



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

BLESSING GREENHOUSES AND)
COMPOST FACILITY INC.,)

Plaintiff,)

v.)

C.A. No. _____

SUSSEX COUNTY PLANNING)
AND ZONING COMMISSION,)

Defendant.)

VERIFIED COMPLAINT

Nature of Action

1. On February 22, 2018, the Sussex County Planning and Zoning Commission (the “Commission”) held a public hearing which included, as an agenda item, a proposed amendment to a Conditional Use Permit. However, instead of considering the proposed amendment, as the agenda item indicated, the Planning Commission instead voted to terminate Plaintiff’s Conditional Use Permit. As a result, Plaintiff provided no testimony or other evidence addressing termination and why such an action would be inappropriate. In voting to *terminate* the existing Conditional Use Permit, rather than considering the proposed amendment, as indicated by the agenda for the meeting, the Planning Commission acted in violation of Delaware’s Freedom of Information Act and in violation of Plaintiff’s constitutional rights, and the termination vote by the Planning Commission should be voided.

The Parties

2. Plaintiff Blessing Greenhouses and Compost Facility Inc. is a Delaware corporation which owns a composting business (the “Facility”) on certain property located at 9372 Draper Road in Sussex County (the “Property”).

3. The Sussex County Planning and Zoning Commission is a commission of Sussex County, a political subdivision of the State of Delaware.

Facts Common To All Counts

4. On or about August 8, 2017, Plaintiff received a conditional use permit (the “Conditional Use Permit,” copy attached as Exhibit A) from Sussex County for composting operations at its Facility.

5. The permit included several conditions which were added by the County after the close of the public hearing on the permit application and were not the subject of any discussion with Plaintiff prior to the permit being granted, including, for example, a limitation on the hours that the Facility could receive yard waste from individuals.

6. On September 25, 2017, Plaintiff filed for an amendment to the Conditional Use Permit, to modify several of the conditions that were added by the County after the close of the public hearing, including, for example, the hours of operation. Plaintiff wanted to move the closing time for the receipt of yard waste from 4:00 p.m. to 6:00 p.m. A copy of the amendment request is attached as Exhibit B.

7. The Planning Commission conducted an initial public hearing on the proposed amendment on February 8, 2018. At the conclusion of the hearing, however, the Planning Commission indicated that it would like to hear from the Delaware Department of Natural Resources and Environmental Control (“DNREC”), and so the hearing was tabled until the Planning Commission’s next meeting date – February 22, 2018.

8. At its February 22, 2018 public meeting, the Planning Commission lifted the matter from the table and continued the public hearing from February 8, 2018 relating to the proposed amendment. A DNREC official spoke concerning the Facility and indicated he and DNREC thought the Facility was operating well.

9. No one else spoke at the February 22 hearing concerning the proposed amendment.

10. At the conclusion of the hearing, a Commission member read a prepared statement and made a motion that had been written in advance to terminate the Conditional Use Permit because, in the Commission member’s view, the Plaintiff, through the testimony of its principal at the February 8 hearing, indicated that the Plaintiff was violating certain conditions of the Conditional Use Permit and the Planning Commission should therefore terminate the permit.

11. The public notice for the February 22, 2018 meeting regarding the proposed amendment read as follows:

C/U #2117 Blessing Greenhouse and Compost

An Ordinance to grant a Conditional Use of land in an AR-1 (Agricultural Residential District) to amend certain conditions of approval of Conditional Use No. 2071 ((Ordinance No. 2514) to be located on a certain parcel of land lying and being in Cedar Creek Hundred, Sussex County, containing 31.9478 acres, more or less. The property is located at the northwest corner of Draper Road and Thirteen Curves Rd, and also on the west side of Draper Rd. 911 Address 9372 Draper Rd., Milford. Tax Map I.D. 230-15.00-34.00 and 35.00

Tabled at 2-8-18 meeting

12. The public notice gave no indication that Plaintiff's Conditional Use Permit might be terminated or that the Commission was considering termination of the Conditional Use Permit.

13. During the February 8, 2018 portion of the public hearing, prior to any member of the public speaking, the attorney for the Commission reminded those in attendance that the public hearing was with regard to the proposed amendment.

Count I – Violation of Delaware Freedom of Information Act

14. Plaintiff incorporates all of the statements set forth in the preceding paragraphs as if set forth herein.

15. The Commission violated the Delaware Freedom of Information Act ("FOIA") by taking action inconsistent with and not disclosed by the agenda for its meeting.

16. Had Plaintiff known that the Commission was considering termination or might take the action to terminate, Plaintiff would have presented

evidence and testimony demonstrating why such action would not be appropriate and why Plaintiff's actions to date were not inconsistent with the Conditional Use Permit.

17. Under the circumstances, and in accordance with 29 *Del. C.* 10005(a), this Court should exercise its discretion and void the action taken by the Commission in terminating the Conditional Use Permit.

18. Under the circumstances, this Court should award reasonable attorneys' fees in accordance with 29 *Del. C.* §10005(d).

Count II – Violation of Procedural Due Process

19. Plaintiff incorporates all of the statements set forth in the preceding paragraphs as if set forth herein.

20. Plaintiff has a constitutionally-protected property interest in its Conditional Use Permit.

21. Plaintiff was denied procedural due process to protect its property interest when the Commission, without prior notice or warning, acted to terminate Plaintiff's Conditional Use Permit.

22. Plaintiff has suffered monetary and other damages as a result of the Planning Commission's actions, which actions violate 42 *U.S.C.* §1983.

23. This Court should award Plaintiff its damages, together with its reasonable attorneys' fees pursuant to 42 *U.S.C.* §1988.

WHEREFORE, Plaintiff prays that the Court:

- A. void the action taken by the Commission at its February 22, 2018 meeting to terminate the Conditional Use Permit;
- B. award Plaintiff monetary damages for lost revenue and other harms caused by the Commission's actions;
- C. award Plaintiff its costs and reasonable attorneys' fees
- D. award Plaintiff such other relief as the Court deems just and equitable.

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