

SUSSEX COUNTY COUNCIL

**DISCUSSION RELATED TO
SENATE BILL 23**

***“THE HOUSING FOR EVERY
DELAWAREAN ACT”***

JULY 28, 2026

SENATE BILL 23

Agenda

- Background of the bill
- Legislative language review
- Initial effects of the new requirements
- Developing new framework
- Next steps

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BACKGROUND

- Primary Sponsor: Senator Russ Huxtable
- Other Sussex County Co-Sponsor: Rep. Alonna Berry
- Introduced April 21, 2026
- Senate Substitute 1 for SB 23 – Introduced May 11
- Senate Substitute 2 for SB 23 – Introduced June 8
- Signed into law July 13, 2026
- Sussex County opposed the bill, had multiple meetings and submitted 2 white papers explaining opposition
- DACo and Delaware League of Local Governments opposed the bill

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LEGISLATIVE LANGUAGE

§ 9223. By-right residential uses.

(a) For purposes of this section:

(1) “By-right” means a use identified as a permitted use within a zoning district under a local zoning ordinance that complies with all applicable objective standards and requirements and does not require a rezoning, conditional use permit, special exception, or variance.

(2) “Objective standards” means standards that are measurable, uniformly applicable, and not subject to discretionary personal judgment.

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§ 9223. By-right residential uses.

(b) A residential development application for a use that is permitted by-right under the zoning ordinance of a local jurisdiction shall be reviewed through an administrative review and approval process.

(c) Nothing in this section prohibits a local jurisdiction from requiring review or approval by a planning commission, planning board, or other administrative body, provided the review is limited to determining compliance with applicable objective standards.

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§ 9223. By-right residential uses.

(d) A local jurisdiction may hold a **public meeting** for a residential development application described in subsection (b) of this section. Any ordinances or regulations adopted to govern a public meeting held under this subsection (d) must provide for a public meeting that meets all of the following criteria:

(1) Does not constitute and is not conducted as a public hearing.

(2) Is limited to determining compliance with applicable objective standards and requirements.

(3) May allow for public comment, provided all such comment is made only through written submission.

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§ 9223. By-right residential uses.

(e) This section supersedes any inconsistent public hearing requirements applicable to a residential development application described in subsection (b) of this section, including public hearing requirements in § 4811, § 6810, § 6811, and § 6812 of Title 9. This section does not impact hearings required in conjunction with Board of Adjustment appeals.

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Reviewing specific terms:

1. “By-right residential” means any major subdivision permitted in the respective zoning district
2. “Objective standards” will need to be developed as well as the process by which the County reviews and approves those standards
3. “Public meeting” framework will need to be developed.

A public meeting is not the same as a public hearing.

There are no notice requirements (e.g., legal ads, yellow yards signs, postcards).

There is no public testimony nor public record.

Public comments are forbidden; only written comments are permitted.

The result of these new rules means Sussex County will need to draft a new Ordinance that creates a specific process for all by-right residential applications.

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Other considerations regarding public meeting rules:

- “No Public hearing” means no testimony including the developer or their representatives. There is no opportunity to learn more and ask questions that could be resolved with a public hearing. Any information that are not part of the “objective standards” puts the county and/or the developer in legal jeopardy for improperly considering outside information.
- “No Public hearing” means no testimony regarding other factors including the environment, public safety, the schools, or the roads. DelDOT representatives will not be permitted to answer questions and provide answers/explanations to assist in the decision. This process is lost under SB23 and so is transparency about roadways and DelDOT.

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Other considerations regarding the new review process:

- We have to determine how information is gathered and considered, and by whom.
- What is the “decision” and who makes it? Staff? P&Z?
- What is the basis for the decision if there is no public hearing and therefore no record?
- Our Code now requires adjacent property owners to be notified of a pending subdivision application. Does that still apply, and what do we tell them?
- How do we inform the public that we can have a public meeting, but they cannot testify and we cannot consider their input?

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Other considerations:

- How do we manage the current appeal process since County Council hears appeals based on the public hearing; what would trigger an appeal and what information will be considered?
- How do we deal with additional lots or additional density or other substantial change to an approved subdivision? This currently requires a public hearing that the existing homeowners can participate in. That is seemingly eliminated now under SB23.
- How do we deal with the bonus density program in Section 115-25 of the Code that funds the Land Trust? There is no public hearing to consider that information or address it.
- During the public hearing, we often hear about adjacent farming operations, hunting activities or airports/landing strips that would not otherwise be known. This enables appropriate “notice” conditions in an approval or even redesigns to address these concerns raised by the public -- all lost without a public hearing (see following slides).

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Other Considerations – Major Subdivisions

- Is Sussex County “ok” with large subdivisions having no public hearings?
 - Northstar = 758 lots
 - Coolspring = 1260 lots
 - Keastone Bay = 651 lots
 - Raley Farms = 646 lots
- This has the potential to supercharge sprawl throughout the County.
- What incentive is there to participate in the SCRP or create any affordable housing?

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Other Considerations – Major Subdivisions – Specific Examples

- NORTHSTAR (2023-14) 758 lots
 - Open space was redesigned based on planning and public testimony
 - A Conservation Easement was proffered and established
 - Based on input from DelDOT, staff and the public, construction phasing was implemented as part of the approval to tie in with the road improvements (not an “objective standard”- but very case specific) and start dates for that work with prohibitions on BPs tied to road improvements.
 - There was testimony from adjacent property owners including the Elks Lodge and stable about additional protections of their property that resulted in conditions.



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Other Considerations – Major Subdivisions – Specific Examples

- SCENIC MANOR (2019-29) 319 lots
 - There was testimony about the impacts of the project on the Route 24 road improvements that were underway at the time and connecting construction phasing to those improvements, including the signalization of Route 24 & Mulberry Knoll Road
 - There were conditions about the coordination and participation with DeIDOT regarding the safe crossing of Mulberry Knoll Road since the subdivision straddled that road.



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Other Considerations – Major Subdivisions – Specific Examples

- KEASTONE BAY – BAYWOOD LLC (2018-34) 651 lots
 - During the public hearing the Commission learned that there are properties outside of the subdivision that have access via a roadway on the property being subdivided and that this subdivision would impact that access. Those neighbors testified about the impacts of the subdivision on their access and there were conditions imposed to protect their interests and access as a result.



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Other Considerations – Major Subdivisions – Specific Examples

- CHASE OAKS (2019-5) 253 lots
 - During the public hearing there was testimony about the safety of Robinsonville Road and the proposed 22 lots on the opposite side of the road, plus the need for those families to cross that Road to gain access to the subdivision's amenities.
 - As a result, there was a condition that the lots be relocated to the main portion of the subdivision.
 - Ultimately, the area of the 22 lots remained as open space and donated to the Sussex County Land Trust
 - There is a cemetery on the property that was protected with conditions.



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Other Considerations – Major Subdivisions – Specific Examples

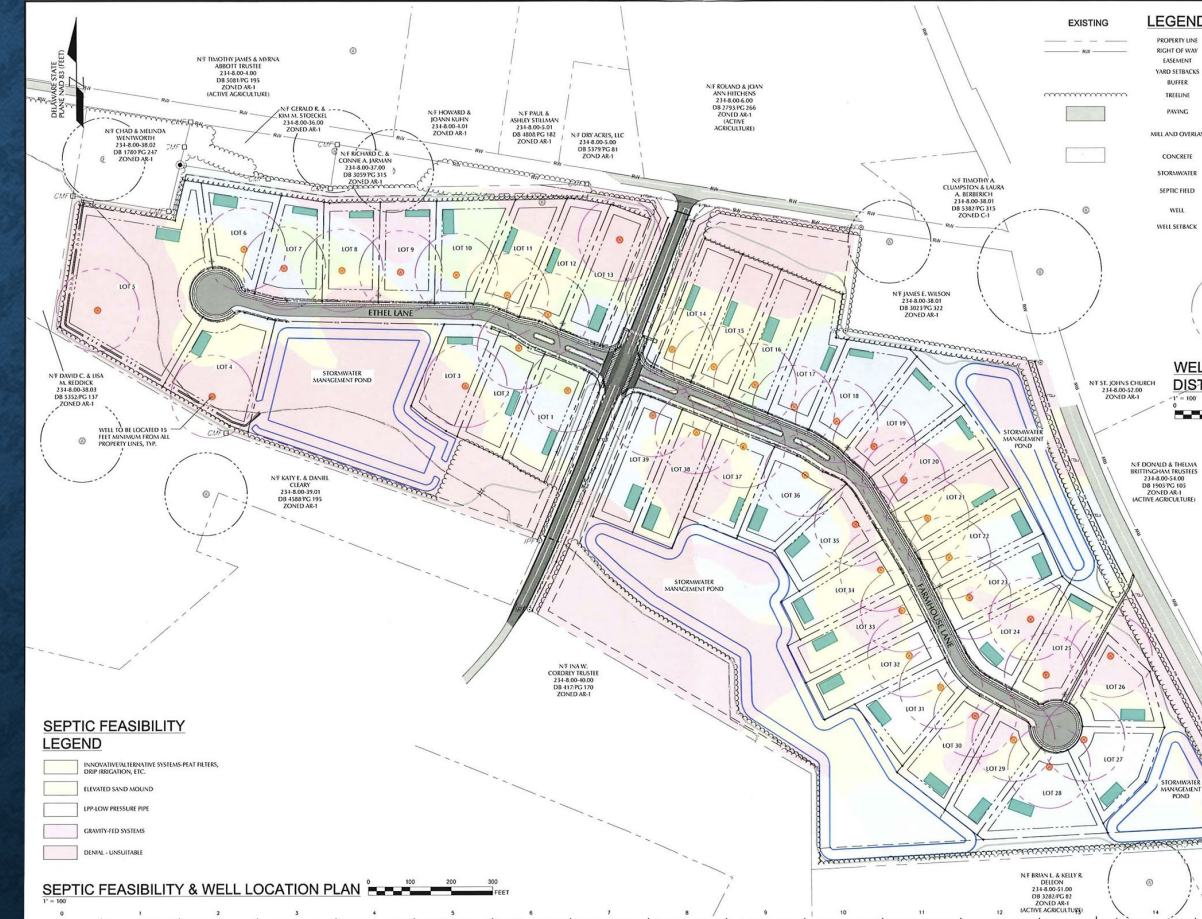
- WALDEN III (2022-08) 21 lots
 - This was an expansion of the existing Walden development. During the public hearing, existing residents of Walden testified about concerns regarding the use of their amenities by these existing homes, and whether they were completed and sized appropriately for that.
 - Conditions were imposed regarding the phasing and timing of construction in relation to the amenities
 - Appropriate on-site amenities were required within these 21 lots to lessen the burden on the existing residents.



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Other Considerations – Major Subdivisions – Specific Examples

- WILSON'S LANDING (2022-33) 39 lots (recent)
 - The applicant did not know about a cemetery that exists on the property and it was not shown on the site plan considered by the Commission
 - During the public hearing, several neighbors testified about the existence of the subdivision and provided its location.
 - As a result, a condition of approval required the applicant to investigate the cemetery and its location and then redesign the subdivision to protect the cemetery and provide appropriate access to it.



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Other Considerations – Major Subdivisions – Specific Examples

- STILLWATER HARBOR (2021-23)
 - This application was denied based on information developed during the public hearing -- the denial was affirmed by the Delaware Courts.
 - Public testimony revealed substantial flooding concerns on River Road and the frequent closure of that road as a result – meaning future residents would be trapped and EMS would not have access to them.
 - The IRVFC publicly objected to the project as a result.
 - The applicant proposed an alternate entrance via a private easement.
 - The property owners with rights to the easement testified that:
 - There was no legal right to use the easement in this fashion
 - The easement is not sized nor constructed appropriately for the 1258 vehicles that would potentially utilize it per day.
 - The easement cannot handle heavy EMS/fire equipment



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Next Steps

- Solicit feedback from PZ Commission and County Council
- Begin to develop a framework for the required changes
- Present initial ideas at a future Council meeting
- Once framework is developed, move to Ordinance drafting
- Timeframe: months to complete
- All residential applications (major subdivisions) remain on hold until the new Ordinance is approved

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QUESTIONS & COMMENTS