

JAMIE WHITEHOUSE, AICP  
DIRECTOR OF PLANNING & ZONING  
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**Sussex County**

DELAWARE  
sussexcountyde.gov

## PLEASE NOTE

This paperless packet is published on the County's website for convenience purposes, and only includes information received up to the close of business on the day before a public hearing. Documents received after this, or documents submitted during the public hearing are not uploaded to the Paperless Packet. The legal record is the paper record maintained in the Offices of the Planning & Zoning Department.



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

**Jamie Whitehouse**

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**From:** webmaster@sussexcountyde.gov on behalf of Sussex County DE  
<webmaster@sussexcountyde.gov>  
**Sent:** Friday, November 12, 2021 4:14 PM  
**To:** Planning and Zoning  
**Subject:** Submission from: Planning & Zoning Commission contact form

RECIPIENTS: Jamie Whitehouse

Submitted on Friday, November 12, 2021 - 4:14pm

**FILE COPY**  
**SUPPORT EXHIBIT**

Name: Scott Shaughnessy  
Email address: shaughn40@msn.com  
Phone number: 3022787380  
Subject: Comments on proposed new wetlands and buffers ordinance  
Message:

Scott Shaughnessy  
36486 Warwick Drive  
Rehoboth Beach, DE 19971

November 12, 2021

RE: Proposed ordinance on wetlands and buffers

Sussex County Planning & Zoning Commission Planning & Zoning Office PO Box 417 Georgetown, DE 19947

Dear Commission members,

This email is following up on comments I made at the November 4th hearing on the proposed new wetlands and buffers ordinance.

It is long overdue that the county's wetlands and buffers rules be updated.

I generally support the proposed new ordinance but with some caveats, which I note below.

**Enforcement**

I believe specific enforcement mechanisms and penalty rules for violations need to be included in the ordinance. Any ambiguity around this leaves 'wobble room', excuse-making, exception-making, and "I can get away with it" attitudes and actions.

**>>My Story:**

>>In my condominium community of 120 dwellings in Rehoboth Beach, about 50% of the condos are vacation/2nd home condos. Full-time residents rarely see these owners, particularly in the off-season. In my efforts to raise awareness about the benefits of buffers, natural vegetation in buffers, and the impact on filtration and habitat, and bring this to the attention of fellow condo-owners, I find, generally, that those who are not full-time resident (and even many full-time residents) tend to not care about such matters here in our community when they are here (or when they are back in

their primary homes). Perhaps it is because they have limited time when here and devote it towards recreation and relaxation and prefer to not get involved in condo-owners' association decisions/operations.

>>Additionally, of all our condo-owners (full-time residents and >>part-time residents), only a portion of them are lucky enough to live >>along Johnson Branch (also known as Wolf Pit Branch), a tidal creek >>that empties out eventually into Rehoboth Bay – about 30 homes or so >>are situated along the creek. So, the majority of condo-owners do not >>even see the creek or what is happening along the creek. Some of >>these owners lucky enough to live along the creek, seem not to care >>about environmental protections and ensuring cleaner water and air – >>they just want their views opened up to the creek and to implement >>their aesthetic of manicured lawns and yards – even though, >>technically, these are not their yards or lawns to manicure (it is >>land owned collectively by the condo association). Others do care >>about environmental protections and ensuring cleaner water and air. >>But, of the former, they cut trees and branches, remove shrubs in the >>buffer and lay sod right down to the creek's edge, minimizing or eliminating the buffer that exists between our condos builder-installed manicured lawn lines and the creek.

>>Before the builders turned the community over to a condo-owners >>association, early condo-buyers/owners were doing what they wanted; >>again, clearing trees and vegetation and running lawn lines right to >>the creek's edge. The builder did nothing. The builder's sales agent >>(who lived on site in the community), wagged her finger and delivered >>lectures, but there was no enforcement, no penalty. Her main concern >>was selling condos as fast as possible, so the builder could turn the >>profit he hoped for and get the 'heck out of Dodge'. Now that we have >>a condo-owners association and a board of directors, the current >>Board, says "what's done is done". They – who have to live here – >>don't want to reprimand and enforce rules (that are not in our condo >>by-laws). They want to stay on everyone's good side. So, what >>happened right under the builder's nose is happening now, under the >>condo-owners association's. This is wrong. It is anti-environmental, >>with detrimental consequences for our watershed and "resident", indigenous, as well as transitory habitat. And sadly, there just isn't the 'power in numbers' factor in this community to elect a new Board or pressure the existing one to do the right thing.

This is likely not particular to our community, nor an isolated incident. It is likely happening all over the county. Mr. Preston Schell, of Ocean Atlantic, who was at the November 4th hearing to deal with another matter before the Commission rose and spoke to this issue, "Don't let them [homeowners] get in there and think they can start cutting down trees in the buffer." He described a situation along Coastal Club Trail where one property will have saplings and large trees growing and the next one will have none. He said, "Some will cut down every single sapling and some will even cut down big trees... homeowners will get down there in the dark of night sometimes and take down trees." This is not consistent with leading environmental practices and flies in the face of the proposed wetlands and buffers regulations.

This is why detailed enforcement and penalty rules are key – at least for future developments (if not for existing ones). And leaving it to the homeowners' associations to enforce and penalize is ineffective.



And this is why selective tree cutting permissions need to be removed from the proposed ordinance (which I write about below).

Selective Tree Cutting – section 10, D2, lines 705 to 707

Mr. Mears said in his presentation on the proposed buffer ordinance on November 4th that the new rules aim to avoid clear-cutting of trees and clearing of meadows. He said “If it is in its natural state, let’s try and keep it that way.” And that if this is not adhered to, then re-establish it.

I believe the section on selective cutting (how is this defined? Is the definition tight enough?) to be vague and open to interpretation and rife with potential risks to tree under-stories and the aim of keeping things in their natural state.

I refer to my story above, where, now, in our community along Johnson Branch, we see a patchwork of sections of properties that have drastically cut trees (to the point it does not look natural), tree and shrub clearing, and lawns extended to the creek’s edge against sections that have left buffers in their natural state, encouraged natural vegetation and tree growth and/or replanted native species to reinforce the buffer – all along the same waterway. It’s a mess. And the condo-owners’ association (and homeowners’ in the case of Mr’ Schell’s story) does nothing to right the wrongs or address the problems and violations. This can only have a detrimental impact on the protection and enhancement of our environment in terms of flooding, soil erosion, water and air quality, and the fostering of healthy and thriving habitat.

I do not believe selective cutting in buffer zones should be permitted except in very limited circumstances: a risk/threat to human life or property.

This provision, in its current form should either be removed entirely or considerably tightened up (including how it is to be enforced).

It is my hope that Sussex County Planning and Zoning commissioners will acknowledge the gaps and loopholes in the proposed rules as currently written and make recommendations for removing ambiguity and tightening up the above-noted (and other) provisions in the proposed ordinance.

Thank you for all the good work you do.

Kind regards,

Scott Shaughnessy  
36486 Warwick Drive  
Rehoboth Beach, DE 19971

**From:** Lynn Farina <[lynnfarina@gmail.com](mailto:lynnfarina@gmail.com)>  
**Sent:** Friday, November 12, 2021 1:16 PM  
**To:** Robin Griffith <[rgriffith@sussexcountyde.gov](mailto:rgriffith@sussexcountyde.gov)>  
**Subject:** Comments on buffer ordinance

Dear Ms. Griffith,

I'm a Lewes resident and my daughter Lee Dunham originally wrote this and I agree with all she says. I am sending this as my contribution to the public comments on the buffer ordinance. I would be very appreciative if you would forward this to the County Council members.

I am very much in support of expansion of the expansion of the buffer ordinance, with the modifications recommended by Mr. Launay, Mr. Borasso and Mr. Bason. I particularly support the expansion of the proposed buffer widths to fall within the recommendations of the Delaware Center for Inland Bays, the removal of the options section in the ordinance permitting the reduction of buffer widths, and the requirement that all buffers be forested or contain natural shrubs. Sussex County's natural and environmental resources are our most precious asset, and it's critical to preserve them for current residents and future generations to enjoy.

Also, it's inevitable that Delaware will see another Nor'Easter or major hurricane. I fear that many of the people buying properties close to the wetlands are newcomers who haven't been here long enough to see the damage that a major storm can do, and that they would not be buying or building in the places where they are if they truly and fully understood the risks. It's very important for the safety of both new and existing residents that new development be carefully regulated to account for the significant risks of flooding and the maintenance of safe evacuation routes and access for emergency vehicles.

Sincerely,

Lynn Farina

**FILE COPY**

**SUPPORT EXHIBIT**

**From:** Patrick Farina <[patvfarina@gmail.com](mailto:patvfarina@gmail.com)>  
**Sent:** Friday, November 12, 2021 11:15 PM  
**To:** Robin Griffith <[rgriffith@sussexcountyde.gov](mailto:rgriffith@sussexcountyde.gov)>  
**Subject:** Comments On Buffer Ordinance

Dear Ms. Griffith,

I'm a Lewes resident and am sending this as my contribution to the public comments on the buffer ordinance. I would be very appreciative if you would forward this to the County Council members.

I am very much in support of expansion of the expansion of the buffer ordinance, with the modifications recommended by Mr. Launay, Mr. Borasso and Mr. Bason. I particularly support the expansion of the proposed buffer widths to fall within the recommendations of the Delaware Center for Inland Bays, the removal of the options section in the ordinance permitting the reduction of buffer widths, and the requirement that all buffers be forested or contain natural shrubs. Sussex County's natural and environmental resources are our most precious asset, and it's critical to preserve them for current residents and future generations to enjoy.

I also particularly agree that references that the one section addressing and allowing for selective cutting should be removed. The only potential for keeping any of that section is to limit it to removal of invasive species, which I assume mainly refers to phragmites.

Also, it's inevitable that Delaware will see another Nor'Easter or major hurricane. I fear that many of the people buying properties close to the wetlands are newcomers who haven't been here long enough to see the damage that a major storm can do, and that they would not be buying or building in the places where they are if they truly and fully understood the risks. It's very important for the safety of both new and existing residents that new development be carefully regulated to account for the significant risks of flooding and the maintenance of safe evacuation routes and access for emergency vehicles.

Our natural resources are our most precious quality of life differentiator and protection of our wetlands is critical to keeping this gem of a place to live that coastal Delaware is. Development will march on, but please keep it away from sensitive parts of the county. It will prove to be a very wise decision in the short as well as long run. Developers can continue to thrive but careless growth could kill the golden goose. Let's work together to keep the goose alive and thriving.

Sincerely,

Patrick V. Farina  
418 Johnson Ave.  
Lewes, DE 19958  
302-242-5422  
[patvfarina@gmail.com](mailto:patvfarina@gmail.com)

**FILE COPY**  
**SUPPORT EXHIBIT**



**From:** Lee Dunham <[lee@leedunham.com](mailto:lee@leedunham.com)>  
**Sent:** Friday, November 12, 2021 12:13 PM  
**To:** Robin Griffith <[rgriffith@sussexcountyde.gov](mailto:rgriffith@sussexcountyde.gov)>  
**Subject:** Comments on Buffer Ordinance

Dear Ms. Griffith,

I'm a Lewes resident and am sending this as my contribution to the public comments on the buffer ordinance. I would be very appreciative if you would forward this to the County Council members.

I am very much in support of expansion of the expansion of the buffer ordinance, with the modifications recommended by Mr. Launay, Mr. Borasso and Mr. Bason. I particularly support the expansion of the proposed buffer widths to fall within the recommendations of the Delaware Center for Inland Bays, the removal of the options section in the ordinance permitting the reduction of buffer widths, and the requirement that all buffers be forested or contain natural shrubs. Sussex County's natural and environmental resources are our most precious asset, and it's critical to preserve them for current residents and future generations to enjoy.

Also, it's inevitable that Delaware will see another Nor'Easter or major hurricane. I fear that many of the people buying properties close to the wetlands are newcomers who haven't been here long enough to see the damage that a major storm can do, and that they would not be buying or building in the places where they are if they truly and fully understood the risks. It's very important for the safety of both new and existing residents that new development be carefully regulated to account for the significant risks of flooding and the maintenance of safe evacuation routes and access for emergency vehicles.

Sincerely,

Lee Dunham  
The Law Offices of Lee P. Dunham  
[Lee@LeeDunham.com](mailto:Lee@LeeDunham.com)

**FILE COPY**

**SUPPORT EXHIBIT**

**From:** Sturges Dodge <[msdodge@udel.edu](mailto:msdodge@udel.edu)>

**Sent:** Friday, November 12, 2021 10:41 AM

**To:** Mary Dodge <[msdodge@udel.edu](mailto:msdodge@udel.edu)>; Robin Griffith <[rgriffith@sussexcountyde.gov](mailto:rgriffith@sussexcountyde.gov)>

**Subject:** Proposed changes to Buffer Zone Ordinance

To the Council,

I am pleased that you are addressing a need for changes in this ordinance and involving the public in these areas. I am distressed that the County has lost significant marshland and wetlands, and urge you to put in place development restrictions that will protect not only what remains, but also protects land sufficient to allow wetlands to migrate inland as a response to sea level rise and land subsistence.

In reviewing the newspaper article in today's Cape Gazette I read the recommendations of Ed Launay, Rich Borrasso and Chris Bason. I agree with all of their recommendations, but especially Mr. Bason's larger buffer widths that stand a better chance of mitigating climate change effects on marsh and wetlands.

I also support tree preservation throughout the State, including penalties, which should result in at a minimum, replanting of trees, for those who violate buffer area and other prohibitions against removal of trees.

Thank you for your attention to my opinions and your service,  
Ms Sturges Dodge,  
Rehoboth Beach, DE

See link below:

<https://dnrec.alpha.delaware.gov/watershed-stewardship/wetlands/and-sea-level-rise/>

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Sent from Gmail Mobile

**FILE COPY**

**SUPPORT EXHIBIT**



**Jamie Whitehouse**

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**From:** webmaster@sussexcountyde.gov on behalf of Sussex County DE  
<webmaster@sussexcountyde.gov>  
**Sent:** Monday, November 15, 2021 2:39 PM  
**To:** Planning and Zoning  
**Subject:** Submission from: Planning & Zoning Commission contact form

RECIPIENTS: Jamie Whitehouse

Submitted on Monday, November 15, 2021 - 2:39pm

**FILE COPY**  
**SUPPORT EXHIBIT**

Name: Henry Strohminger III  
Email address: strohtow@aol.com  
Phone number: 410-382-3900  
Subject: NEW Wetlands and Buffer Ordinance  
Message:

I wanted to state that the Wetlands and Buffer Ordinances are long overdue for updating. I support Sussex County Council approving the proposed new wetlands and buffers ordinance. We must protect the future of our wetlands!!

Henry Strohminger and Michael Burke  
20846 Kenwood Lane  
Rehoboth Beach, DE 19971-1317

## Jamie Whitehouse

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**From:** webmaster@sussexcountyde.gov on behalf of Sussex County DE  
<webmaster@sussexcountyde.gov>  
**Sent:** Monday, November 15, 2021 5:09 PM  
**To:** Planning and Zoning  
**Subject:** Submission from: Planning & Zoning Commission contact form

RECIPIENTS: Jamie Whitehouse

Submitted on Monday, November 15, 2021 - 5:08pm

**FILE COPY**  
**SUPPORT EXHIBIT**

Name: Michael Burke  
Email address: rehomikeb@aol.com  
Phone number: 4103823213  
Subject: Wetlands and Buffer Ordinance  
Message:

I fully support the proposed new wetlands and buffer regulations for Sussex County. There is a significant need for these regulations, as there is much abuse of these areas throughout the community. I live in a condominium community, and some owners who live along the wetlands area do whatever they feel like doing without consequences. I hope these proposed regulations will be a step towards ending such abuse. Thank you for taking up this important matter.

Sincerely,  
J. Michael Burke  
20846 Kenwood Lane  
Rehoboth Beach, DE 19971  
410-382-3213

**FILE COPY**

**SUPPORT-EXHIBIT**

Scott Shaughnessy  
36486 Warwick Drive  
Rehoboth Beach, DE 19971

November 12, 2021

RE: Proposed ordinance on wetlands and buffers

Sussex County Planning & Zoning Commission  
Planning & Zoning Office  
PO Box 417  
Georgetown, DE 19947

RECEIVED

NOV 17 2021

SUSSEX COUNTY  
PLANNING & ZONING

Dear Commission members,

This email is following up on comments I made at the November 4<sup>th</sup> hearing on the proposed new wetlands and buffers ordinance.

It is long overdue that the county's wetlands and buffers rules be updated.

I generally support the proposed new ordinance but with some caveats, which I note below.

### **Enforcement**

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>>My Story:

>>In my condominium community of 120 dwellings in Rehoboth Beach, about 50% of the condos are vacation/2<sup>nd</sup> home condos. Full-time residents rarely see these owners, particularly in the off-season. In my efforts to raise awareness about the benefits of buffers, natural vegetation in buffers, and the impact on filtration and habitat, and bring this to the attention of fellow condo-owners, I find, generally, that the majority of those who are not full-time resident (and even many full-time residents) tend to not care about such matters in our community (or the county) when they are here (or when they are back in their primary homes). Perhaps it is because they have limited time when here and wish to devote it towards recreation and relaxation and prefer to not get involved in condo-owners' association decisions/operations.

>>Additionally, of all our condo-owners (full-time residents and part-time residents), only a portion of them have the good fortune to live along Johnson Branch (also known as Wolf Pit Branch), a tidal creek that empties out eventually into Rehoboth Bay – about 30 homes or so are situated along the creek. So, the majority of condo-owners do not even see the creek or what is happening along the creek. Some of these owners who live along the creek, seem not to care about environmental protections and ensuring cleaner water and air – they just want their views opened up to the creek and to implement their aesthetic of manicured lawns and yards – even though, technically, these are not their yards or lawns to manicure (it is land owned collectively by the condo association). Others do care about environmental protections and ensuring



cleaner water and air. But, of the former, they cut trees and branches, remove shrubs in the buffer and lay sod right down to the creek's edge, minimizing or eliminating the buffer that exists between our condos' builder-installed lawn lines and the creek.

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This is likely not particular to our community, nor an isolated incident. It is likely happening all over the county. Mr. Preston Schell, of Ocean Atlantic, who was at the November 4<sup>th</sup> hearing to deal with another matter before the Commission rose and spoke to this issue, "Don't let them [homeowners] get in there and think they can start cutting down trees in the buffer." He described a situation along Coastal Club Trail where one property will have saplings and large trees growing and the next one will have none. He said, "Some will cut down every single sapling and some will even cut down big trees... homeowners will get down there in the dark of night sometimes and take down trees." This is not consistent with leading environmental practices and flies in the face of the proposed wetlands and buffers regulations.

This is why **detailed enforcement and penalty rules are key** – at least for future developments (if not for existing ones). And leaving it to the homeowners' associations to enforce and penalize is ineffective.

And this is why **selective tree cutting permissions need to be removed** from the proposed ordinance (which I write about below).

### **Selective Tree Cutting – section 10, D2, lines 705 to 707**

Mr. Roberston said in his presentation on the proposed buffer ordinance on November 4<sup>th</sup> that the new rules aim to avoid clear-cutting of trees and clearing of meadows. He said, "If it is in its natural state, let's try and keep it that way." And that if this is not adhered to, then re-establish it.

I believe the section on selective cutting (how is this defined? Is the definition tight enough?) to be vague and open to interpretation and rife with potential risks to tree under-stories and the aim of keeping things in their natural state.

I refer to my story above, where, now, in our community along Johnson Branch, we see a patchwork of sections of properties that have drastically cut trees (to the point it does not look

natural), tree and shrub clearing, and lawns extended to the creek's edge against sections that have left buffers in their natural state, encouraged natural vegetation and tree growth and/or replanted native species to reinforce the buffer – all along the same waterway. It's a mess. And the condo-owners' association (and homeowners' in the case of Mr. Schell's story) does nothing to right the wrongs or address the problems and violations. This can only have a detrimental impact on the protection and enhancement of our environment in terms of flooding, soil erosion, water and air quality, and the fostering of healthy and thriving habitat.


I do not believe selective cutting in buffer zones should be permitted except in very limited circumstances: a risk/threat to human life or property.

This provision, in its current form should either be removed entirely or considerably tightened up (including how it is to be enforced).

It is my hope that Sussex County Planning and Zoning commissioners will acknowledge the gaps and loopholes in the proposed rules as currently written and make recommendations for removing ambiguity and tightening up the above-noted (and other) provisions in the proposed ordinance.

Thank you for all the good work you do.

Kind regards,

  
Scott Shaughnessy  
36486 Warwick Drive  
Rehoboth Beach, DE 19971



## Jamie Whitehouse

---

**From:** webmaster@sussexcountyde.gov on behalf of Sussex County DE  
<webmaster@sussexcountyde.gov>  
**Sent:** Wednesday, November 17, 2021 10:53 AM  
**To:** Planning and Zoning  
**Subject:** Submission from: Planning & Zoning Commission contact form

RECIPIENTS: Jamie Whitehouse

**FILE COPY**

Submitted on Wednesday, November 17, 2021 - 10:53am

Name: Steven Counts  
Email address: slcounts@gmail.com  
Phone number: 9012929514  
Subject: Buffers  
Message:

The Sussex County Planning and Zoning Commission should not approve the proposed wetlands buffer ordinance in its current form. As currently drafted, the proposed ordinance will not protect wetlands and their resource value - the stated purpose of the ordinance. First, understand that the ordinance, if adopted, would only apply to residential developments of six housing units or more and thereby ignores the impacts of commercial development or residential development that might be built with less than six units at one time.

Protection of forested wetlands initially sounds good, but if you read further you see that selective cutting would be allowed, and that the definition of such cutting includes a 30-foot-wide swath of forest canopy that need not be maintained. You realize that they are allowing the clear-cutting of haul roads. That isn't protection. Other means of access are available without causing such permanent damage.

The Resource Buffer Options section (Section G) of the draft ordinance was added to "incentivize" wetland resource preservation and provide flexibility for the development community. First, I believe that based on what I see in my community alone, developers have more than enough economic incentives for the pursuit of their projects, and strict enforcement of the buffer requirements without incentives would not alter that significantly. Why "incentivize" preservation by requiring less of it on the site of the development? That is unnecessarily surrendering the authority of the planning and zoning commission. Instead, Sussex County might recognize with an award the achievements of developers who go above and beyond the basic preservation requirements and promote this. Developers would be promoting this with their sales teams the very next day, most likely to greater long-term advantage than the incentives proposed here.

The buffer averaging in Section G provides such loopholes that it makes a mockery of the rest of the ordinance. As currently drafted, in certain cases it allows the reduction of the Zone A buffer (closest to the resource) despite saying a few pages earlier that Zone A can't be averaged.

Flexibility itself is not the issue. For example, a hardship exemption in concept is fine, but hardship should be strictly defined, which it is not now, and it should be rarely used. Otherwise, every developer might claim a hardship, causing such a flood of crocodile tears that the offices of the planning and zoning commission would need its own drainage ditch, clearly a taxing situation. Wetland buffers need to be strictly enforced to protect the resource. Limiting development in buffer areas is not a hardship. It is the point. The need for flexibility should be up to the commission on a case-by-case basis within strict limitations.



## Jamie Whitehouse

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**From:** webmaster@sussexcountyde.gov on behalf of Sussex County DE  
<webmaster@sussexcountyde.gov>  
**Sent:** Wednesday, November 17, 2021 8:22 AM  
**To:** Planning and Zoning  
**Subject:** Submission from: Planning & Zoning Commission contact form

RECIPIENTS: Jamie Whitehouse

Submitted on Wednesday, November 17, 2021 - 8:22am

Name: Judi Rindler  
Email address: jdboat1@gmail.com  
Phone number: 3012521931  
Subject: Proposed wetlands and buffer ordinance  
Message:

**FILE COPY**  
**SUPPORT EXHIBIT**

I am in support the Sussex County Council approving the proposed new wetlands and buffers ordinance!