

IN THE COURT OF COMMON PLEAS OF VENANGO COUNTY, PENNSYLVANIA
CIVIL DIVISION

CAROL COURSEN, WILLIAM COURSEN	:	
RANDY H. MARTIN, SUSIE MARTIN,	:	
and JOSEPH C. JENKINS,	:	CIVIL ACTION-LAW
Appellants,	:	
	:	
vs.	:	
	:	Civil No. _____-2007
BOROUGH OF BARKEYVILLE ZONING	:	
HEARING BOARD,	:	
Appellee.	:	

NOTICE OF LAND USE APPEAL

COME NOW the Appellants Carol Coursen, William Coursen, Randy H. Martin, Susie Martin and Joseph C. Jenkins and pursuant to Section 1002-A of the Pennsylvania Municipalities Planning Code, Act of July 31, 1968, P.L. 805, Art. IX, sec. 915.1, *as amended*, 53 P.S. § 11002-A, appeal from the decision of the Borough of Barkeyville Zoning Hearing Board dated May 24, 2007, denying the appeal from the zoning/land development permit (no. 31-001-016-4) issued to Glenn O. Hawbaker, Inc. on December 31, 2006, and in support thereof state the following:

1. Your Appellants are Carol Coursen, William Coursen, Randy H. Martin, Susie Martin and Joseph C. Jenkins, landowners in Barkeyville Borough, Venango County, Pennsylvania.
2. Appellee is the Borough of Barkeyville Zoning Hearing Board (“the Board”) with its official office situate at 5405 Pittsburgh Road, Harrisville, Venango County, Pennsylvania 16038.

3. On or about December 22, 2006, Glenn O. Hawbaker, Inc. (“Hawbaker”) submitted its Application for Land Development, Parking and Sign Permit to the Borough of Barkeyville for the proposed construction and development of a new hot-mix asphalt plant, shop, office and related appurtenances.

4. The facility proposed by Hawbaker would be constructed on roughly 27.69 acres on Lots 11, 12 and 16 of the Borough of Barkeyville Industrial Park located at 1041 Stevenson Road in Harrisville, Borough of Barkeyville. According to Hawbaker, it anticipated combusting natural gas, fuel oils, reprocessed oil, biodiesel, coal and any combination of fuels at its proposed asphalt facility, resulting in the emissions of roughly 212.21 tons of air pollutants annually.

5. On Sunday, December 31, 2006, New Year’s Eve day, then Barkeyville Borough Zoning Officer Gary T. Dovey, conditionally granted Hawbaker a land development, parking and sign permit.

6. By written Notice dated February 21, 2007, the Appellants timely filed their appeal from the Zoning Officer’s approval of the Hawbaker permit with the Board.

7. A hearing was held before the Board on April 11, 2007, and continued to completion on May 3, 2007.

8. The substantive objections to the Hawbaker permit raised on appeal to the Board were as follows:

1. The proposed use, to wit, the construction of a new asphalt plant, shop, office and related appurtenances does not conform to the use permitted by right in the Borough’s Industrial Park District.

2. Gary T. Dovey, the Zoning Officer, had an inherent and legal conflict of interest in considering and/or issuing the Zoning Application by Hawbaker in that he was an employee of the Oil Region Alliance, which entity had a vested interest in securing the location of Hawbaker Asphalt

Plant in Venango County, while simultaneously serving as the Zoning Officer of the Borough of Barkeyville.

3. Section 303.1(5) provides that no permitted principal industrial use shall be such which emits noxious, toxic or corrosive fumes or gases nor emit offensive odors. Thus, the issuance of the subject Zoning Permit violates Section 303 and Sub-Section 303.5 as set forth in the Zoning Ordinance as the applicants believe and contend that the prospective use will involve the emission of noxious, toxic and/or corrosive fumes and gases and will emit offensive odors.

4. The applicants believe and contend that other significant violations of the Zoning Ordinance will be indicated, evidenced and/or proven upon the ascertainment of the specific plans of construction, use and operation of the proposed Hawbaker Asphalt Plant.

9. By decision dated May 24, 2007, the Board denied Appellants' appeal. A true and correct copy of the Board's Findings of Fact, Conclusions of Law and Decision are marked and attached hereto as Exhibit "A".

10. The Board abused its discretion and committed errors of law in reaching its determination to deny Appellants' appeal in the following respects:

- a) The Board's Finding of Fact Nos. 13 and 14, and Conclusion of Law No. 4, wherein the Board determined that Hawbaker's proposed use for the site as a hot-mix asphalt plant constitutes "light industry" as defined in Article X of the Borough of Barkeyville Zoning Ordinance and therefore a permitted use within the borough's Industrial Park pursuant to Table 204(D) of said ordinance, i) is contrary to the undisputed evidence that Hawbaker's proposed asphalt plant will emit over 210 tons of materials into the air, including oxides of nitrogen, sulfur oxide, volatile organic compounds, carbon monoxide and other particulate; ii) is contrary to and violates the mandates of Section 614 of Municipalities Planning Code, 53 P.S. § 10614, the use compliance requirements set forth in Section 105 of the Ordinance, and the borough's community development objectives set forth in Section 104 of the Ordinance; and iii) is contrary to Article X of the Ordinance in which Hawbaker's proposed hot-mix asphalt plant would constitute "heavy industry", a conditional use that can only be approved by Borough Council in accordance with Sections 501 and 501.11 of the Ordinance.
- b) The Board committed an error of law by concluding that the Hawbaker permit was properly issued by the borough's zoning officer when the permit application was incomplete because Hawbaker failed to complete and submit a Conditional Uses and Special Exceptions Application and

failed to pay the required fee with its application in violation of Section 703.3 of the Ordinance.

- c) The Board committed an error of law by concluding in its Finding of Fact No. 14 and Conclusion of Law Nos. 4 and 7 that the nature of the air emissions from the asphalt plant proposed by Hawbaker would comply with the Performance Standards set forth in Section 606.5 and the use regulations in Section 303.1(5) of the ordinance since asphalt production will generate air pollution, noxious, toxic and malodorous gas discernible to the neighboring property owners, all of which will violate the use compliance requirements set forth in Section 105 of the ordinance.
- d) The Board committed an error of law in its Conclusion of Law No. 5 that the Zoning Officer who issued the Hawbaker permit did not have a conflict of interest in his review, consideration and in granting said permit application while he simultaneously acted as a municipal representative and employee of the landowner and had a personal and pecuniary interest in the sale and zoning of the subject land within the borough's industrial park district.

WHEREFORE, for the foregoing reasons, the Appellants respectfully request that this Honorable Court set this matter for hearing and after hearing, enter an Order a) reversing the May 24, 2007 decision of the Borough of Barkeyville Zoning Hearing Board that denied and dismissed Petitioners' appeal from the zoning/land development permit (no. 31-001-016-4) issued on December 31, 2006, to Glenn O. Hawbaker, Inc., and b) declaring that said permit was issued improperly and contrary to the Borough of Barkeyville Zoning Ordinance of 1999.

Respectfully submitted,

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