

ORDINANCE NO. 2514

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR COMPOSTING, INCLUDING POULTRY BY-PRODUCTS; GREENHOUSES; MIXING, BLENDING AND BAGGING COMPOST AND POTTING SOIL PRODUCTS; TRUCKING PRODUCTS; ALL WHOLESALE TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN CEDAR CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 31.9478 ACRES, MORE OR LESS

WHEREAS, on the 11th day of August 2016, a conditional use application, denominated Conditional Use No. 2071 was filed on behalf of Blessing Greenhouses and Compost; and

WHEREAS, on the 23rd day of March 2017, a public hearing was held, after notice, before the Planning and Zoning Commission of Sussex County and on the 11th day of May 2017, said Planning and Zoning Commission recommended that Conditional Use No. 2071 be approved with conditions; and

WHEREAS, on the 25th day of April 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. 2071 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 Cedar Creek Hundred, Sussex County, Delaware, and lying on the northwest corner of Draper Road and Thirteen Curves Road, also on the west of Draper Road, and being more particularly described per the attached legal description.

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 Applicant shall comply with all requirements established by DNREC and any other regulatory agency having jurisdiction over this use. Failure to comply with DNREC or other agency requirements shall result in the termination of this Conditional Use.**
- B. No new, uncomposted materials (other than what is necessary to complete the composting process for materials existing on the site) shall be accepted at the site until the areas of the concrete pre-composting pad are cleared of the materials that currently exist there as required in the fourth and fifth bullet items of DNREC's March 31, 2017 letter to Jennifer Walls, Sussex County Planning and Zoning Manager. The removal of these materials must be underway immediately upon the adoption of the ordinance approving this Conditional Use by County Council, with inspections by Sussex County and DNREC occurring every 3 months to review and report on the status of this work. The quarterly inspections shall include consideration of whether the Applicant is actively cleaning up the site and improved odors coming from it as stated by the Applicant during the public hearing on this application and whether the overall effects of this use upon the neighboring area (including smells) are generally improving. If the Commission finds that any of these requirements are not being satisfied, it may terminate this Conditional Use for non-compliance or require further review of it, including a public hearing.**
- C. Once the current materials are removed, pre-compost storage shall only occur on the existing concrete slab, subject to DNREC's inspections of that slab as existing compost material is removed from it.**
- D. The Applicant shall comply with all Sussex Conservation District requirements for the site. Failure to comply with any of these requirements shall result in the termination of the use.**
- E. Material processing hours, including the use of heavy equipment, will be limited to 7:00 a.m. - 7:00 p.m., Monday through Saturday.**
- F. Material acceptance hours will be limited to 7:00 a.m. – 4:00 p.m., Monday through Saturday.**

- G. As proposed by the Applicant, there shall be a landscaped buffer of at least 25 feet around the entire property, to be increased if required by other agencies. This buffer shall include a vegetated berm of at least 8 feet in height. A landscape plan showing the landscaping within the proposed buffer shall be shown on the Final Site Plan.**
- H. All new composting shall only occur within new covered concrete-floored composting buildings designed to hold at least 4,000 cubic yards of compost at a time.**
- I. A water truck shall be available to control dust within the site.**
- J. Once the pre-compost pad is cleared of materials as required by Conditions B and C, this Conditional Use shall be inspected at least annually by DNREC and a County Inspector, with a report from both provided to the Commission. These inspections shall include consideration of whether the Applicant has actively cleaned up the site and improved the odors coming from it as stated by the Applicant during the public hearing on this application; whether the Applicant is in compliance with the conditions of this approval (including all DNREC and Sussex Conservation District (SCD) requirements); and whether the overall effects of this use upon the neighboring area (including smells) are generally improving. Once the pre-compost pad is cleared of said materials, Applicant shall be prohibited from using the pad for composting purposes. Applicant shall only be permitted to use the pad for purposes incidental to its composting business, such as parking, firewood storage and other minor non-composting uses. If the Commission finds that any of these requirements are not being satisfied, it may terminate this Conditional Use for noncompliance or require further review of it, including a public hearing.**
- K. No sanitary waste shall be accepted at the site.**
- L. The Applicant may bag and blend materials properly accepted and composted at the site pursuant to this approval.**
- M. If this property has not been remediated in accordance with DNREC requirements at least four (4) months from the date of this approval, Applicant shall be required to: 1) obtain a performance bond for the benefit of the County in the amount of One Million Dollars (\$1,000,000.00) to remediate this property in accordance with DNREC requirements within one (1) year of the date of this Conditional Use approval; and 2) execute any and all documents necessary to allow the County to utilize the funds under the performance bond and any and all agreements, permits, and documents necessary**

to complete the remediation of the property in accordance with the DNREC requirements including but not limited to an agreement that allows the County to access the property and perform this work. The performance bond and all necessary contracts and documents shall be in place no later than four (4) months and one (1) day from the date of this approval and shall be signed by Applicant and all landowners.

- N. If Applicant applies any compost to agricultural land, that application shall fully comply with all DNREC regulations including but not limited to disking, or other incorporation of, the compost into the soil to prevent odors from emanating from the application site.
- O. The Final Site Plan including all buildings, buffers, a landscaping plan (with types, heights and/or diameter of plantings shown) and stormwater management facilities shall be subject to the review and approval of the Planning and Zoning Commission.
- P. Failure to comply with any condition contained herein shall invalidate this Conditional Use.

I DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE AND CORRECT COPY OF ORDINANCE NO. 2514 ADOPTED BY THE SUSSEX COUNTY COUNCIL ON THE 8TH DAY OF AUGUST 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 Blessing Greenhouses and Compost for the consideration of a Conditional Use of land in an AR-1 Agricultural Residential District for composting, including poultry by-products; greenhouses; mixing, blending and bagging compost and potting soil products; trucking products; all wholesale to be located on a certain parcel of land lying and being in Cedar Creek Hundred, Sussex County, containing 31.9478 acres, more or less (located near the northwest corner of Draper Road and Thirteen Curves Road on the west side of Draper Road) (Tax I.D. No. 230-15.00-34.00 & 35.00) (911 Address: 9372 Draper Road, Milford).
- B. Council found that Timothy Willard, Esquire, of Fuqua, Willard, Stevens, and Schab, P.A.; Bruce Blessing, Applicant and Organic Farmer; William Edward Stephens, Professional Geologist, President of Stephens Environmental Consulting, Inc.; Billie Gibson; Brian Jerose, President of Agrilab Technologies; and Nelson Widell, The Peninsula Compost Group, LLC, were present on behalf of the Applicant, and provided testimony at the public hearing before the Planning & Zoning Commission and the public hearing before the Sussex County Council.
- C. Based on the record and recommendation of the Planning and Zoning Commission and the Planning and Zoning Commission's Findings (1 through 9) and Conditions (10A –P), as amended, Council found that:

- 1. This is a project that has had a lot of attention and scrutiny lately by the public and even DNREC. The record is clear that both DNREC and the Applicant have been working to create a pathway to clean up the site and improve the general conditions and their impact upon the area.**
- 2. The use, if conducted appropriately, is for the semi-public purpose of recycling wastes into composting material that is useful in gardens and for crop production. If operated correctly, it is close to the type of farming operations permitted on land zoned AR-1 Agricultural Residential District.**
- 3. There have been many concerns expressed by neighbors about current conditions on the property and the smells and other adverse effects coming from it. But, these are in large part due to what has occurred there in the past, and not the improved operations that have been proposed as part of this Conditional Use.**
- 4. A denial of the Conditional Use would likely mean that what is there now would simply continue to decay, worsening the impacts on the adjacent properties, the smells, and possibly the environment. A denial would not provide a path forward with new and improved technology on the site that would limit or eliminate the adverse impacts that currently exist. A denial would also likely be detrimental to the solutions that DNREC and the Applicant have agreed upon for the site, both in cleanup and future uses.**
- 5. A recommendation for approval should not be without limits, however. For example, the use should be reviewed periodically for compliance and to review any adverse consequences from the use.**
- 6. The use as a compost facility will benefit the citizens and the environment of Sussex County. By recycling materials such as yard waste, vegetable waste, poultry waste, and wood into compost, there will be a reduction of materials going to the landfills.**
- 7. The compost generated at the site will be available for local agricultural and horticultural uses.**
- 8. The use promotes the Conservation Element of the County's Comprehensive Land Use Plan.**
- 9. The ongoing use will continue to be monitored by DNREC, and this approval is contingent upon all DNREC approvals remaining in effect.**
- 10. 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 sixteen (16) conditions (A – P), as amended, which will serve to minimize any potential impacts on the surrounding area and adjoining properties.**