

Minutes of August 30, 1993

The regular meeting of the Sussex County Board of Adjustment was held Monday evening, August 30, 1993 in the Superior Court Room, County 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. Wheatley, Mr. Mills, Mr. Callaway, Mr. Jones-Attorney and Mr. Betts-Zoning Inspector III.

Motion was made by Mr. Wheatley, seconded by Mr. Callaway and carried unanimously that the minutes of August 16, 1993 be approved as circulated.

Case No. 5165--Allen Family Foods, Inc.- West side of Route 5,  
0.4 mile south of U. S. Route 9 at  
Harbeson.

A special use exception to operate a protein recycling facility in an HI-1 Heavy Industrial District.

The case was presented by Mr. Betts.

The Chairman stated that Board member, Mrs. Hudson, would not participate at the meeting due to a conflict of interest.

Mr. Jones, Attorney, explained how the meeting would be conducted. He also stated that the Board had copies of agency comments that were received by the Planning and Zoning Commission at their Change of Zone public hearing.

Jim Fuqua, Attorney, was present representing Allen Family Foods, Inc., who requested to operate a protein recycling facility (rendering plant) in a HI-1 Heavy Industrial District. The Zoning Code classifies the rendering plant as a potentially hazardous use. Mr. Fuqua referenced the Zoning Code (115-109) and quoted from the Code pertaining to hazardous use. Mr. Fuqua stated that the Board must determine specific findings, such as safety, public health, morals and that general welfare will be protected, also the necessary safeguards to protect water areas. He referenced the agency comments that the Board had copies of.

Robert Witsil, Attorney, representing Mr. Lawson and others, who are in opposition, objected to Mr. Fuqua's comments about the agency comments. Mr. Witsil felt the comments the Board had were presented to the Planning and Zoning Commission and did not reflect what they were hearing at this meeting, and they were not sent to the Board members.

Mr. Fuqua felt the correspondence should be considered.

Mr. Jones, Attorney for the Board, stated that the Board would allow the records to remain and the Board can decide what is applicable.

Mr. Fuqua referenced letters from the Department of Transportation, Division of Air & Waste Management, (a permit is needed from D.N.R.E.C.

for air discharge), Division of Water Resources, Division of Resources Management, Delaware Department of Agriculture, State Fire Marshall, Department of Environmental Quality of Virginia, Department of Transportation (Subdivision Department), Department of Natural Resources Division of Park and Recreation, Division of Water Resources.

Mr. Witsil objected to the above letters.

Mr. Fuqua stated that the Board must consider if the hazardous use can be placed on the property safely.

Charles C. Allen, III of Allen Family Foods, Inc. was sworn in and testified. He stated his families business has been in operation since 1919. He wants the Board to consider the protein recycling plant in Harbeson in the area where they have a poultry plant. They employ approximately 800 employees. The rendering plant will take chicken parts and feathers that will be processed and made into meal, that is used for poultry feed. They currently truck the leftover chicken parts and have them processed by Tyson Foods, a rival, and they are then resold to Allen's. They propose to maintain a competitive edge by doing their own processing. They feel this site is best suited for this type of use. Mr. Allen feels it will reduce the truck traffic, since trucks would not be taking the product out to another location. Mr. Allen stated that the facility requires steam and hot water. The existing waste water facility at Harbeson discharges approximately 9,000 gallon of water per day. He feels they will be upgrading the water quality. Mr. Allen stated this will be a 2 million dollar facility. The facility will have to comply with all State Agencies. The proposed site location will be very far back from Route 5 and in close proximity to the existing poultry plant. A site plan was submitted.

Richard E. Morris, employed by Dupps Co., a equipment manufacturing business, was sworn in and testified in behalf of the application. Mr. Morris testified that they have the patent to install and design rendering plants. Mr. Morris stated they propose to build the plant for Allen's. He described the plant to be built and how the operation works. He stated that there are no negative odors since unloading is done inside of the building. A diagram was presented showing how the process system works. A video was shown of an existing rendering plant in Virginia and Mr. Morris explained what was taking place. He testified that the area size where the operation takes place is 120'x 100' process area 30' height, truck area 35' height. He stated the plant shown on the video was 1½ years old when the tape was shot. The plant shown runs two shifts, 16 hours per day, some run 24 hours per day. One fellow needs to run the control room, two fellows take care of the feathers, three maintenance people and truck drivers. The noise level in the plant falls within what is required although hearing protection is required according to Mr. Morris. The video tape was submitted as an exhibit with the Planning and Zoning file. There will be malfunction electrical controls, monitor alarm sounds and malfunction sensors on the equipment. A major failure would shut down the poultry process. A new boiler room will be added to the poultry processing plant. Steam coming from rendering plant will not be contaminated. U.S.D.A. monitors the plant.

Mr. Witsil questioned Mr. Morris about the plant and the chlorine to be used, employees and what happens if it fails.

Mr. Morris in response stated chlorine is used in the scrubber, approximately 25 employees and stated that the plant runs on electrical power with no generators.

Daniel Olgetree, President of Mill Point Industries, a manufacturer of odor abatement systems, was sworn in and testified in behalf of the application, explaining their operation and the stages of the operation. A diagram was presented showing the operation of their plant. He explained the liquid dispersed at the waste water facility, air streams, air discharge, chlorine and chlorine level.

Mr. Witsil questioned Mr. Ogletree about meloious compounds and how they affect people about air control guide lines, chlorine and chlorine consumption and where it goes after it is used.

Mr. Ogletree stated that he does not know if Delaware has air control guide lines. He explained chlorine and chloride.

Mr. Fuqua submitted a market report prepared by Harold Carmean, Appraiser. Mr. Fuqua also stated that if the Board approves the requested use they could put conditions on it and suggested 9 conditions they might consider. The suggestions were submitted.

Mr. Witsil objected to the comments submitted by Mr. Carmean since he was not present to be cross examined.

Mr. Jones questioned the waste water discharge and chemical concern to the neighbors.

Mr. Fuqua stated that they will comply with D.N.R.E.C. and obtain the necessary permits and that they will have to comply with all State and Federal Regulations.

Mr. Witsil questioned Mr. Olgetree again about chlorine to be used.

Mr. Olgetree responded to Mr. Witsils questions and also stated that there is a difference in the winter months. The maximum use is during the summer months.

Mr. Witsil also questioned Mr. Morris about a plant in Moorefield, West Virginia and if they had been cited with air quality violations.

Mr. Morris stated that no two plants have been built the same and he would not know of their violations. He stated that the Allen plant would not be identical to the West Virginia plant, but would function similar. He stated the processing equipment would be put in by Dutch Company and operated without violations.

Mr. Witsil presented a copy of notice of violation to the Moorefield, West Virginia plant.

Mr. Fuqua did not object to the document being presented.

Charles Silliman from Moorefield, West Virginia, was sworn in and testified that he is a West Virginia State approved Appraiser, copy of credentials submitted. He testified that there have been two poultry plants constructed in Moorefield, but since a rendering plant was constructed they have been bothered with odor and stench.

The only odor they had prior to the rendering plant was a spicy cooking odor. The rendering plant was constructed in 1991. They did not have this type of hearing. He read an article from a newspaper referencing the odor. The hearing they attended, it was stated there would be no odor. Mr. Silliman stated that his property values have decreased by 25% since the rendering plant was built. He testified that a vent pipe was put in the plant, but it did not remedy the problem. He toured the plant and stated the plant in the video is very much the same. The odor is not seasonal, it can be smelled, evening, morning and in different areas of the Town. Something can be seen from the stack. Mr. Silliman stated that the plant was a delicate decision for the community, but a money decision for the plant.

Mr. Fuqua questioned why the plant is operating.

Mr. Silliman stated that the plant was cited by Air Quality Control and told to get their act together. He stated they have been operating since 1991 and have not shut down.

Mr. Silliman stated that there was an odor from sludge ponds, but not long lasting, before the rendering plant, but the rendering plant odor is distinct.

Carmen Silliman, wife of Charles Silliman, was sworn in and testified in opposition stating they came to the meeting from West Virginia because they hate to think the people here will be faced with odors such as they have. She testified she is embarrassed by the odors in their Town. She stated there are odors and a stinging to her nose from Chlorine in the air.

Mr. Fuqua asked if there was any other smell.

Mrs. Silliman stated the odor of burnt feathers and strong meal smell. When asked if she would object to the plant if there were no odors, she replied that she would be opposed to operating in the Town. She also stated there is sludge dripping from trucks. They only had an Environmental hearing.

Ludwig Seufert, a Chemist, who lives in outside of Bridgeville, was sworn in and testified in opposition. He referenced a meeting held in Harbeson and things discussed there. His concern is with health hazards, chlorine consumption. He referenced and presented an article from Delmarva Farmer. He quoted Joe Conaway who represented the applicants at the change of zone hearings. He has great concern about the cause of cancer. He referenced the American Cancer Society documents and presented copies. Mr. Seufert stated that Delaware has a high lung cancer rate. He stated that we have airborne carcinogen. He feels something other than auto emissions is causing the cancer. Mr. Seufert feels the Board should consider the health hazards. He asked the Board to delay their decision until the applicants can locate the by-products to be produced and tell they are safe, tell where the chlorine is going and not expose Sussex Countians to health hazards.

Robert Lawson, President of Harbeson Improvement Association and who lives approximately 1400' from the proposed plant location, was sworn in and testified in opposition. Mr. Lawson testified they had done a count of traffic going in and out of the existing poultry plant.

They counted 1582 cars and 225 tractor trailer trucks. He feels the entrance they have to the poultry plant would have to be used for the new rendering plant and he feels it is not adequate for the trucks turning in. Mr. Lawson stated he is a grain producer and the rendering plant will not benefit the agricultural community. He feels there could be a fire hazard, since the nearest fire company is five miles away. He feels property values will decrease.

Mr. Witsil referenced the Land Use Plan pertaining to fire.

Mr. Lawson stated that he had visited places where rendering plants exist. He stated that there are odors and can even feel it in the air. He testified that he has a video of his visits if the Board desired to see it. It was presented at the Planning and Zoning Meeting.

The video tape became a part of the record, but was not reviewed.

Mr. Fuqua agreed, but felt the video should be viewed at a public hearing for everyone to see.

Mr. Jones stated that if the Board does not leave the hearing open they will not view the tape.

Mr. Lawson stated that he had two letters from Timberville, Virginia where he visited. He stated he visited 6 or 7 plants and saw their operations. He stated they were big, tall high plants, jet rushing air, very loud and there was odor. In answer to Mr. Fuqua, Mr. Lawson stated the use will benefit the owners, but not the agriculture uses. He stated that Del D.O.T. is not aware of the amount of traffic generated by the poultry plant now. He would be concerned about fire and he stated that it would compete with him financially.

Norman L. Montgomery who lives adjacent to the property where the proposed plant will go, was sworn in and testified in opposition. Mr. Montgomery questioned safety and if the location is the proper site for the rendering plant. He feels it is the same response as anyplace that has a rendering plant. He feels the applicants have not proved safety or health hazards. He questioned what would happen to loaded trucks should the plant break down.

A letter of opposition was submitted from Sharon Joseph.

Mr. Mills, Board Member, questioned Mr. Allen about the use of the plant in regards to anyone else using it.

In response, Mr. Allen stated the plant would be to handle their use.

Mr. Fuqua in rebuttal stated that Federal and State laws would have to be complied with and necessary permits obtained.

Mr. Jones questioned Mr. Morris about the Moorefield plant odor.

Mr. Morris stated he feels there is something wrong there, but equipment was brought in from somewhere else. He feels the Timberville plant works good now, since Mr. Lawson was there.

Mr. Witsil withdrew the tape Mr. Lawson offered as evidence.

Mr. Betts referenced letters that had been received by the Board and Planning and Zoning Office, 102 post cards from 22 families, 1 letter in support, 1 letter no impact, 2 letters in opposition and 2 newspaper articles.

Mr. Fuqua stated that there is fear in the unknown and the rendering plant will not be welcomed anywhere in the County. He stated County Council felt the land is appropriate for heavy industrial zoning. He feels it is an agriculture relating use, the rendering plant will be adjacent to the poultry plant, that truck traffic already there will decrease what is used now. Mr. Fuqua stated that County Council change of zone approval is being appealed by people in opposition. He presented some Finding of Facts for the Board to consider.

Mr. Witsil stated that the applicants have burden of proof to prove regarding health and safety. He feels County Council dumped it in the lap of the Board without considering the health and safety. He feels an economic goal is to be met by Allen Family. He stated Mr. Olgetree was not convincing about the chlorine. He feels they have not told where the chemicals are to go. They are concerned about the unknown. He feels it is an economic motive by Allen's. He feels it will be a detriment to the area and to others in Sussex County.

Mr. Fuqua stated that the Dupps system is working fine in West Virginia. They have to have State permits and if there are no regulations in Delaware he is sure there will be some made. He feels the location is the logical place and the Board should put regulations on to protect the people if approved.

The Chairman closed the meeting.

Motion was made by Mr. Mills, seconded by Mr. Wheatley and carried unanimously that the case be tabled until the next regularly scheduled meeting.

Motion was made by Mr. Mills, seconded by Mr. Callaway and carried unanimously that the meeting be ajourned.

Meeting adjourned at 11:45 P. M.