

ORDINANCE NO. 2511

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A RECYCLE CENTER AND WEIGHT SCALE OPERATION TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN GUMBORO HUNDRED, SUSSEX COUNTY, CONTAINING 30.89 ACRES, MORE OR LESS

WHEREAS, on the 30th day of January 2017, a conditional use application, denominated Conditional Use No. 2084, was filed on behalf of Term 2, LLC; and

WHEREAS, on the 22nd day of June 2017, a public hearing was held, after notice, before the Planning and Zoning Commission of Sussex County and on the 13th day of July 2017, said Planning and Zoning Commission recommended that Conditional Use No. 2084 be approved with conditions; and

WHEREAS, on the 25th day of July 2017, 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. 2084 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 Gumboro Hundred, Sussex County, Delaware, and lying on the north side of Lowes Road, approximately 63 feet southwest of Betts Road, and being more particularly described per the attached deed prepared by Parkowski, Guerke & Swayze, P.A., said parcel containing 30.89 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 limited to a recycling center with a scale for concrete, asphalt, wood, soils and other similar materials. No food products, metals, sanitary wastes or liquids shall be accepted at the site.**
- b. Material acceptance and processing hours shall be limited to 7:00 a.m. through 7:00 p.m., Monday through Saturday.**
- c. There shall be a vegetated buffer of at least 50 feet from all boundaries of the site.**
- d. No material processing shall occur within 100 feet of County Road 427.**
- e. Water truck shall be available to control dust within the site.**
- f. One lighted shall be permitted. It shall not be greater than 32 square feet per side.**
- g. The Applicant shall comply with all DelDOT requirements.**
- h. Upon conclusion of the use of this Conditional Use, the site shall be reclaimed by planting trees and/or grass, and shall be noted on the Final Site Plan.**
- i. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.**

I DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE AND CORRECT COPY OF ORDINANCE NO. 2511 ADOPTED BY THE SUSSEX COUNTY COUNCIL ON THE 25TH DAY OF JULY 2017.

**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 Term 2, LLC for the consideration of a Conditional Use of land in an AR-1 Agricultural Residential District for a recycle center and weight scale operation to be located on a certain parcel of land lying and being in Gumboro Hundred, Sussex County, containing 30.89 acres, more or less (located on the north side of Lowes Road, approximately 63 feet southwest of Betts Road) (Tax I.D. No. 333-14.00-23.00) (911 Address: 20139 Lowes Road, Millsboro).**
- B. Based on testimony before the Planning & Zoning Commission and the public hearing before the Sussex County Council, Council found that Dennis L. Schrader, Esquire, with Morris James Wilson Halbrook & Bayard LLP; Barry Baker, Principal Owner; Kyle Lampron, with Ten Bears Environmental; and Michael Reimann, with Becker Morgan Group, were present on behalf of the application; that the property is 30.88 acres and zoned AR-1; that there have been two (2) previous applications for a Conditional Use on this property; that the first Conditional Use No. 187 was approved in 1974 for a borrow pit; that the Commission recently reviewed a site plan for a 8,000 square foot pole barn with weight scales; and that Applicant proposes a recycle center and weight scale operation.**

- C. Council also found that the use is consistent with the Comprehensive Plan; that the site is in a Low Density Area and in an Investment Level 4 Area according to State Strategies; that no Traffic Impact Study was required from DelDOT; that they have on-site septic and well; that the property has been a borrow pit since 1974 and also a hot mix operation plant; that there is woods located on three (3) sides of the property and across the street; that there is a trucking business and a construction business in the area, and the rest is agricultural use; that there are two (2) existing entrances; that there are no issues with traffic and neighbors; that there are five (5) to seven (7) trucks entering the site per hour and maybe fifty (50) loads a day; that they will try to direct traffic to come down the east side of Lowes Road to enter the site; and that there is a fence on Lowes Road.**
- D. Council further found that the type of materials that would be coming to the site are construction debris, concrete, recycled asphalt, top soil, and wood materials to be reused off-site; that they are not looking to expand the site area; that they are proposing two (2) small office buildings; that they are going to use the existing pavement for parking; that there will be a permit from DNREC giving permission for crushing on-site; that the crushing equipment would be brought to the site to do crushing when needed; that they are expanding their work in Sussex County; that they will have seven (7) employees; that the operations are 6:00 a.m. to 6:00 p.m. Monday – Saturday; that 75% of the materials come from their own company; that they are available to take materials from smaller companies; that there will be no food product; that the site will only contain concrete, asphalt, wood, and top soil; that there will be a chipper for chipping wood for mulch; that there will be a dumpster on-site that will have to be screened; that there will be a thirty-two (32) square foot lighted sign; that there won't be much noise on site; that the crusher will be placed back in a corner; that there will be lots of trees to control the noise and water to control the dust; that the nearest resident is 800 feet from the site; that there is a berm under construction; that there will be a fence around the frontage to start; that they can crush and chip at different hours; and that the site is no longer a borrow pit.**
- E. Based on the record and recommendation of the Planning and Zoning Commission and the Planning and Zoning Commission's Findings (1 through 5) and Conditions (6a – i), as amended, Council found that:**
- 1. This site has been used for similar operations in the past. It was approved in 1974 as a borrow pit under Conditional Use #187, and has been in operation under that approval ever since. Also, an updated site plan for the borrow pit was approved by the Planning and Zoning Commission last year.**
 - 2. The area around the Applicant's property is primarily agricultural, with some commercial uses. This is an appropriate location for this use.**
 - 3. The use as a recycling facility for materials such as concrete, asphalt and wood will benefit the citizens and the environment of Sussex County. By recycling these materials, there will be a reduction of materials going to the landfills.**
 - 4. The use will not adversely affect the neighboring properties, roadways, or the community.**
 - 5. 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.**
 - 6. Based on the record and recommendation of the Planning & Zoning Commission and the record created before the Sussex County Council, the Conditional Use is approved subject to nine (9) conditions (a – i), as amended, which will serve to minimize any potential impacts on the surrounding area and adjoining properties.**