

Minutes of October 21, 1996

The regular meeting of the Sussex County Board of Adjustment was held Monday evening, October 21, 1996 in the County Council Chambers, Room 115, Courthouse, Georgetown, Delaware.

The meeting was called to order with Chairman McCabe presiding. The Board members present were: Mr. McCabe, Mr. Callaway, Mr. Mills, Mrs. Hudson, Mr. Wheatley, Mr. Jones-Attorney, Mr. Betts-Zoning Inspector III and Mrs. Talley-Planning & Zoning Secretary.

Motion was made by Mrs. Hudson and seconded by Mr. Callaway that the minutes of October 7, 1996 be approved as circulated, with Mr. Mills abstaining. Motion carried with four voting in favor and one not voting.

Mr. Jones, Attorney, read a statement explaining how the Board of Adjustment meetings are conducted and procedure for hearing the cases.

Case No. 6128--Phillip B. & Rose Marie Cline Lowe - South side of Route 471, 1,700 feet west of Route 432.
A special use exception to place a second manufactured home on a medical hardship basis.

The case was presented by Mr. Betts. Rose Marie Cline Lowe and Michele Rose McCabe were sworn in and testified, requesting to place a 14'x 70' or smaller manufactured home on Mrs. Lowe's property for her parents who are in their 80's and live in Ocean View, and who's health is deteriorating and need to be near for care. She would like to have them near her rather than put them in a nursing home. She testified that the existing manufactured home is 14'x 70' in size and on a permanent foundation. She would not put the proposed unit on a permanent foundation because it will be removed when the hardship ceases.

Mr. Jones explained that if approved the use would be good for a period of two years.

Mr. Betts read a letter from John Giuliano, D.O., Beebe Medical Center pertaining to the parents health. Mr. Betts also read letters of opposition from Granville & Dorothy Conaway, Michael Betts, Gary & Crystal Conaway and Patricia Oliphant.

Michele McCabe presented an affidavit in favor with seven family signatures. It was read into the record by Mr. Betts.

Diann Pawlowski was sworn in and testified in behalf of the application. She stated that she lives four lots down from the applicant and has no objections. She stated that another manufactured home was approved down the road.

Dean Allen Wootten was sworn in and questioned the two year period and if they have to reapply. He does not want a percedent set. He stated that if the manufactured home has to be removed when the hardship ceases, he is not in opposition.

Patricia S. Oliphant was sworn in and asked to see the signatures on the affadavit presented.

Mr. Betts read the names on the affidavit: Sharon A. White, Betty J. Elliott, Wanda M. Layton, Donna Chandler and Alisen M. Ryan.

Motion was made by Mrs. Hudson, seconded by Mr. Wheatley and carried unanimously that the case be taken under advisement.

At the conclusion of the public hearings, the Chairman referred back to this case. After some discussion, motion was made by Mr. Wheatley, seconded by Mr. Callaway and carried unanimously that the special use exception be granted on medical hardship basis for a period of two (2) years.

Case No. 6129--Philmore White, Jr. - South side of Route 492,
700 feet west of Laurel Town Limits,
Lot 6, within Little Creek Acres.

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

The case was presented by Mr. Betts. Philmore White, Jr. & Evett were sworn in and testified. Mr. Philmore requested to place a new 1997 double-wide manufactured home on property he is purchasing for his use, being Lot 6, within Little Creek Acres. He stated that his unit will be in character with the area.

Nancy Schlicker was sworn in and testified in opposition, stating that she wants to make sure the unit will be a new double-wide manufactured home on a permanent foundation. She stated that the Board had approved other manufactured homes for new double-wide units on a permanent foundation.

Mr. Betts read a letter of opposition from Joanne Czemik, Ann Justice, Chester Justice, Nancy Schlicker, Penney West, Tim West, Charles C. White, III, Gail White and Ken Nichols.

Timothy G. West was sworn in and testified in opposition stating he directed his testimony to Mr. Mills and he does not want single or double-wide manufactured homes in the development. He testified that there has been harassment by people moving there.

Mr. Betts stated for the record that the property was posted and he had pieces of the sign that had been cut-up. It was stated in the letter that the property had not been posted.

Mr. West stated that there is a large lawn mower used to cut the grass and that could have destroyed it.

Mr. Betts stated that the sign is put on a wood post, and the post is still on the property.

Joanne Czemik was sworn in and testified in opposition. She presented a copy of a letter she received on May 3, 1993 from the Planning and Zoning Office stating that a Virginia Home was considered a modular home and could be put on property zoned for a dwelling. She referenced Lot 2, within Little Creek Acres. She testified that they were told that no double-wides, no manufactured homes were permitted in the development. A document had to be shown that the home was a modular before it was placed on the property. Ms. Czemik stated that if she tried to sell her lot there would be a reduction in cost due to the manufactured homes permitted in the development. She stated that she did not know the people who moved in the development, but it was stated that they had influence in getting their manufactured home. She stated that harassment has resulted since granting the manufactured homes. She stated that there is one manufactured home on 4 1/2 acres that is not in the subdivision and another one down the road. She stated that there were 17 people who were present at the other hearings for manufactured homes. She was told the Developer and Realtor had a sham. She stated that she has no quarrel with the people moving in, the quarrel is with the deception by the Developer and the Realtor.

Mr. Jones, Attorney, quoted the law in reference to granting a special use exception by the Board. He made reference to photographs at the previous hearing. He stated that the Board had no control over the Realtor and the Developer.

Ms. Schlicker stated that if the Board had not passed or had a moratorium to begin with, the problems would not have increased and escalated. They would not exist as they are.

Motion was made by Mr. Mills, seconded by Mrs. Hudson and carried unanimously that the case be taken under advisement.

At the conclusion of the public hearings, the Chairman referred back to this case.

Mr. Jones explained to the Board that the matter between the Developer and Realtor should be between themselves, it is not a

land use matter.

After some discussion, motion was made by Mr. Callaway, seconded by Mrs. Hudson and carried unanimously that the special use exception be granted for a new double-wide manufactured home on a permanent foundation, finding the use will not adversely affect the surrounding area and two other manufactured homes have already been approved in the development. They found that the use will not adversely affect the neighboring and adjacent properties and due to other manufactured homes being in the area.

Case No. 6130--Robbin Melchiorre (Gilpin) - East side of Route 258, at the intersection of Route 264, Lot 15, within Eagle Crest.

A special use exception to place a pond on less than five acres.

The case was presented by Mr. Betts. Robbin Melchiorre Gilpin was sworn in and testified, requesting to place a nature pond on less than five acres, being Lot 15, within Eagle Crest. She stated that the pond will be 1/4 acre in size, have sloped banks and be three feet in depth. She stated that there will be no fence around the pond. She stated that the Homeowners Association or neighbors have no objections.

Mr. Betts stated that no correspondence had been received pertaining to this case.

Mrs. Hudson asked about children in the neighborhood.

Ms. Gilpin stated that the closest children are three lots away. She testified that there is an existing unfenced pond closer to the children now and there have been no problems.

There were no parties present in opposition.

Motion was made by Mr. Callaway, seconded by Mr. Wheatley and carried unanimously that the special use exception be granted.

Case No. 6131--Robert W. Gooden - North side of Route 299, 270 feet west of Route 298, Lots 51 and 52, within Sherwood Forest.

A variance from the side yard setback requirement.

The case was presented by Mr. Betts. Robert Goodwin was sworn in and testified, requesting a 3 1/2' variance from the 10' side yard setback on Lots 51 and 52, within Sherwood Forest, for a

manufactured home that has been on the property since 1992. He testified that he was not aware of the encroachment until he inherited the property from his mother. His mother had placed the manufactured home in the center of the property. Two lots were left to him. He stated that there is a patio, with glassed-in porch that he could move, but he does know how substantial it is. He stated that he does not know of any opposition to his variance.

Mr. Betts stated that no correspondence had been received pertaining to this case.

There were no parties present in opposition.

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

Case No. 6132--Nanticoke Homes, Inc. - South side of Route 36, 165 feet east of Road 619A, formerly Windsor Crest.

A variance from the minimum lot width requirement.

The case was presented by Mr. Betts. Karen Emory Brittingham was sworn in representing Nanticoke Homes, Inc., who requested a variance from the minimum lot width requirement in Windsor Crest a nine lot subdivision that was approved in 1993. She showed the development plat. The applicants want to reduce the subdivision lots to five instead of nine, because of roads and drainage. She stated that the Highway Department has no objection to a single and two shared entrances for the subdivision. She presented a copy of the plot. She stated that there will be five lots, five houses and five driveways. It will reduce run-off. The lots have been approved for standard septic systems. She stated that the three entrances will be off of Route 36. Each will have its own private driveway.

By a show of hands there were eight (8) people present in opposition.

William Pikes, Jr. was sworn in and testified in opposition stating he wanted to see the plat the was presented. He stated that he lives on the easterly side abutting up to the applicants property. He stated that when the subdivision was first started the developers were to put a collecting basin next to his property. He stated that every spring water lies on the property. He presented a picture. He stated that the property will empty through his basement. He expressed concern about the water table and drainage. He fears the water will migrate under his house and his neighbors houses. He feels to approve the application will be

a great dis-service for any prospective buyers.

Bonnie Elliott & Phillip B. Elliott were sworn in and testified in opposition. They stated that they have lived in the area for 19 years and have seen the property under water. It was stated that the water table is high and the property will not perc. It was stated that everyone on the road has water problems and it would be a crime to allow houses to be built there. They feel sorry for anyone who would purchase lots there.

William H. Gordon was sworn in and testified in opposition, stating concerns when the development was first approved by Planning and Zoning. He stated concern about the road. He stated that when it rains, water stands on his property and that others in the area have water in their basements. He stated that when the development was previously approved there was supposed to be a fence put on the property, but that has not been done.

Gary Burlingame and Elaine Burlingame were sworn in and testified in opposition, questioning the septic systems to be put in. He stated that without fill he does not see how they will work. He stated that when the people move in they will want water and sewer and he does not want it. They stated that the fields flood and with a clay bottom water will not run-off. It takes several months to dry out.

Mr. McCabe explained that the Board is only concerned with the variance request, that the water situation is not their decision or concern.

Mr. Pike questioned how a developer could slap something in and then leave. He feels there will be trouble down the road and questioned who they are to contact.

Mr. Jones stated that now when property is bought there is an addendum attached to the contract so people know in advance the type of property they are buying. He also stated that people have to have approved septic systems before they can build a house.

Mr. Elliott questioned where the drainage basin is going to be. He feels it will cause the surrounding neighbors and home buyers more problems.

Ms. Brittingham stated that any questions that need to be answered, they can come into the office of Charles Murphy and they will try and answer them. She stated that she cannot answer their concerns pertaining to water and drainage, since that is not her field, but there is good soil to the rear of the lots. She stated that Nanticoke Homes agreed to the road and fence at the original

hearing for the subdivision. She stated that there is no Homeowners Association. Ms. Brittingham stated that the variance is for less than 150' of frontage. There will be no holding basin on the property. She stated that the law requires drainage to stay on property of the owner.

Mr. Pikes stated that they must have somewhere for the water to go.

Richard Anthony was sworn in and testified in opposition, questioning the abandonment of the road.

Mr. Betts stated that the subdivision was approved but not recorded.

Mr. Pikes asked if they are to be stick-built homes why the developer had no representation.

Mr. McCabe stated that Ms. Brittingham was their representative.

Mr. Betts stated that the zoning of the property is MR Medium Density Residential and there must be stick-built homes or an approved modular home.

Motion was made by Mr. Mills, seconded by Mrs. Hudson and carried unanimously that the case be taken under advisement.

At the conclusion of the public hearings, the Chairman referred back to this case. After some discussion, motion was made by Mr. Callaway, seconded by Mr. Mills and carried unanimously that the case be tabled until the next meeting, to give the Board members time to revisit the site.

Case No. 6133--Pine Acres, Inc. - North side of Teal Drive, across from Rudder Road, 1,900 feet north of Road 22 (Long Neck Rd.), Lot 29, within Creek End.

A special use exception to use an existing manufactured home as a temporary sales office for sales of lots and/or units within Creeks End Development.

Mr. Jones, Attorney, excused himself from this hearing due to a conflict of interest.

The case was presented by Mr. Betts. George H. Harrison was sworn in and testified, requesting to use a Nanticoke Home that

exists on the property, not a manufactured home as stated on the agenda, for a temporary sales office for the sale of lots and/or units in Creeks End Development. He stated that the model home on the lot will be used as a model and sales office. He stated that if someone wanted to buy the model home they would then like to relocate to another model home on another lot, without coming back for another hearing. This would continue until they sell out.

Mr. Betts stated that the Code states plural, he can use more than one for sales.

Mr. Mills asked if the sales could be completed in three years.

Mr. Harrison did not know.

There were no parties present in opposition.

Motion was made by Mr. Mills, seconded by Mrs. Hudson and carried unanimously that the special use exception be granted for a period of five (5) years.

Mr. McCabe announced that the Board would take a five minute recess.

Case No. 6134--Richard P. Lecates - Northeast side of Route 474,
858 feet north of Route 474 and Route 9.
A special use exception to place a manufactured
home in an AR-1 District on less than five acres
for a permanent residence.

The case was presented by Mr. Betts. Richard Lecates was sworn in and testified, requesting to place a 1988, 14'x 76' manufactured home on his property for his use. A picture of the manufactured home was presented. He stated that there are three other manufactured homes, a chicken farm and timber company in the area.

There were no parties present in opposition.

Mrs. Hudson questioned if the applicant planned to build a home.

Mr. Lecates stated that he would like to build a home when he can afford it, maybe within five years.

Motion was made by Mrs. Hudson, seconded by Mr. Mills and carried unanimously that the special use exception be granted, finding the use will not adversely affect the area.

Case No. 6135--Ruby Quillen - North side of Route 54, 1/4 mile northeast of Route 382.

A variance from the side yard setback requirement.

The case was presented by Mr. Betts. Earl Quillen was sworn in and testified representing the applicant, his sister. Mr. Quillen stated that his mother passed away and he and his sister subdivided the farm. They propose to use the ditch as the dividing line. She is requesting a 7.8' variance from the 15' side yard setback. He stated that the variance would not affect anyone else except them.

There were no parties present in opposition.

Motion was made by Mr. Wheatley, seconded by Mr. Callaway and carried unanimously that the variance be granted, finding the use will not adversely affect the neighborhood in any way.

Case No. 6136--Eugene E. & Jeanette A. Walker - Northeast side of Route 563, 175 feet west of Route 563A.

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

The case was presented by Mr. Betts. Eugene & Jeanette Walker were sworn in and testified, requesting to place a 1997, 28'x 52' double-wide manufactured home on their property for their use. The manufactured home will not have a permanent foundation, but will have skirting. There are other manufactured homes in the area, the nearest on either side of the applicants property.

There were no parties present in opposition.

Motion was made by Mr. Callaway, seconded by Mr. Wheatley and carried unanimously that the special use exception be granted for a 1997, 28'x 52' double-wide manufactured home.

Case No. 6137--Donald K. Miller - North side of Route 490, 807 feet west of Canal Lane.

A variance from the side yard setback requirement.

The case was presented by Mr. Betts. Donald K. Miller was

sworn in and testified requesting a 4.19' variance from the 15' side yard setback requirement for a garage addition. Mr. Miller stated that the main part of the house with the garage was put too close to the side property line. The surveyor discovered the error. He stated that there is brush on the next property.

Mr. Betts stated that he checked the house and thought it was proper at the time.

There were no parties present in opposition.

Motion was made by Mr. Mills, seconded by Mrs. Hudson and carried unanimously that the variance be granted.

Case No. 6138--Glen E. & Karen S. Stevenson - North side of Water Street, 1/4 mile west of Road 38, at Clendaniel Pond.

A variance from the one acre lot size requirement in a Conservation District.

The case was presented by Mr. Betts. Glen Stevenson was sworn in and testified, requesting a variance from the one acre lot size requirement in a Conservation District. Pictures were presented. Mr. Stevenson proposes to cut-out one (1) lot from his property and in order to get one acre he would have to remove his blacktop driveway. He proposes to have a 3/4 acre lot. A letter was presented.

Mr. Betts read the letter presented from Mr. John V. Eustis, Jr. voicing no objections to the variance request.

There were no parties present in opposition.

Motion was made by Mr. Callaway, seconded by Mr. Wheatley and carried unanimously that the variance be granted.

Case No. 6139--John Edwards - East side of Route 288, one mile south of Route 287.

A variance from the minimum lot width requirement.

The case was presented by Mr. Betts. John Edwards was sworn in and testified requesting a variance from the 150' frontage requirement to create a new parcel. Mr. Edwards stated that he will cut-out a two acre parcel of land from nine acres. His new parcel will have 150' of road frontage, the remaining land will have only 126.72' of road frontage. The remaining property will be his aunts. He stated that there are other lots in the area with

less than 150' of road frontage and smaller lots.

There were no parties present in opposition.

Motion was made by Mr. Mills, seconded by Mrs. Hudson and carried unanimously that the variance be granted.

Case No. 6140--Elmer L. & Johnie M. Conquest - North side of Route 64, 1/4 mile east of Route 70, Lot 5.
A special use exception to place a manufactured home in an AR-1 District on less than five acres for a permanent residence.

The case was presented by Mr. Betts. Johnie M. Conquest was sworn in and testified, requesting to place a manufactured home on property they are purchasing for their use. They will place a new double-wide manufactured home on a permanent foundation on the property. She stated that there are several other manufactured homes in the area, as close as the adjoining properties.

Mr. Betts stated that the application states the manufactured home size on the application is 24'x 60'. He also stated that there are other manufactured homes in the area that have been approved by the Board.

There were no parties present in opposition.

Motion was made by Mrs. Hudson, seconded by Mr. Mills and carried unanimously that the special use exception be granted for a new double-wide manufactured home on a permanent foundation.

Case No. 6141--Mary Ann Condash - East side of Route 347, 1/2 mile north of Route 26.
A special use exception to place a manufactured home in an AR-1 District on less than five acres for a permanent residence.

The case was presented by Mr. Betts. Mary Ann Condash was sworn in and testified, requesting to place a 28'x 58' manufactured home on her property for her use. She stated that there are several other manufactured homes in the area.

There were no parties present in opposition.

Motion was made by Mrs. Hudson, seconded by Mr. Wheatley and carried unanimously that the special use exception be granted for a double-wide manufactured home on a permanent foundation.

Case No. 6142--Clarice Tunnell - North side of Route 18, 400 feet west of Route 275, Lots #9 and #10, within Delaware Sand Co.

A special use exception to replace a manufactured home in a C-1 General Commercial District.

The case was presented by Mr. Betts. Clarice Tunnell & Alfred Tunnell were sworn in and testified. Clarice Tunnell requested to replace a manufactured home in a C-1 General Commercial District that has been on the property since 1954. He will replace the unit with a 1978, 12'x70' manufactured home. His daughter lives on the property. He will tear down and remove the existing manufactured home since it is so old. He will also be hooking-up to sewer as soon as he can.

Vincent Lewis was sworn in and testified questioning the tearing down of the existing manufactured home and that it will be removed, and hooking-up to the sewer.

Mr. Betts stated that Mr. Tunnell will have to hook-up to the sewer.

Motion was made by Mrs. Hudson, seconded by Mr. Callaway and carried unanimously that the special use exception be granted, with the stipulation that the existing manufactured home be removed prior to the new manufactured home being placed on the property.

OLD BUSINESS

Case No. 6127 (cont'd)--Concerned Citizens for Community Preservation - West side of Route 525, 1,500 feet north of Route 526.

A special use exception to appeal the Director's decision in reference to Board of Adjustment Case No. 5780, C/U #8744, C/U #9454, and C/U #1079 Edward J. Kaye and relating to fuel storage.

Mr. Betts reviewed the case.

Mr. McCabe stated that they would be voting on whether the decision of the Director was correct.

After some discussion, motion was made by Mr. Wheatley and seconded by Mr. Callaway to affirm Mr. Lank, Director's, decision on Case No. 6127, with Mr. Mills abstaining. Motion carried to affirm Mr. Lank's decision, with four voting in favor and one not voting. Vote 4-0.

Mr. Jones read proposed findings he prepared:

CASE NO. 6127

REVIEW OF TESTIMONY

This matter involves an appeal by Mattie Burton, both individually and on behalf of an organization called Concerned Citizens For Community Preservation. The appeal is from a decision of Lawrence B. Lank, Director of Planning and Zoning, dated June 7, 1996.

In 1988, the Sussex County Council approved a Conditional Use on the premises of Edward J. Kaye. Conditional Use #874 allowed for a borrow pit on the premises. In 1990, the County Council approved Conditional Use #954, which permitted the expansion of the existing borrow pit, and allowed placement of a stump shredding device and a concrete crushing device. The County Council attached conditions to its approval. One of those conditions was: "No fuel shall be stored on site."

In 1994, the County Council approved Conditional Use #1079, which allowed for an expansion of Conditional Use #954. The condition concerning fuel storage remained.

On August 28, 1995, a public hearing was held before the Sussex County Board of Adjustment. Mr. Kaye had filed Application No. 5780 for a special use exception to operate an asphalt batching recycling plant on the property. After hearing evidence both in favor of and opposed to the application, the Board granted the requested special use exception. However, the Board attached several conditions to the approval. One of those conditions was: "The applicant shall utilize fuel tanks on the equipment only, and that there be no fuel storage tank on-site."

On March 20, 1996, and again on April 22, 1996 and May 30, 1996, Mattie Burton forwarded letters to Mr. Lank at the Planning and Zoning Office, raising concerns about Mr. Kaye's operation. In particular, those letters pointed out that Mr. Kaye was using or intended to use a fuel storage tank on his property. Ms. Burton stated that a fuel storage tank was in violation of conditions attached by the County Council to the approved Conditional Use applications, as well as a condition attached to the approved Special Use Exception.

By letter dated June 7, 1996, Mr. Lank responded to Mrs. Burton's letters. Mr. Lank found that the conditions concerning fuel storage had not been violated. Mrs. Burton and Concerned Citizens For Community Preservation have appealed Mr. Lank's decision to the Board of Adjustment.

According to Section 115-209 (A) of the Sussex County Code, the Board of Adjustment has the authority to hear and decide appeals where it is alleged that there is an error in any decision or determination by the Director of Planning and Zoning.

At the public hearing held on October 7, 1996, Mattie Burton appeared both individually and on behalf of the Concerned Citizens. She expressed her opinion that the 10,000 gallon fuel tank on the property, used for the asphalt plant, is prohibited by conditions attached to the previous Conditional Use approvals and the Special Use Exception approval. She stated that Mr. Lank's decision is apparently based on a December 1995 letter from a manufacturers representative, that an asphalt plant can not be built with an attached fuel tank.

Other persons also appeared in opposition to Mr. Lank's decision, including William Bell, David Fees, Timothy Duker and Marlene Mervine. Each of these persons raised concerns about the presence of the 10,000 gallon fuel tank on the property. They stated that the tank build by Mr. Kaye is a fuel storage tank and violates the applicable conditions.

Mr. Lank, represented by Assistant Sussex County Attorney Dennis Schrader, testified and explained the basis for his decision. Mr. Lank stated that it was his opinion that the 10,000 gallon fuel tank on-site was not a storage tank. He stated that a storage tank is utilized to fill equipment and vehicles. The tank constructed by Mr. Kaye is instead used solely for the asphalt plant.

James Fuqua, Esq., appeared on behalf of Mr. Kaye. He stated that certain conditions imposed by the Board with respect to Case #5780 were consistent with other conditions imposed by County Council with respect to the conditional uses. The Board was concerned with the site being used for a fuel storage facility. The Board was not concerned with fuel use associated with the asphalt plant. Mr. Fuqua also pointed out that a 10,000 gallon tank is approximately one day's worth of fuel for Mr. Kaye's asphalt plant. He equated it with a fuel tank on a vehicle, which has to be periodically filled for operating purposes.

Both Mr. Fuqua and Mr. Kaye stated that the fuel tank is connected directly to the asphalt plant and can not be used for filling any other equipment or vehicles. They suggested that the tank is no different than a tank which would be physically attached

to the plant. Safety concerns, as well as the absence of a containment wall, prevent the fuel tank from being placed physically on the plant.

DECISION

It is the job of the Board of Adjustment to review Mr. Lank's decision, and determine whether it was correct or erroneous. After reviewing the evidence submitted, the Board believes that Mr. Lank made the correct decision. The Board concludes that there was substantial evidence submitted at the public hearing to support his decision.

Both the County Council and the Board of Adjustment attached conditions concerning fuel storage to various operations of Mr. Kaye. It is clear that the intention of these conditions was to prohibit the property from being used as a fuel storage facility. In other words, the Board concludes that the conditions were intended to prohibit placement of a large fuel storage tank which would be used to provide fuel to various vehicles and other pieces of equipment which would be used by Mr. Kaye in his various operations, or possibly by others.

The condition was first imposed by the County Council, which determined that no fuel should be stored on the site. It is important to note that when this condition was imposed by the Council, an asphalt plant was not proposed for the site. Later, the Board imposed the same condition when the asphalt plant special use exception application was approved. However, realizing that a

fuel tank would be necessary for operation of the asphalt plant, the Board included a provision that fuel tanks "on the equipment only" would be permitted.

Mr. Kaye has constructed a 10,000 gallon fuel tank to operate the asphalt plant. The tank provides approximately one day's worth of fuel. Although it is not "on the equipment", it is clearly attached directly to the plant, and is intended to be used solely for the tank. It has been constructed within its own containment wall, and is located immediately adjacent to the plant. The Board believes that this tank falls within what was intended by the Board.

Furthermore, this tank does not constitute the type of fuel storage which was prohibited by the Council and the Board. It is not a general storage tank. It is a tank limited to the operation of the asphalt plant, just as an automobile gas tank is limited to the operation of an automobile.

For these reasons, the Board finds that the decision of Mr. Lank, dated June 7, 1996, was correct.

The Board adopted Mr. Jone's findings. Vote 4-0

Mr. Mills abstained due to his absence at the public hearing.

Case No. 6069--Anne J. Kaylor - Request for rehearing.

Mr. Betts reviewed the request for a rehearing from Jim Griffin, Attorney for the opposition.

Mr. Jones stated that the opposition could request a rehearing if applied for within ten (10) days. Mr. Griffin met the requirement.

Motion was made by Mr. Wheatley, seconded by Mr. Mills and carried unanimously that Case No. 6069 be reheard and that Mr. Griffin pay the filing fee of \$150.00 to rehear the case.

Meeting Adjourned at 9:45 P. M.