

**ORDINANCE NO. 2295**

**AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A GR-RPC GENERAL RESIDENTIAL DISTRICT – RESIDENTIAL PLANNED COMMUNITY FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN BROADKILL HUNDRED, SUSSEX COUNTY, CONTAINING 154.90 ACRES, MORE OR LESS (Tax Map I.D. # 2-35-5.00-5.00 and 2-35-13.00-2.00)**

**WHEREAS, on the 11th day of July 2012, a zoning application, denominated Change of Zone No. 1721 was filed on behalf of Captain's Way Development, LLC; and**

**WHEREAS, on the 20th day of September 2012, a public hearing was held, after notice, before the Planning and Zoning Commission of Sussex County and on the 11th day of October 2012, said Planning and Zoning Commission recommended that Change of Zone No. 1721 be approved with conditions; and**

**WHEREAS, on the 9th day of October 2012, a public hearing was held, after notice, before the County Council of Sussex County and the County Council of Sussex County has determined, based on the findings of facts, that said change of zone is in accordance with the Comprehensive Development Plan and promotes the health, safety, morals, convenience, order, prosperity and welfare of the present and future inhabitants of Sussex County,**

**NOW, THEREFORE,**

**THE COUNTY OF SUSSEX HEREBY ORDAINS:**

**Section 1. That Chapter 115, Article II, Subsection 115-7, Code of Sussex County, be amended by deleting from the Comprehensive Zoning Map of Sussex County the zoning classifications of [AR-1 Agricultural Residential District] and adding in lieu thereof the designation of GR-RPC General Residential District – Residential Planned Community as it applies to the property hereinafter described.**

**Section 2. The subject property is described as follows:**

**ALL that certain tract, piece or parcel of land lying and being situate in Broadkill Hundred, Sussex County, Delaware, and lying north of Route 16, South of Road 231 (Reynolds Pond Road) and 2,400 feet east of Road 226 (Holly Tree Road) and being more particularly described in Plot Book 157, Page 15, in the Office of the Recorder of Deeds in and for Sussex County and containing 154.90 acres, more or less.**

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

**This Ordinance was adopted subject to the following conditions:**

- 1. The maximum number of lots shall not exceed 301 lots.**
- 2. The interior street design shall be in accordance with or exceed Sussex County street design requirements.**
- 3. A multi-modal path shall be included on at least one side of all streets.**
- 4. Street lighting shall be included throughout the subdivision. The location of all streetlights shall be shown on the Final Site Plan.**
- 5. All entrances, intersections, roadway improvements and multi-modal facilities required by DelDOT shall be completed by the Applicant as required by DelDOT.**
- 6. All amenities shall be clearly shown on the Final Site Plan and they shall be open and available to use by residents prior to the construction of the second phase of the development.**
- 7. The project shall be served by a publicly regulated central sewer system defined by the County Ordinance and shall be incorporated into a regional wastewater treatment system if at all possible. The operation of the sewer system shall be subject to the Delaware Public Service Commission and all applicable State and County regulations.**
- 8. The project shall be served by central water.**
- 9. Storm water management and erosion and sediment control shall be constructed in accordance with applicable State and County requirements and shall be operated using Best Management Practices to provide ground water recharge.**
- 10. No wetlands shall be included within any lots. Wetlands shall be maintained as non-disturbance areas, except where authorized by a Federal or State Permit.**
- 11. All reforestation areas shall be shown on a landscape plan submitted as part of the Final Site Plan review process. In addition, as required by the approvals for Subdivision #2005-24 on this site, the proposed conservation easement areas shall specifically be referenced on the Final Site Plan.**

12. The Applicant shall form a Homeowners Association to be responsible for the maintenance of the streets, roads, buffers storm water management facilities and other common areas.
13. Road naming and addressing shall be subject to the approval of the Sussex County Mapping and Addressing Department.
14. Because the project will be for moderate income families, additional tot lots shall be included within the site. The location of these tot lots shall be spread throughout the project and shown on the Final Site Plan.
15. The commercial areas associated with this RPC approval shall be clearly shown on the Final Site Plan. The proposed uses for these areas shall be limited to the Permitted Uses identified for B-1 Zoning Districts and for the display and sale of manufactured homes.
16. Areas to be used as a DART bus stop and school bus shelter with parking for 5 vehicles shall be set aside near the entrance to the project. The areas for the bus stops shall be constructed at the time the DelDOT entrance is also constructed.
17. As required by the approval for Subdivision No. 2005-24 on this site; a fence shall be installed on the east side of the project as stated by the Applicant and shown on the Final Site Plan.
18. The buffer areas shall be clearly marked on the site, with the location and type of marker shown on the Final Site Plan. In addition, the Restrictive Covenants and any lot leases must contain a notice describing the buffers and prohibiting any disturbance of them.
19. The setbacks for lots with single-wide manufactured homes shall be 12 feet for the front yard, 10 feet for the side yards, and 5 feet for the rear yard. The setbacks for lots with double-wide manufactured homes or stick built homes shall be 25 feet for the front yards, 5 feet for the side yards, and 10 feet for the rear yard. In addition, the project must comply with any more stringent setback or separation requirements established by the Delaware State Fire Marshal.
20. The Final Site Plan shall contain the approval of the Sussex Conservation District.
21. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning and Zoning Commission.

**I DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE AND CORRECT COPY OF ORDINANCE NO. 2295 ADOPTED BY THE SUSSEX COUNTY COUNCIL ON THE 19TH DAY OF MARCH 2013.**



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**ROBIN A. GRIFFITH  
CLERK OF THE COUNCIL**

**The Council found that the Conditional Use was appropriate legislative action based on the following Findings of Facts:**

- 1. This is an application to amend the Comprehensive Zoning Map from AR-1 Agricultural Residential District to a GR/RPC General Residential District/Residential Planned Community to be located on a certain parcel of land lying and being in Broadkill Hundred, Sussex County, containing 154.90 acres, more or less, lying north of Route 16, south of Road 231 (Reynolds Pond Road) and 2,400 feet east of Road 226 (Holly Tree Road)(Tax Map I.D. 2-35-5.00-5.00 and 2-35-13.00-2.00).**
- 2. DelDOT issued a “No Objection to Record” letter dated September 22, 2010, a DelDOT entrance plan approval letter dated September 22, 2010, a DelDOT Support Facilities Report dated January 12, 2012, and a DelDOT Traffic Impact Study dated February 6, 2006 and a Final Traffic Impact Study.**
- 3. The Sussex County Engineering Department, Utility Planning Division, commented that the site is not located in a proposed or current County operated and maintained sanitary sewer district; that the site is located in the North Coastal Planning Area; that conformity to the North Coastal Planning Study or undertaking an amendment will be required; that the project proposes to develop using a central community wastewater system handled by Tidewater Environmental Services, Inc.; that they recommend that the wastewater system be operated under a long-term contract with a capable wastewater utility; and that in addition, they recommend they have a wastewater utility provider prior to approving the project.**
- 4. The Sussex County Engineering Department further commented that the proposed project is located outside of the Environmentally Sensitive Developing Area or growth area where Sussex County expects to provide sewer service; that Sussex County requires design and construction of the collection and transmission system to meet Sussex County sewer standards and specifications; that review and approval of the**

treatment and disposal system by the Sussex County Engineering Department is also required and plan review fees may apply; that if Sussex County ever provides sewer service and the project has a Certificate of Public Convenience and Necessity (CPCN), it is recommended that the treatment system be abandoned and a direct connection made to the County system at the developer's and/or owners' expense; that if Sussex County ever provides sewer service and the project does not have a CPCN, it is required that the treatment system be abandoned and a direct connection made to the County system at the developer's and/or owners' expense; and that a Concept Plan is not required.

5. The Sussex Conservation District commented that with respect to erosion and sedimentation control, the Applicant will be required to follow recommended erosion and sediment control practices during construction and to maintain vegetation after construction; that a storm flood hazard area could be affected depending on the construction limits and that low lying areas are subject to flooding; that a tax ditch is affected since there is a tax ditch that runs down the middle of the property; that there is the potential to have impacts on the tax ditch; that it is not likely that any off-site drainage improvements will be required; and that it would be necessary for on-site drainage improvements.
6. Preston Dyer and Scott Dailey of Captain's Way Development, LLC and Mark Davidson of Pennoni Associates, Inc. were present at the hearing on behalf of the application and stated that the application is for a GR-RPC for 154.9 acres – a 301 lot subdivision (Captain's Way); that the request includes 3 acres for a commercial use of convenience (within the 154.9 acres); that the property is already approved for 301 single family lots under the cluster ordinance with a minimum of 7,500 square foot lots; and that the property is surrounded by a significant number of single and double-wide manufactured homes.
7. The Change of Zone is consistent with the Comprehensive Plan and its housing objectives; that the project provides for home ownership of the individual mobile homes on a lot rent basis and potential to lease the lot and the home as a package; that, because the low to moderate income residents and tenants would not be in a position to bear the cost of the per acre disturbance, they propose a 26 acre buffer and have contacted the Nature Conservancy and offered a conservation easement to them;

that they do not propose any changes to the prior RPC application and all the plans have been approved by all the agencies; however, there will be one minor adjustment to the prior plan to relocate 5 lots within the subdivision to offer those areas the 100 foot buffer which will be located along the boundary to all adjoining properties and will serve as a separation to and protection for the adjoining lands in Agricultural Preservation and the Ponders Tract owned and managed by The Nature Conservancy.

8. The proposed density of the project is less than 2 units per acre; no lots will be closer than 500 feet to Route 16; they propose 60 foot buffers from wetlands (branches); no lots will have direct access to the State maintained roads; stormwater management has been approved by the Sussex Conservation District; no fill will be brought onto the site; and they are not asking for any bonus density.
9. This project represents the same site plan that received preliminary subdivision approval from the Planning and Zoning Commission on March 23, 2006; that GR Zoning is appropriate for this site, since the purpose of the GR Zone is to provide for medium density residential use, including manufactured housing; that this site, with the RPC overlay and proposed infrastructure, meets these purposes; and that, with the conditions placed upon this project, the RPC designation is appropriate for this parcel of land since the purpose of a RPC is to encourage large scale development as a means to create superior living environments and the use of design ingenuity while protecting existing and future uses.
10. This project promotes Sussex County's Comprehensive Plan, including its goal to provide housing for all Sussex County residents and particularly workforce housing and housing for lower and moderate income County residents; that the Plan also supports manufactured housing as an affordable housing alternative; that the project is located in an area where suitable infrastructure, such as public transportation routes, central water and sewer, exists or will be constructed; that, according to the Sussex County Land Use Plan, the project is in close proximity to a Developing Area; and that it is near the Towns of Milton and Ellendale.
11. As the Commission determined in 2006, the project will not have an adverse impact on the neighboring properties or the community, and substantial buffers have been established along the Nature Conservancy boundary and other adjacent properties.

- 12. The project is located along Route 16, which is recognized by DelDOT as a major collector road, and it is also close to an existing mobile home park and gas station, which are compatible with the GR Zoning and the proposed RPC development.**
- 13. Although this is a Change of Zone application, the proposed use remains a subdivision; the Applicant has addressed all of the items in Section 99-9C of the Subdivision Code; the reduced setbacks proposed by the Applicant are appropriate for this project; and the project will permit alternating home placements within the project and promote design ingenuity.**
- 14. Based on the record and recommendation of the Planning and Zoning Commission and the record created before Council, the Change of Zone was approved subject to twenty one (21) conditions which will serve to minimize any potential impacts on the surrounding area and adjoining properties.**