

CITY OF BURTON
SPECIAL COUNCIL MEETING MINUTES
OCTOBER 1, 2007, 6:30 P.M., COUNCIL CHAMBERS
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The Special Meeting was called to order by Council President Gary Isham at 6:30 p.m.

MEMBERS PRESENT: Isham, Major, Cross, LaDuke, Wells and Tinnin.

MEMBERS ABSENT: Conley.

OTHERS PRESENT: Atty. R. Austin, A. Frost, DPW Representative and J. Adams, Deputy City Clerk.

PURPOSE OF THE MEETING: Second Public Hearing for ZC #305, 2385 Red Arrow, Part of #59-29-400-022, by Cernet Co., LLC, 8033 Fenton Rd., Grand Blanc, MI 48439, to change zoning From M-1 to M-2.

PRESENTATION:

Attorney Steve Iamarino representing Cernet, stated he is also present with Kevin Staley from Rowe Engineering. He has an outline of conditional rezoning tailored and designed to specific activities. The conditions they offered are set forth in the document submitted. The purpose for this area being conditionally rezoned is strictly for storage activities. The company renovated an old building for their corporate offices and they want to reduce the concrete crushed material to a height of 25 ft. In order to accomplish that and be compatible with the amount of concrete that gets crushed every year, they need more area to spread it out to.

Residential neighborhoods will remain 250 ft. from any activity of this operation. That buffer is only zoned for residential. Natural vegetation of 150 ft. will stay on the south side of Elmwood Garden Subdivision, at the end of Cheyenne and Menominee running along Joyce St. Pine trees will be on the inner circle. The location of another berm by the Hemphill Subdivision, we agreed to impose an additional restriction on ourselves by increasing the size of the berm by 10 ft. and planting additional trees for more of a buffer on that site.

Mr. Iamarino also stated they want to vacate Red Arrow Road. They don't want it to be a thoroughfare and they want to control what activity goes on there. His client has spent over \$50,000 to clean up the site. Mr. Iamarino addressed further drainage issues and steps they have taken to help contain the noise level.

AUDIENCE PARTICIPATION:

Debra Eagon, 3328 Ogema, passed out information to Council and read aloud a letter addressing past meetings that were held, fencing and screening not in place, various violations, lack of enforcement, and signage at Dort and Red Arrow Rd.

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Jamie Boggs, 3344 Cheyenne, presented Council with information and read aloud the City's Zoning Ordinance, Preamble Article 1, Section 1.01. Mrs. Boggs stated Zito and Martz new when they bought this property it was surrounded by neighborhoods filled with children that play outside daily. If Council votes yes, they will be destroying our quality of life and taking away our children's rights to fresh clean air, and devastating the property values of our homes. She feels there are adequate sites for this industry as the entire greater Flint area is filled with heavy industrial derelict buildings and unused heavy industrial property. There need for expansion does not justify an inadequate zoning change.

Herbert Herrick, 809 E. Hemphill Rd., stated he lives in a very esthetically pleasing area. I like where I live and enjoy spending my money in Burton. Last week a majestic tree was removed. If further derogation of my quality of life occurs, it will give me no reason to stay here and to enjoy the community.

Carol Popodich, 701 E. Hemphill, Flint, MI, stated Mr. Major spoke to us on the Flint side when we were distressed from hearing what was happening on the Burton side. We thought we were neighbors and you cared about us like we cared about you. It was not from you that we learned about this travesty coming again to our neighborhood. We learned from our neighbors in Burton. You have not consulted our Mayor or Councilman Scott Kincaid. Mrs. Popodich stated she and her husband did \$15,000 worth of improvements to their home this summer. Who would want to buy their home to have gravel trucks go up and down the road and look out at the cement factory. This is not fair to us. In 2001 we were told by you that Mr. Martz and Mr. Zito could keep their little cement crushing factory just to break up the cement on that property. There are now mountains out there. This was just suppose to break up the cement that was remaining on that property to make it better to put into light industry. That is what we were promised and told by Mr. Major at a meeting at the church. That is not what happened. Now he wants more room because he trucked all this cement in and now he wants more room to lay it all out.

Mrs. Popodich stated further she went on the Internet today just to find out about cement dust. It causes lung function disorders. That is what all of us have been breathing. That dust is all over us. We can't have our windows open. You are responsible people, how could you possibly go ahead and approve anything more disastrous. It says in the OSHA report that it is suppose to be wetted down constantly, and it is suppose to be covered. She asks if Council has driven by there because it just blows. There is nothing there to stop the horrendous cement dust that is killers to our community. A 250 ft. berm means nothing. This is airborne and you can't stop that by moving it around and making it smaller.

Jennifer Morquecho, 2246 Red Arrow Rd., presented pictures to Council. She stated Police Chief Bruce Whitman signed papers saying they were no dead bodies ever found on that site since the company was there in 2000. In October of 2000, Mr. Major drafted six conditions that were approved with Z-Mar's site plan in December of 2000. Many conditions are still not met. Cernet has a list of 10 new stipulations for the conditional rezoning proposal and agreement. She feels many of the stipulations are unfair to the residents that have to live with the consequences of them.

Mrs. Morquecho expressed further the following concerns not addressed in the new stipulations: Pile height on the south side of Red Arrow Rd., Item 3 gives the Genesee County Drain

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Commissioner the power to determine fault for the damage that might have been caused by Z-Mar Cernet to the County storm drain located under their piles. She believes this a conflict of interest because Neil Martz co-owner of Z-Mar, works for the Drain Commissioner and both Martz and Zito are long time friends of Mr. Wright. Hours and times of operation. Crushing times are not included nor the times for loud construction equipment used to break the concrete, as well as requesting the ability to run the equipment year round. Diesel fuel fumes caused by the machinery, noise levels and dust caused by moving and conveying the crushed aggregate.

Mrs. Morquecho said the agreement states if Cernet violates any of the written stipulations it will reverse the conditional M-2 rezoning back to an M-1. Given this company's history on violations, reversal is inevitable. How is the City going to make this happen. They are going to have over 200,000 square feet of new piles and new storage buildings. There is no feasible way to reverse this. This is unrealistic and will create a huge burden on the City, not to mention the residents affected by it.

Geraldine Brotherton, 4331 Beechwood, asked Council what would they do if they lived in their neighborhood.

Kevin Pilon, 2228 Red Arrow Rd., asked Council why they ran for office. Was it for the people or the business. We have fought and fought on this and you refuse to listen. How many times do we have to come back and fight this. I understand he wants his business but we want our neighborhood. If you do this a lot of us will sell. Mr. Pilon asked why they just don't buy their neighborhood, but we don't want him to do that, we want our neighborhood.

Paul Wilson, 901 Hemphill, said the trucks come down and the dust and waste comes into our homes.

Claude Arnette, 3308 Cheyenne, said they try to use their window fans in the back of their house and you can write your name on the walls in concrete dust. It is on the furniture. As far as the noise, I can provide tape recordings. In the initial meeting we were shown on the blackboard berms, trees and buildings that were suppose to be there. Now we are getting a bunch of concrete. That is not what it was originally planned for.

John Staphish, PO Box 190134, said Mr. Martz was removed from positions in several other communities. He commented on his involvement with this company, and the lack of a site plan review.

Hector Munoz, 1017 E. Hemphill, Flint, said the dust is a problem and I have children that live with me. We have to keep our windows closed because the dust is thick. I have a great concern because we are breathing this. You can hear the noise, the backup alarms and dump trucks all day long. He asked Council to imagine yourselves there, it could be your children. Please listen to your citizens of Burton, respect their wishes, these are the people that live in your community. Take into consideration with an open heart your neighbors, your taxpayers.

Kathy Foutch, 3347 Cheyenne, said she lives on the corner of Cheyenne and Joyce St. The company is noisy. I have heard them 5:00 a.m. and very late at night. I have been diagnosed with a lung problem in the last year. The dust is terrible. In my furniture and I can't dust

because it does not get clean. I have lived there for 5 years and nothing has ever been cleaned up by them.

Pauline Dargel, 6119 Hugh St., said she seen the 10 conditions and this says that this has incorporated a site plan and a special land use approval as part of this conditional approval. She would like to know if is factually the case and if anything differs from the 1st public hearing.

Randy LaLone, 3814 Circle Dr., Flint, asked Mr. & Mrs. Carpenter, an elderly couple, to stand up in the audience for everyone to see them. Mr. LaLone stated they have lived in the subdivision for 50 plus years. He retired from GM and she was a Sunday school teacher. He believes an EPA study of air quality needs to be done around that operation. Council needs to be concerned about the health of its citizens and not increasing your tax base. An operation like his deserves and merits to be someplace like Grange Hall Rd. and I-75.

Carla Aborcea, 711 Hemphill, said she has had custody of a 3 year old grandson for a year. He has been sick. We have had tests and now they think it is dust mold in the air. We cannot keep the fans going anymore in the house because they are dirty from the dust. The windows have to stay closed. I also have bronchitis and allergies which I never had before till this company moved in.

COUNCIL DISCUSSION:

Mr. LaDuke asked if approving or not approving will change the operation.

Mr. Austin said it is his understanding that this conditional rezoning does not affect the daily operation of that enterprise.

Mr. LaDuke said if this passes or does not pass, the crushing operation is going to stay there. The only thing these conditions do is put conditions on what they can and can't do. Mr. LaDuke asked if the property owner loses their rights if they fail to meet all the conditions under conditional zoning.

Mr. Austin replied that both the proposal and State Statute call for reversion to the former zoning classification in the event of a breach of the agreement. We would be obligated to conduct a hearing before the reversion of that zoning.

Mr. LaDuke asked how hard it would be to remove this type of zoning if it is approved and they fail to meet those conditions.

Mr. Austin stated this conditional rezoning is so new, he is not aware of any cases that report on how difficult it might be. There are no reported cases yet that has gone to the Court of Appeals at the Supreme Court level. It would be like a probation violation hearing, you would give notice and conduct a hearing and take testimony as to whether these conditions were violated.

Mr. Austin stated further, then you would determine if there had been a violation. If that was determined, the recourse would be the reversion of the zoning.

Mr. LaDuke asked if the site plan can require a performance bonds.

Mr. Austin said included in the Planning Commission's recommendation on this rezoning, was approval of the site plan and conditional rezoning application. The site plan has already been approved by the Planning Commission.

Mr. Major expressed a bonding requirement is within the ordinance.

Mr. Austin said we could ultimately at a later date but not as a condition of approval of the site plan because it has already been done by the Planning Commission.

Mr. Major said they have to take out permits after approval process takes place, then bonds are required by the DPW for the site improvements.

Mr. LaDuke said this has been through ZBA twice and Planning once. The ZBA took a super majority, it failed but it did pass a majority at both of those hearings 4 to 3. The Planning Commission passed and recommended it on to this Body. The operation can stay with the 100 ft. mountain of concrete and be in compliance. I am disappointed at times with the DPW enforcement of site plans. Residents come to City Council to look for answers. We need to look at strengthening the teeth in our ordinance that mandates these things get reviewed in a more timely fashion. In reading the ZBA minutes, he thought the Board did a good job putting together conditions that protect this site more than it hinders. The only thing that will change is that storage will go on one side of Red Arrow but the crushing operation still stays. It is not going to improve the dust or any of the conditions that exist today other than make the site look more pleasant. He was around when that site was nothing but a dumping area. The City spent a lot of money and put guardrails up on Ogema to keep out dumping. In his opinion, that site improved a lot since the original condition that was taken over. Knowing that we are not going to change the operation, I think considering spot zoning is probably the best thing that we can do at this time.

Mr. Cross inquired regarding DPW's denial.

Ms. Frost replied they are still recommending denial. The conditions poses no time limit as to getting the site plan completed.

Mr. Cross said he has no confidence in the administration enforcing this. He will rely on the DPW's recommendation.

Mrs. Tinnin said if she understands correctly, this company actually could be shut down right now for being in non-compliance of their site plan. We are elected to protect the health, safety, and welfare. I don't believe I would have gone and purchased a home in that neighborhood in the past year or believe anybody that lives in that neighborhood could sell their home because of what is going on.

Mrs. Tinnin expressed further she wants business in our City and keep our tax base rolling, but we are not going to do it forsaking the health, safety and welfare of the citizens in this

community. They brought up very good points. My husband has asthma. I wouldn't want to live in this neighborhood and have to breathe what is coming through their windows. It is a big health risk. The company needs to be told immediately they are going to comply with the site plan that they haven't complied with for 5 or 6 years or they are going to be shut down immediately. We can enforce that. I am not going to reward them for being in noncompliance.

Mr. Wells inquired further concerning Mr. Strasser recommending denial.

Mr. Austin said he spoke with Mr. Strasser several times today. Ms. Frost has correctly identified Mr. Strasser's primary concern of the conditions proposed do not reflect time deadlines for completion.

Mr. Wells asked why it came before us if it is not completed.

Mr. Austin stated the Planning Commission met and Mr. Strasser gave his recommendation to that Body. The Planning Commission approved the site plan and conditional use application and has now recommended the rezoning to you. Mr. Austin explained it will take two Readings of a rezoning ordinance.

Mr. Wells asked if there is a timetable for Cernet.

Mr. Austin replied he is not aware of any.

Mr. Iamarino said when they were at the last meeting the Planning Commission recommended approval. Mr. Strasser recommended denial because the distances on the site plan were not accurate. That is all he said. They got the drawing revision to reflect the 250 ft. We corrected it immediately. If he had asked about a completion timeframe, it would have been answered too. We are willing to impose condition #11 that all site changes, modifications and required improvements be completed by 12/31/08.

Mr. Wells said people are very passionate about their home. He has close friends in that area. When this first started I came over and listened to the rock crusher and it was very loud. Mr. Zito was kind enough to tone it down and start doing the rock crushing in colder months when peoples windows and doors were shut. Mr. Wells asked if this is one of the conditions.

Mr. Iamarino replied they changed the hours to 6:00 a.m. to 6:00 p.m.

Mr. Wells said he is talking about a seasonality as far as crushing the rock itself.

Mr. Iamarino said the seasonality is dictated by the type of business. The crushing is done during the time of year when you can't put new concrete down. So the seasonality is somewhat weather driven. You try to get all the merchandise out while the weather is good and you can drive on some roads. Hemphill is a State highway and we are not going up to Hemphill. We are coming out onto Dort Highway and then get on the freeway.

Mr. Wells said he wanted to see the operation as it sits today compared to where it was in 2001. I noticed a very clean site and spent about an hour and 15 –20 minutes. My concern is the residents that live around there because that business is not going away. We need to make it

better for the residents. More pine trees and if the berms are raised will help. The piles getting cut more than half will be a big plus. The crushing machine is state-of-art best made in the world and they are shipped all over the world. Most go to Afghanistan, Russia and Iraq. As far as loading trucks, you can't get around it, it is going to make noise. But where they are loading it is surrounded by a 25 ft. berm of cement. That will cut down on some of the racket. Mr. Wells mentioned the EPA going to the site to look it over.

Mr. Iamarino said there are two provisions that address that. One being they are to have the determination if there are wetlands that need to be addressed in a certain fashion before any site alterations or permanent improvements. There is the requirement that the DEQ certify the wetting down of that portion of the machine is functional and catching the dust.

Mr. Wells said he would be willing to come out anytime they are crushing.

Mr. Cross expressed not having the September 11, 2007 Planning minutes.

Mr. LaDuke said at 2:00 p.m. on the day of the Planning Meeting he met with Mr. Strasser and asked him the DPW recommendations. He said it was approval. At this meeting he brought up that the site plan showed a distance of less than 250 ft., one was 214 ft. Immediately Mr. Iamarino stood up and said that will be corrected and is there any other problems. At no time was it brought up that the timetable was a problem. We get a recommendation at 2:00 that is not the same at 6:00.

Mr. Cross explained that there have been many times that changes have been made because of further review. He did not see that this was a big problem.

Mr. Major said he has a problem with lack of enforcement by administration. We wouldn't be in this position today. He opposes some of the conditions by the applicant. This conditional zoning application only improves the conditions out there. Denying it is not going to improve the situation because they can continue to exist. If they are to be shut down, they are going to comply with the conditions of the previous site plans.

Mrs. Tinnin said she thinks it is a shame. We work for the people here. These are the people that should mean something to us. Mrs. Tinnin addressed Mr. Major that when he worked for the City he knew they were non-compliant and something should have been done then.

Mr. Major said when he is told to enforce things he does it. He worked very hard to get a compliance between Mr. Zito and Neil Martz. Not voting for this and not reducing the height down what is over there today, is not in the best interest of the residents.

Mrs. Tinnin said she hopes the residents stay actively involved and bring every situation to the City Council and Mayor's attention when they are non-compliant.

Mr. Major said he believes based on this contract zoning and what we put in writing is going to be complied with or they will lose their business.

Mr. Austin said this has been a public hearing and the residents were notified. Before any action or vote is taken, I would close the public hearing portion of this meeting and at that point, take action or whatever it might be.

Mr. Austin said Cernet has voluntarily offered an 11th condition that all site improvements will be completed by December 31, 2008. If it is Council's pleasure, we can add this condition for your consideration tonight without necessarily sending it back to the Planning Commission for another public hearing. It is just an additional condition on the rezoning request. It was not mandated by the City, it was offered by the applicant voluntarily. The Introduction should include 11 conditions that would ultimately become part of this rezoning.

COUNCIL ACTION:

INTRODUCTION OF AN ORDINANCE:

Major moved and LaDuke seconded the following motion:

1. Approve and authorize the Introduction of an Ordinance for ZC #305, 2385 Red Arrow, Part of #59-29-400-022, by Cernet Co., LLC, 8033 Fenton Rd., Grand Blanc, MI 48439, for change of zoning from M-1 to M-2, to include the October 1, 2007 memorandum with # 11 added that site improvements will be completed by December 31, 2008.

Motion carried 4-2, with Cross and Tinnin voting no.

Meeting adjourned at 8:05 p.m.

jra