

**NORTHSTAR**  
**MOTION TO APPROVE SUBDIVISION**

Mr. Chairman,

I move that we grant preliminary approval for Subdivision **2023-14** for **NORTHSTAR PROPERTY, LLC** with conditions and limitations based on the record made during the public hearing and for the following reasons:

1. This is one of the largest subdivisions that the Commission has recently considered. It has certainly received a lot of attention and there has been a lot of information submitted into the record. The Commission has considered all of this information in reaching its conclusion. Regardless of size, subdivisions in Sussex County are governed by the Subdivision and Zoning Codes. Delaware law and the Delaware Courts mandate that if a subdivision meets the requirements of the Subdivision and Zoning Codes then it is permitted.
2. For the reasons stated in this Motion, this application complies with the Subdivision and Zoning Codes, therefore it is appropriate to approve this subdivision with appropriate conditions and for the reasons that will be stated as part of this motion.
3. The Applicant is seeking approval of a clustered subdivision of 758 single-family lots upon 379.042 acres. This is a truly large

subdivision. But it is in a location where many other subdivisions and other types of residential development has already occurred. This single, large and interconnected subdivision with an integrated design is preferable to multiple unrelated and isolated developments that have no relationship to one another.

4. Although the County does not yet have a master plan ordinance, master planning is a longstanding goal of Sussex County. A subdivision of this size and scope, coupled with the simultaneous applications for affordable housing and commercial space and the privately-constructed segment of Mulberry Knoll Road essentially creates a master-planned community that is superior to several unrelated and uncoordinated developments. Plus, one consolidated subdivision enables the Commission to attach appropriate conditions that would not be possible, or effective, with several different and unrelated developments.
5. The subdivision will satisfy the permitted density within the AR-1 Zone and the lots will be no smaller than 7,500 square feet in size.
6. The subdivision is in an area that already has a mixture residential and commercial zoning and developments. There are GR, MR and AR-1 residential zoning districts and manufactured home parks in the immediate vicinity of the development. Nearby commercial zoning districts include the C-1, CR-1 and B-1 Zoning Districts.

This AR-1 subdivision with its proposed and permitted density of 2.0 units per acre is consistent with the existing zoning and uses in the area.

7. The subdivision is located within the Coastal Area according to the Future Land Use Map that is contained in the Sussex County Comprehensive Plan. The subdivision is permissible in the Coastal Area according to the Plan, which states that “a range of housing types should be permitted . . . including single-family homes, townhouses, and multi-family units.”
8. The project will be served by central water from Tidewater Utilities and wastewater will be provided by Sussex County. Both utilities have stated that they have the ability to serve this subdivision.
9. This subdivision is within the Henlopen Transportation Improvement District. Therefore, the development will be required to enter into an infrastructure recoupment agreement and pay a TID “per-unit” fee prior to the issuance of every residential building permit. DelDOT has stated that *“the intent of the TID is to plan comprehensively and thereby to enable both land development and the transportation improvements needed to support it. For residential developments that are consistent with the Land Use and Transportation Plan (LUTP) developed for the TID, the application is required to pay a fee per dwelling unit . . . in lieu of doing a TIS*

*and making off-site improvements in accordance therewith. The proposed development is in accordance with the LUTP; therefore the developer will be required to pay the TID fees as stated above.”*

In summary, DelDOT has stated that this subdivision is consistent with its projections for the development of this property and the planned roadway improvements within the TID. Still, additional DelDOT improvements will be required for vehicular and pedestrian movements within the site and onto Route 9, Beaver Dam Road and the construction of Mulberry Knoll Road.

10. Even though the subdivision will be located in the TID, it will still be required to construct entrance and roadway improvements necessary for safe vehicular and pedestrian access to the development. As explained by DelDOT during the hearing, since this is just the preliminary stage of the process, the developer and DelDOT have not yet considered record plans and entrance plans. And until they do, no timeframe or phasing of improvements will be established. Therefore, as part of this approval, there is a condition that the construction of these improvements shall be tied to the subdivision's phasing, which shall be presented as part of the Final Site Plan.

10. The property contains approximately 19.505 acres of nontidal wetlands as delineated by the applicant's consultants. All of these wetlands shall have enhanced protections, including the

establishment of Conservation Areas that will be shown on the Final Site Plan and marked on the site itself with appropriate signage.

11. A Drainage Assessment Report was prepared and provided by the applicant as required by Code. Under that Assessment, both defined and undefined intermittent stream channels associated with wide nontidal wetlands provide drainage to the site. The stream banks are low and no erosion issues exist that require correction, and there is no evidence of conditions impacting the ability of these areas to drain the site. Also, these intermittent streams are surrounded by abutting nontidal wetlands that include the buffering required by Code. And again, the wetlands themselves are further buffered and protected by the project's conservation areas.
12. A portion of the property is located within an Excellent Recharge Area and will comply with the requirements of Chapter 89 of the Sussex County Code. The record includes a report addressing compliance with Chapter 89, and the final design and development of the project will be reviewed by the County Engineering Department for compliance with the requirements of this Chapter.
13. This subdivision has a design that is superior to that of a standard subdivision for many reasons, including the following:
  - A. The lots and amenities are clustered on the most environmentally suitable portions of the property.

- B. The areas of the property that will be improved with roads, lots, amenities and infrastructure avoid the areas where wetlands are located. Additionally, these areas will be further protected through the establishment of conservation areas, greater setbacks and signage.
- C. The design includes substantial tree preservation by preserving approximately 22.956 acres of existing woodlands, which results in the preservation of approximately 81% of the 28.127 acres of existing woodlands on the property. This is a superior design to what could occur under a standard subdivision.
- D. The design includes approximately 166.529 acres of land that will be open space. This represents approximately 44% of the site. This exceeds the Code's requirement that 30% of the site shall be preserved as open space. This also substantially exceeds the amount of open space that would remain in a standard subdivision with much larger lots.
- E. The open space, with the conditions imposed by this motion, is integrated into the design of the community so that it results in large areas of open space instead of many small pockets of it. Also, all of the lots throughout the development back up to open space.
- F. There will be a buffer that is at least 30 feet in width around the subdivision. In many places this buffer is greater than 30

feet in width. This exceeds what would occur in a standard subdivision and it exceeds the buffer requirements for cluster subdivisions.

14. Section 99-9C of the Subdivision Code requires the Commission to consider 17 different items relating to the site plan. The Applicant has addressed the requirements of Section 99-9C of the Code, and there are conditions of this approval that are based upon those 17 items. Specifically, the project complies with this Section 99-9C in the following ways:

A. The subdivision is integrated into the existing terrain and surrounding landscape and it is compatible with area land uses. It is an infill development surrounded by a variety of residential and commercial zoning districts and uses. Some of the residential developments have a higher density than what is proposed here. It will also provide forested buffers along its property lines to integrate it into the surrounding landscape. It is consistent with, and integrated into the surroundings.

B. There is a minimal use of wetlands with minimal effect on area waterways. This is supported by reports contained in the record. None of the wetlands will be disturbed except for one permitted crossing. The wetlands will be further protected with conservation

areas. There are no floodplains that will be impacted by the developed area of this project.

C. Natural and historic features are preserved, including the wetlands. Additionally, an archaeological assessment was prepared by the applicant.

D. Open space and scenic views have been preserved. Approximately 166.529 acres, or 44% of the site, is preserved as active and passive open space.

E. Tree and vegetation removal and grade changes are minimized. 22.956 acres of the existing 28.127 acres of woodlands are being preserved. This is 81% of the existing woodlands. The areas to be preserved are based upon a forest stand delineation that determined that there is no “Tier 1” forest cover within the project. While Sussex County does not have forest stand delineations within its Code, this classification is based upon established code standards elsewhere and the designation represents the highest quality of forest stand. Regarding grade changes, the site will be “balanced”, meaning that the need to import or export soils from the site should be minimal, and that grade changes will be limited to the need to establish proper drainage within the site.

F. The site will be screened from neighboring properties and roadways through substantial buffering along its perimeter.



G. Surface and groundwater pollution will be prevented through the design and construction of the development and its stormwater facilities using an Erosion and Sediment Control Plan under the jurisdiction of the Sussex Conservation District and DNREC. The project will comply with Chapter 89 of the Code regarding excellent recharge areas. Finally, the conversion of this property from agricultural use to a residential development will decrease the nitrogen and phosphorus loading by approximately 40%.

H. There will be safe vehicular and pedestrian movement within the site and to adjacent roadways. The project is within the TID, which considered the buildout of this property at the density proposed here, with payments for roadway improvements in the immediate area. A portion of Mulberry Knoll Road will be constructed by the developer and turned over to the state long before DelDOT could construct it. That will be a positive impact of this development on not only its residents but also the existing and future residents and visitors to Sussex County. The subdivision's roadways will be interconnected, which is much better than what would occur with separate, independent subdivisions on the same property. Also, the roadways will be interconnected with the proposed commercial development located along Route 9.

I. There is no credible evidence in the record that area property values will be decreased as a result of this subdivision.

J. While this project does not itself preserve farmland, it is located in an area along Route 9 near the Five Points intersection that is highly developed and where the County Comprehensive Plan states that development should occur. Given these circumstances, the highest, best, and most practical use of this property is no longer agricultural. Also, the applicant has provided a report stating that the development of this farmland *“has the potential to transform a landscape historically dominated by monoculture crops into a biodiverse and interconnected ecosystem. This approach will enhance habitat value immediately....”*.

K. The possible impact upon local schools has been considered. Under the typical course of development this project will take place over at least a 10 year period considering the need to get all agency approvals, receive final site plan approval, and then construct the various phases of it. That, plus the anticipated age and family demographics of the future residents, means that there will not be substantial influx of new students all at once. This is supported by a Report submitted into the record stating that approximately 54% of the units will be occupied full time, and of those units, only 47 new public school students will live in the subdivision. On the other hand, the subdivision will increase tax revenues to the local school district.

15. This preliminary approval is subject to the following conditions:

- A. There shall be no more than 758 lots within the subdivision. These lots shall be phased-in pursuant to a phasing plan submitted as part of the Final Site Plan.
- B. The Final Site Plan shall confirm that 160 acres, or 42% of the site, shall remain as open space, and with this condition at least 30% of the site's open space shall be located on one contiguous tract of land. The open space on the western portion of the site shall be modified to create greater contiguity, and to better promote the goal of the Applicant's consultant for landscape ecology and sustainable design to create a "biodiverse and interconnected ecosystem ... to enhance habitat immediately and provide lasting enjoyment for residents." To accomplish this, the proposed connection of "Road E" to "Road B" shall be eliminated along with current location of lots 202, 203 and 221 through 225 so that "Open Space A" is one large, interconnected area of open space. "Road E" can be redesigned to connect to "Road C", but the improved open space design required by this Condition shall remain in the final design.
- C. The developer shall establish a homeowner's association responsible for the maintenance of streets, roads, conservation areas, buffers, stormwater management facilities and other common areas.
- D. The stormwater management system shall meet or exceed the requirements of the State and County. The Final Site Plan shall

contain the approval of the Sussex Conservation District for the design and location of all stormwater management areas and erosion and sedimentation control facilities.

- E. There shall be a vegetated or forested buffer that is at least 30 feet wide installed along the perimeter of this subdivision in accordance with the planting requirements of the Sussex County Code. This buffer shall utilize existing forest or similar vegetation that exists in the buffer area. Where trees currently exist in the buffer area, stump removal or construction activities that disturb the existing grade of the area within the buffer shall be prohibited. All silt fencing shall be located along the interior limit of the buffer area (the edge of the buffer nearest the interior development) and the Final Site Plan shall identify the “Limit of Disturbance” to prevent disturbance of the buffer area.
- F. Approximately 23 acres of the existing 28 acres of the existing woodlands on the site shall be preserved. This represents 81% of the existing woodlands. The areas of woodlands to be preserved shall be shown on the Final Site Plan as “Non-Disturbance Areas”. Silt fencing shall be installed along the perimeter of these wooded areas to avoid disturbance during sitework and construction.
- G. The proposed Conservation Areas, which are more extensive than what is required for Resource Buffers pursuant to Section 115-193,

shall be created to include waters, wetlands and these areas shown on the Preliminary Site Plan shall be permanently protected, delineated and described on the Final Site Plan and the recorded Declaration of Covenants, Conditions, Easements and Restrictions for the subdivision. Because these Conservation Areas extend beyond the areas protected under Section 115-193, it is appropriate to modify the signage requirements to permit their location at the perimeter of the Conservation Area. Therefore, the 5 inch by 7 inch signage shall be located along the entire perimeter of all Conservation Areas at 200-foot intervals. The signage shall state: “Conservation Area Boundary – All Management Activities To Be In Accordance With Community’s Resource Buffer Management Plan.”. Where trees currently exist within the Conservation Areas that include the Resources and Resource Buffers, stump removal or construction activities that disturb the existing grade of the area within them shall be prohibited. Required silt fencing shall be installed upland of these Conservation Areas to avoid disturbance.

- H. The development shall comply with all DelDOT entrance and roadway improvement requirements, and it shall be part of the Henlopen Transportation Improvement District or TID. The development will be required to enter into an infrastructure recoupment agreement between DelDOT, the developer and Sussex County and pay a TID “per-unit” fee prior to the issuance of every

residential building permit. The final version of the Recoupment Agreement shall be modified so that Item IV.A of the draft agreement in the record is deleted. This provision currently states that “no individual off-site road projects will be required as a separate cost for individual developments participating in the agreement as a condition of approval by DelDOT or the County.” This provision is inapplicable in this instance, since there are off-site improvements that are to occur, including the extension of Mulberry Knoll Road. DelDOT and the applicant shall determine appropriate fee credits associated with the applicant’s construction of the extension of Mulberry Knoll Road.

- I. As proffered by the applicant, the applicant shall construct all of the extension of Mulberry Knoll Road within its property and connecting to Route 9 and Beaver Dam Road during the initial phases of the subdivision. In furtherance of this:
  - i. The applicant shall submit construction plans to DelDOT for the construction of the extension of Mulberry Knoll Road as soon as possible, but no later than six months after the approval of the Final Site Plan for the Phase 1.
  - ii. The applicant shall submit for an entrance permit for the construction of the Mulberry Knoll Road Extension within two weeks of DelDOT’s approval of the construction plans and

will diligently pursue all requirements for DelDOT to issue a Notice to Proceed for the work.

- iii. The applicant shall achieve substantial completion of the Mulberry Knoll Road Extension within 18 months of the issuance of a Notice to Proceed by DelDOT.
  - iv. No more than 120 building permits shall be issued in any calendar year.
  - v. Should substantial completion of the Mulberry Knoll Road Extension not be granted before the issuance of the 240<sup>th</sup> residential building permit, no further building permits shall be issued until such time as substantial completion is granted.
  - vi. The applicant and representatives of Sussex County shall endeavor to request that DelDOT expedite its review and approval of the design and construction plans and issuance of the Notice of Proceed for Mulberry Knoll Road.
- J. In addition to the Mulberry Knoll Road Extension, there will be other off-site roadway and entrance improvements constructed by the applicant that are necessary to provide safe vehicular and pedestrian access to the subdivision. Given the location and size of the development, the development shall provide a phasing schedule that shall coordinate and establish the timeframe and phasing of lot construction and the construction of the off-site entrance and roadway improvements that DelDOT will require as a result of the

development that are not covered by the TID. The phasing schedule shall be presented to the Planning and Zoning as part of the Final Site Plan and shall demonstrate that the off-site improvements required by DelDOT will be completed prior to or simultaneous with this project reaching substantial completion.

- K. Sidewalks shall be installed on both sides of all streets along with a connection to the DelDOT multi-modal path. A streetlighting system that provides lighting in a downward direction with minimal uplighting shall be provided.
- L. As stated by the applicant, the active recreational amenities for the subdivision shall include two clubhouses; one shall have a minimum size of 3,000 square feet and the other shall have a minimum size of 5,000 square feet. There shall also be two pools; one shall have a water surface area of 1,800 square feet and the other shall have a water surface area of 2,250 square feet. Additional active amenities shall include a splash pad or “kiddie pool”, at least 3 sports courts, four playgrounds and four open play areas. Both pools and clubhouses shall be constructed and open to use by the residents of the development on or before the issuance of 60% of the residential building permits for the entire community in accordance with Section 99-21E of the Subdivision Code. The remaining amenities shall be constructed and open to use on or before the issuance of 60% of the residential building permits within the phase where that



amenity is located. The Final Site Plan shall contain specific details as to the size and location of each these amenities and confirming the phase that they relate to.

- M. The subdivision shall be served by a publicly regulated central water system providing drinking water and fire protection.
- N. Street design shall meet or exceed Sussex County standards. In addition, the interior roadways shall include vehicular and pedestrian interconnection with the proposed commercial area at the corner of Route 9 and the Mulberry Knoll Extension. This interconnectivity will provide an internal means of access into the commercial area without having to access the exterior Route 9 or Mulberry Knoll roadways.
- O. Road naming and addressing shall be subject to the review and approval of the Sussex County Geographical Information Office.
- P. Construction, site work, and deliveries shall only occur on the site between the hours of 7:00a.m. through 6:00p.m., Monday through Friday, and 7:00a.m. through 2:00p.m. on Saturdays. No Sunday hours are permitted. A 24-inch by 36-inch “NOTICE” sign confirming these hours in English and Spanish shall be prominently displayed at the site entrance during construction.
- Q. The Applicant shall coordinate with the local school district regarding the location of school bus stops within the subdivision.

The location of the bus stop areas shall be shown on the Final Site Plan.

- R. The applicant shall install a 6-foot high, stockade-style fence along the boundary between the subdivision and the properties along Beaver Dam Road owned by the Elks Lodge and Pam Am Stables. “No Trespassing” signs shall be installed at 100-foot intervals along the fence. The Applicant shall be required to reimburse the Elks Lodge for the cost of relocating its signage if required as part of the roadway improvements.
- S. The Final Site Plan and Recorded Restrictive Covenants shall state that agricultural activities exist nearby, and they shall include the Agricultural Use Protection Notice. Both of these documents shall include a similar notice that hunting activities may also occur on nearby properties.
- T. The Final Site Plan shall include a Landscape Plan depicting all landscaping to be provided or preserved in all of the buffer and conservation areas. The Landscape Plan shall also clearly show all forested areas that will be preserved. The Landscape Plan shall also identify all “Limits of Disturbance” within the site.
- U. The Final Site Plan shall include a Grading Plan for each phase of the subdivision. No building permit shall be issued for individual lots until an individual lot grading plan has been supplied to and

approved by Sussex County. No certificate of occupancy shall be issued until a grading certificate is submitted to the Building Code Department demonstrating general conformity with the individual site grading plan.

- V. A revised Preliminary Site Plan either depicting or noting these conditions must be submitted to the Office of Planning and Zoning.
- W. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission. The Final Site Plan may be approved in Phases, provided that the Applicant shall initially supply a phasing plan with the first Final Site Plan submitted for approval.