

ORDINANCE NO. 2706

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT AND GR GENERAL RESIDENTIAL DISTRICT FOR SLUDGE AND WASTEWATER SPRAY IRRIGATION TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 351.86 ACRES, MORE OR LESS

WHEREAS, on the 13th day of May 2019, a conditional use application, denominated Conditional Use No. 2186, was filed on behalf of Mountaire Farms of Delaware, Inc.; and

WHEREAS, on the 10th day October 2019, a public hearing was held, after notice, before the Planning and Zoning Commission of Sussex County and on the 24th day of October 2019, said Planning and Zoning Commission recommended that Conditional Use No. 2186 be approved with conditions; and

WHEREAS, on the 5th day of November 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, Articles IV and VI, Subsections 115-22 and 115-39, Code of Sussex County, be amended by adding the designation of Conditional Use No. 2186 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 Indian River Hundred, Sussex County, Delaware, and lying on both sides of Mount Joy Road approximately 52 feet west of Townsend Road, and being on both sides of Townsend Road approximately 157 feet south of Mount Joy Road, and being on the southeast corner of Mount Joy Road and Townsend Road, the northeast corner of Maryland Camp Road and Townsend Road, and the southwest corner of Maryland Camp Road and William Street Road, and being more particularly described in the attached legal description prepared by Parkowski, Guerke & Swayze, P.A., said parcel containing 351.86 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:

- 1. The application of sludge and wastewater spray irrigation shall be subject to DNREC and other state and federal regulatory approvals.**
- 2. The application of sludge and wastewater shall be limited to sludge and wastewater from Mountaire Farms.**
- 3. There shall not be any stockpiling of sludge materials or wastewater on-site.**
- 4. The maximum number of sludge and wastewater applications on the property shall be subject to the approval of DNREC and other regulatory agencies with jurisdiction over this use.**
- 5. This Conditional Use shall be valid concurrent with DNREC's permits for this use. If the DNREC permits shall be terminated or expire, this Conditional Use shall also terminate and expire.**
- 6. All stormwater management facilities shall be subject to the review and approval of the Sussex Conservation District. The Final Site Plan shall include the approval of the Sussex Conservation District for the design and location of the stormwater management areas.**
- 7. Prior to the submission of the Final Site Plan, the Applicant must provide copies of all active permits from DNREC demonstrating that the Applicant has received all necessary approvals and permits from DNREC to apply the sludge and wastewater spray irrigation on this property.**
- 8. The failure to abide by these conditions shall result in the termination of the Conditional Use approval.**
- 9. The Applicant shall submit a Final Site Plan, which 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. 2706 ADOPTED BY THE SUSSEX COUNTY COUNCIL ON THE 18TH DAY OF FEBRUARY 2020.

**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 Mountaire Farms of Delaware, Inc. for a Conditional Use of land in an AR-1 Agricultural Residential District and GR General Residential District for sludge and wastewater spray irrigation to be located on a certain parcel of land lying and being in Indian River Hundred, Sussex County, containing 351.86 acres, more or less (lying on both sides of Mount Joy Road, approximately 52 feet west of Townsend Road, and being on both sides of Townsend Road, approximately 157 feet south of Mount Joy Road, and being on the southeast corner of Mount Joy Road and Townsend Road, the northeast corner of Maryland Camp Road and Townsend Road, and the southwest corner of Maryland Camp Road and William Street Road) (Tax I.D. No. 234-28.00-1.00, 2.00, and 3.00) (911 Address: None Available).
- B. Based on the record before the Planning and Zoning Commission and the Public Hearing before the Sussex County Council, Council found that Lisa McLaughlin, Esquire, with Phillips Goldman McLaughlin and Hall, and Austin Pajda and Michael Tirrell, with Mountaire Farms of Delaware, Inc. (“Mountaire”), appeared on behalf of the Applicant before the Planning and Zoning Commission; and that Lisa McLaughlin, Michael Tirrell, and Tanya Rogers-Vickers of Mountaire were present on behalf of the Applicant before the Sussex County Council; that Mountaire is requesting a Conditional Use; that Mountaire currently spray irrigates its treated poultry processed water on thirteen (13) fields; that there are five (5) fields for land application of sludge which are underutilized; that Mountaire wants to repurpose two (2) of the fields to allow spray irrigation on these fields; that when there is more acreage to spray, it is better for the environment; that Mountaire has no plans to increase production or to increase the amount of treated processed water applied to the fields; that this will be good for the County; and that it will help Mountaire achieve its objectives with the Department of Natural Resources and Environmental Control (DNREC).
- C. Council also found that a Conditional Use is required for all bio solid application sites after May 1990; that the Rust and Thorogood Farms were permitted by DNREC through an agriculture utilization permit that began in June 1990; that Mountaire purchased this property in early 2000s and all active permits transferred with ownership; that the sludge application permits were renewed every five (5) years as required; that to be exempt from going through the Conditional Use process for application of sludge, Mountaire would have to prove that the use was in place and not interrupted for more than a two-year period; that after discussion with the County and DNREC bio solids program, Mountaire made the decision to apply for a Conditional Use to proceed with the renewal of the agricultural utilization permit; that, in addition, Mountaire is requesting a Conditional Use to use spray irrigation on these lands; that all locations will need to be approved by DNREC; that the spray irrigation is subject to strict regulations which consider nearby homeowners; that Mountaire currently has approximately 920 acres across thirteen (13) fields which are used for spray irrigation; and that having the potential to increase the amount of land by thirty 30% would be strides forward to allow for better accommodations for Mountaire’s spray irrigation operation.
- D. In addition, Council found that this is not for the purpose of increasing production; that having more acres to spray with the same amount of water on the additional lands would allow operators to have more flexibility to rotate fields during harvest season; that it would allow fields to receive less water on a year-round average; that it would allow crops to uptake nutrients at a more efficient rate; that it would cause overall loading at the site to decrease and that it would decrease the overall percolate for groundwater parameters; that Mountaire employs over 3,000 people in the Millsboro facility and over 5,000 people in the Delmarva area; that 35,000 indirect jobs are provided in the area; that Mountaire purchases services and goods from hundreds of chicken farmers and grain growers; that the payment of wages in 2017 exceeded \$100 million, payments to farmers and growers exceeded \$77 million, utility payments exceeded \$60 million and capital improvements exceeded \$50 million; that in 2017, Mountaire invested over \$300 million into the local economy and donated several million dollars to charities; that approving this conditional use will allow Mountaire to

continue with the programs and contributions to the community; and that Mountaire is committed to getting their facility in complete compliance.

E. Based on the record and recommendation of the Planning and Zoning Commission and the Planning and Zoning Commission's Findings (1 through 8) and Conditions (9a. – i.), Council found that:

- 1. The property is a large parcel consisting of approximately 351.86 acres more or less and is located in a Low-Density Area and Coastal Area. The Low-Density Area designation recognizes that business development should be largely confined to businesses that address the needs of single-family residences and agriculture. The Coastal Area designation recognizes that development can be accommodated provided that any special environmental concerns are addressed.**
- 2. The Applicant seeks to use its property for sludge and wastewater spray irrigation. The Applicant currently spray-irrigates wastewater on other lands and seeks to spray irrigate wastewater on this property as well. The Applicant has no intention to increase the amount of wastewater it spray-irrigates and intends to use this property to allow for better load and nutrient management.**
- 3. The Applicant will also use the property for sludge application. The application of sludge and wastewater spray irrigation will be used to assist in the growing of crops. This use is consistent with the underlying zoning of the property.**
- 4. There were concerns raised by opposition about the effect of the sludge and wastewater spray irrigation application on water. The Applicant will be subject to regular monitoring by DNREC and will have to comply with DNREC's requirements. These monitoring requirements include monthly reports to DNREC and unannounced visits from DNREC to inspect the site. No ponding or runoff is allowed.**
- 5. The Applicant will use an existing pipeline for wastewater transport and wastewater will not be trucked to the site thereby limiting the traffic impact. Sludge will be trucked to the site with an estimated 2-3 loads per day. As such, the traffic related to the sludge should be minimal. The sludge transport is regulated by DNREC permits as well.**
- 6. There is no indication that the use, if in compliance with DNREC regulations, will have any adverse impact upon the area or neighboring or adjacent properties. To the contrary, it will be consistent with the agricultural uses on nearby properties which utilize wastewater spray irrigation and sludge application.**
- 7. The use will not generate a significant amount of traffic, or otherwise have an adverse effect on traffic or area roadways.**
- 8. The use is of a public or semi-public character that will be a benefit to Sussex County.**
- 9. Based on the record and recommendation of the Planning and Zoning Commission and the record created before the Sussex County Council, the Conditional Use is approved subject to the nine (9) conditions (1 through 9) which will serve to minimize any potential impacts on the surrounding area and adjoining properties.**