

ORDINANCE NO. 2475

AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A MR-RPC MEDIUM DENSITY RESIDENTIAL DISTRICT – RESIDENTIAL PLANNED COMMUNITY FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 126.8795 ACRES, MORE OR LESS

WHEREAS, on the 17th day of July 2014, a zoning application denominated Change of Zone No. 1759 was filed on behalf of Osprey Point D, LLC; and

WHEREAS, on the 8th day of January 2015, a public hearing was held, after notice, before the Planning and Zoning Commission of Sussex County and on the 23rd day of June 2016 said Planning and Zoning Commission recommended that Change of Zone No. 1759 be approved with conditions; and

WHEREAS, on the 3rd day of February 2015, 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 classification of [AR-1 Agricultural Residential District] and adding in lieu thereof the designation MR-RPC Medium Density 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 Lewes and Rehoboth Hundred, Sussex County, Delaware, and lying west of Old Landing Road (Road 274) 1.2 miles south of Warrington Road (Road 275) and being more particularly described per the attached legal description provided by Davis, Bowen & Friedel, Inc, said parcel containing 126.8795 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:

- A. The maximum number of residential units shall not exceed 217 single family lots.
No townhouses shall be permitted in the project.**
- B. Site Plan review shall be required for each phase of development.**
- C. All entrance, intersection, interconnection, roadway and multi-modal improvements required by DelDOT shall be completed by the applicant in accordance with DelDOT's requirements, or in accordance with any further modifications required by DelDOT. The developer shall also contribute to the Old Landing Road / Warrington Road / Strawberry Way intersection and signalization improvements.**
- D. As proffered by the applicant, the central recreational facilities and amenities shall be constructed and open to use by residents of the development no later than the issuance of the 100th building permit. These recreational facilities shall include a clubhouse, pool, tennis and basketball courts, and a tot lot and dog park.**
- E. The development shall be served as part of the West Rehoboth Sanitary Sewer District in accordance with the Sussex County Engineering Department specifications and regulations.**
- F. The MR-RPC shall be served by a public central water system providing adequate drinking water and fire protection as required by applicable regulations.**
- G. Stormwater management and erosion and sedimentation control facilities shall be constructed in accordance with applicable State and County requirements. These facilities shall be operated in a manner that is consistent with Best Management Practices (BMPs). The Final Site Plan shall contain the approval of the Sussex Conservation District.**
- H. The interior street design shall be in accordance with or exceed Sussex County street design requirements and/or specifications. As proffered by the applicant, street design shall include sidewalks on both sides of the streets and street lighting.**
- I. The applicant shall submit as part of the site plan review a landscape plan showing the proposed tree and shrub landscape design.**

- J. Construction, site work, grading, and deliveries of construction materials, landscaping materials and fill on, off or to the property shall only occur from Monday through Saturday and only between the hours of 7:00 a.m. and 6:00 p.m.**
- K. The applicant shall cause to be formed a homeowner's association to be responsible for the maintenance of the streets, roads, buffers, open spaces, stormwater management facilities and other common areas.**
- L. Federal and State wetlands shall be maintained as non-disturbance areas, except where authorized by Federal or State permits. The wetland areas shall be clearly marked on the site with permanent markers.**
- M. As proffered by the applicant, there shall be a 25 foot non-disturbance buffer from all Federal non-tidal wetlands. There shall also be a 50 foot non-disturbance buffer from all State tidal wetlands as required by County Code.**
- N. A revised Preliminary Site Plan depicting these conditions and the applicant's proposed changes shall be submitted to the Department for the review and approval by the Planning and Zoning Commission.**
- O. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning and Zoning Commission.**
- P. Pursuant to Section 115-125(B) of the Zoning Ordinance, prior to approval of the RPC Record Plan or Final Site Plan, the Planning and Zoning Commission shall confirm that the Applicant has recorded a deed restriction, limiting the design of the development to a maximum residential density of 217 single family lots and that said restriction cannot be modified or amended without the approval of the Sussex County Council.**

I DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE AND CORRECT COPY OF ORDINANCE NO. 2475 ADOPTED BY THE SUSSEX COUNTY COUNCIL ON THE 15TH DAY OF NOVEMBER 2016.

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

The Council found that the Change of Zone was appropriate legislative action based on the following Findings of Fact:

- A. This is the application of Osprey Point D, LLC to amend the Comprehensive Zoning Map of Sussex County from an AR-1 Agricultural Residential District to a MR-RPC Medium Density Residential District – Residential Planned Community for a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, containing 126.8795 acres, more or less, land lying west of Old Landing Road (Road 274) 1.2 mile south of Warrington Road (Road 275) (911 Address: 20836 Old Landing Road, Rehoboth Beach, DE) (Tax Map I.D. #334-18.00-83.00).
- B. Council found that DelDOT commented that it received the Traffic Operational Analysis on October 22, 2014; that the Consulting Engineer for Davis, Bowen & Friedel, Inc. reports that the Traffic Operational Analysis recommends that DelDOT consider the installation of a traffic signal at the intersection of Old Landing Road, Warrington Road, and Strawberry Way; extension of the left turn lane on Warrington Road at Old Landing Road; and investigating as to whether additional auxiliary lanes are necessary or feasible; and that after DelDOT reviews the Traffic Operational Analysis, they will provide recommendations on the Analysis.
- C. Based on testimony before the Planning & Zoning Commission and the Public Hearing before the Sussex County Council, Council found that Robert Marshall, the landowner and principal of the Applicant, was present with James Fuqua, Jr., Esquire with Fuqua, Yori & Willard, P.A., Zac Crouch, Professional Engineer, and D.J. Hughes, Professional Engineer, both of Davis, Bowen & Friedel, Inc., and John Hynes of John D. Hynes & Associates, Inc., and they stated that this is an application to re-zone a 126.88 acre parcel of land to a MR-RPC, a Medium Density Residential Planned Community; that there would be a recreational amenity center; that under a RPC application, an applicant can request a limited amount of commercial space; that no commercial space is being requested in this application; that the property is located on the west side of Old Landing Road, south of Fairway Drive; that the site is and has been since the early 1960s, the Old Landing Golf Course (with a restaurant located on the site); and that the owner of the property, Mr. Marshall, has owned the property in his own name since 1991 and the property has been owned by his family for over a century.
- D. Council also found that a wetland delineation of the property was performed by Environmental Resources Inc.; that the study indicated that the site contains 17.25 acres of State tidal wetlands and 4.41 acres of Federal Section 404 non-tidal wetlands; that they are proposing to provide 50 foot wide buffers from all tidal waters and wetlands, as required by the Sussex County zoning ordinance; that Federal wetland buffers or setbacks are not required under Federal, State or Sussex County ordinances or regulations; that page 16 of the PLUS review letter recommends a 100 foot buffer but states that “these items are suggestions and these suggestions do not represent State Code requirements and are in no way required”; that, in regards to the State tidal wetlands, the development will have the minimum 50 foot buffer as required by the County; and that the development will provide a voluntary 25 foot buffer from all federal non-tidal wetlands (although no buffers are required).
- E. Council further found that Tidewater Utilities will be providing central water for drinking and fire protection; that Sussex County will be providing central sewer (West Rehoboth Expansion of the Dewey Beach Sanitary Sewer District); that the Sussex County Engineering Department commented that the sewer system design assumption for this parcel of land was 4 units per acre, which amounts to 507 units; that the Engineering Department’s comments confirm that the site is in a County operated sewer district; that wastewater capacity is available; that the proposed project is within the planning study and design assumptions for sewer service; that Delaware Electric Cooperative will provide electricity; that the site is in the Cape Henlopen School District; that the site is located in the Rehoboth Beach Volunteer Fire Company service area; and that there are no federal or threatened species associated with the site.

- F. Council found that in the 1960s when the golf course was developed, there were no requirements for stormwater management; that today, a couple of ponds (for features) exist on the golf course, but there is no stormwater management; that with the development of this property, there is going to be some drainage issues that will be improved; that existing problems with low areas will be addressed as part of the design and approval process; that reference to an archaeological site was made during the Planning and Zoning Commission's Public Hearing; that an email was received from the Delaware State Historic Preservation Office stating that, after a field visit, there was insufficient information for that site; and that the project went through the PLUS process and the TAC process.**
- G. Council also found that interior roads will be built to Sussex County standards; that the roads will be privately owned; that a Traffic Impact Study is not required; that in regards to the Pollution Control Strategy regulations approved in 2008 for the Indian River Bay, Rehoboth Bay, and Little Assawoman Bay watersheds, this project as well as surrounding projects fall within the load reduction area which means 40% reduction in nitrogen and phosphorus is required; based on the Pollution Control Strategy requirements (Best Management Practices), during the design process, they will be implementing bio-swales, bio-filters, infiltration and wet and dry ponds to meet those requirements; that they will have to submit their designs to the review agencies for approval to address stormwater management for the site; that there are flooding issues, however, once stormwater management is implemented, the water will have somewhere to go; that a nutrient management analysis was performed; that nitrogen will be reduced (76% reduction) with this proposed change in land use and the water quality will be better protected; and that regarding stormwater regulations, this project would be designed based on the old regulations (the project must be approved within 18 months for it to fall under the old regulations, which is June 2015).**
- H. Council further found that there are questions about developing on the poorly draining soils on this site and he presented a map showing the various degrees of poorly draining soils; that the firm of John G. Hynes & Associates, Inc. did test borings on the poorly draining soils on the Osprey Point project site; that they were hired to address the question of hydric soils; that regarding the question of whether residences, roadways, and infrastructure can be built in areas with poorly draining soils, they drilled 20 test borings on the property so they could determine the consistency/variability of the soils (report was distributed to Council); that the reports showed that the soils are good enough to support houses on common footing foundations; that they also looked at groundwater conditions and they found that groundwater depths range from 2 to 5 feet at the boring locations; that the areas drilled meet frost-depth requirements which is a major issue with foundation construction; that the site and grading design will be done by Davis Bowen & Friedel and will undergo a review and approval; that developers/builders build on these types of conditions every day; that in the 20 borings, from a geotechnical standpoint, they did not find anything that is unbuildable; that this is a preliminary study; and that before the Developer proceeds with the building design, the architects and structural engineers should engage a geotechnical engineer to drill additional borings and provide final recommendations.**
- I. Based on the Findings (1 through 10) and Conditions (11A through 11O) of the Planning & Zoning Commission, as amended with the addition of Condition P by the Council, Council found that:**
- 1. This project originally sought approval for 339 units, including 180 townhouses. During the public hearing, much of the opposition related to the density of the proposed development and the proposed townhouses. After hearing these concerns, the Applicant submitted a revised Site Plan that deletes the townhouses and reduces the number of units to 217, which is a reduction in the density from 3.2 units per acre to 2.0 units per acre; or gross density calculation from 2.7 units per acre to 1.7 units per acre. This 36% reduction in housing units results in a development that is consistent with the surrounding developments of Old Landing Road.**

2. The proposed MR-RPC project meets the purpose of the Zoning Ordinance in that it promotes the orderly growth of the County because the proposed project is in a Development Area as established by the Comprehensive Land Use Plan.
 3. The development of this site at 217 units is consistent with and often less than the densities of surrounding RPCs and other developments that exist along Old Landing Road, including Sawgrass South, Sawgrass at White Oak Creek and the Villages at Old Landing. In addition, Redden Ridge was approved as a bonus density cluster development. As a result, this project represents “infill” development.
 4. Sewer service will be provided as part of a County operated Sanitary Sewer District, and adequate wastewater capacity is available for the project.
 5. Central water will be provided to the project.
 6. With the conditions placed upon this project, the RPC designation is appropriate for this parcel of land in that the purpose of an RPC is to encourage large scale development as a means to create superior living environments and the use of design ingenuity. This development, revised to only include single family lots, achieves this goal. The design also retains a great deal of open space, provides for additional buffers, protects wetlands, and provides considerable recreational amenities.
 7. A revised Traffic Operational Analysis was prepared and reviewed by DelDOT as a result of the reduction in residential units. The applicant will be required to comply with all DelDOT entrance, intersection and roadway improvement requirements, including the improvement of Old Landing Road from Fairway Drive to its southern terminus, construction of bicycle and pedestrian improvements and required contributions to the signalization and improvement of the Old Landing Road/Warrington Road/Strawberry Way intersection.
 8. The proposed development will provide buffers from Federal and State wetlands and will comply with the Inland Bays Pollution Control Strategy. The Final Site Plan will take into account the review and approval of Federal, State and County agencies that have jurisdiction over the protection of wetlands.
 9. There was concern stated in the record about soil types and storm water management at this site. All of this will be reviewed and regulated by the Sussex Conservation District and DNREC prior to Final Site Plan approval. As with any Preliminary Site Plan, there may be further changes to the Plan following the District’s and DNREC’s review to accommodate an appropriate and workable storm water management design.
 10. The Plan has adequately addressed all of the terms contained in Section 99-9C of the Subdivision Code.
 11. Based on the record and recommendation of the Planning & Zoning Commission and the record created before the Sussex County Council, the Change of Zone is approved subject to sixteen (16) conditions (A – P), as amended, which will serve to minimize any potential impacts on the surrounding area and adjoining properties.
- J. Based on the record created before the Planning and Zoning Commission and the Sussex County Council, the Council approved this application.