

SUSSEX COUNTY COUNCIL - GEORGETOWN, DELAWARE, MARCH 16, 2021

A regularly scheduled meeting of the Sussex County Council was held on Tuesday, March 16, 2021, at 10:00 a.m., in the Carter Partnership Center at Delaware Technical Community College, Georgetown, with the following present:

Michael H. Vincent	President
John L. Rieley	Vice President
Cynthia C. Green	Councilwoman
Douglas B. Hudson	Councilman
Mark G. Schaeffer	Councilman
Todd F. Lawson	County Administrator
J. Everett Moore, Jr.	County Attorney

The Invocation and Pledge of Allegiance were led by Mr. Vincent.

**Call to
Order**

Mr. Vincent called the meeting to order.

**M 096 21
Approve
Agenda**

A Motion was made by Mr. Schaeffer, seconded by Mr. Rieley, to approve the Agenda, as posted.

Motion Adopted: 5 Yeas.

**Vote by Roll Call: Mrs. Green, Yea; Mr. Schaeffer, Yea;
Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Vincent, Yea**

Minutes

The minutes of March 9, 2021 were approved by consent.

**Public
Comments**

Public comments were heard and the following spoke: Donna Voigt, Director of the Old Landing Road Coalition, discussing traffic and safety concerns on Old Landing Road and Warrington Road.

**Old
Business/
CU 2201**

The Council discussed Conditional Use No. 2201 filed on behalf of Pine Acres, Inc. (Sun Leisure Point Resort, LLC).

The Planning and Zoning Commission held a Public Hearing on this application on January 21, 2021 at which time action was deferred. On February 11, 2021, the Commission recommended approval with conditions.

The Sussex County Council held a Public Hearing on this application on March 2, 2021 at which time action was deferred.

**M 097 21
Adopt
Ordinance
No. 2766**

A Motion was made by Mr. Hudson, seconded by Mr. Rieley, to Adopt Ordinance No. 2766 entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL

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Adopt
Ordinance
No. 2766 /
CU 2201
(continued)

RESIDENTIAL DISTRICT FOR A CAMPGROUND TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 8.0 ACRES, MORE OR LESS” (Conditional Use No. 2201) filed on behalf of Pine Acres, Inc. (Sun Leisure Point Resort, LLC), with the following conditions:

- A. There shall be no more than 58 camping or RV sites within this Conditional Use area. No more than 6 guests shall be permitted per site.**
- B. All entrance and roadway improvements and any other DelDOT requirements shall be completed as required by DelDOT.**
- C. The campground shall be connected to Sussex County’s central sewer system.**
- D. The campground shall be connected to a central water system for domestic use and fire protection.**
- E. Stormwater management and sediment and erosion control facilities shall be constructed in accordance with applicable State and County requirements and maintained using Best Management Practices. The Final Site Plan shall contain the approval of the Sussex Conservation District.**
- F. This expansion area shall be surrounded by a 50-foot-wide landscaped buffer.**
- G. Each campsite shall be permitted to have one accessory building of no more than 64 square feet with a maximum height of 10 feet. The accessory buildings shall be of uniform design and size.**
- H. Campground restrictions shall be submitted as part of the site plan review. These shall include “Quiet Hours” between 11:00 p.m. and 7:00 a.m. each day.**
- I. All units to be used for the purpose of human habitation on campsites shall be tents, travel trailers, recreational vehicles and equipment manufactured specifically for camping purposes.**
- J. All lighting shall be downward screened so that it does not shine on neighboring communities or roadways.**
- K. The Applicant shall identify all “dwellings” in the vicinity of the property that require a 400-foot buffer pursuant to Section 115-172.H(3) of the Sussex County Code. Except for the dwellings that are the subject of the approved variance in Board of Adjustment Case No. 12428, all campsites and cabins shall be a minimum of 400 feet from any dwelling that exists at the time of Final Site Plan approval.**
- L. All campsites must be 2000 square feet in size and at least 40 feet wide.**
- M. No cabin or campsite shall have direct access to any road outside of the boundaries of the campground. Access to the campground shall be gated and restricted so that the only access shall be from Radie Kay Lane.**
- N. There shall be no sales of campsites or camping units, including park models, RVs, travel trailers or cabins.**
- O. This expanded camping area shall comply with all of the requirements of Section 115-172H, with the exception of the variance approved in Board of Adjustment Case Number 12428.**

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- P. No entertainment or similar organized activities shall be permitted in this expansion area of the campground.**
- Q. The Final Site Plan shall include the conditions established by this Conditional Use No. 2208 and by Board of Adjustment Case No. 12428.**
- R. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.**

Motion Adopted: 5 Yeas.

**Vote by Roll Call: Mrs. Green, Yea; Mr. Schaeffer, Yea;
Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Vincent, Yea**

Rules

Mr. Moore read the rules of procedure for public hearings on zoning matters.

**Public
Hearing/
CU 2258**

A Public Hearing was held on the Proposed Ordinance entitled “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” (Conditional Use No. 2258) filed on behalf of Bioenergy Development Group, LLC (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).

The Planning and Zoning Commission held a Public Hearing on this application on February 11, 2021 at which time action was deferred. On March 11, 2021, the Commission recommended approval with 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.**

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- 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.**

(See the minutes of the meetings of the Planning and Zoning Commission dated February 11 and March 11, 2021.)

Jamie Whitehouse, Planning and Zoning Director, presented the application and noted the documents received into the record, including 16 letters/emails in support of the application and 255 letters/emails in opposition to the project.

The Council found that Dennis Schrader, Attorney, was present with representatives of two groups: Bioenergy Development Group (Bioenergy) and Duffield Associates. Mr. Schrader, Peter Ettinger of Bioenergy, Christine McKiernan of Bioenergy, and Jeffrey Bross of Duffield presented information on the proposed project and responded to questions raised by the Council. They stated that Bioenergy is a Maryland-based developer of anaerobic digestion facilities, committed to bring leading European technology to North America; that the application is to permit the processing and handling of poultry litter to include nutrient recovery for natural gas and electrical generation; that the Applicant is the owner and occupant of the subject property; that the site is located under the industrial category in the Comprehensive Plan and the Development Strategies Map; that the site consists of 228.88 acres but the proposed development is less than that; that there are at least three Conditional Uses currently in effect on this site; that the site was originally approved in 1999 (Conditional Use No. 1314) as a pellet plant and has been in operation since then for the receipt of poultry waste to be converted to fertilizers; that the proposal is to build upon the prior Conditional Uses; that under the Planning and Zoning Commission's recommendation of approval, it

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was defined what can take place on this site as poultry litter and DAFT; that 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; that these historic uses have been approved by regulatory agencies, including DNREC air and waste quality agencies; that since the original approval, there have been two amendments to the Conditional Use; that the site is an active site that has been used for the poultry industry since the original application; that the site is designated as an 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 industry, light industry, warehousing, and flex space; that this application is for an extension to the existing Conditional Use to enlarge the use to include nutrient recovery and conversion for natural gas and electrical generation; that the structures currently existing on the site will remain; that proposed site improvements include the repurposing of the former pelletizing plant, anaerobic digesters and pretanks, biogas processing area, relocated stormwater pond, and wastewater treatment system; that the site is part of the Nanticoke Watershed leading into the Chesapeake; that no public streets are proposed; that there will be no sanitary waste on-site; that there is an on-site water supply; that there are no delineated wetlands on-site; that the total disturbed area is 11.22 +/- acres; that no change in the wooded cover is proposed; that there will be 2.78 acres of additional impervious surface (totaling 1.2% of site); that the benefits that anaerobic digestion can bring to the community include increasing the lifespan of a local landfill, reducing percolates, increasing water quality, reducing odor as organics are deposited into sealed tanks, shrinking transport costs and associated environmental impact, reducing greenhouse gases and enabling CO₂ and methane capture and use, reducing pathogens and antibiotic use in the environment as digested organics are effectively pasteurized and dried digestate can be used as an organic soil amendment, and creating both direct and indirect jobs to construct and manage the facility as well as attend to the resulting offtake use and distribution; that anaerobic digestion is completely enclosed and sealed with no odors; that they will create a renewable natural gas which can be converted to hydrogen, as well as energy and compressed natural gas; that the process takes waste and turns it into something beneficial; that they will primarily use DAFT at this facility; that Bioenergy has been doing this for 22+ years, starting in Europe, and currently operate 150 plants; that the goal is to be able to take in 210,000 tons of new material; that renewable natural gas will come out of the facility and it will be pipeline quality; that the potential for a methane explosion is a minimal issue if at all; that the site is managed under safety standards and regulatory requirements; that the proposal is not for a refinery and it is a contained project and environmentally sound; that the Company has no safety issues in their history; that there will be no hazardous substance at this facility, it is organic; that no human waste will be accepted, only poultry waste; that each load of material is tested and any hazardous loads rejected; that the compost facility is currently in operation; that they have buyers for the compost; that the proposal will add digestate to the compost, a high nutrient

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project; that most of the material will go off the shore (65 to 70 percent) to other areas; that they reuse their water and it goes in their own treatment plant and meets the standards of Sussex County; that originally it will be trucked to a Sussex County facility and the long term goal is to connect to a sewer system; that DelDOT did not require a Traffic Impact Study; that the project received a Letter of No Contention and an entrance approval from DelDOT; and that the poultry industry is vital to Sussex County and the area, and the industry is faced with the challenge of handling excess poultry organics. The engineering aspects of the site were presented including existing site conditions, proposed site improvements, repurposing of the main building, repurposing of pelletizing plants, pretreatment of wastewater, and impervious surface. It was noted that this project is subject to multiple state and local agency reviews including DelDOT, State Fire Marshal, DNREC, and the Sussex Conservation District; and that the Conditional Use is consistent with the County's Comprehensive Plan.

Public comments were heard.

The following spoke in support of the application: Carol Dunahoo and Christina Darby on behalf of the Friends of the Nanticoke River; Gina Bloodworth on behalf of the Wicomico Environmental Trust; Jeff Dietz, the new Facility Manager for the Bioenergy Facility; and Chris Bason on behalf of the Center for the Inland Bays. They stated that the proposed Bioenergy anaerobic digestion facility will substantially reduce the environmental impact of poultry production in the entire region; that the anaerobic digestion of DAF waste at this facility will reduce serious impacts by eliminating odors and pathogens and producing an easily transportable fertilizer; that it will also contribute renewable natural gas; that the proposal will remove excess nutrients from the watershed; that the proposal includes an onsite wastewater treatment plant and the collection and use of stormwater for the small amount of water required for the digestion process, so it will neither deplete the aquifer nor pollute groundwater; that the process will be enclosed with negative pressure to minimize odor and other nuisances; that there will be no risk of a gas explosion at the site because the methane produced in the process will be captured and treated by Chesapeake Utilities elsewhere, then transported to local customers; that the proposed operation will significantly improve water and air quality throughout the watershed; that the facility already exists and will be repurposed; that there has been misinformation about how this facility will be operated; and that the proposed process will handle chicken waste responsibly which will be good for the environment.

The following spoke in opposition to the application: Keith Steck (speaking on behalf of himself and on behalf of Delaware Coalition for Open Government); Renee Phillips; Greg Layton and Tyler Lobdell on behalf of Food and Water Watch; Maria Payan; Dustyn Thompson on behalf of the Sierra Club Delaware Chapter; and Shelly Cohen. They stated that there is no PLUS review of this application; that the last review for this site was completed in 2012 and was only completed for one of the four parcels of this

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application; that the State Fire Marshal's report is incomplete as it did not mention anything about the methane gas that will be produced on the site; that methane gas is explosive and combustible; that DNREC also needs to address the methane or compressed natural gas; that there was no discussion from DelDOT regarding truck traffic; that maps indicate that there are three tax ditches on the site and this is not consistent with maps and information provided by the Applicant; that the proposal will benefit industry; that the proposal takes advantage of residents and farmers; that the proposal will result in the entrenchment of industrial poultry in Sussex County; that the project would threaten public safety; that the risks are inappropriate for this agricultural and residential area; that the Applicant is proposing to put this biogas production facility in an area where air and water pollution is already a serious issue; that the project site is an environmentally sensitive area; that the site is not zoned for heavy industry; that the proposed use is not really an agricultural use; that the proposed use is a heavy industrial process; that the proposal will exponentially increase the end-stage solid-waste product; that the proposal would not provide a sustainable solution to Sussex County's pollution challenge; that the waste stream coming into the facility will be about eight times more than the current load; that the difference between the transport of liquid propane versus compressed natural gas needs to be addressed; that this proposal will not offset fracked gas; that the stated risk of explosion is untrue; that the Sourcewater Protection Ordinance is not being looked at; that a legitimate environmental assessment needs to be performed; that the proposal is a dramatic change to the previous Conditional Use approvals; that Conditional Use No. 2258 does not accurately describe Bioenergy's proposed use; that there is confusion in the application and the whole project has been misrepresented; that the proposed use is not an approvable Conditional Use under County Code; that agriculture-related industry does not include the proposed industrial gas production and refining; that the proposed natural gas production does not meet the purposes of AR-1 zoning; and that the application should be readvertised for the correct use. They expressed concern about the waste coming onsite; the damage to roads; air, water and noise pollution; the risk of methane gas and the potential for explosion on this site or in vehicles going down the road; the wellhead protection area delineation which is not shown by the Applicant; increased truck traffic (over 200 trucks per day); why Laurel and Seaford residents have to take in waste from other states; impact on a new residential community north of the site; a new 4-way stop installed along Route 13A and already an accident has occurred; a new source of air pollution and a new safety risk; the possibility of failure of the facility resulting in leaks, spills, explosions, etc.; the proposal is for a gas production facility and a refinery; and the Applicant has no contract for the taking of the product. They raised questions about: how the Conditional Use language was written and presented, stating it is misleading; how much of the gas being produced is staying in Sussex County and Delaware; where is the material is coming from; how many chicken processing plants will be sending their DAF to this facility; how many trucks will be coming and going and what will they be hauling; where is the pipeline and does it currently exist, are gas refinery

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activities a part of this application; how will wastewater and the digestate be managed; how will Sussex County fight a massive fire/explosion; and what bonds/insurance is the Applicant putting up in case of an accident/catastrophe. They stated that Council should have all the information before them before making a decision and that Delaware Code and County Code establishes a list of mandatory considerations that must be considered.

There were no additional public comments.

The Public Hearing and public record were closed.

**M 098 21
Defer
Action on
CU 2258**

A Motion was made by Mr. Hudson, seconded by Mr. Schaeffer, to defer action on Conditional Use No. 2258 filed on behalf of Bioenergy Development Group, LLC.

Motion Adopted: 5 Yeas.

**Vote by Roll Call: Mrs. Green, Yea; Mr. Schaeffer, Yea;
Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Vincent, Yea**

**M 099 21
Adjourn**

A Motion was made by Mr. Hudson, seconded by Mr. Schaeffer, to adjourn at 1:41 p.m.

Motion Adopted: 5 Yeas.

**Vote by Roll Call: Mrs. Green, Yea; Mr. Schaeffer, Yea;
Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Vincent, Yea**

Respectfully submitted,

**Robin A. Griffith
Clerk of the Council**

{An audio recording of this meeting is available on the County's website.}