

## **ALTERNATIVE MOTION #2 – LICENSE DENIAL**

I move that the Board deny P.J. Keating’s application for a new land use license for the property located at 72 South Main Street on the grounds that the applicant has failed to demonstrate that the issuance of the license is in the public’s interest. I further move that the Board adopt the following findings in support of its decision:

1. P.J. Keating, Co., (the “Applicant”) is the owner of the property located at 72 South Main Street, Acushnet, Massachusetts (the “Property”).
2. The Applicant operates on the Property a quarry from which it mines crushed stone and gravel, conducts sand, gravel, and stone processing, and operates a plant that produces hot-mix asphalt.
3. The Applicant is the holder of a license dated July 11, 1995, issued to Tilcon MA, Inc., pursuant to Massachusetts General Laws Chapter 148, for the storage of 88,000 gallons aboveground, and 12,000 gallons underground, of AC-20, diesel fuel, #2 fuel oil, waste oil, motor oil, and gasoline.
4. On or about November 15, 2019, the Applicant filed an application pursuant to Massachusetts General Laws Chapter 148 to amend its license so that it may relocate three (3) vertical aboveground liquid asphalt storage tanks located on the Property.
5. During the pendency of this application, the Applicant relocated the Hot Mix Asphalt (HMA) Plant on the Property, and reused the three (3) existing vertical aboveground liquid asphalt storage tanks.
6. Tank 1 was installed on the property in 1998, and has a 20,000-gallon capacity.
7. Tank 2 was installed on the property in 1998, and has a 20,000-gallon capacity.
8. Tank 3 was installed on the Property in 2013, and has a 30,000-gallon capacity.
9. The aboveground storage tanks were previously located on the easterly portion of the Property, and away from residential homes and public ways.
10. Applicant has relocated the tanks to the westerly portion of the Property, near residential homes, and within approximately 100 yards of South Main Street, a public way in the Town of Acushnet.

11. Applicant initially stated that approximately 6-12 trucks will visit the HMA Plant and aboveground storage tanks every day. We have since received information that the truck traffic may be as high as 100 trucks per day.
12. Applicant stated that trucks loading and unloading on the Property will be equipped with standard back-up noise alarms.
13. Applicant initially stated that trucks would be required to sit and run at high idle to allow for the pumping of liquid asphalt.
14. Subsequently, Applicant stated that the high idling of trucks is not required because product will be drawn from trucks via a pump and into either the storage tanks or directly into the production process.
15. The Board requested that the Applicant provide additional documentation to the Fire Chief relating to fire safety, fire prevention, and fire protection engineering.
16. On May 20, 2020, the Applicant provided to the Fire Chief the requested fire safety report.
17. As of the date of this decision, the fire safety report is awaiting peer review by a third party consultant recommended by the staff at the Department of Fire Services. As such, the Board does not yet have the third party consultant's findings.
18. On April 28, 2020, the Massachusetts Department of Environmental Protection, Southeast Regional Office, Air Quality Permitting Section ("MassDEP") issued a Determination Letter that the proposed relocation of the HMA failed to meet the criteria for 310 CMR 7.02(2)(b)(27) Exemption from Plan Approval, and was thus subject to the requirements of 310 CMR 7.02(5) Comprehensive Plan Application (CPA).
19. The MassDEP Determination Letter also states: "given the MassDEP findings identified in this document, the Facility cannot operate the relocated hot mix asphalt drum plant and hot oil heater until such time as it has demonstrated that it meets the requirements of 310 CMR 7.02(2)(b)(27) or it has obtained a modification to Plan Approval No. 4P09023 by submitting and receiving approval of a Non-Major Air Quality Plan Application in accordance with 310 CMR 7.02(5)."
20. On June 2, 2020, MassDEP issued a second Determination Letter (the "Second Letter") stating that air emissions associated with new equipment at the relocated HMA Plant have not been previously evaluated in accordance with 310 CMR 7.02.

21. The Second Letter also states that additional sound mitigation measures at the relocated HMA Plan may be required to comply with the MassDEP noise policy.
22. The Second Letter also states that the Applicant's submissions to MassDEP failed to address nuisance conditions other than noise that could cause or contribute to a condition of air pollution.
23. As of the date of this decision, the Applicant has yet to satisfy MassDEP criteria in order to operate the HMA plant.
24. The Board has conducted a public hearing session on the application. At the session, residents of the nearby residential neighborhoods appeared and expressed their opposition to the application.
25. Based on these facts, the Board finds that the storage of liquid asphalt in the relocated aboveground storage tanks is not in the public interest because it will increase the threat to public health, safety, and the environment.
26. Allowing the storage of liquid asphalt in the proposed location and configuration will increase the threat to public health, safety, and the environment because, if there is a release of liquid asphalt, the impact will be greater on the surrounding residential neighborhood.
27. Allowing the storage of liquid asphalt in the proposed location and configuration will increase the threat to public health, safety, and the environment because, if there is a fire or explosion, the impact will be greater on the surrounding residential neighborhood.
28. The storage of liquid asphalt in the relocated aboveground storage tanks will contribute to additional noise pollution because trucks will be required to operate closer to the residential neighborhood before loading and unloading liquid asphalt.
29. The storage of liquid asphalt in the relocated aboveground storage tanks will contribute to additional noise pollution because trucks will utilize back-up noise alarms closer to the residential neighborhood.
30. The storage of liquid asphalt in the relocated aboveground storage tanks will contribute to additional dust and environmental pollution in the surrounding residential neighborhood due to increased truck activity.
31. The Applicant has failed to satisfy the Board that the storage of liquid asphalt in the relocated aboveground storage tanks is in the public interest, and has failed to address sufficiently the possible detrimental effects on the surrounding residential neighborhood.