

BEFORE THE BOARD OF ADJUSTMENT OF SUSSEX COUNTY

IN RE: TILCON MATERIALS, INC.

(Case No. 12165)

A hearing was held after due notice on July 9, 2018. The Board members present were: Mr. Dale Callaway, Ms. Ellen Magee, Mr. John Mills, and Mr. Brent Workman.

Nature of the Proceedings

This is an application for a special use exception for an asphalt batching plant.

Findings of Fact

The Board found that the Applicant is seeking a special use exception for an asphalt batching plant. This application pertains to certain real property located on the west side of Joseph Lane, approximately 1,745 feet north of Bunting Road (911 Address: 22351 Joseph Lane, Georgetown); said property being identified as Sussex County Tax Map Parcel Number 1-33-6.00-53.09.

1. The Board was given copies of the Application, property record information, the Findings of Fact for Case No. 11230, an aerial photograph of the Property, and a portion of the tax map of the area.
2. The Board found that the Office of Planning & Zoning received no correspondence in support of or in opposition to the Application.
3. The Board found that Jay Miller was sworn in to testify about the Application.
4. The Board found that Mr. Miller testified that the Property has been used for this purpose for the past 20 years and the use has not changed since he last appeared before the Board in 2013. The Applicant purchased the Property in 2009.
5. The Board found that Mr. Miller testified that the Applicant has upgraded the facility, which is used as a drum plant for asphalt. The plant has converted to natural gas. According to Mr. Miller, a drum plant creates less traffic because the asphalt could be made earlier and stored in silos. A drum plant does a continuous mix and can make between 200-300 tons per hour.
6. The Board found that Mr. Miller testified that there were no permit violations and the Applicant is current with all permits. The Applicant has no violations with the EPA and the Applicant has not received any complaints about the plant either.
7. The Board found that Mr. Miller testified that the Applicant recycles and that up to 40% of the new material is recycled material.
8. The Board found that Mr. Miller testified that Tilcon Materials maintains the road going back to the asphalt plant and recently repaired the road. The plant results in approximately 50 trucks per day.
9. The Board found that Mr. Miller testified that there is a tree buffer on the property and that the tree buffer reduces dust and noise associated with the plant. The site is also adjacent to deep water ponds and a sand plant. According to Mr. Miller, the sand plant contributes to traffic on nearby roads more than the Applicant's asphalt plant.
10. The Board found that no parties appeared in support of the Application and two (2) parties appeared in opposition to the Application.
11. The Board found that Rebecca Breasure and Geri Clark were sworn in to testify in opposition to the Application. Ms. Breasure lives on Breasure Road near the site.
12. The Board found that Ms. Breasure testified that operations begin very early at the plant and that there is a noise of trucks backing up and doors being slammed.
13. The Board found that Ms. Breasure testified that that there is an odor and ash in the air. She alleged that there were black specks on nearby properties.

14. The Board found that Ms. Breasure testified that there is an issue with water and many of the neighbors have had to drill new wells; though she was unsure if the issue with the wells is due to the sand plant or the asphalt plant.
15. The Board found that Ms. Clark testified that a new well had to be drilled on her property because of the water use by the asphalt plant. She said that Melvin Joseph's wife paid for new wells in the area.
16. The Board found that Ms. Breasure testified that the location of the stop sign is a problem. She expressed concerns about the danger caused by the number of trucks especially as there are three (3) daycare facilities in the area. She admitted that there have been no accidents to her knowledge but that she expects there will be in the future.
17. The Board found that Ms. Clark testified that the stop sign has been in existence for many years but it is dangerous along the road.
18. The Board found that Ms. Breasure testified that there is poor visibility at the corner of Breasure Road and Kurger Road due to a fence. She wants to see the road widened.
19. The Board found that Mr. Miller testified that the asphalt plant does not use much water and the asphalt plant uses less water than an average household. According to Mr. Miller, the Applicant's plant has limited water use because asphalt and water do not mix. The nearby sand plant, however, uses water as part of its processes.
20. The Board found that Mr. Miller testified that the Applicant does not create ash as part of its process and that DNREC has strict regulations on airborne pollutants. He suggested that the specks could come from the nearby Route 113.
21. The Board found that Mr. Miller testified that the Applicant has a highly rated safety record.
22. The Board found that Mr. Miller testified that the curvature of the road limits a loaded truck to no more than 15 mph and the road is curved to deter speeding on the road.
23. The Board voted to leave the record open for the limited purpose of receiving documentation from the Applicant regarding its DNREC permits and compliance and to ask questions of the Applicant regarding such documentation. Thereafter, the Applicant submitted a letter with documentation responsive to the Board's request.
24. On August 6, 2018, the Board held a hearing on the matter. At that hearing, David Schnackenberg and Jay Miller were sworn in to testify about the Application.
25. The Board found that Mr. Miller testified that there have been no violations against the Applicant since it took over operation of the facility and that improvements were made to the natural gas system.
26. Based on the findings above and the testimony and evidence presented at the public hearing and the public record, which the Board weighed and considered, the Board determined that the application met the standards for granting a special use exception because the asphalt plant will not substantially affect adversely the uses of neighboring and adjacent properties. The findings below further support the Board's decision to approve the Application.
 - a. The Property is a large parcel consisting of approximately 5 acres and the Applicant proposes to continue to operate an asphalt plant on the site. The site has been used for this use for 20 years and no change to the use is proposed.
 - b. The Property is adjacent to lands used for a sand plant and, based on the aerial photographs, much of the site is surrounded by deep water ponds and tree buffers. These natural conditions provide a significant buffer from the facility and residential properties in the neighborhood.
 - c. The opposition expressed concerns about traffic, water, and airborne pollutants but it appeared that much of their concerns focused on issues with the sand plant. The opposition acknowledged that representatives of the sand plant paid for new wells in the area thereby evidencing that water

concerns were due to the sand plant and not the asphalt plant. The concern about airborne pollutants also appeared speculative. The Applicant presented testimony that it does not produce ash as part of its process and is governed by strict regulations from DNREC. The submissions from the Applicant evidence that the Applicant must maintain permits with DNREC and has undergone emissions testing. There was no credible evidence that the Applicant has produced airborne pollutants which have substantially affected adversely the uses of neighboring and adjacent properties.

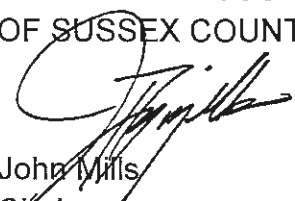
- d. Much of the oppositions' concern appeared focused on traffic related to the site. The Applicant uses nearby roads to access Route 113 and one of those roads is curved with a stop sign at the intersection of Breasure Road and Kruger Road. The opposition expressed concern about the safety of that intersection but acknowledged no accidents have occurred at the intersection. The Board submits that the concerns about the safety of that intersection are within the purview of DelDOT and not the Board. To the extent that the plant adds traffic in the area, the plant results in approximately 50 trucks per day. The Board, thus, was not convinced that the resulting traffic from the plant substantially affects adversely the uses of neighboring and adjacent properties.
- e. The Board was not convinced that the plant would have a substantial adverse effect on neighboring and adjacent properties.
- f. The special use exception was approved for a period of five (5) years.

The Board granted the special use exception application for a period of five (5) years finding that it met the standards for granting a special use exception.

Decision of the Board

Upon motion duly made and seconded, the special use exception application was approved for a period of five (5) years. The Board Members in favor were Mr. Dale Callaway, Ms. Ellen Magee, Mr. John Mills, and Mr. Brent Workman. No Board Member voted against the Motion to approve the special use exception application. Mr. Bruce Mears did not participate in the discussion or vote on this application.

BOARD OF ADJUSTMENT
OF SUSSEX COUNTY



John Mills
Chairman

If the use is not established within two (2) years from the date below the application becomes void.

Date October 2, 2018