

Minutes of October 6, 1999

The regular meeting of the Sussex County Board of Adjustment was held Wednesday evening October 6, 1999 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. Hudson, Mr. Mills, Mr. McCabe, Mr. Wheatley, Mr. Berl – Assistant County Attorney, Mr. Rickard – Chief Zoning Inspector, Mr. Lank – Director, and Ms. Jackson – Recording Secretary.

Mr. Callaway asked for any additions or changes to the agenda. Hearing none, motion was made by Mr. Mills, seconded by Mr. Hudson and carried unanimously that the agenda for October 6, 1999 be approved. Vote 5-0.

Motion was made by Mr. Mills, seconded by Mr. Wheatley and carried unanimously that action on the minutes of September 13, 1999 and October 6, 1999 be held until the next Board of Adjustment meeting. Vote 5-0

Case No. 6980 – Edward J. Kaye- west of Road 525, 1,500 feet northwest of Road 526.

A special use exception for an asphalt batching recycling operation.

James A. Fuqua Jr., Esq., Attorney, was present on behalf of the applicant and noted that no one was present in opposition. Mr. Fuqua stated that his, client Mr. Kaye, would like to renew the application for another five (5) year period and that on August 28, 1995, Case No.5780, the previous special use exception was approved with ten (10) conditions; that the asphalt plant exist as originally submitted; that Mr. Kaye has several conditional use approvals for the same parcel which includes a borrow pit, stump shredding, concrete crushing and recycling of building materials; that the plant is located in an old borrow pit area; that the plant is regulated by DNREC for emissions and is inspected annually; that the entrance road has been paved from Road 525 back to the asphalt plant and the sand plant; and requested that the original condition No. 7 be amended by adding the following: “ The stated hours of operation shall not apply to contract work with the State of Delaware where the contract requires delivery of asphalt at times exceeding that permitted”.

Mr. Kaye was sworn and testified that he had no objection to the conditions, except for condition No. 7; that the trucks make more noise than the asphalt plant; and that 95% of the asphalt is utilized in Sussex County.

Mr. Fuqua submitted a letter from Division of Air & Waste Management, dated January 31, 1999; a stack test with rap, dated June 11, 1997; a stack test virgin mix, dated June 12, 1997; a letter from Division of Air & Waste Management in reference to the asphalt plant inspection, dated July 20, 1999; a letter from Freedom of Information Act Request, dated September 14, 1999; a letter from Freedom of Information Act ("FOIA") Response Form dated, September 21, 1999; a letter from Department of Natural Resources and Environmental Control, dated September 21, 1999; a report for asphalt tonage and recycled asphalt tonage; and a letter from Sussex County Planning and Zoning, dated October 1, 1999, for the record.

The Board found that no parties were present in opposition.

Motion was made by Mr. Mills, seconded by Mr. Wheatley and carried unanimously that the special use exception be granted for five (5) years beginning November 8, 2000, and with the following amended conditions:

1. The extension approval is limited to a period of five (5) years beginning November 8, 2000.
2. All required Delaware Department of Natural Resources and Environmental Control (DNREC) permits will be obtained and all operations will be in compliance with said permits. In the event the applicant is cited with a permit violation by DNREC, operations shall cease until violation is corrected and approved by DNREC.
3. Operation will be located in the existing pit as shown on the site plan submitted by the applicant and will be set back at least nine hundred (900) feet from County Road 525 and at least nine hundred (900) feet from the branch located at the rear of the property.
4. No wooded areas or wetlands shall be disturbed. The applicant shall maintain the existing berm located along County Road 525.
5. Operations shall utilize existing access road and entrance on County Road 525.
6. A water truck shall be available at all times for use in dust control.

7. Hours of operation shall not exceed those authorized for Conditional Use No. 954, being six o'clock A.M. to six o'clock P.M. (6:00 A.M. – 6:00P.M.) weekdays during the months March through October; seven o'clock A.M. to five o'clock P.M. (7:00 A.M. – 5:00 P.M.) weekdays during the months November through February; Saturday operations shall be limited to seven o'clock A.M. to noon (7:00 A.M. – 12:00 P.M.); the stated hours of operation shall not apply to contract work with the State of Delaware where the contract requires delivery of asphalt at times exceeding that permitted; there shall be no Sunday hours of operation.
8. The driveway from scales to the highway shall be blacktopped to control the dust.
9. The applicant shall utilize fuel tanks on the equipment only, and that there be no fuel storage tank on-site.
10. The equipment shall be limited to a new four ton state of the art recycling batch plant, of the type presented by the applicant or of equal specifications.

Motion was made by Mr. Wheatley, seconded by Mr. McCabe and carried unanimously that the meeting be adjourned.

Meeting adjourned at 7:40 P.M.