

**City of Marine City
Zoning Board of Appeals
March 5, 2008**

Prior to the meeting being called to order, Commissioners Lloyd McGeachy and Kim Weil, Planning Commissioner Helen Beauvais, and City Commissioner Rudolfo Menchaca were sworn into office by City Clerk Diana Kade.

A regular meeting of the Marine City Zoning Board of Appeals held on Wednesday, March 5, 2008, in the Fire Hall, 200 South Parker Street, Marine City, Michigan, was called to order by Chairperson Kim Weil at 7:00 PM.

The Pledge of Allegiance was led by Chairperson Weil.

Present: Commissioners Weil, Danneels, and McGeachy; Planning Commission Representative Beauvais; City Commission Representative Menchaca; Building Inspector Tuttle; City Manager Gabor; and, City Clerk Kade.

Absent: None

Also Present: George Joachim, City Attorney

Appointment of Chairperson & Vice-Chairperson

Motion by Commissioner Danneels, seconded by Commissioner McGeachy, to appoint Commissioner Kim Weil as Chairperson for calendar year 2008. All Ayes. Motion Carried.

Motion by Commissioner McGeachy, seconded by Commissioner Menchaca, to appoint Commissioner Danneels as Vice-Chairperson for calendar year 2008. All Ayes. Motion Carried.

Approve Agenda

Motion by Commissioner Menchaca, seconded by Commissioner McGeachy, to approve the Agenda, as presented. All Ayes. Motion Carried.

Approve Minutes

Motion by Commissioner Danneels, seconded by Commissioner Menchaca, to approve the Minutes of the Regular Zoning Board of Appeals Meeting of August 1, 2007, as presented. All Ayes. Motion Carried.

Communications

None received.

Open Session

No residents addressed the Board.

Unfinished Business

None

New Business

Appeal #01-08 ~ St. Clair Aggregates

City Attorney George Joachim reported that Larry Beaker, on behalf of St. Clair Aggregates, had requested the Zoning Board of Appeals review a determination made by the City administration that the operation of the County stone yard by Detroit Bulk Storage was a proper use in that particular zoning district. The City administration had determined, based on the information provided to them, that the proposed operation would not be an expansion of a non-conforming use.

S. Douglas Touma, attorney for St. Clair Aggregates, addressed the Zoning Board of Appeals and asked that they look at the facts and apply the ordinance. He said his clients were appealing the City administration's decision, which they believed was in error.

Attorney Touma asked the members of the ZBA: *What did the St. Clair County Road Commission do? What is Detroit Bulk Storage's business?*

Attorney Touma reported that St. Clair Aggregates had approached the Road Commission and asked to lease a portion of their land. He said the Road Commission leased a portion of the property to another bidder, based upon erroneous statements; and, that St. Clair Aggregates' use of the property would have been conforming.

Attorney Touma discussed the lease signed between the Road Commission and Detroit Bulk Storage, which he said was for the whole site and then changed when they were told that they would need to pay taxes. The lease had been amended for Detroit Bulk Storage to lease only one-third of the site (2.25 acres) versus the whole six acres.

Attorney Touma commented that Detroit Bulk Storage had stated the Zoning Board of Appeals had no jurisdiction. He noted that the ZBA determined all zoning issues and zoning functions, and that it was reviewable.

Attorney Touma further commented that there was an *issue of standing* to complain by St. Clair Aggregates because Detroit Bulk Storage was abutting property. He stated that there had been a change in the nature of the use; that the intensity of the use was that there were no regular hours of operation; and, that there were now two users on the property.

Resident Rosalie Skwiers, 211 Michigan Drive, Marine City, commented that 12% of Marine City's population lived on King Road, and that truck traffic had increased on King Road. She also commented on the City's Master Plan, and the Road Commission property.

Resident Rita Roehrig, 162 South Third Street, Marine City, commented that she had read the lease, and that they were only taxed for one-third of the property and not the whole piece. She said she did the best she could as a citizen.

Gary Gendernalik, attorney for Detroit Bulk Storage, addressed the Zoning Board of Appeals and asked them to affirm what the City administration did, and explained their position with aerials and diagrams. He stated that bulk storage was used for Marine City and other municipalities, and referred to the Master Plan Land Use.

Attorney Gendernalik referred to a comment by St. Clair Aggregates citing competition as a problem at a City Commission Meeting.

Attorney Gendernalik presented aerial photographs of the St. Clair County Road Commission Yard and adjacent parcels taken in 1949, 1960, 1985, 1995, and in 2005 as exhibits, together with photographs of a freighter unloading at St. Clair Aggregates on December 16, 2006 showing the mooring lines secured to a mooring post on the Road Commission property. The aerials showed the property as always being used as bulk storage. Attorney Gendernalik stated that over the life of the use of the facility, the current and future operations would not change significantly.

Attorney Gendernalik stated that there had been discussion by the previous City Manager and the Road Commission regarding the property. He said that, just because the property had been leased, does not change its use. Further, the business license was not under the zoning ordinance, it was under licensing, he said.

Attorney Gendernalik stated that St. Clair Aggregates was not an aggrieved party. He spoke of the terms of the temporary business license, which would expire June 1, 2008, requiring bathroom facilities to be constructed. He noted that there had never been bathroom facilities on the site for the Road Commission employees.

Attorney Gendernalik said that they were respectfully requesting that the Zoning Board of Appeals affirm what City Manager Gabor and the City Commission had approved.

Commissioner McGeachy spoke of the wear and tear on the roadways, and asked if Detroit Bulk Storage would pay for the roads, or if it would be out of the taxpayers' pockets.

Chairperson Weil commented that the truck issue was the same with both Detroit Bulk Storage and St. Clair Aggregates, and that they needed to discuss the needs of the issue before them.

Commissioner Beauvais said there was a problem with the assessed value of the property, which she said was low.

Resident Glenn Terbush, 444 North Main Street, Marine City, commented on the legal description of the property, and said there was something wrong with the assessment.

City Manager Gabor explained that surrounding comps had been used, and commented on the 1000-foot frontage owned by St. Clair Aggregates. He stated that the County Road property did not change hands, and there was no uncapping of the assessment.

Resident Rosalie Skwiers commented that Detroit Bulk Storage must be operating before 6:00am; and, that the County had to know about Marine City's Recreation Plan and Master Plan.

Attorney Gendernalik responded to Commissioner Danneels' inquiry as to the date the addendum to the lease agreement was signed. The Lease was signed on September 20, 2007, with an effective date of September 17, 2007. The amendment to the Lease was dated December 28, 2007.

Attorney Touma commented that the St. Clair County Road Commission had approved the addendum to the Lease on January 8, 2008.

Kirk Weston, St. Clair County Road Commission Managing Director, discussed how the issue of leasing a portion of the Road Commission property began, and that the Road Commission had been looking at funding issues, and getting revenues. He said he had spoken with both former City Manager Michael Nagy and former Interim City Manager Amy Sullivan regarding the matter. Mr. Weston stated the City's Planner, Ken Montgomery, had talked to him about the requirements. The City had been notified of the Road Commission's intentions, and taxation was not brought up at that time. He said the City asked that the property size be spelled out in the addendum, and that the addendum to the Lease discussed taxation. Mr. Weston said that the Road Commission still needed to retain the property for County use.

Commissioner Beauvais said the matter looked a little shady.

Mr. Weston said that their partial intent was income for the Road Commission. The addendum stated that the City of Marine City and the Road Commission needed to be contacted if Detroit Bulk Storage expanded.

Commissioner Menchaca commented that they were dealing with issues that were not relevant. He said he was concerned with the statement in the Summary of Appeal, which stated: *A "nuisance" is a use of land that unreasonably interferes with the property rights of other landowners.*

Both Attorney Touma and Attorney Gendernalik stated that the Zoning Board of Appeals had a duty to look at the laws and facts.

City Attorney Joachim instructed the Zoning Board of Appeals members that they needed to only determine if this was an expansion of a non-conforming use.

Attorney Gendernalik reiterated that this was the same activity on the same property since 1949, as shown by the photographs presented.

Attorney Touma stated that the commercial activity on the property was a new type of activity, and asked that the certification be reversed.

City Manager Gabor described the essence of changing the character or nature of the site.

The members of the Zoning Board of Appeals debated, at length, the request before them. They noted the following:

- Photographs showing identical stone piles throughout the years;
- Not a lot of changes except for the lease agreement; and,
- Carrying on same kind of business – Loading and unloading the same type of materials.

Commissioner Beauvais commented on the definition of expansion as growth, increase, and extension.

Motion by Chairperson Weil, seconded by Menchaca, to deny the appeal because he did not see, in his own mind, where the expansion of the operation had gone. Roll Call Vote. Ayes: Menchaca, Weil. Nays: Beauvais, Danneels, McGeachy. Motion Failed.

Motion by Commissioner Beauvais, seconded by Commissioner Danneels, to grant the appeal as the proposed operation would constitute an expansion of what had previously been done at this site in that it is an expansion due to more commercial activity. Roll Call Vote. Ayes: Beauvais, Danneels. Nays: McGeachy, Menchaca, Weil. Motion Failed.

Motion by Commissioner McGeachy, seconded by Commissioner Menchaca, to deny the appeal because the proposed operation is consistent with what the County had previously

done on the site, and does not appear to be an expansion of the operation. Roll Call Vote. Ayes: McGeachy, Menchaca, Weil. Nays: Beauvais, Danneels. Motion Carried.

Other Business

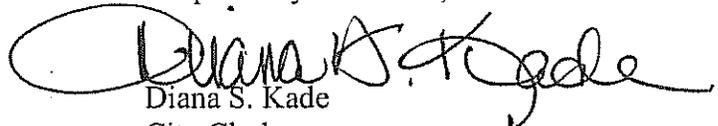
Commissioner McGeachy congratulated the Cardinal Mooney Lady Cardinals Basketball Team.

Commissioner Beauvais congratulated the Marine City Swim Team.

Adjournment

Motion by Commissioner Menchaca, seconded by Commissioner McGeachy, to adjourn at 9:15 PM. All Ayes. Motion Carried.

Respectfully submitted,


Diana S. Kade
City Clerk