

ORDINANCE NO. 2769

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO AMEND CONDITIONAL USE NO. 1314 (ORDINANCE NO. 1354) (AS AMENDED BY CONDITIONAL USE NO. 1691 (ORDINANCE NO. 1865) AND CONDITIONAL USE NO. 1962 (ORDINANCE NO. 2311)) TO PERMIT THE PROCESSING AND HANDLING OF POULTRY LITTER TO INCLUDE NUTRIENT RECOVERY FOR NATURAL GAS AND ELECTRICAL GENERATION, TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BROAD CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 228.88 ACRES, MORE OR LESS

WHEREAS, on the 22nd day of December 2020, a conditional use application, denominated Conditional Use No. 2258 was filed on behalf of Bioenergy Development Group, LLC; and

WHEREAS, on the 11th day of February 2021, a public hearing was held, after notice, before the Planning and Zoning Commission of Sussex County and on the 11th day of March 2021, said Planning and Zoning Commission recommended that Conditional Use No. 2258 be approved with conditions; and

WHEREAS, on the 16th day of March 2021, a public hearing was held, after notice, before the County Council of Sussex County and on the 11th day of March 2021, the County Council of Sussex County has 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. 2258 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 Broad Creek Hundred, Sussex County, Delaware, and lying on the west side of Seaford Road (Route 13A) approximately 0.2 mile north of Oneals Road (S.C.R. 485), and being more particularly described in the attached legal description prepared by Parkowski, Guerke & Swayze, P.A., said parcel containing 228.88 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. Except as otherwise amended by this grant of Conditional Use, the conditions imposed by Conditional Use No. 1314, as amended by Conditional Use Nos. 1691 and 1962, shall remain in effect.**
- b. The proposed facility shall be subject to DNREC, and other state and federal regulatory approvals.**
- c. The proposed facility shall only accept, process, and handle poultry litter and DAF.**
- d. There shall not be any stockpiling of DAF, poultry litter, or wastewater on site.**
- e. 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.**
- f. The proposed facility, anaerobic digesters, pretanks, and other equipment and structures related to this use shall be located behind the site of the existing pelletizing facility and the area of disturbance related to this new use shall be no greater than 11.3 acres.**
- g. As proposed by the Applicant, there will be no change to the wooded coverage on the property.**
- h. 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.**
- i. 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 operate the proposed facility.**
- j. As proffered by the Applicant, a landscape buffer shall be installed at the front of the site. A landscape buffer plan shall be included as part of the Final Site Plan for the project.**
- k. The failure to abide by these conditions shall result in the termination of the Conditional Use approval.**
- l. 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. 2769 ADOPTED BY THE SUSSEX COUNTY COUNCIL ON THE 20TH 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 Bioenergy Development Group, LLC (Bioenergy) for the consideration of a Conditional Use of land in an AR-1 Agricultural Residential District to amend Conditional Use No. 1314 (Ordinance No. 1354) (as amended by Conditional Use No. 1691 (Ordinance No. 1865) and Conditional Use No. 1962 (Ordinance No. 2311)) to permit the processing and handling of poultry litter to include nutrient recovery for natural gas and electrical generation, to be located on a certain parcel of land lying and being in Broad Creek Hundred, Sussex County, containing 228.88 acres, more or less (lying on the west side of Seaford Road (Route 13A) approximately 0.2 mile north of Oneals Road (S.C.R. 485) (Tax I.D. Nos. 132-6.00-88.01 and 95.00, and 132-11.00-41.00 and 41.02) (911 Address: 28338 Enviro Way, Seaford).
- B. Based on testimony before the Planning and Zoning Commission and the public hearing before the Sussex County Council, Council found that Dennis Schrader, Esquire, of Morris James LLP, was present on behalf of the Applicant, Bioenergy Development Group, LLC, together with Peter Ettinger and Christine McKiernan, from Bioenergy Development Group, and Jeffrey Bross of Duffield Associates; that a lot of these items being presented are regulated by DNREC, DelDOT and other State agencies; that the application today is for the land use; that this property is operating under a Conditional Use that began in 1995 as a pellet plant; that since that time, there have been two amendments to the Conditional Use; and that it is an active site that has been used for the poultry industry since the original application.
- C. Council found that Bioenergy plans to build an anaerobic digester; that they have been in business for approximately 22 years, have built 220 plants throughout the world and are currently building 3 plants in the United States; that Bioenergy owns its own microbiology lab; that it is important to know how to use microbials to produce a renewable natural gas product and create a digestate that can be used as a compost; that they believe in the reuse, recycling and repurposing of materials; that anaerobic digestion is economically smart and an environmentally savvy alternative to land application, overcrowded landfill use, and pollution-causing incineration; that it is important to manage this waste in a manner that does not involve trucking it hundreds of miles; that they take organic inputs and put them through a completely enclosed process that transforms organic residuals into renewable energy and a nutrient-rich compost; and that anaerobic digestion is not new to the area as it is used on a smaller basis by five or six locations in Delaware.
- D. Council also found that this site will be named the Bioenergy Innovation Center (BIC); that it will be located in on a 228 acre parcel of land in Seaford and they will work with the University of Delaware and Del Tech; that the digester will sit behind the old Perdue pelletizing plant and will work with the composting plant already on site; that this will be a single campus and the different sections will be integrated; that the facility is approximately 1.5 miles from any residential property; that they will be able to process 210,000 tons of excess organics from the poultry industry; that the goals are to become a member of the community, to combine the existing composting facility with the process of the anaerobic digestion to address the challenges of disposal of organic residuals, to create a new source of renewable, sustainable and clean energy for the continued economic growth of Sussex County, to market and sell the digestate to farmers and gardeners to improve their soil, and to reduce greenhouse gas; that digestate improves the soil health of farms and communities by recycling nutrients and carbon in organic waste back into the soil; that digestate can be used as livestock bedding and as a plant nutrient source instead of synthetic fertilizers; that they are taking materials that are waste and looking at them as opportunity by using technology to transform that waste into two new products of great value to the community; that there are three key points to keep in mind: healthy soils, clean air and water; and that this will reduce odors, pathogens and greenhouse gases at a six-day per week facility that will have tremendous impact in Sussex County.

- E. Council found that safety in design, construction and operation is important; that understanding what happens at these plants is also important so that local, state and federal regulations are adhered to; that Bioenergy Development Group has been in business for a long time and they will partner with Chesapeake Utilities Corporation which has an incredible safety record; that Chesapeake Utilities Corporation will take the biogas produced at this site and they will create the renewable natural gas and bring it approximately one mile and inject it into the pipeline; and that this is energy to fuel houses and businesses that is not petrol derived but green energy.**
- F. Council found that the site includes an access road, scales, the former pelletizing plant, office, mixing building for the compost operation, compost piles, existing stormwater pond and a location for the anaerobic digester; that the existing pelletizing plant would be repurposed to receive feedstock, have an odor control system, a control room and an electrical distribution for the site; that the site will include four anaerobic digesters and pre-tanks which are shown as circles on the site plan; that the site plan also shows the relocated stormwater pond and a wastewater pretreatment plant; that the total project will be approximately 11 acres of the total 228 acres; that the wooded cover will remain unchanged and will create an additional 2.78 acres of impervious cover which is 1.2% of the entire site; that there is screening and protection from adjacent properties by the wooded area onsite; that there will be two landscaped buffers to the east of the site; that Route 13A is quite a distance from the activity on the subject property; that the railway line runs between Route 13A and the property; and that there is a private road leading to the facility.**
- G. Council further found that the site is subject to permitting and regulations from DelDOT, Fire Marshal, Sussex Conservation District and multiple divisions of DNREC; that no Traffic Impact Study is required as the use is consistent with the current Conditional Use permit; that the project has received a Letter of No Objection from DelDOT; that the project has received entrance improvements approval from DelDOT; that the State Fire Marshal has issued approval for the site plan and the additional approval for buildings and tanks is pending; that wastewater from the Anaerobic Digester (AD) process will be treated onsite; that effluent quality from on-site treatment will meet Sussex County Public Sewer Discharge Standards; that much of the effluent will be recycled back into the AD process; that wastewater will be less than 60,000 gallons per day at full capacity; that wastewater is proposed to be trucked to a facility operated by Sussex County for discharge; that options for connection to local municipal systems is being evaluated; that the facility is expected to meet potable and emergency water needs with existing on-site wells and a water storage tank; that the AD process requires water which is provided through recycling of treated wastewater generated by the AD process; that the stormwater management goal is to have zero discharge to surface waters; that the existing stormwater pond for the compost area is being upgraded by installing aeration to enhance evaporation, raising the weir to enhance storage capacity, exploring offsets for potential discharge from the pond, and the industrial stormwater plan to be updated after construction under NPDES; and that the existing stormwater pond will be relocated to accommodate the new infrastructure and has received an approved Sediment and Stormwater Management Plan from Sussex Conservation District.**
- H. Council also found that this project does not result in feedstock or product being exposed to weather conditions as it is a fully enclosed system; that there are several emission sources on the site, a thermal oxidizer for treatment of waste gases from biogas processing, a flare to serve as emergency backup treatment for waste gases and a standby generator for use when electricity from the grid is not available; that all units are considered minor sources under DNREC regulations; that all permit applications are currently under review by DNREC; that recently BIC has added a scrubber that will require an emissions permit and will be processed by DNREC; that the project will also require a Resource Recovery permit that will apply to both the AD and composting operations; that the Resource Recovery permit has been submitted to DNREC and is under review; and that in summary, all the DelDOT permitting is completed, all site permitting with the Fire Marshal is completed, the Resource Recovery and Air permits have been submitted to DNREC and are under review, Sussex Conservation District permitting is completed, the existing on-site wells are adequate for water supply and the Applicant is working with Sussex County on wastewater discharge.**

- I. Council also found that this site has had a Conditional Use since the 1990's and has had that permit revised four times over the history of the site; that this Conditional Use falls under Section 115-22 of the Code; that this Conditional Use meets the requirement of the Statute because the use is public or semi-public in nature and it is desirable for the convenience and well-being of the community; that letters of support have been received from State Representatives and Senators who are familiar with this site; that the project relates to the Comprehensive Plan as it is an industrial site; that there will be minimal effect on the adjacent properties as there is a distance from the activities on site to the nearest residential properties; that this is a 228-acre property with a very small area of the property to be used; that this use is environmentally sound and will be monitored by DNREC and other agencies; that this use is good for the poultry industry; that it allows for farmers not to use their own waste from their farms as fertilizer; that it allows for that waste to be recycled and to be used for the good of the public; that the Applicant will have to comply with all local, state and federal regulations; and that 30 on-site jobs will be created as well as a number of other indirect jobs.**
- J. Based on the record and recommendation of the Planning and Zoning Commission and the Planning and Zoning Commission's Findings (1 through 15) and Conditions (16a - l), Council found that:**
- 1. The property is a large parcel consisting of approximately 228.88 acres more or less and is located in the AR-1 Agricultural Residential District, which allows for a full range of agricultural activities, and is designated in the County's Comprehensive Land Use Plan as an Industrial Area, allowing land to be devoted to concentrations of larger industrial uses including heavier industrial, light industry, warehousing, and flex space.**
 - 2. The site was originally approved in 1999 for a conditional use and has been in operating since then for the receipt of poultry waste to be converted to fertilizers. The site is currently operated by the Applicant as a micro-nutrient plant with related truck entrance and rail spur for the processing and handling of poultry waste and litter. These historic uses have been approved by regulatory agencies, including DNREC air and water quality agencies.**
 - 3. The present use was originally granted by Conditional Use No. 1314 and has been amended by Conditional Use Nos. 1691 and 1962. These conditions, as amended, will continue to apply to the site.**
 - 4. This proposed extension to the existing Conditional Use enlarges the use to include nutrient recovery and conversion for natural gas and electrical generation. As part of this expansion, the Applicant intends to construct a facility with tanks and anaerobic digesters which will recycle poultry byproducts and create renewable natural gas. The Applicant intends to use dissolved air flotation sludge ("DAF") which is derived from the poultry industry in this process. Microorganisms within contained tanks will be used to extract energy from poultry residuals. The other structures currently existing on the site will remain.**
 - 5. The proposed change is consistent with and is a reasonable expansion of the current use and is essential and desirable for the general convenience and welfare of Sussex County residents and the agribusiness community.**
 - 6. The proposed use will require regulatory review by State agencies, including DNREC, relating to air and water quality controls, the State Fire Marshal, and DelDOT. New approvals for the proposed use will be required.**
 - 7. The granting of this application benefits the environment by providing a clean and efficient method for the conversion of poultry litter and DAF to renewable energy and by serving the community with natural gas and electricity.**

- 8. As proposed by the Applicant, the total area of disturbance from the proposed use will be 11.22 acres, more or less, and there will be no change to the wooded cover on the property.**
- 9. The proposed facility will be located adjacent to the existing compost facility and behind the pelletizing facility and will be designed to blend into the site.**
- 10. The Applicant will accept poultry litter and DAF from area poultry producers and the proposed use will reduce the amount of DAF land application on area farms which would benefit area soils and waterways.**
- 11. The anaerobic digester system proposed by the Applicant will utilize existing stormwater and the Applicant intends to recycle treated wastewater as well to minimize the need for other water sources in this process. The Applicant also aims to have a 0% discharge of surface water from the site.**
- 12. There were concerns raised through written comments and at the public hearing about the environmental effect of the project, but the Applicant will be subject to regular permitting requirements imposed by DNREC and will have to comply with DNREC's requirements.**
- 13. The use, if in compliance with DNREC regulations, will not likely have any adverse impact upon the area or neighboring or adjacent properties.**
- 14. The use, as amended, will not generate a significant amount of traffic, or otherwise have an adverse effect on traffic or area roadways. DelDOT has submitted a letter that DelDOT considers the traffic impacts from the proposed use to be diminutive.**
- 15. The use is of a public or semi-public character that will be a benefit to Sussex County and will promote the health, safety, and welfare of the inhabitants of Sussex County.**
- 16. Based on the record and recommendation of the Planning and Zoning Commission and the record created before the Sussex County Council, Conditional Use No. 2258 is approved to amend Conditional Use No. 1314 (Ordinance No. 1354) (as amended by Conditional Use No. 1691 (Ordinance No. 1865) and Conditional Use No. 1962 (Ordinance No. 2311)) to permit the processing and handling of poultry litter to include nutrient recovery for natural gas and electrical generation subject to twelve (12) conditions (a through l) which will serve to minimize any potential impacts on the surrounding area and adjoining properties.**