

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA

Case No 05-20 (Asphalt Plant – Text Amendment)

Hearing Date October 6, 2005

STATEMENT OF JOHN H. C. BARRON, JR. ON BEHALF OF AND ROUBIN ASSOCIATES, LLC AND ROUBIN & JANEIRO, INC.

Good evening My name is John Barron I am a partner in the law firm of Duane Morris LLP and serve as legal counsel to both Roubin Associates, LLC and Roubin & Janeiro, Inc in connection with the asphalt plant at 60 P Street, S E , Washington, D C In his statement, Mr Roubin discussed the circumstances that support the need for the proposed asphalt plant text amendment and the benefits that would accrue therefrom both to the District and to the owners and operators of the plant I would like to comment on the specific text amendment language currently before you for your consideration

First, we wish make it clear that we support the proposed amendments to Sections 802 17 through 802 20, 822 15 and 823 1(f) which, taken together, would permit an asphalt plant as a special exception in either the C-M or M districts, subject to approval by the Board of Zoning Adjustment

Proposed Section 801 7(m) does not impose any special conditions or requirements on the relocation of our existing asphalt plant to the C-M-1 portions of D C Village as a matter-of-right other than compliance with the standards of external effects in Section 804 and the requirements applicable to site planning and external effects operations of Section 805 This is important, since as noted by Mr Roubin in his testimony, there is serious concern as to the economic viability of the plant at this location due to its remoteness from downtown and

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resultant increases in transportation costs that will have to be absorbed and increased travel time. It is also important to note that the existing plant is subject to a stringent Title V air quality operating permit. This permit already addresses key issues such as truck idling requirements and control of fugitive dust arising from the plant. We anticipate that the relocated plant will be subject to these same requirements. Imposition of requirements or conditions at the DC Village site not applicable to asphalt plant operations at its current location could result in further cost increases and, thus, have an adverse impact on the future economic viability of the plant. Given that the DC Village site is surrounded by District and Federal Government uses and has road access to I-295 via Shepherd Parkway without traversing neighborhoods, we believe that no additional conditions or restrictions should be placed on the relocation of the asphalt plant. In short, proposed Section 801.7(m) should be adopted as drafted.

We recognize that if proposed Section 801.7(m) is adopted, we will need to meet the standards of external effects set forth in Section 804 and the requirements for site plan and external effects operations in Section 805. Such requirements do not apply to our existing plant and we don't know whether our existing operations when relocated would comply therewith or not. We have not yet finalized the terms and conditions of the sale or lease of the DC Village site with OPM and have not yet made a final determination that relocation to this site is economically feasible. Once we do so, we will commence preparation of any required submittals under Section 805.1. Our ability to comply with the requirements of Sections 804 and 805 and the cost thereof will be a material factor in determining whether relocation to the DC Village site makes economic sense.

Even though as presently drafted proposed Section 801.7(m) is not subject to the requirements of Sections 802.17 through 802.20 that would be applicable to asphalt plant

operations in other locations in the C-M or M districts via special exception, it may be helpful to the Commission to have comfort that asphalt plant operations at the DC Village site will be conducted in a manner that is sensitive to such concerns

We can offer the following preliminary comments regarding how the conduct of asphalt plant operations at DC Village would relate to the issues raised in Section 802 17

- (A) No portion of the facility, including the land used by such facility, shall be located within two hundred feet (200ft.) of a residential property line or of any property that is a public park or is used for retail, office, church, school or institutional purposes**

Comment: We do not yet have a definitive legal survey of the boundaries of the proposed DC Village site from OPM and have had preliminary discussions with OPM regarding a potential reconfiguration of the site. As shown on the aerial photograph attached as **Exhibit A** to my statement, the site abuts Federal Government land to the south, I-295 and the Blue Plains Treatment Plant to the west, DC Village to the east and Shepherd Parkway to the north. There appear to be no residential, retail, office, church, school or institutional uses located within a 200-foot perimeter of the site. Thus, the provisions of Section 802 17(A), even if it were to be applied to the DC Village site, would be satisfied.

- (B) There shall be no truck access, parking, standing or queuing to the facility from any street or block-long portion of a street for which 50% or more of the abutting properties on either side are used for residential purposes**

Comment: As shown on **Exhibit A**, the proposed site is located entirely within the District-owned DC Village complex and any truck access, parking, standing or queuing to the facility will inherently occur within the confines of DC Village where there is no street or block-long portion of a street for which 50% or more of the abutting properties

on either side are used for residential purposes. Thus, the provisions of Section 802 17(B), even if it were to be applied to the DC Village site, would be satisfied.

- (C) No truck dumping or picking up of [asphalt] or related materials shall park, stand, or queue for the facility along any public right-of-way. Vehicular traffic resulting from operations at the facility shall not obstruct traffic and the facility shall provide access from a paved street with a road base capable of with standing anticipated load limits.**

Comment: The sole road in and out of the proposed site will be Shepherd Parkway. To our knowledge, this is a District owned and maintained roadway. At our present location at 60 P Street, S E, there is access to the plant from different public roadways on all four sides and during certain busy periods, there may be truck queuing on one or more of those streets, however, to our knowledge, such queuing has not obstructed through traffic. Here, ingress and egress would be restricted to the eastern perimeter of the site via Shepherd Parkway only. While we have not yet even started a site plan for layout of the DC Village site, based on our prior experience, it is possible that there could be some intermittent queuing of trucks entering the site along Shepherd Parkway, however, any such queuing would not obstruct traffic, since Shepherd Parkway for all intents and purposes ends at the proposed site and there is no through traffic. Further, relocation of the asphalt plant to the site at DC Village is supported by the District Department of Transportation (DDOT) which currently uses and occupies the premises. DDOT is more familiar with the load-bearing capabilities of Shepherd Parkway than we are and we assume that they took the proposed use into account before recommending this location for use as an asphalt plant. We believe that Shepherd Parkway is capable of standing the anticipated load limits associated with operation of an asphalt plant as contemplated by Section 802 17(C).

(D) Any facility located within five hundred feet (500 ft.) of a residential district shall not be in operation between 7:00 P.M. and 7:00 A.M. Hours of operation shall include the arrival and departure of trucks

Comment From what we can tell looking at the aerial map attached as **Exhibit A** to my statement, there does not appear to be any residential district located within 500 feet of the proposed site. Accordingly, we believe that this provision is inapplicable. It is important to keep in mind that the proposed site at DC Village is much further from downtown locations than the current site at 60 P Street, S E. Paving jobs tend to start at about 7 a.m. in town and it is important that asphalt be available at the jobsite at that time. In order to fulfill these delivery time commitments and allow adequate travel time from the plant to downtown jobsites, especially given rush-hour traffic, we will need to commence operations at the plant earlier than 7 a.m. and, depending on the needs of our customers, including DDOT, may need to operate after 7 p.m.

(E) The use shall not have unacceptable adverse impacts on the character of the neighborhood due to noise, traffic, parking or other objectionable conditions.

Comment: The proposed DC Village site is in a location that is isolated from any surrounding “neighborhood.” As far as we can determine, all surrounding uses are Federal or District Government uses. As previously noted, Shepherd Parkway provides access to I-295 without traversing any “neighborhood.” Thus, we believe that one advantage of this location is that the concerns one would have about operation of an asphalt plant at a site adjacent to a neighborhood are simply not applicable. Even Section 802 17(E) were to be applied to the DC Village site, the provisions thereof would be satisfied.

(F) The facility shall meet the “standards of external effects” pursuant to § 804.

Comment: As noted above, if this Commission approves Section 801 7(m) to allow asphalt plant operations at the DC Village site as a matter of right, we will automatically become subject to the requirements of Section 804 relating to standards for external effects and the requirement of Section 805 1(b) that we provide with our building permit application a description of any operations that would be subject to such standards of external effects. Thus, the provisions of Section 802 17(F), even if it were to be applied to the DC Village site, would be satisfied.

(G) The facility shall be enclosed on all sides by a fence or wall at least ten feet (10 ft.) in height. The public view side and the side of the facility facing residential zones or nearby or adjacent property used as a public park or for retail, office, church, school, or institutional purposes shall be landscaped and shall have an opaque screen, fence or wall, not less [than] ten feet (10ft.) in height. The use of barbed [wire] or razor wire that is visible from residential or public space is prohibited.

Comment: Again, given the proposed site’s remote location and the absence of surrounding non-governmental uses that may require appropriate screening, the provisions of Section 802 18(G) should not apply. Our current facility is not subject to any such provisions. The facility will be fenced for plant protection and public safety.

(H) Landscaping standards shall be applied as follows:

- (1) A landscaped area of evergreen trees shall be maintained in the front, side and rear yards and along all public rights-of-way;**
- (2) The landscaping shall be maintained in a healthy growing condition,**
- (3) The trees shall be a minimum of 6 feet to 8 feet in height when planted**

Comment: Again, given the remote location of the site, the absence of surrounding non-governmental uses that would normally support a landscaping requirement and the fact that we are not subject to any landscaping requirements at our current location, we believe that there should be no required landscaping at this site.

With respect to Section 802 18, it is important to note that the proposed relocated plant will be subject to full review of plans and specifications in connection with obtaining all required permits. These permits will include a building permit and periodic construction-related inspections by the Department of Consumer and Regulatory Affairs, as well as an air quality construction permit and Title V air quality operating permit based on reviews and approvals by the Department of Health. As noted above, we will also have to submit a site plan and external effects operations description requirements of Section 805 1. Given the remote location of the proposed site, the existing public use thereof, the strong endorsement of relocation to the site by DDOT, and the foregoing reviews, approvals, inspections and permits already required in order for us to build and operate an asphalt plant at the proposed site, no additional District agencies or departments need to review this matter.

With respect to Section 802 19, as noted, the exact dimensions of the site have not yet been finally determined pending receipt by OPM of a survey of the DC Village campus and are subject to some refinement. In addition, as previously noted, we have not yet reached agreement with OPM on the terms of any proposed sale or ground lease of the premises. Only when those steps are completed, will we be able to make a final determination as to whether operation of an asphalt plant at that location is economically viable. If so, we will then proceed with the extensive planning and permitting process already applicable to the site as previously mentioned. The site plan required pursuant to Section 805 1(a) will address the issues raised in subsections 802 19 (A) through (C). The air quality permitting process will address the issues raised in subsection 802 19(E). In view of the remote location of the site and its distance from any neighborhoods that would normally be of concern if this were a special exception, we do not believe that the requirements of subsection 802 19(D) should apply.

With respect to Section 802.20, it would be counterproductive to impose any additional requirements on the relocation of this asphalt plant in view of the remote location of the proposed site, the absence of any such conditions at the plant's current site, and the public interest in assuring that this plant is economically viable when relocated. Accordingly, we respectfully request that no additional conditions be imposed on the proposed relocation of the type contemplated by Section 802.20.

Now, turning to another matter, Mr. Roubin has articulated that, in order to enhance the continued economic viability of the asphalt plant if relocated to DC Village and to assure that the District will continue to have a supply of competitively-priced concrete for its infrastructure development projects, it would be both in our interest and in the interest of the District if we were to have the flexibility to co-locate concrete operations as a matter of right at the DC Village site as well.

It is logical that both asphalt and concrete operations would be co-located as we request. The proposed text amendments under consideration this evening would treat both asphalt and concrete operations identically for purposes of special exceptions in the C-M and M districts. There are also certain cost efficiencies that could potentially be derived from co-location of asphalt and concrete operations that could help us to remain cost competitive on both product lines resulting in enhanced competitiveness in bidding for District procurements. Further, the Department of Transportation has expressed concern to us about the absence of an existing concrete plant in that area of town and has indicated support for the co-location of asphalt and concrete operations at the DC Village site.

Accordingly, we respectfully request that the Commission consider as a separate matter at the earliest practicable date a further text amendment to permit us to co-locate concrete operations at the DC Village site as a matter of right. One way to address this would be to simply add a new Section 801 7(n) to the list of uses permitted as a matter of right in the C-M district to read as follows

- (n) A concrete plant situated on the same (DC Village location) referred to in Section 801 7(m)

Should you permit concrete operations to be co-located at the DC Village site, such operations would be subject to most, if not all, of the same requirements as already would apply to our asphalt operations as previously discussed. Again, given the remoteness of this location from any residential neighborhood, public park, retail, office, church, school or institutional uses, we respectfully request that no additional requirements or conditions be imposed on a concrete plant jointly operated together with the relocated asphalt plant at the DC Village site.

The Office of Planning has advised us that they are unable to support our proposed text amendment to permit the co-location of a concrete plant as a matter of right at the DC Village site at this time, because it was not advertised for this hearing and would require additional notice and a public hearing which would delay this case well into February. Neither the District nor we want to hold up approval of the pending asphalt plant text amendment. Hence, we respectfully request that the Commission proceed with the prompt approval of the pending asphalt plant text amendment and consider our proposal to co-locate concrete operations at the DC Village site as a matter of right separately at the your earliest convenience. Mr. Roubin and I would be pleased to return and testify at any subsequent hearing in support of our concrete proposal.

Thank you for the opportunity to present this statement and for your prompt approval of the pending asphalt plant text amendment

Exhibit A

