

BOROUGH OF TOTOWA

PASSAIC COUNTY, NEW JERSEY

BOARD OF
ADJUSTMENT



MUNICIPAL BUILDING
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BOARD OF ADJUSTMENT MINUTES OF AUGUST 9, 2017

The August 9, 2017 meeting of the Borough of Totowa Board of Adjustment was held at the Municipal Building. Chairman Fierro called the meeting to order at 7:39 p.m.; followed by the Flag Salute. Attorney Briigliodoro read the Open Public Meetings Act. The minutes from the July 12, 2017 meeting was approved by Vice Chairman Krautheim and seconded by Commissioner Bavazzano.

1ST CASE: SOUTHPORT LLC (CARRY OVER) 200 WEST END ROAD, BLOCK 170.02, LOT 2

Attorney Briigliodoro announced he just want the record to reflect that all the attorneys that were here last time are here tonight. Are there any new attorneys? Tim Donohue, is here on behalf of Grandview Printing. Attorney Briigliodoro had just one other thing, one other housekeeping matter. Two board members were not present at the July 12th meeting, but Mr. Vogel was kind enough to provide the board with transcripts of the proceedings and Commissioner Patten and Commissioner D'Ambrosio have reviewed the transcripts and they have signed certifications that they have reviewed the transcripts. Mr. Vogel states at the last hearing there were three witnesses, you will recall, they were Mr. Braen from the applicant itself, there was Mr. Jeff Morris of Boswell Engineering and Mr. Jeff Meeks who was the constructor of the plant itself. Attorney Vogel calls first witness, Hal Simoff, sworn in by Briigliodoro and his address is 2 Shunpike Road, 4 Madison, New Jersey. I'm a licensed professional engineer, licensed professional planner, with an emphasis on traffic engineering. I'm a fellow with the Institute of Transportation Engineers. Basically as an overview of what we did is we took an inventory of the existing neighborhood and -- by traffic counts. We analyzed and projected the additional traffic to be projected by the proposed asphalt plant and then we superimposed the two and did a second analysis as to what the impacts of the proposed use are. We conducted counts in July and -- last week of July, 1st week of August of this year at the intersection of Riverview Drive and West End Road, in the morning peak hour in 2017, we found 2,494 cars traversing the intersection of Riverview and West End. In it were about 50 -- in a four-year period that number went up 40 vehicles. So it's pretty stagnant. In the afternoon we counted two -- 2,297 and that was down 55 vehicles from what we had counted in 2013. So in one instance the number went up 59 vehicles which is a very small percentage when we're talking about 2,500 cars and in the afternoon analysis it went down about the same number. The level of service is a traffic engineer's way of rating traffic flow from A to F, A obviously being the best, F being failure by capacity. And we found that in the morning and the afternoon peak hours, the intersection

operates at level service A. The side street operates at approximately level C, while the Riverview Drive operates at level of service A. the facility has the ability to manufacture 500 tons per hour. So we took the maximum that the asphalt plant could generate, 500 tons per hour, we divided it by 20 tons per truck which is about 75 percent of the capacity. The capacity of the trucks is in the range of 25 to 26 tons per truck. We used a number of 20 because not all the trucks are full, most are full but some are not. So we used 75 percent. And I used, therefore, an average of 20 tons per truck. When you divide the capacity of the facility by 20 tons per truck we come up with 25 trucks being serviced or loaded during peak hours. So then we took, I assume that 25 trucks would be entering, 25 trucks would be leaving during the peak hour. I then went and I looked at what would be, what kind of traffic we would get from the site if we used some other common land uses that are in the neighborhood and that are permitted in the zone. There is a 3.6-acre site; you're allowed a .55 floor area ratio which would give us a building of 86,000 square feet. The -- I also looked at the coverage requirement. You're allowed a 45 percent coverage which would give the building of about 70,000 square feet. So I took the lower number and I analyzed what would happen if we had a 70,000 square foot industrial building or a 70,000-square foot office building. Office building could be 2 stories; industrial building would be probably 1 story. The industrial building would generate 70 vehicles in the morning and 76 vehicles in the afternoon. That compares to 50 and 50. And if it was an office building it would be 145 vehicles in the morning and 104. So three times the activity if it was an office building, one and a half times the activity if it were an industrial one. So this use on the scale or on the hierarchy of uses that are permitted in the zone is on the lower end of the traffic generated. And so therefore, traffic from a traffic point of view, the use would have no detrimental impacts which are obviously what we have to prove as part of the D-6 variance and it's -- and compared to other uses that could be put to the proper use, less traffic.

Commissioner D'Ambrosio would like to know what the square footage of the building is. Mr. Simoff proposed building it's relatively small, I'm not sure. It's just an office from what my understanding. Engineer Murphy had a couple of comments. Did you prepare a formal report? Mr. Simoff replied yes. Engineer Murphy asked if have you submitted it to the borough or is it pending? Mr. Simoff replied it's pending. Engineer Murphy's its pending. And will it be submitted for review? Attorney Vogel states yes. Engineer Murphy, any assessment or consideration of how the driveway will conform? This driveway is shared, it will be share the exit driveway I should say, it will be shared by the recycling facility and the mulching facility and exit out approximate location to the driveway serving the transfer station.

Mr. Simoff observed it but didn't study it. We're talking about one car every three, 4 minutes -- I'm sorry, one vehicle every two, 3 minutes. I think that that's probably is a low generator when you've got 25 cars exiting, 25 vehicles; trucks existing which I think are manageable. We're not talking about hundreds of vehicles exiting. Engineer Murphy: Okay. Would that be something you could append to your report so include a narrative. Mr. Simoff: I mean I can -- candidly I didn't do any traffic counts there. I didn't see it as an issue for discussion, but I can if the board requires it.

The second witness is Paul Grygiel, planner, was sworn in by Attorney Briadoro. Mr. Grygiel has been a licensed planner in the state of NJ since 1999 and is considered an expert in his field by the Board. In terms of preparation, my objective was to review the appropriateness of the height variance that's being requested and the overall proposal. In preparation for that I reviewed the application and related documents including the site plan. I read the transcript of the July 12th hearing, inspected the site and surrounding area, and reviewed relevant section of Totowa's master plan and zoning ordinance. The applicant is proposing the development of an asphalt batch plant on a 4-acre site in the western-most portion of Totowa. It's isolated from most of the rest of the borough particularly from residential areas. The land use character and the surrounding area has a predominance of light industrial uses, some distribution facilities as well as concrete and asphalt recycling center, a sewer pump station. There's a telecommunications tower, garbage transfer station and over in Wayne the New Jersey Transit bus garage as well as a billboard. So the proposal is for a permitted use that complies with all I-3 bulk standards except for one and that's notably height. The maximum building height in the zone is 40 feet that's permitted and the applicant is proposing height of 98.42 feet for the silos and tower. As such the application requires a D-6 height variance for exceeding the maximum permitted by more than 10 feet or 10 percent. The negative criteria dealing with the public good and the master plan and the zoning ordinance. In my opinion as a planner the proposed height can be permitted in accordance with the required criteria. First, in terms of the positive criteria or the special reasons, the subject property in the area can accommodate this additional height due to the size, the 4-acre property and its location within the borough as well as the siting of the use on this property that it's well set back. The proposed silos and other structures from any property lines it's over 300 feet from any property that's not owned by the borough of Totowa. With regard to the positive criteria the added height as was discussed at the previous meeting allows for storage of the asphalt product within the silos which enables more orderly operation of the facility. So if you had shorter storage structures it would require running the plant more times, it would be harder to regulate the flow of traffic in and out of the property. In essence, you could build a plant with lower structure height but it's more efficient and more appropriate for a modern asphalt plants to have the taller structures to allow for the orderly operation on the property. In terms of negative criteria we have to demonstrate first there's no substantial detriment to the public good, again from the height it and I think you're getting into the context of the area and the conditions around it there would be no substantial detriments. The proposal would not detract from the character of the area. And as far as noise, emissions and those types of other potential impacts they're regulated by the state, the operator would obviously have to comply with all regulations pertaining to that. So I don't think there would be any substantial negative impacts on the public good from this additional height. And again, the use could be there regardless of the height.

Commissioner Bavazzano: Going back from last month to operate the plant there's about three or four people personnel that would be on the plant?

Attorney Vogel: In the transcript, yes. Attorney Briadoro: Mr. Chairman, if I may, did you do any analysis of any existing buildings in the area in terms of the building heights?

Mr. Grygiel: Yes. So I cited the ones that I noticed that were above 40 feet. Generally building heights nearby appear to be within conformance of the height requirements. But

the notable one would be the transfer station building which is about 60 feet.

Commissioner Mancini: How many total structures are over 90 feet would you say? Mr.

Grygiel: There are three silos plus there's another tower. I'm not an expert on the

operations but I think in the transcript its three to four. Alternate Korsakoff: You stated

there is a direct correlation between the height of the silos and the traffic volume, the

lower the silos the higher the traffic? The shorter silo you have to either run the plant

more often and you have less control over when trucks can come and go. By having a

taller silo there's more room, storage, and it can be, the product can be held for a longer

period of time to structures are over 90 feet would you say spread out the truck traffic

Attorney Brigliadoro addresses the board and members-Chairman, I know we have

several objector attorneys here. So I would think that it would be fair to start with the

objector's attorneys. Attorney Dan Keough brings up Mr. Braen. You worked with the

company for most of your adult life start by asking about the trucking of the material both

the finished product and the aggregate. That estimating 400,000 tons of product produced

a year and then using 10 months of the year as a realistic operation period given the

winter months not being good for that and then from that 10 months extrapolating 250

days of product deliveries, reached I think it was 1,600 tons a day using 26 tons per truck.

So that led to, I think, about 60 or 61 trucks a day. And Mr. Vogel went on to expect

about half of that about 30 trucks to work during the 8-hour day delivering final product.

he just came up to 200 trucks a day. I guess somewhere between 30 and 200 is where it

winds up, I guess. So if we use 30 trucks increased by 70 percent you're around 50 or 51

trucks, if that math makes any sense. So and I like to speak in terms of a 23 trip in versus

a trip out as opposed to round trips. They come in more or less I guess on River -- on

West in the proposed entrance point at the end of West End off of Riverview, they would

enter the facility End, go in through and come out on Maltese. So if you've got 51 coming

in and 51 going out it's around, again, in this posited scenario these hypothetical a

hundred trucks in a day, a hundred truck trips, one in, and one out. A hundred times, you

know, being each one of those one hundred times each trip in, each trip out one of a

hundred. diesel trucks emit, diesel fumes do you have any kind of a study that can show

us that talks about the effect of air quality on those, that truck movement? Mr. Braen

responds No, but there's plenty of truck movement on Route 80 that's 50 feet behind us.

Does it occur to you at all that having that much truck use of a diesel type within that area

on a regular basis, it seems at least five if not 7 days a week for ten months of the year

over time could have any kind of an effect on the air quality? Mr. Braen responds. We

haven't done an air quality test. Do you ever say to any of the truckers or their companies,

we don't want that one truck in here because it's dilapidated or it's somehow not

consistent, compatible? Mr. Braen has refused trucks. do they ever lose any of the

material when they come in, does any of it ever come off from back from the bed, I know

they have tarps, but does any bounce out, do you ever see any coming out of the trucks?

Mr. Braen says nothing comes out of the trucks. Do they get kind of grimy and oily and

dirty basically from doing this work? Mr. Braen responds typically most of the trucks are

in very good condition. I understand you'd like to get anyway outdoor storage on the site.

You're requesting outdoor storage of material in addition to your silos containing

material? You mean where we would store the rock before we put it in the plant? I don't

know about the square footage we really look at the tons more than the footage, but I'm

not sure what's on that plant. Is there a good amount of dust and material kicked up in

that process at the site? Mr. Braen states typically we wet the roads down. If there is dust that was, you know, raising it would keep it down. You suppress the dust if the conveyor belts are not enclosed does any of the raw material ever fall off the conveyor belts, spill over? Any of it? It doesn't naturally just fall off to the side or something? Mr. Braen explains we have two places we can load. So the tower it's designed to drop 7 tons in one shot, at a shot. And then the silos it's continuous. So you type in how much weight you want to load the truck and press a button. And that's what it drops in. sounds like a pretty noisy operation because these trucks are not quiet and I know when you dump 7 tons of anything into a truck it's going to be pretty loud. Does it get fairly loud on the site where you're working? Mr. Braen responds with a state of the art, brand new plant, no. It's probably not louder than the transfer station next door or the recycling, I'm sure the recycling, and the concrete and asphalt crushing recycling facility is much louder. I understand you have a lease with the Borough of Totowa? Attorney VOGEL: The lease speaks for itself. I put it in evidence. You can read it, make your own assessment. Do accidents ever happen of any kind? Forty years? Off the top of my head I can't think of any accidents on our site. I don't know of any accidents on our other sites where, that are -- we move hundreds of trucks an hour out of. Q. Ever have any trouble with the silos? Collapsing? Exploding? Any fires ever? Mr. Braen responds no to all. Can you give us any more specificity, any exact idea of what regulations you have to satisfy let's say of the New Jersey DEP? The DEP you would have storm water regulations you have to meet and you have to meet air emissions. Air emissions regulations. Federal regulations. County regulations. Town regulations. Are there regular reports you have to file with the DEP and/or EPA and/or county or town? And so you have to do that testing yourself of air emissions quality? Mr. Braen responds no that's all subcontracted out there's special companies that just deal with doing air testing. What are the demands of these regulations, Mr. Braen does not know. Is the other asphalt plant in Totowa open and functioning, Mr. Braen does not know. How much distance is between them, Mr. Braen thinks about a mile. Is Tilcon his competitor, Mr. Braen replies yes. Does that plant operate 24 hours a day, Mr. Braen replies no. Can you give me a couple of examples of the ways that your state of the art plant being proposed. Mr. Braen responds No, not really. I would have to analyze the plant. Common knowledge. common sense. We talked a little bit about your night operation. The right to operate 24-hours a day being important because of, I think you said, a lot of the entities that buy the asphalt want the paving done at night when there's less traffic. There was an estimate provided last time of 400,000 tons a year as a, I don't know if that was a low or a high or a mean level or what. Would you describe your company as aggressively seeking new business or not aggressively seeking new business, what mode are you in? Mr. Braen responds competitive. Does that mean you'd like to get new business when you can or just maintain where you are? Are we looking for new customers? Not really. We're, it's a matter of how much work is out there. So when they pass let's say the gas tax there's going to be more highway work out there so we'll have to do more highway work. Maximum if we didn't run any work of our other plants, you know, we put a number, it's roughly 400,000 tons. So this plant could not generate 600 or 800,000 tons a year? Eight hundred would be a tall order. 600, yes, depends how much work is out there if it ran around the clock. Does that Tilcon plant have an active, Mr. Braen says it does. What do you mean by "throw away," I understand it's less likely with your batch plant versus the

drum plant but throwing away oil and asphalt it's no good, it's not like a Kleenex I don't think? Mr. Braen states we recycle it back; it goes back into the mix. With silos we can load a truck in a minute. You can load a lot of trucks real fast so they don't stack up.

That's why you put silos on the plant. So you can keep making the material so when the trucks, a lot of trucks come in you can load them right out.

There was some mention of odors; New Jersey is not lagging behind. New Jersey is on the forefront of all regulations maybe second to California.

Mr. John Testa, here representing Spiral Binding Maltese Realty which is the owner of the property and also Moring Metals and Devash Dairies. One of the things that we just talked about was odor. And I believe your testimony was when Mr. Vogel asked you this, this plant will create no odors; correct? I think you said that again recently; is that right?

Mr. Braen responds yes. It was testified to by Mr. Meeker the expert that you presented with respect to the plant. And his testimony was, I don't know if you recall, was that the oxidation of the asphalt when it's being created at high temperatures does create odor. Do you recall that testimony? He went on to testify that warm mix asphalt, which is the predominant way things are oh, done now, does lower the odors that are created when you're processing asphalt. Mr. Braen responds everything is contained in newer plants. So there's, they're built with so there's no way for any smoke, odor, whatever you want to call it to leave the plant. It was positive by him; however, that the warm mix asphalt is what, I guess, creates the no odor. He said this new facility is capable of the warm mixed asphalt. my question would be is your plant going to exclusively use the warm mix asphalt production or will you also use the conventional production as well? Mr. Braen states he would use both, usually the DOT determines if they want warm mix asphalt or another. Now when you start up your operation, do you intend to use the silos right away or is that something that's being done in the future? Mr. Braen responds the reason we have it future is because we're starting up a plant, we're not going to have a lot of business, right, so we have to build a market and we're not, you know, that's why we have - if we knew we had a large book of business we would put the silos up right away, but we're anticipating we're going to start off, you know, gradual. So that's the reason you want silos so you don't keep starting the plant up and stopping the plant throughout the day. So you put this finished product silos in so when a truck, you don't have a truck you don't shut the plant down. You keep it running and you put -- so the plant basically starts up and stops once a day. Mr. Braen states So if you get all of a sudden 20 trucks show up they, the plant isn't running because you had to stop it because no trucks were there, say at the half-hour and hour and you had to stop the plant, so then they all of a sudden show up, you have no materials stored. That's how it alleviates it. The trucks they come and they get rid of the millings and the recycled material they will use. How do they clean out their load? When they dump the truck everything comes out or is there anything left? Mr. Braen replies I think it all comes out. I don't really watch how they clean their trucks. So when they dump out do they ever have to clean the truck or get anything out of the truck before they return with good material to a paving operation? Mr. Braen responds yes, if something, regardless of what they're delivering. In other words stone in the might have to clean their truck out. So is there any cleaners or anything used in the cleaning out of these trucks when they say deliver a load of milled material? Mr. Braen responds just elbow grease. Do you think a sprinkler system is needed for dust suppressions? Mr. Braen responds we would do whatever we would have to do to stay in

compliance with the DEP. I'm not sure what jurisdiction the municipality has over dust suppression. I know the county health department and the New Jersey DEP does regulate that. We want the ability to run 24 hours there was something else was also testimony about 7 days a week which would include Saturdays and Sundays. But it's your intent to work Saturdays and Sundays, Mr. Braen responds yes.

Chairman Fierro would like to take 10 minutes is that acceptable? Okay, 10-minute break at 9:22 pm.

The meeting was resumed at 9:36 pm and a role call was taken.

Attorney Brigliadoro addresses Chairman Fierro, typically the board cuts off hearings at 10:30. We did cut off the first meeting at 10:30. So we just want everybody to be apprised of that.

CROSS-EXAMINATION BY MS. RUBRIGHT

Attorney Rubright is representing Star Stainless Screw Company. You bid on this property or this leased property; correct? Mr. Braen responds yes. How did you come to know that it was available? Mr. Braen replies it was advertised you noticed it in the paper that the property was available? Mr. Braen replies yes. So you filled out the bid documents or did someone do that on your behalf? Mr. Braen responds someone did it for him. Do you know whether or not the bid request had a specific statement with regard to what the property should be used for or could be used for? Mr. Braen does not recall. Do you know whether the bid request specified that the use for which the property was to be put had to be a permitted use for the property? Mr. Braen's response was I think it said, yes, you needed site plan approval, whatever approval, yes.

Attorney Brigliadoro addresses Ms. Rubright, if I may, we know that this was publicly bid. The bid was awarded to South Port. There is a lease. So if you can tell us why these questions about the bid process because one could argue you seem to be doing is preparing a collateral attack on the underlying bid process which really this board has nothing to do with it. I really wanted to find out what kind of due diligence has been done. I wanted to find out what did they look at, what was the bid process, what did they look at in terms of the property since as you'll recall, as the board will recall it is my position still that this is not a permitted use and I wanted to find out what they looked at in terms of the zoning. He said they looked at the zoning ordinance. So I finished that line of questioning and I thank you for answering the questions. So when the trucks leave the site with the asphalt, are they covered in some way? Mr. Braen advises some sort of tarp. We don't own any trucks, but they have to cover their loads. You said it takes a short amount of time for the asphalt to be filled into the truck and then the trucks move out. When do they cover, when does the owner of the truck or the contractor, when does he cover it. Does he pull out and cover, Mr. Braen responds they usually cover it right after it is filled, they're supposed to cover the load before they leave. I think the law is they have to cover the load before they get on a public road. How often in your Haledon plant do you have to use the water to, for dust suppression? Well, because the asphalt plants are in the quarry, we're running dust suppression for the quarry. The plants are right; they come in the operation itself. It's continuous. At the Totowa branch If we pave the whole site and landscape it and do this you might not have to do, you know, if they're on asphalt the whole time, right, if they're on a road the whole time even when they come onto the site you have them on a paved surface and they're always on a paved surface you might not have to do anything. Conveyor will be enclosed or it's not going to be

enclosed? Mr. Braen replies typically a conveyor is not a source of any dust or like I said we're actually trying to dry the material so we don't want the material to get wet. So that's, even the material that, the material that the trucks bring in most likely that would be covered. You don't want anything to get, you want to keep everything as dry as you can.

Attorney, Ronald Shaljian. I'm from Schumann Hanlon. And I represent Catholic Books. With respect to the Haledon operation I think you testified that you would truck some materials from that location to this location if this was approved, Mr. Braen replies there is a possibility. If it's only 10 minutes by truck from Haledon to get to this location, why are you interested in this location? Mr. Braen responds because it's in an industrial zone. Our Haledon location is in a residential area and it's been there for over a hundred years. Can you tell us what kinds of trucks will be used to load the asphalt at your plant? Are they going to be one size? Are they going to be larger trucks? Tractor-trailers? What kind of trucks are they? Mr. Braen replies Most of the trucks are tri-axle trucks. How many yards of material does a dump truck hold? Mr Braen responds we sell everything by the ton so typically the trucks carry anywhere from 24 to 27, 28 tons. You felt that 800,000 tons was way out of the ballpark, but 600,000 tons was realistic as a maximum for this facility, didn't you say that? Mr. Braen replies I don't think I said realistic. I think we said realistic we were projecting to do at some point 400,000 tons. Could we do more? Yes. Could we do less? Yes. We're probably going to do less. Can you tell us are there any materials, flammable materials stored on the site other than the asphalt? Asphalt's not flammable we have gas, gases can feed the plant, gas pipeline. You testified that the tower could dump 7 tons in one drop; is that correct? And if it can dump 7 tons at one time, how many trucks could you service over an hour? Mr. Braen replies, yes seven times 60 is 420 tons per hour.

CROSS-EXAMINATION BY MR. DONOHUE, Tim Donohue, on behalf of Grandview Printing, located 33 West End Road in Totowa. In regards to SouthPort, Am I correct that that is an entity that was formed specifically for this asphalt plant that's planned in Totowa? Mr. Braen replies no. And what business did South Port engage in prior to this bid in this case? Mr. Braen replies it's a real estate company. So who are the owners of South Port? Mr. Braen replies, The Braen family. In the bid documents, it indicated that the owners included a number of people. First, it indicated Stone Industries/Van Orden Sand & Gravel, are those both companies owned by various members of the Braen family? Mr. Braen replies yes. Are Stone Industries and Van Orden Sand & Gravel the owners of South Port? Mr. Braen replies I actually don't know who the owners of South Port are. Can you tell us who are listed as the owners in the bid documents and what their percentages of ownership are? Mr. Braen reads Janet Braen, 58. Samantha Braen, 10. Josh Braen, 10. Dirk Braen, 10. Scott Braen. And that adds up to 98. Who owns the other 2 percent? Mr. Braen responds that he does not know. The Braen family owns a number of other entities as I understand it; is that correct? Mr. Braen responds yes, Stone Industries, Braen Commercial Holdings, Van Orden Sand & Gravel, Braen Supply, Inc., Braen Aggregates, Braen Equipment, Braen Mulch, Braen Properties, Inc., Braen Royalty, LLC, Braen Technologies, LLC. So when I'm going to ask you some questions here I'm going to at times refer to the Braen companies understanding that we're talking about those companies which you have identified as being within the Braen family. So do

any of the Braen companies have direct contracts with public entities like the state, DOT, counties or cities? Mr. Braen replies yes. Are you, sir, a member of the New Jersey Concrete & Aggregate Association? Mr. Braen responds yes. I think you serve on the board of directors of that organization. Mr. Braen responds yes. Do you live in Totowa, Mr. Braen responds no. Do any of the Braen companies other than say South Port, LLC, and this thing have business interests in Totowa? Mr. Braen responds no, well South Port will be. Are you aware that Braen Stone Industries has contributed thousands of dollars over the last 5 years to the elected members of the Totowa municipal council and the mayor of Totowa? Mr. Braen replies yes. Did you authorize those contributions? Mr. Braen replies yes. Are you aware that every single member of the council and the mayor has received political contributions from Braen Stone Industries over the last few years? Mr. Braen replies no. Did Braen Stone make those contributions in order to gain any political influence with the mayor and council so it could obtain this lease? Mr. Braen replies No. It's a low bid document. Did Braen Stone make those contributions in order to gain political influence in Totowa with the hopes that this board would grant this variance? Mr. Braen replies no. Are you familiar with the Peter Murphy Totowa Republican Organization? Mr. Braen replies he thinks so. Do you know Peter Murphy? Mr. Braen replies yes. We have done business in this county for a hundred years, yes; I know who Peter Murphy is. I know who his father was. Are you aware that Braen Stone Industries and you personally have contributed \$7,000 to the Peter Murphy Totowa Republican Organization over the last 5 years? Mr. Braen replies, if that's what it was. When you made those contributions to Mr. Murphy's political organization, did you actually attend a fundraiser? Mr. Braen replies, yes probably. Do you know who the treasurer is of the Peter Murphy Totowa Republican Organization? Mr. Braen replies he does not. Let me show you the documents that are filed with the New Jersey Election Law Enforcement Commission and on the first page of each document at the bottom it identifies the treasurer who receives all of the funds. Who is that? Mr. Braen replies he has no idea. Do you know Mr. D'Ambrosio? Mr. Braen replies no. Never met him before today? Mr. Braen replies I don't know if I met him today. Attorney Donohou directs Mr. Braen's attention to the Board members and ask him to read the sign. Mr. Braen reads Commissioner D'Ambrosio's Name plate. When you and your companies made those contributions to the Peter Murphy Totowa Republican Organization, were you seeking to gain political influence in the town so you could get this lease? Attorney Vogel Objection, by the questioner's own basis for the question, contributions were made before this bid ever went out or before this lease was ever signed. Mr. Braen replies no. We give to every single town that we're in and not in. Did you believe that it would give you political influence so you could get a variance from the board of adjustment? Mr. Braen replies no. The organization that you belong to, the New Jersey Concrete and Aggregate Association, Are you aware that it has a pact or political action committee that also makes contributions to various candidates? Mr. Braen replies yes. And do you know why that pact decided in February of this year to contribute a thousand dollars to the Peter Murphy Totowa Republican Organization? Mr. Braen replies probably because I asked them to, the pacts give to a bunch of municipalities, towns all over the state. The pacts give to a bunch of municipalities, towns all over the state. Attorney Vogel replies yes, I know Peter Murphy since he was a child. I was a close friend of his deceased father. I have made contributions to his father. And for Peter Murphy and for Wayne and for all

areas. I've been active in Passaic County and I've been friends with people in various municipalities and I will not sit by and let you make an aspersion. You can ask questions, but don't you attempt to cast aspersions upon me. Because I will not allow it to pass. any of the companies that do business with public entities, have those companies filed annual disclosure statements with the State Election Law Enforcement Commission disclosing their political contributions, There is no record of any of the Braen companies filing the annual disclosure statement. Do you understand why? Do you know it's a violation of law for a company with over 50,000 in public contracts in 1 year to fail to disclose any reportable political contributions? Attorney Brigliadoro would like to know How is all this relevant to an application before the board for preliminary and final site plan approval for height variance relief for outdoor storage? How are all these questions about election law and filings, how is that --MR. DONOHUE: It creates an appearance of impropriety by this applicant that this board ought to be concerned about. They have submitted, they have submitted affidavits of non-collusion and fraud and made all kinds of representations they're going to be transparent and open. We have a commissioner sitting here listening to evidence who is the treasurer of an organization that has received thousands of dollars from this applicant and through other entities that he has an influence in. I think this board ought to be very concerned about the public's perception of that kind of in this day and age of pay to play you ought to be very concerned about the perception of the public that somebody is buying influence.

At this time Chairman Fierro opens the public portion of the meeting.

Peter Longo, lives in Saddle River, was sworn in by Attorney Brigliadoro, and owns two businesses on 15 Maltese Drive and West End. 200 Maltese Drive in Totowa 19 and 11 West End Road, my company has over 300 employees in Totowa and we are completely against this asphalt plant that they're planning on opening up in Totowa. What I just heard from the traffic expert, they're talking about Riverview Drive and West End Road. Has anybody ever addressed Maltese Drive or Route 23 coming through Taft where most of the traffic is coming from morning to night? I can't even get into my own parking lot because there are trucks parked the whole day long going into whatever that stone place is across the street from us, there is trucks lined up to go to the transfer station. I don't know exactly when those trucks are going to come out, if they're going to go from West End Road, they're going to come up I assume on Maltese Drive, okay, which other trucks are going to come towards my factory. I'm right in the front of the stone factory, whatever you want to call it. When it rains, there is at least a 2 feet water, my employees cars are getting flooded every time it rains. And there is already all kinds of debris, oil, standing on top of the water. Now the water instead of going in the drainage sewers is coming up because you can see the water actually bubbling. The name of Mr. Longos business is Precision Custom Coatings. If the asphalt plant will open up I will be forced to move not only myself, but there is a lot of business people in the same neighborhood. We are just installed \$3 million worth of solar panels. The first thing I was told by the installer that the dust and the powder from the asphalt it will be, it will cost me no less than ten to \$12,000 per year. You take that over the life of the solar panels would cost me over \$250,000 and if some of the hot asphalt or hot tar happens to drip on top of the panels there is no way of cleaning it. You want to put up an asphalt plant, I tell

you one thing I will be the first one to sell out and move out. 300 plus employees in one location and about six or seven other location, they will be all gone. And the ones that could not come, again, if the board would like to have this 123 people have signed petition that don't want this in the neighborhood. Attorney Brigliadoro states the board can't accept petitions, but Mr. Longo, I counted the photographs and you've submitted to the board 20 photographs. Attorney Brigliadoro states there's a series of 20 photographs, but are these photographs -- there's just a couple of questions so we clarify. The photographs, are they photographs that you took? Mr. Longo replies yes. Attorney Brigliadoro states, I was going to offer that we mark it O-1 Longo, 20 photographs.

Michael Anthony Rosko, sworn in by Attorney Brigliadoro. He resides at 138 Buckley Road, Franklin, New Jersey. I work for Catholic Book Publishing, 77 West End Road. West End Road, Maltese, Taft Road are the most neglected roads when it comes to snow and sloping. It is a hazard. Trucks every day slide through the stop signs. They slide past our dead end to the bus terminal; some of them actually hit the fence. There is no plowing. And at least five or six a winter cannot get up the road from Riverview on West End to make that turn onto Riverview, they're stuck at the hill there. I can imagine what Maltese is going to look like with all this traffic. And like I said, I know dump trucks. I'm late to work every day because I'm behind three of them on 23. That's all I wanted to say.

TESTIMONY BY Debra D'Agostino resides at 70 Vreeland Ave in Totowa, was sworn in by Attorney Brigliadoro handed out to the board and for you information on environmental of asphalt plants. For everyone here this is the "EPA Hot Mix Asphalt Plants Emission Assessment Report," its dated 2000, but if you were to go on line all emission reports tend to go back to this report. That is one document. It's about 58 pages on both sides. Then there is "The Asphalt Mixing Plant EIA Report: Seven Predicted Environmental Impacts and Mitigation Measures." Which again is quite a few pages. This is the cons of the asphalt plant arguments, websites opposing the development of asphalt plants near communities. It has to do with the effects, it is non partial. It's from universities and studies independent so that you'll get more of a realistic of what's involved and what it's going to do to your health and your proximity to living to a site like this. So we will do the Hot Mix Asphalt Plant Emission Assessment report we'll make that D'Agostino-1. And then the Predicted Environmental -- Seven Predicted Environmental Impacts and Mitigation Measures, we will make that objector D'Agostino-2. And then the Con Asphalt Plant's Arguments, Websites Opposing the Development of Asphalt Plants near Communities, that will be the D'Agostino-3. Attorney Brigliadoro states Mr. Meeker is an expert witness and he traveled from out of state, this is his second time here so we really want to get him on first.

At this time a motion was made by Commissioner D'Ambrosio to close the public portion of the meeting and was seconded by Commissioner Nash.

MR. BRIGLIADORO: Next meeting of which this application will be continued is going to be Wednesday, September 13th. There will be no further notice required from the

applicant, and anybody who is interested in this application should return to the board at that time. September 13th. At 7:30.

A motion was made by Commissioner D'Ambrosio, executive session potential litigation regarding denial of VanEss Application.

A motion was made by Commissioner Patten to adjourn the meeting and was seconded by Commissioner Mancini at 10:58 pm.

Respectfully submitted,
Pam Steinhilber, Secretary