and erosion and sediment control regulations. There will be no adverse impacts to area flooding.

**(12) Provision for safe vehicular and pedestrian movement within the site and to adjacent ways.**

The community will be accessed by Rodney Street. In 1947, Rodney Street was deeded to the Commissioners of Lewes "to be used as a public street or highway" fifty feet in width. Book 371, Page 308. Section 170-27(a)(3) of the

Code provides that “[s]ub streets will be located or easements will be granted so as to permit the future development of interior parcels.” Streets are defined in § 170-60 as “furnishing access to abutting properties and space for sewers and public utilities.”

Section 170-27(B) further provides that: “Streets shall be arranged to conform to the arrangement of both existing and planned streets, so as to form a harmonious and systematic development of the City’s secondary roads and through highways, and shall be connected with such existing roads and highways so as to form continuation thereof. Residential streets shall be laid out so as to discourage their use as secondary roads or through highways.”

The access on Rodney Street not only conforms to the City’s street policy, it is required. The internal streets will be designed to City and Fire Marshal standards. The circular pattern creates a harmonious pattern and discourages the use as a secondary road. Finally, the sidewalks and proposed easement encourages pedestrian and bike movement. The internal roads will be designed for minimal speed limits, and improvements to Rodney Street may be made as required by City Council.

Per the City of Lewes Comprehensive Plan, the roads shall be designed to consider safety and potential flooding.

**(13) Effect on area property values.**

Single Family Homes are a permitted use in the R-2 Zoning District, and will not have an adverse effect on area property values. Because of the location and size of these lots, the anticipated purchase price for lots in this market falls in the mid- to high \$419.9K to \$448K range. The Rodney Street and Hornkill Street communities are located nearby. Based on comparable and expected pricing in this market, property values in those communities should increase as higher end homes are built in their vicinity.

**(14) Effect on schools, public buildings and community facilities.**

The development will have no adverse impact on schools, public buildings and community facilities. Owners will make significant contribution to the Cape Henlopen School District through payment of Sussex County Real Estate Taxes.

The City impact fees and annual taxes should be a significant net positive for city revenue.

**(15) Effect on area roadways and public transportation. The Planning Commission, by majority vote, may require a traffic impact study conducted by an outside agency at the expense of the applicant, should conditions warrant such a study.**

See response #12 herein. Because there will be only eighteen lots and some of those homes will be temporary residents, the effect on area roadways should not be significant. Improvements to Rodney Street or speed control mechanisms may be considered.

**(16) Compatibility with adjacent area land uses.**

The proposed development is similar in nature to and compatible with adjacent area land uses.

**(17) Effect on area waterways.**

There will be no adverse effect on area water ways and the objective of the proposed development's final engineering design is to improve flooding and draining conditions.

**(18) Whether estimated costs to be borne by the City during construction, if any, can be met from available City funds which reasonably may be anticipated to become available to the City and applicable to subdivision purposes.**

Per response #14, above, the proposed development will contribute a significant amount to City funds through impact fees and annual taxes.

**(19) Whether the estimated expense to the City can be justified on the basis of estimated tax returns which would accrue to the City within a reasonable period of time.**

See above.

**(20) Recognition of scenic byways and walkability.**

The proposed development will have sidewalks on both sides of all proposed public streets, as well as a walkway across the Fisher House property to Pilottown Road. These improvements will increase the walkability of the area and connect the adjacent properties to Pilottown Road and the Rehoboth Canal.

**(21) Job creation.**

Jobs will be created by the site work and home construction of the proposed development. New residents of the development will create additional need for goods and services. The National Association of Homebuilders indicates that a single family home creates an average of one full time job per house in the economy.

**(22) Providing diverse housing options.**

These housing types will be distinct from those on Rodney Street and some of the other housing on the offshoots of Pilottown Road in the West. The proposed development's oversized lots are distinct from those common within the downtown City area or beachfront housing.

# EXHIBIT J





February 28, 2020

**VIA E-MAIL AND HAND DELIVERY**

City of Lewes Mayor and City Council  
P.O. Box 227  
114 E. Third Street  
Lewes, DE 19958

**RE: Fishers Cove Land Use Application – Burke & Rutecki, LLC**

Dear Mayor and City Council:

My name is Jamie Masten and I am a licensed appraiser in the state of Delaware with significant experience in the valuation of residential real property in Sussex County, Delaware and the Lewes area. I have been asked to provide my opinion on the potential impact of the proposed Fisher's Cove subdivision on the value of neighboring properties.

It is my expert opinion that the Fisher's Cove project should have a positive impact on the surrounding home communities particularly the home prices on Rodney and Hornkill Avenues. The projected lot prices at Fisher's Cove will be between \$499,000 and \$619,000. The Fisher's Cove community will have many amenities and property value protections in place that are not currently within the Town of Lewes code.

Among these will be the following:

- Minimum square footage;
- Architectural review guidelines to ensure homes conform to an upscale and appealing design aesthetic;
- Minimum landscaping and tree requirement as shown on the proposed landscaping plan; and
- An established HOA that will have rules for landscaping, aesthetic, and maintenance of homes and mechanisms for enforcement of their rules.

All of the above items and the fact that the homes at Fisher's Cove will all likely be \$1,000,000 or more will help to increase the comparable sales prices and therefore increase the property values of the surrounding properties. According to a December 2014 article in the Journal of Housing Economics "construction of a concentration of larger than average size houses exerts a small positive effect on existing house prices, especially for those houses that are selling for a relatively low price. The effect is the strongest when the new construct on is located within one-quarter mile."

The homes on Rodney have sold for between \$387,000 and \$850,000 from 2005 – 2019 (please see attached). It is very likely that after the completion of Fisher's Cove, the prices will increase accordingly.

One other impactful issue to mention is that once Fisher's Cove is complete there will be no uncertainty as to how the land will be developed or used. Since the Fisher's Cove land is private and has the right to be developed the adjacent landowners have had no certainty as to how the land would be used. The development of Fisher's Cove will take away that uncertainty and likely increase home values.

Respectfully,

James Masten  
Certified General Real Property Appraiser  
Delaware Certificate # X1-0000409  
Expires October 31, 2021

Enclosures

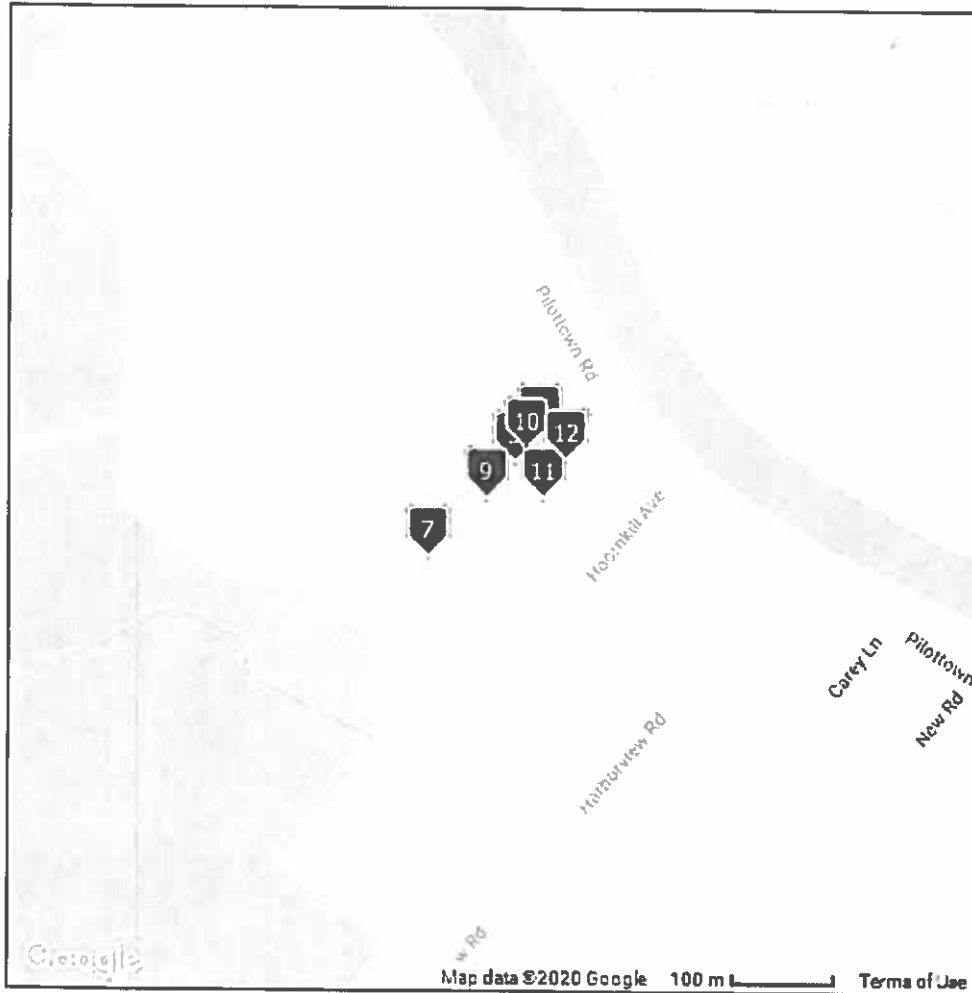
6103 South Rehoboth Boulevard, Milford, Delaware 19963  
(302) 422-1850 – Telephone · (302) 422-8020 – Fax



Friday, February 28, 2020

## CMA Map

This page displays the Map for the CMA Subject and your comparables.



- 1 124 Rodney Ave
- 2 124 Rodney Ave
- 3 108 Rodney Ave
- 4 116 Rodney Ave
- 5 112 Rodney Ave
- 6 107 Rodney Ave
- 7 124 Rodney Ave
- 8 115 Rodney Ave
- 9 116 Rodney Ave
- 10 110 Rodney Ave
- 11 115 Rodney Ave
- 12 107 Rodney Ave





## CMA 4-Up Listings Report

Friday, February 28, 2020

This page outlines the subject property versus comparables properties.



Address	124 Rodney Ave	124 Rodney Ave	108 Rodney Ave
County	Sussex, DE	Sussex, DE	Sussex, DE
Municipality	Lewes Rehoboth Hundred - :	Lewes Rehoboth Hundred - :	Lewes Rehoboth Hundred - :
Neighborhood	NONE AVAILABLE	NONE AVAILABLE	NONE AVAILABLE
Status	Closed	Closed	Closed
Closed Date	03/27/2019	05/31/2005	08/13/2018
List Price \$0	\$550,000	\$550,000	\$525,000
Closed Price	\$550,000	\$515,000	\$515,000
Concessions	No, \$0	No, \$0	No, \$0
Financing	Conventional		Cash
Property Class	Residential	Residential	Residential
Structure Type	Detached	Detached	Detached
Ownership	Fee Simple	Fee Simple	Fee Simple
Sale Type	Standard		Standard
Style	Cottage	Other	Cottage
Levels/Stories	1	1	2
Year Built	1950	1950	1954
Condition			
Annual Tax \$0	\$1,150	\$625	\$720
Tax Total Asmt \$0	\$0	\$0	\$0
Lot Acres/SqFt a / sf	0a / 6,957.00sf	0a / 0.00sf	0a / 6,960.00sf
Lot Dimension	60.00 x 116.00	60 x 116	60 x 116
Waterfront	No	No	No
Abv Grd Fin SF	0	0	1,800
Blw Grd Fin SF	0	0	0
Total Bldg SF	0	0	1,800
Total Units	0	0	0
Bedrooms	2	2	2
Baths /	2	2	2
Garage -Car Garage	0-Car Garage	0-Car Garage	0-Car Garage
Parking			Stone Driveway
Basement		Crawl Space	Crawl Space
Cooling	Window Unit(s)	Window Unit(s)	Central A/C, Heat Pump(s)
Heat	Forced Air	None	Heat Pump(s), Zoned
Pool	No Pool	No Pool	No Pool
DOM	1	32	95
MLS#	DESU134254	1000918782	1001571462





## CMA 4-Up Listings Report

Friday, February 28, 2020

This page outlines the subject property versus comparables properties.



Address	116 Rodney Ave	112 Rodney Ave	107 Rodney Ave
County	Sussex, DE	Sussex, DE	Sussex, DE
Municipality	Lewes Rehoboth Hundred - :	Lewes Rehoboth Hundred - :	Lewes Rehoboth Hundred - :
Neighborhood	NONE AVAILABLE	NONE AVAILABLE	NONE AVAILABLE
Status	Closed	Closed	Closed
Closed Date	11/19/2010	12/29/2006	03/06/2015
List Price \$0	\$449,900	\$525,000	\$387,000
Closed Price	\$437,500	\$525,000	\$387,000
Concessions	No, \$0	No, \$0	No, \$0
Financing	Conventional		Cash
Property Class	Residential	Residential	Residential
Structure Type	Detached	Detached	Detached
Ownership	Fee Simple	Fee Simple	Fee Simple
Sale Type			
Style	Salt Box	Other	Other
Levels/Stories	2	2	1
Year Built	1965		
Condition			
Annual Tax \$0	\$1,030	\$0	\$1,189
Tax Total Asmt \$0	\$0	\$0	\$0
Lot Acres/SqFt a / sf	0a / 0.00sf	0a / 0.00sf	0a / 0.00sf
Lot Dimension	60X116	0X0	120X135
Waterfront	No	No	No
Abv Grd Fin SF	0	0	0
Blw Grd Fin SF	0	0	0
Total Bldg SF	0	0	0
Total Units	0	0	0
Bedrooms	3	3	3
Baths /	2	2	2
Garage -Car Garage	0-Car Garage	0-Car Garage	0-Car Garage
Parking			
Basement	Crawl Space	None	Crawl Space
Cooling	Central A/C	Central A/C	No Cooling
Heat	Forced Air, Wood Burn Stove	Wood Burn Stove	None
Pool	No Pool	No Pool	No Pool
DOM	7	362	40
MLS#	1000955756	1001327604	1001317024

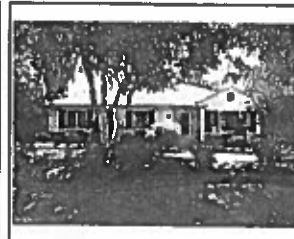




## CMA 4-Up Listings Report

Friday, February 28, 2020

This page outlines the subject property versus comparables properties.



Address	124 Rodney Ave	115 Rodney Ave	116 Rodney Ave
County	Sussex, DE	Sussex, DE	Sussex, DE
Municipality	Lewes Rehoboth Hundred - :	Lewes Rehoboth Hundred - :	Lewes Rehoboth Hundred - :
Neighborhood	NONE AVAILABLE	NONE AVAILABLE	NONE AVAILABLE
Status	Closed	Closed	Closed
Closed Date	05/29/2015	01/15/2016	03/05/2015
List Price \$0	\$459,000	\$869,900	\$545,000
Closed Price	\$440,500	\$850,000	\$505,000
Concessions	No, \$0	No, \$0	No, \$0
Financing	Conventional	Conventional	Conventional
Property Class	Residential	Residential	Residential
Structure Type	Detached	Detached	Detached
Ownership	Fee Simple	Fee Simple	Fee Simple
Sale Type			
Style	Cottage	Ranch/Rambler	Salt Box
Levels/Stories	2	1	2
Year Built		1960	1964
Condition			
Annual Tax \$0	\$998	\$1,685	\$0
Tax Total Asmt \$0	\$0	\$0	\$0
Lot Acres/SqFt a / sf	0a / 0.00sf	0a / 17,424.00sf	0a / 0.00sf
Lot Dimension	60 x 116	120x135	61x114
Waterfront	No	No	No
Abv Grd Fin SF	0	3,000	2,000
Blw Grd Fin SF	0	0	0
Total Bldg SF	0	3,000	2,000
Total Units	0	0	0
Bedrooms	2	3	3
Baths /	2	2 / 1	2
Garage -Car Garage	0-Car Garage	0-Car Garage	0-Car Garage
Parking	Stone Driveway	Paved Driveway	Concrete Driveway, Stone Dr
Basement	None	Partial, Partially Finished	Crawl Space
Cooling	Heat Pump(s)	Central A/C, Whole House Fi	Central A/C
Heat	Heat Pump(s)	Heat Pump(s), Wood Burn St	Forced Air, Wood Burn Stove
Pool	No Pool	Yes - Personal	No Pool
DOM	172	104	55
MLS#	1000986390	1001009508	1000987470

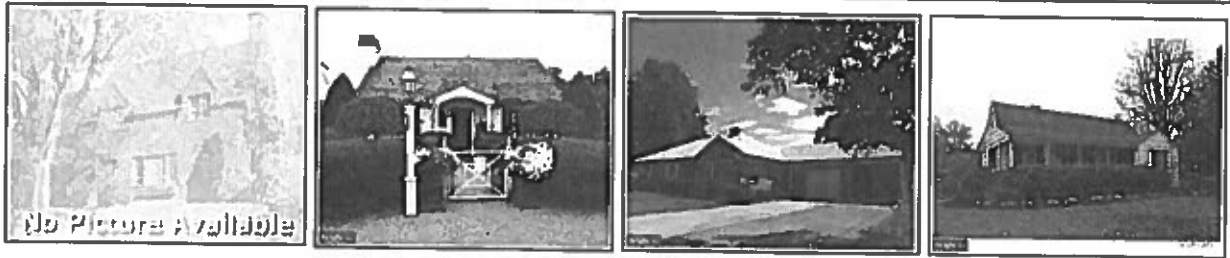




## CMA 4-Up Listings Report

Friday, February 28, 2020

This page outlines the subject property versus comparables properties.



Address	110 Rodney Ave	115 Rodney Ave	107 Rodney Ave
County	Sussex, DE	Sussex, DE	Sussex, DE
Municipality	Lewes Rehoboth Hundred - :	Lewes Rehoboth Hundred - :	Lewes Rehoboth Hundred - :
Neighborhood	NONE AVAILABLE	NONE AVAILABLE	NONE AVAILABLE
Status	Closed	Closed	Closed
Closed Date	05/19/2017	05/28/2008	06/14/2013
List Price \$0	\$698,985	\$549,000	\$429,900
Closed Price	\$655,000	\$500,000	\$408,000
Concessions	No, \$0	No, \$0	No, \$0
Financing	Cash		Cash
Property Class	Residential	Residential	Residential
Structure Type	Detached	Detached	Detached
Ownership	Fee Simple	Fee Simple	Fee Simple
Sale Type			
Style	Cottage	Ranch/Rambler	Ranch/Rambler
Levels/Stories	2	1	2
Year Built	1941		
Condition			
Annual Tax \$0	\$962	\$1,052	\$1,189
Tax Total Asmt \$0	\$0	\$0	\$0
Lot Acres/SqFt a / sf	0a / 6,690.00sf	0a / 0.00sf	0a / 0.00sf
Lot Dimension		120 x 135	120x135
Waterfront	No	No	No
Abv Grd Fin SF	1,350	0	0
Blw Grd Fin SF	0	0	0
Total Bldg SF	1,350	0	0
Total Units	0	0	0
Bedrooms	2	3	3
Baths /	2	2	2
Garage -Car Garage	0-Car Garage	0-Car Garage	0-Car Garage
Parking	Stone Driveway		Paved Driveway
Basement	Full, Walkout Stairs	Full	Crawl Space
Cooling	Central A/C	Central A/C	Central A/C
Heat	Wood Burn Stove		
Pool	No Pool	No Pool	No Pool
DOM	321	273	25
MLS#	1001017182	1000939142	1000973312

