



SPONSOR: Rep. Mitchell & Sen. Delcollo

HOUSE OF REPRESENTATIVES
150th GENERAL ASSEMBLY

HOUSE JOINT RESOLUTION NO. 7

VACATING DEDICATED PARKLAND IDENTIFIED AS TAX PARCEL NO. 19-009.00-015.

1 WHEREAS, New Castle County maintains the parcel of land identified on New Castle County tax maps as Tax
2 Parcel No. 19-009.00-015, also known as Elsmere Open Space ("the Property"); and

3 WHEREAS, the December 1, 1964, deed, transferring ownership to the State of Delaware for the use of New
4 Castle County is recorded in the Office of the Recorder of Deeds in and for New Castle County in Volume H Book 74,
5 Page 264; and

6 WHEREAS, the Property is approximately \pm 3.13 acres of undeveloped land with natural resources, including a
7 portion of Little Mill Creek and zoned General Industrial; and

8 WHEREAS, New Castle County has determined that the Property is impliedly dedicated parkland, under the
9 public trust doctrine for parkland, which was adopted by Delaware courts in *Anderson v. Mayor of Council*, 137 A.2d 521
10 (Del. Ch. 1958); and

11 WHEREAS, Delaware courts in *Anderson* and *Lord v. City of Wilmington*, 332 A.2d 414 (Del. Ch. 1975), in
12 agreement with common law, held that dedicated parkland cannot be used for any non-parkland purpose without legislative
13 authorization; and

14 WHEREAS, due to the Property's unique location in an established industrial park, a portion of the park, as
15 depicted on the attached Exhibit, is often plagued by illegal dumping and is considered a nuisance property by the
16 surrounding community; and

17 WHEREAS, New Castle County continues to utilize resources to clean up this portion of the Property, which does
18 not function as parkland benefiting the public; and

19 WHEREAS, New Castle County has determined there are no current or future benefits in continuing to maintain
20 that portion of the Property as dedicated parkland; and

21 WHEREAS, New Castle County is requesting that the parkland dedication be vacated for the \pm .22 acres of the
22 Property as depicted on the attached Exhibit; and

23 WHEREAS, vacating the parkland dedication will permit New Castle County to discontinue use of that portion of
24 the Property as parkland, with the ability to transfer it in accordance with § 1521(e) of Title 9; and

25 WHEREAS, vacating the parkland dedication will advance, and is reasonably and rationally related to, legitimate
26 government interests, including promoting the health, safety, morals, convenience, order, prosperity, or welfare of the
27 present and future inhabitants of this State.

28 NOW, THEREFORE:

29 BE IT RESOLVED by the House of Representatives and the Senate of the 150th General Assembly of the State of
30 Delaware, with the approval of the Governor, that the parkland dedication for ± .22 acres of Tax Parcel No. 19-009.00-015,
31 as depicted in the attached Exhibit, which is hereby incorporated by reference and made a part hereof, is hereby vacated.

SYNOPSIS

This Joint Resolution vacates the parkland dedication for ± .22 acres of Tax Parcel No. 19-009.00-015, as depicted in the exhibit that accompanies this Joint Resolution, thereby removing the restrictions on permitted uses for public parks, held in public trust as provided in the common law, including the restrictions under *Anderson v. Mayor and Council of Wilmington*, 137 A.2d 521 (Del. Ch. 1958) and *Lord v. City of Wilmington*, 332 A.2d 414 (Del. Ch. 1975), *aff'd*, 378 A.3d 635 (Del. 1977). The removal of the parkland dedication allows New Castle County to transfer the Property in accordance with § 1521(e) of Title 9. Due to the Property's unique location, there are no known current or future public needs or benefits in continuing to restrict the use of this Property as dedicated parkland. A significant amount of illegal dumping occurs on the Property, negatively impacting the surrounding community.