



**STATE OF DELAWARE  
EXECUTIVE DEPARTMENT  
OFFICE OF STATE PLANNING COORDINATION**

January 17, 2020

Jamie Whitehouse, AICP  
Sussex County  
Department of Planning and Zoning  
P.O. Box 589  
Georgetown, DE 19947

RE: PLUS review 2020-12-05; Sussex County Comprehensive Plan Amendment

Dear Mr. Whitehouse:

Thank you for meeting with State agency planners on December 16, 2020 to discuss the proposed Comprehensive Plan Amendment for Sussex County. This amendment would change the Future Land Use Map for several parcels from AR-1 to HI-1

Please note that additional changes to the plan could result in additional comments from the State. Additionally, the comments below reflect only issues that are the responsibility of the agencies that were represented at the meeting.

**Office of State Planning Coordination – Contact Dorothy Morris 739-3090**

- The office has concerns with the plan amendment because it is within a Level 4 area according to the 2020 Strategies for State Policies and Spending. In Investment Level 4 Areas, the State's investments and policies should retain the rural landscape, preserve open spaces and farmlands, support farmland-related industries, and establish defined edges to more concentrated development.

With that said, we understand that Investment Level 4 Areas may be the location for certain uses that because of their specific requirements are not appropriate for location elsewhere. Such uses, expected to be limited in number, could involve public safety or other uses that require their location outside designated investment areas. Industrial activity would be limited, except where specific requirements of major employers may dictate an exception for a use, which, because of specific siting and potential conflicts with neighboring uses, should not be placed elsewhere. We saw this site plan in August and at that time expressed concerns about the storage space and stand-alone flex sites.

Because of its location in a Level 4 area but along the railway, the State would support this as an Ag Industrial Site and we urge the county to consider a conditional use for the balance of the site to ensure that the additional uses toward the front of the site relate to agriculture. Allowing stand alone uses such as retail sales, veterinary offices, etc. would be out of compliance with the Strategies for State Policies and Spending in a Level 4 area. We again urge the County to consider an Agricultural Zone to be used in the future to ensure that the land needed to move goods produced by farmer is available.

In addition, the state asks that the County consider creating a process to review comprehensive plan amendments on a scheduled basis, possible once or twice a year. While the state understands that the counties will, from time to time, have amendments that need to be considered we remind the County that this is a 10 year planning document that was adopted after a much input from municipalities, business, developers, and residents within the county. The plan that was ultimately adopted was intended to be a guide book to show the developers and residents of Sussex County how and where the County intends to grow. To amend the document sporadically can undermine that process.

**Department of Transportation – Contact Bill Brockenbrough 760-2109**

- DelDOT has no comments on the subject comprehensive plan amendment. In August 2020, in response to a PLUS application pertaining to the rezoning that the subject amendment would enable, DelDOT provided detailed comments. A copy of those comments is attached. Then, as now, however, DelDOT's comments are oriented primarily to the site plans that would follow if the County approves the amendment and rezoning.

**Department of Natural Resources and Environmental Control – Beth Krumrine 735-3480**

- The parcels of interest are in Delaware State Strategies Level 4 lands, located directly west of Milton on Route 16 (Milton Ellendale Highway). The application indicates rezoning from Agricultural Residential (AR-1) Zoning District to Heavy Industrial Zoning District (HI-1). According to Sussex County Code § 115-109, "The purpose of this district is to provide for a variety of industrial operations but to restrict or prohibit those industries which have characteristics likely to produce serious adverse effects within or beyond the limits of the district. Certain potentially hazardous industries are permitted only after public hearings and review to assure protection of the public interest and surrounding property and persons. It is the intention of the district to preserve the land in the district for industrial use and to exclude new residential or commercial development, except for certain specified uses deemed appropriate adjuncts to industrial operations."

The 2019 comprehensive plan did not propose industrial development in this area. The rezoning to HI-1 represents a significant departure from the land use proposed for this area in the March 2019 Sussex County Comprehensive Development Plan. Heavy Industrial uses will require infrastructure such as roads, transit, water, and wastewater.

Rezoning should consider infrastructure development needs, which should also be addressed in the comprehensive plan or master plan. Please consider further collaboration and dialogue with other entities about the infrastructure investments that would be necessary to support industrial activities in this area. This includes the potential secondary effects of industrial development, as well as potential public transit needs, job centers, and pike paths/trails.

Likewise, existing neighborhoods are located immediately to the southeast of the area of interest. Local residents should be afforded opportunities to engage in designing the future uses of these areas in a robust and meaningful way. For this reason, rezoning of this area should be contemplated in the comprehensive development plan or a separate master planning process.

In summary, DNREC reviewers feel that additional planning efforts are necessary before proceeding with a rezoning of this area for the following reasons:

- Located in level 4
- Need to address such changes in the comp plan
- Lack of transportation options for employees
- Existing neighborhoods nearby

#### **Wastewater Permitting – Small Systems**

- Expired permits held with the DNREC Ground Water Discharges Section exist on the site. These systems must be abandoned properly if no longer in use. Notify DNREC Groundwater Discharges Section of any changes by reaching out to the Sussex County Branch at (302) 856-4561 (<https://dnrec.alpha.delaware.gov/water/groundwater/septic-systems/>).

For any future permitting of Small Wastewater Systems, site evaluations must be performed by a Delaware licensed Class D Soil Scientist to determine the type of disposal system allowed under current regulations and site conditions. A list of licensed Class D soil scientists can be found at the following website:

<http://www.dnrec.delaware.gov/wr/Information/GWDInfo/Documents/Class%20D%20list.pdf>

Expired permits:

- 235-13.00-29.00
  - Gravity system permit (Small Systems) is expired, dated January 27, 2001.
  - A site evaluation completed by a licensed Class D Soil Scientist expired on January 19, 2005.
- 235-13.00-29.01

- There is an active permit that will expire on January 24, 2021 for a capping filled pressure dosed system (Small Systems).
  - The site evaluation will expire on January 2<sup>nd</sup>, 2023.
- 235-14.00-570.00
  - There are no existing permits or site evaluations under this tax parcel.

**Natural Area Located Within Near Vicinity**

- The Broadkill River Natural Area exists immediately to the south of the parcels of interest. Natural Areas contain lands of statewide significance identified by the Natural Areas Advisory Council as the highest quality and most important natural lands remaining in Delaware. Should the parcels ultimately be rezoned, site design should reduce environmental impacts near Natural Areas by avoiding impacts to sensitive areas such as wetlands and forest habitat.

Once a decision has been reached on this proposed comprehensive plan amendment, please forward a copy of the plan amendment to the Office of State Planning Coordination for our records. The plan amendment must include the adopting resolution or ordinance, a revised version of any maps that were updated as well as any text that was approved in amending the comprehensive plan. If the amendment is not approved by the town, please notify the office so we can update our records.

Thank you for the opportunity to review this Comprehensive Plan amendment. If you have any questions, please contact me at 302-739-3090.

Sincerely,



Constance C. Holland, AICP  
Director, Office of State Planning Coordination

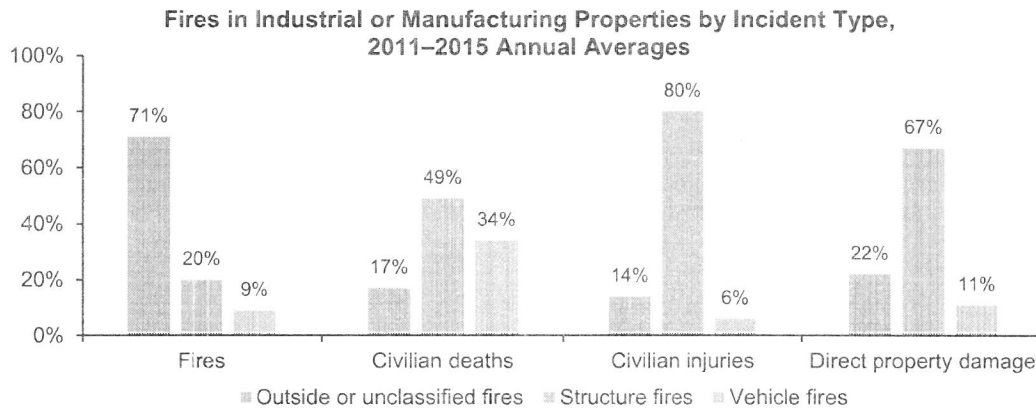


# FACT SHEET » RESEARCH

## Industrial and Manufacturing Property Fires

During 2011–2015, an estimated **37,910** fires in industrial and manufacturing properties were reported to U.S. fire departments per year. These included:

- ▶ **26,730** outside or unclassified fires
- ▶ **7,770** structure fires
- ▶ **3,410** vehicle fires
- ▶ An estimated \$1.2 billion in property damage per year



- ▶ Structure fires are more common in manufacturing or processing properties, while vehicle fires are more common in agricultural properties.
- ▶ Electrical distribution and lighting equipment was involved in 24% of structure fires, and heating equipment was involved in another 16% of these fires.
- ▶ Hot ember or ash was the leading heat source in 15% of outside non-trash fires in industrial properties.
- ▶ Vehicle fires are more common in the fall months, particularly in October, likely due to harvesting activities.

### Codes & Standards Related to Industrial and Manufacturing Properties

NFPA 30, *Flammable and Combustible Liquids Code* – [www.nfpa.org/30](http://www.nfpa.org/30)

NFPA 61, *Standard for the Prevention of Fires and Dust Explosions in Agricultural and Food Processing Facilities* – [www.nfpa.org/61](http://www.nfpa.org/61)

NFPA 101®, *Life Safety Code®* – [www.nfpa.org/101](http://www.nfpa.org/101)

NFPA 654, *Standard for the Prevention of Fire and Dust Explosions from the Manufacturing, Processing, and Handling of Combustible Particulate Solids* – [www.nfpa.org/654](http://www.nfpa.org/654)

NFPA 664, *Standard for the Prevention of Fires and Explosions in Wood Processing and Woodworking Facilities* – [www.nfpa.org/664](http://www.nfpa.org/664)

NFPA 5000®, *Building Construction and Safety Code®* – [www.nfpa.org/5000](http://www.nfpa.org/5000)

Source: NFPA Research: [www.nfpa.org/research](http://www.nfpa.org/research)

Contact information: 617-984-7450 or [research@nfpa.org](mailto:research@nfpa.org)



**NATIONAL FIRE  
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March 1, 2021

**BY EMAIL**

The Honorable Members of  
Sussex County Council  
2 The Circle  
Georgetown, DE 19947

**Re: CZ 1923 Reed Farms, LLC**

Dear Members of Council:

I am writing on behalf of the Board of Directors of Pemberton Property Owners Association, Inc. (the "Association").

On the agenda for Tuesday, March 2, 2021, is an Ordinance to grant a change of zoning for a certain 67.31 acre parcel of land bounded by the west side of Gravel Hill Road (S.R. 30) and the south side of Milton Ellendale Highway (S.R. 16)(the "Property") from AR-1 (Agricultural Residential Zoning District) to HI-1 (Heavy Industrial Zoning District).

On behalf of all residential homeowners in Pemberton, the closest neighboring residential community to the Property, the Board wishes the Commission to know that it **opposes this Ordinance, unless and until** the matters set forth below are appropriately addressed by the Applicant, Reed Farms, LLC, in its application. Addressing these matters now will protect not only the residents of Pemberton, but also the greater interests of the citizens of Sussex County.

Pemberton is a residential neighborhood consisting of 65 lots, with 59 completed homes, located immediately adjacent to the Property. In fact, Pemberton is the most direct neighborhood to the Property and would be subject to the brunt of the harmful effects of the now prohibited heavy industrial activity that is proposed to take place on the Property if the Ordinance is approved. Indeed, if the plans being offered to you are accurate predictors of the future for this property, the entrance way for this heavily industrial complex is right at the community's doorstep, as the entrance and exit is proposed to line up directly across from the community's entrance on to Route 30, Gravel Hill Road.

Greenville Professional Center • 3704 Kennett Pike, Suite 200 • Greenville, DE 19807  
Telephone: 302-426-1313 • Fax: 302-426-1300 • Web: www.mvzllc.com

DOVER OFFICE • 1675 S. State Street, Suite E • Dover, DE 19901  
MILLSBORO OFFICE • 34814 Long Neck Road • Cove Village, Suite 1 • Millsboro, DE 19966

Before consideration of the approval of the application for this zoning change is undertaken by Council, the Board wishes to have the following matters addressed as part of the application process: (i) fire protection; (ii) sewage treatment; (iii) the environment; (iv) traffic; (v) vehicular access; (vi) nuisance mitigation; (vii) public participation. The Board is hamstrung by not yet knowing the extent of the heavy industrial uses that will ultimately be proposed for this site, but wishes its residents and all citizens of Sussex County be protected now should Council approve rezoning to heavy industry to a site that has long been Agricultural/Residential.

It is indeed unfortunate that the Applicant has not taken the time and effort to meet with or discuss these matters with the Pemberton community. It is hoped that Council will assist the community to have its legitimate concerns addressed and resolved favorably.

**Fire Protection.** The Board believes that this zoning change should be contingent upon there being ample and adequate fire protection services for the Property. **There is no public water supply currently serving the site,** and if an industrial fire were to break out in this proposed heavy industrial site, there will not be ample water available to contain a catastrophic fire on the site. Further, this proposed heavy industrial site is located quite a distance from any fire company, and the companies that are the closest do not have the type of equipment that would be necessary for addressing heavy industrial fires.

Even with municipalities with adequate water and fire protection services, industrial building fires are extremely dangerous to persons and destructive to property. A recent Report from the National Fire Protection Association, attached herewith, confirms that while structural fires in industrial sites represent just twenty percent of the fires at such sites, those fires result in 49% of the deaths and an astounding 80% of the civilian injuries, along with 67% of the total direct property loss.

Accordingly, no buildings on this proposed heavy industrial site should be allowed to be developed on the site until (i) public water is brought into the site, with appropriately high pressure to handle an industrial type fire, and (ii) the fire department(s) with jurisdiction over the Property certify that fire protection equipment and services are both adequate and available to ensure that no catastrophic conflagration will threaten the users of the Property and the homes and lives of the Property's immediately adjacent neighbors, the Pemberton residents.

**Sewage Treatment.** Good sanitary and planning principles require that onsite septic should never be acceptable for a proposed large scale heavy industrial site such as the one being proposed by this Applicant. Indeed, the underground aquifer beneath the Property cannot handle the high-density load and volume of waste and type of discharge which would be generated from this newly proposed industrial site. The Board believes that, for public health and the protection of Sussex County ground water, this zoning change should be contingent upon there being a connection to public sewer services.

While there is a forced sewer main that is adjacent to the site, which the Applicant has referenced, that main contains only treated sewage and cannot be used for transporting raw sewage from the site. Accordingly, the Board requests that Council require that no heavy industrial uses or development should be allowed to occur on the Property until such time as the

public sewer system is accessible and plans to access such system are provided to and approved by the County.

**Environmental Impact Study.** The Property, which has been primarily used for farming, sits miles from any intense property usage, and indeed if it is approved by Council will be the largest area of heavy industrial use not in, around or adjacent to any large municipality in the County.

Pemberton, whose residents are on well-water, sits to the immediate down-stream side of this Property. There is absolutely no study or information about how this proposed intense use, and the drainage from acres and acres of impervious use on the Property will affect the owners in Pemberton. The Board requests that Council deny the application unless the Applicant offers to undertake an Environmental Study of this Property and the impact of the development of this Property will have on its down-stream neighbor, Pemberton.

**Traffic Impact Study.** The Board believes that if a change to HR-1 zoning is thought beneficial for the Property, a Traffic Impact Study should be required, and thereafter undertaken if and when proposals are made for the actual development of the Property.

The Board is concerned about the number of truck trips and employee vehicular trips that this site will generate, and the degradation of the road and the addition to traffic congestion already being experienced along the Routes 30 and 16 corridors. Accordingly, no matter what ultimate industrial development is sought for the site, a Traffic Impact Study must be required at the time of the application for such development, and the Board requests that Council deny the application unless the Applicant offers to provide such a Study at the time its plans for a proposed development of the Property are submitted to the County.

**Vehicular Access.** The plans and proposals that have been presented publicly by this Applicant about this application all show that the primary entrance to this site is to be directly across from the entrance to the Pemberton community. The Board opposes this entrance and believes that the primary entrance to the site should be from Route 16, a primary east-west corridor through Sussex County with direct connections to both of the primary north-south access corridors, Route 1 and Route 113.

Pemberton, as a residential community, should not have residents and guests being required to negotiate, head on, heavy industrial truck traffic to and from this site, and risk, on a daily basis, incompatible usage of the only access that Pemberton's residents and guests have to exit from the community. It is particularly egregious situation given the site of Pemberton's access on a limited sightline curve on Gravel Hill Road.

The residents should not be put in this highly dangerous situation especially where, as here, this Applicant's Property has significant frontage along Route 16. Accordingly, primary access to the Property should be on Route 16, and no other entrance or exit to or from the Property should be aligned directly across from Pemberton's sole entry and exit point. The Board requests that Council deny the application unless the Applicant offers to limit its entrance



and exits locations consistent with a Route 16 focal point and not focused on a direct conflict with Pemberton's entrance.

**Nuisance Mitigation.** There is, of course, no complete offering to Council or even an understanding of what heavy industrial uses may or may not be forthcoming to this site, as the only matter before Council is a change of zoning request. This puts the Board at an enormous disadvantage, essentially fighting a chimera, a movable target of unknown size, scope and nature.

If the currently zoned AR-1 site is deemed by members of Council to be in the public interest for a zoning change to heavy industrial, then the public, in this case the residents of Pemberton, who all bought their homes in contemplation of the consistent Agricultural/Residential nature of the surrounding property, should be protected **at this time** from the excesses that might take place on this property which are allowed by a change in zoning to heavy industrial.

The Pemberton homeowners should not be forced to live in uncertainty from future unknown harms and should be given assurances now that will protect their quality of lives and investment in their homes. Accordingly, the Board believes that this zoning change should be contingent upon the Applicant offering substantial protections for the community's benefit. Those protections must include light migration mitigation, noise mitigation, idling truck and other air pollution restrictions, limited night hours of operation and enhanced setbacks, buffering and landscaping.

The Board also believes that the Applicant should offer a limitation on the category of industrial uses it will undertake on the site, and the Board requests that the Applicant offer to narrow its uses to a subset list of approved uses for the site to be appended to this change of zoning. In particular, the Board suggests that the limitation be to those uses consistent with an "Ag Industrial Site," as proposed by the Office of State Planning Coordination in its comments to the companion Sussex County Comprehensive Plan Amendment, a copy of which is attached.

All of these mitigation offerings are necessary to protect the quality of life that the residents of Pemberton expected with property surrounding them that was zoned AR-1, and are reasonable given that the change in the character of the Property should in some way be consistent with or at least compatible with residential living already in existence.

**Public Participation.** The Department of Natural Resources and Environmental Control in its comments on the companion application for a Sussex County Comprehensive Plan Amendment noted that "Heavy Industrial uses will require infrastructure such as roads, transit, water, and wastewater.... Please consider further collaboration and dialogue with other entities about the infrastructure investments that would be necessary to support industrial activities in this area...." DNREC then noted that "**Local residents should be afforded opportunities to engage in designing the future uses of the areas in a robust and meaningful way.**" See attached.

The Honorable Members of  
Sussex County Council  
March 1, 2021  
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The Board concurs with DNREC and believes that Pemberton should be included in the process of the future development of this Property. As set forth above, Pemberton and the Board have been excluded by this Applicant from having any meaningful participation in the process. To this day, not one representative of the Applicant has approached the Board about this application, even after the Board expressed its opposition following the hearing before the Planning and Zoning Commission.

The Board requests that Council deny the application unless the Applicant offers to afford members of the public, and especially the Board of the Association, with meaningful opportunity to participate in and comment upon its future proposed plans for the development of the Property before they are presented to the County for consideration, and does so in a way that allows for thoughtful analysis, and with a commitment to listening and working with the community, and implementing mutually beneficial solutions to the benefit of the community and Sussex County.

\* \* \*

Accordingly, the Board respectfully requests that Council deny the application unless and until the matters set forth herein are adequately and amply addressed.

Should you have any questions concerning the position of the Association, please do not hesitate to contact the undersigned.

Sincerely,

*/s/ Robert J. Valihura, Jr.*

Robert J. Valihura, Jr., Esquire

RJV/es  
Enclosures

cc: Board of Directors, Pemberton Property Owners Association, Inc.



RECEIVED

MAR 01 2021

SUSSEX COUNTY  
PLANNING & ZONING

March 1, 2021

To: Sussex County, DE County Council

Re: C/Z 1891 - Chappell Farm, LLC  
C/Z 1892 - Chappell Farm, LLC  
C/U 2193 - Chappell Farm, LLC

President Vincent, Members of the Sussex County Council:

The Sussex Alliance for Responsible Growth (SARG) supports policies and regulations that protect and enhance the economic growth and quality of life in Sussex County.

Regarding the applications above, SARG requests that approval of the rezonings be deferred and that the application for the conditional use be denied if the Council ultimately approves the rezoning applications for the following reasons.

- The methodology used to calculate the density of this project is incorrect and if approved would allow a density far exceeding anything in the area.
- The Traffic Impact Statement (TIS) and therefore the Traffic Impact Study Review Letter (TIRSL) originally provided to the County and used as the basis for review by the Planning and Zoning Commission was not accurate, based on incorrect information and did not accurately project the impacts of the project on area roads and intersections. The information now provided to the Council has been amended but has not received Planning and Zoning Commission review.
- The Route 1 Corridor from Minos Conaway to Milton is depicted in the Comprehensive Plan as an overwhelmingly low density development area. Yet many of the recent development proposals have been for high density development, both residential as well as commercial. The County must demonstrate the will to support the Comprehensive Plan and make a clear determination now as to what the character of this corridor will be before it is overwhelmed by development following the construction of the interchanges at Minos Conaway, Cave Neck Road and Route 16.

### **Analysis**

SARG recognizes where the Chappell Farm property is located and that it will not likely remain underutilized, low density AR-1 property. However, we must all work together to assure that this high value and high visibility location at a major highway interchange be developed as a point of pride for the County and a positive contributor to area residents' quality of life. The lands between this location and the new Minos Conaway interchange are the northern Gateway to the Beaches and the County needs to make the right decisions with this area and not repeat the mistakes made below Five Points.

SARG also recognizes that the land could be sold off and rezoned piecemeal causing a hodgepodge of poorly designed developments, adding little to the quality of life of residents or to the visitor experience. That the property is controlled by a local Applicant with a history of creating better-quality projects and managing them long term is a major plus. By addressing some significant concerns, the proposed plan for the entire site can be realistic and complementary with the surrounding area. The Applicant's efforts to listen to and account for nearby communities' concerns is commendable. However, there are serious concerns that SARG presents here that, if properly resolved, would result in a much better development. These concerns involve traffic and density.

Since our initial analysis and comments provided to the Planning and Zoning Commission, the TIS for the project has been updated. SARG did not have the updated information until less than a week before this hearing, but our initial review has only reinforced our concerns with this development proceeding at this time.

### **The Proposed Project Exceeds Permitted Density For Multifamily Structures In MR**

SARG is confused and concerned about how density is determined and presented in this application. The Applicant seeks rezoning of 6.4 acres to MR. They then ask for conditional use of this 6.4 acres to build 128 dwelling units [apartments].

Virtually the entire Route 1 corridor from Minos Conaway to Milton is designated as Low Density, reflecting the desire of the Council and the Community to maintain the rural character of the area. As the TIS points out *"A portion of the site (a section of the proposed convenience store with gas) would be in the Investment Level 3 area and the rest of the site would be in the Investment Level 4 area. According to Livable Delaware, the state's investments and policies should retain the rural landscape and preserve open spaces and farmlands within Level 4 areas. In addition, construction of new homes is discouraged in Level 4 areas. Therefore, the proposed development is generally not consistent with the 2015 update of the Livable Delaware "Strategies for State Policies and Spending" (Emphasis added).*

Additionally, the TIS states *"Per the Sussex County Comprehensive Plan Future Land Use Map, the proposed development is in an area designated as Low Density. Proposed Development's Compatibility with the Sussex County Comprehensive Plan: Per the Sussex County Comprehensive Plan, Sussex County hopes to retain the rural environment of Low Density areas. Therefore, the proposed development is generally not consistent with the Sussex County March 2019 Comprehensive Plan" (Emphasis added).*

MR zoning allows up to 8 Dwelling Units (DU's) per acre. This is the zoning of the Paynter's Mill development across Cave Neck Road, although its actual density is closer to 4 units per acre with substantial open space and designed to fit the context of the area. Per Table II in Chapter 115, a conditional use in the MR district could permit up to 12 DU's per acre. The density calculation is based on "dwelling units"; the permitted number of units on 6.4 acres under MR zoning would be a maximum of 52 and for MR with a



conditional use it would be a maximum of 77 DU's. Applicant's application proposes 128 dwelling units on this 6.4-acre parcel, a density of 20 dwelling units per acre, a level which is plainly not within the permitted density.

Applicants application misstates that the requested density would be 10.5 units per acre. In their calculation, they incorrectly use 14.9 acres as the area of the parcel and 156 as the number of units, which is the total acreage and units of the entire development, including the area carved off and to be rezoned to C3. Section 115-15-1 of the zoning code states that "the gross area, as defined herein, shall be divided by the applicable lot area stated **in each district**". If and when these parcels are rezoned, the Applicant should base their density calculation on the rezoned applicable district, which is MR and not aggregate acreage from adjoining parcels which are zoned differently with different regulations regarding residential units. Not to limit the density calculation to the MR zoned section would seem to be a mistaken interpretation of the County Zoning Code. Hypothetically, and without consideration for other restrictions such as height limitations, using the Applicant's methodology, the 100 acre parcel zoned AR 1 on the East side of Route 1 directly across from this project could have 10 acres rezoned to MR with a CU and then use the entire 100 acres to calculate the permitted density, thereby allowing 1,200 DU's on the 10 acres. This is clearly not what the zoning code was designed to encourage.

The methodology of calculating density and its enforcement needs to be clearly defined and understood by all stakeholders for uniform future development. If the use of mixed zoning districts in density calculations is permitted, it will encourage the proliferation of such uses in the future to take advantage of significantly increasing density on undersized parcels.

### **The Proposed Project Is Not Consistent with the Surrounding Land Use**

The Applicant's application stated that "Based on the analysis of the land use, surrounding zoning and uses, the Conditional Use to allow for a multifamily apartment community, subject to considerations of scale and impact, *"could be considered as being consistent with the land use, area zoning and surrounding communities"* (emphasis added). At 10 or 20 units per acre, it most certainly is not consistent with the land use, area zoning and surrounding communities or the Comprehensive Plan. Has the County analyzed the ramifications of such a decision? Those densities are urban in nature and, if approved at this location, will encourage higher densities not only in the immediate vicinity of this project but set the precedent for the Route 1 corridor from Five Points to Route 16.

There is no development anywhere near to this project that approaches 8 or 10.54 units per acre, much less 20 units per acre. With the exception of Paynter's Mill at less than 4 DU's per acre and Red Fox Run at less than one DU per acre, all area developments are zoned AR 1. The Conditional Use proposed is unreasonable, not correctly calculated and certainly out of keeping with the Comprehensive Plan and the surrounding community and should be denied.

## **The TIS And TIRSL Now Reflect The Correct Base Numbers**

In SARG's presentation to the Planning and Zoning Commission we stated that *“the base numbers used to calculate the additional trips generated by the development are understated by 40%! As a result, the Traffic Impact Study (TIS) and therefore the Traffic Impact Study Review Letter (TIRSL) are critically flawed. The Applicant’s presentation shows 128 residential units in four buildings, 32 per building, and another 28 units above the large commercial space, a total of 156 units versus the 94 units used as the base number in the TIS calculations. This 40% differential is substantial and should not be ignored or dismissed. (Emphasis added )*

The Applicant’s representative attributed this error to a “typo” and said it would not make a material difference in the traffic impacts. SARG disagrees – 40% is not immaterial. When questioned by Commission members, Mr. Brockenbaugh of DelDOT said that recalculating for the difference would not change what DelDOT would require of the Applicant in terms of improvements, only increase the contributions they would be required to contribute to a variety of mitigation projects in the area, including the new overpass. His statement clearly confirms that there will be more traffic and greater impacts than reported in the TIRSL. *“How will levels of service and their impact on the area’s residents as well the amounts contributed, be calculated if the actual load driving them is not known or presented to the Council? It is imperative that the Council have the most complete and accurate information available.” (Emphasis added)*

Now we know that our statement was accurate. The TIRSL has been revised and now reflects an increased number of residential units (156 vs 94), increased sizes of the commercial developments (39,000 square feet vs 37,000 square feet), increased size of the convenience store/gas station (5,374 square feet vs 5,068) and updates to the traffic counts. But the recalculation also confirms that the negative impacts on residents and visitors over the next five years as described below will only be intensified.

Except for lengthening the stacking lane on northbound Route 1 at Cave Neck Road to 900 feet, DelDOT apparently plans no improvements to relieve traffic or improve safety prior to construction of the interchange in 2026. Capacity and safety issues at that location will not be resolved until then. Anyone living on, near or using Cave Neck road, communities served by intersections north and south along Route 1, and area visitors will deal with significantly increased traffic congestion and deteriorating safety over the next five years, all on already congested roads and intersections. Specifically, the proposed project Phase 1 will add over 5,600 daily trips to and from this site.

The Cave Neck/Route 1 intersection is currently extremely unsafe, second only to Route 1 and Route 16 in the number of crashes. Yet, while the TIS includes a “Crash Evaluation” for multiple intersections in the Route 1 and Cave Neck corridors, it omits any data for Route 1 and Cave Neck Road. This is unacceptable, the Council, the public and residents of the area deserve more consideration.



For example, according to the current TIS, at the Route 1 Cave Neck Road intersection, the northbound left turn to westbound Cave Neck Road already has a LOS of F with an average delay per vehicle of 65 seconds, just over a minute. In 2023, without any further development, that delay will become 356 seconds, or 6 minutes. The TIS states *“The unsignalized Cave Neck Road intersection with Delaware Route 1 exhibits LOS deficiencies during all peak hours under existing conditions and during the PM and Saturday peak hours under future conditions, with or without the construction of the 5,374 square-foot convenience store with gas pumps and apartment units. The deficiencies occur along the eastbound Cave Neck Road left turn, northbound Delaware Route 1 left turn, and southbound Delaware Route 1 U-turn.”* (Emphasis added) It continues *“Delays of up to 537.1 seconds per vehicle are expected along the northbound Delaware Route 1 left turn during the Saturday peak hour under future conditions with the proposed development”* (Emphasis added)

**The TIS/TIRSL Now Propose A Different Phasing Plan Than What Was Presented To And Made A Condition Of Approval By The Planning And Zoning Commission.**

At the outset of the public hearing before the Planning and Zoning Commission, the Applicant's representative made an unequivocal statement that the applicant “ would be agreeable to” not build two of the commercial traffic generators, the convenience store/gas station and the retail space on the eastern property edge, until the new interchange is complete in 2026. He invited the Commission to make this a condition for a recommendation for approval, which they eventually did. Yet in the new TIRSL, the phasing proposed is to construct the 156 residential units and the convenience store as the initial phase, exactly opposite of what was publicly promised and is embodied in the Planning and Zoning resolution recommending approval of the project. The Planning and Zoning Commission and the public were presented an inaccurate TIRSL and promised a certain phasing sequence upon which they based their recommendation only to have different data and a different phasing plan presented to the Council. This seems disingenuous at best. It might be construed as an effort by the Applicant to divert attention from the incorrect residential density calculation by offering to delay the convenience store/gas station before the Commission and possibly again before the Council.

The question we ask of the Council is why would you approve this project now? The Applicant's own TIS shows that traffic congestion and safety are at critical levels currently and **with no further development** will be considerably worse in just 2 years. With the proposed development, it will be intolerable. The construction of the 156 residential units and the convenience store/gas station will add 5,637 Average Daily Trips (ADT) to the area's roads, most of them going through the Route 1/Cave Neck Road intersection. Even if just the residential was permitted at the reduced MR zoning, it would generate an estimated 600 new trips. How much F Level of Service is too much?

What is to be gained for the County, it's residents safety and quality of life by allowing this project to move forward now when virtually all of the traffic safety and congestion issues will be resolved in five years, by a project already in the pipeline? For the County and it's residents, there is significant upside to delay.

### **This Important Corridor Section Needs A True Corridor Plan**

Long term, the critical issue is that the Council's decision on this project's density will set a precedent for years to come. Yes, there are developments both to the north and south of Chappell Farms already zoned MR, and the precedent for higher densities is already set. But none are near the maximum density permitted, let alone above it. Notwithstanding Commissioner Kim Hoey Stevenson's statement when making the motion to approve the rezoning and the CU *"That being said, I am not expecting to see every new development that comes in near there to look like this, so fair warning everybody"*, once this Pandora's box is open it will not be closed. As Commissioner Stevenson also said *"the grade separated overpass there, it will change the dynamic of that spot."* Absolutely correct.

Development will overtake this area when the new interchange is completed along with the project at Minos Conaway Road and Route 16. This corridor will be in high demand and the pressure for intense development will grow exponentially. The decision that the Council makes regarding this project will set the tone for future development.

The County must determine now what this corridor will become. Will it remain low density with selected areas around highway interchanges having higher densities similar to Paynter's Mill yet maintaining the rural/suburban character as called for in the Comprehensive Plan or will it be the next Route 1 below Five Points, an urbanized, high density corridor where development again threatens to overcome the County's and State's ability to keep up with it. It is up to Sussex County. The County's policies and approach to land use will determine its future. Already, the area has seen a proposed 800,000 square shopping center and multiple high density housing projects, Chappell Farms is just the latest. The County's current transactional approach of reviewing and approving ad hoc, one off developments has not served the County well. It is time to alter this process and treat these high value, high demand areas/corridors as the jewels that they are, rather than just being a transfer tax ATM. Just as the County, DelDOT and the development community did in creating the Henlopen TID, there must be an effort to plan for the best possible outcome in this corridor. DelDOT is convening meetings regarding the future of the major east/west corridors in the County from a transportation standpoint, the County should do the same here from an overall development perspective.

County land use policies and decisions causes or prevents poor development and congested roads and hopefully the County will make clear its intentions to remedy past errors in these corridors. As with those reviews, it is time for the County to exercise its authority and create a real vision for sustainable growth in this corridor. A plan that;



- preserves open space,
- is compatible with the sensitive environment,
- presents a welcoming appearance,
- has the necessary transportation infrastructure to support the level of development,
- encourages and incentivizes property owners to develop their properties in an orderly, systematic manner.

Such an approach, with clear infrastructure and development regulations in place, agreed to and understood by all, would be a major step forward and help ensure a better quality of life and visitor experience in the future.

The County should immediately convene a representative group of stakeholders, including civic groups, HOA's, property owners, Applicants, DelDOT and County officials supported and guided by an independent expert in planned development to analyze and prepare a set of recommendations as to how the County should provide for, encourage and shape the highest and best quality of development in this corridor. Nothing should be off the table. This is not a novel approach; it has been used very successfully throughout the country. It does not have to be a long or tedious undertaking, although full implementation of some recommendations could require changes to land use regulations and that can take time. It is a process that could be replicated for other high growth corridors.

The County should consider a temporary moratorium on rezoning in this corridor until this process is concluded. We understand the ramifications of this statement but this is a critical corridor and Sussex County must take a future forward approach to assuring highest and best use is achieved and not let it get out of control. To our knowledge there are few if any proposed or pending applications in this corridor that would be delayed.

In light of these issues, SARG urges the County Council to ;

- Defer a decision on this development until the grade separated interchange is completed.
- If the Council should determine to move forward, the following actions would protect the safety and future quality of life of residents:
  - approval of the proposed MR residential zone,
  - denial of the proposed Conditional Use
  - approval of the C 3 zone with a condition that occupancy be delayed until the interchange is complete.
- Engage with the Applicant and DelDOT to assure the accuracy of the TIS and provide the County, and the public, with an accurate assessment of the traffic impacts created by this project over the next five years based on any approval.
- As a result of the process above, work with DelDOT to determine any possible opportunities to provide temporary relief to the worst impacts

approval of the project would create. The safety of residents and visitors is at stake.

- Clarify how density is determined and work within the bounds of permitted density for multifamily dwellings with the MR district
- Initiate a planning process that will provide all key stakeholders, especially the public, with an opportunity to engage with the County in determining what the appropriate future development of this corridor will be.

This approach will assure fairness to the Applicant while ensuring that the development does not detract from the safety and quality of life of Sussex residents and sets a positive tone and character of the area for years to come.

SARG thanks you for the opportunity to present our views on this matter.

Submitted on behalf of the Sussex Alliance for Responsible Growth  
Jeff Stone  
Milton, DE

\* \* \*

c/z 1891

**Jamie Whitehouse**

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**From:** RDD <rdumain@gmail.com>  
**Sent:** Monday, March 1, 2021 12:21 PM  
**To:** Jamie Whitehouse  
**Subject:** March 2 County Council Hearing-Chappell Farm LLC  
**Attachments:** Chappell Farm Application County Council Hearing Final with pics.docx

**CAUTION:** This email originated from outside of the organization. Do not click links, open attachments, or reply unless you recognize the sender and know the content is safe. Contact the IT Helpdesk if you need assistance.

Dear Mr. Whitehouse-

Please find attached my written statement in opposition to the change in use application filed by Chappell Farm, LLC under C/U 2193.

I respectfully request that my statement be entered into the record and copies be made available to the County Council members.

Thank you for your assistance in this matter.

Sincerely,  
Rita D. Dumain





**Challenge to Chappell Farm, LLC Applications**

**Rita D. Dumain**

**3-2-2021**

To: Sussex County Council

Re: C/Z 1891 – Chappell Farm, LLC  
C/Z 1892 – Chappell Farm, LLC  
C/U 2193 – Chappell Farm, LLC

Good afternoon President Vincent and members of the Sussex County Council:

My name is Rita Dumain and I reside at 16226 Red Fox Lane, Milton, Delaware. My community borders the subject Chappell Farm site. In fact, my home abuts the center of the north end of the site. I appreciate the opportunity to voice my opposition to the approval of the change of use application— C/U 2193.

Initially, I want to note that Commissioner Kim Hoey Stevenson when moving these applications for vote before the Planning and Zoning Commission on February 11 highlighted the fact that she had put in hours of time reviewing the documents and statements. Her time and effort is greatly appreciated. I do not, however, believe that the Commission gave proper and appropriate weight to the character of the surrounding neighborhood when approving the increase in the permissible density under the conditional use application. The Commission's approval does not protect, preserve, maintain or respect the landscape of the surrounding neighborhood. Significantly, Commissioner Stevenson specifically introduced a new character description for the neighborhood when she said the development meets what is expected to be the "urban" character of the surrounding neighborhood. I respectfully submit that this distortion and manipulation of the character of the neighborhood was done to "shoehorn" in an impermissible density modification. The Commission has unilaterally and without support in the record changed the character of the surrounding neighborhood. I ask the Council not to perpetuate this creative approach to conditional use applications.

I understand that MR zoning permits a density of up to 8 dwelling units per acre. Included in the findings at the Commission hearing was a statement that orderly growth of the area allows up to 12 dwelling units per acre and thus found the application consistent with other land uses in the area. Under C/U 2193, applicant is requesting an ordinance to grant conditional use for 128 dwelling units on approximately 6.4 acres. Such an ordinance would result in allowing up to 20 dwelling units per acre. Within a radius of a mile or so around the development site the largest density is 6.8 dwelling units per acre. Indeed, Commissioner Stevenson further cited to the "extensive" MR density across the road from the subject site. That development is Paynter's Mill with a density of 6.8 dwelling units per acre. That is almost two-thirds less than the 20 dwelling units per acre proposed for the 6.4 subject site. Granting this ordinance is not consistent with the character of the surrounding neighborhood.

I am not sure how familiar any of the Council members may be with the surrounding area. So I'd like to beg your indulgence and show you some photos I recently took of the surrounding neighborhood. [SLIDES]

During the Commission vote, a Commissioner stated that increased density in this area "impacts nobody" as DEL DOT is constructing a "fly over" overpass at the intersection of Cave Neck Road and SR 1 thereby allowing residents to jump on the highway to get where they're going. I respectfully submit that this statement defies logic and does not support the passage of C/U 2193. Basically, in my view, to allow a triple increase in density because the state has, for ongoing safety issues and to ease traffic conditions, decided to construct an overpass and roundabout is neither well grounded nor reasonable. Further, I question the relevance of relying on this statement to determine that the proposed increase in density is appropriate. I don't believe there is anything in the record to support such reliance. The fact that the public will have access to a state highway should not be a ground for changing the character and landscape of the surrounding neighborhood. Granting this ordinance is not consistent with the character of the surrounding neighborhood.

Indeed, Commissioner Stevenson commented that one should not expect to see every new development that comes in near this site to look like this. She went so far as to say she was giving "fair warning" to everybody. Her statements are quite perplexing. She seems to be saying this approval should not be used as precedent for other applications. More importantly, she seems to be acknowledging and recognizing that this approval is NOT consistent with and is out of character with the surrounding neighborhood. I respectfully submit that this self described, not sustainable "one-off" decision will have a ripple effect in the long term in changing the character of the surrounding neighborhood.

The Commission in approving the use change has indicated the new use is consistent with the urban character of the neighborhood. In so finding the Commission is viewing the future construction of the overpass as creating an urban neighborhood. I beg to differ. You need look no further than the Merriam Webster dictionary which defines urban as "of, relating to, characteristic of, or constituting a city." The dictionary defines a city as "an inhabited place of greater size, population, or importance than a town or village." This area of Sussex County does not constitute a city and is not urban in nature. The photos I showed earlier speak volumes. The construction of a traffic circle and overpass for safety reasons and to ease traffic conditions does not turn this area into a city. This circular, distorted and unsupported reasoning should not be countenanced.

On a more individual basis, I am certainly not proposing that development in the area shouldn't take place. But development should not be done in a vacuum. If you approve this change in use you are opening the door to future manipulative and creative changes to the character of the surrounding neighborhood. I and my two neighbors, who share a property line with the subject site, will feel the immediate impact of looking at what is proposed to be four, four story buildings together with parking for, I assume, over 200 parking spaces on 6.4 acres. We will be some of the first to witness the change in the character of the neighborhood—but not the last. The Council must consider the long term effect of its decisions.

I ask the Council not to approve C/U 2193 or at the very least condition approval on the substantial reduction in the number of dwelling units per acre permitted for this 6.4 acre site to bring it into line with the density and character of the surrounding neighborhood.

Thank you for your attention to and consideration of my concerns.

Rita D. Dumain  
Milton, DE





Looking south at Paynter's Mill directly across from residential lot on Cave Neck Rd



Entrance to Paynter's Mill west of residential lot on Cave Neck Rd





Entrance to Pondview Estates west of residential lot on Cave Neck Rd



Entrance to Heronwood Estates west of residential lot on Cave Neck Rd





Entrance to Overbrook Shores west of residential lot on Cave Neck Rd



Entrance to Windstone west of residential lot on Cave Neck Rd



Entrance to Vincent Overlook west of residential lot on Cave Neck Rd



Entrance to Covington Chase northeast of residential lot on Oyster Rock Rd.





Home north of residential lot on Rte. 1 east side



Home north of residential lot on Rte. 1 west side





Home north of subject residential site on Rte. 1 west side



Entrance to Red Fox Run east of Rte. 1 directly bordering the subject residential site





Main road Red Fox Run



Looking South from Red Fox Lane