

ORDINANCE NO. 2180

AN ORDINANCE TO MODIFY CONDITION NO. 10 IMPOSED ON ORDINANCE NO. 1573 FOR CHANGE OF ZONE NO. 1475, THE APPLICATION OF RIBERA-ODYSSEY, LLC, AS AMENDED BY ORDINANCE NO. 2018 FOR CHANGE OF ZONE NO. 1697, THE APPLICATION OF PENINSULA AT LONG NECK, LLC FOR “THE PENINSULA”, A MR-RPC MEDIUM DENSITY RESIDENTIAL DISTRICT – RESIDENTIAL PLANNED COMMUNITY, TO EXTEND THE TIME TO CONSTRUCT AND OPEN FOR USE THE GOLF CLUBHOUSE AND NATURE CENTER FACILITIES

WHEREAS, on the 15th day of April 2002, a zoning application, denominated Change of Zone No. 1475 was filed on behalf of Ribera-Odyssey, LLC; and

WHEREAS, on the 22nd day of August 2002, a Public Hearing was held, after notice, before the Planning and Zoning Commission of Sussex County, and on the 12th day of September 2002, said Commission recommended that Change of Zone No. 1475 be approved with conditions; and

WHEREAS, on the 10th day of September 2002, a Public Hearing was held, after notice, before the County Council of Sussex County and the County Council determined, based on the findings of facts, that said Change of Zone is in accordance with the Comprehensive Development Plan and promotes the health, safety, morals, convenience, order, prosperity and welfare of the present and future inhabitants of Sussex County; and

WHEREAS, on the 19th day of November 2002, the County Council of Sussex County adopted Ordinance No. 1573 with conditions; and

WHEREAS, on the 12th day of February 2008, this application was filed to modify Condition No. 10 imposed on Ordinance No. 1573 to extend the time to construct and open for use the golf clubhouse and nature center facilities; and

WHEREAS, on the 10th day of July 2008, a Public Hearing was held after notice, before the Planning and Zoning Commission of Sussex County and on the 20th day of August 2008, said Commission recommended that Change of Zone No. 1657 be denied; and

WHEREAS, on the 29th day of July 2008, the County Council of Sussex County considered a request of Peninsula at Long Neck, LLC to modify Condition No. 10 imposed in Ordinance No. 1573 for Change of Zone No. 1475 and it was determined, based on the Findings of Facts, that Change of Zone No. 1657 is in accordance with the Comprehensive Plan and promotes the health, safety, morals, convenience, order, prosperity and welfare of the present and future inhabitants of Sussex County;

WHEREAS, on the 7th day of June 2010, a zoning application denominated Change of Zone No. 1697 was filed on behalf of Land Tech Receiver Services, LLC; and

WHEREAS, on the 18th day of November 2010, a Public Hearing was held, after notice, before the Planning and Zoning Commission of Sussex County and on the 27th day of January 2011, said Planning and Zoning Commission recommended that Change of Zone No. 1697 be approved, as modified; and

WHEREAS, on the 7th day of December 2010, a Public Hearing was held, after notice, before the County Council of Sussex County and the County Council determined, based on the findings of facts, that said Change of Zone is in accordance with the Comprehensive Development Plan and promotes the health, safety, morals, convenience, order, prosperity and welfare of the present and future inhabitants of Sussex County;

NOW, THEREFORE, THE COUNTY OF SUSSEX HEREBY ORDAINS:

Section 1. That Condition No. 10 be modified to read:

- 10. A Recreational facilities, e.g. tennis courts, swimming pool, community buildings, pathways, trails, and beaches shall be constructed and open for use by the residents within two (2) years of the issuance of the first building permit.**
- B. The nature center shall be constructed and open for use by May 30, 2011. Construction of the clubhouse shall commence no later than the date that the Peninsula Club attains 750 members, a minimum of 250 of which shall be full golf members. All membership initiation fees paid after the effective date of this amended condition shall be placed in an escrow account created pursuant to The Peninsula Golf & Country Club Escrow Agreement for Membership Deposits dated as of _____, 2010 (the "Escrow Agreement") to assure completion of the clubhouse. Such funds shall be released only in accordance with the Escrow Agreement.**

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

The Council found that the Conditional Use was appropriate legislative action based on the following Findings of Fact and subject to the following conditions (modified from the proposal set forth by the Applicants in the ordinance, as introduced):

- 1. This is an application for an Ordinance to modify Condition No. 10 imposed on Ordinance No. 1573 for Change of Zone No. 1475, the application of Ribera-Odyssey, LLC, as amended by Ordinance No. 2018 for Change of Zone No. 1697, the application of Peninsula at Long Neck, LLC for “The Peninsula”, a MR-RPC Medium Density Residential District – Residential Planned Community, to extend the time to construct and open for use the golf clubhouse and nature center facilities.**
- 2. A Clubhouse must be built, as promised by the original developers. That promise was relied upon by the County and by those purchasing lots within The Peninsula Development.**
- 3. Sussex County Engineering Department, Utility Planning Division, commented that the site is located in the Long Neck Sanitary Sewer District; that wastewater capacity is available for the project; that Ordinance 38 construction will not be required; that the current System Connection Charge Rate is \$3,472.00 per EDU; that conformity to the North Coastal Planning Study will be required; that this proposal is to modify Condition #10 of Change of Zone No. 1475 to extend the time to construct and open for use the golf clubhouse and nature center facilities; that approval of a time extension would not have a significant impact on the sewer system; and the County Engineering Department does not object to the proposal.**
- 4. A Receiver has been appointed by the Court of Chancery to maintain and operate the entire Peninsula Development, including the Clubhouse. Land Tech Receiver Services, LLC, the Receiver, has made positive steps in continuing with the development of the Project.**
- 5. The Development and Club currently have a lot of substantial amenities. Many of these amenities would be included in a clubhouse, including a grill, pro shop, health and fitness center, locker rooms, swimming pools and other facilities.**

6. Based on the governing documents of The Peninsula and the Peninsula Country Club, neither the developer nor Land Tech Receiver Services, LLC, are members of the Club. Only members pay dues based upon the budget determined by the Club each year.
7. Construction of the Clubhouse would place an undue burden on not only the Developer or Receiver, but also on the individual members, which are homeowners in the development. They would be required to carry the costs of the Clubhouse and its operation and maintenance. Similarly, the increased dues associated with the Clubhouse would adversely affect the marketability of future sales within the development, which are necessary to maintain its viability. All purchasers of residential units within The Peninsula are required to be Club members.
8. The County has received many letters in support of the Applicant's request to delay construction of the Clubhouse. In contrast, only one property owner has objected to the proposal.
9. The Applicant has stated that the required number of members necessary to construct, operate and maintain the Clubhouse will be achieved in 3 to 4 years.
10. The Applicant's proposal for determining the timeframe to construct the Clubhouse based upon membership is not appropriate. The proposal places too much control over the timing in the hands of the Developer, the Applicant or the Club owner at the time. Instead, the County should set a specific date that is known to everyone for completion of the Clubhouse.
11. The Escrow Agreement proposed by the Applicant is not the best means to guarantee the completion of the Clubhouse. The County's Ordinances require bonds or letters of credit as guarantees for completion. In this case, that means of guarantee should be used as well.
12. Condition No. 10 to Change of Zone No. 1475 as amended by Change of Zone No. 1697 should be as follows:
 - A. Recreational facilities, e.g. tennis courts, swimming pool, community buildings, pathways, trails, and beaches shall be constructed and open to use by the residents within two (2) years of the issuance of the first building permit.

- B. The Nature Center shall be constructed and open to use by September 30, 2011.**
- C. Construction of the Clubhouse shall commence no later than three (3) years from the date Sussex County Council approves Change of Zone No. 1697, with construction to be completed 12 months thereafter. A bond, cash bond, or letter of credit shall be provided to Sussex County in the amount of 125% of the cost of completion of the Clubhouse within sixty (60) days of the date that Sussex County Council approves Change of Zone No. 1697.**
- D. The site plan for the Clubhouse shall be subject to the review and approval by the Planning and Zoning Commission.**
- E. The Developer/Receiver shall be in compliance with the County's Clean Hand Ordinance.**

I DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE AND CORRECT COPY OF ORDINANCE NO. 2180 ADOPTED BY THE SUSSEX COUNTY COUNCIL ON THE 22ND DAY OF MARCH 2011.


ROBIN A. GRIFFITH
CLERK OF THE COUNCIL