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**Sussex County**

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## PLEASE NOTE

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NOV 29 2021

SUSSEX COUNTY  
PLANNING & ZONING

TO: Sussex County Council

November 19, 2021

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

SUBJECT: November 30<sup>th</sup> 2021 County Council Meeting - Ord' - 1883.

In January, 2009 I closed on a newly constructed 3 bedroom condo in the Windswept community of The Peninsula, Millsboro, DE and became a citizen of Sussex County DE. I put down approximately \$250k in cash against a closing price of \$603K; a mandatory 10% down went to 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 all the guaranteed first class amenities and inducements would assure my property value. I knew could always sell without fear of losing a great deal of money should I have to re-locate due to health or other unforeseen reasons.

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 420 members in January of 2009 but there was no clubhouse being constructed (2.) The fully completed educational, retail and recreational

(2)

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 to be held in escrow at a local financial institution guaranteeing completion of the Club's facilities. In my case I paid approximately \$3,000. In 2009 there was approximately \$1.5 million paid into the homeowners escrow account but 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 the Members Escrow Agreement by the Clubs manager.

PRESTON SCHELL-OA – was the contractor/owner of the Windswept and 18<sup>th</sup> on the Bay Multi Family (MF) building communities. By January of 2009 OA had built out 13 of the promised 25 MF buildings, leaving 12 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. This left OA owning 60 units in Windswept and 18<sup>th</sup> on the Bay in January of 2009.

“WILMINGTON TRUST Merger tied to Sussex loans” (Cape Gazette) – Preston Schell-OA was having financial problems and could not meet its residential development loan obligations at Willington Trust (WT).

(3)

“Wilmington Trust offered loans valued at \$130.6 million in two pools. One pool had an outstanding balance of \$76.3 m and 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 and was named in the Government's WT's bank fraud indictment. WT either accepted, approved of, wrote or accepted false loan applications 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, reducing liabilities.

THE ABSOLUTE AUCTION – Preston Schell-OA still owned 60 condos in Windswept and 18<sup>th</sup> on the Bay in January, 2009. Property sales had dried up. OA also had an obligation to build out the remaining 12 MF buildings in 18<sup>th</sup> on the Bay. On May 20<sup>th</sup> 2009, 100 days after I put down over a quarter of a million dollars in closing on my condo, Preston

Schell-OA put out a written publication through its real-estate department; "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, (WT and or M&T's) Absolute Auction did not sell "just a few units," it sold all the remaining 60 condo units it owned in Windswept and 18<sup>th</sup> on the Bay at \$0.30 to \$0.40 on the dollar. My 3-bedroom "Marco" (# 8404) in building 8 closed at \$603k and OA's Absolute Auction price for the identical unit in the adjacent building 7 (#7404) sold for \$227k, 63% below what I had just paid for my unit. A 4 bedroom Clearwater (#8403) sold pre-auction for \$904k while the identical unit one door away at (#8405) went for \$291k, 68% less. All the Absolute Auction reduced prices are recorded in 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 loan balances. 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 Absolute Auction sale prices. Windswept and 18<sup>th</sup> on the Bay homeowners were now trapped with no way out short of foreclosures, sheriff sales or short sales. Every pre-auction homeowner 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

(5)

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. Home owners in Windswept and 18<sup>th</sup> on the Bay ended up losing their life savings due to the actions of Preston Schell-OA, Wilmington Trust and or M&T.

GOING BROKE – Windswept and 18<sup>th</sup> on the Bay condo owners were going broke. They couldn't sell or couldn't move without suffering great loss while having to pay high HOA, Condo and full Club fees (without a Club House). One couldn't sell their condo because they were 60% or more under water in value. 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 Club membership. Potential buyers were not interested in purchasing property in The Peninsula without completed Club amenities. One could not resign and stop the monthly Club bills because Club membership dues and fees were tied to member's homes i.e., delinquencies 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 in August, 2014 with Wells Fargo continuing to hold the deed to the unsold properties.

(6)

CONCLUSION – homeowners in the MF condominium developments of TP have made many written requests for a meeting with Preston Schell. The purpose was to discuss ways OA might work with home owners in Windswept and 18<sup>th</sup> on the Bay for restoring property values. Preston Schell never met with homeowners to address their concerns or 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 further “tweak” the numbers and eliminate all the remaining 12 MF condo units (180 families). This would not only reduce the number of promised units needed for supporting the developments upkeep i.e., increasing financial burden to homeowners, but would create environmental vulnerability to the Indian River Bay as well as a restraining Sussex County’s desire to open up increase affordable homes for low income families.

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’d hope to sell. My identical style Marco unit in building 6 just sold (totally furnished) in August, 2021 for \$359k setting the current market value approximately 60% of my 2009, unfurnished, purchase price.  
Thank you for your time.

## Jennifer Norwood

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**From:** Steve Dulin <sbdulin@omnisolutionsinc.com>  
**Sent:** Monday, November 29, 2021 11:39 AM  
**To:** Planning and Zoning  
**Subject:** OA-PZ Marina Bay CZ 1936  
**Attachments:** IMG\_9573.jpg; IMG\_9574.jpg

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From: Stephen B. Dulin – 410-703-6868  
To: P and Z - 11/29/2021

Please open attachments and scan the two documents and include them with Architects site plan drawings of The Peninsula on the Indian River Bay that were previously scanned for the last P and Z's meeting on CZ 1936. Please include these docs for presentation at tomorrow's (11/30) County Council Hearing. Please confirm this request once completed. Thank you for your assistance with this request.

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# The PENINSULA

*On The Indian River Bay*



A message from the Windswept Developer:

We hope this message finds you well.

As many of you know, sales at The Peninsula, and subsequently Windswept, have been slow since the beginning of 2008. In an effort to generate some activity, we have decided to hold an on-site sales auction Sunday, June 7th at 1:00 pm. The event will be hosted by Emmert Auction Associates, a local group that's had considerable success in the business for several years. In order to promote the event, you will see ads in various local and regional publications and approximately six open houses will be held on-site between May 24th and June 6th.

We understand the connotations that sometimes come along with real-estate auctions and want to ensure you that this event is not a "fire-sale". The Windswept partnership is in excellent financial condition and is holding this event as a reaction to market conditions. Our initial intent is to sell 11 units at the auction; additional units will only be added if we are pleased with the results.

To view the Windswept Auction brochure, please click here: [Windswept Auction Brochure](#). We hope to see you at the event and look forward to a great summer selling season at the Peninsula.

December 7, 2010

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