

ORDINANCE NO. 2549

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A SOLAR ARRAY FARM TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN DAGSBORO HUNDRED, SUSSEX COUNTY, CONTAINING 70.0 ACRES, MORE OR LESS

WHEREAS, on the 31ST day of August 2017, a conditional use application, denominated Conditional Use No. 2114, was filed on behalf of Spangler Strategic Advisers, LLC; and

WHEREAS, on the 25th day of January 2018, a public hearing was held, after notice, before the Planning and Zoning Commission of Sussex County and on the 8th day of February 2018, said Planning and Zoning Commission recommended that Conditional Use No. 2114 be approved with conditions; and

WHEREAS, on the 20th day of February 2018, 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. 2114 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 on the southeast corner of DuPont Boulevard (Route 113) and Betts Lane, and being more particularly described per the attached deed prepared by Moore & Rutt, P.A., said parcel containing 70.0 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. No storage facilities shall be constructed on the site.**
- B. Lighting on the facility will consist of perimeter lighting for security purposes. All lighting shall be downward screened so that it does not shine on neighboring properties or roadways.**
- C. One lighted sign, not to exceed 32 square feet in size, shall be permitted.**
- D. The site shall be secured by fencing with a gate with a “Knox Box” to accommodate emergency access by the local fire company or other emergency responders.**
- E. There shall be a vegetation buffer of no less than 30 feet around the entire perimeter of the site to screen it from neighboring properties and roadways, with a 6 foot fence inside the land side of the buffer.**
- F. All of the grounds, including the area outside of the fence, shall be maintained so that it does not become overgrown.**
- G. All national industry standards shall be followed in the construction of the project.**
- H. The Applicant shall cooperate with the Delaware Department of Agriculture for appropriate plantings for a bee habitat.**
- I. The preference for the entrance shall be from Route 113 if permitted by DelDOT.**
- J. 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. 2549 ADOPTED BY THE SUSSEX COUNTY COUNCIL ON THE 20TH DAY OF FEBRUARY 2018.

**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 Spangler Strategic Advisers, LLC for a Conditional Use of land in an AR-1 Agricultural Residential District for a solar array farm to be located on a certain parcel of land lying and being in Dagsboro Hundred, Sussex County, containing 70.0 acres, more or less (located at the southeast corner of DuPont Blvd. (Route 113) and Betts Lane) (Tax I.D. No. 133-6.00-123.00 (portion of) (911 Address: Not Available).**

- 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, Thomas Spangler, Principal with Spangler Strategic Advisers, LLC and Dr. Kristi Shaw were present on behalf of the application; that the application did not have to go to PLUS; that this proposal is for a solar array farm/solar electric generation farm in the order of 14.9 megawatts of energy; that the power is sold back to the market; that the Comprehensive Plan identifies this as a low density area; that the site is in a State Strategies Level 4 Area; that the property is currently used for agriculture; that the Applicant is proposing to subdivide the parcel which is divided by Route 113; that there are residential properties to the north and east side; that there are businesses and mixed uses to the south of the property; that the site will be landscaped properly and the land and buffers will be manicured; that the solar piece will be fenced; that the fence will be on all sides; that there will be a transformer on the site; that there will be limited access for construction and maintenance purposes; that there will be no deliveries; that there will be no employees on the site; that it is inspected by a crew of four on a quarterly to annual basis to clean panels and maintain the property; that there will be no noise, dust or odors; and that it will meet the conditional use standards and Comprehensive Plan.**
- C. Council also found that Dr. Shaw stated there are no environmental concerns created by this use; that Mr. Spangler stated that the panels would be similar to the height of Delaware Electric Co-op's facility which is four feet; that the panels will be fixed panels; that they put this project out to bid and they have a number of suppliers available that have adequate panels in stock and have American made panels; that they would like a lighted sign; that Mr. Schrader stated if Betts Lane is a private road, they will need to get approval from owners of the road and will talk to DelDOT; and that it may be built all in one phase.**
- D. 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 through 6J), as amended, Council found that:**
- 1. 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.**
 - 2. The proposed use will not have any adverse impact on the neighboring or adjacent properties.**
 - 3. The proposed solar generation facility will not result in any noticeable increase in traffic on adjacent and neighboring roadways. There are no regular employees at the site, only periodic visits for inspections, maintenance or repair of the solar panels.**
 - 4. The Delaware Department of Transportation has reviewed the proposed plan and has issued its letter of service report on the project.**
 - 5. No noise, dust or odor will be generated by the facility.**
 - 6. Based on the record and recommendation of the Planning & Zoning Commission, the Conditional Use is approved subject to the following ten (10) conditions (A through J), as amended, which will serve to minimize any potential impacts on the surrounding area and adjoining properties.**