

ORDINANCE NO. 2276

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A SOLAR ELECTRIC GENERATION FACILITY TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN GEORGETOWN HUNDRED, SUSSEX COUNTY, CONTAINING 40 ACRES, MORE OR LESS (Tax Map I.D. 1-35-22.00-23.00 (Part of)

WHEREAS, on the 15th day of June 2012, a conditional use application, denominated Conditional Use No. 1941 was filed on behalf of Delaware Electric Cooperative, Inc.; and

WHEREAS, on the 9th day of August 2012, a public hearing was held, after notice, before the Planning and Zoning Commission of Sussex County and said Planning and Zoning Commission recommended that Conditional Use No. 1941 be approved with conditions; and

WHEREAS, on the 21st day of August 2012, 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. 1941 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 Georgetown Hundred, Sussex County, Delaware, and lying southeast of East Trap Pond Road (Route 62) approximately 840 feet northeast of Road 518 (Substation Road) and being more particularly described as:

BEGINNING at a point on the southeasterly right-of-way of Route 62 (East Trap Pond Road); thence N 26°02'57" E 777.39 feet and N 25°56'40" E 182.65 feet along the southeasterly right-of-way of Route 62 to a point; thence S 75°19'07" E 1,586.98 feet across lands of Heritage Lands, LLC to a field stone thence southerly the following four (4) courses: S 08°41'17" W 238.89 feet along lands of Robert F. Carusi to a pipe; S 08°40'21" W 367.10 feet along lands of Jesse S. Atkinson to a pipe; S 08°45'18" W 250.20 feet along lands of Jesse S. Atkinson to a pipe; and S 08°43'24" W 112.67 feet along lands of Timothy Conaway to a pipe; thence northwesterly following the meandering centerline of New Ditch Prong 2, a Tax Ditch, 1,861.44 feet along lands of Mary K. Workman, Trustee, to a point on the southeasterly right-of-way of Route 62, the point and place of beginning, and containing 40.0 acres, more or less, per survey prepared by Simpler Surveying & Associate, Inc.

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. No storage facilities shall be constructed on the site.**
- 2. Lighting on the facility will consist only of perimeter lighting for security purposes.**
All lighting shall be downward screened so that it does not shine on neighboring properties or roadways.
- 3. One unlighted sign not to exceed 32 square feet in size, shall be permitted.**
- 4. The site shall be secured by fencing. A locked 38 foot wide gate will permit access to the site from East Trap Pond Road, with a "Knox Box" to accommodate emergency access by the local fire company.**
- 5. If the solar electric generation facility is non-operational for a period of 12 months, the Delaware Electric Cooperative, Inc. or assigns must return the site to its original state within a 12 month period.**
- 6. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning and Zoning Commission with a landscaping plan to screen the site from neighboring houses.**

I DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE AND CORRECT COPY OF ORDINANCE NO. 2276 ADOPTED BY THE SUSSEX COUNTY COUNCIL ON THE 18TH DAY OF SEPTEMBER 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 solar electric generation facility, to be located on a certain parcel of land lying and being in Georgetown Hundred, Sussex County, containing 40 acres, more or less, lying southeast of Trap Pond Road (Route 62) approximately 840 feet northeast of Road 518 (Substation Road).**
- 2. The Sussex County Engineering Department, Utility Planning Division, commented that the site is located in the Western Sussex Planning Area #4; that an individual on-site septic system is proposed; that conformity to the Western Sussex Planning Study will be required; that the proposed use is not in an area where the County currently has a schedule to provide sewer service; and that a Concept Plan is not required.**
- 3. The Sussex Conservation District commented that the site contains six soil types; that the Applicant will be required to follow recommended erosion and sedimentation control practices during construction and to maintain vegetation; that no storm flood hazard areas are affected; that off-site drainage improvements will not be necessary; that it is very likely that on-site drainage improvements will be required; that tax ditches are evident, and that the scope of the project will determine the effect on the tax ditches.**
- 4. Terry Jaywork, Attorney for the Delaware Electric Cooperative, Inc., Mark Neilson, Vice President of Delaware Electric Cooperative, Inc. and Walt Hoey, Professional Engineer with Century Engineering, were present on behalf of this application and stated that the site is surrounded by farm land and a small tract of woodland; that the renewable energy statute mandates that the Cooperative meet 25% of their overall demand with green infrastructure; that the project should provide for good environmental use of the site and should be good for the economy;**

that the solar panels are proposed to be manufactured in Newark and should create a minimum of 40 jobs; that the solar farm will have minimal impact on the area and will be less impacting on the area residents than agricultural uses; that the solar farm will not require any chemical uses and should not create any dust, odors or noises once completed; and that the Cooperative held a public meeting at the Cheer Center on July 30, 2012 to get comments from area residents.

5. John Sergovic, Attorney with Sergovic, Carmean & Weidman, P.A., was present in support of the application on behalf of his client, Heritage Lands, LLC. He stated that the contract allows the seller to possibly develop the residual lands for residential uses, and that this facility should enhance the development of the residual lands due to the green infrastructure proposed.
6. Sondra Ware, Real Estate Broker, was present in support of the application. She stated that the use supports good stewardship of the land; that other project types could be detrimental to the area; that the green effect of solar panels creates an economic benefit for the area; and that there will be minimal run-off from the project.
7. There were three (3) people present in opposition to the application.
8. Mr. Neilson, Vice President of Delaware Electric Cooperative, Inc. commented that the transformers on site measure approximately 4' by 4' and are 3' or 4' tall and will be set on concrete slabs; that the transformers are all located to the interior of the site; that there are four (4) proposed transformers in the first Phase and three (3) in the second Phase; that the red poles are location markers for future poles, or guide wires, that will support larger conductors; that solar panels create direct current and do not pose any hazards to area residents; that the height of the solar panels proposed are 5 feet 10 inches from grade to the top of the panel; and that they reviewed a number of sites for the solar farm and this site was chosen because it is within close proximity to a Cooperative substation.
9. The proposed facility is a public utility use under the Sussex County Zoning Code and it meets the purposes of a Conditional Use in that it is of a public or semi-public character that is essential and desirable for the general convenience and welfare of Sussex County residents.

- 10. The proposed use, with the conditions imposed, will not have an adverse impact on the neighboring or adjacent properties. It is bordered on the East by a collector ditch and an unoccupied wooded area, on the South by a tax ditch and a large tract of tilled agricultural land, on the West by East Trap Pond Road and another large tract of tilled agricultural land, and on the North by yet another large tract of tilled agricultural land. The nearest residence to the proposed use, which appears to be unoccupied and abandoned, is approximately 0.1 mile from the proposed use. The nearest occupied residence is approximately 0.2 mile from the site.**
- 11. The proposed solar electric generation facility will be constructed in two (2) phases. The first phase will generate four (4) megawatts of solar electric power and a second phase will add an additional three (3) megawatts of solar electric power. The combined total of these two (2) phases will provide sufficient renewable green energy for approximately 870 homes and will be “eco-friendly.” In its first year of operation, it will decrease approximately 12,641 pounds of carbon-based generated electricity which is the equivalent of taking 1,239 automobiles off the road.**
- 12. The proposed solar generation facility will not result in a noticeable increase in traffic on adjacent and neighboring roadways. It is expected that only one vehicle trip per week on average is anticipated for inspections, maintenance and repair of the solar panels.**
- 13. The Department of Transportation has reviewed the proposed plan and has issued a “Letter of No Objection” with regard to the plan.**
- 14. Based on the record and recommendation of the Planning and Zoning Commission and the record created before the Council, the Conditional Use was approved subject to (6) six conditions, which will serve to minimize any potential impacts on the surrounding area and adjoining properties.**