

CITY OF MANISTEE PLANNING COMMISSION WORKSESSION
70 Maple Street, Manistee, MI 49660

March 20, 2014

NOTES

A Worksession of the Manistee City Planning Commission was held on Thursday, March 20, 2014 at 7 pm in the Council Chambers, City Hall, 70 Maple Street, Manistee, Michigan.

Roll Call:

Members Present: Maureen Barry, David Crockett, Bill Dean, Ray Fortier, Marlene McBride, Mark Wittlief, Roger Yoder

Members Absent:

Others: Mitch Deisch (City Manager), Denise Blakeslee (Planning & Zoning Administrator) and others

ITEM

Seng Dock & Trucking, Zoning Amendment Request - A Public Hearing was held on March 6, 2014 in response to a request from Seng Dock & Trucking for a Zoning Amendment that would ADD Shipping Facility as a use permitted by right in the P-D Peninsula District. The Planning Commission requested additional information from staff to continue discussion on the request. Commissioner's discussion included:

- Memo from City Engineer Shawn Middleton Dated February 5, 2014 Impacts of Additional Commercial Truck Traffic on City Streets
- Manistee Peninsula Neighborhood Revitalization Action Plan
- Staff was requested to prepare a list of property owners in the Peninsula District including sale dates for properties.
- Staff is to place on the April Agenda how correspondence to the Planning Commission is to be signed (need to include principle residence address, if they own property in the City should include address or tax ID number).

Correspondence was received by staff and forwarded to the Commission

Keith Rose, Rieth-Riley Construction Co., Inc - 3/10/14

Email Gary Patulski – 3/15/14

Email Mike Carl -3/18/14

No Action can be taken at a Worksession, this item will be placed on the April 3, 2014 Agenda.

ADJOURNMENT - The Worksession adjourned at 8:07 pm

MANISTEE PLANNING COMMISSION

Denise J. Blakeslee, Recording Secretary



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RIETH-RILEY CONSTRUCTION CO., INC.

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March 10, 2014

Planning Commission
City of Manistee
City Hall
70 Maple Street
Manistee, MI 49660

Re: Seng Dock and Trucking - Zoning Amendment Request - PC 2014-03

Dear Members of the Planning Commission:

The purpose of this letter is to follow up on our presentation to the Planning Commission during the public hearing on the Seng request for a zoning amendment to the P-D District held March 6, 2014. Initially, we would like to thank the members of the Planning Commission for listening to our presentation. However, we have some concern that in our short presentation, we failed to make clear certain important facts which we believe should be brought to the Planning Commission's attention.

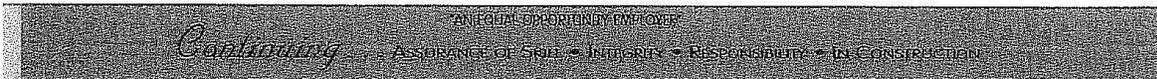
First, as you know from our prior correspondence, we have urged the City Council and the Planning Commission to consider the Memorandum of Understanding executed November 1, 2007 by and among the City, Mr. Seng and the Seng companies, and Rieth-Riley to be a legally binding agreement whose terms must be honored by all of the parties to that agreement, and whose terms are enforceable by any party to that agreement. In light of Mr. Seng's statement on March 6 to the effect that:

"I admit that I signed the memorandum and it is an agreement. I am bound by that agreement."

Any question of whether the terms of that agreement bind Mr. Seng and the Seng companies should be put to rest. It is an acknowledged legally binding agreement.

Second, the Memorandum of Understanding dated November 1, 2007 was the product of extensive and then "good faith" negotiations between the City, Mr. Seng and the Seng companies, and Rieth-Riley, and it was intensively negotiated over a considerable period of time. As a consequence of the final agreement, each of the parties received benefits.

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Unfortunately, Mr. Seng's claim now, as set forth in his application to the Planning Commission for a zoning change, is that;

"I have been denied use of my commercial property to my financial detriment. My Business has been shipping and receiving since 1982 and this business should be grandfathered in and exempt from this ordinance. I should be able to continue to use my property for shipping and receiving of materials by the use of a deep water port as I have done for 30-plus years."

As pointed out by Rieth-Riley's associate general counsel at the March 6 meeting, no zoning change deprived Mr. Seng of the use of his commercial property. Rather, Mr. Seng entered into a contract by virtue of which he gave up the right to use his commercial property on the peninsula for shipping and receiving and for commercial purposes which would result in the stockpiling of materials on the peninsula. As a result thereof, the right to all such uses of the property ceased on September 30, 2008.

What we failed to tell you at the public hearing was that this restriction on the use of the Seng property located on the peninsula was not forced upon Mr. Seng; rather, it was self-imposed. The reason Mr. Seng was willing to impose those restrictions was that as a result of the three way agreement with the City and Rieth-Riley, Mr. Seng received many millions of dollars paid by Rieth-Riley for not only his real estate, equipment and material stockpiles that were purchased by Rieth-Riley, but also for agreeing to give up those rights on the peninsula. The zoning change on the peninsula which constitutes the present P-D district occurred after Mr. Seng voluntarily (and for compensation) sold his rights to use the peninsula property for those uses he now seeks to have reinstated.

To suggest that somehow Mr. Seng and the Seng companies are "victims" of the P-D Peninsula District zoning is ridiculous in light of the many millions of dollars which came to rest in the proverbial pockets of Mr. Seng and the Seng companies arising from the agreement where he willingly imposed those restrictions on his peninsula property both for himself, his successors and assigns.

As stated by City Manager Deisch in his memorandum to the City Council dated February 6, 2014:

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 the sale of his aggregate business. ...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 had 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. (Emphasis added.)

To be clear, the present request by Mr. Seng is not a request to benefit the entire peninsula district. Rather, it is a request by Mr. Seng calculated to restore rights which he voluntarily relinquished in exchange for substantial (millions of dollars) compensation. This request is for the benefit of Mr. Seng and the Seng companies only. By making this request, Mr. Seng and the Seng companies are asking the City to reinstate his right to use the peninsula property for shipping and receiving, thereby abrogating the very restrictions which are part of the three party agreement, restrictions for which Rieth-Riley bargained and paid great compensation, and which restrictions Rieth-Riley is committed to enforcing. As clearly and correctly stated by one of the Commission members, this request puts the City squarely in between Mr. Seng who is attempting to avoid the terms of the contract he made, and Rieth-Riley who is committed to its enforcement.

Third, Rieth-Riley does not dispute the City's right to review the zoning of the entire peninsula district. The question of whether that zoning continues to make sense or whether it should be changed is a question whose discussion lies squarely within the jurisdiction of the City's elected and appointed officials. However, the question of what might be the best use or appropriate changes in zoning for the peninsula district is not the question presented by the Seng request. The Seng request is a request to, as Mr. Seng sees it, the reinstatement of the right to use his property in a fashion that he had previously contracted away. That issue should not get confused with the overall issue of appropriate zoning or changes in the zoning for the Peninsula District.

It is also important to remember that the City is a party to the agreement which imposed those restrictions and the City Council has already voted in favor of upholding that agreement by refusing to authorize amendments to that agreement. We continue to urge that the Seng request should be dealt with as a separate matter from an overall review of the P-D zoning, should be dealt with in light of the agreements entered into involving Rieth-Riley, the City, Seng and the Seng companies, and this request should be denied.

Finally, when the three-party negotiations were completed, everyone involved, including Mr. Seng, was benefitted. Unfortunately, throughout the history of the existence of the agreement, while Rieth-Riley and the City have lived up to the requirements of the agreement, Mr. Seng has failed to do so in a number of ways. First, the portion of this property that was to be dedicated for a river walk was sold to Consumers Power without providing for the easement as required by the very first item of the agreement. Furthermore, the value of this property sold to Consumers was enhanced for the benefit of Mr. Seng, by the City agreeing to create a Neighborhood Enterprise Zone for this parcel, along with the City agreeing to include this parcel in a future development and reimbursement agreement including Tax Increment Financing ("TIF"). Second, Mr. Seng failed to remove his landscape material stockpiles in a timely fashion from the peninsula. Third, it seems that Mr. Seng has continued doing business as he sees fit without regard to the agreement. Now, to add insult to injury, Mr. Seng is asking the City to waive one of the most significant terms of the agreement for which the City and Rieth-Riley intensively and extensively bargained. The City sought the changes for the Seng property

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and the peninsula to augment its plans for the Peninsula District. As part of the negotiations, Rieth-Riley committed to making truck route improvements which were completed. Rieth-Riley contributed \$185,000 toward those improvements. Additionally, Rieth-Riley committed to performing up to \$200,000 of repaving work on behalf of the City (as outlined in the Memorandum of Understanding) to be performed at the direction of the City. Like the City, Rieth-Riley had a vital interest in those restrictions provided for in the agreement, received benefits from the City by way of its Brownfield and Renaissance Zone agreement, while Mr. Seng received many millions of dollars for his agreement including imposing restrictions on his Peninsula property. The benefits were to all three parties and were not slanted in favor of one over the other. Now, after receiving those benefits, while already not fulfilling a number of his contractual obligations under the agreement, Mr. Seng seeks to convince the City and Rieth-Riley to waive one of the most significant terms of the agreement for his personal benefit to the detriment of the other parties. To be clear, this is a request that Rieth-Riley has no interest whatsoever in entertaining. What we ask for now is that the Planning Commission uphold the spirit of those agreements and deal with the Seng rezoning request by recommending its denial.

CONCLUSION

Seng Dock and Trucking and Mr. Seng have presented a request both to the City Council (which was denied) and to this Commission for action which would relieve them (at least in Mr. Seng's mind) from contracted for obligations for which he willingly accepted money. As stated by City Manager Deisch in his February 6 memorandum to members of the City Council:

"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 business. 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. ...Based upon the information being presented to the 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."

Similarly, the City's Planning and Zoning Administrator, in her memorandum to the Planning Commission which was included in the Planning Commissioner's packets for March 6 stated as follows:

"The rezoning of the P-D Peninsula District to ADD a shipping facility will not apply to Mr. Seng's property, based upon the existing development agreement...." The Planning and Zoning Administrator also noted that the Seng proposal is not consistent with the Master Plan (Chapter 8, *Future Land Uses*).

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Through this entire matter, Mr. Seng has never once approached Rieth-Riley with respect to his plans or the requests made of the City Council and the City Planning Commission. He is well aware that he is bound by the terms and provisions of the Memorandum of Understanding and the development agreements, all of which provided for the restrictions on his use of the peninsula property. Rather than forthrightly acknowledge that he sold those rights for a great deal of money, he put in his application that his problems were “due to a change in the zoning ordinance [which] denied use of my commercial property to my financial detriment.” He does not happen to mention that he received millions and entered into a contract which resulted in the zoning change, i.e., it wasn’t the ordinance that denied use of his commercial property, it was his own willful acceptance of the funds which purchased those rights.

Rieth-Riley is committed to the enforcement of the development agreements, including Mr. Seng’s agreement to discontinue shipping operation on the peninsula. Rieth-Riley and the City continue to live up to their end of the bargain and we ask that you not change that by authorizing the zoning amendment requested by Mr. Seng which he would no doubt use to attempt to justify his renegeing on the Memorandum of Understanding and his development agreement.

Very truly yours,

RIETH-RILEY CONSTRUCTION CO., INC.



A. Keith Rose
President/CEO

AKR/pkf

cc: Denise Blakestee, Planning/Zoning Administrator
Mitch Deisch, City Manager

APPENDIX

From the Development Agreement:

“Beginning September 30, 2008, Seng shall restrict the future use of the Peninsula Property to prohibit any industrial use, and any commercial use that would result in stockpiles....”

Excerpts from Jon Rose memo dated November 15, 2012 in response to Seng letter of October 30, 2012:

“The City subsequently amended the zoning for the peninsula to protect the investments they have made in the neighborhood’s future. The amended ordinance specifically removes shipping facility from the uses allowed in the district. ...The City has made a large investment in both dollars and time to insure the revitalization of the east end of River Street and complementary anchor to the downtown.”

Memorandum dated January 14, 2014:

“Mr. Seng is currently in violation of the development agreement/MOU by moving the Landscaping Operation to parcel 51-448-735-01.”

“Mr. Seng violated the development agreement/MOU by entering into a contract with Potlatch for the shipping of logs.”

“The development agreement required Mr. Seng to convey an easement for the extension of the river walk over parcel 51-448-700-00. Mr. Seng sold the property in question. The City will now be required to obtain the easement to convey from the new property owner.”

“The zoning of the property is moot as long as the development agreement is in place.”

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Denise Blakeslee

From: Gary Patulski <gpatulski@yahoo.com>
Sent: Saturday, March 15, 2014 4:37 PM
To: Denise Blakeslee; Mark Wittlieff
Subject: Planning Meeting - Please Distribute

Hello Denise,
I hope you are doing well.

I am following the ongoing saga regarding Mr. Seng's rezoning request. It is my understanding that discussion will continue during the next meeting scheduled for March 20, 2014.

Will you please provide a copy of this email to each member on the Planning Commission? In addition, if possible, I would like this correspondence to be documented or incorporated in the next meeting minutes.

I have also sent this e-mail to Mr. Wittlieff, but I do not have e-mail addresses for the other members. Denise, will you please confirm with me that you have received this e-mail.

Thank you - Gary

March 17, 2014

Dear Planning Commission:

It is with much interest that I am closely following the meetings and discussions regarding Mr. Seng's rezoning request to allow him to reopen the deep water port located on his property. As such, I am reading and researching all available documentation that I can find on the Brownfield Authority, American Materials LLC, and Rieth-Riley. I have read Rieth-Riley's written position and their alleged non-compliance by Mr. Seng.

The data that I cannot locate is the number of jobs which American Materials LLC (Rieth-Riley) has created in Manistee since the Peninsula Project and related agreements were entered into.

It would appear that job creation was a commitment included in the agreements. What was the agreed upon timeframe for such job creation? I would appreciate receiving information on what jobs have been created under the agreement. Specifically, please disclose the type of job, the number of jobs, the average wage rate of the jobs, the number filled by residents of Manistee compared to jobs filled by transferees, the business name in which the job was created and if the job still exists today.

Rieth-Riley has operating businesses in other States and Cities. In 2009 they expanded operations. Why not in Manistee?

I would also like to understand what active efforts have been taken by the parties of the agreements to attract an investor or developer for the Peninsula over the past six years. Specifically, has the City of Manistee and the Planning/Zoning Commission been contacted by any party interested in investing or developing the Peninsula and what is the current status of any such inquires?

What Tax base revenue increase over the past six years was directly contributed by the agreements?

In closing, I want to emphasize that Manistee is in need of jobs. It would appear that every party of the agreements have benefited while the tax paying residents have suffered and continuing to suffer.

Please vote for Jobs, not future promises.

Sincerely,

Gary L. Patulski

Denise Blakeslee

From: Michael-JudyCarl <michaelljcarl@yahoo.com>
Sent: Tuesday, March 18, 2014 11:16 AM
To: Denise Blakeslee
Subject: Letter for March 20 planning commission meeting

Denise,

Please can you please confirm receipt and forward to Planning Commission Members for the March 20 meeting.

Thanks - Mike Carl

March 17, 2014

Dear Planning Commission:

In reference to the ongoing discussions regarding Mr. Seng's proposal for opening a deep water port and to create much needed jobs in Manistee, I would like to refer the Planning Commission to their March 7, 2013 Meeting minutes. Specifically, please examine the Questionnaire Results included with the Minutes (i.e., Commissioners were sent a copy of the list of answers to the question' *"If you were to drive through Manistee or fly over in a hot air balloon in ten years what would you see?"*)

Please note the ranking and score for "More jobs/commercial & Industrial facilities" as compared to "Start/complete Peninsula Project". It is clear from questionnaire responses that the participants' priority and 10-year vision for Manistee is Job Creation and not the Peninsula Project (13 vs 3 votes).

I believe the City of Manistee and Planning Commission owe it to the public not only to solicit input, but to actually use such input in their decision-making process. There was little confidence in the successful outcome of the current Peninsula Plan before the Seng proposal was publically known. With the current hostile business relationship there is even less reason to believe there will be a successful Peninsula development outcome and result.

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Residents and investors alike are well aware of the current uncompleted and vacant condominium and commercial property in Manistee. To refresh such awareness, I refer to the Arens Construction Company's March 25, 2013, correspondence which references developing an area of land across from the City Marina which has now stood vacant for decades: "As of today, there is no intent to build on the property in the near future. I believe the best use of the property today would be to build condos with possibly a couple of small coffee shops or bakery stores. This will not be possible currently because of the glut of empty stores and condos in Manistee."

It is naive for businesses and municipalities to believe prior agreements should not be or won't have to be changed over the course of time.

Manistee has and continues to benefit greatly with grants and other funding from the State of Michigan. I have seen and read correspondence from our State Representative and other State officials to Mayor Kenny regarding the positive ripple effect that Mr. Seng's Deep Water Port would have on job creation throughout the State and also how it would contribute to increasing State revenue. It is time for Manistee to listen and give back to the taxpaying residents of Manistee and to the State of Michigan from whom Manistee so greatly benefited.

I believe that it is also time for the City of Manistee to learn from the past and to stop turning down certainties for the mere hope that something better will come along in 2, 3 or 4 decades.

Please listen to the public and the State of Michigan - approve Mr. Seng's business proposal. Let Manistee be known as a job creator not a job crusher.

Sincerely,
Mike Carl