

CITY OF BURTON  
SPECIAL COUNCIL MEETING MINUTES  
AUGUST 9, 1999, 6:30 P.M., COUNCIL CHAMBERS

The Special Meeting was called to order by Ted Hammon, Council President, at 6:30 P.M.

MEMBERS PRESENT: Centilli, Cox, Cross, Hammon, Walls and Zelenko.

MEMBERS ABSENT: Martinbianco

OTHERS PRESENT: Mayor Charles Smiley; C. Abbey, Administrative Assistant; J. Major, DPW Director; D. Lowthian, City Assessor; R. LaDuke, Building Supervisor; R. Hamilton, City Attorney and C. Ladd, Deputy City Clerk.

PURPOSE OF THE MEETING: DeNovo Appeal for Site Plan Review #99-27, Road Runner Express Gas Station/Convenience Store East Side of Belsay Rd. Approximately 400 feet South of I-69. (Approved at Planning Commission Meeting of July 13, 1999, with a 4-2 vote).

Mr. Hammon explained there are two types of appeal process that can take place in regards to the Planning Commission. One being DeNovo and the other Administrative Appeal. He stated the Administrative Appeal is the one where the City Council looks over all testimony given by the Planning Commission and makes a determination. A DeNovo means we will hear everything all over again, listening to any information the developer wishes to give and make a determination based on that information.

PRESENTATION:

Russ Osborne, 2410 Tanbark Oak Dr., Flint, MI, 48532, said he brought along several people who are prepared to speak regarding their particular area of this development. They are Jim Sporer, Architect, CHMP; Jerome Meyer, Senior Project Hydrogeologist of Innovative Environmental Solutions; Mike Smith of Applied Eco Systems, addressing sound concerns; Kevin Cook of CHMP Engineers and Architects, addressing site concerns; and Sue Csutores of Home and Hearth Realtors, representing the concerned citizens involved in the sale of the property.

The developer has listened to the concerns of the people and understands where they are coming from. He is an environmentalist himself. The growth rate in Burton is great and a system that is working for you that is good. You have people such as DPW Staff, Enforcement Division, Planning Commissioners with over 20 years experience, available to you, to investigate, analyze and then report their recommendations. After you hear what is said tonight, I'm hoping you will substantiate the vote of these people you have in place. This project will bring approximately 45 to 50 new jobs to the City of Burton. The revenue from real estate taxes alone will be in excess of \$60,000.00 annually.

Jim Sporer, CHMP, said when our client came to us and suggested he would like to develop this project as a convenience store, gas station and fast food restaurant, we looked at the present zoning and determined it was an appropriate use. However, a special land use was needed. Prior to any formal submittal, we met with DPW at the City to get feedback and input from them before starting the process of developing the site plan. We worked with this information and arranged the site plan so that the site was fairly well buffered on all three sides. We positioned the required detention areas on the north and south between the property line and the paving. On the east, where the existing residential is zoned R-1B, we set a buffer zone of about 240 feet, which far exceeds any minimum requirements for that zoning and for that use. We also incorporated an earth berm and evergreen trees on top of that berm to further enhance the buffering to deflect some of the noise and to shield the headlights. The increased distance, we thought, was sufficient for the project and we had no objections from the Planning Commission with that distance. On Friday, we met with the developer and he agreed to further enhance the buffering zone. All utilities are available to the site, which is oriented so the gas fueling is on the west side and the diesel fueling is on the east side of the site.

SPECIAL COUNCIL MEETING MINUTES  
AUGUST 9, 1999/6:30 P.M.

Both areas will be canopy covered, all lighting will be shielded down. We had a favorable report from DPW staff and approval from the Planning Commission for Special Lane Use on June 8<sup>th</sup> and Final Site Plan on July 13<sup>th</sup>. We believe if you look at all the requirements and facts of this project, you will agree with their recommendation.

Jerome Meyer, 510 Brighton Rd., Howell, MI, said one of the main concerns of the residents is their water supply system. He said he went to the Genesee County Health Department and obtained copies of the water well records that are available for all wells of the houses in the surrounding streets. I then selected one from each street and developed a geological cross section of the map (Copies were provided to Council). This proposed development could be at a potential risk even with all the technology of the system. Even with all of the equipment in place, such as double wall tanks and double wall pipes, the spill containment cans under the dispensers, the leak detection equipment, sensors, monitoring, there still could be a release to the subsurface soils or, if present, ground water. At this particular location there is a substantial amount of clay that exists. All of the well records I reviewed, have casings that extend down into the bedrock. The wells are drawing from depths of 80 to 200 feet with casings that extend down to the bedrock, then it's an open hole where the water is drawn from. The potential risk, after doing this analysis, for impact of these wells, is almost non-existent. It would be near impossible for this site to be built in the clay and have a release impacting the aquifers. Sites where there would be sand and gravel would be more of a problem than the clay that is on the site. There is a 99.9% chance that a release would be impossible. Other things could pose more of a potential risk, such as arsenic.

Michael Smith, 5233 Kelly Rd., Flint, MI, of Applied Eco Systems Great Lakes, Inc., 5527 S. Saginaw St., Grand Blanc, MI. We were commissioned by Mr. Osborne and other interested parties to complete a noise evaluation with respect to the potential development. Mr. Smith presented a sketch of the results of the evaluation. We wanted to get an idea of what the sound or noise level readings were without the influence of the gas station along Belsay Road along I-69. He explained the chart presented and said the results came to an average of 61.5 decibels, which indicated the background reading along I-69. Each sample point was taken for a one minute average, using a decibel meter. The timing was between 3:30 and 4:30 P.M. on a Thursday, with substantial traffic. In order to replicate the worst case scenario of the noise at the gas station, we hired a gentleman to park his diesel truck at the end of the driveway at 1127 S. Belsay, which is about midway through the parcel. We asked him to leave the truck running in that location so we could get an idea of the noise level with the decibel meter. Our findings show there would be more noise from I-69 on the east boundary, than from the truck, and little to no noise from the truck traffic. This doesn't take into account some of the measures the developers have proposed for the site.

Sue Csutoras, 504 N. State Rd., Davison, MI, said she is representing the sellers of the property on Belsay Road. We have searched for qualified buyers and the people have sold their property. Based on the actions of the Planning Commission, the people sold their properties in good faith and have gone on to purchase other homes. Please base your decision on how it impacts the entire City.

#### AUDIENCE PARTICIPATION:

Paul Parker, 1096 Adams Rd., Burton, MI, presented the Council with several documents regarding his presentation. For those of us who oppose the development, we have everything to lose and absolutely nothing to gain. The people who sold their property deserve to do so, but they will not be affected by the development. He said the residents here tonight do not object to progress, but they do object to the proposed gas station. He said they are asking the Council to overrule the Planning Commission's decision. The people welcome progress, as it will increase the tax base, but it has to be the right type of business. The proposed business will adversely affect the neighborhood in many ways. As a Council, you have the responsibility to first look out for the welfare and protect the citizens, then promote business opportunity. Some of the concerns of the residents include contamination of wells, truck traffic, 24 hour service, increased noise,

SPECIAL COUNCIL MEETING MINUTES

AUGUST 9, 1999/6:30 P.M.

prostitution and lower property values. Mr. Parker presented statistics concerning the tanks being installed to code. Mr. Parker also shared other facts concerning such diseases as Asthma, Cancer and others that may be caused from the diesel exhaust. Mr. Parker stated his son suffers from asthma.

Amy Menard, 1122 Adams Rd., spoke concerning the noise levels, congested traffic and possible gas leaks. She is opposed to the proposed development.

Don McDaniel, 1096 Kettering, said he has lived in Burton since 1959 and he has raised his five children in this City. He said his concerns include health and safety issues, including the possibility of a semi hitting a school bus when making their turns. He said he has seen two semi's make U-turns this week when traveling this area. The speed limit isn't always adhered to in this area. The odors from the fumes are unpleasant. With a new business in a residential area, there could be problems. I am concerned about the school buses traveling in this area.

Don Kline, 1104 Adams Rd., indicated the proposed station would be built behind his home and he is concerned about ground water. All the water on Adams Rd. to about 6 lots north, flows back to where the gas station is being built. The water goes across to the drainage system. If the barrier is constructed, it will be just like a dike in that area. When I mow the grass in the Spring I have water rather deep in one corner. With a barrier built, there will be no where for the water to go and it would be about a foot deep.

Dora Garcia, 1138 Brabbs, said three and one-half years ago, a car crossed Belsay Road, missed four lanes of traffic and missed trees and hit our house. Luckily there was no one hurt or killed. There is a possibility of one of these big trucks hitting a child or a house.

Charles Menard, 1122 Adams Rd., spoke concerning the noise issue. He said there was only one truck idling. The trucks will be pulling out of there with a load and the decibels will greatly increase. In fact, these trucks will be coming in with diesel brakes, which are much louder. He would like to see another type of business go on that property.

Adam Parker, 1096 Adams Rd., said he has asthma and is on a great deal of medication.

Carl Fenner, 1148 Kettering, said he lives near the site across from a 24 hour party store and gas station with overnight parking. I hear all kinds of noise from the expressway and I'm a good distance from it. He said the semis are rather noisy and he doesn't think Belsay Road is feasible for semi trucks with no left turn lane for cars, let alone trucks. The air pollution will be bad from the diesels. There will be more than one or two trucks. He is also concerned about ground pollution and possible spilling, contaminating the ground water.

Pauline Dargel, 6119 Hugh, said there are other locations available that would be more suitable for this type of business and offered several other locations. She doesn't think a one day study of noise is reliable. She referred to the spill at the Admiral gas station on S. Saginaw Street and noted that the DEQ indicated the station had the required tanks and pipes, but the spill still occurred. She went to the Drain Office and Road Commission to see if there had been a site plan or letter submitted to them and learned there was none at the Drain Office. Before the Planning Commission is asked to make a decision, it would be better if there was a report from the Drain Office. When I visited the Road Commission, I found a drawing was there, but the receipt was not stamped and therefore no review was done.

COUNCIL RECESSED AT 7:46 P.M.

COUNCIL RECONVENED AT 7:59 P.M.

SPECIAL COUNCIL MEETING MINUTES  
AUGUST 9, 1999/6:30 P.M.  
PAGE -4-

COUNCIL DISCUSSION:

Mr. Cox asked to have an explanation of the Special Land Use Permit.

Attorney Hamilton explained the Special Land Use Permit, stating the entire City is divided into zoning districts and in each zoning district certain uses are permitted, while others are not. Within these zoning districts, there is recognition that under some circumstances, certain types of uses would be appropriate in some locations, but within that same zoning classification. In other areas within that zoning classification they would be inappropriate, so we have what is called Special Use Approvals. A Special Use would be permitted only after it's been reviewed to see its impact on the adjoining parcels and if it's appropriate in that particular location, not just in that district.

Mr. Cox asked Mr. Lowthian if the annual tax dollars would amount to about \$60,000.00. Mr. Cox asked if the City receives anything out of the sale of gas. He was advised no.

Mr. Lowthian replied the developer gave an estimate value of \$2.6 Million and that would generate total taxes for City, County and Schools. The City would realize about \$11,000.00 out of this.

Mr. Cox addressed the concerns of traffic congestion, possible ground water contamination, and noise levels. Consideration should be taken that the trucks would be under load and returning up the hill to get on the expressway. He said he is also concerned about the additional truck traffic, as there is no turn lane. If someone has a feasibility study, he would appreciate receiving a copy.

Mrs. Zelenko asked if there is any type of certification necessary in regards to the storm sewers. She also asked if it would be the same situation with the Road Commission.

Mr. Major replied at some point in time they will do a review, whether the City requests it or not. This may be done during the permit time. It is a discharge permit and they will set the criteria to allow the discharge. The criteria is non-negotiable. Mr. Major said the same situation applies with the Road Commission.

Kevin Cook, Director of Engineering, CHMP, Inc., stated the Drain Commission and the Water and Sewer Division has received the plans, but they have not processed them as they wait for Burton approval. The Road Commission has received the plans along with Consumers Energy.

Mr. Cross stated he lives in that subdivision. He asked if anyone had considered the wide right turns the semis will make when they come out of the gas station. He is also concerned about the diesel trucks idling, although the trucks will be in and out. I have previously complained to the DPW regarding semis parking in the surrounding area.

Mr. Spore indicated the driveways are three lanes with a radius of 30 feet. Sometimes a right turn may be made from the center turn lane of the driveway.

Mrs. Walls inquired about the storm water from the adjacent parcels. Would this be taken care of by this site plan? She also asked where the two detention ponds would be located.

Mr. Cook replied there is one detention pond to the north side and one to the south side. In regards to the drainage from Lots 36 thru 40, referencing the grading plan, the land indicates the water naturally flows towards Belsay Road. Provisions would be made in accordance with the Drain Commission suggestions.

#### SPECIAL COUNCIL MEETING MINUTES

AUGUST 9, 1999/6:30 P.M.

PAGE -5-

Mr. Hamilton asked if the construction of the berm would interfere with the surface sheet draining. Have any provisions been made to accept water coming on to that site from the southeast.

Mr. Cook replied they don't think the grading plan would impede the drainage area. A brief discussion continued.

Mrs. Walls said the Planning Commission was told the semis would only be in there long enough to get something to eat or use the restroom and get gas. How many diesels could be parked at one time?

Mr. Osborne replied there is room for two semis to be parked. The other parking area is for the employees.

Mrs. Walls asked if signs could be placed to indicate no overnight parking allowed. She also asked what the City's legal liability would be, should this site plan be denied.

Mr. Hammon asked Mr. Hamilton for a legal definition of what the Council is here to vote on tonight. As much as the people don't want to hear it, legally it has to do with the site and the provisions that are provided by the developer are adhered to. He asked Mr. Hamilton to elaborate on this issue.

Mr. Hamilton explained the use is permitted on this site under the Special Use Permit, which was granted. The focus now is to make the use on this site, comply with all ordinance requirements and being organized and placed in such a manner so as to be the most compatible with the surrounding properties. The use itself isn't the question, but the manner in that it will be utilized. What we have before us is the paper documents and the testimony and statements that have been made here tonight. That is the information upon which the decision must be made. Whatever happened at the Planning Commission meeting is irrelevant for our purpose tonight. We are here to review the site plan, make modifications, conditions or requirements of this site plan as it has been submitted, to make it as compatible as possible with the surrounding land uses, being the accesses onto the highway, stacking of vehicles, storage and various uses on the site. This is a permitted use according to the zoning classification and the granting of the special use permit. The question before us is, is this the best possible site plan for this use at this location.

Mrs. Zelenko asked for an explanation of the underground tanks and the secondary containment, as to how they are installed and what is done to prevent the leakage. She asked who would be responsible if there was ground water contamination. Mrs. Zelenko asked if the developer would be willing to run a water line down Lapeer Road to Brabbs Street.

Mr. Mayes gave a detailed explanation of how the tanks are safe-guarded against spills. He said with the new technology, they can minimize the gas spills. Mr. Mayes said in the case of ground water contamination, the State would quickly step in a take care of the problem.

Mr. Cross said the water loop has been brought down Lapeer Road, but it has to be petitioned to come into the subdivision.

Mr. Centilli asked Mr. Meyer what his opinion is of a dense layer of clay.

Mr. Meyer explained the dense layer of clay. He said clay is one of the best barriers anyone could have, as it doesn't allow much migration. Further explanation continued.

Mr. Centilli asked if the pumps were the kind that recaptured the fumes. He then read a letter from Mr. Hodges in response to Mr. Parker.

REGULAR COUNCIL MEETING MINUTES  
AUGUST 9, 1999/6:30 P.M.  
PAGE -6-

Mr. Meyer said the stations are not required to have these by state or federal law. The tanks, when delivering, will have vapor recovery, and that is required.

Mrs. Walls asked Mr. Donald Kline (resident) if he knew of any particular case where there was well contamination from the gas station at Lapeer and Belsay or at Kettering and Lapeer.

Mr. Kline said he didn't know of any contamination in that area.

Mr. Cross stated he would like to see Council to either amend or get a workable site plan that would be agreeable to all concerned.

Mr. Hammon said, after discussion with the Attorney, that some type of action had to be taken at this time or Council could postpone to a specific date, if more information is necessary to make a decision.

Mr. Cross said he would like to see the people set up a meeting with the developer, postpone our decision tonight, and come back to us with a workable plan, if possible.

Mr. Osborne stated that the residents concerns are viable and they have tried to address those concerns. We would be happy to accept modifications, such as a higher berm and plant foliage. We have addressed the drainage in the site plan. We can't do anything on the site until we pull the permits.

Mrs. Walls asked if a \$100,000.00 Performance Bond would be possible. She was advised yes. She also stated she would like to see the 8" waterline all the way to Brabbs and fire hydrant.

Mr. Osborne said there will be an insurance policy in place in excess of \$1,000,000.00 should something happen.

Mr. Major explained they will have to have a Performance Bond to cover certain items addressed in the site plan. There may be more than one site bond required through the County, since Belsay Road is not in our jurisdiction.

Further discussion continued regarding the issues of a performance bond, waterline, berming and foliage, retention pond, overnight parking and asphalt paving. They may also be required to get a bond for road improvements.

Mrs. Zelenko inquired about other locations owned by Mr. Hodges.

Mr. Hammon asked if there are any flood plains on this site.

Mr. Major replied none that he is aware of, but there could be low pockets.

Mr. Hammon asked Mr. Hamilton if the new Federal Taking Law could be involved in this scenario should the proposal be rejected. He was advised yes, there is a good possibility of a problem with this law. Mr. Hammon asked when the construction would start and end and also, when Mr. Hodges would be available.

Mr. Osborne stated the construction would begin as soon as the closing was completed and the proper permits were obtained from the Road Commission and Drain Commission. He said Mr. Hodges would return on August 16<sup>th</sup>.

A brief discussion was held concerning the legal ramifications of the site plan.

SPECIAL COUNCIL MEETING MINUTES

AUGUST 9, 1999/6:30 P.M.

PAGE -7-

Mr. Cox expressed concerns regarding noise, pollution, traffic and property values. He said he thinks this type of use will be a problem for the surrounding area, and would like to see the site plan denied and resubmitted with a proposal that does not include the truck stop portion.

Mr. Hammon asked if changing this site plan to a regular station as opposed to what the developer is asking, would be an option for Council.

Mr. Hamilton said he would review the ordinance and then give an opinion.

Mr. Hammon asked Mr. Major if he is aware of an existing ordinance that would regulate overnight parking at that location. He was advised no. He asked if an ordinance would have to be created to allow the police to cite those individuals if they were there for any specified amount of time, other than getting something to eat and going to the bathroom. The necessity of being there for a long period of time should be negated through an ordinance.

Mr. Hammon passed the gavel to Mrs. Zelenko, Vice Chair, and addressed the following issues regarding the site plan:

1. He stated he is unhappy with this type of development.
2. Contamination of wells, that may cause different types of cancers.
3. New jobs and economic development are essential in maintaining personal incomes and family survivals.
4. The developer is meeting specific environmental laws that are posed by both the state and Federal government and also adhering to all city policies.
5. He commended Mr. Parker on his presentation.
6. If this project is rejected, it would be inconsistent with Michigan Law, both statutory and case law. Also, it would be inconsistent with past City policy in regards to the site plan, when they meet the stipulations of the City. It would be inconsistent with the Master Plan.
7. The developer is adhering to the EPA requirements.
8. Council represents the entire City and the new Taking Law could put the City in receivership.

Mr. Hammon said based on the fact that the developer is adhering to all the requirements and to protect the General Fund, due to the Taking Law, he would have to support this development. Unfortunately, it's a matter of law that must be adhered to in this particular instance.

Mr. Hamilton referred to the ordinance, stating it doesn't differentiate between different types of motor vehicles and therefore, the City would be hard pressed to say the ordinance wouldn't permit the servicing of fuel to trucks versus fuel to cars.

Discussion continued regarding the possibility of the developer and residents meeting and solving some of the pertinent issues regarding this development. Mr. Hamilton said if any changes are made to the site plan it would be a voluntary action on the part of the developer.

Mr. Cross asked if the site plan was modified, would this have to come back for approval.

Mr. Major said the site plan modifications would have to go back before the Planning Commission for approval.

A lengthy discussion was held concerning the barrier of a berm with foliage and a masonry wall and what the ordinance stipulates.

SPECIAL COUNCIL MEETING MINUTES  
AUGUST 9, 1999/6:30 P.M.  
PAGE -8-

#### COUNCIL ACTION:

Walls moved and Centilli seconded the following motion:

1. Approve and authorize City Council to Modify the approval by the City of Burton Planning Commission of Site Plan Review #99-27, as follows:
  1. Site Plan is subject to complete compliance with DPW requirements.
  2. Performance Bond in the amount of \$100,000.00.
  3. Developer to put in 8" water line along Lapeer Road, from Belsay Road to Brabbs St.
  4. Berm with evergreens.
  5. Two Hour Maximum Truck Parking Limit, subject to citation by the Burton Police.

Cox moved and Cross seconded an amendment to the motion as follows:

2. Approve and authorize City Council to ask for re-submittal for Site Plan Review #99-27 and that the station does not become a diesel refueling station.

Amended motion failed 2-4 with Hammon, Zelenko, Walls and Centilli voting no.

Main motion carried 4-2 with Cox and Cross voting no

Meeting Adjourned at 9:40 P.M.

Cheryl M. Ladd, CMC/AAE  
Deputy City Clerk

CML