

ORDINANCE NO. 2362

(Change of Zone No. 1751 – Peninsula at Long Neck, LLC)

AN ORDINANCE TO MODIFY CONDITION NO. 10(C) IMPOSED ON ORDINANCE NO. 2180 FOR CHANGE OF ZONE NO. 1697, THE APPLICATION OF PENINSULA AT LONG NECK, LLC FOR “THE PENINSULA”, A MR-RPC MEDIUM DENSITY RESIDENTIAL DISTRICT – RESIDENTIAL PLANNED COMMUNITY, TO EXTEND THE TIME TO CONSTRUCT AND OPEN FOR USE THE GOLF CLUBHOUSE FACILITY

WHEREAS, on the 15th day of April 2002, a zoning application, denominated Change of Zone No. 1475, was filed on behalf of Ribera-Odyssey, LLC; and

WHEREAS, on the 22nd day of August 2002, a Public Hearing was held, after notice, before the Planning and Zoning Commission of Sussex County and on the 12th day of September 2002, said Commission recommended that Change of Zone No. 1475 be approved with conditions; and

WHEREAS, on the 10th day of September 2002, a Public Hearing was held, after notice, before the County Council of Sussex County and the County Council determined, based on the Findings of Fact, 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; and

WHEREAS, on the 19th day of November 2002, the County Council of Sussex County adopted Ordinance No. 1573 for Change of Zone No. 1475, with conditions; and

WHEREAS, on the 12th day of February 2008, an application was filed to modify Condition No. 10 imposed on Ordinance No. 1573 to extend the time to construct and open for use the golf clubhouse and nature center facilities; and

WHEREAS, on the 10th day of July 2008, a Public Hearing was held, after notice, before the Planning and Zoning Commission of Sussex County and on the 20th day of August 2008, said Commission recommended that Change of Zone No. 1657 be denied; and

WHEREAS, on the 29th day of July 2008, the County Council of Sussex County considered a request of Peninsula at Long Neck, LLC to modify Condition No. 10 imposed in Ordinance No. 1573 for Change of Zone No. 1475 and it was determined, based on the Findings of Fact, that Change of Zone No. 1657 is in accordance with the Comprehensive Plan and promotes the health, safety, morals, convenience, order, prosperity and welfare of the present and future inhabitants of Sussex County; and

WHEREAS, on the 7th day of June 2010, a zoning application denominated Change of Zone No. 1697 was filed on behalf of Land Tech Receiver Services, LLC; and

WHEREAS, on the 18th day of November 2010, a Public Hearing was held, after notice, before the Planning and Zoning Commission of Sussex County, and on the 27th day of January 2011, said Commission recommended that Change of Zone No. 1697 be approved, as modified; and

WHEREAS, on the 7th day of December 2010, a Public Hearing was held, after notice, before the County Council of Sussex County, and on the 22nd day of March 2011, the County Council decided, based on the Findings of Fact, that to modify Condition No. 10 imposed on Ordinance No. 1573 for Change of Zone No. 1475, the application of Ribera-Odyssey, LLC, as amended by Ordinance No. 2018 for Change of Zone No. 1697, the application of Peninsula at Long Neck, LLC is in accordance with the Comprehensive Plan and promotes the health, safety, morals, convenience, order, prosperity and welfare of the present and future inhabitants of Sussex County; and

WHEREAS, on the 7th day of March 2014, a zoning application, denominated Change of Zone No. 1751 was filed on behalf of Peninsula at Long Neck, LLC; and

WHEREAS, on the 12th day of June 2014, a Public Hearing was held, after notice, before the Planning and Zoning Commission of Sussex County and on the 24th day of July 2014, said Commission recommended a conditional approval of Change of Zone No. 1751; and

WHEREAS, on the 5th day of August 2014, a Public Hearing was held, after notice, before the County Council of Sussex County and the County Council has determined, based on the Findings of Fact, 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 Condition No. 10(C) be modified to read: “Construction of the Clubhouse shall commence no later than October 1, 2015, with construction to be completed 12 months thereafter. A bond, cash bond or letter of credit shall be provided to Sussex County in the amount of 125 percent of the cost of completion of the Clubhouse within 60 days of the date that the Sussex County Council approves Change of Zone No. 1751.”

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 with the following condition, as amended:

- 1. To modify Condition 10(C) imposed on Ordinance No. 2180 for Change of Zone No. 1697 to extend the time period for constructing the clubhouse until December 1, 2016; however, this extension is contingent upon the following events occurring:**
 - a. Within 60 days of the approval of this Ordinance Amendment, the developer shall submit to the Sussex County Planning and Zoning Commission a sketch or Concept Plan of the proposed clubhouse with the estimated square footage of the structure. The developer shall consult with and obtain the approval of the Homeowners Association regarding the design in the sketch plan and the proposed square footage of the clubhouse. In no event shall the clubhouse be less than 25,000 finished square feet (32,000 total square feet) with a value of \$11,470,800.00 without first obtaining approval from the Homeowners Association.**
 - b. At the same time the concept or sketch plan and square footage are submitted, the developer shall submit an estimated cost per square foot to construct the proposed clubhouse.**
 - c. Within 30 days of the approval of the concept or sketch plan and square footage by the Sussex County Planning and Zoning Commission, the developer shall submit a Bond or Letter of Credit acceptable in form by the Sussex County Attorney in the amount of 125% of the estimated cost to construct the proposed clubhouse.**
 - d. If the developer does not submit a new Bond or Letter of Credit as required, Sussex County shall prohibit the issuance of any further residential building permits within The Peninsula until the new Bond or Letter of Credit is submitted to Sussex County.**
 - e. No further extensions will be granted.**

I DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE AND CORRECT COPY OF ORDINANCE NO. 2362 ADOPTED BY THE SUSSEX COUNTY COUNCIL ON THE 19TH DAY OF AUGUST 2014.



**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 Peninsula at Long Neck, LLC for an Ordinance to modify Condition No. 10 (C) imposed on Ordinance No. 2180 for Change of Zone No. 1697, the application of Peninsula at Long Neck, LLC for “The Peninsula”, a MR-RPC Medium Density Residential District – Residential Planned Community, to extend the time to construct and open for use the golf clubhouse facility (911 Address – None Available) (Tax Map I.D. #2-34-30.00-1.00 and others).**
- B. Council found that the Sussex County Engineering Department, Utility Planning Division, commented that the project is located in the Long Neck Sanitary Sewer District; that wastewater capacity is available for the project; that Ordinance 38 construction is not required; that conformity to the North Coastal Planning Study will be required; that the proposal is to modify Condition No. 10 as set forth in C/Z #1697 by requesting an additional time extension for the commencement of the clubhouse; that the approval of a time extension would not have a significant impact on the sewer system and the Department does not object to the proposal; and that a Concept Plan is not required.**
- C. Council found that the Sussex Conservation District commented that the Applicants will be required to follow recommended erosion and sediment control practices during construction and to maintain vegetation after construction; that no storm flood hazard areas are affected; that it may be possible that off-site drainage improvements will be necessary; and that no tax ditches are affected.**
- D. Based on testimony before the Planning & Zoning Commission and the Public Hearing before the Sussex County Council, Council found that James Fuqua, Esquire, of Fuqua, Yori & Willard, P.A., was present with Daniel Bartok of Wells Fargo and they stated that the only outstanding issue/condition at The Peninsula is the design and construction of a private clubhouse facility; that they are requesting the amendment of Condition No. 10(c) of the RPC approval to provide the construction of the private clubhouse to commence by October 1, 2015 and it would be required to be completed and open for use within one year of that date; that Wells Fargo just acquired ownership in May and this would give them time to market the property, sell it to a new developer, and the new developer would design and actually build the**

clubhouse; that the project is a 1,404 mixed unit residential use development with extensive amenities approved in 2002; and that the majority of the amenities have been completed, except for the clubhouse.

- E. Council also found that in 2010, a time extension was granted for the construction of the clubhouse; that the County Council also required in Condition of Approval No. C that “Construction of the Clubhouse shall commence no later than three (3) years from the date Sussex County Council approves Change of Zone No. 1697, with construction to be completed 12 months thereafter. A bond, cash bond, or letter of credit shall be provided to Sussex County in the amount of 125% of the cost of completion of the Clubhouse within sixty (60) days of the date that Sussex County Council approves Change of Zone No. 1697”; that construction of the Clubhouse has not yet been started; that Wells Fargo pursued foreclosure in both the Court of Chancery and the Delaware Superior Court; that the process involved litigation and through that process, Wells Fargo, through its subsidiary, is now the owner of the property (as of May 2014); that it is Wells Fargo’s intention, and they are now in the process, of finding a buyer for the development; that the buyer will take over the management and the completion of the development including the design and construction of the clubhouse; that Wells Fargo is actively marketing the development; that Wells Fargo expects to complete the process and sale this year; that the purchaser will be made aware of the obligation to construct the clubhouse and it is intended that the final design and construction will include the input from the existing Peninsula owners; that by granting the 14 month extension they are requesting (construction to start no later than October 1, 2015), it will provide enough time for Wells Fargo to find a buyer, to complete the settlement, and to have the new developer design the clubhouse with the input of the owners; that the purchaser will have to work with the residents of the project to determine the needs of the community for the Clubhouse; and that there is an escrow account in the amount of \$3 million for the Clubhouse and that funds are added to this account as new homes and lots are sold with a fee being paid by the homeowners.
- F. Based on testimony before the Planning & Zoning Commission and Public Hearing before the Sussex County Council, Council found that John Gee, Chairman of the Peninsula Homeowners Action Committee (PHAC), was present on behalf of PHAC and stated that they are a community of 635 homeowners; that of the 635

homeowners, 462 homeowners (approximately 75%) are members of PHAC, which is a 50% increase in the number of owners since the last requested time extension; that whatever action the Council decides to take in response to the request for an additional extension to build the Clubhouse will impact the present and existing homeowners as well as potentially 750 future homeowners, and also the bank and the new developer who purchases the property; that the PHAC endorses the Motion adopted by the Planning and Zoning Commission on July 24, 2014 pertaining to the design and construction of the Clubhouse and that they urge the Council to approve the Commission's plan for completion of the Clubhouse on or before December 1, 2016 including its stipulation that further extensions to build the clubhouse will not be entertained, as well as other conditions; and that the conditions are entirely appropriate in the circumstances that now exist and are fully capable of being readily achieved.

- G. Council also found that the PHAC is ready to perform its role in evaluating and participating in the clubhouse design and budgeting process; that by establishing the square footage and cost requirements, potential buyers will be on a level playing field when submitting their bids; that this level playing field will also prevent the homeowners from being shortchanged by a buyer who promises one thing and delivers less; that the timetable established by the Commission will moreover allow the successful bidder at least six months to finalize the drawings and select a general contractor and an additional 16 to 18 months to complete the project; and that this is a very reasonable timetable.
- H. Council also found that the estimated cost of a clubhouse with a minimum of 25,000 finished square feet (32,000 total square feet) would be approximately \$11,470,800.00 and should be subject to the approval of the Homeowners Association.
- I. Based on the Findings and Conditions of the Planning & Zoning Commission and the record before the Sussex County Council, Council approved this Application to extend the time period for constructing the clubhouse as set forth below and subject to three conditions (a-e).