

# MANISTEE CITY COUNCIL

## WORK SESSION AGENDA

**Tuesday, February 11, 2014 - 7:00 p.m. - Council Chambers, City Hall**

**I. Call to Order.**

**II. Work Session Items.**

- a.) DISCUSSION ON PENINSULA PLAN UPDATE – City Manager Mitch Deisch, Planning & Zoning Administrator Denise Blakeslee.
- b.) DISCUSSION ON CLERK / TREASURER WHITE PAPER – City Clerk Michelle Wright, Finance Director Ed Bradford and City Manager Mitch Deisch.

**III. Adjourn.**

MDD:cl

MEMO TO: Mayor Colleen Kenny  
Members of City Council

FROM: Mitch Deisch, City Manager

DATE: February 6, 2014

SUBJECT: Peninsula Property  
Zoning Ordinance/Development Agreement Request



City Manager's Office  
231-398-2801

---

Mr. Ed Seng has requested that City Council amend the current development agreement that prohibits shipping/industrial uses on the peninsula property; and rezone the property from its current Peninsula Zoning District to allow shipping and industrial usage. This request was made by Mr. Seng in late 2013.

Attached to this memo is the following:

1. Letter from the Manistee Manufacturing Council.
2. Letter from Rieth-Riley.
3. Memo from City Engineer regarding truck traffic and road impacts.

In addition, City Attorney George Saylor is also sending you an attorney opinion regarding the matter of Rieth-Riley potentially having certain legal rights based upon claims related to previous agreements (MOU, BRA, etc.). This attorney opinion is covered under attorney/client privilege, is not subject to FOIA and should not be shared.

As I have previously indicated to City Council I believe the only real question to be addressed by City Council and the Planning Commission is: Is the current Peninsula Plan and the Zoning District still viable and in the best interest of the City? This is neither an Ed Seng matter nor a matter of potential job creation.

Mr. Seng knowingly and willingly entered into the development agreement with the City and he was compensated by Rieth-Riley for both his property and sale of his aggregate businesses. As previously discussed Mr. Seng has never honored all of the conditions of this agreement including removal of landscape materials and delivery of a 20 foot easement along the river channel.

Research by the Alliance for Economic Success (AES) regarding the three business opportunities (Saw Logs/Potlatch Lumber, Steel Mill/Steve Blank and Fuel Pellets/CP Recycling) indicate that both the saw logs and steel mill operations could proceed on alternate sites. The new job creation for those new businesses does not solely rely upon Mr. Seng's property being made available for this use.

Based upon the information being presented to Council, the fact that other deep water ports exist to facilitate potential new business opportunities, and the fact that Mr. Seng has not complied with the terms of the development agreement; I do not recommend amending the Zoning Ordinance and the Development Agreement based on Mr. Seng's request.

If we are convinced or concerned that the current plan for the peninsula no longer meets the long-term needs of the City, then a deliberate, thoughtful review should commence. That review should include City Council, City Staff, Planning Commission and peninsula area residents/businesses.

It took years to create the Peninsula Plan, enter into development agreements, create new zoning districts, secure State grants and invest hundreds of thousands of public funds into a new vision for the peninsula. Recognizing that many things have changed since the initial plan was created and the fact that it might be necessary to re-examine those decisions, it needs to be done in a thorough manner.

MDD:cl

Attachments

## Martin Marietta Magnesia Specialties



P.O. 398  
1800 Eastlake Road  
Manistee MI 49660  
Phone (231) 723-1205  
[jim.reithel@martinmarietta.com](mailto:jim.reithel@martinmarietta.com)

January 20, 2014

Mr. Mitch Deisch  
City Manager  
City of Manistee, MI  
70 Maple Street  
Manistee, MI 49660

Dear Mitch:

On behalf of the Manistee Manufacturers Council (MMC), I wish to express encouragement for the City of Manistee, the City Council, and the Zoning Commission to reconsider the Peninsula District (PD) initiative, and in particular the current prohibition against commercial and industrial uses with respect to existing deep water docks in the district.

While the MMC supports the City of Manistee's effort to provide zoning in accordance with developed strategic and master planning, we are also compelled to step forward to identify a significant concern regarding the elimination of existing deep water dockage within our community.

Through previous agreement over five years ago, the City and property owners forfeited an existing viable deep water dock in favor of alternative potential residential and commercial development. Subsequent to that arrangement, the speculated alternative development has not transpired, and in fact, there are no current plans for any of the targeted types of development in the PD.

We continue to believe the highest and best use of the existing facility is as a deep water dock. This would appear to be validated by the fact that there has not ever been any serious interest by developers to seek alternative uses. It must also be noted that the deep water dock is essentially impossible to replace, from both a physical and economic standpoint. Local industry and the jobs they create rely on great lakes shipping, making deep water docks a necessity in our community. Manistee has also recently experienced a serious inquiry regarding a significant business development opportunity, which was based on Manistee's unique ability to support marine freight logistics. For our community leaders, there is no better reminder of the importance of sustaining this logistics option than preserving existing jobs, or having the opportunity to bring new additional employment to Manistee.

The MMC believes compelling reasons exist to reconsider the PD agreement, and strongly urges the City of Manistee to take the necessary steps to amend the current arrangement appropriately, as expeditiously as possible. Our members would also be pleased to discuss their concerns in person, should that provide additional value as this issue is reviewed.

Thanks in advance for what we are sure will be a thoughtful and careful consideration for our concerns.

Sincerely,

Jim Reithel  
Vice President of Chemical Operations - Martin Marietta Magnesia Specialties  
Chairman - Manistee Manufacturers Council

# RIETH-RILEY CONSTRUCTION Co., Inc.

POST OFFICE BOX 477 • GOSHEN, INDIANA 46527-0477 • WWW.RIETHRILEY.COM

"100% Employee Owned"



January 27, 2014

The Honorable Colleen Kenny  
Mayor of the City of Manistee  
70 Maple Street  
P.O. Box 358  
Manistee, MI 49660

Manistee City Council Members  
70 Maple Street  
P.O. Box 358  
Manistee, MI 49660

*Re: Request of Seng Dock and Trucking for Amendment to the City of Manistee  
Zoning Ordinance - City of Manistee - Rieth-Riley Construction Co., Inc.*

Dear Mayor Kenney and Members of the City Council:

The purpose of this letter is to set forth Rieth-Riley's concerns with respect to the above-captioned request, to state Rieth-Riley's opposition to that request, and to fully explain the reasons behind Rieth-Riley's opposition.

On November 1, 2007, Rieth-Riley Construction Co., Inc. ("Rieth-Riley"), Seng Land Company, L.L.C., and Edward Seng ("Seng") executed a three-party Memorandum of Understanding ("MOU"). That memorandum of understanding was the product of extended negotiations by virtue of which, with the City's assistance, Rieth-Riley agreed to purchase and redevelop certain property located in the City of Manistee (the "City"). The City, for its part, negotiated certain conditions with Seng related to certain property commonly known as the "Peninsula Property" which, in particular, would remove industrial and similar uses from the Peninsula Property, would result in the relocation of Seng's landscaping business away from the Peninsula and would provide the City with a waterfront easement, all aimed at the City's plan and desire for revitalization of the Peninsula area as a mixed use district encompassing residential, retail and similar complementary uses. Seng, for its part, was able to market and sell a separate industrial property located outside the peninsula area to Rieth-Riley. It is Rieth-Riley's position that the MOU became an enforceable agreement between the parties by its

3626 ELKHART ROAD • GOSHEN, INDIANA 46526 • TELEPHONE: (574) 875-5183 • FAX: (574) 875-8405

"AN EQUAL OPPORTUNITY EMPLOYER"

*Continuing* . . . ASSURANCE OF SKILL • INTEGRITY • RESPONSIBILITY • IN CONSTRUCTION

The Honorable Colleen Kenny  
Mayor of the City of Manistee  
Manistee City Council Members  
January 27, 2014  
Page 2

---

own terms upon the execution of certain development agreements contemplated by the MOU between Seng and the City and between Rieth-Riley and the City. In point of fact, the MOU was incorporated by reference into a Brownfield Development and Reimbursement Agreement which was executed on January 16, 2008 by and between American Materials, LLC (a subsidiary of Rieth-Riley) and the City of Manistee Brownfield Redevelopment Authority, and restated on October 13, 2008.

In reliance upon the Memorandum of Understanding and the subsequent development agreements by and among all of the parties to that memorandum, Rieth-Riley invested millions of dollars in the purchase and redevelopment of its waterfront property. The City, through a combination of tax incentives and its assistance in a Brownfield Redevelopment Plan provided considerable support and assistance to Rieth-Riley which aided in the culmination of the transaction. Seng received significant funds in exchange for its property and in turn promised to provide a number of benefits to the City which were outlined in the development agreement between Seng and the City.

In the years following the execution of the memorandum of understanding and the subsequent development agreements, it became apparent that Seng had violated a number of the provisions of his development agreement with the City. Despite promising to do so on or before January 1, 2011, Seng failed to relocate the landscaping operation located on the Peninsula Property to another location outside that property. Additionally, after promising the City in the development agreement that Seng would donate to the City "a permanent easement over a 20 foot wide portion of tax parcel 51-51-448-700-00 along Manistee Lake as well as access to a public way to be used by the City to construct and maintain a public river walk," Seng sold that property to Consumers for nearly a half million dollars on December 21, 2012. He never provided the City with the promised permanent easement nor the access to a public way, and has made it impossible to do so himself, by transferring his ownership of the property. In December of 2012, Seng relocated the landscape operation to an adjoining parcel still located on the Peninsula Property in violation of the development agreement. In September of 2013, despite promising to restrict industrial use of the Peninsula Property, and to restrict commercial uses which would result in stockpiling, Seng delivered logs or had logs delivered to the Peninsula Property in violation of that agreement.

The purpose of the memorandum of understanding and the subsequent development agreements as stated in a memo from John Rose dated November 15, 2012 in response to Mr. Seng's letter of October 30, 2012, was to achieve:

...a legally binding three-way memorandum of understanding between Mr. Seng, American Materials (Rieth-Riley) and the City of Manistee. This document and subsequent development agreements between the City and Mr. Seng and between the City and Rieth-Riley were the result of extensive negotiations. In exchange for Mr. Seng agreeing to discontinue shipping operations on the end of River Street on the peninsula, the City agreed to provide several incentives to Rieth-Riley which enabled Rieth-Riley to purchase the property and business from Mr. Seng.

In other words, Mr. Seng profited financially by making promises he apparently did not or does not intend to keep. Now, as a reward for his actions (which best are summarized as “it’s easier to beg forgiveness than to ask permission”) he wants the City to reinstate industrial uses to the peninsula despite his promise to discontinue industrial operations and shipping on the Peninsula Property and despite the City having previously amended its zoning ordinance to protect the investments the City had made in the neighborhood’s future through its dealings with Rieth-Riley and Seng. Seng has also effectively denied the City the opportunity to develop the River Walk and should not now be rewarded by having the City abandon the Peninsular Neighborhood Revitalization Plan. As part of the preparation for crafting this letter, Rieth-Riley reviewed the City’s Strategic Plan Update dated January 8, 2013. At page 3 of that update, the City sets forth a list of its values to guide decisions involving the governance of the city. Among those values are the following:

- Fairness
- Integrity, honesty and highest ethical standards
- Respect

The City’s own statement of its values: fairness, integrity, honesty and the highest ethical standard, should require that both Mr. Seng and the City respect the earlier decisions made which resulted in the investment of millions of dollars by Rieth-Riley which included contributions to the development of City infrastructure and job creation.

As to the enforceability of the prior agreements, it is a long-held rule of construction under the laws of the State of Michigan that multiple, simultaneously-executed instruments should be construed as a single transaction if they involve the same parties and subject matter. *Culver v Castro*, 126 Mich App 824 (1983). Further, where there are several agreements relating to the same subject matter, all of the documents must be construed together in determining the parties’ intent. *Reber v Pearson*, 155 Mich 593 (1909).

Instruments executed at the same time by the same parties for the same purpose and in the course of the same transaction will be read and interpreted together, it being said that they are, in the eyes of the law, one instrument. *Beacon Plaza Shopping Center v Tri-Cities Construction and Supply*, 2 Mich App 415 (1966).

In this case, the agreements involved constitute a three-party agreement (the City, Seng and Rieth-Riley), and each of the agreements is enforceable by any party to that agreement.

It is Rieth-Riley's position that what was agreed to in order to induce its multi-million dollar acquisition should be maintained. The City and Rieth-Riley have continually lived up to the memorandum of understanding and subsequent development agreements. Seng has failed to do so and honesty, fairness and integrity should certainly weigh against rewarding a breach of those agreements. Moreover, Rieth-Riley takes the position that amending the zoning ordinance to permit the uses requested by Seng would not supercede the enforceable agreements made in the memorandum of understanding and the subsequent development agreements. Simply stated, those agreements are binding obligations of the City and cannot be abrogated by zoning changes.

As stated, Rieth-Riley relied on the development agreements and the memorandum of understanding to invest millions of dollars in acquiring and redeveloping property in the City of Manistee. A key feature of that agreement was removing industrial uses from the Peninsula Property. If Seng is allowed to renege on its agreements, the results would be extremely damaging to Rieth-Riley and its operations. In reality, the only justification that Seng can offer for this change is based upon his desire to profit by breaching the agreements that he made and to continue to profit by backing out of promises relied upon in good faith by the City and by Rieth-Riley.

Accordingly, we would ask the members of the Planning Commission and the City Council to deny Mr. Seng's request for amendment of the zoning ordinance on the following bases:

1. The memorandum of understanding and development agreements are binding, not only on the City and Rieth-Riley, but are also binding on Seng.
2. The development agreements in place are enforceable separate and apart from the zoning ordinance.
3. Providing Seng with an opportunity to develop an industrial use on the Peninsula Property now lacks fundamental fairness when viewed in the light of the

The Honorable Colleen Kenny  
Mayor of the City of Manistee  
Manistee City Council Members  
January 27, 2014  
Page 5

---

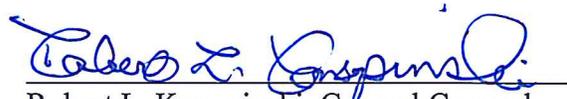
commitments made by the City and Rieth-Riley in accomplishing the Rieth-Riley development and furthering the revitalization plan for the Peninsula.

Rather than reward Mr. Seng for violating the agreements reached by and among these parties, those agreements should be enforced as written.

Respectfully,

**RIETH-RILEY CONSTRUCTION CO., INC.**

By:

  
Robert L. Konopinski, General Counsel

cc: City Planning Commission, 70 Maple Street, P.O. Box 358, Manistee, MI 49660  
Mitchell D. Deisch, City Manager, 70 Maple Street, P.O. Box 358, Manistee, MI 49660  
George V. Saylor, III, City Attorney, 414 Water Street, Manistee, Michigan 49660  
A. Keith Rose, President/CEO, Rieth-Riley Construction Co., Inc.

# MEMO

TO: Mitchell D. Deisch, City Manager  
Denise Blakeslee, Planning and Zoning  
City of Manistee, Michigan

FROM: Shawn Middleton, PE  
Spicer Group Inc.

DATE: February 5, 2014

RE: Impacts of Additional Commercial Truck Traffic on City Streets

As requested we have evaluated the impacts of additional truck traffic loading on existing major and local streets resulting from potential future commercial land uses at Mr. Seng's property. This property is located on the east side of East Street north of River Street. Specifically we have evaluated the impacts of traffic loading on River Street from US-31 to East Street and on East Street immediately north of the intersection with River Street. The following is a summary of the roads needed for access to the Seng property from US 31.

- River Street - US 31 to Jones Street                      Major Street      Last Resurfaced 2000
- River Street Jones Street to East Street                      Major Street      Last Resurfaced 2010
- East Street - River St. to Mr. Seng's Property                      Local Street      Last Resurfaced 2010

Various future uses of the property have been discussed. These uses included shipping of timber, production and shipping of fuel pellets, and shipping of raw materials and products for a steel mill.

The following estimated truck traffic loading scenarios were provided to the City and were used for this analysis.

**Table 1 - Summary of Future Land Use Truck Traffic Estimates**

Future Land Use	Estimated Average Trucks Per Day	Estimated Loaded Weight (Lbs)	Estimated Empty Tractor & Trailer Weight (Lbs)
Potlatch Lumber	5 +/-	142,000	37,000
CP Recycling	100 +/-	73,000	30,000
Steel Mill	7-10 +/-	70,000	30,000

**SPICER GROUP MISSION STATEMENT:**  
To provide our clients quality service;  
to help each firm member to develop to full potential;  
to enhance the environment and serve the public interest.

To estimate the remaining service life of these streets we have determined the number of Equivalent Single Axle Loads (ESALs) the pavement is designed to handle. Without going into a lot of detailed calculations the Major Street design cross section (12" Sand Subbase, 8" Aggregate Base, and 4" of HMA) is theoretically designed to handle 250,000 ESAL's. The Local Street design cross section (12" Sand Subbase, 8" Aggregate base and 3" of HMA) is theoretically designed to handle 100,000 ESAL's. If the design number of ESAL's is not exceeded during the pavement's lifespan then the natural degradation of the surface material due to weather, exposure, etc. will dictate the life of the pavement (up to 20 years with preventive maintenance being performed as needed).

We have estimated the remaining service life of the pavement based upon the estimated number of ESAL's that have occurred on these roads to date and based upon the design ESAL's for the given roadway. The following table summarizes the estimated remaining ESAL's and estimated remaining service life for the pavement of these three streets.

**Table 2 - Estimated Remaining Service Life of Access Roads to Mr. Seng's Property**

	<b>Last Resurfaced</b>	<b>Design Standard</b>	<b>Design ESAL's</b>	<b>Estimated ESAL's to Date</b>	<b>Remaining ESAL's</b>	<b>Estimated Remaining Service Life without Additional Truck Loading*</b>
River Street - US-31 to Jones	2000	Major Street	250,000	56,0000	N/A	6 Years +/-
River Street - Jones to East Street	2010	Major Street	250,000	16,000	234,000	16 Years +/-
East Street @ River Street	2010	Local Street	100,000	16,000	84,000	16 Years +/-

\* Assumes preventive maintenance being performed as needed on pavement section

**SPICER GROUP MISSION STATEMENT:**  
 To provide our clients quality service;  
 to help each firm member to develop to full potential;  
 to enhance the environment and serve the public interest.

Using the estimated truck loading scenarios provided to the City, the estimated service life remaining to date and the estimated loading impacts of the future land uses, calculations were made to estimate the remaining service life of these pavement sections. The following table summarizes the remaining service life for these access road sections.

**Table 3 - Estimated Remaining Service Life of Access Roads under Various Development Scenarios**

	<b>Existing Conditions</b>	<b>Potlatch Lumber Truck Loading with Existing ADT</b>	<b>CP Recycling Truck Loading with Existing ADT</b>	<b>Steel Mill Truck Loading with Existing ADT</b>
Truck Trips/ Day	500 Cars, 5% Commercial	5	100	7-10
Weight (Lbs)	N/A	142,000	73,000	70,000
ESAL's/ Year	4,000	16,500	50,000	8,000
River Street - US-31 to Jones	6 Years +/-	Recommend Reconstruction	Recommend Reconstruction	Recommend Reconstruction
River Street - Jones to East Street	16 Years +/-	14 Years +/-	5 Years +/-	16 Years +/-
East Street @ River Street	16 Years +/-	5 Years +/-	2 Years +/-	11 Years +/-

River Street and East Street will see an estimated decrease in remaining service life of approximately 2 years and 11 years, respectively, under the proposed Potlatch Truck Traffic Scenario. Though the number of proposed trips is small, this decrease in remaining service life is driven primarily by the proposed heavy truck loads. Once these roads have reached the end of their service life the roads will need to be fully reconstructed to accommodate the projected truck traffic loading. This will require additional excavation, a thicker sand subbase, thicker aggregate base, a thicker HMA overlay, and a replacement of curb and gutter. This reconstructed road would then be able to accommodate future traffic life and would have a 15 to 20 year design life with proper preventive maintenance.

River Street and East Street will see an estimated decrease in remaining service life of approximately 11 years and 14 years, respectively, under the proposed CP Recycling Truck Traffic Scenario. This significant decrease in remaining service life is driven primarily by the large number of projected trips. Once these roads have reached the end of their service life the roads will need to be fully reconstructed to accommodate the projected truck traffic loading. This will require additional excavation, a thicker sand subbase, thicker aggregate base, a thicker HMA overlay, and a replacement of curb and gutter. This reconstructed road would then be able to accommodate future traffic life and would have a 15 to 20 year design life with proper preventive maintenance.

**SPICER GROUP MISSION STATEMENT:**  
 To provide our clients quality service;  
 to help each firm member to develop to full potential;  
 to enhance the environment and serve the public interest.

---

River Street and East Street will see an estimated decrease in remaining service life of approximately 0 years and 5 years, respectively, under the proposed Steel Mill Truck Traffic Scenario. The projected loads and relatively low trip counts result in lower impact to River Street and East Street. Once these roads have reached the end of their service life the roads will need to be fully reconstructed to accommodate the projected truck traffic loading. This will require additional excavation, a thicker sand subbase, thicker aggregate base, a thicker HMA overlay, and a replacement of curb and gutter. This reconstructed road would then be able to accommodate future traffic life and would have a 15 to 20 year design life with proper preventive maintenance.

The current asset management plan indicates River Street between US-31 and Jones Street has not been resurfaced in 14 years. Any additional loadings to this road section will accelerate road degradation at this location and therefore it is recommended this section of road be reconstructed prior to the onset of additional truck traffic or within the first couple of years of increased truck traffic loading. This will require additional excavation, a thicker sand subbase, thicker aggregate base, a thicker HMA overlay, and a replacement of curb and gutter. This reconstructed road would then be able to accommodate future traffic life and would have a 15 to 20 year design life with proper preventive maintenance.

If you have any questions or need further information please contact me at any time.

**SPICER GROUP MISSION STATEMENT:**

To provide our clients quality service;  
to help each firm member to develop to full potential;  
to enhance the environment and serve the public interest.