

ORDINANCE NO. 2448

AN ORDINANCE TO AMEND CONDITION NO. 19 OF CONDITIONAL USE NO. 1413 (ORDINANCE NO. 1530) TO ALLOW ADDITIONAL TIME TO COMPLETE THE EXISTING BORROW PIT OPERATION LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN SEAFORD HUNDRED, SUSSEX COUNTY, CONTAINING 200.5 ACRES, MORE OR LESS

WHEREAS, on the 3rd day of November 2015, a conditional use application, denominated Conditional Use No. 2043 was filed on behalf of Edward J. Kaye; and

WHEREAS, on the 10th day of March 2016, a public hearing was held, after notice, before the Planning and Zoning Commission of Sussex County and on the 24th day of March 2016 said Planning and Zoning Commission recommended that Conditional Use No. 2043 be approved with conditions; and

WHEREAS, on the 17th day of May 2016, 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. 2043 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 Seaford Hundred, Sussex County, Delaware, and lying at the northeast corner of Road 531 (Eskridge Road) and Road 533 (Sanfilippo Road) and being more particularly described in the text of Ordinance No. 1530 for Conditional Use No. 1413, said parcel containing 200.5 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 amending Condition No. 19 to Conditional Use No. 1431 (Ordinance No. 1530) to read as follows:

19. After 15 years, the property owner shall complete and pay for an Environmental Impact Study, as the phrase is defined by DNREC, or any successor. Upon certification of DNREC of owner's compliance with then-existing regulations, the permit shall be extended for an additional twenty (20) years. This permit shall terminate upon the expiration of thirty-five (35) years from the date of enactment.

I DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE AND CORRECT COPY OF ORDINANCE NO. 2448 ADOPTED BY THE SUSSEX COUNTY COUNCIL ON THE 17TH DAY OF MAY 2016.

**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 Edward J. Kaye to amend Condition No. 19 of Conditional Use No. 1413 (Ordinance No. 1530) to allow additional time to complete an existing borrow pit operation located on a certain parcel of land lying and being in Seaford Hundred, Sussex County, containing 200.5 acres, more or less. The property is located at the northeast corner of Road 531 (Eskridge Rd.) and Road 533 (Sanfilippo Road). (911 Address: 22223 Eskridge Road, Seaford) (Tax Map I.D. 331-4.00-49.00).**
- B. Council found that DelDOT commented that a Traffic Impact Study was not recommended and that the current Level of Service "A" of Eskridge Road may change to a Level of Service "C".**
- C. Council found that the Sussex County Engineering Department, Utility Planning Division, commented that the project is located in the Western Sussex Planning Area #3; that a private septic system will be utilized; that the project is not capable of being annexed into a County operated Sanitary Sewer or Water District; that conformity to the Western Sussex Planning Study will be required; that the proposed borrow pit expansion is not in an area where the County currently has a schedule to provide sewer service; and that a concept plan is not required.**
- D. Based on testimony before the Planning & Zoning Commission and the public hearing before the Sussex County Council, Council found that Edward J. Kaye was present with Dennis Schrader, Esquire, and William Childs of Chaney Enterprises of Freedom, Maryland; that they presented a short powerpoint display on Chaney Enterprises to introduce Chaney Enterprises to the Council; that the basis of this application is to request a 10 year extension to the time limit on Conditional Use No. 1431 to allow more time to complete the borrow pit operation; that they realize that an Environmental Assessment is required and that they are willing to do an additional Environmental Assessment with the additional time extension; that Mr. Kaye has been in business for 40 years and has entered into a sales agreement to convey Sussex Sand and Gravel and Seaford Concrete Products, LLC to Chaney Enterprises; that the borrow operation was started in 2002 with major activities in 2006; that the real estate market had a downturn and substantially reduced the borrow activities; that all buffers have been completed and remain in place, and no further encroachments are proposed into those areas; and that the only intent of the application is to allow continued mining of the borrow product to complete the borrow pit that was originally intended and started.**

E. Council also found that Mr. Kaye will remain active in the business; that an Environmental Assessment Report is due in 2017 and will be performed and submitted to the State DNREC; that they will do another Environmental Assessment Report in another ten (10) years; that no violations of any regulations exists; that the interior service road is paved within the project; that the sand plant is electric, and creates little to no noise; and that access to the site is via the existing commercial truck entrance.

F. Based on the record and recommendation of the Planning and Zoning Commission, the Planning and Zoning Commission's Findings (1 through 6) and the record created during the public hearing before the Sussex County Council, Council approved the amendment of Condition No. 19 of Conditional Use No. 1413 (Ordinance 1530) to allow additional time to complete the existing borrow pit operation for the following reasons:

1. Conditional Use #1413 was approved by County Council on April 9, 2002. Condition 19 of that approval currently states:

After 15 years, the property owner shall complete and pay for an Environmental Impact Study, as the phrase is defined by DNREC, or any successor. Upon certification of DNREC of owner's compliance with then-existing regulations, the permit shall be extended for an additional ten (10) years. This permit shall terminate upon the expiration of twenty-five (25) years from the date of enactment.

2. The Applicant has stated that operations on the site slowed during the recent economic downturn and that more time is necessary to complete all operations on the site. There are mineral reserves on the site that cannot be mined within the original timeframe established by Condition 19.
3. The application does not seek an expansion of the borrow pit area, only the timeframe for completing the work that was previously approved.
4. There continues to be a need in Sussex County for gravel and borrow materials mined from this site.
5. Based on these findings, it is recommended that Condition #19 of Conditional Use #1413 be amended to allow an additional ten (10) years of time to complete all borrow pit operations, so that Condition #19 now reads as follows:

After 15 years, the property owner shall complete and pay for an Environmental Impact Study, as the phrase is defined by DNREC, or any successor. Upon certification of DNREC of owner's compliance with then-existing regulations, the permit shall be extended for an additional twenty (20) years. This permit shall terminate upon the expiration of thirty-five (35) years from the date of enactment.

6. All other conditions of Conditional Use #1413 that are not affected by this amendment shall remain in effect.