

ORDINANCE NO. 2259

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A DIRT BORROW PIT TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 31.02 ACRES, MORE OR LESS

WHEREAS, on the 31st day of March 2011, a conditional use application, denominated Conditional Use No. 1897 was filed on behalf of Russell V. Banks; and

WHEREAS, on the 26th day of May 2011, a public hearing was held, after notice, before the Planning and Zoning Commission of Sussex County and on the 23rd day of June, 2011, said Planning and Zoning Commission recommended that Conditional Use No. 1897 be approved with conditions; and

WHEREAS, on the 14th day of June 2011, 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. 1897 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 Baltimore Hundred, Sussex County, Delaware, and lying east of Road 348 (Irons Lane) approximately 800 feet north of Road 349 (Old Mill Road) and being more particularly described per attached legal description prepared by Solutions, IPEM, LLC, said parcel containing 31.02 acres, more or less, including site and haul road.

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

The Ordinance was adopted subject to the following conditions:

- 1. No materials shall be brought from off site for processing, mixing or similar purposes.**
- 2. Water or a water truck shall be available to control dust from road traffic when conditions require.**
- 3. As stated by the Applicant, the entrance to the borrow pit shall be from Irons Lane. However, if dictated by DelDOT, the entrance could be from Old Mill Road, within the road frontage of the parcel that is the subject of this application.**
- 4. Any roadway and entrance improvements required by DelDOT shall be completed by the Applicant. All entrances shall be secured when the borrow pit is not in operation.**
- 5. The hours of operation for the business on this site shall only occur between the hours of 7:00 a.m. to 7:00 p.m. Monday through Friday and 7:00 a.m. to 5:00 p.m. on Saturdays. There shall not be any borrow pit activity on Sundays.**
- 6. No materials shall be stored on any access roads or within any buffer area.**
- 7. No fuel shall be stored on-site for borrow pit operations.**
- 8. No dredging activities shall be permitted on the site.**
- 9. No dewatering activities will occur on the site.**
- 10. No stumps, branches, debris or similar items shall be buried or placed in the site of the borrow pit.**
- 11. The borrow pit shall have benches and 3:1 slopes and the slopes shall be seeded and planted to control erosion. The pit shall not be greater than 25 feet deep at any point.**
- 12. A Final Site Plan, including all pit slopes, excavation phasing, and reclamation plans shall be reviewed and approved by the Planning and Zoning Commission prior to the commencement of operations. Reclamation plans shall indicate finished grading, seeding, and planting schedules designed to create a pleasing appearance. Reclamation of the site shall be ongoing as phase's progress.**
- 13. The Applicant shall comply with all State and County erosion and sediment control regulations.**

14. A buffer shall be maintained along the perimeter of all boundaries of at least 50 feet in width as shown on the preliminary site plan. The buffer area shall include a 30 foot wide vegetated buffer of native species trees. Existing natural vegetation and tree growth within the buffer areas shall remain undisturbed.
15. Every five (5) years after the start of digging, the Planning and Zoning Department shall perform an inspection of the site, and shall request written comments from all appropriate State agencies so that the Planning and Zoning Commission can review the comments to verify compliance with all then-existing regulations. After twenty (20) years, the property owner shall complete and pay for an Environmental Impact Study, as the phase is defined by the Department of Natural Resources and Environmental Control (DNREC), or any successor thereto. Upon certification by DNREC of the owners' compliance with then-existing regulations, the permit shall be extended for an additional ten (10) years. The permit shall terminate upon the expiration of forty (40) years from the date of enactment.
16. The Applicant shall comply with all of the requirements set forth in Section 115-172B of the Sussex County Zoning Code.
17. The Applicant shall provide Performance Guarantees to assure completion of any approved reclamation plan, pursuant to Section 115-172B(6)(e) as approved by the County Attorney.
18. The excavated area shall not exceed 17 acres, which shall be divided into 2 phases. The second phase shall not be started until the first phase is completed. The phase line shall be the hedgerow line that currently exists across the site.
19. The borrow pit shall be no closer than 200 feet from the boundary to property of other ownership and further, no structures shall be built or placed within 200 feet of the limits of excavation.
20. 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 FORGOING IS A TRUE AND CORRECT COPY OF ORDINANCE NO. 2259 ADOPTED BY THE SUSSEX COUNTY COUNCIL ON THE 12TH DAY OF JUNE 2012.


ROBIN A. GRIFFITH
CLERK OF THE COUNCIL

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

- 1. This is an application to consider the Conditional Use of land in an AR-1 Agricultural Residential District for a borrow pit to be located on a certain parcel of land lying and being in Baltimore Hundred, Sussex County, containing 30.78 acres, more or less, lying east of Road 348 (Irons Lane) approximately 800 feet north of Road 349 (Old Mill Road).**
- 2. The Sussex Conservation District commented that the Applicant will be required to follow recommended erosion and sediment control practices during construction and to maintain vegetation; that there are no storm flood hazard areas or tax ditches affected; that it is not likely that the project will necessitate off-site drainage improvements and on-site drainage improvements; and that there are private ditches on the property.**
- 3. The Sussex County Engineering Department, Utility Planning Division, commented that the site is located in the North Millville Expansion of the Bethany Beach Sanitary Sewer District; wastewater capacity is available; Ordinance 38 construction is not required; System Connection Charge Rates will apply when sewer becomes available; central sewer has not been extended to the area at this time; that conformity to the South Coastal Area Planning Study – 2005 Update will be required; that if the parcel requires sewer service in the future, the owner could install infrastructure to an approved connection point; and that a Concept Plan is not required.**
- 4. The Applicant, Russell V. Banks, was present along with Heidi Gilmore, Esquire, Frank Kea, Land Planner and Jason Palkewicz, Professional Engineer. They stated in their presentation that the total area of the site is 31 acres; that it would not be an industrial site nor an industrial use; that the pit location would be 1,700 feet from Irons Lane and 500 feet from Old Mill Road; that it is 950 feet from the nearest off-site dwelling; that the Applicant proposes to operate the borrow pit within the naturally buffered area; that the Applicant has a licensed dirt hauling business; that there is no intention of creating a sand and gravel pit; that there are other borrow pits approved in the area, many of which have ceased operations or are nearing completion; that a Preliminary Land Use Service (PLUS) review was not required,**

but they went voluntarily; that the Sussex County Comprehensive Plan – 2008 Update has this property identified for purposes of future land use as a Low Density Area; that the State Strategies identifies the area as an Investment Level 3; that with the conditions proposed, the Conditional Use will be designed in accordance with the Sussex County Code; that the use is consistent with the trend of uses in the area; that the location provides convenient and safe access to the site; that no Traffic Impact Study was required; that they anticipate 15 to 18 trips per day to the site; that wetlands will not be affected; that the soils on the site are appropriate for use as a borrow pit; that there is no need for lighting of the area; that there will be no site preparation, site disturbance, excavation or other construction commenced until all permits are obtained; that the Applicant would operate the borrow pit by using mechanical means; that there will be no disturbance of existing trees to access the site or to build the borrow pit; that a landscaped berm will be built around the entire facility; that there will be no run-off from the pit; that underwater benches will be put in place; that there is no proposed pumping of ground water and there will be no impact to wells or groundwater levels with the exception of a minor impact that has to do with evaporation; that DelDOT stated that traffic volumes in the area are relatively light and they do not expect the borrow pit to generate enough traffic to create congestion; and that borrow pits are covered by OSHA.

5. Council found that a need exists in the area for dirt, sand, and gravel; that the material removed from this site will be used locally and throughout the County for a variety of residential and commercial uses and road construction; that this use is essential and desirable for the general convenience, safety and welfare of the current and future residents of the County; and that the borrow pit operation will be limited to areas that are currently farmed and will not generate significant tree removal.
6. The project, with the conditions and stipulations placed upon it, will not have an adverse impact on the neighboring properties or community.
7. The use is of a public or semi-public character.
8. Based on the record and recommendation of the Planning and Zoning Commission and the record created before Council, the Conditional Use is approved subject to twenty (20) conditions which will serve to minimize any potential impacts on the surrounding area and adjoining properties.