

ORDINANCE NO. 2886

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR AN AMENDMENT OF CONDITION NO. 9 IN ORDINANCE NO. 2378 (CONDITIONAL USE NO. 1963) TO AMEND THE REQUIREMENT THAT NO CAMPERS OR RVS SHALL BE STORED ON THE CAMPGROUND DURING THE PERIOD THAT THE CAMPGROUND IS CLOSED TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 54.33 ACRES, MORE OR LESS

WHEREAS, on the 4th day of March 2022, a conditional use application, denominated Conditional Use No. 2356 was filed on behalf of Sun Massey's Landing RV, LLC; and

WHEREAS, on the 8th day of September 2022, a public hearing was held, after notice, before the Planning and Zoning Commission of Sussex County and said Planning and Zoning Commission recommended that Conditional Use No. 2356 be approved; and

WHEREAS, on the 27th day of September 2022, a public hearing was held, after notice, before the County Council of Sussex County and the County Council of Sussex County determined, based on the findings of facts, that said conditional use 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 that the conditional use is for the general convenience and welfare of the inhabitants of Sussex County.

NOW, THEREFORE, THE COUNTY OF SUSSEX HEREBY ORDAINS:

Section 1. That Chapter 115, Article IV, Subsection 115-22, Code of Sussex County, be amended by adding the designation of Conditional Use No. 2356 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 Indian River Hundred, Sussex County, Delaware, and lying on north side and south side of Long Neck Road within the Massey's Landing RV Park and being more particularly described in the attached legal description prepared by Morris, Nichols, Arsht & Tunnell LLP, said parcel containing 54.33 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.

I DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE AND CORRECT COPY OF ORDINANCE NO. 2886 ADOPTED BY THE SUSSEX COUNTY COUNCIL ON THE 27TH DAY OF SEPTEMBER 2022.

**Tracy N. Torbert
Clerk of the Council**

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

- A. This is the application of Sun Massey’s Landing RV, LLC for the consideration of a Conditional Use of land in an AR-1 Agricultural Residential District for an amendment of Condition No. 9 in Ordinance No. 2378 (Conditional Use No. 1963) to amend the requirement that no campers or RVs shall be stored on the campground during the period that the campground is closed to be located on a certain parcel of land lying and being in Indian River Hundred, Sussex County, containing 54.33 acres, more or less (property lying on the north side and south side of Long Neck Road, within the Massey’s Landing RV Park) (911 Addresses: 20628 Long Beach Drive, 20636 Long Beach Drive, 32464 Sailfish Lane and 22814 Conch Road, Millsboro) (Tax Parcel: 234-25.00-31.02 & 31.05).**
- B. Based on testimony before the Planning and Zoning Commission and the public hearing before the Sussex County Council, Council found that David Hutt, Esquire, with Morris James LLP, was present on behalf of the Applicant, Sun Massey’s Landing RV, LLC; that the resort is managed by the Bluewater Development Company and present on their behalf were Rafael Correa and Tony Nichols; that a Conditional Use was granted for Massey’s Landing RV Campground which included 24 conditions; that two conditions were modified in 2017; that Applicant is requesting that Condition No. 9 be amended; that Condition No. 9 currently reads, “The campground/RV park shall remain vacant and no campers or RV’s shall be stored on the campground during the period that the campground is closed.”; that as part of the request for amendment, Applicant proposed language for Condition No. 9 as follows: “The campground/RV park shall remain vacant and no campers or RV’s except “Park Model RV’s” on approved Park Model campsites shall be stored on the campground during the period that the campground is closed. Park Model RVs in special flood hazard areas shall meet the requirements of 115-141.5B (3) for manufactured homes.”; that this change would allow the Park Models to remain at the resort when it is closed; and that the second sentence in the proposed change essentially refers to moving any Park Models that are in a special flood hazard area.**
- C. Council found that the final site plan shows the various types of campsites, but all 291 campsites are required to be transient; that there are 216 sites where guests bring their RVs, 5 tent sites, and 70 Park Model sites; that the Park Model sites are highlighted on the site plan; that the sites shaded in tan are within the special flood hazard area, and the areas shaded in green are outside the flood hazard areas; that pursuant to the conditions at the end of the first weekend in November each year, the process begins of disassembling those campsites and removing the RVs from the property; that the cost for this process is \$150,000 annually; that during the pandemic, a hauler could not be found to facilitate this process and the RVs remained on the site; that a notice of violation was sent to the property owner; and that the notice of violation prompted this application.**
- D. Council also found that there are many RV parks where the RV’s remain on the property year round; that during the hearing to amend conditions in 2017, the Applicant discussed the special flood area, the taxation of RVs which receive a title from the Department of Motor Vehicles (DMV), and whether, if the RVs remain on the site on a 12-month basis, the RVs essentially become manufactured homes making them a permanent structure which is the opposite of an RV park; that the difference between a manufactured home and an RV is clear in that an RV must be less than 400 square feet, while a manufactured home must be more than 450 square feet; that if an owner brings a manufactured home into a Manufactured Home Community, the owner must surrender the title, it becomes a fixture on the land, and the owner pays property taxes to Sussex County; that an RV always stays a motor vehicle which is registered through the DMV; and that each of the 63 RVs on the site are registered through the DMV.**

E. Council found that, while this is a flood hazard area, the same concerns exist when the homes are occupied from April through November; that there would be no danger to individuals as the RVs are not occupied when the park is closed for the season; that hurricane season ends in November, with the most activity from Mid-August through Mid-October; that the County Code has a provision that states exactly what is required if an RV is located in a special flood hazard area; that Sussex County Code Section 115-141.4 G subsection 2 states “Recreational vehicles that are to be placed on a site for more than 180 consecutive days, shall meet the requirements of § 115-141.5B(3) for manufactured homes or § 115-141.6C(4), as applicable.”; that those two code sections relate to special flood hazard areas and the second one applies to Coastal High Hazard areas which does not apply here; that the reason for denial in 2017 was best described in reason 4 from the motion; that reason stated the following “Section 115-172.H.9 - No permanent structures for human occupation or manufactured homes other than the one used by the park manager are permitted in a campground”; that this section prohibits the conversion of RVs into permanently anchored structures like a manufactured home; that the Code seems contradictory while it should be read to be harmonious; that park model RVs have hitches for towing purposes; that DelDOT stated there would be a minor impact on traffic and an area-wide study fee could be paid; that he spoke with the DelDOT staff in attendance at this meeting and they concur that this must be incorrect as this request would not generate any new traffic; that in fact, if this amendment is approved, there would be 126 less trips per year on Long Neck Road as the RVs would remain on the site year round; and that they will not be occupied year round as the Park will be closed from November through the beginning of April.

F. Based on the record and recommendation of the Planning and Zoning Commission and the Planning and Zoning Commission’s Findings (1 through 5), Council found that:

- 1. Condition # 9 of Ordinance # 1963 currently prohibits campers and RVs from being stored within the campground when it is closed for the season. This includes “Park Model” RVs specifically built for use in this campground. County Council Report for C/U 2356 filed on behalf of Sun Massey’s Landing RV, LLC.**
- 2. As a result of Condition #9, all “Park Model” RVs must be disconnected from all utilities and transported along the area roadways to an offsite location. This creates additional and unnecessary traffic on those area roadways.**
- 3. This revision will not adversely affect neighboring properties or roadways.**
- 4. No parties appeared in opposition to this request.**
- 5. Based on the record and recommendation of the Planning and Zoning Commission and the record created before the Sussex County Council, Condition #9 of Ordinance No. 2378 and Conditional Use No. 1963 is hereby amended to state as follows:**

“9. “The campground/RV park shall remain vacant during the period that the campground is closed. No campers or RVs shall be stored on the campground while it is closed, with the exception of “Park Model” RVs located on approved “Park Model” campsites within the site. “Park Model” RVs located within the Special Flood Hazard Areas shall meet the requirements of Section 115-141B (3) of the Sussex County Zoning Code for manufactured homes.”