

**ORDINANCE NO. 2433**

**AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR LAND APPLICATION OF BIO-SOLIDS AS AGRICULTURAL FERTILIZER FOLLOWING DNREC APPROVAL TO BE LOCATED ON CERTAIN PARCELS OF LAND LYING AND BEING IN DAGSBORO HUNDRED, SUSSEX COUNTY, CONTAINING 203.0 ACRES, MORE OR LESS (Tax I.D. No. 133-3.00-4.00 and 133-7.00-1.00, 4.00, 11.00 and 12.10 (all of or parts of)**

**WHEREAS, on the 28th day of July 2015, a conditional use application, denominated Conditional Use No. 2035 was filed on behalf of Synagro Central, LLC; and**

**WHEREAS, on the 12th day of November 2015, a public hearing was held, after notice, before the Planning and Zoning Commission of Sussex County and on the 10th day of December 2015, said Planning and Zoning Commission recommended that Conditional Use No. 2035 be and**

**WHEREAS, on the 15th day of December 2015, 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. 2035 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 Dagsboro Hundred, Sussex County, Delaware, and lying north and south of Zoar Road, northeast of Railroad, southwest of Patriot's Way, and east and west of Governor Stockley Road and being more particularly described as all or parts of Tax Map I.D. Nos. 133-3.00-4.00, and 133-7.00-1.00, 4.00, 11.00 and 12.10, said parcels containing 203.00 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:**

- a. The use shall be reviewed and approved by DNREC and shall be designed and constructed in accordance with all applicable Federal, State and County requirements, including those mandated by DNREC and other agencies having jurisdiction over it.**
- b. There shall not be any stockpiling of sludge materials on the site that are not actively being applied to the site as agricultural fertilizer.**
- c. This Conditional Use shall be valid concurrent with DNREC's permit for the use. If the DNREC permits shall be terminated or expire, this Conditional Use shall also expire. The Applicant shall notify the Sussex County Planning and Zoning Office if the permit terminates or expires.**
- d. Bio-solid application shall be limited to the hours of 7:00 a.m. to 6:00 p.m. Monday through Saturday.**
- e. There shall be buffers of at least 25 feet from all property lines, 100 feet from all off-site dwellings, 100 feet from potable wells, 25 feet from non-potable wells, 15 feet from public roads, 25 feet from streams or other bodies of water, and 25 feet from all drainage ditches. These requirements shall be subject to any increased buffers or separation distances as mandated by State or Federal requirements.**
- f. 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. 2433 ADOPTED BY THE SUSSEX COUNTY COUNCIL ON THE 15TH DAY OF DECEMBER 15, 2015.**



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**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:**

- A. This is the application of Synagro Central, LLC to consider a Conditional Use of land in an AR-1 Agricultural Residential District for land application of bio-solids as agricultural fertilizer following DNREC approval to be located on a certain parcel of land lying and being in Dagsboro Hundred, Sussex County, containing 203.00 acres, more or less. The properties are located on both sides of Zoar Road, northeast of the Railroad tracks, southwest of Patriot's Way, and on both sides of Governor Stockley Road (911 Address: None Available) Tax Map I.D. 133-3.00-4.00 and 133-7.00-1.00, 4.00, 11.00 and 12.10 (all of or parts of).**
- B. Council found that DelDOT commented that a Traffic Impact Study was not recommended and that the current Levels of Service of Stockley Road, Governor Stockley Road, and Zoar Road will not change as a result of this application.**

- C. Council found that 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 the project will not necessitate any off-site drainage improvements; and that it is not likely that the project will necessitate any on-site drainage improvements.
- D. Based on testimony before the Planning & Zoning Commission and the public hearing before the Sussex County Council, Council found that John Ueupis was present at the Planning & Zoning Commission hearing on behalf of Synagro Central, LLC with James Baxter, Jr. and James Baxter IV, and that Avery Dunn was present at the Council hearing on behalf of Synagro Central, LLC with James Baxter IV; that they stated that the liquefied bio-solids will be used as farm fertilizer on lands owned by Baxter Farms; that the parcels are adjacent to other lands farmed by Baxter Farms and allows for nutrient management of those farms; that Baxter Farms has been applying bio-solids on the adjacent farms for 20 years; that the land will be farmed for approved crops under the DNREC bio-solids regulations and are regulated by both DNREC and the EPA; that a decade of assessments exists in the evaluation of the use of bio-solids; that bio-solids have been used from the Town of Georgetown Wastewater Treatment Plant; that the bio-solids are hauled in by tractor trailer in liquid form and trenched, injected, and covered in one process; that the sites are the same as those previously used for the Town of Georgetown Wastewater Treatment Plant and that the purpose of this application is to accommodate bio-solids from the Georgetown Wastewater Treatment Plant; that there are no restrictions other than the setbacks required by DNREC; that they grow vegetable crops, including sweet corn and beans; that within three years of injecting the bio-solids, commercial buyers will accept vegetable crops; that they anticipate no negative impact on neighboring wells; that they have no concerns about run-off impacting the adjacent vegetable fields; that the soils are being reviewed for submittal to DNREC; that eight or nine monitoring wells have been installed; and that injections are staggered and no applications are performed annually on the same tract.
- E. Council also found that the Applicant is requesting that additional parcels be approved for bio-solids application so they can better manage the land; that the parcels were previously permitted by the Town of Georgetown but the Town has since let their permit lapse; that Parcel 133-7.00-1.00 was recommended for removal by the Planning and Zoning Commission due to a misunderstanding; that this parcel is not a contiguous piece of land and is divided by Governor Stockley Road; that they still plan to apply bio-solids on the piece of this parcel on the west side of the road and that the east side of the parcel is used for vegetable production; therefore, they asked for Parcel No. 133-7.00-1.00 to be included in the Conditional Use application along with the rest of the application (listed in the title of the ordinance).
- F. Council also found that, at the hearing, Ms. Dunn distributed updated maps to more clearly show the property; that Mr. Baxter resides on the site; and that the DNREC permit is for a term of five (5) years after which time it will be reviewed for renewal.
- G. Based on the record and recommendation of the Planning and Zoning Commission and the Planning and Zoning Commission's Findings (1 through 7) and Conditions (a through f), as amended, Council found that:
1. The proposed use of the subject property is generally of a public or semi-public character and is essential and desirable for the general convenience and welfare of neighboring communities and the County.
  2. The use will be reviewed, approved, regulated and monitored by the Delaware Department of Natural Resources and Environmental Control.
  3. The use will create a disposal area for treated bio-solids that will have the sufficient capacity to serve a substantial volume of users in this area of Sussex County.
  4. The use, with the stipulations and conditions placed upon it, will not have any adverse impact upon the County or its residents.

- 5. This is an expansion of the existing application of bio-solids on adjacent and nearby properties owned by Baxter Farms. The addition of the subject property will allow even better nutrient management on these properties.**
- 6. The bio-solid disposal process will be designed to minimize impacts on neighboring and adjacent properties as well as the environment. This includes the rotation of the application of bio-solids on this and other properties with adjacent buffering.**
- 7. The use of this property for the application of bio-solids promotes the continued agricultural use of the property. That underlying use for agricultural purposes will not be changed as a result of this conditional use.**
- 8. Based on the record and recommendation of the Planning & Zoning Commission, the Conditional Use is approved subject to six (6) conditions (a. – f.) which will serve to minimize any potential impacts on the surrounding area and adjoining properties.**