

ORDINANCE NO. 2768

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO ALLOW FOR AN EXPANSION OF AND AMEND CONDITIONS OF APPROVAL FOR CONDITIONAL USE NO. 1724 TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BROADKILL HUNDRED, SUSSEX COUNTY, CONTAINING 127.37 ACRES, MORE OR LESS

WHEREAS, on the 18th day of October 2019, a conditional use application, denominated Conditional Use No. 2208, was filed on behalf of Artesian Wastewater Management, Inc.; and

WHEREAS, on the 11th day of March 2021, a public hearing was held, after notice, before the Planning and Zoning Commission of Sussex County and on the 25th day of March 2021, said Planning and Zoning Commission recommended that Conditional Use No. 2208 be approved, with conditions; and

WHEREAS, on the 13th day of April 2021, 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. 2208 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 Broadkill Hundred, Sussex County, Delaware, and lying on the east side of Isaacs Road, approximately 610 feet south of Reynolds Pond Road and on the southwest side of Reynolds Pond Road, approximately 635 feet east of Isaacs Road and being more particularly described in the attached legal description prepared by Artesian Wastewater Inc., said parcel containing 127.37 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 Regional Sewage Treatment Plant and its accompanying systems and facilities for the collection, storage, treatment and disposal of waste shall continue to operate with all changes or modifications to those systems and facilities being reviewed and approved by DNREC and they shall be operated, designed and constructed in accordance with all other applicable Federal, State and County requirements including those mandated by DNREC and other agencies having jurisdiction over same.**
- b. The water treatment plant shall be subject to the conditions imposed on December 2, 2008 when Sussex County Council adopted Ordinance No. 2013 approving Conditional Use No. 1810.**
- c. Any buildings constructed on the site shall be constructed with an agricultural appearance.**
- d. There shall be a medium density landscaped buffer twenty feet (20') in width adjacent to the storage lagoons along Isaacs Road (Del. Route 30) and along the back of the properties along the northern boundary of the property with the exception of where the structures are located too close to the northern boundary line for the location of the buffer (being within Tax Parcel No. 235-6.00-28.01). The density and location of these landscaped buffers shall be shown on the Final Site Plan. These buffer areas and the plantings within them must be maintained by the property owner during the lifetime of this permitted use. For example, if a tree or shrub that is part of the landscaped buffer dies, it must be replanted with a similar tree or shrub in a timely manner.**
- e. Any lagoons, Rapid Infiltration Basins or similar structures shall be located at least 100 feet from any dwellings.**
- f. One lighted sign shall be permitted along Isaacs Road (Del. Route 30) not to exceed 32 square feet in size per side.**
- g. Any motorized, non-vehicular equipment utilized in the operation of the facility within 600 feet of a dwelling shall be located indoors.**
- h. Any security lighting shall be fully screened so that it does not shine onto neighboring properties or County roads.**

- i. **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. 2768 ADOPTED BY THE SUSSEX COUNTY COUNCIL ON THE 13TH DAY OF APRIL 2021.

**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 Artesian Wastewater Management, Inc. for the consideration of a Conditional Use of land in an AR-1 Agricultural Residential District to allow for an expansion of and amend conditions of approval for Conditional Use No. 1724 to be located on a certain parcel of land lying and being in Broadkill Hundred, Sussex County, containing 127.37 acres, more or less (property lying on the east side of Isaacs Road, approximately 610 feet south of Reynolds Pond Road and on the southwest side of Reynolds Pond Road, approximately 635 feet east of Isaacs Road) (Tax I.D. No. 235-6.00-28.00 & 28.09) (911 Address: None Available).**
- B. **Based on testimony before the Planning and Zoning Commission and the public hearing before the Sussex County Council, Council found that David Hutt, Esquire, of Morris James, LLP, was present on behalf of the Applicant, Artesian Wastewater Management, Inc., together with Mr. David Spacht, President of Artesian Wastewater Management, Inc., Mr. Rodney Wyatt, Vice President of Artesian Wastewater Management, Inc., Mr. Daniel Konstanski, Principal Engineer with Artesian, also certified in Environmental Engineering, Mr. Bruce Bagley, Soil Scientist, Mr. Peter Demicco and Associates, LLC, Hydrogeologist with Demicco and Associates, LLC and Lee Bridgman, Landscape Architect working with Solutions Firm; that this Application deals with the processing of wastewater; that there are three primary providers of sanitary sewer service in Sussex County – Sussex County, Tidewater or the Applicant, Artesian; that this Application is for what Artesian refers to as the Southern Regional Recharge Facility (“SRRF”); that the collection, storage, treatment and disposal of wastewater is one of the basic elements of practically every land use application that comes before the Commission; that the use of individual septic systems is not the preferred manner to treat wastewater in today’s society but instead should occur at a regional provider such as SRRF; that many people come to Sussex County because of the resources such as the Inland Bays and tributaries and most local to this site is the Broadkill River and its watershed; that many the communities would be serviced by this proposal; and that the region that will be treated by SRRF is an expansive area.**
- C. **Council also found that there are three (3) existing conditional uses for this project; that the first was Conditional Use No. 1724 (Ordinance No. 1922) that was for a sewage treatment plant for 74.61 acres for the collection, treatment and disposal of waste; that in 2017, there was a Final Site Plan; that when Conditional Use No. 1724 was approved by the County, Conditional Use No. 1725 was also approved; that Conditional Use No. 1725 was approved for various properties, approximately 1,740 acres of woodlands and agricultural lands as spray areas for treated effluent; that about one year later, Conditional Use No. 1810 was approved for a water treatment plant on the 74 acres which was part of the original application; that in 2018, Artesian acquired 52.76 acres adjacent to the 74.61 acres; and that this Application seeks to add the additional 52.76 acres to the existing 74.61 acres and to also make some amendments to the conditions on the original Conditional Use No. 1724 which was approved.**

- D. Council found that the site lies along Isaacs Road (Rt. 30) with additional frontage on Reynold's Pond Road (S.C.R. 231); that the lagoon is located on the original 74.61 acres and the new area is on the left side of the site plan; that the lot line between the two parcels has been removed and these have now been recorded as one property totaling approximately 127 acres; that removing the lot line does not extend the Conditional Use to the additional acreage thus creating the need for this application; that this property is located in the AR-1 zoning district and it is in the Low-Density Area on the 2045 Future Land Use Map; that many areas surrounding this site are in agriculture and woodland preservation and many of these represent many of the spray fields and are used as part of the SRRF facility; and that the additional 52 acres is in Zone X on the FEMA maps and is outside of the 500-year flood plain.**
- E. Council also found that the response from DelDOT to the Service Level Evaluation Request stated that no Traffic Impact Study (TIS) was required; that response also stated under the terms of DelDOT's Memorandum of Agreement ("MOA") with Sussex County that the traffic impact is defined as negligible; that there is a 90-million gallon storage lagoon on this site that cannot be seen from the road as grass covered berms form a barrier to the lagoon; that the Applicant's goal is to be treating wastewater on this site by the summer of 2022; that all the existing improvements on the site were pursuant to the approval of the original conditional use; that, in addition to adding the additional acreage to the site, the Applicant is requesting some modifications to the original conditions; that the Applicant is requesting a reduction in the 30-foot buffer as it is impractical and over-dense; that there are spray fields in the rear of this property making it impractical to have a buffer between this site and the spray fields as it would interrupt the process; that the Applicant is proposing a 20-foot wide medium density landscaped area between Isaac's Road and the lagoon area; that, as you travel north on Route 30, that there be no buffer as this will be a future disposal area that will look like a farm field and, therefore, there is no benefit to planting trees to block the view of a farm field; that there are existing houses on Reynolds Pond Road which form the northern boundary of this property; that the Applicant is proposing the same 20-foot wide buffer in this area; that, as you get to the western boundary, there are buildings in close proximity to each other; and that the Applicant has discussed this with the adjacent property owner and is requesting no buffer in this area.**
- F. Council further found that Condition 7 is related to the placement of equipment indoors for the reduction of the noise from generators and other equipment; that the loudest sounds generated by this site would be that of a generator starting up; that the location of the generators are such that if you are 1,000 feet away from them, the decibels are less than normal conversation and the generators are more than 1,000 feet away from the property lines and adjacent residences; that this use is heavily regulated by other agencies, particularly by DNREC; that there was a preliminary soils report performed on the 52 acres to establish what the disposal could be for this property; that there was a hydrogeologic suitability report which is part of the DNREC approval process; that the following is the summary of the requested changes to the conditions of approval for Conditional Use No. 1724:**
- Adds 52.76+ acres for a total acreage of 127.37+ acres**
 - Condition 1: included the terms "storage" and "treatment" to better describe the entire process**
 - Condition 1: added the information about Conditional Use No. 1810**
 - Condition 3: modified the term "treatment plant building" to include "any buildings"**
 - Condition 4: removed the Sussex County Engineering Department as this is regulated by DNREC**
 - Condition 5: clarified the location and density of the buffer with the landscaping plan**
 - Condition 5: made the second sentence a separate condition**
 - Condition 7: modified so that any motorized, non-vehicular equipment building within 600' of a dwelling shall be located indoors**

;and, that all the other conditions would remain the same as the original conditions.

- G. Council also found that this use on this site will be closely monitored by DNREC; that the Application is the appropriateness of the expansion of the Conditional Use and the changes to some of the conditions; that Sussex County Code, Section 115-171, describes the purpose of the Conditional Use “is to provide for certain uses which cannot be well adjusted to their environment in particular locations with full protection offered to surrounding properties by rigid application of the district regulations. These uses are generally of a public or semipublic character and are essential and desirable for the general convenience and welfare but, because of the nature of the use, the importance of the relationship to the Comprehensive Plan and possible impact not only on neighboring properties but on a large section of the County, require the exercise of planning judgment on location and site plan”; that the slide outlining the area that this recharge facility will serve demonstrates how this is necessary for the people of Sussex County; that this plan will keep similar uses in the area where the infrastructure is already in place; that in the Utility Chapter, Goal 7.1 of the Sussex County Comprehensive Plan states “encourage adequate central sanitary sewer service in a coordinated approach that anticipates future demand”, and one of the objectives under that goal is to “optimize existing sewer transmission and treatment infrastructure utilization, limiting if possible duplicate infrastructure installation”; and that this will service an existing regional location for wastewater treatment with a coordinated approach to optimize the existing Conditional Use and will limit duplication of systems here or in other parts of the County which does not have the existing infrastructure.**
- H. Based on the record and recommendation of the Planning and Zoning Commission and the Planning and Zoning Commission’s Findings (1 through 10) and Conditions (11a - i), as amended, Council found that:**
- 1. Conditional Use No. 1724 and Ordinance No. 1922 approved the location of a sewage treatment plant for the collection, treatment and disposal of waste on 74.61 acres of land, subject to nine conditions.**
 - 2. Conditional Use No. 1810 and Ordinance No. 2013 approved the use of the same land as a water treatment facility.**
 - 3. This application seeks to add 52.17 acres to the 74.61 acres previously approved for the collection, storage, treatment and disposal of wastewater. The total acreage will be 127.37 acres, more or less.**
 - 4. Conditional Use No. 1725 and Ordinance No. 1923 separately approved the use of approximately 1,714 acres of land for disposal of the treated wastewater by irrigation.**
 - 5. The existing use application as a regional wastewater facility under Conditional Use No. 1724 and Ordinance No. 1922 and the expansion of that use under this application is generally of a public or semipublic character and is essential and desirable for the general convenience and welfare of neighboring properties and the County.**
 - 6. The regional sewage treatment plant and its accompanying facilities play a vital role protecting Sussex County’s most sensitive environmental areas including the Inland Bays and the Broadkill River watershed and their tributaries by providing for the collection, storage, treatment and disposal of waste in a manner that is greatly superior to on-site septic systems.**
 - 7. The expansion of the Conditional Use area and the amendment to the prior conditions of approval will not have any adverse impact upon the County, its residents, or the environment.**
 - 8. The expansion of the regional wastewater facility is appropriate for this site because it is in an area of residential development where wastewater treatment is needed now and in the future.**

- 9. The expansion, construction and operation of the wastewater facility will be reviewed and approved by DNREC and must be designed and constructed in accordance with all other applicable Federal, State and County requirements, including those mandated by DNREC and other agencies having jurisdiction over the use.**
- 10. It is appropriate to amend and replace the conditions originally imposed by Conditional Use No. 1724 and Ordinance No. 1922 so that one updated and uniform set of conditions applies to the entire 127.37-acre site.**
- 11. Based on the record and recommendation of the Planning and Zoning Commission and the record created before the Sussex County Council, Council approves this application to amend the conditions such that the nine (9) conditions (a through i), as amended, shall replace the conditions of approval of Conditional Use No. 1724 and Ordinance No. 1922 which will serve to minimize any potential impacts on the surrounding area and adjoining properties.**