

Minutes of March 25, 1996

A special meeting of the Sussex County Board of Adjustment was held after due notice on March 25, 1996 in the Court of Common Pleas courtroom, the Courthouse, Georgetown, Delaware.

The meeting was called to order at 7:00 P.M. with Chairman McCabe presiding. The Board members present were: Mr. McCabe, Mr. Mills, Mr. Callaway, Mrs. Hudson, Mr. Wheatley, Mr. Jones Attorney, Mr. Betts - Zoning Inspector III, and Mr. Lank-Director.

Motion was made by Mr. Mills, seconded by Mrs. Hudson and carried with 4 votes, with Mr. Wheatley abstaining, that the minutes of March 18, 1996 be approved as circulated.

Mr. McCabe read a statement explaining how the Board of Adjustment meetings are conducted.

Mr. McCabe announced that the Old Business items would be decided prior to the public hearing.

OLD BUSINESS

Case No. 5898 (cont'd)--Collins Avenue Realty Trust - East side of Pierce Avenue, 90 feet north of Beach Avenue, 662 feet east of Route One, Lot 15, within Indian Beach Surf Club.

A variance from the front yard and the side yard setback requirements.

Mr. Jones advised the Board that he had spoken to the applicant and advised him that the letter that the applicant had sent to the Board members was out of order and that the Board could not give consideration to the information in the letter in rendering their decision.

Motion was made by Mrs. Hudson, seconded by Mr. Mills, and carried unanimously that the application be denied, finding that the applicant failed to meet the criteria for a variance, that the property can still be utilized, and that there was no hardship.

Case No. 5900 (cont'd)--George and Janet Campbell - East side of Route 348A, 700 feet north of Route 26.

A special use exception to place a second manufactured home on farm.

Mr. McCabe excused himself from this hearing due to a possible conflict of interest. He turned the meeting over to Vice Chairman Mills.

Mr. Mills opened the discussion on this application.

Motion was made by Mr. Callaway, seconded by Mrs. Hudson that the case be denied due to a possible adverse impact on the area, with Mr. McCabe abstaining. Motion carried with four voting in favor and one not voting.

Case No. 5927 (cont'd)--Frank B. Calio - northeast side of U.S. Route 13, at the corner of Route 466 and southwest of Road 465.

A variance from the rear lot frontage on a through lot.

Motion was made by Mr. Mills, seconded by Mr. Callaway that the case be approved due to the odd shape of the lot, with Mr. Wheatley abstaining. Motion carried with four votes in favor and one not voting.

Case No. 5928 (cont'd)--William K., Sr. and Jacqueline Hearn - west side of Route 463, 300 feet north of Route 451.

A special use exception to place a manufactured home in an AR-1 District on less than five acres for a permanent residence.

Motion was made by Mr. Mills, seconded by Mr. Callaway that the case be approved since other manufactured homes exist in the area, with Mr. Wheatley abstaining. Motion carried with four votes in favor and one not voting.

Case No. 5929 (cont'd)--Edward and Marjorie Wittemore Dixon - south side of Route 270A, 1/4 mile east of Route 270, Lots 10 and 11, within Tru-Vale Acres.

A variance from the front yard setback requirement and the side yard setback requirement on a corner lot.

Motion was made by Mrs. Hudson, seconded by Mr. Mills that the case be approved since the unit will be further back than the existing unit, since no adverse impact is anticipated on the area, and with the stipulation that the unit be placed on a permanent foundation, with Mr. Wheatley abstaining. Motion carried with four votes in favor and one not voting.

Case No. 5930 (cont'd)--H. Rick and Dee Elliott - south side of Little Creek Lane, 600 feet south of Route 492 and 800 feet west of the Town of Laurel.

A special use exception to place a manufactured home in an AR-1 District on less than five acres for a permanent residence.

Motion was made by Mr. Callaway, seconded by Mrs. Hudson that the case be approved since single wide manufactured homes exist in the area and since the use will enhance the area due to the existence of manufactured homes in the area, with Mr. Wheatley abstaining. Motion carried with four votes in favor and one not voting.

Case No. 5931 (cont'd)--Donald Parrish - east side of Route 350, one mile north of Route 349, Lot 9, within the Land of Pleasant Living.  
A variance from the front yard setback requirement.

Motion by Mrs. Hudson, seconded by Mr. Mills that the case be approved since similar decks exist in the area, with Mr. Wheatley abstaining. Motion carried with four votes in favor and one not voting.

Case No. 5932 (cont'd)--R & L Enterprises, Inc. - east side of Route 13, 1/2 mile south of Route 40.  
A special use exception to place an off premise sign in a C-1 District.

Motion was made by Mr. Mills, seconded by Mrs. Hudson that the case be tabled until the next meeting, with Mr. Wheatley abstaining. Motion carried four votes in favor and one not voting.

Case No. 5935 (cont'd)--Dr. Charles R. Hudson, et.ux. - east side of River Drive, on the west side of Whites Creek and on the east side of Route 351.  
A variance from the minimum lot width requirement and a variance from the one acre lot size requirement in a conservation zone.

Motion was made by Mr. Mills, seconded by Mr. Callaway that the case be approved, with Mr. Wheatley abstaining. Motion carried four votes in favor and one not voting.

Case No. 5936 (cont'd)--Larry H. and Achsah D. Brasure - north side of Route 54, 141 feet east of Route 391.  
A special use exception to place a manufactured home in an AR-1 District on less than five acres for a permanent residence and

a variance from the setback requirements for a poultry house.

Motion was made by Mrs. Hudson, seconded by Mr. Mills that the case be approved, with Mr. Wheatley abstaining. Motion carried four votes in favor and one not voting.

Case No. 5937 (cont'd)--Alverna J. and Wendy S. Dickerson - East side of Route 468, 1/4 mile southwest of Route 13.

A variance from the setback requirements for a composter.

Motion was made by Mr. Callaway, seconded by Mrs. Hudson that the case be approved, with Mr. Wheatley abstaining. Motion carried four votes in favor and one not voting.

Case No. 5940--County Seat Materials, L.L.C. - southeast side of Route 319, 3,000 feet south of Route 18, at the Sussex County Airpark.

A special use exception to operate an asphalt plant.

Mr. Jones described the rules of order for the meeting.

The case was presented by Mr. Betts. Albert Page Croll, III, Randall Handy, Jr., and David F. Pershears were sworn in to testify on behalf of County Seat Materials, L.L.C. and were represented by James A. Fuqua, Jr., Attorney.

Mr. Fuqua submitted copies of exhibits to Mr. Jones for the record.

Mr. Fuqua stated that the application is for an asphalt production plant, that the zoning code permits this type of application in an LI-2 District, that in late 1994 and early 1995 the applicants met with County officials contracting for a lease in the industrial park and referenced the lease agreements (Applicant's Exhibit #1), that the applicants and the County Council felt that the use was exempt from the special use exception requirement since the site was being proposed on County property, that approximately one year ago an appeal was filed with the Board of Adjustment by opposition to the asphalt plant, that the Board upheld the decision of the Director, that an appeal was then filed with Superior Court and that the Superior Court reversed the Board's decision, that the Superior Court decision did not address the asphalt plant issue, and that the applicants are here this evening for a public hearing on the asphalt plant.

Mr. Fuqua submitted a copy of the decision of the Superior Court (Applicant's Exhibit #2).

Mr. Fuqua submitted a VHS tape recording (Applicant's Exhibit #3) of an asphalt plant for review.

The Board viewed the VHS tape recording which in summary made reference to Route 319, smoke, dust, noise, odor, environmental impacts, a description of the site at the industrial park, fuels to be used at the site, and community benefits, which included better roads, increased tax base, and jobs.

Mr. Croll in answer to Mr. Fuqua's questions, described the limited partnership, and stated that a need for asphalt has increased in the area, that the closest available plant sites are in Dover and Gumboro, that it is difficult getting products for paving work, that approximately 60% of the available work is for State and municipal projects, that approximately 40% of the work is on private projects, that transporting is difficult from Dover when bidding large projects, that a recent plant approval near Georgetown will not help control access to the product, that the application site is an appropriate location in the center of the County that can serve the entire County, that Route 319 will carry traffic to Route 9, that north, south, and west traffic will utilize the Georgetown Truck Bypass to get to U.S. Route 113, that rail delivery of stone will cut down on truck traffic, that the site's size meets the criteria of the partnership, that another site in the area was appropriate but conflicted with a proposed school location on North Bedford Street, that the partnership is aware that the maximum approval shall be limited to five (5) years.

Mr. Fuqua submitted a general map of the area marked with the location of the industrial park (Applicant's Exhibit #4), and a copy of a map of the Georgetown area depicting the industrial park, the site, and industrial zoning within the Town of Georgetown (Applicant's Exhibit #5).

Mr. Fuqua and Mr. Croll exhibited an aerial photograph of the area and described the general area, improvements on the industrial airpark, and located the A.P. Croll reclamation site near the industrial airpark.

Mr. Croll, while exhibiting a survey of the site shaded with green to depict the area of trees to remain, stated that the partnership proposes to maintain as many trees as possible, that approximately 4 acres will be cleared for the plant and related activities, that the closest residence to the plant will be approximately 1/4 mile as a crow flies, that a railroad siding

will be utilized for off loading of stone, that an access road will be constructed opposite the Emergency Operations Center, that the primary equipment to be on the site will be the drum dryer, storage silos, and various stockpiles of stone and sand, that an option to a septic system could be to connect to the sewer system at the industrial park, that water will probably be obtained from a well on the site, that stormwater management shall be subject to the review and approval of the Sussex Conservation District, that approximately 4 acres of the site will be paved to facilitate a neat and tidy site, that the closest fire company is the Georgetown Fire Company approximately 3/4 mile away, that the site is not within a flood plain, that the site will be secured by chainlink fencing, that the hours of operation will be 6:00 A.M. to 6:00 P.M. weekdays, some Saturdays hours from 8:00 A.M. to 2:00 P.M., that there shall be no Sunday hours, that asphalt plants in this area typically operate from mid March to mid December, dependent on weather, and that the down time between December and March are used for necessary repair of equipment.

Mr. Fuqua submitted the copy of the revised site plan (Applicant's Exhibit #6), a copy of a flood plain map (Applicant's Exhibit #7), and a copy of a small tax map (Applicant's Exhibit #8).

Mr. Croll described the required truck routing, stated that no truck traffic is permitted to go through the Town of Georgetown unless making local delivery, described a future roadway to be used for truck traffic to and from the site, and stated that the roadway is to be completed within two years of securing the property.

Mr. Fuqua submitted photographs of signage relating to the truck bypass (Applicant's Exhibit #9), and a letter for David Baker referencing the County agreement to purchase property from All American Engineering, Inc. (Applicant's Exhibit #10).

Mr. Croll stated that the use is heavily regulated by the State DNREC, and that permits have been obtained.

Mr. Fuqua described the State DNREC permit and limitations that are required or may be required by the State DNREC and submitted copies of the State DNREC application (Applicant's Exhibit #11), the State DNREC hearing transcript (Applicant's Exhibit #12), the State DNREC permit order (Applicant's Exhibit #13), and the State DNREC permit to construct the plant (Applicant's Exhibit #14).

Mr. Croll described his site in Georgetown used for recycling of concrete and asphalt.

Mr. Fuqua described and referenced the Coastal Sussex Land Use Plan goal to promote and protect agricultural lands, referenced the future land use map, quoted sections from the Land Use Plan referencing that new industries should be located in the industrial park, stating that the use is consistent with the Land Use Plan, stating that the use is consistent with the Land Use Plan Map and the industrial area within the Town of Georgetown, stating that the use is compatible to the industrial area and uses, referenced the numerous uses permitted in a LI-2 District, which may have impacts that are similar or greater than the proposed use, including, but not limited to, auto/truck repair and assembly, bakeries, cleaning and dyeing of garments, seafood processing/packing and storage, manufacture of food products, canneries, blending of chemicals, plating, poultry slaughter and processing, recapping, and truck terminals, stating that the Town of Georgetown Light Industrial uses are similar, and presented sections of the Coastal Sussex Land Use Plan (Applicant's Exhibit #15), sections of the Code of Sussex County describing the LI-2 District (Applicant's Exhibit #16), and sections of the Town of Georgetown Code describing the LI-2 District (Applicant's Exhibit #17).

The Board took a five minute recess.

Randall Handy, previously sworn in, testified that he has been in the real estate business for 25 years, that he is a licensed broker and a licensed real estate appraiser, that he has testified in both Federal and State Courts as an expert witness in reference to land values, that he has inspected the site and the surrounding area, that he reviewed the permitted uses in a LI-2 District, that this plant, with State DNREC approval, is no more objectionable than other uses permitted by zoning, that it is his opinion that if there is no noise, no smoke or air pollutants then the plant will cause no particular negative or overall market value impact than existing uses or permitted uses in the industrial park.

Mr. Fuqua submitted a booklet with biographies on the principals of the partnership, statements on the proposal plant, a decibel level comparison, a brochure on the proposed "Ultraplant" equipment, stationary surge-storage systems, a question and answer pamphlet, and a site plan (Applicant's Exhibit #18).

Mr. Pershears, representing Gencor Industries, Inc., the designers of the reference "Ultraplant", testified that asphalt plants do not create chemicals, that asphalt plants do burn oils and gases, that asphalt is 100% recyclable, that new technologies heat rock in drum dryers, mix liquid asphalt with the hot rock, that fumes are collected by fans which blow the fumes back into the burner flame, that the stack emits less hydrocarbon than a bakery, that older plants create more noise due to the design of the burner, that new technology places the burner inside of a steel drum which is sealed at both ends with the flame surrounded by rocks being heated, that a person can talk normally immediately adjacent to the drum, that emission will be much less than the permit references in the State DNREC permit, that factory technicians will set up the plant and train the staff and operators, that the plant is computer controlled, that competitive sources of materials are needed to establish fair pricing of the asphalt product, that the site is in a very appropriate location, that a typical plant operation utilizes sites of approximately 5 acres, that this plant proposes to utilize approximately 4 acres of a 19 acre parcel surrounded by trees, and described a typical plant site by referencing a photograph of a plant.

Mr. Fuqua submitted the calendar photograph referenced (Applicant's Exhibit #20).

Mr. Croll testified that the plant is a 300 ton model with 2 silos, that the silos are 72 feet high, that there is no conflict with F.A.A., and that trucks are tarped and covered until a load is delivered.

Mr. Fuqua summarized and submitted proposed conditions of approval relating to permit compliance, State DNREC permits, site plan compliance, wooded area non-disturbance, stormwater management compliance, hours of operation, truck traffic routing, construction of access roads, and a five year time limitation (Applicant's Exhibit #19).

Mr. Betts read a letter in support of the application from The Reverend Michael Bye referencing living on Truck Route 9, the difference between older asphalt plants and the new technology plants, additional jobs, increases in the economic base, diversify the industrial base, the maximum approval of five years, the reduction of asphalt transportation cost benefiting both private consumers and taxpayers, and expressing concerns about conflicting statements being made by the opposition.

Mr. Betts read a letter from Robert L. Stickels, County Administrator, to County Seat Materials, L.L.C., referencing that the Sussex County Council takes no position with respect to whether the permit for the plant is appropriate, and that the Board of Adjustment has exclusive function to render a decision.

Mr. George Gardner, Attorney, stated that he was present on behalf of some residents in the area opposing the asphalt plant.

Mr. Gardner read and submitted petitions in opposition to the application (Opposition's Exhibit #1). The petition referenced that the use is not conducive to the immediate area residents health, safety, morals, convenience, order, prosperity and welfare, that such a facility operation on the parcel will generate an increase in truck and train traffic on streets and roads entering and exiting the site, and that such a use will generate noise, dust, and the storage of hazardous materials not conducive to the safety and health of a residential community. The petitions contained a total of 391 signatures.

Mr. Gardner summarized the Purpose of the Zoning Ordinance as written in Article I Section 115-3 of the Code of Sussex County.

Mr. Gardner summarized the Purpose of the LI-2 Light Industrial District as written in Article XIV Section 115-101 of the Code of Sussex County, and added that an asphalt plant should be located in a HI-1 Heavy Industrial District, where permitted, that an asphalt plant is not a permitted use or an accessory use in an LI-2 District, that the use must be a special use exception, referenced the five year limitation on this type of special exception, questioning the twenty year lease agreement with the Sussex County Council, stating that the words temporary and conditional refer that a use is permitted only in special situations and exemplified large highway projects, stating that by law the intended use is inappropriate and should not be permitted and should not be used as a substitute for a permanent facility, stating that the Board has certain powers that no adverse impact will be created on adjacent parcels, stating that the Board can attach conditions of approval and that if approved the opposition will suggest conditions in the alternative, stating that in the present litigation the lease between County Seat Materials, L.L.C. and the Sussex County Council did not comply with the Freedom of Information Act, and that the Chancellory Court has been asked to decide on the lease.

Judy Mitchell was sworn in and testified that she built across from the Emergency Operation Center, that the use does not meet the concept of industrial uses in the industrial park, referenced the zoning map and uses, stated that if the Council

had desired heavy industrial uses in the industrial park they would have zoned the industrial park as a HI-1 District, that it is obvious that the applicants intend to stay on the site for more than 5 years since the lease agreement provides for a 20 year term with a possible 20 year extension, expressed concerns about emissions and noise, blowing sand and dust pollutants, increased truck and train traffic, questioning enforcement of the truck traffic routing, stating that the roads are not adequate to handle the additional truck traffic, stating that the plant brings nothing positive to the area, and requested denial.

Jane E. Hovington, a Georgetown Councilperson and resident in the area, affirmed and testified that truck drivers take the shortest routes available, that trucks presently use S. Railroad Avenue, that railroad activity is daily, and questioned emergency access across a railroad when unloading is being performed at the proposed site.

Mrs. Hovington read a letter into the record on behalf of the Town Council of Georgetown opposing the application and referencing that residents in the area are concerned that their quality of life will significantly decline and their property values will decrease as a result of this heavy industrial use, that the plant's proposed site is located within the industrial park very close to existing and future residences and future recreational facilities, that the increased heavy truck traffic along Airport Road will require increased maintenance and will pass by a proposed sports complex, that the traffic will impact Industrial Park Boulevard, South Bedford Street and the new Cheer Center, that the Town has a main sewer trunk line that runs through the middle of the site, that the Town is concerned that the trunk line could be damaged during construction, and that the storage of materials and day by day truck movement pose hazards to the trunk line (Opposition's Exhibit #2).

Mr. Gardner summarized a letter of opposition from Patricia and Wayne VanAuken, owners of land on the south side of the airport on Industrial Park Boulevard, referencing that they own and operate a family farm, that the approval of a heavy industrial use will have permanent negative affects on all properties around the airport, that air quality will be reduced, that dust, noise and air pollutants may create health concerns on the surrounding community, that the use is not conducive to a residential/farming community, that they don't want to worry about their lung condition worsening, that truck and train traffic will substantially increase as raw materials are brought to the site and finished hot mix products are transported from the site, that Road 319, Route 9, and Industrial Park Boulevard have reached their maximum capacity, that the use will devastate these established roads, that traffic counts indicate that these

roads presently have daily traffic beyond their design capability, that there is no indication that DelDOT has plans to improve these roads, that Road 319 is overloaded with cars and trucks since DelDOT has identified it as a truck route and bypass, expressing concerns relating to depreciation of property values, that the zoning ordinance does not state that the Board should consider economic development matters or even County government economics over the best interest, health and welfare of the citizens living in the area, that the use is not in the best interest of residents in the area, and that the Board should reject the application in the interest of citizens opposing the application (Opposition's Exhibit #3).

Mrs. Theresa Christoferson was sworn in and testified that she and her family live approximately 1,500 feet from the site, that she operates a day care in her home and is concerned about children being exposed to unhealthy pollutants from the plant, concerned about the use of fuels to maintain the truck beds, concerns about truck traffic increases on Route 9, especially during the summer season, stating that the plant will become a nuisance to the residential area, bringing dust, odors, traffic and a change to the community, that the residents of the area, both in town and out of town are opposed, and will negatively impact property values (Opposition's Exhibit #4).

Mr. Gardner read a letter from Gary B. Homewood of the Delaware Asphalt Pavement Association referencing data on the quantity of hot mix asphalt on an annual basis, that approximately 357,000 tons of hot mix asphalt were placed in the County in 1995, of which 250,000 tons were on State projects, and that approximately 23 percent of the total state production was placed in the County (Opposition's Exhibit #5).

The Board took a five minute recess.

Mark G. Shaffer was sworn in and testified that he is a Delaware Licensed Real Estate Broker and Appraiser, that he has performed appraisals for approximately 8 years on commercial, residential, and farms in Delaware.

Mr. Gardner submitted a copy of the site plan presented by the applicant as a part of the application (Opposition's Exhibit #6).

Mr. Shaffer continued by stating that he has visited the site, reviewed the site plan, advised the Board that truck traffic was given consideration in his review, that railroad usage was also considered, that no railroad siding is depicted on the site plan, that he drove around the entire area to determine the possible impact on the area, stated that a facility of this

nature would have an impact on residential values due to traffic, dust, and noise, that the immediately area is in agricultural use, that a heavy industrial use impacts residential and agricultural uses negatively, that there will be less truck traffic if stone is hauled in by rail and questioned the lack of a rail siding, and expressed a concern that rail cars could be stacked waiting to be unloaded and may block the railroad crossing.

Robert Dixon Bewick, Jr. was sworn in and testified that he is a consultant, a Licensed Delaware Civil Engineer, and a Licensed Appraiser.

Mr. Bewick submitted a copy of his qualifications (Opposition's Exhibit #7).

Mr. Bewick continued by stating that he has reviewed the site plan, inspected the area around the airport and Georgetown, spoken with representatives of DelDOT Subdivision Section in Dover and the South District office of DelDOT in Georgetown, performed research on rail information and the Capital Improvement Plan data, and photographed the area and roads in the area.

Mr. Gardner submitted a copy of the layout of the industrial airpark (Opposition's Exhibit #8).

Mr. Bewick continued by presenting a map of the area around the airport depicting wetlands and ditching, and traffic volumes.

Mr. Gardner submitted the map as Opposition's Exhibit #9.

Mr. Bewick continued by presenting a map of the area with attached photographs of roads in the area, photographs of poor road conditions, and referenced the difficulty of obtaining permits for road crossings from the U.S. Army Corps. of Engineers and the State DNREC.

Mr. Gardner submitted the map as Opposition's Exhibit #10.

Mr. Bewick continued by questioning the lack of a railway siding proposal for the project, stated that the use is not feasible without a siding, stated that Road 319 is not adequate to serve the project, that Road 319 needs to be rebuilt to handle additional truck traffic, that it may be required to be improved to a 34 foot width with improved shoulders, referenced the lease excluding use of Route 9 through Georgetown, referenced the difficulty of controlling truck traffic, and stating that the railroad crossing needs to be rebuilt with concrete.

Mr. Bewick continued by presenting a chart referencing the letter previously presented from Gary Homewood on asphalt production in County, and stated that due to the number of asphalt plants in Delaware and Maryland, no need exist for an additional plant.

Mr. Gardner submitted the map as Opposition's Exhibit #11, a map of the Peninsula depicting asphalt plants in Delaware (Opposition's Exhibit #12), and a map of the Peninsula depicting asphalt plants in Delaware and Maryland (Opposition's Exhibit #13).

Mr. Bewick continued by stating that the Delaware plants are near Dover, Seaford, Gumboro, and a proposed plant near Georgetown, that the Maryland plants that can readily serve the County are located near Easton, Ridgely, Salisbury, Delmar, and Bishop, that truck trips could generate 180 trips per day with 20 ton trucks, that there is not adequate distance along the railroad to provide a siding, that the roads should be built to industrial street standards, that there is no record of any submittal for improvements to Road 319 and/or the proposed future roadway, that no major highway improvements are proposed in the 1997-2002 DelDOT Capital Improvement Plan, that a Delaware Transit Association approval is necessary for a railroad expansion, that the Town of Georgetown sewer force main runs through the site under the proposed stockpile area and that an easement may exist which will not permit placement of the stockpile, presented the applicant's site plan with the sewer force main depicted, and stated that the Town's engineers should review the site plan for compliance with the sewer easement.

Mr. Gardner submitted the site plan with the force main as Opposition's Exhibit #14.

Mr. Gardner submitted a summary of Mr. Bewick's comments as Opposition's Exhibit #15.

Ronald H. Love, Consulting Engineer, was sworn in and testified that he is a pilot with approximately 5,300 hours of flight time and approximately 2.5 years experience in airspace management, that he inspected the site and the area, examined the site plan, airfield diagrams, and approach diagrams, and expressed a concern with the impact on Runway 2-2 at the airport.

Mr. Gardner submitted a copy of proposed legislation relating to aeronautics and County Building Codes (Opposition's Exhibit #16) and referenced that the proposal requires notice of construction be sent to the F.A.A., and questioned height limitations.

Mr. Love continued by exhibiting a cross section drawing of the approach slopes for Runway 2-2 with possible structures depicted that could possibly encroach the approach slopes.

Mr. Gardner submitted the cross section drawing as Opposition's Exhibit #17.

Mr. Love continued by exhibiting a drawing of an aerial view of Runway 2-2, the location of the towers at the Emergency Operations Center, and expressed concerns with visibility restrictions, possible smoke or steam plumes restricting visibility, and sand and gravel blowing causing damage to aircraft.

Mr. Gardner submitted the aerial view drawing (Opposition's Exhibit #18), a proposed set of findings on behalf of his clients (Opposition's Exhibit #19), and a set of proposed conditions of approval in case the application is approved (Opposition's Exhibit #20).

Michael S. Kafel was sworn in and testified that he is a contractor who specializes in driveways, that the use will provide jobs for 12 or 15 people, that the use will bring money into the County, that the use is better than a poultry plant, that the use will create less dust than the farm activities existing in the area, that the use will help growth in the area, that a contractor must pay \$8.00 a ton more in Maryland plus a 6% sales tax, and that denial will negatively impact progress.

William Andrew Willey was sworn in and testified that he lives approximately 3/8 mile from the site, that trains are presently parked behind Burton Street, that the Railroad is in need of repair, referenced airport activities, and expressed a concern about the close proximity of the site to Runway 2-2.

Daniel C. Bryan was sworn in and testified that he is concerned about the value of his property, that the Town of Georgetown has a lot of challenging situations, and that he supports the Town's opposition to this application.

Mr. Fuqua in rebuttal asked Mr. Croll some questions.

Mr. Croll, responding to Mr. Fuqua's questions, stated that there is an F.A.A. notice process, that the County Engineering Department called the F.A.A. and were advised that the F.A.A. will have to review the plans for the project, that a final site plan will not be prepared unless the use is approved, that the original site plan is the same as the one exhibited before the County Council, that the revised plan depicts less use of the site and greater setbacks from residences, that the lease will be

amended to reflect five (5) years maximum, that the asphalt plants in Dover are owned by Tilcon Delaware, Inc., and that the asphalt plant in Gumboro is owned by I.A. Construction.

Mr. Pershears, responding to a question from Mr. Jones, stated that the conveyor on the top of the silo is approximately 76 feet high.

Mr. Fuqua, in closing, submitted proposed findings to support approval of the use (Applicant's Exhibit #21), and stated that the opposition has reflected all the difficulties of permits for the use, questioned if the use will adversely affect neighboring uses, stated that if the Board considers the permitted uses in LI-2 District then this use should be approved, that the site is not in a residential district, but a industrial district, that the applicants realize that permits are required from other agencies, that the Board must consider whether or not the use negatively impacts neighboring property values, that people throughout the County repeatedly have said that industrial uses should be in the industrial park, that the use will not adversely affect the area, and that the use is an appropriate place for the use.

Mr. Gardner, in closing, stated that he felt if unfair that the site plan filed with the application was changes for this evenings hearing, that the Board should consider that the industrial park is zoned for light industry, not heavy industry, that a legal question still exist relating to the lease, that the use will require major improvements and cost for a temporary use, that the Board's decision will be a forever decision, that the LI-2 zoning is not appropriate for the use, that the figures and testimony of Mr. Bewick reflect the lack of a need for this use, that the figures, presented by Mr. Bewick, relating to traffic congestion are adequate reason to deny the application, that Mr. Love's concerns relating to the impact on aircraft and people flying into the airport should be a concern, that the Board must give consideration to property values since two experts opinions differed, that the applicant failed to prove a need due to the available sources for the product, that the area is predominantly agricultural and residential, that the use will adversely affect values, create an unnecessary burden on highways, and will create congestion and safety problems.

Mr. McCabe stated that the Board will not receive any further oral comments, and that the record will be left open for one week for written submission of legal arguments, with a maximum of five (5) pages.

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Motion was made by Mr. Mills, seconded by Mr. Wheatley, and carried unanimously to table this application until the next regular meeting.

Motion was made by Mr. Mills, seconded by Mrs. Hudson, and carried unanimously to adjourn.

Meeting adjourned at 11:50 P.M.