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Sussex County

DELAWARE
sussexcountyde.gov

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COUNTY ADMINISTRATIVE OFFICES
2 THE CIRCLE | PO BOX 417
GEORGETOWN, DELAWARE

PLANNING & ZONING COMMISSION

ROBERT C. WHEATLEY, CHAIRMAN
KIM HOEY STEVENSON, VICE-CHAIRMAN
R. KELLER HOPKINS
J. BRUCE MEARS
HOLLY J. WINGATE



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PLANNING AND ZONING AND COUNTY COUNCIL INFORMATION SHEET

Planning Commission Public Hearing Date: November 4th, 2021

Application: CZ 1936 OA-BP Marina Bay-Lakeside, LLC

Applicant: OA-BP Marina Bay-Lakeside, LLC
20184 Phillips Street
Rehoboth Beach, DE 19971

Owner: OA-BP Marina Bay-Lakeside, LLC
20184 Phillips Street
Rehoboth Beach, DE 19971

Site Location: The property is lying on the south end of Bay Farm Road (S.C.R. 299) and the south side of Trinity Road (S.C.R. 299A).

Current Zoning: Medium Density Residential - Residential Planned Community (MR-RPC)

Proposed Zoning: Medium Density Residential – Residential Planned Community (MR-RPC)

Proposed Use: Increase the number of Single-Family Detached Condominiums permitted under Condition “1” of Ordinance No. 2690 from 388 to 471 (83 units) and decrease the number of Multi-Family Units from 378 to 295 (83 units).

Comprehensive Land Use Plan Reference: Coastal Area

Councilmanic District: Mr. Hudson

School District: Indian River School District

Fire District: Indian River Fire District

Sewer: Sussex County Sewer District

Water: Tidewater Utilities

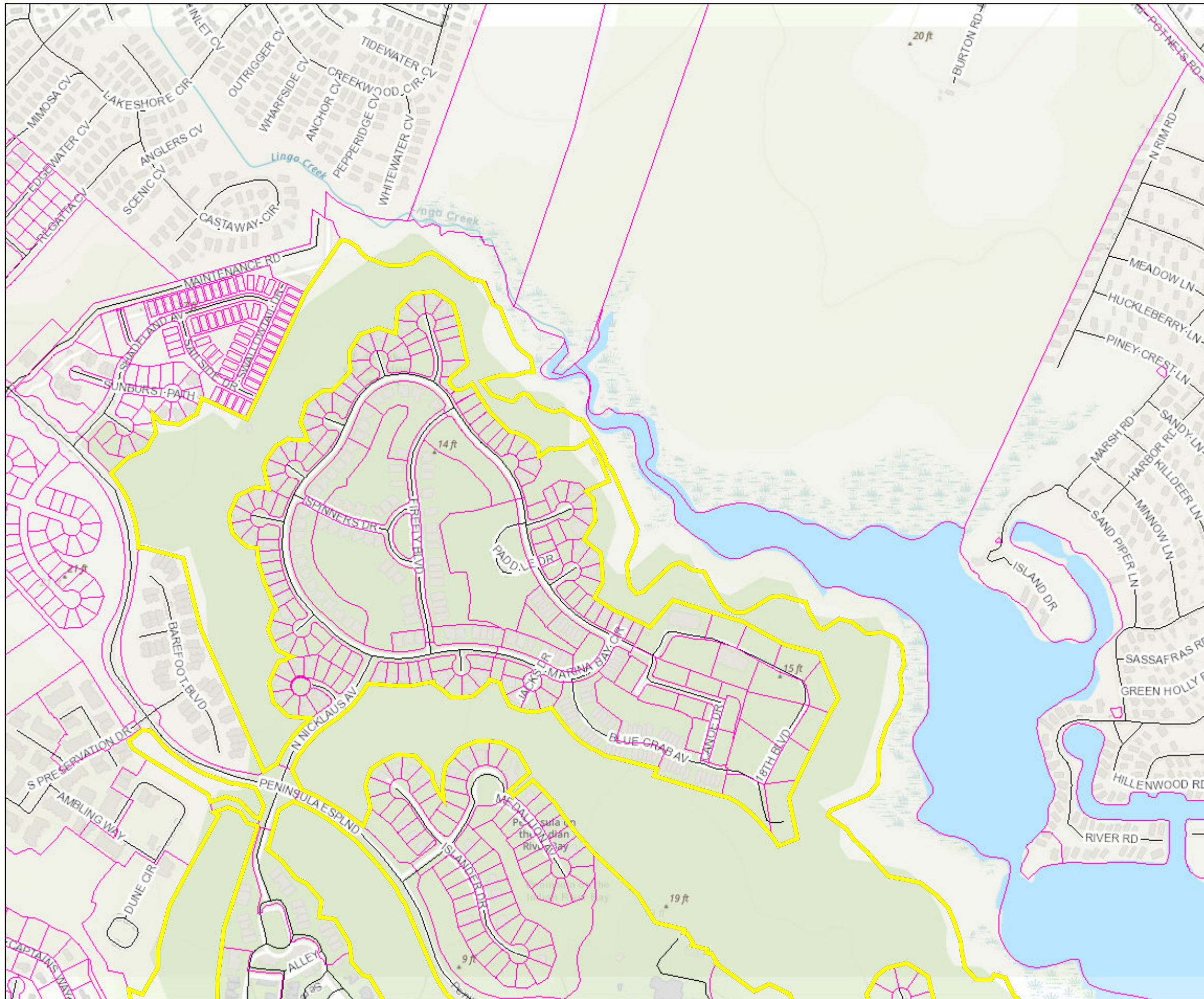
Site Area: 778.39 +/- acres

Tax Map ID.: 234-30.00-1.00 thru 430.00





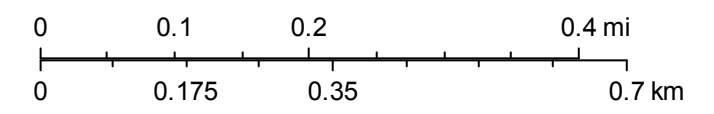
Sussex County



PIN:	234-30.00-1.08
Owner Name	OA-BP MARINA BAY-LAKESIDE LLC
Book	4320
Mailing Address	18949 COASTAL HWY
City	REHOBOTH BEACH
State	DE
Description	THE PENINSULA
Description 2	GOLF COURSE
Description 3	PARCELS 1 THRU 6
Land Code	

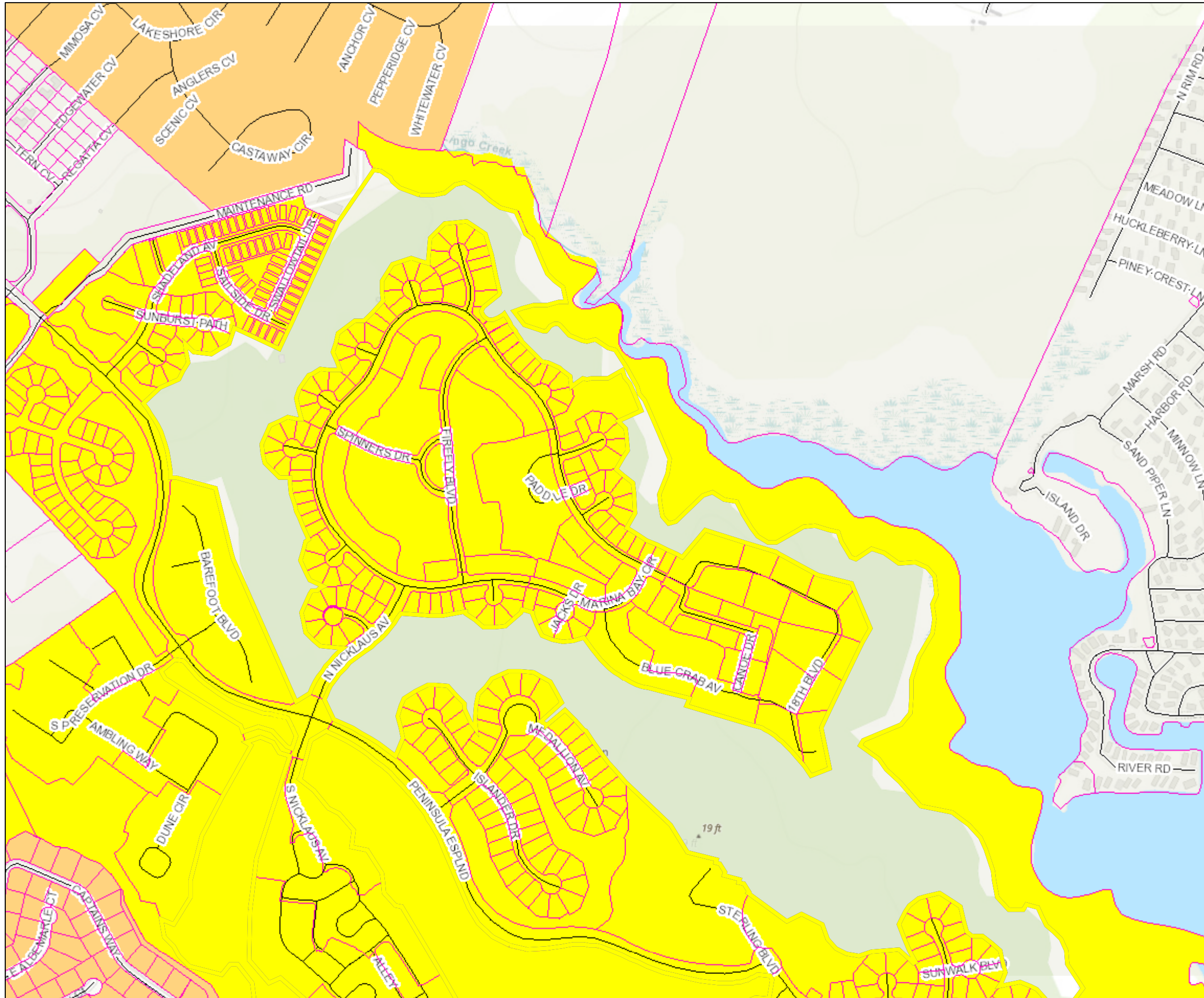
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| | Streets |
| | County Boundaries |

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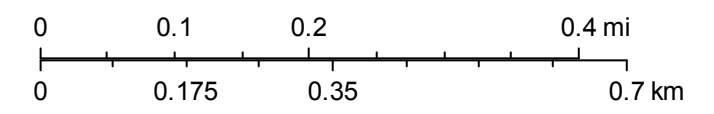
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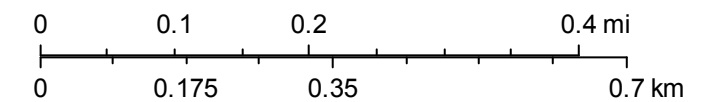
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- polygonLayer**
- Override 1
- polygonLayer**
- Override 1
- Tax Parcels
- Streets
- County Boundaries

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Memorandum

To: Sussex County Planning Commission Members
From: Lauren DeVore, Planner III
CC: Vince Robertson, Assistant County Attorney and applicant
Date: October 29th, 2021
RE: Staff Analysis for CZ 1936 OA-BP Marina Bay – Lakeside, LLC

This memo is to provide background and analysis for the Planning Commission to consider as a part of application CZ 1936 OA-BP Marina Bay – Lakeside, LLC to be reviewed during the November 4, 2021, Planning Commission Meeting. This analysis should be included in the record of this application and is subject to comments and information that may be presented during the public hearing.

The request is for a Change of Zone for Tax Parcels 234-30.00-1.00 thru 430.00 to allow for a change of zone from a Medium Density Residential, Residential Planned Community (MR-RPC) to a Medium Density Residential, Residential Planned Community (MR-RPC). The parcels are located on the south end of Bay Farm Road (S.C.R. 299) and the south side of Trinity Road (S.C.R. 299A). The parcels to be rezoned contains 778.39 acres +/-.

Specifically, the proposal is to amend Condition #1 of Ordinance No. 2690 by increasing the number of Single-Family Detached Condominiums permitted from 388 to 471 (83 units) and decrease the number of Multi-Family Units from 378 to 295 (83 units).

The 2018 Sussex County Comprehensive Plan Update (Comprehensive Plan) provides a framework of how land is to be developed. As part of the Comprehensive Plan, a Future Land Use Map is included to help determine how land should be zoned to ensure responsible development. The Future Land Use map in the plan indicates that the subject properties have a land use designation of “Coastal Area.” The properties to the north, south, east and west also have the land use designation of Coastal Area with four (4) parcels to the west and one parcel to the north having a Future Land Use designation of Commercial Area.

As outlined in the 2018 Sussex County Comprehensive Plan, the Coastal Areas are areas that can accommodate development provided that special environmental concerns are addressed. A range of housing types should be permitted in Coastal Areas, including single-family homes, townhouses, and multi-family units. Retail and office uses are appropriate, but larger shopping centers and office parks should be confined to selected locations with access along arterial roads. Appropriate mixed-use development should all be allowed.

The properties are zoned Medium Density Residential, Residential Planned Community (MR-RPC). The adjacent parcels to the north of the subject properties are zoned General Residential (GR) Zoning District and consist of the Pot Nets Lakeside and Oak Forest Manufactured Home Parks. The properties to the southwest of the subject properties are zoned General Residential (GR) Zoning District and are comprised of the Captain’s Way Residential Planned Community



(RPC) and Oak Landing Subdivision. The properties to the northeast, which border the Indian River Bay are zoned Agricultural Residential (AR-1) Zoning District and are included as part of the Pot Nets Bayside and White House Beach Manufactured Home Parks.

The 2018 Sussex County Comprehensive Plan outlines Zoning Districts by their applicability to each Future Land Use category. Under Table 4.5-2 “Zoning Districts Applicable to Future Land Use Categories,” the Medium Density Residential Zoning District is listed as an applicable zoning district in the “Coastal Area.”

Since 2011, there have been three (3) Change of Zone applications within a 2-mile radius of the application site. The first application is for Change of Zone No. 1801 for a change of zone from an Agricultural Residential (AR-1) Zoning District to a Commercial Residential (CR-1) Zoning District. The application was approved by the Sussex County Council on July 26, 2016 and the change was adopted through Ordinance No. 2459. The second application is for Change of Zone No. 1880 for a change of zone from an Agricultural Residential (AR-1) Zoning District to a Medium Commercial (C-2) Zoning District. The application was approved by the Sussex County Council on July 16, 2019 and adopted through Ordinance No. 2669. The last application is for Change of Zone No. 1791 for a change of zone from an Agricultural Residential (AR-1) Zoning District to a General Commercial (C-1) Zoning District. The application was approved by the Sussex County Council on April 12, 2016 and adopted through Ordinance No. 2444.

Based on the analysis of the land use, surrounding zoning and uses, a Change of Zone from a Medium Density Residential, Residential Planned Community (MR-RPC) Zoning District to a Medium Density Residential, Residential Planned Community (MR-RPC) for the sole purpose of increasing the number of Single-Family Detached Condominiums permitted under Condition #1 of Ordinance No. 2690 could be considered as being consistent with the land use, area zoning and surrounding uses.

File #: CZ 1936

Planning & Zoning Commission Application

Sussex County, Delaware

Sussex County Planning & Zoning Department
2 The Circle (P.O. Box 417) Georgetown, DE 19947
302-855-7878 ph. 302-854-5079 fax

Type of Application: (please check applicable)

Conditional Use

Zoning Map Amendment

Site Address of Conditional Use/Zoning Map Amendment

The Peninsula on Indian River Bay

Type of Conditional Use Requested:

Request to amend condition #1 of Ordinance 2690

Tax Map #: 234-30.00-1.00 thru 430.00

Size of Parcel(s): 778.39 Acres

Current Zoning: MR-RPC

Proposed Zoning: MR-RPC

Size of Building: _____

Land Use Classification: Residential Subdivision

Water Provider: Tidewater Utilities

Sewer Provider: Sussex County

Applicant Information

Applicant Name: OA-BP Marina Bay-Lakeside, LLC

Applicant Address: 20184 Phillips Street

City: Rehoboth Beach

State: DE

Zip Code: 19971

Phone #: (302) 227-3573

E-mail: greg@oacompanies.com

Owner Information

Owner Name: OA-BP Marina Bay-Lakeside, LLC

Owner Address: 20184 Phillips Street

City: Rehoboth Beach

State: DE

Zip Code: 19971

Phone #: (302) 227-3573

E-mail: greg@oacompanies.com

Agent/Attorney/Engineer Information

Agent/Attorney/Engineer Name: Davis, Bowen & Friedel, Inc.

Agent/Attorney/Engineer Address: 1 Park Avenue

City: Milford

State: DE

Zip Code: 19963

Phone #: (302) 424-1441

E-mail: wzc@dbfinc.com



Check List for Sussex County Planning & Zoning Applications

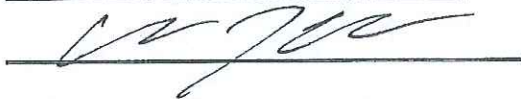
The following shall be submitted with the application

- Completed Application
- Provide eight (8) copies of the Site Plan or Survey of the property
 - Survey shall show the location of existing or proposed building(s), building setbacks, parking area, proposed entrance location, etc.
 - Provide a PDF of Plans (may be e-mailed to a staff member)
 - Deed or Legal description
- Provide Fee \$500.00
- Optional - Additional information for the Commission/Council to consider (ex. architectural elevations, photos, exhibit books, etc.) If provided submit 8 copies and they shall be submitted a minimum of ten (10) days prior to the Planning Commission meeting.
- Please be aware that Public Notice will be sent to property owners within 200 feet of the subject site and County staff will come out to the subject site, take photos and place a sign on the site stating the date and time of the Public Hearings for the application.
- DeIDOT Service Level Evaluation Request Response
- PLUS Response Letter (If required)

The undersigned hereby certifies that the forms, exhibits, and statements contained in any papers or plans submitted as a part of this application are true and correct.

I also certify that I or an agent on my behalf shall attend all public hearing before the Planning and Zoning Commission and the Sussex County Council and any other hearing necessary for this application and that I will answer any questions to the best of my ability to respond to the present and future needs, the health, safety, morals, convenience, order, prosperity, and general welfare of the inhabitants of Sussex County, Delaware.

Signature of Applicant/Agent/Attorney



Date: 8-30-2021

Signature of Owner



Date: 8/30/21

For office use only:

Date Submitted: 8/30/21 Fee: \$500.00 Check #: _____
Staff accepting application: EBB Application & Case #: CZ 1936
Location of property: _____

Subdivision: _____
Date of PC Hearing: _____ Recommendation of PC Commission: _____
Date of CC Hearing: _____ Decision of CC: _____

**SUSSEX COUNTY ENGINEERING DEPARTMENT
UTILITY PLANNING & DESIGN REVIEW DIVISION
C/U & C/Z COMMENTS**

TO: **Jamie Whitehouse**

REVIEWER: **Chris Calio**

DATE: **10/18/2021**

APPLICATION: **CZ 1936 OA-BP Marina Bay – Lakeside, LLC**

APPLICANT: **OA-BP Marina Bay – Lakeside LLC**

FILE NO: **OM-7.12**

TAX MAP &
PARCEL(S): **234-30.00-1.00 through 430.00**

LOCATION: **Lying on the south end of Bay Farm Road (SCR 299) and the south side of Trinity Road (SCR 299A).**

NO. OF UNITS: **Increase the number of single family units by 83 and decrease the number of Multi-Family Units by 83**

GROSS
ACREAGE: **788.39**

SYSTEM DESIGN ASSUMPTION, MAXIMUM NO. OF UNITS/ACRE: **4**

SEWER:

(1). Is the project in a County operated and maintained sanitary sewer and/or water district?

Yes

No

a. If yes, see question (2).

b. If no, see question (7).

(2). Which County Tier Area is project in? **Tier 1**

(3). Is wastewater capacity available for the project? **Yes** If not, what capacity is available? **N/A.**

(4). Is a Construction Agreement required? **Yes** If yes, contact Utility Engineering at (302) 855-7717.

(5). Are there any System Connection Charge (SCC) credits for the project? **No** If yes, how many? **N/A.** Is it likely that additional SCCs will be required? **Yes** If yes, the current System Connection Charge Rate is **Unified \$6,600.00** per EDU. Please contact **Choose an item.** at **302-855-7719** for additional information on charges.

- (6). Is the project capable of being annexed into a Sussex County sanitary sewer district? **N/A**
- Attached is a copy of the Policy for Extending District Boundaries in a Sussex County Water and/or Sanitary Sewer District.
- (7). Is project adjacent to the Unified Sewer District? **N/A**
- (8). Comments: **Developer will be required to add/remove sanitary sewer laterals where appropriate to accommodate the changes requested.**
- (9). Is a Sewer System Concept Evaluation required? **No**
- (10). Is a Use of Existing Infrastructure Agreement Required? **Yes**
- (11). **All residential roads must meet or exceed Sussex County minimum design standards.**

UTILITY PLANNING & DESIGN REVIEW APPROVAL:



John J. Ashman
Sr. Manager of Utility Planning & Design Review

Xc: Hans M. Medlarz, P.E.
Lisa Walls
Nicole Messeck

ORDINANCE NO. 2690

AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM A MR-RPC MEDIUM DENSITY RESIDENTIAL DISTRICT-RESIDENTIAL PLANNED COMMUNITY TO A MR-RPC MEDIUM DENSITY RESIDENTIAL DISTRICT-RESIDENTIAL PLANNED COMMUNITY TO AMEND CONDITIONS OF APPROVAL OF CHANGE OF ZONE NO. 1475 (ORDINANCE NO. 1573) FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 787.787 ACRES, MORE OR LESS

WHEREAS, on the 19th day of March 2019, a zoning application, denominated Change of Zone No. 1883, was filed on behalf of OA-BP Marina Bay-Lakeside, LLC; and

WHEREAS, on the 27th day of June 2019, a public hearing was held, after notice, before the Planning and Zoning Commission of Sussex County and on the 18th day of July 2019, said Planning and Zoning Commission recommended that Change of Zone No. 1883 be approved; and

WHEREAS, on the 30th day of July 2019, 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 [MR-RPC Medium Density Residential District-Residential Planned Community] and adding in lieu thereof the designation of 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 Indian River Hundred, Sussex County, Delaware, and lying on the south end of Bay Farm Road and the south side of Trinity Road, and being more particularly described in the attached legal description prepared by McCrone, said parcel containing 787.787 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:

Condition No. 1 of Change of Zone No. 1475 and Ordinance No. 1573 is hereby amended as follows:

“The maximum number of units shall not exceed 1,394 units completed, as follows:

358 Single Family Lots
388 Single Family Detached Condominiums
270 Single Family Attached Town Houses
378 Multi-Family Units”

I DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE AND CORRECT COPY OF ORDINANCE NO. 2690 ADOPTED BY THE SUSSEX COUNTY COUNCIL ON THE 8TH DAY OF OCTOBER 2019.



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 OA-BP Marina Bay-Lakeside, LLC to amend the Comprehensive Zoning Map of Sussex County from a MR-RPC Medium Density Residential District - Residential Planned Community to a MR-RPC Medium Density Residential District - Residential Planned Community to amend conditions of approval of Change of Zone No. 1475 (Ordinance No. 1573) for a certain parcel of land lying and being in Indian River Hundred, Sussex County, containing 787.787 acres, more or less (Tax I.D. No. 234-30.00-1.00 through 430.00) (911 Address: None Available).
- B. Based on the record before the Planning and Zoning Commission and the hearing before the Sussex County Council, Council found that Zac Crouch with Davis, Bowen & Friedel, Inc. was present at the Planning and Zoning Commission hearing, and Ring Lardner with Davis Bowen & Friedel, Inc. was present at the Sussex County Council hearing, on behalf of the application; that the application is for an amendment to Condition #1 to Ordinance No. 1573; that the original condition stated that the number of units shall not exceed 1,404 consisting of 323 single-family lots, 378 single-family detached condos, 325 single-family attached townhouses, and 378 multi-family units; that the Applicant wishes to reduce the number of townhouses and increase the number of single-family and single-family detached condos; that the overall number requested shall not exceed 1,394 units comprised of 358 single-family lots, 388 single-family detached condos, 270 single-family attached townhouses, and 370 multi-family units; that this amendment will result in an increase of 35 single-family lots, an increase of 10 single-family detached condominiums, a reduction of 55 single-family attached townhouses, and no change in the number of multi-family units; that there would be a total reduction of 10 units; that the request is due to market and trend changes; and that the market indicates that more single-family units are desired.
- C. Based on the record and recommendation of the Planning and Zoning Commission and the Planning and Zoning Commission’s Findings (1 through 6), Council found that:
 - 1. C/Z # 1475, which was identified as Ordinance No. 1573, included a condition identifying the number and types of uses allowed within this MR-RPC as follows:

*“The maximum number of units shall not exceed 1,404 units comprised, as follows:
323 Single Family Lots
378 Single Family Detached Condominiums
325 Single Family Attached Town Houses
378 Multi-Family Units”*

2. This MR-RPC was approved in 2002 and is still being built out today.
3. As the master developer of this project, the Applicant has stated that there is no longer as strong demand for townhouse units within this project. Based upon the market, they are seeking to replace certain townhouse units with single-family units and detached condominium units. This will also result in a reduction in the total number of units that will be built in the MR-RPC.
4. The Peninsula Owners Association representatives testified during the hearing that they do not object to this request, subject to confirmation of the reduced number of units that will be allowed as a result of this request.
5. This request will not adversely affect the overall design of the MR-RPC, or the current and future residents of the development.
6. For these reasons, and at the Applicant’s request, Condition #1 of C/Z #1475 and Ordinance #1573 is hereby amended to state as follows:

*“The maximum number of units shall not exceed 1,394 units comprised, as follows:
358 Single Family Lots
388 Single Family Detached Condominiums
270 Single Family Attached Town Houses
378 Multi-Family Units”*

- D. Based on the record created before the Planning and Zoning Commission and the Sussex County Council, the Council approved this application with the amended condition set forth herein.

further consideration. Motion carried 4-0.

C/Z 1883 OA-BP Marina Bay-Lakeside, LLC

An Ordinance to amend the Comprehensive Zoning Map of Sussex County from a MR-RPC Medium Density Residential District - Residential Planned Community to a MR-RPC Medium Density Residential District - Residential Planned Community to amend conditions of approval of Change of Zone no. 1475 (Ordinance no. 1573) for a certain parcel of land lying and being in Indian River Hundred, Sussex County, containing 787.787 acres, more or less. The property is lying on the south end of Bay Farm Rd. and the south side of Trinity Rd. 911 Address: N/A. Tax Parcels: 234-30.00-1.00 through 430.00

Ms. Cornwell advised the Commission that submitted into the record were a Site Plan, a staff analysis, comments from the Sussex County Engineering Department – Utility Planning Division, and comments from the Sussex Conservation District. Ms. Cornwell noted that the request is to amend the condition regarding the number of units and the type of number of units. Originally, the condition was that the number of units shall not exceed 1,404 consisting of 323 single-family lots, 378 single-family detached condos, 325 single-family attached townhouses, and 378 multi-family units. The Applicant is requesting that the overall number not to exceed 1,394 units comprised of 358 single-family lots, 388 single-family detached condos, 270 single-family attached townhouses, and 370 multi-family units. The Applicant wishes to reduce the number of townhouses and increase the number of single-family and single-family detached condos.

The Commission found that Mr. Zac Crouch with Davis, Bowen & Friedel, Inc. was present on behalf of the application; that Mr. Crouch stated Ms. Cornwell summed up the request; this Application was from November 2002; the Applicant requests to decrease the townhouses and increase the single-family lots, the total number of units will decrease from 1,404 to 1,394.

Mr. Robertson outlined the changes in the numbers of each unit type, and explained the overall calculation of the revised unit total.

Ms. Cornwell asked the Applicant to confirm that they wanted to lose 10 lots because if it is decided in the future that additional units are needed, it would require a new application before the Planning and Zoning Commission and County Council. Mr. Wheatley clarified that the request could be to change the number and the mix of the units, but the Applicant could request not to decrease the maximum number. Mr. Crouch stated that the Applicant would prefer to keep to their request for the change in the mix of units and to decrease the total number from 1,404 to 1,394.

Ms. Cornwell asked the Applicant if they have verified with the other engineer/builder within the development whether the proposal would impact upon them. Mr. Jon Horner, attorney for Ocean Atlantic Companies stated that this request will not impact anything that is currently approved in the other sections of the community. Mr. Horner stated that the other sections of the community that are owned by other parties already have their approvals, and that the requested change would not affect the approved numbers of those other sections.

Ms. Jennifer Cinelli-Miller from DeDOT did not wish to comment on the proposal, but understood that the request was to reduce the overall number of units within the RPC. Mr. Crouch pointed out that, as the units were being reduced, the overall impact would be less from a Transportation

perspective.

Mr. John Gee stated that he is a member of the Peninsula Homeowners Action Committee and has been a resident for fifteen years; that he supports the Application but he would like clarification as to why the request is for 1,394 units but the submitted map lists 1,336 units; and is requesting more clarity and transparency.

Mr. Crouch stated that the number shown on the submitted masterplan is the total number of homes already built in this development throughout all existing phases; that it does not reflect the current Application which seeks to reduce the number of units from 1,404 to 1,394 with a change in the type of units as stated previously. Mr. Crouch pointed out that the submitted masterplan was prepared when the previous 'Sailside' Phase was previously submitted to the Commission.

Mr. Joseph Andrea-Bronski stated that he has been a resident of the Peninsula for twelve years and supports the Application; that the 'Marina Bay' phase was planned for thirteen buildings, but only two have been built; and he would applaud a lower density in the RPC and greater transparency as to the implementation of the various phases, including 'Marina Bay'.

Chairman Wheatley explained that the decision as to whether individual units are built is not a matter before the Commission, and that the matter before the Commission is the requested change in the housing types.

The Commission found that no one spoke in opposition to the application.

Ms. Suzanne Laws, Sussex County Review Coordinator with DelDOT recommended that the Applicant contact DelDOT regarding the project. Mr. Wheatley stated as the request is for a reduction in units it should reduce the amount of traffic and the Applicant should make the decision if they need to coordinate with DelDOT regarding this Application.

Motion by Mr. Hopkins, seconded by Ms. Wingate and carried unanimously to defer action for further consideration. Motion carried 4-0.

C/Z 1882 Nassau DE Acquisition Co., LLC

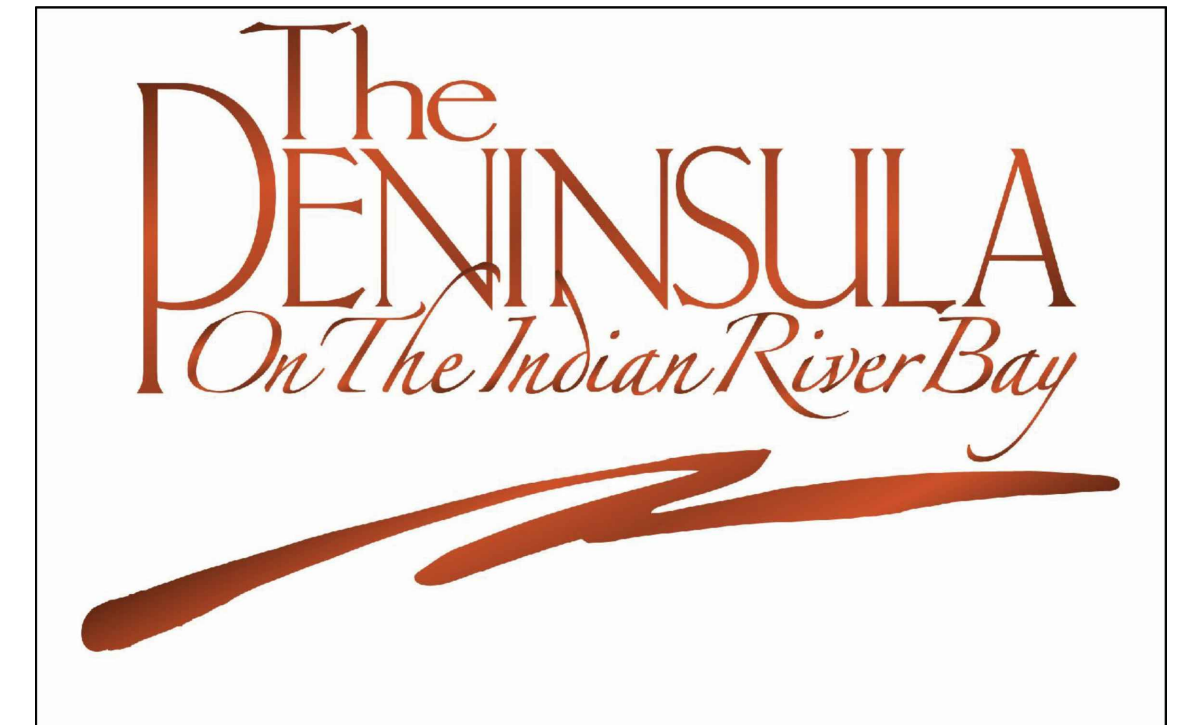
An Ordinance to amend the Comprehensive Zoning Map of Sussex County from an AR-1 Agricultural Residential District and C-2 Medium Commercial District to a HR-1 High-Density Residential District – Residential Planned Community for a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, containing 15.2 acres, more or less. The property is lying on the east side of Coastal Hwy. (Rt. 1), approximately 150 ft. north of Old Mill Rd, and on the north side of Old Mill Rd., approximately 708 ft. east of Coastal Hwy. (Rt. 1). 911 Address: N/A. Tax Parcels: 334-1.00-15.00 and 334-1.00-15.03.

Ms. Cornwell advised the Commission that submitted into the record were a Site Plan, an exhibit booklet, a staff analysis, comments from the Sussex County Engineering Department – Utility Planning Division, comments from the Sussex Conservation District, comments from the DelDOT Service Level Evaluation Request, PLUS comments and the response to PLUS comments, and several letters in opposition.



- PER ORDINANCE NO.2690
(MAXIMUM SINGLE-FAMILY LOTS ALLOWED = 358)
- EXISTING SINGLE FAMILY LOTS-----312
- PER ORDINANCE NO.2690 REVISED CONDITIONS
(MAXIMUM SINGLE-FAMILY DETACHED CONDOMINIUMS ALLOWED = 388 471)
- PROPOSED(STILLWATER) SINGLE FAMILY DETACHED CONDOMINIUMS----79
- EXISTING SINGLE FAMILY DETACHED CONDOMINIUMS--388
- PER ORDINANCE NO.2690
(MAXIMUM SINGLE-FAMILY ATTACHED TOWN HOUSES ALLOWED = 270)
- EXISTING SINGLE FAMILY ATTACHED TOWN HOUSES--270
- PER ORDINANCE NO.2690 REVISED CONDITIONS
(MAXIMUM MULTI-FAMILY UNITS ALLOWED = 378 295)
- EXISTING MULTI-FAMILY UNITS-----295
- PER ORDINANCE NO. 2690
(MAXIMUM TOTAL UNITS ALLOWED = 1394)
- TOTAL UNITS-----1344

- EXISTING CONDITIONS**
(CONDITION 1 OF ORDINANCE 2690)
1. THE MAXIMUM NUMBER OF UNITS SHALL NOT EXCEED 1,394 UNITS COMPRISED, AS FOLLOWS:
 - A. 358 SINGLE-FAMILY LOTS
 - B. 388 SINGLE-FAMILY DETACHED CONDOMINIUMS
 - C. 270 SINGLE-FAMILY ATTACHED TOWNHOUSES
 - D. 378 MULTI-FAMILY UNITS
- PROPOSED CONDITIONS**
(REVISION TO CONDITION 1 OF ORDINANCE 2690)
1. THE MAXIMUM NUMBER OF UNITS SHALL NOT EXCEED 1,394 UNITS COMPRISED, AS FOLLOWS:
 - A. 358 SINGLE-FAMILY LOTS
 - B. 471 SINGLE-FAMILY DETACHED CONDOMINIUMS
 - C. 270 SINGLE-FAMILY ATTACHED TOWNHOUSES
 - D. 295 MULTI-FAMILY UNITS



Jamie Whitehouse

From: Judith Siegel <siegeljp@hotmail.com>
Sent: Saturday, October 23, 2021 11:34 AM
To: Planning and Zoning
Subject: Letter to zoning commissioners ahead of public hearing Nov 4 re zone change by Ocean Atlantic
Attachments: Sussex Zoning appeal.docx; OceanAtlanticLennar1.jpg; OceanAtlanticzone2.jpg; OceanAtlantic3.jpg

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 members of the commission, I have attached this letter and referenced photos for your review.

I am a resident of The Peninsula development at 26937 Bay Farm Road in Millsboro and am writing to request that you deny Ocean Atlantic/Lennar Builder's request to change the zoning (I believe it is case # CZ1936.)

Like the other 12 existing townhome owners whose backyards are adjacent to the field in question, I was blindsided by the sudden announcement of 8 new townhomes for sale in a field that was never intended or approved for housing construction. In 2020 the Lennar sales representatives assured me and the other home buyers that the field behind our townhomes was "not suitable or zoned for building." You can see on the map of existing and planned building that this field was never intended for new housing. Yet, Lennar/Ocean Atlantic is so sure of your approval that they have already leveled and elevated the proposed sites and are advertising new townhomes for purchase (see attached photos).

The field provides a badly needed green space in an area that is already over-crowded by townhouses and condominiums. The proposed townhomes will compromise privacy and reduce the value of our homes. Many of us chose our homes in 2020/21 because of the small field that provided green space and privacy.

Furthermore, the sites under development have been raised 3-4 feet above what is left of the field. Rain will runoff and swamp that area and the backyards of the existing townhomes (see photos).

In the interest of the wellbeing of Sussex County residents and the integrity of the builders in our area, the request to allow new construction and rezone should be denied. Should Ocean Atlantic/Lennar's request to rezone be approved they should, at minimum, be required to build a barrier to prevent the remaining field and existing back yards from flooding, and plant trees between the existing and new townhomes to help maintain privacy.

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Furthermore, the sites under development have been raised 3-4 feet above what is left of the field. Rain will runoff and swamp that area and the backyards of the existing townhomes (see photos).

In the interest of the wellbeing of Sussex County residents and the integrity of the builders in our area, the request to allow new construction and rezone should be denied. Should Ocean Atlantic/Lennar's request to rezone be approved they should, at minimum, be required to build a barrier to prevent the remaining field and existing back yards from flooding, and plant trees between the existing and new townhomes to help maintain privacy.

Thank you for your time and consideration,

Judy Siegel, 24231 Canoe Drive, Millsboro DE 19966.





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Dear members of the Zoning Commission,

I am a resident of The Peninsula development at 26937 Bay Farm Road in Millsboro and am writing to request that you deny Ocean Atlantic/Lennar Builder's request to change the zoning (case # CZ1936, OA BP Marina Bay)

Like the other 12 existing townhome owners, whose backyards are adjacent to the field in question, I was blindsided by the sudden announcement of 8 new townhomes for sale in a field that was never intended or approved for housing construction. In 2020 the Lennar sales representatives assured the home buyers that the field behind our townhomes was "not suitable or zoned for building." You can see on the map of existing and planned building that this field was never intended for new housing. Yet, Lennar/Ocean Atlantic is so sure of your approval that they have already leveled and elevated the proposed sites and are advertising new townhomes for purchase (see attached photos).

One major concern is that the sites under development have been raised 3-4 feet above what is left of the field. Rain will runoff and swamp that area and the backyards of the existing townhomes (see photos). This area has no drainage and there are no plans to protect the backyards of the existing townhomes. This will become especially problematic once the square footage with houses will no longer absorb rain.

The field provides a badly needed green space in an area that is already over-crowded by townhouses and condominiums. The proposed townhomes will compromise privacy and reduce the value of our homes.

In the interest of the wellbeing of Sussex County residents and the integrity of the builders in our area, the request to allow new construction and rezone should be denied. Should Ocean Atlantic/Lennar's request to rezone be approved they should, at minimum, be required to build a barrier or proper drainage to prevent the remaining field and existing back yards from flooding, and landscape the project in a way that helps maintain privacy.

Thank you for your time and consideration,

Judy Siegel, 24231 Canoe Drive, Millsboro DE 19966.

RECEIVED

NOV 03 2021

SUSSEX COUNTY
PLANNING & ZONING

TO: Sussex County Council November 19, 2021

FROM: Stephen Dulin, 33579 Windswept Dr., # 8404, Millsboro, DE.

SUBJECT: Chronology of The Peninsula's Multifamily Condo Buildings

In January, 2009 I became a citizen of Sussex County, DE and closed on newly constructed 3 bed-room condo in the Windswept community of The Peninsula, Millsboro, DE. I put down approximately \$250k in cash against a closing price of \$603K; a mandatory 10% down went the builder, Ocean Atlantic (OA), the remainder going to my mortgage lender. Most of my life savings went toward this down payment. I did this in order to lower my mortgage rate. I used my IRA funds knowing I could borrow from the equity in my new home when the time came to settle IRA tax obligations. I was pleased to have bought a home in TP and was comfortable knowing that with all the guaranteed first class amenities and inducements to buy I could always sell without fear of losing my money should I have to re-locate due to health or other unforeseen reasons.

(2)

PROMISES MADE - Not long after moving into my new home I became aware that things were not going as promised. (1) The "Club's" clubhouse, a keystone of the community, had a promised construction start date no later than when TP had 350 members. TP had over 400 members in January of 2009 but there was no clubhouse being

constructed (2.) The fully completed educational, retail and recreational Nature Center was not being built nor was it going to be built as promised. (3) Membership Escrow Agreement – Peninsula home buyers were required to pay .005% of their homes purchase price that was to be held in escrow at a local financial institution guaranteeing completion of Club Facilities. In my case I paid approximately \$3,000. In 2009 there was approximately \$1.5 million paid into that homeowners escrow account and Club facilities were being not built out as promised. The escrow funds went missing and homeowners were never returned their escrow deposits. I sometime later made a written request to see a copy of Members Escrow Agreement contract which was to be made available to all members in the Clubs Memberships office. I was denied access to view the Members Escrow Agreement by the Clubs manager.

PRESTON SCHELL-OA – was the contractor/owner and agreed to build out the Windswept and 18th on the Bay MF building communities. By January of 2009 OA had built out 13 of the promised 25 MF buildings leaving 12 yet to be built. The 13 completed buildings housed a total of 207 individual family units. OA had sold 147 of those 207 units as of January, 2009. The real estate market had dried up and OA stopped construction on the remaining 12 MF buildings it had promised to build out in 18th on the Bay. This left OA and owning 60 units in Windswept and 18th on the Bay in January of 2009; or for that matter Wilmington Trust since Preston Schell/OA could not meet loan obligations tied to those unsold properties.

“WILMINGTON TRUST Merger tied to Sussex loans” (Cape Gazette) – Preston Schell-OA was having financial problems with lenders and could not meet its residential development loan obligations at Willington Trust. Preston Schell-OA was named in the Wilmington Trust Bank fraud

case against. "Wilmington Trust offered loans valued at \$130.6 million in two pools. One pool had an outstanding balance of \$76.3 m the other consists of \$54.3 m in loans in varying degrees of distress. The bulk of the collateral is in raw land and residential developments in Delaware. The loans were made to two developers hit hard by the economic downturn: Preston Schell and Michael Zimmerman." – Commercial Mortgage Alert

Preston Schell-OA did not have the stated resources for meeting loan obligations with WT. WT either accepted, approved of or wrote false loans application from/for Preston Schell-OA; WT was approving false loan applications that were tied to two Sussex County developers, Preston Schell/OA and Michael Zimmerman. WT was convicted of bank fraud for accepting or making false loan applications.

AGREEMENT - With the merger of WT&MT Preston Schell-OA worked out an agreement to have OA's loans written down. WT and or MT wrote down OA's loan balances with the stipulation that OA rid itself of all non performing assets, i.e. reduce liabilities.

THE ABSOLUTE AUCTION – Preston Schell-OA still owned 60 condos that it had not been able to sell in Windswept and 18th on the Bay. OA also had an obligation to build out the remaining 12 MF buildings in 18th on the Bay as promised. On May 20th 2009, 100 days after I put down over quarter of a million dollars when closing on my condo, Preston Schell-OA announced; "Because of slow sales Ocean Atlantic would be holding an Absolute Auction for selling a few condos, just to test the market. Homeowners need not be concerned because our financial situation is good. This is not a fire-sale."

FIRE SALE – Preston Schell-OA's Absolute Auction did not sell "just a few units," it sold all the remaining 60 condo units it owned in Windswept and 18th on the Bay at .30 to .40 cents on the dollar, i.e. my 3-bedroom "Marco" # 8404 in building 8 closed at \$603k and the Absolute Auction price for the identical Marco unit in the adjacent building 7 (#7404) sold for \$227k (63% less than what I had just paid for my unit. A 4 bedroom Clearwater at #8403 sold pre-auction for \$904k while the identical unit one door away at #8405 sold at auction \$291k (68% less). All the Absolute Auction reduce prices are to be found in the County records. How could there be any other interpretation than the banks and Preston Schell colluded to dump non-performing assets in order to write-down his residential development loans. Preston Schell-OA was forgiven debt at the expense of the homeowners whom had been deceived.

TRAPPED – Once those 60 condo units closed lenders immediately wrote down the values of every condo equal to the AbsoluteAuction sale prices. Windswept and 18th on the Bay homeowners were now trapped with no way out short of foreclosures, sheriff sales or short sales. Every pre-auction homeowners likely put at least 20% down on their condos (mandatory 10% to builder OA plus 10% to mortgage lender). These homeowners were now backed into a corner with no way out while having to pay high monthly club and community fees. To exacerbate the situation no one was interested in buying in TP due to the lack of promised facilities i.e., the grand clubhouse and full service Nature Center, etc. People ended up losing their life savings due to the actions of Preston Schell-OA and Wilmington Trust and or M&T.

GOING BROKE – Windswept and 18th on the Bay condo owners were going broke trying to stay above water while having to pay high HOA,

Condo and Club fees (without a Club House). One couldn't sell their condo because they were 60% under water in value due to WT/MT, OA's Absolute Auction. The only way to not have to pay Club dues and fees was to sell your house and for the new owner to assume the membership. Perspective buyers were not interested in buying without into TP without completed amenities. One could not resign and stop the monthly club bills as members homes were tied to the membership agreement and any delinquencies in club fees would result in the Club placing a lien against one's property.

FORCLOSURE – The peninsula went into receivership followed by Wells Fargo's foreclosing on the development. Preston Schell-OA reached an agreement with Wells Fargo to purchase TP project and confirmed the sale in August 2014. Wells Fargo continued to hold the deed on properties that weren't sold.

CONCLUSION – homeowners in the MF condominium developments of TP have made many written requests dating back years to Ocean Atlantic's COO, Tom Tipton, for a meeting Preston Schell-OA. The purpose of these requests were to see if OA would work with homeowners whom had suffered financially as a result OA's Absolute Auction and satisfying their assist homeowners in some way in order to restore value to their properties. Preston Schell ignored those requests and has never met or addressed home owner's grievances.

CHANGE IN ORDINANCE 1883 - The declarant came before Sussex County in July of 2019 and requested to simply "tweak" by reducing the number of homes by 10 units while keeping the Multifamily condo units at 378. Now in the fall of 2021 the declarant wants to eliminate the

remaining 12 MF condo units (180 families). This would not only reduce the number of promised units for supporting the development from the originally promised 1404 to approximately 1344 the community's upkeep.

SELLING PROPERTY - I put my \$603k condo, totally furnished, on the market from March 2014 thru March 2015 with an asking price of \$399, with no offers. After one year Jeffrey Fowler (realtor) recommended I lower the starting asking price to \$299 if I hope to sell. My identical style Marco unit in building 6 just sold (totally furnished) in August, 2021 for \$359k making its value approximately 60% of original my 2009 purchase price.

All of these factors had a hand in devaluating my property value.

*The Club's membership agreement and its up-capped obligatory fees, dues, and minimums were tied to a member's deeded property, i.e., if one's Club membership was delinquent the Club would place a lien on a member's property. I wrote a letter to the Club's current ownership, asking it to provide me with a new membership agreement, since The Club had broken its promise in my contract by not building the clubhouse as promised.

FILE COPY

Opposition
Exhibit

Received at Public Hearing
11.04.2021

October 25, 2021

Dear Members of the Sussex County Zoning Commission,

As homeowners in The Peninsula community, my husband and I are writing to share our concerns regarding impending new development by Lennar Builders, Case # CZ1936. Having purchased a Lennar townhome in July 2020, we were verbally assured that the common property behind our home would be kept as a natural area with a plan of adding a walking path at some point. Imagine our dismay when heavy machinery appeared on the common ground a few weeks ago moving ground, while large loads of dirt were brought in to prepare for what appears to be the construction of eight new Lennar townhomes.

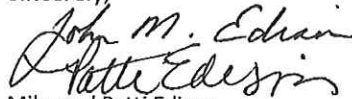
In the fifteen months of living here, we have experienced the change of seasons. During times of heavy rain, the area in question holds water to the point where, last spring, the mallard ducks and flocks of geese found a new home for weeks on end. All of the land directly behind the townhomes on the north side of Canoe Drive does not drain well; standing water can remain for months. Our property has lost shrubbery due to the extremely damp conditions. You may wonder how this applies to our concern regarding the construction of housing on this property. The prepared land that will hold future housing has already been built up by a couple of feet of dirt. When these building sites are completed, that square footage will no longer absorb water and stress the remaining property to do so. The property behind our home is already soggy long after a rain because the water does not all flow to the nearby pond. Any future rainwater drainage will naturally flow into the back yards of the Canoe Drive residents, creating an even greater water retention problem than already exists.

It has been brought to our attention that the pre-construction preparation of adding fill dirt may have begun without the zoning approval of the Sussex County Zoning Commission. No evidence of proper drainage or consideration for how additional construction will affect the Canoe Drive townhomes has been produced. The addition of eight new homes, we fear, will only negatively impact the standing water situation and lack of proper drainage in the common area. In addition, the property in question is the only property in our subdivision of The Peninsula, Marina Bay, that did not already have water and sewer installed. This leads us to believe that it was never planned to be built upon.

We are requesting that the Zoning Commission deny Ocean Atlantic/Lennar's request for new construction.

Should you decide in their favor, we would ask that there be strict requirements for insuring the addition of proper drainage of the land, as well as addition of landscaping which aids in prevention of land erosion and offers privacy to existing homeowners. This past week, our area experienced a nor'easter with significant rain. Attached, you will see evidence of how the area in question has poor drainage. The pictures show the pooling of water on days one and two after the storm. The Peninsula is the Forever Home for most residents. We ask for fair and balanced consideration of our request. Thank you for your time.

Sincerely,



Mike and Patti Edison
24241 Canoe Drive
Millsboro, DE 19966

edisonj@fortrex.com
240-994 6790

FILE COPY

Exhibit

Exhibit 101

The first part of the report deals with the general situation of the country and the position of the various groups. It is a very interesting and well-written account of the situation in the country and the position of the various groups. It is a very interesting and well-written account of the situation in the country and the position of the various groups.

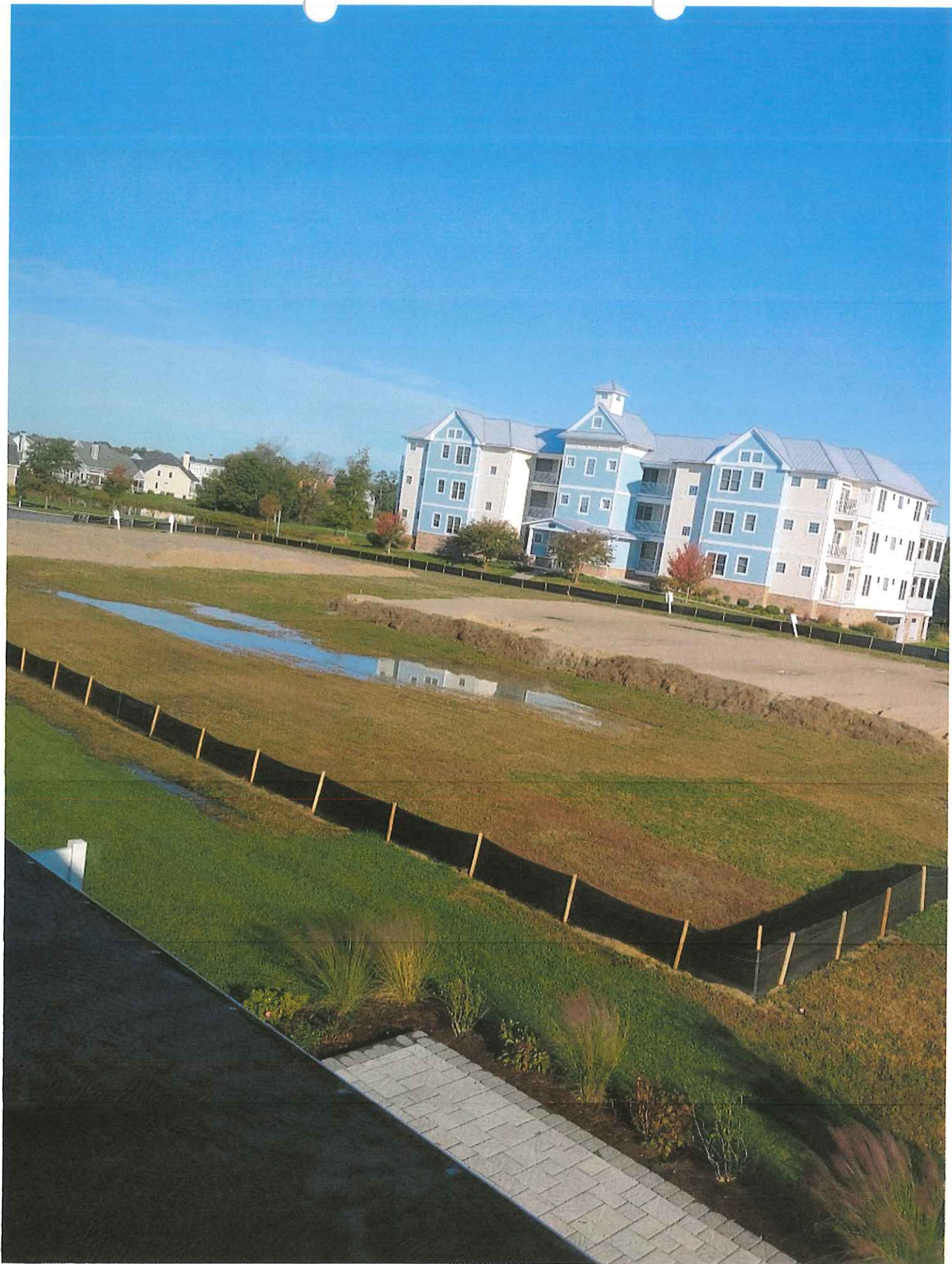
The second part of the report deals with the specific details of the situation in the country and the position of the various groups. It is a very interesting and well-written account of the situation in the country and the position of the various groups. It is a very interesting and well-written account of the situation in the country and the position of the various groups.

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Handwritten notes and signatures in the bottom right corner.

Printed text at the bottom right corner.





Jamie Whitehouse

From: Patti Edison <serenitynow80@hotmail.com>
Sent: Sunday, October 31, 2021 8:27 PM
To: Planning and Zoning; honey edison
Subject: Information regarding case CZ1936 OA-BP Marina Bay-Lakeside, LLC
Attachments: Case CZ1936.pdf; Water Retention Picture Day 1.jpg; Water Retention Picture Day 2.jpg

Follow Up Flag: Follow up
Flag Status: Flagged

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To whom it may concern,

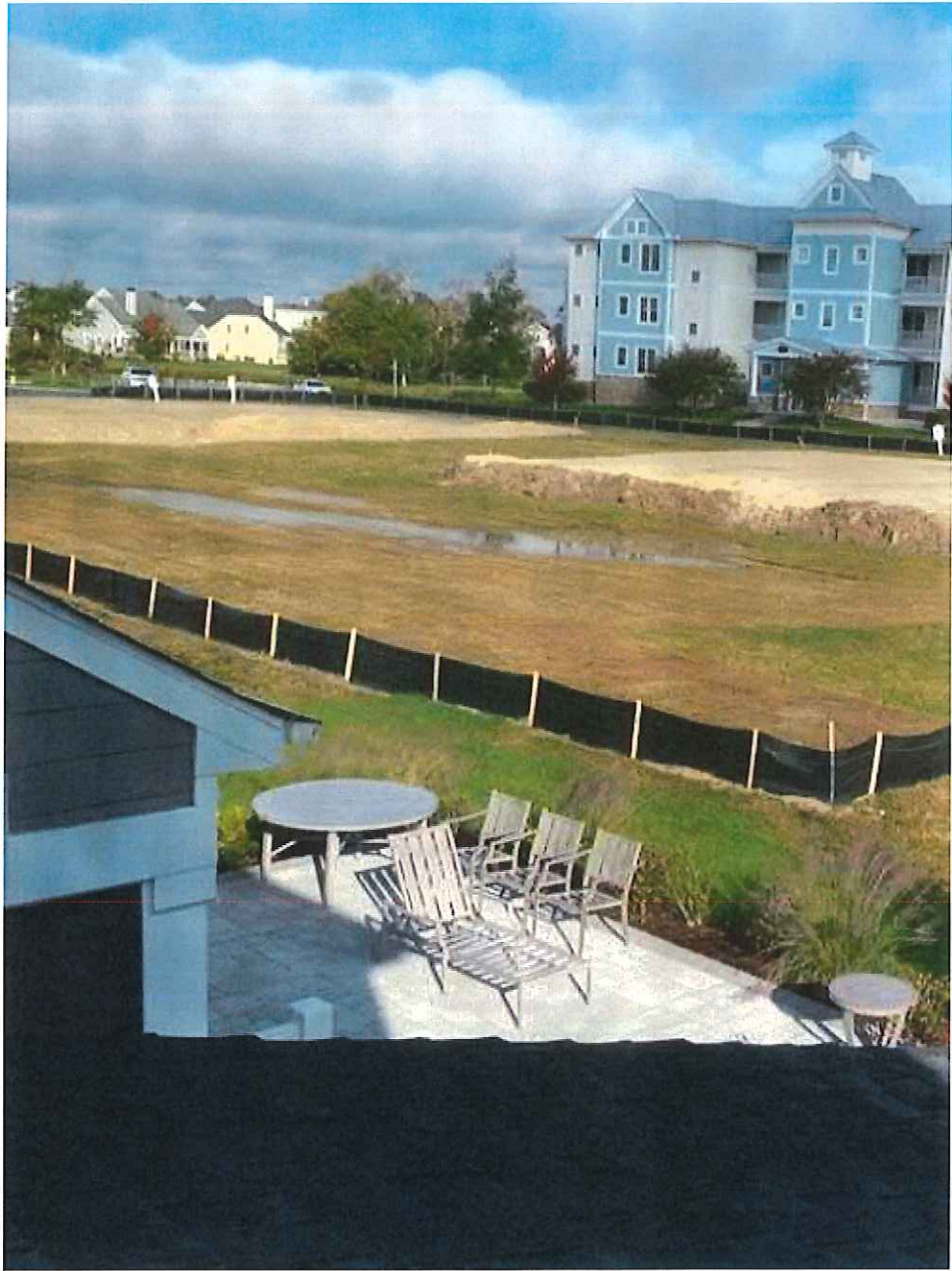
Please see the attached letter and pictures relating to case CZ1936.

Best Regards,

Patti & Mike Edison

Sent from [Mail](#) for Windows





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EM-1-SK-14

SAIL SIDE 89

Marina Bay Multifamily Condos 30
 LANGO CREEK 76
 Wind Swept 206

Town Homes 28 (units)
 152

SEA WATERS 79

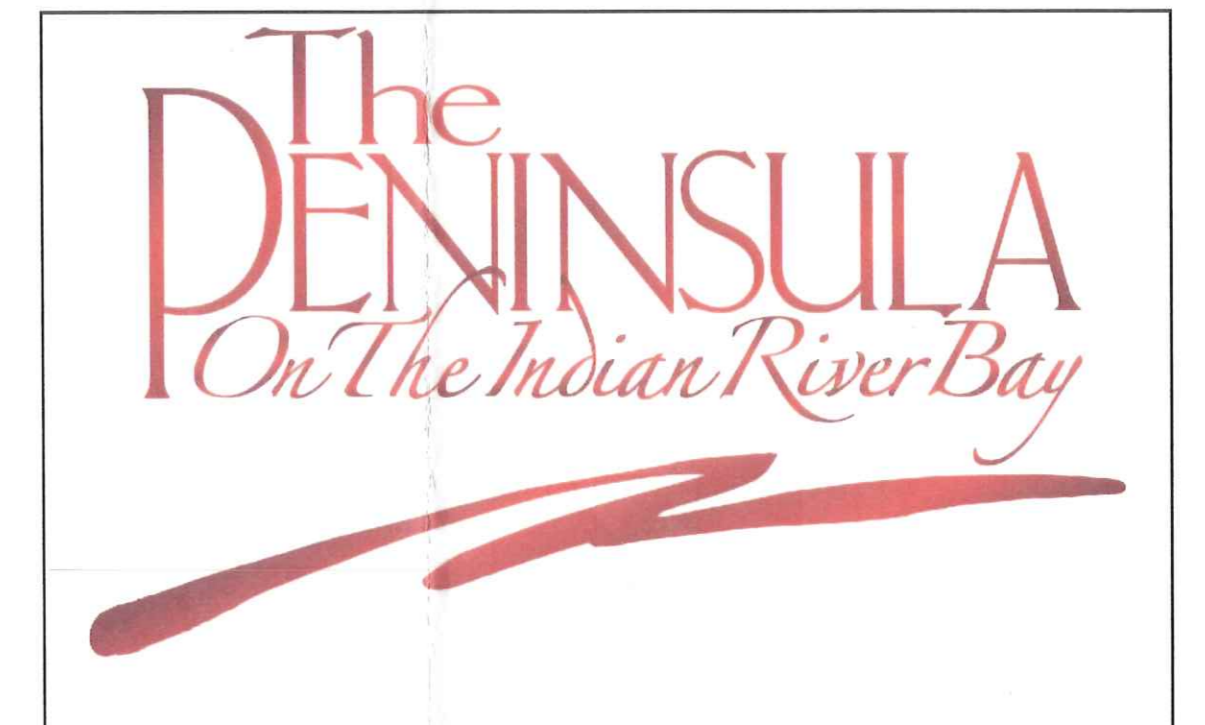
- PER ORDINANCE NO.2690
(MAXIMUM SINGLE-FAMILY LOTS ALLOWED = 358)
- EXISTING SINGLE FAMILY LOTS-----312
- PER-ORDINANCE-NO-2690 REVISED CONDITIONS
(MAXIMUM SINGLE-FAMILY DETACHED CONDOMINIUMS ALLOWED = 388 471)
- PROPOSED (STILLWATER) SINGLE FAMILY DETACHED CONDOMINIUMS---79
- EXISTING SINGLE FAMILY DETACHED CONDOMINIUMS---388
- PER ORDINANCE NO.2690
(MAXIMUM SINGLE-FAMILY ATTACHED TOWN HOUSES ALLOWED = 270)
- EXISTING SINGLE FAMILY ATTACHED TOWN HOUSES---270
- PER-ORDINANCE-NO-2690 REVISED CONDITIONS
(MAXIMUM MULTI-FAMILY UNITS ALLOWED = ~~378~~ 295)
- EXISTING MULTI-FAMILY UNITS-----295
 $Wind\ Swept\ 176 + Marina\ Bay\ 30 = 206$
 $206 = 89$
- PER ORDINANCE NO. 2690
(MAXIMUM TOTAL UNITS ALLOWED = 1394)
- TOTAL UNITS-----1344

EXISTING CONDITIONS
(CONDITION 1 OF ORDINANCE 2690)

1. THE MAXIMUM NUMBER OF UNITS SHALL NOT EXCEED 1,394 UNITS COMPRISED, AS FOLLOWS:
 - A. 358 SINGLE-FAMILY LOTS
 - B. 388 SINGLE-FAMILY DETACHED CONDOMINIUMS
 - C. 270 SINGLE-FAMILY ATTACHED TOWNHOUSES
 - D. 378 MULTI-FAMILY UNITS

PROPOSED CONDITIONS
(REVISION TO CONDITION 1 OF ORDINANCE 2690)

1. THE MAXIMUM NUMBER OF UNITS SHALL NOT EXCEED 1,394 UNITS COMPRISED, AS FOLLOWS:
 - A. 358 SINGLE-FAMILY LOTS
 - B. 471 SINGLE-FAMILY DETACHED CONDOMINIUMS
 - C. 270 SINGLE-FAMILY ATTACHED TOWNHOUSES
 - D. 295 MULTI-FAMILY UNITS



To all,

October 18, 2021

You may have noticed the public hearing advertisement that was displayed this past weekend at Peninsula. The public hearing is for a condition change to the ordinance that created the Peninsula Master Plan approval. The ordinance conditions are particular about the number of each home type we can build at Peninsula.

With the current home type counts and changes, specifically 18th on the Bay, we are removing multi-family homes and converting them into single-family detached homes. I have attached the request for the public hearing to this email.

Click [HERE](#) for the request for a public hearing.

The total number of potential homes at Peninsula is not changing. We are de-densifying by removing some of the multi-family or condo home products and converting them into single-family detached homes. The change removes 93 multi-family homes (Windswept/18th on the Bay type units) and adds 93 single-family detached homes. These are the type of single-family homes found in Moorings/MBTH association/Veranda/Sailside Villa. Stillwater will most closely resemble Sailside Villa going forward.

Please reply to this email with your questions, which will be forwarded to me for review and a follow up response, if necessary.

Regards,
Tom Tipton
PCA Board President



61°F Mostly

Clubhouse drama rolls on



The seventh hole is seen at the Peninsula Golf and Country Club on the Indian River Bay. The community is still awaiting a clubhouse.

THE NEWS JOURNAL

Bank asks for another extension to add amenity to community

By James Fisher The News Journal

The Peninsula on the Indian River Bay, a Millsboro-area gated community not quite halfway filled to its 1,400-home capacity, has numerous luxury amenities: indoor and outdoor pools; a Jack Nicklaus-branded golf course; a staffed spa; a nature center with boardwalks over marshland; a restaurant; tennis and basketball courts.

Still not impressed? Try the wave pool.

What it's supposed to have, but doesn't yet, is a golf clubhouse. And its residents' alternating efforts to delay, and then speed up, the clubhouse's construction has tangled the development in years of litigation and government oversight. Beginning in 2002, the Sussex County Council set several deadlines for the clubhouse to be built. All of them were missed, including the most recent requirement that construction commence by this past March.

Now, a bank that owns The Peninsula's more than 700 unsold lots is asking County Council for one more delay that would let it start construction by October 2015, finishing the job within a year.

The County Council is considering adding drastic penalties to the sought-after extension if the deadline is missed again, including a ban on any building permits for new homes there until the clubhouse is finally done.

"From my perspective, I've had about enough of The Peninsula," councilmember Vance Phillips said Tuesday when the bank, Wells Fargo, appeared to ask for extra time.

The Peninsula was an ambitious boom-era housing development. It is the brainchild of a Washington, D.C.-area developer, Larry Goldstein, who bought its undeveloped land in 2002 for \$34 million. He got permission to build as he liked through a conditional use granted by the county, which called for a clubhouse and other amenities to be built.

When homes went on sale the following year, demand was high, and so were prices. Many homes went for north of \$1 million. Nicklaus himself showed up to open the links.

But the swoon in housing prices starting around 2006 and the economic recession stunted sales at the Peninsula. By 2009, Wells Fargo - which had bought the original lender, Wachovia - foreclosed on the development company, saying it owed the bank \$72 million.

The original clubhouse mandate has been revised several times by County Council at the request of the various developers who tried to make a go of selling lots at The Peninsula. But each time, the new deadline passed without dirt moving an inch.

"Our property values have suffered," said John Gee,



A marketing brochure for the Peninsula on the Indian River Bay shows a sketch of an as-yet-unbuilt clubhouse. The developer, Wells Fargo, is asking the county for a time extension to October 2015, but residents want the clubhouse finished. JAMES FISHER/THE NEWS JOURNAL

a Peninsula resident who's led a group of his neighbors in talks with Wells Fargo and the county. "There is that cloud over us."

After a drawn-out foreclosure process, more than 700 unsold lots went up for grabs at a sheriff's sale last year. Wells Fargo, the lender, now owns them through a subsidiary company. Dan Bartok, a Wells Fargo executive, told the County Council the bank expects to sell the lots to a new developer by the end of the year.

Wells Fargo is asking for a basic extension, but the county's Planning & Zoning Commission recommended strings attached: A requirement that Wells Fargo or the developer draw up blueprints and a cost estimate for the clubhouse, and produce a letter of credit covering 125 percent of its expected cost. If that's not done, the commission advised, Sussex County shouldn't allow the construction of any more homes in The Peninsula.

Recent estimates by a consultant of the clubhouse's cost call for a \$19 million building or a smaller \$11 million one.

An earlier construction bond required by the county was for far less: \$1.4 million, or what some of the development's single-family homes cost. In the past, Gee

said, homeowners agreed with construction delays because they didn't want the clubhouse built cheaply because of lack of funds.

An attorney for Wells Fargo, James Fuqua, asked County Council to extend the deadline without adding the P&Z conditions. But Gee told the Council his group of 400 property owners wants penalties imposed for missing the new deadline. Councilmembers said they'd consider the penalties, but put off a final vote until Aug. 19.

Rich Abbott, an attorney who represented property owner Dennis Silicato in legal tussles over the foreclosure process, said Peninsula property owners deserve to get the clubhouse they've been promised since 2002.

"Residents of the community who bought in would like to get an amenity that they paid a premium for," Abbott said. "It doesn't really have any difference from a municipal golf course, because it doesn't have a clubhouse. It's a promise made years ago that has not been kept."

Contact James Fisher at (302) 983-6772, on Twitter @JamesFisherTNJ or jfisher@delawareonline.com.

500-675-0125

48K

Wilmington Trust merger tied to Sussex loans

Henry J. Evans Jr.
December 7, 2010

1 B

One of Delaware's oldest and once-presumed financially solid banks was forced into a merger with another bank, and a local legislator wants to know the reasons why.

"It just seems like someone wasn't watching what was going on. A lot of loans were put out to different LLCs [limited liability corporations], and a bank with such a large financial portfolio was sinking so much into commercial real estate loans, much of which was in Sussex County," said Sen. George Bunting, D-Bethany Beach.

He said Wilmington Trust's employees, who had invested in the bank for years, would be most hurt financially. Bunting said he does not hold stock in the bank.

On Nov. 1, Wilmington Trust Corp. and M&T Bank Corp. announced an agreement to merge, ending the existence of Wilmington Trust. Under the terms of the agreement, Wilmington Trust common stock shareholders will receive shares of M&T common stock in exchange for shares of Wilmington Trust common stock they own in a stock-for-stock transaction valued at \$351 million. M & T will also assume \$330 million in Troubled Asset Relief Program preferred stock.

Bunting said as a result of the merger, Wilmington Trust stockholders are taking a financial beating.

According to Commercial Mortgage Alert, Wilmington Trust offered loans valued \$130.6 million of loans in two pools. One pool has an outstanding balance of \$76.3 million, about half of which is distressed. The other pool consists of \$54.3 million in loans in varying stages of distress.

"The bulk of the collateral is raw land and residential developments in Delaware. The loans were made to two Delaware developers hit hard by the economic downturn: Preston Schell and Michael Zimmerman. The portfolio's average loan balance is \$1.6 million," a Commercial Mortgage Alert document stated.

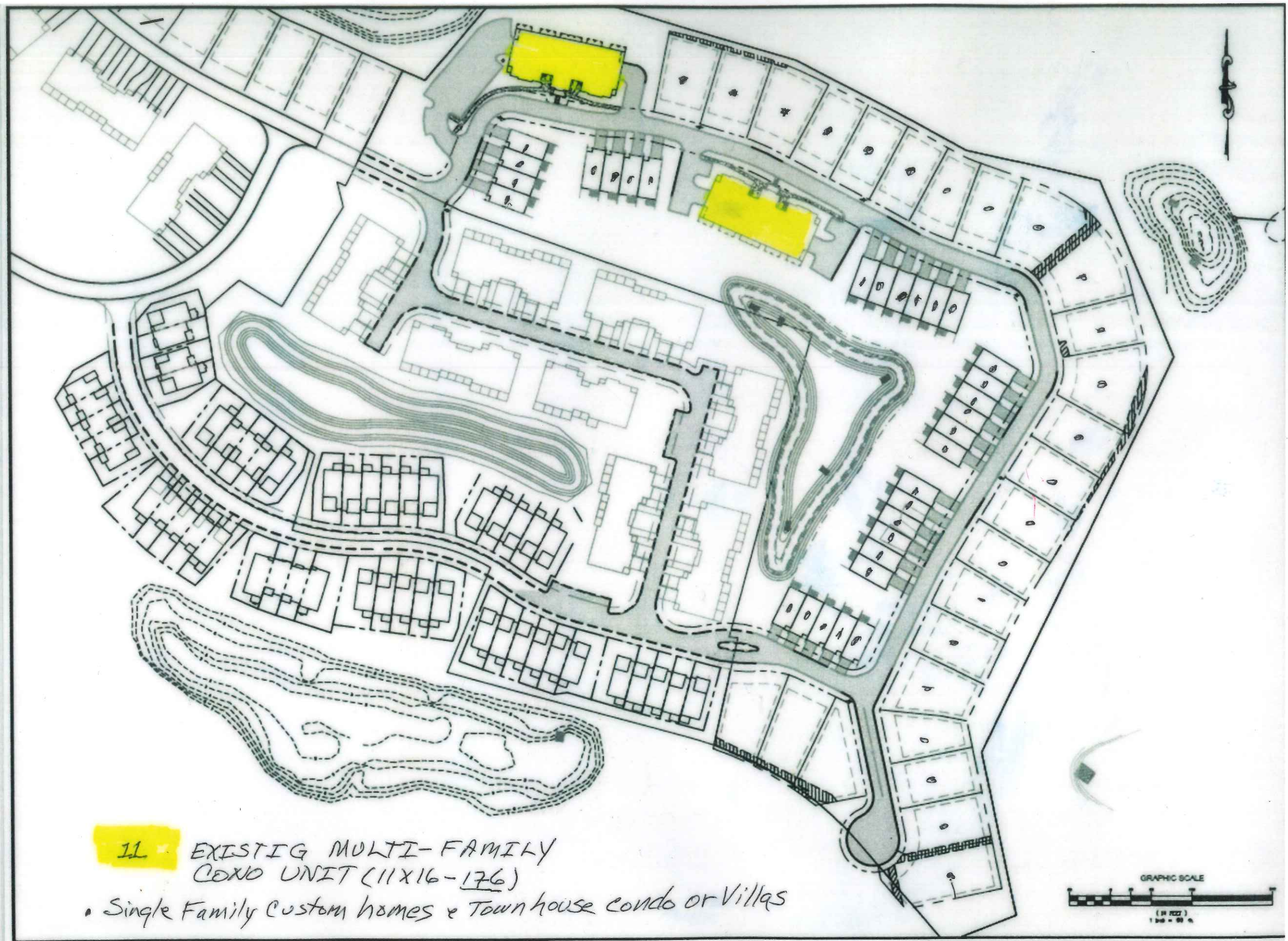
In an interview, Preston Schell said Wilmington Trust asked him if would allow the bank to seek a buyer of his loan. Last month he told the Cape Gazette he had approved the bank's plan.

Schell on Monday, Dec. 6, declined to comment on the status of the loan sale because of an agreement with Wilmington Trust and his desire to keep personal financial matters between himself and the bank. Wilmington Trust spokesman Bill Benintende said Dec. 6, the bank merger is still pending and he would not comment on sale of loan portfolios.

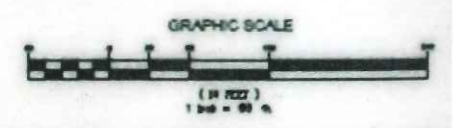
Zimmerman did not return phone calls. A commercial mortgage loan is similar to a residential mortgage except the collateral is a commercial building or other business real estate.

In addition, commercial mortgages are typically taken on by businesses instead of individual borrowers. The borrower may be a partnership, incorporated business or limited company, so assessment of the creditworthiness of the business can be more complicated. Some commercial mortgages, in the event of default in repayment, the creditor can seize only the collateral and has no further claim against the borrower for any remaining deficiency.

Bunting said he received information in mid-October that the federal government had been considering closing Wilmington Trust. On Oct. 14, Bunting sent a letter to the Federal Reserve Board asking it to look into the bank's actions and also asking the board to have the FBI investigate for any criminal wrongdoing. He said it appears there was "a lot of bad mismanagement."



11 EXISTING MULTI-FAMILY
CONDO UNIT (11X16-176)
• Single Family Custom homes & Townhouse condo or Villas





SINGLE FAMILY LOTS-----332

PER ORDINANCE NO.1573
 (MAXIMUM SINGLE-FAMILY DETACHED CONDOMINIUMS ALLOWED = 378)

PROPOSED
 SINGLE FAMILY DETACHED CONDOMINIUMS---50

SINGLE FAMILY DETACHED CONDOMINIUMS---328

PER ORDINANCE NO.1573
 (MAXIMUM SINGLE-FAMILY ATTACHED TOWN HOUSES ALLOWED = 325)

PROPOSED
 SINGLE FAMILY ATTACHED TOWN HOUSES---10

SINGLE FAMILY ATTACHED TOWN HOUSES---239

MULTI-FAMILY UNITS-----376

TOTAL UNITS-----1335

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