

**ORDINANCE NO. 2311**

**AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A COMPOSTING FACILITY AS AN EXTENSION TO CONDITIONAL USE NO. 1314 AND CONDITIONAL USE NO. 1691 (A MICRO-NUTRIENT PLANT WITH RELATED TRUCK ENTRANCE AND RAIL SPUR FOR THE PROCESSING AND HANDLING OF POULTRY LITTER) TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BROAD CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 228.88 ACRES, MORE OR LESS (Tax Map I.D. 1-32-6.00-88.01 AND 95.00 and Tax Map I.D. 1-32-11.00-41.00)**

**WHEREAS, on the 5th day of March 2013, a conditional use application, denominated Conditional Use No. 1962 was filed on behalf of Chesapeake AgriSoil, LLC; and**

**WHEREAS, on the 25th day of April 2013, a public hearing was held, after notice, before the Planning and Zoning Commission of Sussex County and on the 23rd day of May 2013, said Planning and Zoning Commission recommended that Conditional Use No. 1962 be approved with conditions; and**

**WHEREAS, on the 21st day of May 2013, a public hearing was held, after notice, before the County Council of Sussex County and the County Council of Sussex County determined, based on the findings of facts, that said conditional use is in accordance with the Comprehensive Development Plan and promotes the health, safety, morals, convenience, order, prosperity and welfare of the present and future inhabitants of Sussex County, and that the conditional use is for the general convenience and welfare of the inhabitants of Sussex County.**

**NOW, THEREFORE, THE COUNTY OF SUSSEX HEREBY ORDAINS:**

**Section 1. That Chapter 115, Article IV, Subsection 115-22, Code of Sussex County, be amended by adding the designation of Conditional Use No. 1962 as it applies to the property hereinafter described.**

**Section 2. The subject property is described as follows:**

**ALL that certain tract, piece or parcel of land, lying and being situate in Broad Creek Hundred, Sussex County, Delaware, and lying west of Route 13A and north of Road 485 and being more particularly described as:**

**BEGINNING at a point on the westerly right of way of U.S. Route 13A, a corner for these subject lands and lands now or formerly of Victor E. Moore; thence south 85°45'06" west 250.23 feet, south 86°46'11" west 1068.22 feet and south 07°53'54" west 1,495.60 feet along lands of Victor E. Moore to a point; thence southerly along these lands and lands now or formerly of Victor E. Moore the following courses: south 24°14'37" east 92.40 feet, thence south 09°17'37" east 899.25 feet, thence south 05°00'23" west 313.50 feet, thence south 05°14'37" east 198.00 feet, thence south 09°59'37" east 610.94 feet to the northerly right of way of Road 465; thence westerly 505.15 feet along the northerly right of way of Road 485 to the centerline of Gum Branch; thence northwesterly along the meandering centerline of Gum Branch approximately 2,200.00 feet to a point, a corner for these lands and lands now or formerly of Stephen C. Glenn; thence south 16°46'19" west 354.98 feet along said Glenn property to a point; thence north 78°57'47" west 318.35 feet along lands now or formerly of Frederick M. O'Neal (Trustee) to a point; thence north 09°16'05" east 297.01 feet and north 04°55'59" east 817.39 feet along lands now or formerly of Ronald W. and Ruth M. Conaway to a point; thence north 86°05'12" east 396.08 feet and north 04°18'33" west 1,168.72 feet along lands now or formerly of Donald R. Eisenbrey to a point; thence north 79°02'14" east 2,055.56 feet and north 34°54'37" west 384.45 feet along lands now or formerly of Ralph H. and Jane L. Givens to a point; thence north 49°05'23" east 1,384.35 feet along lands now or formerly of Ralph H. Givens, lands now or formerly of Ronald G. Fensick, and lands now or formerly of Edward N. Dickerson to a point; thence south 45°47'19" east 717.20 feet along lands now or formerly of George D. Elzey, Jr. to a point; thence north 68°08'07" east 504.34 feet and south 79°42'15" east 619.83 feet along lands of Florence E. Johnson and Sussex Manor to a point; thence south 06°25'19" west 261.98 feet to a point; thence north 87°41'15" east 351.14 feet to a point on the westerly right of way of U.S. Route 13A; thence 1,036.47 feet along the westerly right of way of U.S. Route 13A to the point and place of beginning and containing 228.88 acres, more or less.**

**This Ordinance shall take effect immediately upon its adoption by majority vote of all members of the County Council of Sussex County, Delaware.**

**This Ordinance was adopted subject to the following conditions:**

1. The conditions of previously approved Conditional Use No. 1314 and No. 1691 are unchanged by this approval, unless specifically modified herein.
2. The use shall be strictly limited to the improvements shown on the April 11, 2013 Site Plan proposed by Axiom Engineering, LLC. Any future additions, alterations or improvements to the Site Plan shall be subject to an application and public hearing to amend this Conditional Use.
3. Any rail cars accessing the site shall be cleaned at an off-site location.
4. The noise and odor emissions from the operations of the composting facility shall not exceed minimum standards established by DNREC or any other agency having jurisdiction over the project. The odors shall be controlled by negative air pressure in the receiving building, a bio-filter, and by the Gore Cover System.
5. The lands on the Site Plan surrounding the composting facility shall remain wooded north of the truck entrance. The location of all wooded, vegetative and buffer areas shall be shown on the Final Site Plan.
6. As proposed by the Applicant, all wooded areas outside of the approximately 20 acre project area shall remain as woodlands. Cut-over woodlands shall be allowed to mature.
7. Any lighting on the site shall be downward screened so that it does not illuminate neighboring properties or roadways.
8. All trucks entering the site must be covered.
9. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning and Zoning Commission.

**I DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE AND CORRECT COPY OF ORDINANCE NO. 2311 ADOPTED BY THE SUSSEX COUNTY COUNCIL ON THE 25TH DAY OF JUNE 2013.**

  
**ROBIN A. GRIFFITH**  
**CLERK OF THE COUNCIL**

**The Council found that the Conditional Use was appropriate legislative action based on the following Findings of Fact:**

1. This is an application of Chesapeake AgriSoil, LLC to consider the Conditional Use of land in an AR-1 Agricultural Residential District for a composting facility as an extension to Conditional Use No. 1314 Conditional Use No. 1691 (a micro-nutrient plant with related truck entrance and rail spur for processing and handling poultry litter), to be located on a certain parcel of land lying and being in Broad Creek

Hundred, Sussex County, containing 228.88 acres, more or less, lying west of Route 13A north of Road 485 (Tax Map I.D. 1-32-6.00-88.01 and 95.00 and Tax Map I.D. 1-32-11.00-41.00).

2. The Sussex Conservation District commented that the Applicant will be required to follow recommended erosion and sediment control practices during any construction and to maintain vegetation; that no storm flood hazard areas or tax ditches are affected; that it is not likely that any off-site drainage improvements will be required; and that it is possible that on-site drainage improvements will be required.
3. The Sussex County Engineering Department, Utility Planning Division, commented that the site is located in the Western Sussex Planning Area No. 3 and Blades Planning Area No. 2; that an onsite septic system will be utilized; that the parcel is not in an area where the County has a schedule to provide sewer service at this time; and that a Concept Plan is not required.
4. Shannon Carmean-Burton, Attorney, of Sergovic, Carmean and Weidman, P.A., Ken Christenbury, Professional Engineer with Axiom Engineering, LLC, Whitney Hall, Professional Engineer, Wayne Hudson of Perdue Agri-Recycle, LLC, and Charlie Gifford of Chesapeake AgriSoil, LLC were present on behalf of the application and stated that this use will occupy approximately 20 acres of the 228.88 acre site; that the 20 acre portion is contained within Tax Map 1-32-11.00-41.00; that the site is immediately adjacent to the plant; that the existing wooded buffers will remain; that the site is being cleared to eliminate young seedlings and tree growth; that no clearing will occur beyond the railroad spur; that the original conditions for the micro-nutrient plant, as amended in 2006, will remain with the exception of the use of this facility; that DeIDOT voiced no objections and determined that there will not be any traffic impact; and that DNREC approvals are required and will be obtained.
5. The Applicant stated that the proposed facility would utilize processed water from the Plant in this process rather than having to haul the processed water off-site for land application.
6. The Applicant further represented that Best Management Practices will be utilized; that the proposed project is very environmentally responsible; that the operation will be carried on during one daytime shift from 7:00 a.m. to 5:00 p.m. weekdays only; that water can be provided to control any dust; that the intended 20 acre area for the facility includes the stormwater management pond; that they may utilize dead-birds in a catastrophic emergency situation; that they anticipate 11 full-time employees, and assume approximately eight (8) secondary related service jobs; and that they will most likely be using independent haulers.
7. The Applicant further represented that the purpose of AR-1 includes references to provide for a full range of agricultural activities and protects agricultural lands; that it should also protect established agricultural operations and activities; that the permitted conditional uses in the AR-1 District include agricultural related activities; that it will decrease the amount of pollution and odor from poultry waste previously applied directly to the soils as a fertilizer; that the proposed use will provide community-wide benefits and the ability to recycle a by-product of the poultry industry utilizing the latest Gore technology; that due to the need for enhancing the ability of the poultry industry to protect the local environment, the proposed conditional use is an appropriate zoning method for permitting the use and thus, the conditional use complies with the Zoning Code; that the Applicant submits that this project is consistent with the provisions of the Comprehensive Plan which identifies the property in a Low Density Area; that the Plan provides that all land designated in the Low Density Area are currently zoned AR-1; that the Plan provides that the primary uses envisioned in Low Density Areas are agricultural activities and single family detached homes; and that industrial uses that support or depend on agriculture should be permitted.

8. **The Applicant further represented that the Gore system proposed to be utilized uses positive aeration and a specially designed cover to create an enclosed system that optimizes the recycling process, controls odors and micro-organisms, separates leachate from storm water and creates a consistent product unaffected by outside environmental conditions; and that the use is designed to benefit the family farm and agricultural industry, especially poultry growers, in the County.**
9. **This is an extension of existing Conditional Uses approved by Sussex County; that Conditional Use Nos. 1314 and 1691 were for a micro-nutrient plant with related truck entrances and a rail spur for the processing and handling of poultry litter; that this is a reasonable change to the existing uses and a reasonable expansion to the overall site; that the proposed site is adjacent to the existing micro-nutrient plant that is operated by Perdue AgriSoil, LLC; and that the proposal is consistent with this adjacent use.**
10. **The proposed use will have a positive economic impact on Sussex County and its residents, with full-time employees on the site, and additional equipment and hauling services that are necessary for the operation of the facility.**
11. **The application is supported by the Inland Bays Foundation and the Secretary of the Delaware Department of Agriculture.**
12. **The use is consistent with the underling AR-1 Agricultural Zoning and the rural agricultural uses that exist in the vicinity of the site; that the proposed use will be a benefit to agriculture in Sussex County, as well as the Delmarva Peninsula, as an efficient means to eliminate a potential source of excess nitrates and phosphates from area soils; and that it also provides an innovative but environmentally sensitive method of handling poultry waste products and produces an end-product that can be beneficially used in an environmentally responsible manner.**
13. **This use promotes the goals of the Sussex County Comprehensive Plan by enhancing the environmental quality of Sussex County; it is also a use which has a public or semipublic character that is essential and desirable to the general convenience and welfare of Sussex County and its residents.**
14. **Based on the record and recommendation of the Planning and Zoning Commission and the record created before Council, the Conditional Use was approved subject to 9 conditions which will serve to minimize any potential impacts on the surrounding area and adjoining properties.**