

## COUNTY COUNCIL

MICHAEL H. VINCENT, PRESIDENT  
JOHN L. RIELEY, VICE PRESIDENT  
CYNTHIA C. GREEN  
DOUGLAS B. HUDSON  
MARK G. SCHAEFFER



# Sussex County

DELAWARE  
sussexcountyde.gov  
(302) 855-7743

## SUSSEX COUNTY COUNCIL

### A G E N D A

MARCH 16, 2021

10:00 A.M.

**PLEASE NOTE THAT THE MEETING WILL BE HELD AT THE FOLLOWING LOCATION: ROOM 540, CARTER PARTNERSHIP CENTER AT DELAWARE TECHNICAL COMMUNITY COLLEGE, 21179 COLLEGE DRIVE, GEORGETOWN**

**PLEASE REVIEW MEETING INSTRUCTIONS AND PARTICIPATION INSTRUCTIONS AT THE BOTTOM OF THE AGENDA**

### Call to Order

### Approval of Agenda

### Approval of Minutes – March 9, 2021

### Reading of Correspondence

### Public Comments

### Old Business:

#### Conditional Use No. 2201 filed on behalf of Pine Acres, Inc.

**“AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL 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” (property lying on the south side of Dogwood Lane approximately 305 feet south of Radie Kay Lane, approximately 0.29 mile northeast of Long Neck Road (Tax I.D. No. 234-24.00-39.02 and 39.06) (911 Address: 25491 Dogwood Lane, Millsboro)**



## **Public Hearing:**

### **Conditional Use No. 2258 filed on behalf of Bioenergy Development Group, LLC**

**“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” (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)**

## **Council Members’ Comments**

## **Adjourn**

In accordance with 29 Del.C. §10004(e)(2), this Agenda was posted on March 9, 2021 at 4:15 p.m. and at least seven (7) days in advance of the meeting.

This Agenda was prepared by the County Administrator and is subject to change to include the addition or deletion of items, including Executive Sessions, which arise at the time of the meeting.

Agenda items may be considered out of sequence.

Further meeting access instructions are listed below.

-MEETING INSTRUCTIONS-

The Sussex County Council is holding this meeting under the authority issued by Governor John C. Carney through Proclamation No. 17-3292.

**PLEASE NOTE:** The meeting is to be held at the following location: **Room 540, Carter Partnership Center at Delaware Technical Community College, 21179 College Drive, Georgetown.**

The public is encouraged to view the meeting on-line. Any person attending in-person will be required to go through a wellness and security screening, including a no-touch temperature check. The public will be required to wear a facial mask.

Seating capacity is limited and seating assignments will be enforced.

The meeting will be streamed live at <https://sussexcountydela.gov/council-chamber-broadcast>.

The County is required to provide a dial-in telephone number for the public to comment during the appropriate time of the meeting. **Note, the on-line stream experiences a 30-second delay.** Any person who dials in should listen to the teleconference audio to avoid the on-line stream delay.

To join the meeting via telephone, please dial:

Conference Number: 1-302-394-5036

Conference Code: 570176

Members of the public joining the meeting on the telephone will be provided an opportunity to make comments under the Public Comment section of the meeting and during the respective Public Hearing.

The Council meeting materials, including the “packet”, are electronically accessible on the County’s website at: <https://sussexcountydela.gov/agendas-minutes/council-council>.

If any member of the public would like to submit comments electronically, please feel free to send them to [rgriffith@sussexcountydela.gov](mailto:rgriffith@sussexcountydela.gov). All comments shall be submitted by 4:30 P.M. on Monday, March 15, 2021.

# # # #

**SUSSEX COUNTY COUNCIL - GEORGETOWN, DELAWARE, MARCH 9, 2021**

**A regularly scheduled meeting of the Sussex County Council was held on Tuesday, March 9, 2021, at 10:00 a.m., in Council Chambers, with the following present:**

<b>Michael H. Vincent</b>	<b>President</b>
<b>John L. Rieley</b>	<b>Vice President</b>
<b>Cynthia C. Green</b>	<b>Councilwoman</b>
<b>Douglas B. Hudson</b>	<b>Councilman</b>
<b>Mark G. Schaeffer</b>	<b>Councilman</b>
<b>Todd F. Lawson</b>	<b>County Administrator</b>
<b>Gina A. Jennings</b>	<b>Finance Director</b>
<b>J. Everett Moore, Jr.</b>	<b>County Attorney</b>

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

**Call to  
Order**

**Mr. Vincent called the meeting to order.**

**M 079 21  
Amend  
and  
Approve  
Agenda**

**A Motion was made by Mr. Rieley, seconded by Mr. Hudson, to amend the Agenda by deleting “Introduction of Proposed Zoning Ordinances”, and to approve the Agenda, as amended.**

**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 2, 2021 were approved by consent.**

**M 080 21  
Approve  
Consent  
Agenda  
Items**

**A Motion was made by Mr. Rieley, seconded by Mr. Hudson, to approve the following items listed under the Consent Agenda:**

- 1. Use of Existing Wastewater Infrastructure Agreement, IUA-1114  
Riverside Plaza Project, Oak Orchard Area**
- 2. Use of Existing Wastewater Infrastructure Agreement, IUA-CZ870  
Tanger Seaside (Microtel) Project, West Rehoboth Area**
- 3. Use of Existing Wastewater Infrastructure Agreement, IUA-10-10-158  
Agave Tequila Bar & Restaurant, West Rehoboth Area**
- 4. Use of Existing Wastewater Infrastructure Agreement, IUA-1124  
Revised  
Chase Oaks Project, Angola North Area**

**M 080 21  
(continued)**

**Motion Adopted: 5 Yeas.**

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

**Atlantic  
General  
Hospital  
Presentation**

Michael Franklin, Chief Executive Officer of Atlantic General Hospital, along with other representatives, presented an update on Atlantic General Hospital & Health System, Fiscal 2020, in review, including the Hospital's COVID-19 response, and including what's coming in 2021 to serve the growing needs of the community, including proposed facility upgrades and expansion of services closer to the Delaware line. The presentation included statistics on services provided to Sussex County residents: 2,200 ER visits, 500 in-patient visits, 4,100 out-patient services, 4,700 physician office visits, for a total of 11,000 total Sussex County encounters, which make up over one-half of the hospital's total encounters with patients.

**Adminis-  
trator's  
Report**

Mr. Lawson read the following information in his Administrator's Report:

**1. Council Meeting Schedule**

The next regularly scheduled Council meeting will be held on March 16<sup>th</sup> at 10:00 a.m. in Room 540, at the Carter Partnership Center at Delaware Technical Community College, 21179 College Drive, Georgetown.

**Grant  
Requests**

Mrs. Jennings presented grant requests for the Council's consideration.

**M 081 21  
Council-  
manic  
Grant**

A Motion was made by Mr. Hudson, seconded by Mr. Schaeffer, to give \$4,500.00 (\$3,500.00 from Mr. Hudson's Councilmanic Grant Account and \$1,000.00 from Mr. Schaeffer's Councilmanic Grant Account) to West Rehoboth Community Land Trust for low income housing support.

**Motion Adopted: 5 Yeas.**

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

**M 082 21  
Council-  
manic  
Grant**

A Motion was made by Mr. Schaeffer, seconded by Mr. Rieley, to give \$1,000.00 from Mr. Schaeffer's Councilmanic Grant Account to the Greater Lewes Foundation for the Lewes Community Garden for construction of a picnic grove and for additions to the community garden.

**Motion Adopted: 5 Yeas.**

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

**M 083 21  
Council-  
manic  
Grant**

A Motion was made by Mr. Hudson, seconded by Mr. Rieley, to give \$1,500.00 (\$300.00 from each Councilmanic Grant Account) to the American Cancer Society for Relay for Life of Sussex County.

**Motion Adopted: 5 Yeas.**

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

**M 084 21  
Council-  
manic  
Grant**

A Motion was made by Mr. Rieley, seconded by Mr. Hudson, to give \$500.00 from Mr. Vincent's Councilmanic Grant Account to the Kim & Evans Family Foundation for a fundraiser benefitting disadvantaged people.

**Motion Adopted: 5 Yeas.**

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

**Public  
Hearing/  
Proposed  
Ordinance/  
Amending  
Annual  
Operating  
Budget**

A Public Hearing was held on the Proposed Ordinance "AN ORDINANCE AMENDING THE ANNUAL OPERATING BUDGET FOR FISCAL YEAR 2021 TO INCORPORATE ADDITIONAL REALTY TRANSFER TAX REVENUE AND ALLOWABLE EXPENDITURES".

Mrs. Jennings explained that the Proposed Ordinance to amend the Annual Operating Budget Ordinance for Fiscal Year 2021 is to incorporate additional Sussex County Realty Transfer Tax revenue and allowable expenditures by amending the Anticipated General Fund Revenues, the Anticipated General Fund Appropriations and the Anticipated Capital Project Fund Revenues and Expenditures in the Annual Operating Budget for the Fiscal Year Ending June 30, 2021.

Mrs. Jennings noted that the Fiscal 2021 Budget was conservative due to the uncertainty of COVID-19 impacts and a baseline budget was adopted with eight supplemental budgets that could be enacted when certain revenue milestones are reached. Also, Realty Transfer Tax was budgeted at 65 percent of what was expected to be collected. Mrs. Jennings reported that, after seven months into the Fiscal Year, it can be determined how revenues have been impacted by COVID and there is opportunity to amend the Budget by increasing Realty Transfer Tax eligible expenditures. As of January 31, 2021, there was a Year-to-Date Budget of \$13,125,000; the County actually has \$32,540,000 collected through January 31, 2021, a difference of \$19,415,000; supplementals were enacted in the amount of \$8,000,000, leaving \$11,415,000 of Realty Transfer Tax that was brought in but not anticipated.

**Public  
Hearing/  
Proposed  
Ordinance/  
Amending  
Annual  
Operating  
Budget  
(continued)**

Mrs. Jennings presented and explained her recommendation to adjust expenditures for the Realty Transfer Tax, as follows: land acquisition for future EMS stations (\$1,000,000), ambulance service (\$5,375,000), Economic Development Loan Program (\$3,000,000).

Public comments were heard.

Jim Arrington, President of the Volunteer Firefighters Association, spoke in support of the Proposed Ordinance.

There were no additional public comments.

The Public Hearing and public record were closed.

Mr. Rieley offered an amendment to the Proposed Ordinance to provide additional funding in Local Law Enforcement Grants, which are currently \$30,000 a year. Mr. Rieley proposed an additional \$5,000; this additional funding would be a one-time only grant to be used for technology or equipment (no salaries). It was noted that there are four police departments that get \$15,000 a year and, therefore, that amount would be pro-rated.

**M 085 21  
Amend  
Proposed  
Budget  
Ordinance**

A Motion was made by Mr. Hudson, seconded by Mr. Rieley, to amend the Proposed Ordinance to include an additional \$5,000.00 in funding in Local Law Enforcement Grants (from \$30,000 per year to \$35,000 per year with the exception of four departments that do not receive the full \$30,000; these departments would receive a pro-rated amount).

**Motion Adopted: 5 Yeas.**

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

**M 086 21  
Adopt  
Ordinance  
No. 2765**

A Motion was made by Mr. Hudson, seconded by Mr. Rieley, to Adopt Ordinance No. 2765 entitled "AN ORDINANCE AMENDING THE ANNUAL OPERATING BUDGET FOR FISCAL YEAR 2021 TO INCORPORATE ADDITIONAL REALTY TRANSFER TAX REVENUE AND ALLOWABLE EXPENDITURES", as amended.

**Motion Adopted: 5 Yeas.**

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

**DCF  
Agreement**

With the approval of the Proposed Budget Amendment Ordinance, Mrs. Jennings presented for Council's consideration an Agreement with Delaware Community Foundation to manage the Ambulance Grant Fund.

**Agreement (continued)**      **Mrs. Jennings responded to questions regarding the Foundation's fees and how those fees will be covered.**

**M 087 21**      **A Motion was made by Mr. Hudson, seconded by Mr. Rieley, that the**  
**Approve**      **Sussex County Council enter into an Agreement with the Delaware**  
**Agreement/**      **Community Foundation to create a philanthropic and charitable fund**  
**Delaware**      **called the Sussex County Ambulance Fund.**  
**Community**

**Foundation/**      **Motion Adopted:      5 Yeas.**  
**Sussex**

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

**Update**      **Mrs. Jennings reported that, in December 2015, the Council signed a**  
**MOU/**      **Memorandum of Understanding (MOU) that transferred the County's**  
**Dog**      **authority of dog control to the Office of Animal Welfare beginning in 2016.**  
**Control**      **The State of Delaware's authority of dog control was later formalized in**  
**Enforce-**      **Delaware Code in 2017, which moved the responsibility of dog control from**  
**ment**      **Title 9 to Title 16. The State of Delaware has reached out to the three**  
      **counties and the City of Wilmington to update the last MOU that was**  
      **signed in 2020. Mrs. Jennings reported that the difference between the**  
      **2020 MOU and the new MOU is the pricing structure; adding three**  
      **additional staff and the terms whose terms would extend to 2024. The**  
      **pricing structure is based on a per capita distribution among the three**  
      **counties and the City of Wilmington. The current cost of the County's**  
      **MOU is \$768,364.00; the proposed increase would result in a new total cost**  
      **of \$853,422.00 (for FY 2022).**

**Chief Mark Tobin and Executive Director Christina Motoyoshi of the**  
**Office of Animal Welfare gave a presentation on the services they provide**  
**the County and the reason why additional staff are needed.**

**Council members asked for a quarterly report from the Office of Animal**  
**Welfare.**

**M 088 21**      **A Motion was made by Mr. Rieley, seconded by Mr. Schaeffer, that the**  
**Approve**      **Sussex County Council approves the Memorandum of Understanding with**  
**MOU/**      **the State of Delaware to enforce Delaware Dog Control and Dangerous Dog**  
**Dog**      **Statutes, as presented.**  
**Control**

**Enforce-**      **Motion Adopted:      4 Yeas, 1 Nay.**  
**ment**

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



**Western  
Sussex  
Trans-  
mission  
Facilities/  
Contract  
Nos. 4 & 6/  
Change  
Orders  
and  
Close-out**

Hans Medlarz, County Engineer, presented Change Order No. 4 for Contract 4, Project S19-28, Pumping Stations, Western Sussex Transmission Facilities, and a Contract Close-out for Contract 6, Project S20-35. Change Order No. 4, in the amount of \$21,504.87 is for a Delmarva Power & Light transformer modification and SCADA System upgrades and includes an associated two week contract time extension. Mr. Medlarz reported that the Western Sussex Transmission Facilities, Contract 6, Maintenance Garage/Office Building, Project S20-35 was substantially complete on December 4, 2020 and the project was determined to be complete upon final inspection of punch list items on February 2, 2021; with no outstanding issues, a Balancing Change Order No. 2 in the credit amount of \$19,389.00 can be issued.

**M 089 21  
Approve  
Change  
Order/  
Project  
S19-28**

A Motion was made by Mr. Hudson, seconded by Mr. Rieley, based upon the recommendation of the Sussex County Engineering Department, that Final Balancing Change Order No. 2 for S20-35, Western Sussex Transmission Facilities, Contract 6, be approved, decreasing the Contract amount by \$19,389.00 and that Substantial Completion be granted effective December 4, 2020, with any held retainage released in accordance with Contract documents.

**Motion Adopted: 5 Yeas.**

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

**M 090 21  
Approve  
Close-Out/  
Project  
S20-35**

A Motion was made by Mr. Rieley, seconded by Mr. Schaeffer, based upon the recommendation of the Sussex County Engineering Department, that Change Order No. 4 for Contract S19-28, Western Sussex Transmission Facilities, Contract No. 4, Pump Station, be approved, increasing the Contract by \$21,504.87, for a new Contract total of \$3,353,775.84.

**Motion Adopted: 5 Yeas.**

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

**SCRWF  
and RBWTP  
Project/  
Change  
Orders**

Hans Medlarz, County Engineer, presented Change Order Nos. 8 and 9 for the South Coastal RWF Treatment Process Upgrade No. 3 and Rehoboth Beach WTP Capital Improvement Program, Phase 2, General Construction Project C19-11. The change orders are for repairs in the oxidation ditches and for line stops for the by-pass tie-in to minimize downtime.

**M 091 21  
Approve  
Change  
Orders**

A Motion was made by Mr. Schaeffer, seconded by Mr. Hudson, based upon the recommendation of the Sussex County Engineering Department, that Change Order Nos. 8 and 9, for Contract C19-11, South Coastal RWF Treatment Process Upgrade No. 3 and Rehoboth Beach WTP Capital

- M 091 21**  
**Approve**  
**Change**  
**Orders/**  
**SCRWF**  
**and RBWTP**  
**Project**  
**(continued)**
- Improvement Program, Phase 2, General Construction Project C19-11, be approved, increasing the Contract amount by \$34,765.50 and \$45,600.00, respectively, for a new Contract total of \$40,727,399.64.**
- Motion Adopted: 4 Yeas, 1 Absent.**
- Vote by Roll Call: Mrs. Green, Yea; Mr. Schaeffer, Yea;  
Mr. Hudson, Yea; Mr. Rieley, Yea;  
Mr. Vincent, Absent**
- Proposed**  
**Woodlands**  
**II Expansion**  
**of the**  
**SCUSSD**
- John Ashman, Director of Utility Planning and Design, presented a request to prepare and post notices for the Woodlands II Annexation of the Miller Creek Area of the Sussex County Unified Sanitary Sewer District. The proposed expansion would include Parcel 134-19.00-23.00. The Engineering Department received a request from Civil Engineering Associates on behalf of their client, Gulfstream Development, LLC, the owners/developers of the Proposed Woodlands II Subdivision (a proposed 33-lot subdivision). With Council's approval, a public hearing will be scheduled.**
- M 092 21**  
**Post Notices**  
**for the**  
**Woodlands**  
**II Expansion**  
**of the**  
**SCUSSD**
- A Motion was made by Mr. Hudson, seconded by Mr. Rieley, that the Sussex County Engineering Department is authorized to prepare and post notices for the Woodlands II Expansion of the Sussex County Unified Sanitary Sewer District to include Parcel 134-19.00-23.00 located along Bayard Road and Central Avenue, as presented.**
- Motion Adopted: 5 Yeas.**
- Vote by Roll Call: Mrs. Green, Yea; Mr. Schaeffer, Yea;  
Mr. Hudson, Yea; Mr. Rieley, Yea;  
Mr. Vincent, Yea**
- M 093 21**  
**Go Into**  
**Executive**  
**Session**
- At 11:41 a.m., a Motion was made by Mr. Schaeffer, seconded by Mr. Rieley, to recess the Regular Session and go into Executive Session for the purpose of discussing matters relating to pending litigation and land acquisition.**
- Motion Adopted: 5 Yeas.**
- Vote by Roll Call: Mrs. Green, Yea; Mr. Schaeffer, Yea;  
Mr. Hudson, Yea; Mr. Rieley, Yea;  
Mr. Vincent, Yea**
- Executive**  
**Session**
- At 11:45 a.m., an Executive Session of the Sussex County Council was held in the Basement Caucus Room to discuss matters relating to pending litigation and land acquisition. The Executive Session concluded at 12:25 p.m.**

**M 094 21**      **At 12:30 p.m., a Motion was made by Mr. Rieley, seconded by Mr. Reconvene**  
**Schaeffer, to come out of Executive Session and to reconvene the Regular Session.**

**Motion Adopted:      4 Yeas, 1 Absent.**

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

**E/S Action      There was no action on Executive Session matters.**

**M 095 21**      **At 12:30 p.m., a Motion was made by Mr. Schaeffer, seconded by Mr. Adjourn**  
**Rieley, to adjourn.**

**Motion Adopted:      4 Yeas, 1 Absent.**

**Vote by Roll Call:      Mrs. Green, Absent; 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.}*



## Memorandum

To: Sussex County Council  
The Honorable Michael H. Vincent  
The Honorable Cynthia C. Green  
The Honorable Douglas B. Hudson  
The Honorable John L. Rieley  
The Honorable Mark G. Schaeffer

From: Jamie Whitehouse, AICP, Director of Planning & Zoning

CC: Everett Moore, County Attorney

Date: March 11, 2021

RE: County Council Report for CU 2201 filed on behalf of Pine Acres, Inc (Sun Leisure Point Resort, LLC)

---

The Planning and Zoning Department received an application (CU 2201 filed on behalf of Pine Acres, Inc (Sun Leisure Point Resort, LLC)) for a Conditional Use for parcels 234-24.00-39.02 and 39.06 to allow for a campground at 25491 Dogwood Lane. The property is within the Agricultural Residential (AR-1) Zoning District. The parcel size is 8.0 acres +/-.

After the application was submitted, the owner of the site changed to Sun Leisure Point Resort, LLC.

The Planning and Zoning Commission held a public hearing on January 21, 2021. At the meeting of February 11, 2021, the Commission recommended approval of the application for the 13 reasons and 18 recommended conditions outlined within the motion (included below).

County Council held a public hearing on March 2, 2021. At the conclusion of the public hearing, Council deferred action on application CU 2201 for further consideration.

Below are the draft minutes from the Planning & Zoning Commission meetings of January 21, 2021 and February 11, 2021.

### Draft Minutes of the January 21, 2021 Planning & Zoning Commission Meeting

#### **C/U 2201 - Sun Leisure Point Resort, LLC (Pine Acres, Inc.)**

**An Ordinance to grant a Conditional Use of land in an AR-1 Agricultural 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.** The property is lying on the south side of Dogwood Lane approximately 305 feet south of Radie Kay Lane, approximately 0.29 mile



northeast of Long Neck Road. 911 Address: 25491 Dogwood Lane, Millsboro. Tax Parcels: 234-24.00-39.02 and 39.06.

Mr. Whitehouse advised the Commission that submitted into the record is a copy of the Applicant's indicative site plan, a copy of the Applicant's exhibit book, a copy of the DelDOT service level evaluation response, a staff analysis, and a copy of comments received from the Sussex County Engineering Department Utilities Planning Division, Mr. Whitehouse noted that Staff have received one letter regarding the Application.

The Commission found that Mr. David Hutt, Esq. was present on behalf of the Applicant, Sun Leisure Point Resort, LLC; that also present are Mr. Mark Davidson, Principal Land Planner and Alan Decktor, Professional Engineer with Pennoni Group, and Jackie Maguire representing Sun Leisure and appearing by teleconference is Brian Styck, Engineer with the Atwell Group; that exhibit notebooks were submitted as part of the record; that Sun Leisure Point Resort community is a community of manufactured homes, recreational vehicles (RVs), and a marina located just off Long Neck Road; that the property under consideration is made up of two tax parcels; that each parcel is made up of four acres for a total of eight acres; that the proposed Conditional Use is for 58 RV sites on these eight acres; that Leisure Point has been in existence since the 1960s; that Leisure Point was developed by George Harrison, Sr., prior to the enactment of the Sussex County Zoning Code; that Leisure Point is considered a pre-existing legally non-conforming manufactured home and RV resort community; that Leisure Point was originally developed for transient campers but, over time, it became a mixture of permanent manufactured home lots as well as RV sites; that, currently, the community consists of 211 manufactured home sites, 317 RV sites, and 305 boat slips in the marina; that Mr. Dick Harrison worked in Leisure Point for many years until it was sold in 2019 to Sun Leisure Point Resort, LLC; that there is a Conditional Use Application before the Planning and Zoning Commission for 58 RV sites on these eight acres which is adjacent to the existing community; that, after the Conditional Use application was filed, the Applicant was informed that a variance from the separation distance requirement would also be necessary for this property; that the variance request was heard by the Board of Adjustment on June 1, 2020; that the variance was granted on July 6, 2020, and a copy of the Findings of Fact have been included in the exhibit booklet; that the property is zoned AR-1 and a Conditional Use is required for a campground in addition to the special requirements of Sussex County Code 115-172(H); that the surrounding area is primarily residential and consists of manufactured home / RV parks, single-family residential homes and farmland; that there are 17 manufactured home parks and three RV parks off Long Neck Road not counting Sun Leisure Point; that immediately to the south of the subject property are three single-family residences, to the north is the remainder of Sun Leisure Point community, to the east are manufactured home parks and to the west is an agricultural used area; that Long Neck Road is known as a major collector road; that the entrance will be off Radie Kay Lane which already exists so additional road improvements will not be needed at this time; that the subject property lies in the Coastal Area according to the Comprehensive Plan and the majority of the parcel in the Level Two Area according to the Strategies for State Policies and Spending Map with a small portion in the Level Three Area; that Level Two is an area where growth is anticipated by local, county and state plans in the near-term future; that public utilities are available for this site; that there are no known archeological sites or national registered historical sites on the property; that there are no wetlands on the property and is outside of a floodplain area; that because this property is located in the Coastal Area an environmental assessment report was prepared and is part of the exhibit book; that the property is located in a well-head protection area; that the development must be at least 100 ft. away from the wells and this proposal will greatly exceed the requirements; that the impervious cover must be 35% or less and this proposal will comply with those requirements; that there are nine requirements for an RV park; that the first requirement is

that the access to the site must be from a public highway or an easement having a width of at least 50 ft. and this property has access from a public road – Long Neck Road to Radie Kay Lane which is a 50 ft. right of way which leads back to Leisure Point; that the second requirement is that there is adequate drainage on the site and the entire site is in a Fair Water Recharge Area, that drainage will be to Guinea Creek and those waters eventually end up in the Bay; that the third requirement is that the campsites be at least 400 ft. from any existing dwelling on property of other ownership and shall be at least 100 ft. free from any public road and this site is over 100 ft. from a public road and a variance was granted by the Board of Adjustment with regard to the 400 ft. separation distance; that as part of that approval, the Applicant has offered to install a privacy fence around the entire perimeter of the campground; that the fourth requirement is that each campsite shall have an area of 2000 sf and a width of not less than 40 ft. and that the park have a landscaped buffer of 50 ft. wide and the Applicant will meet the campsite dimensions and the 50 ft buffer requirements and will include a privacy fence; that the fifth requirement is that proper provisions be made for public water supply, toilets and bathing facilities and electric connections and as described earlier these services will be provided and there a bathing facility for guests is shown on the site plan; that the guests in this part of Leisure Point will also have access to the amenities in the existing Leisure Point; that the sixth requirement is that small retail businesses intended primarily for occupants of the park area shall be permitted within the park area and there is no plan to add to this section as there is a camp store in the original section of Leisure Point; that the seventh requirement is that proper provision shall be made for refuse storage and collection, and as it does now there will be refuse collections sites and all refuse will be removed from the site by a commercial refuse hauler; that the eighth requirement deals with accessory structures and should there be any accessory structures on the site they will be shown on the site plan and be uniform appearance in design and size; that the ninth requirement is that other than the allowed accessory structure the only other structures on site would be the RVs that would rent space there; that there was an email from Ms. Debbie Fields that asked six questions; that she asked if all the RV park guests would have to go through a criminal and credit background check, this would not be proposed as the guests would be vacationing and when vacationing that is not generally a requirement; that there may be some confusion because in the manufactured home section of the park, credit checks and criminal background checks would be required as that is a more permanent contract; that anyone who brings in a golf cart must show proof of insurance; that there will be an 11:00 pm curfew; that animals must be leashed; that there will be speed limits within the park; that the Applicant has submitted some conditions for the Commission members to review; that all conditions placed by the Board of Adjustment be part of the site plan; that there is a condition that campsites be available year round; that conditional uses are of a public or semipublic character and require the exercise of planning judgment on location and site plan, that a conditional use should be found to be desirable for the general convenience and welfare of the County; that this Application meets those objectives as the nature of this area is exactly what Leisure Point is a microcosm of and that is Manufactured Home Parks and RV Parks; that this is in the Coastal Area, no additional infrastructure is necessary; that tourism is the second highest economic generator in Sussex County, trailing only to agriculture and forestry and this proposed RV resort extension would contribute to the prosperity and welfare of the County by providing another option for visitors to the County; that the RV industry thrived during the pandemic as people could vacation and still maintain social distancing; and that this use is desirable for the convenience, orderly growth, prosperity and welfare of the County.

Mr. Mears asked if there are plans for a pavilion to allow for entertainment on the site.

Mr. Hutt said that any entertainment such as live music will take place on the existing Leisure Point property.

Mr. Mears asked if there would be a sewer dump station on site or would it be self-contained.

Mr. Jackie Maguire stated that all sites would have a full hook up so they will not need to go to a dump station at the end of the stay and the Applicant will be able to meet any design standards that are set forth today.

Ms. Wingate asked if there would be an on-site manager to maintain the rules that will be set in place.

Ms. Maguire stated that there is an on-site manager and rangers at the guard shack during the evening hours; that during the day, the gate may remain up to help the flow of traffic; that during the evening the gate would be down and a key card would be required for entrance to the site; that the gate is manned 24 hours, someone is always on-site to address any issues or concerns that arise.

Ms. Stevenson asked if there are any limits on how long a person can stay at the site.

Mr. Hutt stated that currently there are no limits on how long someone can stay; that in the existing RV section which closes during the winter, no one can declare that to be their residence; and that the Applicant has procedures to make sure that the RV sites do not become residences.

Mr. Hopkins asked about past issues regarding RV parks.

Mr. Robertson stated that in some RV parks, additions such as decks were added to the RVs making them more permanent structures; that there were concerns about building permits, were the structures safe; that previously Council wanted to make sure that RV parks did not become permanent residences; that the more recent Council did not seem concerned with that and wanted to allow the RV Park be year round if the Applicant requested it; that typically there were dates where the RV park closed, usually during winter months, so that the RVs did not become permanent homes; and that there are concerns that RVs that become permanent are assessed as permanent dwellings.

The Commission found that no one spoke in favor of the Application.

The Commission found that Mr. Anthony DiGirolamo spoke in opposition to the Application; that he opposes the 11:00 pm curfew; and that there is a very sharp turn on Radie Kay and to get a 30 ft. trailer around that turn means encroaching onto his family's property.

The Commission found that Ms. Marilyn Wilson spoke in opposition to the Application; that this Application is impacting 70 plus acres of family land with five homes; that initially this Application was for a seasonal RV park and now the request is for a year round park; that there are flooding concerns; that the road is narrow; that having a campground will devalue properties in the area; and that there are concerns about how many people will be staying at this campground.

The Commission found the Mr. James DiGirolamo spoke by teleconference in opposition to the Application as this does not fit with the character of the neighborhood.

The Commission found the Mr. Joseph DiGirolamo spoke by teleconference in opposition to the Application; that he has concerns about the security system in place; that should the golf carts remain



in the community or are they allowed to be on Radie Kay Lane and Diplomat Street; that he has concerns about the installation of sewer and water and if it will affect his property; that there was a letter from Mr. Michael McGoerty submitted during the variance hearing and that this letter should also be entered into the record for this Application and that it will create more traffic and Long Neck Road and Radie Kay Lane.

Chairman Wheatley stated that the Applicant has indicated that there will be security on-site 24 hours a day.

Mr. Robertson stated that it is incumbent on witnesses to bring forth evidence regarding the impact on property values.

Mr. Whitehouse stated that letters from the Variance case were not made part of this record, but should the Commission request it, a copy of the letter from Mr. McGoerty could be added to the file.

The Commission found the Mr. James Russum spoke by teleconference in opposition to the Application; that he is concerned about the right-of-way; that it is difficult to enter his property currently and that there will be additional traffic with the park expansion; that the park is a golf cart community which results in an enormous amount of traffic; and that his entrance is blocked by trees that need to be removed.

Mr. Hutt stated that there is a 50 ft. easement parallel to Dogwood Lane and the caller could put a road in that easement if they wish to; that the development of the RV park would not interfere with access to this adjacent property; that Radie Kay Lane is used by Leisure Point, the farmland property and Long Neck Village; and that there is a letter in the exhibit book from a Realtor stating that this development would have a positive impact on property values in the area.

The Commission found the Ms. Debbie Fields spoke by teleconference in opposition to the Application; that there should be background checks for the users of the RV park; that it is not clear if this will be a seasonal or year-round campground; and that security is lax and that is a concern.

Mr. Hutt responded that there may be a combination of seasonal sites and transient sites.

Mr. Mears asked how many people per lot would be allowed per campsite.

Ms. Maguire stated that there would be a maximum of six guests per site.

Mr. Mears asked about the water run-off on the property.

Mr. Mark Davidson stated that there are two stormwater management ponds on site.

Ms. Stevenson referred to one of the caller's comments where he stated that the campers entering the property encroach on his property.



Mr. Davidson stated the caller may have be talking about the intersection at Radie Kay Lane and Dogwood and that the roads are well established there.

Mr. Bill Brockenbrough, DelDOT stated that he had no prepared remarks and that there is a letter from DelDOT in the file.

Upon there being no further questions, Chairman Wheatley closed the public hearing for this application.

Prior to the recess, the Commission discussed Application C/U 2201 – Sun Leisure Point Resort, LLC. Motion by Mr. Mears to defer action for further consideration but to leave the record open for submission of Mr. McGoerty’s letter, seconded by Ms. Wingate, and carried unanimously. Motion carried 5-0.

#### Draft Minutes of the February 11, 2021 Planning & Zoning Commission Meeting

The Commission discussed this application which has been deferred since January 21, 2021.

Ms. Wingate moved that the Commission recommend approval of C/U 2201 for Sun Leisure Point Resort, LLC for a Conditional Use of land in an AR-1 Agricultural Residential District for a campground based upon the record made during the public hearing and for the following reasons:

1. This application seeks to add 58 additional campsites to the existing legally non-conforming Leisure Point campground. These additional 58 units will be situated on 8 acres.
2. This conditional use is for the expansion to the existing Leisure Point campground/resort to provide additional lodging opportunities for RV and camping visitors to Sussex County and its beach and bay areas, which is a vital part of Sussex County’s tourism industry.
3. The use is consistent with other existing uses in the area, including the existing Leisure Point camping facility. There are a number of similar manufactured home or RV communities, including 4 with campgrounds. There are also nearby C-1 properties.
4. The Comprehensive Plan identifies this site as part of the Coastal Area, which is recognized as a development or growth area on the Future Land Use Map.
5. The development is consistent with the purposes and goals of the Sussex County Comprehensive Plan Update since it (1) promotes economic development; (2) promotes tourism; and (3) is consistent with the character of the zoning and development in the area.
6. This expanded camping and RV area will be accessed through the existing gated entrance to Leisure Point via Radie Kay Lane.
7. The proposed conditional use will not adversely affect the congestion of roads or streets as confirmed by DelDOT. In accordance with the MOU between Sussex County and DelDOT, the campground would only have a “negligible” impact on area roadways and a TIS is not required. Access will be via Radie Kay Lane from Long Neck Road, which DelDOT has designated as a “Major Collector”.
8. There will be no negative impact on schools or other similar public facilities since the expanded camping and RV area will only be used for transient visitors.

9. The Long Neck Water Company will provide water service to the expansion area.
10. Sussex County will provide central sewer service to the expansion area.
11. By written decision of the Board of Adjustment dated August 17, 2020 in Case Number 12428, the Sussex County Board of Adjustment granted a 266-foot variance from the 400-foot separation distance required for the manufactured homes on Sussex County Tax Parcels 234-24.00 39.07 and 39.08.
12. With the variance, the expansion area complies with the requirements of Section 115-172.H of the Sussex County Zoning Code for the approval, design and operation of campgrounds.
13. The proposed use is beneficial and desirable for the general convenience and welfare of Sussex County and its residents and visitors since it will provide tourism and related services, economic growth in a designated development area, full and part-time employment opportunities, and significant economic benefits to area businesses.
14. This recommendation is subject to 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 pm and 7:00 am 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 Number 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 115-172.H, with the exception of the variance approved in Board of Adjustment Case Number 12428.
- 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 Condition Use # 2208 and by Board of Adjustment Case Number 12428.
- R. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.

Motion by Ms. Wingate, seconded by Ms. Stevenson and carried unanimously to recommend approval of C/U 2201 Sun Leisure Point Resort, LLC for the reasons and conditions stated in the motion. Motion carried 4 – 0.

## PLANNING & ZONING COMMISSION

ROBERT C. WHEATLEY, CHAIRMAN  
KIM HOEY STEVENSON, VICE-CHAIRMAN  
R. KELLER HOPKINS  
J. BRUCE MEARS  
HOLLY J. WINGATE



## Sussex County

DELAWARE  
sussexcountyde.gov  
302-855-7878 T  
302-854-5079 F  
JAMIE WHITEHOUSE, MRTPI, AICP  
DIRECTOR OF PLANNING & ZONING

### PLANNING AND ZONING AND COUNTY COUNCIL INFORMATION SHEET

Planning Commission Public Hearing Date: January 21<sup>st</sup>, 2021

Application: CU 2201 Sun Leisure Point Resort, LLC (Pine Acres, Inc.)

Applicant: Pine Acres, Inc.  
25491 Dogwood Lane  
Millsboro, DE 19966

Owner: Sun Leisure Point Resort, LLC (Pine Acres, Inc.)  
27777 Franklin Road  
Suite 200  
Southfield, MI 48034

Site Location: 25491 Dogwood Lane, Millsboro, DE. The property is on the south side of Dogwood Lane, approximately 305 feet south of Radie Kay Lane.

Current Zoning: AR-1 - Agricultural Residential Zoning District

Proposed Use: Conditional Use for expansion of existing Leisure Point Campground.

Comprehensive Land  
Use Plan Reference: Coastal Area

Councilmanic  
District: Mr. Hudson

School District: Indian River School District

Fire District: Indian River Fire Department

Sewer: Sussex County Sewer

Water: Long Neck Water Company

Site Area: 8.0 acres +/- (two parcels, 4.0 acres each)

Tax Map IDs: 234-24.00-39.02 & 234-24.00-39.06



JAMIE WHITEHOUSE, AICP MRTPI  
PLANNING & ZONING DIRECTOR  
(302) 855-7878 T  
(302) 854-5079 F  
jamie.whitehouse@sussexcountype.gov



**Sussex County**

DELAWARE  
sussexcountype.gov

## Memorandum

To: Sussex County Planning Commission Members  
From: Lauren DeVore, Planner III  
CC: Vince Robertson, Assistant County Attorney and applicant  
Date: January 13, 2021  
RE: Staff Analysis for CU 2201 Sun Leisure Point Resort, LLC (Pine Acres, Inc.)

---

This memo is to provide background and analysis for the Planning Commission to consider as a part of application CU 2201 Sun Leisure Point Resort, LLC (Pine Acres, Inc.) to be reviewed during the January 21, 2021 Planning Commission Meeting. This analysis should be included in the record of this application and is subject to comments and information that may be presented during the public hearing.

The request is for a Conditional Use for Tax Parcels 234-24.00-39.02 and 234-24.00-39.06 to allow for the expansion of the existing, non-conforming Leisure Point campground to be located at 25491 Dogwood Lane in Millsboro, Delaware. The expansion includes adding 58 campsites to the community. The Sun Leisure Point Resort community is a community consisting of manufactured homes, recreational vehicles (RVs), and a marina located off Long Neck Road. The parcels are located on the south side of Dogwood Lane, approximately 350 feet south of Radie Kay Lane and approximately 0.29-mile northeast of Long Neck Road. Each parcel is comprised of 4.0 acres, for a combined total acreage of 8.0 acres +/-.

There was a related Board of Adjustment Application for the parcels, BOA Case No. 12428. The application was for a variance from the separation distance requirement that campers be at least 400 feet from existing dwellings on properties of other ownership, which was granted by the Board and of which, the Findings of Fact were approved on August 17, 2020. The variance only applies in relation to the Niblett Property (which consists of Tax Parcels 234-24.00-39.08 & 39.07.)

The 2018 Sussex County Comprehensive Plan Update (Comprehensive Plan) provides a framework of how land is to be developed. As part of the Comprehensive Plan, a Future Land Use Map is included to help determine how land should be zoned to ensure responsible development. The Future Land Use map in the plan indicates that the parcels have a designation of "Coastal Area." The surrounding and adjacent properties located to the north, south, east and west of the subject properties also lie within the "Coastal Area" Future Land Use Map designation.

As outlined within the 2018 Sussex County Comprehensive Plan, Coastal Areas are areas that can accommodate development provided that special environmental concerns are addressed. A range of housing types should be permitted in Coastal Areas, including single-family homes, townhomes, and multi-family units. Retail and office uses are appropriate, but larger shopping centers and office parks should be confined to selected locations with access along arterial roads. Appropriate mixed-use development should also be allowed.

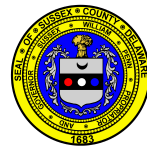


The subject properties are zoned Agricultural Residential (AR-1). The adjoining parcels to the north, south, east and west are all zoned Agricultural Residential (AR-1). The properties to the southeast along Long Neck Road (Route 23) are zoned General Commercial (C-1).

Since 2011, there have been two Conditional Use applications within a 2-mile radius of the application site. The first application was Conditional Use No. 1984 to allow for a landscaping business and supply area in a Neighborhood Business (B-1) Zoning District. This application was subsequently withdrawn on March 27, 2014. The second application was Conditional Use No. 2167 to allow for open outdoor sales (yard sale) to be located in an Agricultural Residential (AR-1) Zoning District. This application was denied by the Planning and Zoning Commission on April 25, 2019 and was denied by the Sussex County Council on May 14, 2019.

Based on the analysis of the land use, surrounding zoning and uses, the Conditional use to allow for an 8.0 acre expansion of the existing, non-conforming Leisure Point campground, subject to considerations of scale and impact, could be considered as being consistent with the land use, area zoning and surrounding uses.





Sussex County







<b>PIN:</b>	234-24.00-39.02
<b>Owner Name</b>	SUN LEISURE POINT RESORT LLC
<b>Book</b>	5116
<b>Mailing Address</b>	27777 FRANKLIN RD STE 2
<b>City</b>	SOUTHFIELD
<b>State</b>	MI
<b>Description</b>	RT 22
<b>Description 2</b>	4 ACRES
<b>Description 3</b>	
<b>Land Code</b>	

**polygonLayer**

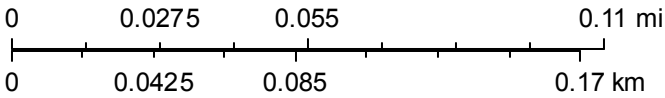
Override 1

**polygonLayer**

Override 1

-  Tax Parcels
-  911 Address
-  Streets
-  County Boundaries

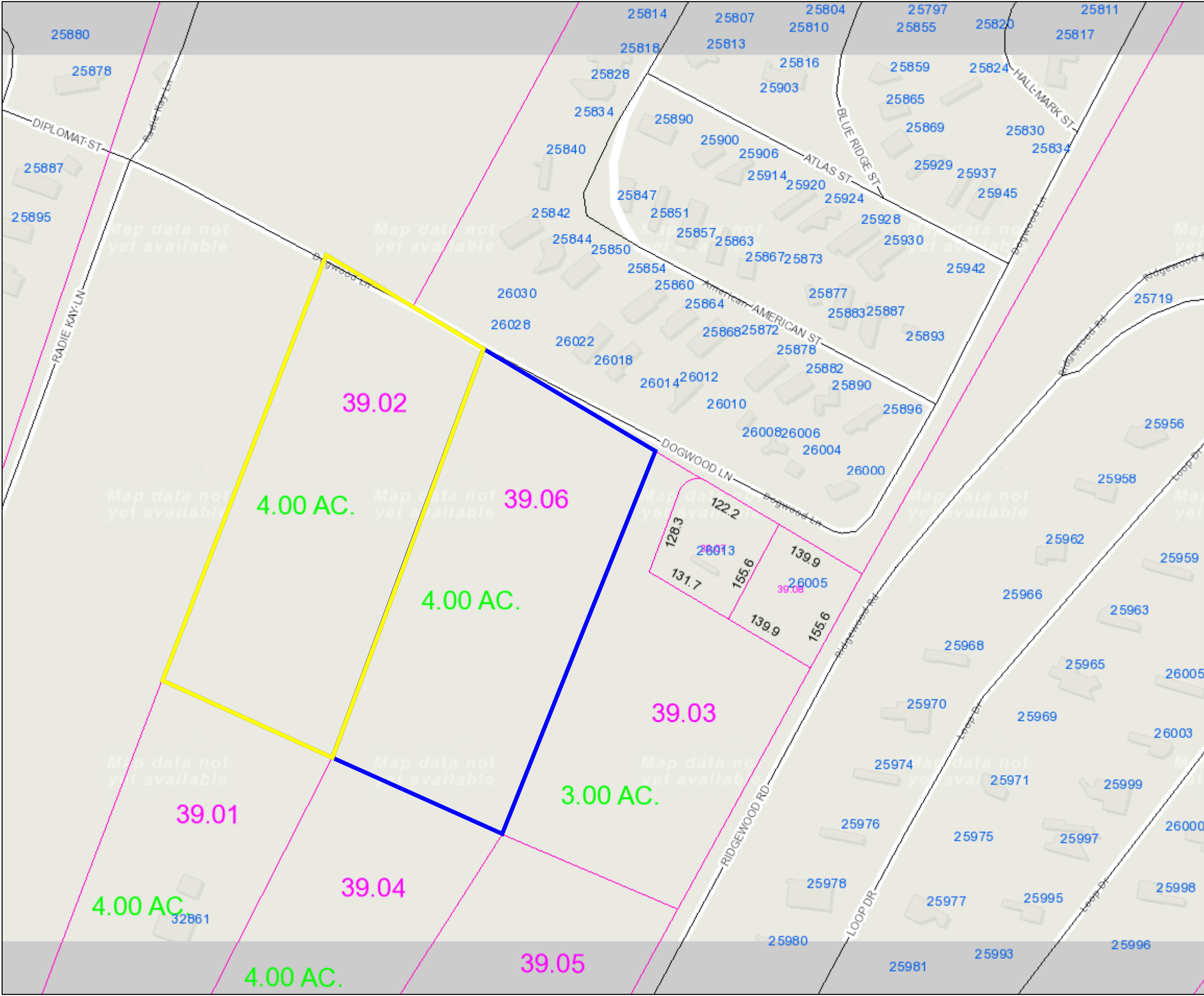
1:2,257





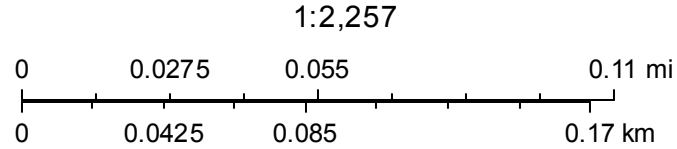


Sussex County

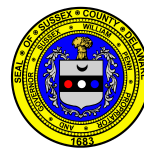


PIN:	234-24.00-39.02
Owner Name	SUN LEISURE POINT RESORT LLC
Book	5116
Mailing Address	27777 FRANKLIN RD STE 2
City	SOUTHFIELD
State	MI
Description	RT 22
Description 2	4 ACRES
Description 3	
Land Code	

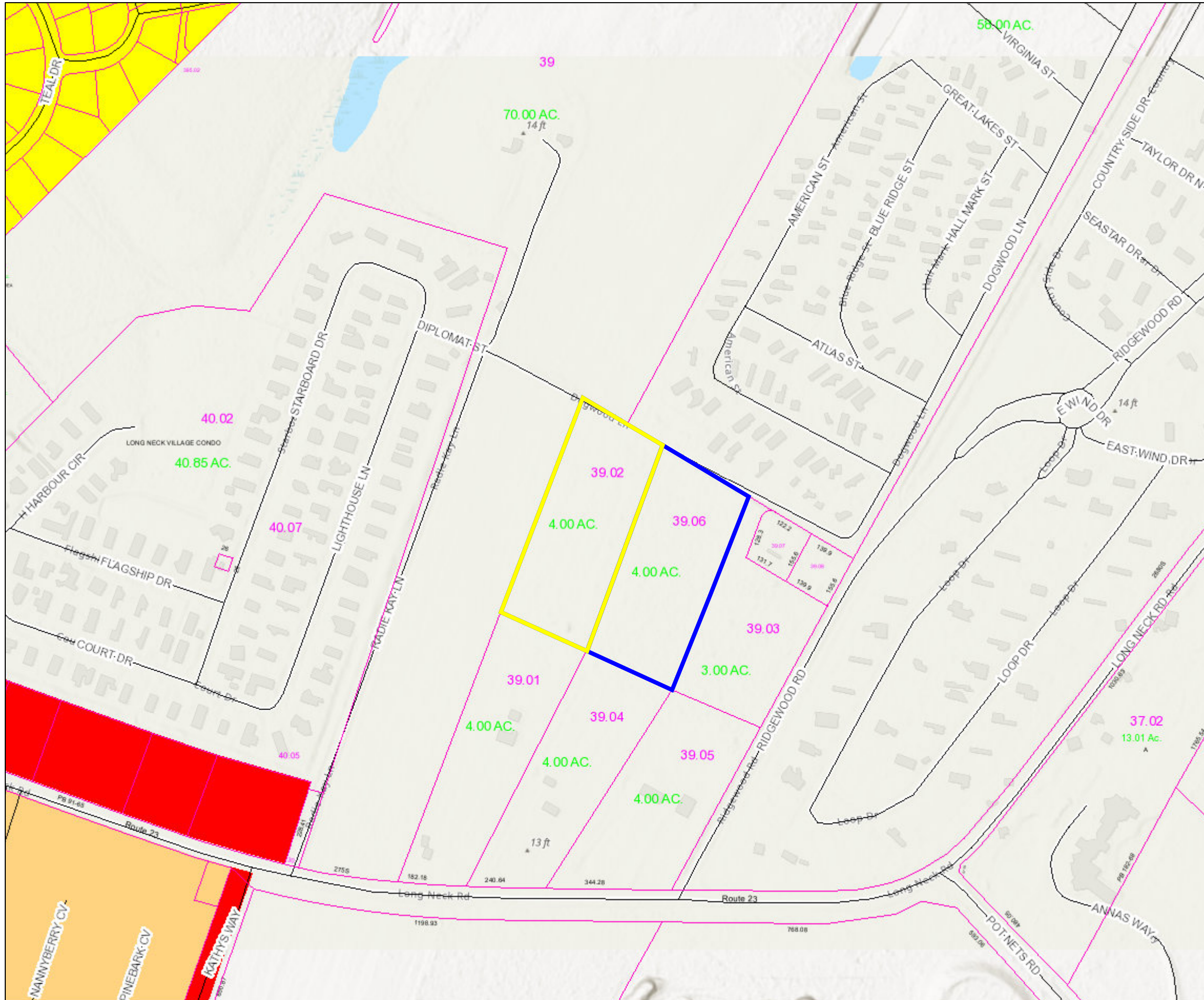
- polygonLayer  
Override 1
- polygonLayer  
Override 1
- Tax Parcels
  - 911 Address
  - Streets
  - County Boundaries








# Sussex County




<b>PIN:</b>	234-24.00-39.02
<b>Owner Name</b>	SUN LEISURE POINT RESORT LLC
<b>Book</b>	5116
<b>Mailing Address</b>	27777 FRANKLIN RD STE 2
<b>City</b>	SOUTHFIELD
<b>State</b>	MI
<b>Description</b>	RT 22
<b>Description 2</b>	4 ACRES
<b>Description 3</b>	
<b>Land Code</b>	

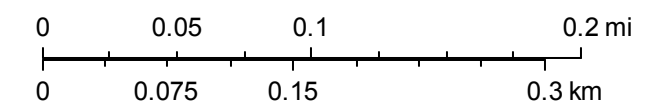
**polygonLayer**  
Override 1

**polygonLayer**  
Override 1

 Tax Parcels

 Streets

1:4,514



**Introduced 09/10/19**

**Council District No. 4 – Hudson  
Tax I.D. No. 234-24.00-39.02 and 39.06  
911 Address: 25491 Dogwood Lane, Millsboro**

**ORDINANCE NO. \_\_\_\_**

**AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL 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**

**WHEREAS, on the 26th day of August 2019, a conditional use application, denominated Conditional Use No. 2201, was filed on behalf of Pine Acres, Inc.; and**

**WHEREAS, on the \_\_\_\_ day of \_\_\_\_\_ 2020, a public hearing was held, after notice, before the Planning and Zoning Commission of Sussex County and said Planning and Zoning Commission recommended that Conditional Use No. 2201 be \_\_\_\_\_; and**

**WHEREAS, on the \_\_\_\_ day of \_\_\_\_\_ 2020, 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. 2201 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 the south side of Dogwood Lane approximately 305 feet south of Radie Kay Lane, approximately 0.29 mile northeast of Long Neck Road and being more particularly described in the attached legal description prepared by Morris James Wilson Halbrook & Bayard, LLC and D. Stephen Parsons, P.A., said parcel containing 8.0 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.**



## Memorandum

To: Sussex County Council  
The Honorable Michael H. Vincent  
The Honorable Cynthia C. Green  
The Honorable Douglas B. Hudson  
The Honorable John L. Rieley  
The Honorable Mark G. Schaeffer

From: Jamie Whitehouse, AICP, Director of Planning & Zoning

CC: Everett Moore, County Attorney

Date: March 12, 2021

RE: County Council Report for CU 2258 filed on behalf of Bioenergy Development Group, LLC

The Planning and Zoning Department received an application (CU 2258 filed on behalf of Bioenergy Development Group, LLC for a Conditional Use for parcels 132-6.00-88.01 and 95.00 and 132-11.00-41.00 and 41.02 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 at 28338 Enviro Way, Seaford. The property is within the Agricultural Residential (AR-1) Zoning District. The parcel size is 228.88 acres +/-.

The Planning and Zoning Commission held a public hearing on February 11, 2021. At the meeting of March 11, 2021, the Commission recommended approval of the application for the 15 reasons and 12 recommended conditions outlined within the motion (included below).

Below are the approved minutes from the Planning & Zoning Commission meeting of February 11, 2021 and the draft minutes of the Planning & Zoning Commission meeting of March 11, 2021.

Approved Minutes of the February 11, 2021 Planning & Zoning Commission Meeting

### **C/U 2258 Bioenergy Development Group, LLC**

**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. The property is lying on the west side of Seaford Rd. (Rt. 13A) approximately 0.2 mile north of Oneals Rd. (S.C.R. 485). 911 Address:**





28338 Enviro Way, Seaford. Tax Parcels: 132-6.00-88.01 & 95.00, 132-11.00-41.00 & 41.02.

Mr. Whitehouse advised the Commission that submitted into the record is a copy of the legal description of the lands, a copy of the Applicant's conceptual site plan, a copy of the Applicant's exhibit book, a copy of the previous ordinances for the site; a copy of comments from the Sussex County Engineering Department Utility Planning Division a copy of the PLUS response, a copy of the DelDOT service level evaluation response dated January 16, 2020 and a letter received from DelDOT. Mr. Whitehouse noted that Staff have received 113 letters in opposition and 10 letters in support of the Application.

The Commission found that Mr. Denis Schrader, Esq. was present on behalf of the Applicant, Bioenergy Development Group, LLC; that also present are Mr. Peter Ettinger of Bioenergy, and Mr. Jeffrey Bross of Duffield along with other team members who will address questions that the Commission may have. Mr. Schrader stated that there will be a lot of scientific matters introduced today by both the Applicant and the opposition; that a lot of these items will be regulated by DNREC, DelDOT and other State agencies; that the Application today is for the land use; that an exhibit book has been submitted including proposed findings of fact; 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.

The Commission found that Mr. Peter Ettinger was present on behalf of the Application. Mr. Ettinger stated that Bioenergy is looking forward to being a part of the Sussex County Community; that they plan to build a 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 digest aid that can be used as a compost; that they believe in the reuse, recycling and repurpose 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 transforms organic residuals into renewable energy and a nutrient-rich compost; that anaerobic is not new to the area as it is used on a smaller basis by five or six locations in Delaware; 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 sell the digestate to farmers and gardeners to improve their soil, and to reduce greenhouse gas; that there are three key points to keep in mind, healthy soils, clean air and water; that there will be a waste water facility will be onsite; that community engagement is important and as such BIC has donated to the Spade and Trowel Garden Club, the Delaware Food Bank and other local organizations; that there was a discovery day to give the Community the opportunity either in person or virtually to see what takes place on the site; that there will be the creation of 30 jobs onsite with a

number of other indirect jobs; 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; that digestate can be used 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 this will reduce odors, pathogens, greenhouse gases at a six-day week facility that will have tremendous impact in Sussex County.

The Commission found that Ms. Christine McKiernan, Head of Engineering and Construction for Bioenergy Development Group was present on behalf of the Application. Ms. McKiernan stated 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.

Mr. Schrader stated 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; that there is screening and protection from adjacent properties by the wooded area onsite; and that there is a private road leading to the facility.

The Commission found that Mr. Jeffrey Bross, Professional Engineer with Duffield Associates, was present on behalf of the Application. Mr. Bross introduced his colleagues from Duffield Associates also in attendance, Scott Hoffman, Steve Gorski, Steve Cahill, Brian Lyncha and David Small. Mr. Bross stated that the site is comprised of four parcels totaling 228 acres; that the site includes an access road, scales, the former pelletizing plant, office, mixing building for the compost operation, compost piles, an existing stormwater water 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 also shown on the site plan is the relocated stormwater pond and a wastewater pretreatment plant; that the total of this project will be approximately 11 acres of the total 228 acres; that there will not be a change to the wooded cover and will create an additional 2.78 acres of impervious cover which is 1.2% of the entire site; that there will be two landscaped buffers to the east of the site; 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 at full capacity wastewater will be less than 60,000 gallons per day; 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 does require water which is provided through recycling of treated wastewater generated by the AD process; that the goal for managing stormwater is to have zero discharge to surface waters; 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; 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; 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, this permit has been submitted to DNREC and is under review; 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.

Mr. Schrader stated 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 115-22 of the Code; that the Conditional Use before the Commission meets the requirement of the Statute because the use is public or semi-public in nature, 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 there are a number of letters in opposition to the Application; that this is a 228-acre property with a very small area of the property to be used and that this is not a refinery as stated in some of the opposition letters; 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; and that if this Application receives approval of Council, the Applicant will have to comply with all local, state and federal regulations.

Ms. Wingate asked if the process of trucking in material is the same for this Application as it was for the Pellet operation.

Mr. Ettinger stated that the materials will be trucked into the site and there will be no real change in the number of trucks entering the site.

Ms. Wingate asked if water is necessary for operations would be available onsite.

Mr. Ettinger clarified that there is a minimal amount of water used in this process as it is not a litter plant; that litter is a very dry product and requires large quantities of water to moisten it; that the Dissolved Air Flotation (DAF) waste used in this process has a 10-12 % solid content and is very moist; and will have little impact on the water supply.

Ms. Wingate asked if there would be safety training with local agencies and fire departments.

Mr. Ettinger stated that safety training of staff has already begun; that the facility is fully alarmed and there is security staff onsite.

Ms. Stevenson asked where the litter and DAF coming from.

Mr. Ettinger stated that the DAF would primarily be from Delaware and some that would come up Route 13.

Ms. Stevenson asked what happens to all the waste if it did not come to this site.

Mr. Ettinger stated that the poultry industry may move to other states where rules are less stringent; that the alternative is leeching and influencing the Chesapeake Bay and the Nanticoke; that when the material is in the AD it is being changed and being combined with carbon sources to make it a cleaner and safer product for the environment.

Ms. Stevenson asked if there is a market for the by-product.

Mr. Ettinger responded in the affirmative.

Mr. Hopkins asked why this is a conditional use and not industrial.

Mr. Schrader stated that this site has had a conditional use for approximately 25 years; that the conditional use and the industrial use operate in similar ways; that with the Conditional Use permit, the Council can place conditions that will protect the community; that if the Applicant applied for the industrial use, the Applicant would still have to come back with a final site plan and again, Council could place conditions on the use.

Mr. Hopkins asked how the material coming to the site is measured.

Mr. Schrader stated that the material is weighed; that the trucks coming in are weighed and again when they leave the site.

Ms. Wingate asked what is happening to the DAF currently.

Mr. Ettinger stated that it is used in land application and stored in large tanks to be used for land application; that Councils are getting complaints because of the odor when it is land applied; that most of what will be used is DAF or the "pieces and parts"; that not so much litter will be used in the digester; that blood is a commodity; and that they are permitted for 220,000 tons of DAF / year.

Mr. Hopkins stated that this will be a real service to the community.

Mr. John Rebar from DNREC was available by teleconference to answer questions from the Commission and stated that he had no prepared comments.

There were no questions from the Commission members.

Mr. Bill Brockenbrough from DelDOT was available by teleconference to answer questions from the Commission and stated that he had no prepared comments but had submitted a letter to Staff.

There were no questions from the Commission members.

Chairman Wheatley asked if offal is the same as DAF and could it be used in the anaerobic process.

Mr. Ettinger stated that the composition of offal is challenging but they are considering a pilot program to see what could be done with offal.

The Commission found that Mr. Keith Steck spoke in opposition to the Application. Mr. Steck stated that he sees holes in this Application; that there is no PLUS review of the Application; that the last review for this site was completed in 2012 and was only completed for one of the four parcels of this Application; that the fire marshal report is incomplete as it did not mention anything about the methane gas that will be produced at this site; that methane gas is an explosive or combustible; that DNREC also needs to address the methane or compressed natural gas; and that there was no discussion from DelDOT regarding truck traffic.

The Commission found that Ms. Maria Payan spoke in opposition to the Application. Ms. Payan stated that the Application is deficient because of the confusion about DAF and litter; that the amendment lists litter, and this caused the confusion; that this use would be water intensive; that the Application should be more complete, and Chesapeake Utilities should be part of the Application; that a request was made that this hearing be postponed as the Bioenergy Development Group, LLC has different names on different Applications; that the use will increase traffic; that it is the responsibility of Sussex County to protect the health and welfare of the citizens; that more waste will be brought into Delaware from other states does not make sense for safety or to benefit Sussex County; that there are manufactured home communities within two miles of this site; that this area is already overburdened with pollution; and that there is a limited market for composting products. Ms. Payan submitted exhibits.

Mr. Wheatley stated that the responsibility of the Commission is to decide if the use is appropriate on the parcel of land indicated on the Application; that the questions regarding the names of the companies in not under consideration of the Commission; and that it is not unusual for company names to change as they evolve and change.

Mr. Wheatley asked Mr. Schrader to respond to the questions from Ms. Payan regarding pollution, the market for the composting material and the range of jobs that will be created.

Mr. Hopkins stated that from what he heard the Applicant testify to, that there will be less truck traffic with this use than with the prior use on the site.

Mr. Schrader stated that Bioenergy Development Group is the land holder and is a party to any application for this site and that the engineers for the project will address the questions.

Mr. Bross stated this this will not be a polluting activity; that DNREC require several permits and that DNREC is rigorous with regulations; that this use will not injure the health or welfare of the citizens of Delaware; and that the Applicant has already made improvements to the current composting operations and to stormwater management.



The Commission found that Mr. Steve Gorski, Duffield Associates addressed the traffic concerns; that the number of trucks is like the previous use; that the only increase in traffic will be the number of employees driving to and from the site; and that all truck traffic is counted the same way.

Mr. Ettinger stated that the jobs will range from simple vehicle operators to researchers and scientists that the salary range is \$15 - \$27 per hour starting out and there will be a number of managers under contract and not under an hourly wage; that there are benefits such as hospitals and a 401K; that they have a market for the compost produced onsite; and that they sold more compost in 1 year than Perdue sold in 4-5 years.

The Commission found that Mr. Dustin Thompson spoke by teleconference in opposition to the Application. Mr. Thompson stated that the Application does refer to poultry litter; that he has concerns about gases that will be produced on site but the major concern is the poultry litter contributing towards pollution in Sussex County; that he has concerns about the effect to the Gum Branch Wetlands behind this facility from the increased impermeable surface on this site; that he has concerns about air quality since biogas will be produced on this property; that no explanation was given about how the impurities would be removed from the biogas before it is injected into the natural gas line; and that the Application does not reflect the presentation that was given this evening.

Mr. Schrader stated that the Application this evening is to expand the previous Conditional Uses on the property; that the ordinances for the prior three Conditional Uses were for the processing and handling of poultry litter and had to be referenced in the title for this Application.

Mr. Bross stated that there is a tax ditch at the rear of the property but there are no wetlands on the property; that the stormwater pond will not impact the tax ditch; that the stormwater pond will not be lined; and that Sussex Conservation District have reviewed and approved the stormwater management plan.

The Commission found that Mr. Tyler Lobdell spoke by teleconference in opposition to the Application. Mr. Lobdell stated that he is an attorney with Food and Water Watch; that the description should be more defined than poultry litter; that poultry litter is a very broad term and the Applicant could bring in whatever waste they think is appropriate in the future; that there is a discrepancy between the paperwork filed with DNREC and the Application before the Commission; that it should be clear what will be introduced into the digester; that while feedstock may be used in the digester, it is important to know how this will operate; that it is important to know what pollution will be created by this site; that there is a difference between compost with poultry litter and a gas production facility without poultry litter; that he would like Bioenergy to explain exactly what this site will handle, exactly what will be put into the digester and how the waste will be handled; and that he recommends denial.

The Commission found that Ms. Cheryl Siskin spoke by teleconference in opposition to the Application. Mr. Siskin stated that she is the chair of Conservation for the Sierra Club; that this road is a concentration of residential uses; that because a certain land use was appropriate in 1995 does not mean that it would be appropriate today; that this application is a significant capacity increase; that while the site does sit back from the road the concern is that if you allow an industrial use so far into the wooded area, then you are creating a precedent for industrial uses all the way to the street; that air quality monitoring has to be at least a condition if this is approved; that as the notice referenced poultry litter and seems inadequate; that there are concerns that the traffic will be increased in the area;

and that she questions that this is appropriate use for this area.

The Commission found that Mr. Chris Bason spoke by teleconference in support to the Application. Mr. Bason stated that he is the executive director for Delaware Center for Inland Bays; that, although this project is located outside of the inland bays watershed, it would provide significant water quality, climate change and mitigation benefits to the inland bays and is consistent with the master plan; that this project will transport significant amounts of excess nutrients out of polluted watershed; that both inland bays and Nanticoke River are State of Delaware designated waters with exceptional recreational and ecological significance that are polluted by persistently high nutrient volume; that almost all inland bays have phosphorous levels that exceed healthy limits; that particularly in the Indian River the pollution is so high that sometimes the oxygen level is zero; that the amount of chicken litter produced on Delmarva has increased significantly in the past years; that this waste is often applied to land that is already phosphorous saturated; that this digestion facility in conjunction with two other facilities could possibly accept half of the litter produced on Delmarva; that AD could be an important part of the solution in managing poultry processing facility waste and poultry litter resource for healthy quality in Sussex County; that the facility will also produce sustainable renewable natural gas which will reduce the need to produce nonrenewable gas and thus reduce greenhouse gases; that this will serve as an important contribution to climate change and is a highly beneficial project; that this should be closely inspected and regulated due to its close proximity to sensitive waterways; that this is an appropriate use for the property and ask that while you support the Application that you request that DNREC closely monitor the facility to ensure the successful and publicly accepted project which will set an example of the beneficial use of large scale of anaerobic digestion.

At the conclusion of the Public Hearings, the Commission discussed the Applications.

In relation to Application C/U 2258 Bioenergy Development Group, LLC., motion by Ms. Wingate to defer action for further consideration, seconded by Ms. Stevenson, and carried unanimously. Motion carried 4-0.

#### Draft Minutes of the March 11, 2021 Planning & Zoning Commission Meeting

The Commission discussed this application which has been deferred since February 11, 2021.

Mr. Mears was not-present on February 11, 2021. He stated that he had viewed the tape of the public hearing and was prepared to vote.

Ms. Wingate moved that the Commission recommend approval of C/U 2258 for Bioenergy Development Group, LLC for a Conditional Use 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 based upon the record made during the public hearing and for the following reasons:

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. This use is 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.

Motion by Ms. Wingate, seconded by Mr. Mears, and carried unanimously to recommend approval of C/U 2258 Bioenergy Development Group, LLC for the reasons and conditions stated in the motion. Motion carried 4 – 0.

## PLANNING & ZONING COMMISSION

ROBERT C. WHEATLEY, CHAIRMAN  
KIM HOEY STEVENSON, VICE-CHAIRMAN  
R. KELLER HOPKINS  
J. BRUCE MEARS  
HOLLY J. WINGATE



## Sussex County

DELAWARE  
sussexcountyde.gov  
302-855-7878 T  
302-854-5079 F  
JAMIE WHITEHOUSE, AICP, MRTPI  
DIRECTOR

### PLANNING AND ZONING AND COUNTY COUNCIL INFORMATION SHEET

Planning Commission Public Hearing Date February 11<sup>th</sup>, 2020.

Application: CU 2258 Bioenergy Development Group, LLC

Applicant: Bioenergy Development Group, LLC  
50 State Circle  
Annapolis, MD 21401

Owner: BDG DE LLC  
50 State Circle  
Annapolis, MD 21401

Site Location: Lying on the west side of Seaford Road (Route 13A), approximately 0.2 mile north of Oneals Road (S.C.R. 485)

Current Zoning: AR-1 Agricultural Residential Zoning District

Proposed Use: Amend CU 1314 (as amended by CU's 1691 and 1692) to permit the processing and handling of poultry litter to include nutrient recovery for natural gas and electrical generation

Comprehensive Land  
Use Plan Reference: Industrial

Councilmatic  
District: Mr. Vincent

School District: Seaford School District

Fire District: Blades Fire District

Sewer: Private, On-Site

Water: Private, On-Site

Site Area: 228.88 acres +/-

Tax Map ID.: 132-6.00-88.01, 95.00 & 132-11.00-41.00, 41.02



JAMIE WHITEHOUSE, AICP MRTPI  
PLANNING & ZONING DIRECTOR  
(302) 855-7878 T  
(302) 854-5079 F  
jamie.whitehouse@sussexcountype.gov



**Sussex County**

DELAWARE  
sussexcountype.gov

## Memorandum

To: Sussex County Planning Commission Members  
From: Christin Scott, Planner I  
CC: Vince Robertson, Assistant County Attorney and applicant  
Date: February 5, 2021  
RE: Staff Analysis for CU 2258 Bioenergy Development Group, LLC

---

This memo is to provide background and analysis for the Planning Commission to consider as a part of application CU 2258 Bioenergy Development Group, LLC to be reviewed during the February 11, 2021 Planning Commission Meeting. This analysis should be included in the record of this application and is subject to comments and information that may be presented during the public hearing.

The request is for a Conditional Use for Tax Parcels 132-6.00-88.01, 95.00 & 132-11.00-41.00, 41.02 to amend CU 1314 (as amended by CU's 1691 and 1692) to permit the processing and handling of poultry litter to include nutrient recovery for natural gas and electrical generation to be located at 28338 Enviro Way, Seaford. The parcels are located on the west side of Seaford Rd. (Rt. 13A), approximately 0.2 mile north of Oneals Rd. (S.C.R. 485). Each separate parcel combines for a total acreage of 228.88 acres +/- the Applicant has submitted a Conceptual Site Plan showing the additional buildings and structures associated with the proposed use, and the floor areas associated with the additional buildings. The existing floor area of 69,120 sf. is proposed to be increased to 72,620 sf.

There are 3 related Conditional Use Applications for the parcels, CU 1314, CU 1691 & CU 1692. CU 1314 requested a micro-nutrient plant for poultry litter and was approved by the Sussex County Council on December 21, 1999 through Ordinance No. 1354. CU 1691 was a request to amend CU 1314 to a micro-nutrient plant with related truck entrance and rail spur for the processing and handling of poultry litter and was approved by the Sussex County Council on July 25, 2006 through Ordinance No. 1865. CU 1692 was a request to amend the conditions of approval of CU 1691 and CU 1314 and was approved by the Sussex County Council on August 1, 2006 through Ordinance No. 1866.

The 2018 Sussex County Comprehensive Plan Update (Comprehensive Plan) provides a framework of how land is to be developed. As part of the Comprehensive Plan, a Future Land Use Map is included to help determine how land should be zoned to ensure responsible development. The Future Land Use map in the plan indicates that the parcels have a designation of "Industrial." The surrounding and adjacent properties located to the north, south, east, and west of the subject properties lie within the "Low Density" Future Land Use Map designation.

As outlined within the 2018 Sussex County Comprehensive Plan, Industrial Areas are lands devoted to concentrations of larger industrial uses including heavier industry, light industry, warehousing, and flex space. Appropriate development in these areas could take the form of conventional



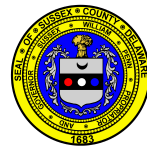
industrial parks or planned business parks with a unified design that incorporate a combination of light industry and other business uses. Large, more intensive stand-alone industrial uses should also be directed to these areas.

The subject properties are zoned Agricultural Residential (AR-1). The adjoining parcels to the north, south, east and west are all zoned Agricultural Residential (AR-1). The properties to the south along Seaford Rd. (Rt. 13A) are zoned General Commercial (C-1).

Since 2011, there has been one additional Conditional Use application, as well as the applications mentioned above, within a 1-mile radius of the application site. Conditional Use No. 1940 to allow for a physical training studio and gym. This application was approved by the Sussex County Council on September 11, 2012 through Ordinance No. 2276-A

Based on the analysis of the land use, surrounding zoning and uses, the Conditional use to amend CU 1314 (as amended by CU's 1691 and 1692) to permit the processing and handling of poultry litter to include nutrient recovery for natural gas and electrical generation, subject to considerations of scale and impact, could be considered as being consistent with the land use, area zoning and surrounding uses.





Sussex County

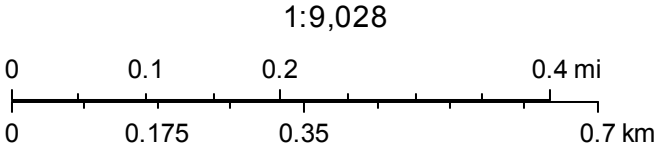


PIN:	132-11.00-41.00
Owner Name	BDG DE LLC
Book	5195
Mailing Address	50 STATE CIR
City	ANNAPOLIS
State	MD
Description	NW/RT 487
Description 2	1555'NE/RT 487 SW/50
Description 3	EASEMENT ENVIRO WAY
Land Code	

- polygonLayer

Override 1
- polygonLayer

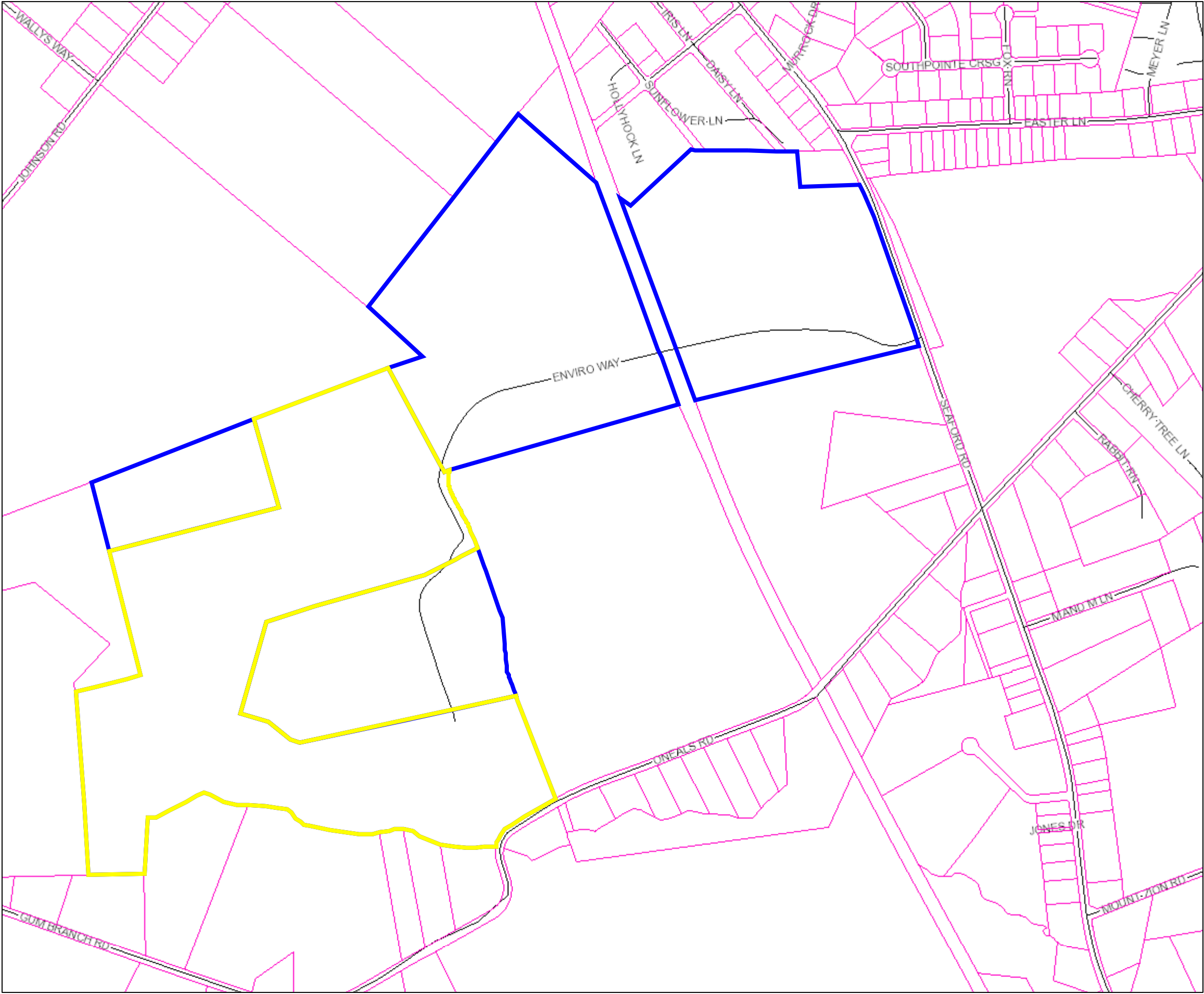
Override 1
- Tax Parcels
- Streets







Sussex County



<b>PIN:</b>	132-11.00-41.00
<b>Owner Name</b>	BDG DE LLC
<b>Book</b>	5195
<b>Mailing Address</b>	50 STATE CIR
<b>City</b>	ANNAPOLIS
<b>State</b>	MD
<b>Description</b>	NW/RT 487
<b>Description 2</b>	1555'NE/RT 487 SW/50
<b>Description 3</b>	EASEMENT ENVIRO WAY
<b>Land Code</b>	

polygonLayer

Override 1

polygonLayer

Override 1

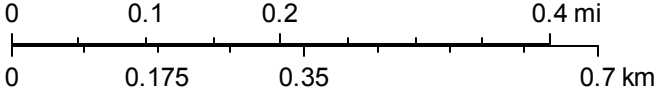
Tax Parcels

Streets

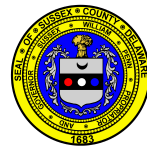
County Boundaries

Municipal Boundaries

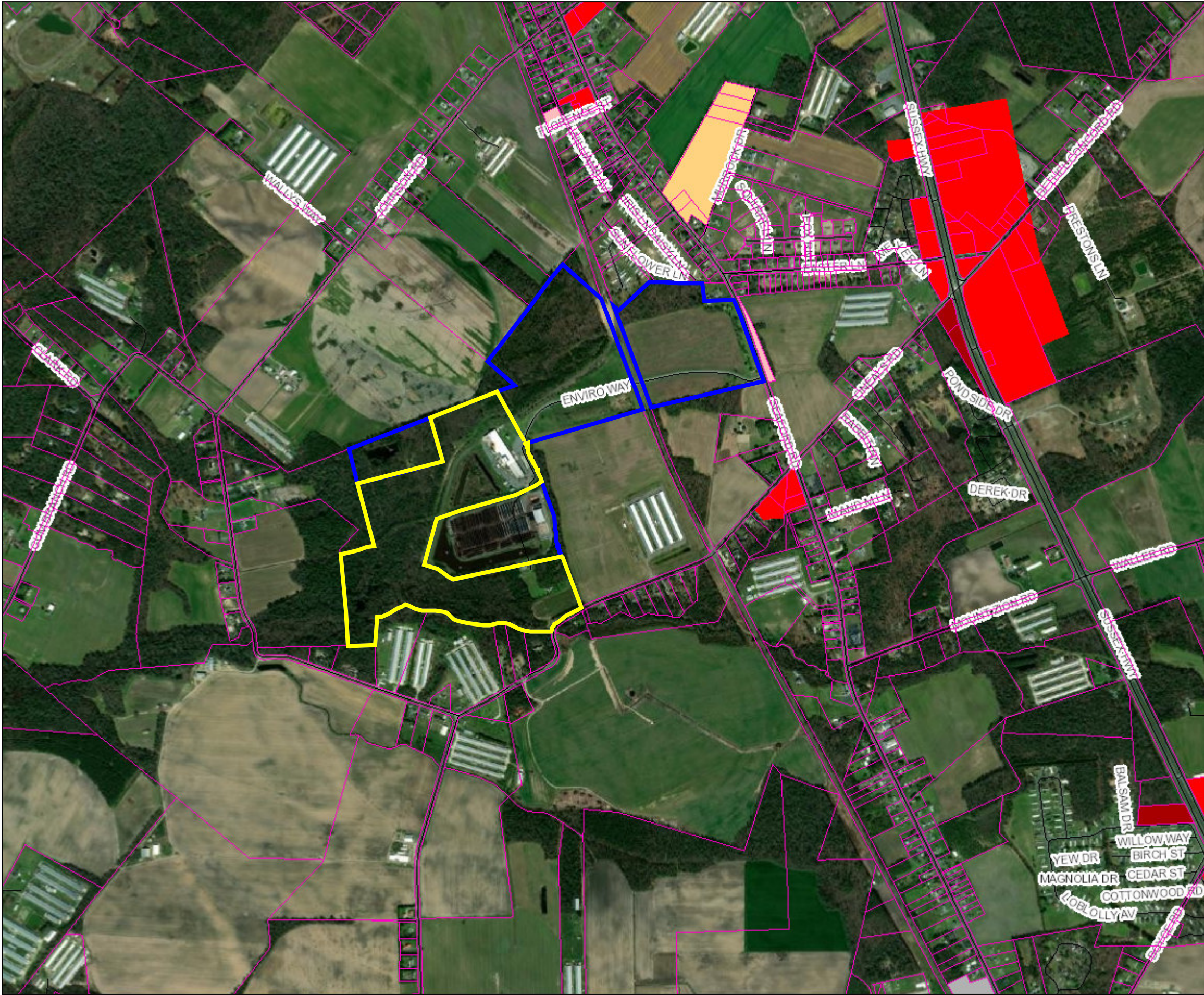
1:9,028







Sussex County



PIN:	132-11.00-41.00
Owner Name	BDG DE LLC
Book	5195
Mailing Address	50 STATE CIR
City	ANNAPOLIS
State	MD
Description	NW/RT 487
Description 2	1555'NE/RT 487 SW/50
Description 3	EASEMENT ENVIRO WAY
Land Code	

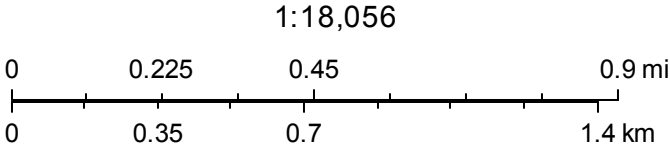
polygonLayer

Override 1

polygonLayer

Override 1

- Tax Parcels
- Streets





**To Be Introduced 01/12/21**

**Council District 1 - Vincent**

**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**

**ORDINANCE NO. \_\_\_\_**

**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 \_\_\_\_ day of \_\_\_\_\_ 2021, a public hearing was held, after notice, before the Planning and Zoning Commission of Sussex County and said Planning and Zoning Commission recommended that Conditional Use No. 2258 be \_\_\_\_\_; and**

**WHEREAS, on the \_\_\_\_ day of \_\_\_\_\_ 2021, a public hearing was held, after notice, before the County Council of Sussex County and 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.**