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Case No. 2025-1478-KSJM

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

TOWN OF FENWICK ISLAND, and SUSSEX COUNTY, *Plaintiff(s),* v. STATE OF DELAWARE, and THE HONORABLE MATTHEW S. MEYER, in his official capacity as Governor of the State of Delaware, and Renewable Redevelopment, LLC. *Defendants*.	C.A. No. 2025-1478-KSJM

OPENING BRIEF OF DEFENDANT RENEWABLE REDEVELOPMENT, LLC IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT

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NATURE AND STAGE OF PROCEEDINGS

In response to Sussex County's rejection of a conditional use permit for an electrical substation – a substation which the General Assembly views as critical to Delaware's renewable energy policy and the future of this state – the General Assembly adopted SB 159 and SB 199 (together, the "Legislation," copy attached as Ex. A). The Legislation states in part that: "[n]o county shall deny a conditional use permit to any electrical substation [that meets certain criteria]."[1] The Legislation further provides that it applies retroactively to all applications made after August 3, 2023, and that all such applications will be deemed approved, notwithstanding any adverse action a county may have taken prior to the effective date. SB 199 delayed the effective date of the Legislation to January 31, 2026. Plaintiffs Sussex County and the Town of Fenwick Island have now brought suit challenging the Legislation.

But, the General Assembly's actions were entirely consistent with its constitutional authority. Under the Delaware Constitution, a county "possesses no inherent power to regulate land use in the county. That power is one that resides in the General Assembly."[2] More specifically, Article II, Section 25 of the Constitution provides that: "The General Assembly may enact laws under which

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[1] Defendant Renewable's application meets all of the relevant criteria.

[2] *Green v. County Council*, 508 A.2d 882, 889 (Del.Ch. 1986), *aff'd*, 516 A.2d 480 (Del. 1986).

municipalities and [counties] may adopt zoning ordinances, laws or rules . . ." Thus, this case is about the General Assembly's authority to delegate, revoke, and/or otherwise place conditions on the zoning powers that the General Assembly may grant to local governments. And, relatedly, this case is about the State's energy policy – something entirely in the General Assembly's purview, but something which Sussex County has sought to thwart by denying a conditional use permit for an electrical substation on ground zoned HI-1 (Heavy Industrial), located next to an existing substation and power plant, far from any residential areas. As the Sussex County Planning & Zoning Commission (the "Planning Commission") noted in its unanimous recommendation in favor of the substation's approval: "The construction and use of an electrical substation on this site will not adversely affect neighboring properties or roadways." Indeed, at the hearing on Renewable's application, not one opponent (nor any member of Council) spoke about the proposed location, its zoning, or the suitability of a substation on land zoned Heavy Industrial next to an existing substation – all of which are the material factors to be considered by Council when granting or denying a conditional use permit. Rather, the public comments were based on opposition to the wind turbines which the substation will serve and other issues unrelated to the proposed substation itself.

But whatever the feelings of those who spoke in opposition, the General Assembly is deeply committed to renewable energy sources. In the "Delaware

Energy Solutions Act of 2024," the legislature continued its commitment to a sustainable energy future, and stated in the synopsis to that legislation that "offshore wind" constitutes "a significant element of Delaware's energy future."[3]

Ultimately, Plaintiffs' claims fail. The General Assembly has the constitutional authority to enact the Legislation, and did so properly. Moreover, both Plaintiffs lack standing[4] and Sussex County cannot bring the claims under the doctrines of collateral estoppel and claim-splitting.[5]

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[3] This legislation appears at 84 *Del.Laws* ch. 401. The original bill (including the synopsis and legislative history) is available on the General Assembly's website at: https://legis.delaware.gov/BillDetail?LegislationId=141232.

[4] Fenwick claims that it has standing because it appeared at the public hearing on the conditional use application, and because it fears that, if this legislation reining in the County's zoning powers is upheld, its zoning authority may be curtailed by future legislation. As explained herein, neither of the foregoing grievances confers standing.

Sussex County, like Fenwick Island, claims no harm from the actual construction of the proposed substation. Rather, it opposes the curtailment of its zoning powers – but that opposition was resolved by the General Assembly when it passed the Legislation, and, having lost in the General Assembly, the County cannot now seek relief from the judiciary. It too lacks standing.

[5] As further explained herein, following Sussex County's rejection of Renewable's application, Renewable sought review in Superior Court (the "Superior Court Appeal"). Following passage of the Legislation, Renewable then wrote the Court, suggesting that the appeal be stayed in light of the Legislation. The Court asked for memoranda on the issue and the County argued that the General Assembly lacked the power to adopt the Legislation; but, the Court rejected that argument, stating that: "The Court requested letter briefs on the authority of the General Assembly to enact legislation that overturns the result of Council's denial. Based on the research it appears that the General Assembly possesses such power." *See Renewable*

STATEMENT OF FACTS

Sussex County denies Renewable's Conditional Use Application for an electrical substation on ground zoned "Heavy Industrial" located next to an existing substation and Renewable promptly files in Superior Court for review

Ultimately, this case is about the General Assembly's sole power to decide and set forth the energy policy of this State and the General Assembly's ability to revoke or amend the zoning powers it has granted to counties and municipalities in order to further that policy. Sussex County Council failed to properly consider a conditional use application for a proposed electrical substation which is: (i) next to an existing electrical substation, (ii) on land zoned "heavy industrial," and (iii) at a location consistent with the County's Comprehensive Plan – and such action by Sussex County directly interfered with the State's renewable energy policy as determined by the General Assembly, as well as the State's contracts with US Wind, the parent company of Defendant Renewable Redevelopment, LLC.[6] Renewable is

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Redevelopment LLC v. Sussex County Council, 2025 WL 3443112, at *1 (Del.Super. Dec. 1, 2025) (the "Stay Order") (copy attached as Ex. B). Sussex County, having made – and lost – the argument to the Superior Court that the Legislation is improper, is not free to bring a new complaint making the same argument or new arguments in this Court.

[6] Renewable is an affiliate of US Wind, which is constructing wind turbines in federal waters off the coast of Maryland (and to a much lesser extent, Delaware) to produce electricity. The electricity will be routed to Delaware across subaqueous land owned by the State, and come ashore at Renewable's property, where it will be connected to the grid via the proposed substation. Sussex County, however, has no jurisdiction over the proposed turbines or cables.

the owner of property zoned HI-1 (Heavy Industrial) under the Sussex County Zoning Code and sought a conditional use approval under that Code to construct an electrical substation on its property, located far from residential communities, adjacent to an existing electrical substation and power plant, to permit electricity generated by off-shore wind turbines to come ashore and enter the electrical grid. One would be hard-pressed to identify a more ideal location for this substation. In fact, the Planning Commission unanimously recommended in favor of the application, explaining: "The construction and use of an electrical substation on this site will not adversely affect neighboring properties or roadways."[7]

Nevertheless, despite the obvious propriety of the site for the use, Council voted 4-1 to deny the application on December 17, 2024.[8] In so doing, the naysaying Councilmembers all failed to mention or discuss the merits of the application before them (that is, an electrical substation on ground zoned HI-1 located next to an existing electrical substation and power plant, screened from view by mature trees and natural barriers), and instead (and erroneously) claimed the substation would be of no benefit to Sussex County. In rejecting the application, Council said nothing about the proposed use, nothing about the propriety of that use in the proposed

[7] *See* July 10, 2024 Planning Comm'n Minutes at 9, ¶6 (copy attached as Ex. C).

[8] *See* Transcript, Sussex County Council, Dec. 17, 2024, vote on Renewable Redevelopment Conditional Use Application (copy attached as Ex. D).

location, and nothing about the consistency of the use with the County's Comprehensive Plan. Most tellingly, Council completely ignored the favorable recommendation issued unanimously by its own Planning Commission. Instead, Council claimed the project would provide no benefits to the County and therefore denied the application. It made this decision because 14 individuals appeared at the public hearing and complained vociferously – not about the substation, but about the wind turbines to be located in federal waters off the coast, and about the buried cable lines from that offshore location to the proposed substation.

Renewable promptly sought review in the Superior Court, filing its action on December 26, 2024 (the "Superior Court Appeal"). After some delay on the part of the County, the record was filed and briefing occurred.[9]

The General Assembly is committed to renewable energy sources and the State signs an agreement with US Wind for US Wind to make substantial upgrades ($200 million) to the "grid" and to save Delaware ratepayers on their power bills

The State of Delaware, concerned with climate change and greenhouse gas emissions, is committed to increasing the use of renewable energy sources for power

[9] Renewable has included the following as Exhibits to this brief: (E) Petition, (F) Opening Brief, (G) Answering Brief, (H) Reply Brief, (I) Renewable's July 24, 2025 letter advising the Court of the Legislation, (J) County response to July 24 letter, (K) Renewable's Sept. 10, 2025 letter memorandum on power and authority of the General Assembly to adopt the Legislation, (L) County's Sept. 11, 2025 memorandum arguing against the Legislation, and (B) the Superior Court's Dec. 1, 2025 Stay Order.

supply in Delaware. On June 30, 2024, the General Assembly passed Senate Bill 265 (*see* 84 *Del.Laws* ch. 401), titled the "Delaware Energy Solutions Act of 2024," which among its recitals states as follows:

- "emissions of greenhouse gases are contributing to climate change, threatening the health and well-being of the people of Delaware"
- "Delaware has the lowest mean elevation of any state in the nation and the State is particularly vulnerable to climate change impacts"
- "the Delaware General Assembly, recognizing the threat posed by climate change, enacted the Climate Change Solutions Act of 2023, requiring the State to establish strategies to ensure that greenhouse gas emissions shall be at or below net zero emissions no later than January 1, 2050"
- "key elements for facilitating this transition will be increased flexibility in connecting renewable energy resources to the transmission grid, and preparing for offshore wind to be a significant element of Delaware's energy future"

The synopsis to the bill further provides that:

> The bill facilitates a transition to carbon-free energy sources by (i) preparing for offshore wind to be a significant element of Delaware's energy future, if cost is competitive with other potential sources, and (ii) increasing options for interconnecting renewable energy resources to the transmission grid.

Thus, the General Assembly has found that "offshore wind" constitutes "a significant element of Delaware's energy future."

As to US Wind and Renewable, specifically, the State of Delaware began negotiating with US Wind on the procurement of electricity from its offshore project well before the enactment of the 2024 legislation. On December 19, 2023, Governor John Carney announced that negotiations had begun with US Wind, and released a copy of the Term Sheet for those negotiations. *See* Exs. M and N. Among other

things, the Term Sheet states:

- US Wind will pay the State $350,000/year (with an annual 3% increase for inflation) for running the transmission line across the State's 3Rs Beach.
- The wind turbine project "is anticipated to reduce ratepayer costs for electricity by $329 million in gross terms over the contract term."
- US Wind expects to make over $200 million in upgrades to the transmission system on the Delmarva peninsula and these upgrades "are anticipated to increase reliability of the local electric grid and reduce congestion costs to Delaware ratepayers."
- US Wind will pay to the State or to entities designated by the State benefit payments totaling but not exceeding $40 million.
- Once US Wind's offshore wind turbine projects are operational, "they will generate approximately 150,000 MWhs per year of RECs – more than twice the amount of in-State renewable energy generation in Delaware from existing wind, solar, and biomass facilities," and if US Wind fails to meet this 150,000 REC figure from its own operations, it is required to purchase or otherwise obtain similar RECs that are compliant with Delaware's Renewable Portfolio Standard.

See Term Sheet at 2, 4, 4, 5-6.

Following execution of the Term Sheet, then-Governor Carney issued a press release stating that a formal agreement had been signed, consistent with the Term Sheet. *See* Ex. O. The press release states in part that, consistent with the Term Sheet, US Wind "will sell carbon-free power into the regional power grid, and this new source of power generation is projected by US Wind to lower electric costs for Delaware ratepayers by up to $253 million over 20 years. US Wind will also invest more than $200 million in transmission system upgrades."

In his recent State of the State address, Governor Meyer reiterated the State's commitment to this project, making clear that the State needs more energy and sees

the US Wind project as a critical source: "We need more homegrown energy to lower electricity bills. And that is why U.S. Wind, a 1.7 gigawatt project can and must be part of the solution."[10]

Thus, it is more than fair to say that the State of Delaware is committed to the overall US Wind project, particularly in light of the agreement signed with US Wind.

The General Assembly takes action and passes the Legislation in response to Sussex County's rejection of the substation

Without a substation, there is no way to get the power generated offshore by the wind turbines into the "grid" and thereby into homes and businesses. Alarmed by Sussex County's actions, particularly in light of the substation's well-suited proposed location, the General Assembly took action to ensure that the substation can be constructed and that Sussex County's denial does not interfere with or defeat the state policy in favor of renewable energy sources.

On May 21, 2025, Senate Bill 159 was introduced. It passed the Senate (with one amendment) on June 10, then passed the House (with an additional amendment) on June 30, and then passed the Senate again (due to the House amendment) that same day. It was then signed by the Governor. Later that evening, in response to pressure from Senate Republicans, SB 199 was introduced and quickly passed by

[10] Text of the 2026 State of the State Speech, Office of the Governor, https://governor.delaware.gov/text-of-the-2025-state-of-the-state-speech/ (last accessed Jan. 29, 2026).

the Senate and House (and then signed by Governor Meyer that evening as well). SB 199 delayed the effective date of the Legislation until January 30, 2026.

Senate Bill 159 provides that:

> No county shall deny a conditional use permit to any electrical substation, along with any directly related project infrastructure, proposed to be located on unincorporated land within such county where the following conditions apply:
>
> > (1) The substation is being proposed to support the operation of a proposed renewable energy generation project of 250 MW or greater;
> > (2) The proposed substation would be located in a heavy industrial zone;
> > (3) An electrical substation is an allowed conditional use within the proposed zone; and
> > (4) The specific zoning district in which the proposed substation would be located already has an electric substation located in such zone with a rating of 230kv or greater as of August 3, 2023.

The bill further provides:

> This Act shall have retroactive effect and any previous application to a county, on or after August 3, 2023, for approval of an electrical substation prior to the enactment of this Act that complies with the provisions of this Act shall be deemed to be approved, notwithstanding any adverse action which a county may have already taken with respect to such application prior to the enactment of this Act. Further, any action on the part of a county to alter the underlying zoning classification applicable to a previously filed application for a conditional use for an electrical substation or otherwise render an application unqualifying by any means, including changing the underlying zoning or zoning code, is prohibited.

Finally, when SB 159 was first passed, it provided that the legislation would sunset on December 31, 2026, thus not having indefinite effect. However, after SB 159

passed with this sunset date, opponents of the bill threatened to hold up other legislation (including the bond bill) and demanded that, instead of a sunset, the bill should not become effective until January 31, 2026.

In response, Senate Bill 199 was quickly introduced and passed by both chambers. This bill removed the sunsetting language and replaced that language with the phrase: "This Act takes effect on January 31, 2026." The bill also made clear, though, that "This Act does not affect or limit the retroactive effect of Section 2 of [Senate Bill 159]." The Governor signed SB 199 shortly after it was passed on June 30. Thus, under the Legislation, Sussex County Council's denial of Renewable's application will be reversed as a matter of law and the application deemed approved on January 31, 2026.

The Superior Court stays the pending Superior Court Appeal finding that the General Assembly has the authority to enact the Legislation and any opinion issued by the Court would be merely advisory in light of the Legislation

Following the passage of the Legislation, counsel for Renewable wrote the Superior Court advising of the passage and asking for an office conference in light of the fact that the Legislation, upon becoming effective, would be case dispositive. Sussex County responded, and the Court held a conference on August 13, 2025. The Court asked for letter memoranda concerning the Legislation and the parties so responded. In its September 11, 2025 letter, Sussex County stated: "it will concede the Delaware Code . . . allows the denial of authority and thus the Code may be

amended to change what has been granted since the Delaware Constitution vests the zoning powers in the General Assembly."[11] Nevertheless, the County went on to argue that the legislature could not overturn Council's rejection of the Renewable application and urged the Court to decide the matter notwithstanding the Legislation.

Thereafter, the Court stayed the appeal until February 1, 2026, explaining:

> The Court requested letter briefs on the authority of the General Assembly to enact legislation that overturns the result of Council's denial. Based on the research it appears that the General Assembly possesses such power. . . .
>
> If the Court were to opine on the pending Writ of Certiorari, the opinion would be merely advisory in that the Superior Court would not have last authoritative say in the matter effective January 31, 2026. It is clear that this Court has the ability to grant a stay of matters on its docket where other actions would affect the litigation in this Court.
>
> In light of the forgoing, the litigation regarding the Writ of Certiorari is stayed until determination is made whether the Writ of Certiorari is moot as of February, 2026.[12]

Sussex County and Fenwick Island challenge the Legislation
(nearly 6 months after its adoption and only 6 weeks before its effective date)

Three weeks after the Superior Court's Stay Order, Sussex County and Fenwick Island brought this action. Their complaint, however, is devoid of any allegations of harm that the proposed substation itself, or the Legislation, would actually cause either party. This omission, however, is hardly surprising given the

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[11] *See* Ex. L (County's Sept. 11, 2025 letter to the Superior Court) at 6.

[12] *See* Stay Order at *1.

Planning Commission's statement that: "The construction and use of an electrical substation on this site will not adversely affect neighboring properties or roadways." And, the omission is further consistent with the fact that at the public hearing before County Council on the conditional use application, no one speaking in opposition offered any testimony challenging the suitability of the site for a substation.

ARGUMENT

I. SUMMARY JUDGMENT SHOULD BE GRANTED WHERE, AS HERE, THERE ARE NO MATERIAL FACTS IN DISPUTE AND DEFENDANTS ARE ENTITLED TO JUDGMENT AS A MATTER OF LAW.

The purpose of summary judgment is to avoid a useless trial where there is no issue of material fact.[13] Here, all the relevant facts with respect to Renewable's motion are undisputed, and, indeed, the parties are filing cross-motions for summary judgment. Thus, as this Court has observed:

> Under Court of Chancery Rule 56(h), when the parties have filed cross-motions for summary judgment and, as here, have not argued that there is an issue of fact material to the disposition of either motion, "the Court shall deem the motions to be the equivalent of a stipulation for decision on the merits based on the record submitted with the motions." Thus, the usual standard of drawing inferences in favor of the nonmoving party does not apply.[14]

Ultimately, as shown below, Defendants are entitled to summary judgment because the General Assembly has the authority under the Delaware Constitution to adopt the Legislation and did so properly. Plaintiffs are unable to overcome "the strong presumption of constitutionality attending a legislative enactment which, unless the evidence of unconstitutionality is clear and convincing, the court will be reluctant to

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[13] *See Tomalewski v. State Farm Life Ins. Co.*, 494 F.2d 882, 884 (3d Cir. 1974); *Steen v. County Council of Sussex County*, 476 A.2d 642, 645 (Del.Ch. 1989) *citing Bershad v. Curtiss-Wright*, 535 A.2d 840 (Del. 1987); *Nicolet, Inc. v. Nutt*, 525 A.2d 146 (Del. 1987).

[14] *Farmers for Fairness v. Kent Cty.*, 940 A.2d 947, 954-55 (Del.Ch. 2008).

ignore."[15] Moreover, Plaintiffs' claims should also be rejected, or be rejected in the alternative, because they lack standing, and because Sussex County's claims are barred by the doctrines of collateral estoppel and claim splitting.

II. AS A THRESHOLD MATTER, THE GENERAL ASSEMBLY HAS FINAL AUTHORITY ON ZONING MATTERS, AND THE LEGISLATION IS CONSISTENT WITH THAT AUTHORITY.

There should be no doubt that the General Assembly has the power and authority to enact the Legislation. Delaware Courts have long recognized that, under the Delaware Constitution, local counties and municipalities have no inherent zoning powers. Rather, Article II, Section 25 of the Delaware Constitution requires that any zoning powers of local governments must be delegated to them by the General Assembly.[16] And, in providing that authority, the General Assembly can, and has, placed conditions on it.[17] Ultimately, what the General Assembly giveth, it can taketh away.

As but one example, in 1976, the General Assembly modified the zoning

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[15] *Wilmington Medical Center, Inc. v. Bradford*, 382 A.2d 1338, 1342 (Del. 1978) *quoting Justice v. Gatchell*, 325 A.2d 97, 102 (Del. 1974) *citing State Highway Dept. v. Delaware Power & Light Co.*, 167 A.2d 27 (Del. 1961); *see also State v. Brown*, 195 A.2d 379 (Del. 1963) (parties challenging legislation "bear the burden of overcoming the presumption" of the legislation's validity).

[16] *See, e.g., Green*, 508 A.2d at 889 ("The Sussex County government possesses no inherent power to regulate land use in the county. That power is one that resides in the General Assembly").

[17] *Id*.

power it had delegated to New Castle County by adding the following language at the end of 9 *Del.C.* §2601(a), where such language remains to this day:

> provided, however, that no such regulation or regulation promulgated pursuant to Chapter 30 of this Title shall apply to any lands, buildings, or other structures proposed to be used by or for any non-profit corporation organized under the laws of this State and engaged at the time of such proposal in the operation in this State of one or more acute general hospital facilities for the purpose of such or similar operations, or to any lands, buildings, or other structures of such corporation devoted to such operations.

Such language acted (and still acts) to exempt "acute general hospital facilities" from certain land use regulations which the county may otherwise impose on other uses and facilities. In *Wilmington Medical Center*,[18] the Supreme Court found "no merit" in the contention that such legislation was illegal because it withdrew zoning power already granted or that the legislation was invalid because similar restrictions were not imposed on Kent or Sussex Counties. Again, what the General Assembly giveth, it can taketh away.

Similarly, in 1980, the General Assembly limited the zoning authority of all three counties regarding housing for the disabled with identical language stating: "[f]or purposes of all county zoning ordinances a residential facility licensed or approved by a state agency serving 10 or fewer persons with disabilities on a 24-hour-per-day basis shall be construed to be a permitted single family residential use

[18] 382 A.2d at 1351.

of such property."[19] The General Assembly has restricted the zoning authority of counties and municipalities in other situations as well.[20]

In sum, there simply is "no merit" to the notion that the General Assembly cannot modify the zoning authority it grants local governments; and, as already noted above, the Superior Court came to the same conclusion in its Stay Order.

III. NEITHER PARTY HAS STANDING.

Standing is a threshold question and "[t]he party invoking the jurisdiction of

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[19] *See* 62 *Del.Laws* ch. 390 (amending Title 9 by adding new sections 2612, 4923, and 6819).

[20] In 1994, for example, when the General Assembly first authorized the video lottery at existing Delaware racetracks (69 *Del.Laws* ch. 446, the "Video Lottery Act"), it provided, in part, that video lottery machines (*i.e.*, slot machines) would be permissible at any then-operating horse racetrack, and that counties and municipalities could not prohibit video lottery machines by zoning ordinance or otherwise. See 29 *Del.C.* §4819(b) ("use of video lottery machines shall not be prohibited by any . . . county or municipal zoning ordinance, including amendments thereto"). Put another way, the General Assembly limited local governments' zoning powers so they could not restrict or interfere with the video lottery created by the General Assembly. So too here, the General Assembly is taking action to make sure that Sussex County cannot derail wind power, which the State believes is critical for Delaware's energy future.

Other examples of similar "zoning-like" actions taken by the General Assembly include requirements that buildings constructed in excess of 25,000 square feet in size must include certain emergency communication systems, see 76 *Del.Laws* ch. 181 (adding sections 2616, 4927, and 6927 to Title 9 and adding section 311 to Title 22). In addition, Delaware's Coastal Zone Act prohibits new heavy industrial uses, and places conditions on other uses, in the "coastal zone" (as defined in the act). *See* 7 *Del.C.* §§ 7003, 7004. Prohibiting or restricting uses in a particular geographic area (as is the case with the Coastal Zone Act) is at the very heart of zoning authority.

a court bears the burden of establishing the elements of standing."[21] In *Higgin,* the Delaware Supreme Court further explained that in order to establish standing:

> "a plaintiff must demonstrate that: (i) the plaintiff has suffered an 'injury-in-fact,' i.e., a concrete and actual invasion of a legally protected interest; (ii) there is a causal connection between the injury and the conduct complained of; and (iii) it is likely the injury will be redressed by a favorable court decision." In addition, the plaintiff must demonstrate that the interest they seek to vindicate is "arguably within the zone of interests to be protected or regulated by the statute or constitutional guarantee in question."[22]

Moreover, a plaintiff only has standing when the "plaintiff's interest in the controversy [is] distinguishable from the interest shared by other members of a class or the public in general."[23] Here, neither Plaintiff can make the required showings.

A. Fenwick does not have standing because the proposed electrical substation will be located miles from the Town and the Legislation does not apply to municipalities.

Here, Fenwick Island has not established standing based on its allegations in the complaint, nor can it otherwise satisfy the requirement. To begin, Fenwick has not pled any facts suggesting that the construction or operation of the proposed substation, to be located many miles from Fenwick, will cause it any harm.

Instead of harm from the proposed substation, Fenwick argues that it is

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[21] *Albence v. Higgin*, 295 A.3d 1065, 1086 (Del. 2022).

[22] *Id.* (citations omitted).

[23] *Albence v. Mennella*, 320 A.3d 212, 216 (Del. 2024) (finding plaintiffs lacked standing) *citing Stuart Kingston, Inc. v. Robinson*, 596 A.2d 1378, 1382 (Del. 1991).

adversely affected by the Legislation because (i) "it was entitled to rely on the decision and vote of Sussex County Council to deny the permit," and (ii) the Legislation "poses a direct threat to [Fenwick's zoning] authority, in that it constitutes the State's determination that it can retroactively override a specific local zoning decision via legislation."[24] Elsewhere, it notes that its mayor appeared and spoke at the public hearing before Sussex County Council.[25] None of these allegations provides a basis for standing.

Fenwick is, of course, no more entitled to "rely" on a Sussex County Council decision than any other member of the general public. It lacks an interest distinguishable from the general public in that regard and has otherwise suffered no injury-in-fact.

To the extent that Fenwick suggests it has standing because its mayor spoke at County Council's public hearing, such appearance does not confer standing. Counsel for Renewable can find no caselaw to support this novel proposition nor has Fenwick cited any. If appearance at a public hearing acted to confer standing, then any person or entity who speaks at a public hearing, regardless of whether they suffered an "injury-in-fact," could nevertheless achieve standing merely because they spoke at the public hearing. Moreover, mere participation in a public hearing

[24] *See* Complaint ¶15.

[25] *Id.* at ¶2.

does not create an "injury-in-fact" just because the decision does not turn out the way the speaker wanted or because the decision might be overturned.

Finally, as to Fenwick's apprehension about possible future legislation, such possible future legislation does not give Fenwick the right to contest legislation *which in no way affects its legal rights or powers*. Put another way, Fenwick suffers no "injury-in-fact" from the passage of legislation which affects only counties. Fenwick, like all local governments in Delaware, is always subject to the General Assembly modifying or terminating its zoning authority. Under the Delaware Constitution, zoning authority resides with the General Assembly. If the General Assembly is displeased by a local government's exercise of the power delegated to it, the General Assembly has the authority and ability to take whatever corrective action it deems necessary, including corrective legislation. Local governments may, as was done here, participate in that legislative process, but they cannot override it. Fenwick's distaste for offshore wind and the aesthetics of the turbines far off-shore has nothing whatsoever to do with this case. Fenwick lacks standing.

B. Sussex County lacks standing because the County's discontent with the changes in the County's zoning authority made by the General Assembly does not mean that the County has "standing" to contest those changes in the courts – the time and place for the County to contest the Legislation was during the legislative process, which it did. Robustly.

In the Complaint, the County complains that it is harmed because the Legislation "overrides the County's lawfully delegated zoning authority," and that

it "infringes on the County's existing zoning authority in that it purports to grant a 'conditional use' within the County's jurisdiction as a matter of right – thereby transforming a 'conditional use' into a 'permitted use.'"[26] But the County misses the point. The zoning authority which the County exercises is the direct result of a delegation from the General Assembly, and the General Assembly is always free to modify or place conditions on the zoning power which it has delegated. Indeed, in its September 11 letter to the Court, the County conceded the point, writing:

> County Council will concede the Delaware Code and specifically 9 *Del.C.* §7001(a) allows the denial of authority and thus the Code may be amended to change what has been granted since the Delaware Constitution vests the zoning powers in the General Assembly. The General Assembly has the power to change what powers it delegates to the counties.[27]

Having conceded that the General Assembly has the authority to change the powers it delegates, the County has, for all intents and purposes, conceded that it has no standing to challenge a change in those powers. It has no "right" to any zoning powers, as all zoning powers come from the General Assembly. Even if dissatisfied with a change to those powers, that does not mean that the County has standing to sue the General Assembly. The time for the County to contest a change is when the change is being considered by the legislature, not after the fact in the courts.

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[26] *Id.* at ¶11.

[27] *See* Ex. L at 6.

Further, to the extent that the County complains that the Legislation acts to "transform" a "conditional use" into a "permitted use," that transformation is the General Assembly's prerogative, as the Delaware Constitution vests zoning powers in the legislature. Indeed, if the General Assembly so desired, it could itself write a state-wide zoning code or write separate zoning codes for each county and municipality, in lieu of delegating that authority.

Ultimately, it is telling that Sussex County, like Fenwick Island, claims no actual harm from the proposed substation itself. Again, this is not surprising, as no one at the public hearing claimed the location was inappropriate, and no one argued they would be harmed by the substation itself. As the Planning Commission found: "The construction and use of an electrical substation on this site will not adversely affect neighboring properties or roadways." Sussex County lacks standing because it will suffer no injury distinguishable from the public with the construction of the substation at the proposed location and because it is for the General Assembly, in its legislative capacity, to decide what zoning powers and authorities local governments may exercise. Local governments may not try and end run the legislature through lawsuits to obtain zoning powers which the General Assembly will not grant or may take back.

IV. SUSSEX COUNTY CANNOT BRING THE CLAIMS BECAUSE IT IS SUBJECT TO THE DOCTRINES OF COLLATERAL ESTOPPEL AND CLAIM SPLITTING.

No litigant gets two bites at the apple. Because Sussex County raised, or could have raised, its arguments in the letter briefing in the Superior Court Appeal, it cannot do so here under the doctrines of collateral estoppel and claim splitting.

A. Sussex County argued and lost before the Superior Court on the authority of the General Assembly to adopt the Legislation.

The doctrine of collateral estoppel bars the County's claims here that were already made to and decided by the Superior Court because:

> Under the collateral estoppel doctrine, "once an issue is actually and necessarily determined by a court of competent jurisdiction, that determination is conclusive in subsequent suits based on a different cause of action involving a party to the prior litigation." . . . Under Delaware law, the collateral estoppel doctrine applies broadly to a court's determinations of "rights, questions, or facts." The Delaware rule also extends to legal rulings.[28]

Before the Superior Court, Sussex County argued that the Legislation could not apply retroactively and the General Assembly could not "retroactively overturn or

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[28] *PVP Aston, LLC v. Financial Structures Limited*, 2023 WL 2728775, at *7 (Del.Super. March 31, 2023) (citations omitted); *see also Agspring Holdco, LLC v. NGP X US Holdings, L.P.*, 2022 WL 170092, at *4 (Del.Ch. Jan. 19, 2022) ("Given that the elements for collateral estoppel have been satisfied, the resolution of factual *and legal issues* by the arbitration panel is justly conclusive") (emphasis added); *N.S.N. Intern. Industries, N.V. v. E.I. DuPont De Nemours and Co.,* 1994 WL 148271, at *4 (Del.Ch. March 31, 1994) (referring to "the preclusive effect of collateral estoppel as to legal and factual issues determined by the adverse legal judgment").

revoke a zoning action by County Council."[29] Having raised the issue (and lost), Sussex County cannot relitigate that issue here.

In the earlier briefing on the TRO, the Plaintiffs argued that collateral estoppel only applies to facts and not legal rulings, but the *PVP Aston* case says directly to the contrary, and there is no policy reason as to why a plaintiff should not get two bites at the apple as to a factual issue, but get two bites as to a legal issue. The same policy concerns about multiplicity of suits, and burdens on defendants and the judiciary apply with equal weight to legal rulings. Sussex County lost in the Superior Court on the issue of the Superior Court's authority and it may not now make that argument here.

B. Sussex County cannot now bring new legal arguments concerning the legality or application of the Legislation that it could have brought before the Superior Court.

In addition to the claim that the General Assembly lacked the authority to enact the Legislation, the Complaint also raises arguments (the bill title, "spot zoning," due process) that Sussex County could have raised before the Superior Court but did not. As a result, these arguments are barred here, in this Court, by the prohibition on claim splitting, and Sussex County cannot raise these arguments now. As this Court has explained:

> The claim splitting doctrine requires that a plaintiff raise all legal theories arising from a common nucleus of operative fact in one action

[29] *See* County Sept. 11, 2025 letter (Ex. L) at 6.

> so long as she has had a full and free opportunity to do so. A final judgment in the first-filed action is not a necessary element of the doctrine. Claim splitting may bar a second cause of action even where there is not complete overlap between the named defendants. The burden is on the plaintiff to show that she could not have raised her new claims in the first proceeding. Two principles drive the claim splitting doctrine: (1) "that no person should be unnecessarily harassed with a multiplicity of suits"; and (2) a litigant should be prohibited "from getting 'two bites at the apple.'"[30]

Here, the claim splitting doctrine applies because Sussex County chose to raise some, but not all, of its arguments before the Superior Court – despite having the opportunity to raise any arguments it deemed appropriate as to why the Legislation was ineffective and a stay should not be granted. Sussex County shouldn't get a second bite at the apple simply because it wants to make some new or different arguments about the Legislation now that the Superior Court has ruled against it.

Indeed, to allow Sussex County to move forward with its new theories here would only encourage future litigants to "save" some arguments when arguing a case, so that, should they lose, they will be able to go to another forum with different arguments. And then, if still unsuccessful, maybe to a third forum with still different arguments. The doctrine of claim splitting is designed precisely to stop this behavior and save defendants (and the judiciary) from multiple suits over the same set of facts.

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[30] *Daugherty v. Dondero*, 2023 WL 46112, at *3 (Del.Ch. Jan. 27, 2023).

V. THERE ARE NO MATERIAL FACTS IN DISPUTE AND ALL FOUR COUNTS OF THE COMPLAINT FAIL AS A MATTER OF LAW.

In their Complaint, Plaintiffs have set forth four counts as follows:

I. Violation of separation of powers;
II. Violation of Delaware Constitution, Art. II, Sec. 16, regarding bill titles;
III. Violation of due process and illegal spot zoning;
IV. Violation of 9 *Del.C.* §6923

Each count fails as a matter of law. Defendants are entitled to summary judgment.

A. There is no "separation of powers" issue, as all zoning power is vested in the General Assembly.

In Count I, Plaintiffs allege that the Legislation violates the principle of "separation of powers," but this is not a case of co-equal branches of government. Plaintiffs incorrectly assert that the statute here, in which the General Assembly is exercising its authority to control the zoning power it granted to Sussex County, violates "separation of powers" because Sussex County's denial of the conditional use permit is considered a "quasi-judicial" action. Just because the action of County Council is considered "quasi-judicial" does not make it an action of the judicial branch. "Quasi-judicial" simply means that a legislative body is applying the law it enacted to a particular application.[31] And, because a "quasi-judicial" action is simply carrying out "existing legislative policy" relating to zoning, the General

[31] *See, e.g., Delta Eta Corp. v. City of Newark*, 2023 WL 2982180, at *11 (Del.Ch. Feb. 2, 2023) ("An entity acts in a quasi-judicial capacity where it applies existing laws to a set of facts before it. In order words, a quasi-judicial act carries out existing legislative policy, rather than making new policy.").

Assembly has the final say on zoning policy since zoning power ultimately rests in the General Assembly.

Plaintiffs' reliance on *Evans v. State*,[32] cited in paragraph 35 of their Complaint, illustrates their misunderstanding and does not support their argument. In *Evans*, the General Assembly enacted a statute which purported to directly reverse a Delaware Supreme Court *en banc opinion* in a criminal matter. In analyzing the respective powers of the three constitutionally-created branches of government, the Court observed that the Delaware Constitution specifically vests the Delaware Supreme Court with the power and jurisdiction "to determine finally all matters of appeal on the judgments and proceedings of said Superior Court in criminal causes."[33] Thus, by enacting the legislation at issue in *Evans*, the General Assembly attempted to usurp a power granted to the Supreme Court *by the Delaware Constitution* – something it lacked the power to do under the Constitution. It is hardly surprising that the Supreme Court declared that statute unconstitutional.[34]

But this case presents a very different scenario. Here, the General Assembly's legislative act did not interfere with actions taken by a *separate branch* of the government. And here, the General Assembly's legislative act did not seek to usurp

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[32] 872 A.2d 539 (Del. 2005).

[33] *Id.* at 548, *quoting* Del.Const. Art. IV, § 11.

[34] *Id*. at 549.

power granted by the Constitution to another branch of government. Rather, here, the General Assembly exercised its zoning authority under the Delaware Constitution to make clear that a certain use (electrical substations), meeting certain criteria, would be permitted, regardless of any actions which a local government might take or may have taken with respect to that use. As already observed above, the General Assembly's authority in zoning and land use matters is broad and exclusive, and local governments have no inherent zoning authority except for the authority delegated by the General Assembly, which authority the General Assembly may modify, condition, or revoke as it sees fit.[35] Sussex County was not acting as a separate branch of the government, nor was Sussex County acting in accordance with inherent powers under the Delaware Constitution. The Plaintiffs' claim that the Legislation is invalid on "separation of powers" grounds lacks merit.

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[35] By way of example, the General Assembly could enact a statute declaring that electrical substations are permitted by right in any zoning classification, without the need for any conditional use or other special use permit from any local government; and, under such statute, Renewable's proposed substation would be permitted. Here, the General Assembly did not go so far; but, the point is that the legislature has the right to do so. Indeed, the General Assembly could, if it so desired, enact a statewide zoning code and remove all authority from local governments. Such would most likely not be sound policy (and hence it has never been done), but, ultimately, the General Assembly has the right to decide zoning matters, and, here, all the Legislation does is correct what the General Assembly found to be a mis-use of Sussex County's delegated zoning authority in denying the conditional use permit for the proposed electrical substation at the proposed location – an action severely hampering and undermining the State's commitment to renewable energy.

B. The Legislation is not invalid due to its title.

Plaintiffs claim that the Legislation is invalid because it was not properly titled in accordance with Article II, Section 16 of the Delaware Constitution, which states: "No bill or joint resolution, except bills appropriating money for public purposes, shall embrace more than one subject, which shall be expressed in its title."

Here, SB 159's title was: "An Act to Amend Title 26 of the Delaware Code Relating to Public Utilities," and the bill does exactly what it says: it amends Title 26, which Title is named "Public Utilities," by adding a single new section to Title 26. And that section mandates that electrical substations (which exist for the sole purpose of either adding or withdrawing electric power from the "grid") which meet certain conditions shall be approved or deemed approved. Substations deliver power to the grid, and public utilities use the grid to deliver electric power to consumers of that power. There is no multiplicity of subjects. There is only one subject – the addition of a new section to Title 26, which deals with the substations that deliver power to the grid and thus to public utilities for distribution to the public.

SB 159's title is similar to the bill title the Supreme Court examined and found to be constitutional in the *Wilmington Medical Center* case. There, the title was "An Act to Amend Title 16, Delaware Code, by Adding a New Part IX Providing For a Delaware Health Facilities Authority," which the Court found was "neither fatally

deceptive and misleading nor void for double subject matter."[36] The Court made clear that the Delaware Constitution does not require the title to be "an index to its details or a synopsis of the means by which its object is to be accomplished" but merely needed to be "sufficiently informative as to put on notice parties interested in the general subject matter in such manner as would lead them to inquire into it if they wished."[37]

In *Klein v. National Pressure Cooker Co.*,[38] where a statute was being challenged on the grounds of an insufficient title, the Delaware Supreme Court rejected the challenge and observed that:

> Legislative Acts should not be disturbed except in clear cases, and then only upon weighty considerations. Each case dealing with the subject must of necessity be determined upon its own merits. Nevertheless, it should be said to those seeking to annul legislative Acts on such grounds as here presented that it has consistently been the policy of this Court to construe the provisions of Article 2, Section 16 of the Constitution most liberally, and whenever possible, to sustain rather than to destroy the legislation. Especially is this so in the light of the general rule that each legislative enactment is cloaked with the presumption of constitutionality and should not be invalidated unless the circumstances be shown beyond doubt to do violence to the provisions of the Article and Section aforesaid.

The Court then went on to observe that: "All that is required is that the language be

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[36] *Wilmington Med. Ctr.*, 382 A.2d at 1343.

[37] *Id.*

[38] 64 A.2d 529, 532 (Del. 1949).

of sufficient import to give reasonable intimation of the subject matter dealt with."[39] In a later opinion, the Court stated that the Constitutional titling requirement "is designed to prevent deception of the general public and the members of the General Assembly by titles to bills which give no adequate information of the subject matter of the bills."[40] Where a bill indicates what section of the Code it is intended to amend, such reference is sufficient.

Plaintiffs also suggest the title is misleading because the new statutory provision should have been inserted into Title 9 (which deals with the powers granted counties) rather than Title 26 (which deals with utilities). Certainly one could have placed the provision (or similar language) in Title 9, but the same can be said of many provisions of the Delaware Code. One might just as easily argue that the restrictions on certain land uses in Title 7 (under the Coastal Zone Act), or that the restrictions regarding slot machines in Title 29 (under the Video Lottery Act), should be in Title 9; but, ultimately, where the Code is amended is a matter of legislative discretion. And Plaintiffs have pointed to no harm or confusion resulting from the Legislation's placement in Title 26 rather than Title 9. This claim is similar to that raised in *Wilmington Medical Center*, where the party challenging the statute claimed that its placement in Title 16 was misleading, as Title 16 had previously

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[39] *Id.*

[40] *Opinion of the Justices*, 194 A.2d 855, 856 (Del. 1963).

only dealt with controlling threats to public health, not hospitals in general.[41] The Court rejected such challenge.[42]

If, as Plaintiffs claim, the purpose of the titling requirement is to "prevent deception" and not "trap the unwary into inaction," then Plaintiffs must concede that no such deception occurred and no one was "trapped" into "inaction." There were intensive debates about the Legislation, as well as extensive media coverage.[43] Sussex County's legislators fought tooth and nail against SB 159, but failed. They were, however, able to delay its effective date until January 31, 2026, through SB 199. Plaintiffs were well aware of the Legislation and its import, and they have not alleged that anyone was trapped by the title "into inaction."

Defendants are entitled to summary judgment on this claim. "Legislative Acts should not be disturbed except in clear cases, and then only upon weighty considerations" and Plaintiffs have not and cannot meet their burden. The title complied with the constitutional requirements.

C. There is no due process or spot zoning violation.

With Count III, in paragraph 42 of their Complaint, Plaintiffs allege a due

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[41] 382 A.2d at 1343.

[42] *Id.*

[43] Attached as Exhibit P is a collection of news reports, letters to the editor, and other media coverage from May and June of 2025 while the bill was being considered and debated.

process violation, claiming that with the General Assembly's adoption of the Legislation "the public has been improperly divested of its due process right to notice and an opportunity to be heard." But due process rights are triggered only when the government takes an action by which a plaintiff is deprived of "life, liberty, or property, without due process of law."[44] And here, the Plaintiffs (and the general public) were not denied any such rights (indeed, Plaintiffs have not articulated any). The general public has no "due process" right to be heard on a proposed land use permitted by right (which is what the General Assembly created with the Legislation). The action about which Plaintiffs complain is a legislative act by the General Assembly, and the Delaware Supreme Court has held that there are no due process rights relating to the legislative process.[45] In *Croda*, where the appellant was challenging New Castle County's adoption of an ordinance for failure to comply with certain titling requirements and for procedural due process violations, the Court stated: "procedural due process protections do not apply to legislation of general applicability."[46]

Count III also alleges that the Legislation constitutes illegal "spot zoning."

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[44] *See, e.g., Croda, Inc. v. New Castle County*, 282 A.3d 543, 550 (Del. 2022).

[45] *Id.*

[46] In *Croda*, the plaintiff could at least articulate the potential loss of a property right, as the zoning change reduced the usability of its property. Plaintiffs here have no such argument.

As to "spot zoning,"[47] the fact remains that, as this Court has observed, "spot zoning has never been employed to invalidate a zoning ordinance in Delaware."[48] Plaintiffs' claim of spot zoning, like its claim of due process violations, is without merit, and Defendants are entitled to summary judgment with respect to Count III.

D. There is no violation of 9 *Del.C.* §6923.

Finally, in their last count, Plaintiffs claim the Legislation conflicts with Title 9, Section 6923, of the Delaware Code which states:

> Whenever any regulations made under authority of this subchapter require a greater width or size of yards, courts or other open spaces, or

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[47] "Spot zoning" is, for all intents and purposes, an outdated zoning concept that pre-dates comprehensive planning and other modern zoning practices. In *McQuail v. Shell Oil Co.,* 183 A.2d 572 (Del. 1962), where opponents challenged a large rezoning for a possible (but later not pursued) oil refinery, the Delaware Supreme Court explained that spot zoning is "generally defined as an attempt to wrench a small lot or a small area from its environment and give it a new rating that disturbs the tenor of the community. Normally, spot-zoning benefits a private interest and has no relation to the general public interest." *Id.* at 579 (internal citations omitted). In evaluating whether "spot zoning" has occurred, several factors may be considered including "whether the differently-zoned land was unfit for the uses allowed in the surrounding lands or was inherently distinguishable from those lands" and "whether the land whose zone differs from neighboring land, or the neighboring land itself, is host to a nonconforming use." *Hudson v. County Council of Sussex County*, 1988 WL 15802, at *4 (Del.Ch. Feb. 24, 1988), *aff'd*, 549 A.2d 699 (Del. 1988).

Here, of course, Renewable's property is part of a larger HI zoning district, and the proposed substation will be located adjacent to an existing substation and an existing power plant. Put another way, the proposed use is entirely consistent with the existing uses in the immediate vicinity. It is not "spot zoning."

[48] *Cain v. Sussex County*, 2020 WL 2122775, at *21 (Del.Ch. May 4, 2020); *see also Deibler v. Sea Gate Village*, 1983 WL 142507, at *2 (Del.Ch. Aug. 24, 1983) ("The courts of Delaware have never ruled that spot zoning is illegal").

> require a lower height of buildings or smaller number of stories, or require a greater percentage of lot to be left unoccupied, or impose other higher standards than are required in or under any other statute or local regulation, the provisions of the regulations made under authority of this subchapter shall govern. Whenever the provisions of any other statute or local regulation require a greater width or size of yards, courts or other open spaces, or require a lower height of buildings or a lesser number of stories, or require a greater percentage of lot to be left unoccupied, or impose other higher standards than are required by any regulations made under authority of this subchapter, the provisions of such statute shall govern.
>
> Whenever the provisions of any other statute shall derogate from the provisions of this subchapter, unless it be a statute granting powers to the State Planning Office, the provisions of this subchapter shall govern.

Plaintiffs cite no case law in support of their position, and at least one Superior Court decision conflicts with their position. Plaintiffs also fail to consider three important principles: (i) state laws pre-empt inconsistent local laws; (ii) a past legislature cannot bind a future legislature, and (iii) Plaintiffs' argument would render the Legislation a nullity, and the General Assembly does not engage in pointless acts.

1. State laws pre-empt inconsistent or conflicting local laws, as recognized by at least one Superior Court zoning case.

It is a basic principle of law that: "when the county ordinance and the state statute conflict, the county ordinance must yield."[49] And this principle applies with

[49] *University of Delaware v. New Castle County Dept. of Finance*, 801 A.2d 202, 206 (Del.Super. 2006) *aff'd* 903 A.2d 323 (Del. 2006); *see also State ex rel. Jennings v. City of Seaford*, 278 A.3d 1149, 1160 (Del.Ch. 2022) ("If a state law and a municipal ordinance directly conflict, then the state law prevails [and, further, that] [a] conflict exists '[i]f the ordinance expressly permits what a statute expressly

respect to zoning as well. In *4th Generation Ltd. v. Board of Adjustment of City of Rehoboth Beach*,[50] a municipal zoning ordinance prohibited the erection of a sand dune fence on beachfront property. The ordinance conflicted with a state statute (the Beach Preservation Act of 1984, 64 *Del.Laws* ch. 361, codified at 7 *Del.C.* §6801 *et.seq.*). Despite a code provision virtually identical to 9 *Del.C.* §6923,[51] the Superior Court held unreservedly that:

> In this case, there is no difficulty because of the obvious conflict of a zoning ordinance which prohibits a sand fence where a [state] statute permits it. Logically, it is not possible for these two to stand together.

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forbids, or vice versa.'") *citing Taylor v. Smith*, 115 A. 413, 414 (Del. Ch. 1921) (explaining that the "legislative power of [a] municipality ..., expressing itself through [its] council, is inferior and subordinate to the legislative power of the state, whose creature it is"); *State v. Putman*, 552 A.2d 1247, 1249 (Del. Super. 1988) ("[W]here a conflict exists between a state statute and a municipal ordinance, the statute must always prevail.").

[50] 1987 WL 14867 (Del.Super. July 16, 1987).

[51] In Title 22, Chapter 3, which delegates zoning powers to municipalities, §307, titled "Conflict with other laws," states:

> Wherever the regulations made under authority of this chapter require a greater width or size of yards or courts, or a lower height of building or less number of stories, or a greater percentage of lot to be left unoccupied, or impose other higher standards than are required in any other statute or local ordinance or regulation, the regulations made under authority of this chapter shall govern. Wherever any other statute, local ordinance or regulation requires a greater width or size of yards or courts, or a lower height of building or a less number of stories, or a greater percentage of lot to be left unoccupied, or imposed other higher standards than are required by the regulations made under authority of this chapter, such statute, local ordinance or regulation shall govern.

> In the event of such a conflict, the ordinance must yield. . . . The existence of Zoning Ordinance § 19-66 therefore cannot operate as a bar to the installation of a sand dune fence after DNREC has determined that it is an appropriate beach preservation practice. Accordingly, the Beach Preservation Act of 1984 and its duly promulgated regulations supersede the City of Rehoboth Beach's Zoning Ordinance § 19-66 to the extent that it prohibits sand fences on any beaches seaward of the building line.[52]

Note that the Rehoboth ordinance prohibited fences entirely, while the state statute and regulations permitted them, just as here, Sussex County has sought to prohibit the substation while the Legislation permits it. Given this resolution of any conflicts between state law and county/municipal law, summary judgment on Count IV should be granted Defendants. In addition to this fundamental principle of supremacy, two other principles further support Defendants.

2. Past legislatures cannot bind or restrict future legislatures.

Plaintiffs' position with respect to Section 6923 is that a prior law enacted by the General Assembly (that is, Section 6923) can bind and limit what a future General Assembly may do. But Plaintiffs' position is clearly not the case because: "It is axiomatic that one legislative body (here one General Assembly) cannot bind a future one absent the enactment of a constitutional amendment."[53] And this

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[52] *Id.* at *9.

[53] *State v. Reeves*, 316 A.3d 408, 434 (Del.Super. 2024) (citations omitted), *abrogated on other grounds, Jewell v. State*, 340 A.3d 562 (Del. 2025); *see also Town of Cheswold v. Central Delaware Business Park*, 163 A.3d 710, 727 (Del.Super. 2017) ("It is an accurate general statement of the law that one legislative

concept that past legislative bodies cannot bind future bodies has long been recognized by Delaware courts.[54] Thus, if the General Assembly wants to limit the zoning powers of the counties in Title 26 it may do so, just as it limited the zoning powers of the counties in Title 7 with the Coastal Zone Act, and in Title 29 with the Video Lottery Act.

3. Plaintiffs' position would impermissibly render the Legislation a nullity.

Legislatures do not engage in pointless acts, and legislation will not be interpreted in such a way as to render it a nullity.[55] Yet Plaintiffs' position would do just that – render the Legislation a nullity – and for this reason it should be rejected. With the Legislation, the General Assembly engaged in its constitutional prerogative and acted to rein in the zoning authority it granted the counties in

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body cannot bind the discretion of future legislative bodies."), *reversed on other grounds*, 188 A.3d 810 (Del. 2018).

[54] *See, e.g., Taylor v. Smith*, 115 A. 413, 414 (Del.Ch. 1921) ("one city council, by the passage of an ordinance . . . cannot thereby bind another city council elected after the expiration of the terms of the members who passed such ordinance.").

[55] *See generally* 73 Am.Jur.2d Statutes §147 ("A court will not interpret a statute in such a way as to make a nullity of its provisions if a sensible construction is available."); *see also Godwin v. State*, 903 A.2d 322 (Del. 2006) (Table, text available in Westlaw, 2006 WL 1805876) (rejecting appellant's proposed construction because it would render provision a "practical nullity, a result the legislature cannot be presumed to have intended."); *Dorsey v. Coastal Tank Lines, Inc.*, 133 A.2d 914 (Del.Super. 1957) (rejecting proposed interpretation that would render statute a nullity); *Wyatt v. Rescare Home Care*, 81 A.3d 1253 (Del. 2013) (rejecting an interpretation which would render a portion of a statute a nullity).

reaction to a Sussex County Council decision which the General Assembly found to improperly interfere with the State's commitment to renewable energy resources. The Legislation was debated and it was enacted. It is not a nullity. Plaintiffs' attempt to use Section 6923 to undo that action is wrong for all the reasons set forth above, and Defendants are entitled to Summary Judgment on Court IV as well as Counts I through III.

CONCLUSION

As a threshold matter, Plaintiffs both lack standing and Sussex County is further subject to the doctrines of collateral estoppel and claim splitting such that neither party may bring the claims set forth in the Complaint. In particular, Sussex County, having made argument to the Superior Court regarding the Legislation, is not entitled to a second bite at the apple here. However, even if Plaintiffs could bring the claims, the claims all fail.

Under the Delaware Constitution, the General Assembly has the express authority to limit, restrict, or revoke zoning authority previously delegated to counties. And, because the General Assembly has this authority, it did not violate the "separation of powers." Simply put, the General Assembly has the ultimate word when it comes to zoning. To the extent that Plaintiffs complain about the title of the Legislation, this claim is also without merit. There was extensive media coverage, and, in fact, Sussex County's legislators fought vigorously against the Legislation. The Legislation's title did not create a "trap for the unwary." The legislation addresses substations which are, of course, a matter that inherently involves "public utilities" – a fact clearly and concisely declared in its title. Finally, Plaintiffs' claims regarding due process, spot zoning, and Section 6923 all fail for the reasons discussed above.

Plaintiffs may disagree with the State's commitment to renewable energy and

they may dispute the benefits it will bring – but it is the General Assembly, and not Sussex County, which determines Delaware's energy policy. Plaintiffs' recourse is through their duly elected state legislators. They cannot seek redress through untimely and ill-conceived lawsuits, particularly, where, as here, one competent court has already ruled against them. There being no facts in dispute, summary judgment should be granted Defendants as to all counts.

Respectfully submitted,

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