

MINUTES OF JANUARY 29, 2001

The regular meeting of the Sussex County Board of Adjustment was held Monday evening January 29, 2001, at 7:00 P.M., in the County Council Chambers, County Administrative Office Building, Georgetown, Delaware.

The meeting was called to order at 7:00 P.M. with Chairman Callaway presiding. The Board members present were: Mr. Callaway, Mr. McCabe, Mr. Wheatley, Mr. Mills, Mr. Hudson, with Mr. Berl – Assistant County Attorney, Mr. Rickard – Chief Zoning Inspector, and Ms. Jackson – Recording Secretary.

Motion by Mr. Mills, seconded by Mr. Wheatley, and carried unanimously to approved the Revised Agenda as circulated. Vote carried 5 – 0.

Motion by Mr. Mills, seconded by Mr. Wheatley, and carried unanimously to vote on the Minutes of January 22, 2001 at the next regular Board of Adjustment meeting. Vote carried 5 – 0.

Case No. 7357 – Tilcon Delaware, Inc. – a private drive 0.6 miles southwest of Road 323, 1,500 feet north of Road 322.

Renew a special use exception for an asphalt batching plant.

Mr. Rickard presented the case. James Fuqua, Jr., Attorney, was present on behalf of the applicant requesting to renew the application for another five (5) year period and stated that Case No. 5663, the previous special use exception was approved for Melvin L. Joseph; that Tilcon bought the asphalt batching plant from Melvin L. Joseph on July 3, 1997; that the existing plant does not adversely effect neighboring properties; that Tilcon has been in operation for 2 ½ years; that they have operated the plant in a good manner; that they have updated the equipment; that only two (2) incidents have happened since they have been in business; that the vase majority of the acreage around the site is a borrow pit; that Mr. Fuqua submitted a site map; pictures of the site; a deed, a copy of the DNREC Air and Waste Management Complaint Files; a report from Randall Handy, Handy Realty, dated January 26, 2001; an affidavit signed by Mrs. Bisbing; and an exhibit that includes:

1. A Board of Adjustment Decision, dated August 16, 1995, approving the the Asphalt Plant.
2. A Board of Adjustment Decision, dated June 1, 1992, confirming the existing non-conforming borrow pit.
3. DNREC Secretary's Order, dated June 27, 1997, and original permit, dated July 2, 1997.
4. A current DNREC permit, dated November 21, 2000.
5. An Emission Compliance Test Result Summary (November 2000).
6. A DelDot Entrance approval and comments.
7. A Deed and Tax Map.

8. Average load information.
9. Job information.
10. Tilcon's Georgetown Plant/Important Facts.
11. An equipment layout, equipment improvements and specifications.
12. Tilcon's achievements and awards.
13. Tilcon's community involvement.
14. A National Asphalt Pavement Association's Diamond Achievement Commendation information and new release, dated December 29, 2000, announcing that Tilcon's Georgetown Plant earned commendation.
15. DelDot's CIP 2002-2007.
16. Letters in support of permit renewal from P & A Company, Inc., Jerry's Inc., and A.P. Croll and Son, Sussex County Asphalt Contractors.

Eric Hutchinson was sworn in and testified that he is employed with Cedar Rapids; and that Cedar Rapids supplied the new drum mixer, burner, and duck work.

Randall Handy, Handy Realty, was sworn in and testified that he is an expert in real estate appraisal; and that he did a site inspection and evaluation of the impact, if any, on surrounding property values that may result from the proposed extension of the asphalt batching plant and found that there would be no negative impact.

Brian Peck, Vice President of Tilcon, was sworn in and testified that what Mr. Fuqua has stated is correct; that the hours of operation are 6:30A.M. to 5:00P.M.; that there is an on-site well; that a sewer tank is on site; that there should not be any concerns with liquid spills from asphalt and that the asphalt it would not get into the ground; that the trucks use Route 113; that the closest resident is 1,200 to 1,300 feet from the site; that the plant is a benefit to their customers; that a neighbor filed a complaint for odor one windy day, and that they accepted the responsibility; that in 1999 they failed an opacity reading, which does not affect neighbors; that there have been no other violations; and that they send their foremen to school twice a year to be able to take opacity readings.

By a show of hands, 3 parties were in favor of the application.

By a show of hands, 7 parties were in opposition to the application.

William Mallory was sworn in and testified that he is in opposition to the application; that the plant was brought in by Milford and that it did not meet their requirements; that at the hearing in 1995, the applicant stated that a state of the art plant would be placed and questions why that never happened; that there are problems with odors from the plant; that he has been told by Mr. Rickard that he had to contact DNREC with odor problems; that they are prisoners of their own homes because of the odors; that

the odor has made people sick; that Tilcon has tried to add sweet smelling stuff to make the odor better, but it didn't; and that people who have purchased land near the plant are very unhappy.

David Cloud, President of Tilcon, was sworn in and testified that the plant has met all requirements from the Kent and Sussex County agencies; that the plant complies with all regulations; and that the only condition from the Board was that the trucks has to use Route 113, not that they had to have state of the art equipment.

Dorothy Bisbing was sworn in and testified that she is in opposition to the application; that she is a neighbor; that she has been sick from the odors; that noise has started at 5:00A.M.; that she has seen black and beige smoke from the plant; that fumes filter through her house; that the fumes aggravate existing conditions of ill people in the area; and that the plant is very loud.

Sandra Blades was sworn in and testified that she is in opposition to the application; that she has lived in the area for 13 years; that she is moving to Maryland; that she was told by a real estate agent that the value of her home has decreased because of the asphalt plant; that the property values have been negatively impacted; that she does not agree with Mr. Handy's analysis of the area and she feels that it is incomplete; that there is an odor from the plant; and that the Board should not grant the extension.

Mr. Rickard read the minutes, dated May 15, 1995, from the previous special use exception hearing; and that it did not note that state of the art equipment was to be used.

Theresa Vickers was sworn in and testified that she is in opposition to the application; that Melvin Joseph stated that he was going to build a new plant with state of the art equipment; and that electric lines were being put up before the plant was even approved.

Elizabeth Mumford was sworn in and testified that she is in opposition to the application; that her husband never needed a doctor until the plant was put in; that she has smelled odors from the plant; that she has called DNREC with the odor problems; and that the odor is gone before the officer gets there.

Jean Hudson was sworn in and testified that she is in opposition to the application; that she has experienced burning in her eyes from the plant; that she hears loud beeping noises; that the plant starts operating before sun up and also works late; that when the asphalt plant and the borrow pit are in operation it is very loud and noisy; that

she has complained to Tilcon, DNREC and the State Police because of the odors; and that the State Police told her that she needed to contact the County with any odor problems.

In rebuttal, Mr. Fuqua stated that the statements made by the opposition are opinions and hear say; that there is less opposition than before the previous hearing; that DNREC investigated the complaints and then closed the investigation finding no violations; that the County has also found no violations; and that the history of the site has been a battlefield and Tilcon stepped in the middle of it; that the plant now has state of the art equipment; and that there is a need for the plant because of the fast growing County.

Mr. Rickard stated that he has had some complaint; that he and Mr. Lank, Director of Planning and Zoning, have been to the site and found that everything was in compliance; and that he has also sent out a Planning and Zoning Inspector to the site, who also found no violations.

William McDaniel, an Environmental Protection Officer with DNREC, was sworn in and stated that he had 171 complaints that were investigated regarding the plant and closed the cases with no further action taken; that Tilcon has only had 2 violations with 200 complaints; that he relocated his office in January 2000 to Georgetown because of all the extensive complaints that have been made; that he is the supervisor for Kent and Sussex County; that he has been to the site and taken a digital reading of the noise and it was below 55 decibels; that he let the neighbors take the readings themselves; that he has had his officers on the site from 8:00A.M. to 8:00P.M.; and that they have not visibly seen any violations.

Mr. Fuqua noted to the Board that the stipulation for the hours needed to be addressed. The applicant would like the hours to be from 6:00A.M. to 5:00P.M. with the exception for State contracts which may require rush jobs with different hours.

Laura Moore was sworn in and testified that she is in opposition to the application; that she does not live in the area; that she has been the person who has typed the letters with concerns of emissions and noise; and that she hopes the Board will oppose the extension.

Mr. Mills stated that he has some concerns with the original testimony that was made about placing a new state of the art plant and questions why they never went through with it. Mr. Mills recommended that the case be left open to hear testimony from the original applicant only, and not from the public.

Motion by Mr. Mills, seconded by Mr. Hudson and carried unanimously that the case be left open only to the original applicant and not for the public.
Vote carried 5 – 0.

Meeting Adjourned 9:25 P.M.