

ORDINANCE NO. 2642

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A SOLAR ARRAY FACILITY TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN DAGSBORO HUNDRED, SUSSEX COUNTY, CONTAINING 91.304 ACRES, MORE OR LESS

WHEREAS, on the 3rd day of October 2018, a conditional use application, denominated Conditional Use No. 2158, was filed on behalf of Millsboro Solar, LLC; and

WHEREAS, on the 14th day of February 2019, a public hearing was held, after notice, before the Planning and Zoning Commission of Sussex County and on the 28th day of February 2019, said Planning and Zoning Commission recommended that Conditional Use No. 2158 be approved with conditions; and

WHEREAS, on the 2nd day of April 2019, 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. 2158 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 north side of Nine Foot Road, approximately 0.27 mile west of Gum Tree Road, and on the south side of Nine Foot Road, approximately 0.2 mile west of Gum Tree Road, and being more particularly described in the attached legal description prepared by Smith O'Donnell Feinberg & Berl, LLP, and D. Stephen Parsons, P.A., said parcel containing 91.304 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 shall only consist of perimeter lighting needed for security purposes. All lighting shall be downward screened so that it does not shine on neighboring properties or roadways.**
- C. One unlighted 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 vegetated buffer between the boundary of the conditional use area and the perimeter fence to screen the use from the view of neighboring properties. This buffer shall be at least 30-feet wide, with at least 12 evergreen trees and 10 shrubs per 100 linear feet. This buffer shall be located along Nine Foot Road, Fox Run and the northeast border of the site between Nine Foot Road and Fox Run.**
- F. Any transformers or similar equipment shall be centrally located on the site away from all nearby residential uses.**
- G. All grounds, including the area outside of the fence, shall be maintained so that they do not become overgrown.**
- H. 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. 2642 ADOPTED BY THE SUSSEX COUNTY COUNCIL ON THE 2ND DAY OF APRIL 2019.

**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 Millsboro Solar, LLC for the consideration of the Conditional Use of land in an AR-1 Agricultural Residential District for a solar array facility to be located on a certain parcel of land lying and being in Dagsboro Hundred, Sussex County, containing 91.304 acres, more or less (lying on the north side of Nine Foot Road, approximately 0.27 mile west of Gum Tree Road, and on the south side of Nine Foot Road, approximately 0.2 mile west of Gum Tree Road) (Tax I.D. No. 233-15.00-57.01 & 57.02) (911 Address: None Available).**

- B.** Based on the record before the Planning and Zoning Commission and the hearing before the Sussex County Council, Council found that Linda Nwadike, Engineer with SunEnergy 1, LLC (“SunEnergy”), and Carla Rickards, the property owner, and Andrew Willey, grandson of the late Bruce Rickards, were present at the Planning and Zoning Commission hearing, and Linda Nwadike and William McCain of W. R. McCain & Associates, Inc. were present at the Sussex County Council hearing on behalf of the application; that SunEnergy is one of the top five solar developers in the United States and is based in North Carolina; that this would be their first project in Delaware; that this is a proposed six-megawatt project; that the land is zoned AR-1 (Agricultural Residential District); that SunEnergy would lease the farmland; that a fence and landscape buffers would be provided along the roads; that they are proposing a landscaping buffer that, for every 100 linear feet, there would be 12 evergreen trees and 10 shrubs with additional ornamental grass; that the late Mr. Rickards was pro solar and pro clean energy; that he wanted utility scale solar for this land; that Mr. Bruce Rickards has passed away since starting on this project; that Mr. Rickards’ family would like to proceed with his wishes and continue with the project; and that the closest solar panel to a residence would be 200 feet from the property owner’s house and 500 feet from the adjacent house that is not owned by the property owner.
- C.** Council also found that the property is located in a low-density area; that the property is located in the Delaware State Strategies for Spending Level 4 Area; that DelDOT did not require a Traffic Impact Study (TIS); that there are two solar facilities in the area and one was approved one year ago; that SunEnergy will try to hire local contractors for the project; that there would be no water and sewer on the site; that there would be no noise after construction is completed; that the construction would take approximately five months; that only a few people would visit the site after the construction is completed; that the panels have a warranty of 25 years; that after 25 years, the energy efficiency of the panels decreases due to degradation, but the panels would still work at up to 80% capacity; that SunEnergy would monitor the panels from its headquarters through use of a scanner system, but it would have a local person check on the panels if there are any issues; that SunEnergy would be working with Delmarva Power; and that it would take five years for the system to pay for itself.
- D.** Based on the record and recommendation of the Planning and Zoning Commission and the Planning and Zoning Commission’s Findings (1 through 4) and Conditions (5A through H), 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.** With the conditions imposed in this recommendation, 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.** No noise, dust or odor will be generated by the facility.
 - 5.** Based on the record and recommendation of the Planning & Zoning Commission, the Conditional Use is approved subject to eight (8) conditions (A - H), which will serve to minimize any potential impacts on the surrounding area and adjoining properties.