

**OFFICIAL PROCEEDINGS
OF THE
PLANNING COMMISSION-CITIZEN ADVISORY COMMITTEE
CITY OF LOWELL, MICHIGAN
FOR THE REGULAR MEETING OF
MONDAY, APRIL 11, 2022 AT 7:00 P.M.**

1. **CALL TO ORDER, PLEDGE OF ALLEGIANCE, ROLL CALL.**

The Meeting was called to order at 7:00 p.m. by Chair Bruce Barker.

Present: Commissioners Tony Ellis, Amanda Schrauben, Collin Plank, Marty Chambers, Michael Gadula, Dave Cadwallader and Chair Bruce Barker.

Absent: None.

Also Present: Nathan Mehmed of Williams and Works and Lowell City Clerk Sue Ullery.

2. **APPROVAL OF AGENDA.**

IT WAS MOVED BY CHAMBERS and seconded by CADWALLADER to approve the agenda as written.

YES: Commissioner Chambers, Commissioner Ellis, Commissioner Gadula, Commissioner Plank, Commissioner Schrauben, Commissioner Cadwallader and Chair Barker.

NO: None. ABSENT: None. MOTION CARRIED.

3. **APPROVAL OF THE MINUTES OF THE PREVIOUS MEETINGS.**

IT WAS MOVED BY ELLIS and seconded by CHAMBERS to approve minutes of the February 14, 2022 Regular Meeting as written.

YES: Commissioner Chambers, Commissioner Ellis, Commissioner Gadula, Commissioner Plank, Commissioner Schrauben, and Chair Barker.

NO: None. ABSENT: None. MOTION CARRIED.

4. **PUBLIC COMMENTS AND COMMUNICATIONS CONCERNING ITEMS NOT ON THE AGENDA.**

There were no comments.

5. **OLD BUSINESS.**

a.) **Proposed Adult Use Marihuana Zoning Amendment.**

Chair Barker opened the public hearing.

Nathan Mehmed with Williams & Works reviewed his memo explaining the proposed zoning ordinance amendment that would amend Section 17.03 (FF) of the City's Zoning Ordinance related to adult use marihuana establishments. If adopted, the proposed amendment would prohibit the establishment of any adult use marihuana establishments on property located east of the Flat River.

Chair Barker asked if there were any public comments.

Todd Foot who resides in Mollen, Michigan has put an offer in on one of the properties that would be excluded with the zoning change. Wants it to be a grow and processing marihuana establishment, not open to public, but would improve the building. Considering even giving the golf course back to the City of Lowell to make a park for the City residents.

Joe Verscula who resides at 1308 Highland Hill stated he is the real estate agent helping Mr. Foot and explained the building they are looking at is 805 E. Main. Want to make it a multiple use building and could lease out portions of the building for other purposes. They want to make it a really nice building and benefit the community.

Chair Barker closed the Public Hearing.

Commissioner Barker stated that this location just doesn't work for this type of establishment as it is too close to residential properties.

City Manager Michael Burns stated there are four or five properties east of the Flat River that this would effect.

Barker asked how many open properties are still for sale in the areas not in question and how many we have already approved.

Burns stated he is not aware of any more buildings available, but a few lots are still for sale. To date, we have approved 11 special land uses. Eight micro-processors and dispensaries and three grow facilities. Five are currently in operation.

Commissioners discussed at length.

Chair Barker re-opened Public Hearing for one more comment from Joe Verscula.

Joe Verscula explained why they wanted this particular building and the way it is zoned.

Chair Barker closed the Public Hearing.

IT WAS MOVED BY BARKER and seconded by PLANK that the Lowell City Planning Commission forward the proposed adult use zoning amendment to City Council for the adoption of the text amendment.

YES: Commissioners Gadula, Ellis, Schrauben, Plank, Cadwallader, Chambers and Chair Barker.

NO: None.

ABSENT: None.

MOTION CARRIED.

6. **NEW BUSINESS**

a.) Pubic Hearing – Grand Rapids Gravel –Special Land Use Re-Application.

Chair Barker opened the Public Hearing.

Nathan Mehmed of Williams and Works reviewed his memo stating this application was reviewed and approved in December 2020. However, no construction or other on-site activities had taken place on the property to exercise that permit, and no extension for the special use was sought by the applicant Thus, the 2020 permit is considered null and void and the applicant must now re-apply to proceed with project. The project is the same with the exception of a couple items. The applicant is going to maintain those two or three properties (the duplex and the single family homes) until they are ready to excavate those properties and at that time will use their discretion with however they are leasing them to vacate those residents. Moore has a recommended condition addressing this updated site plan showing this change. Second, the trail conditions have two options to choose from and then the rest of the conditions are the same.

Dave Austin with Williams & Works then came and gave an update on the trail project and the location which goes through Grand River Gravel Property, there is an easement through their property, but explained difficulties with the trail going through. So we need to permit this, there will be a lot of red tape to get through with EGLE. If we get a no from EGLE the option would be to go north of their property along Bowes Rd.

James Dykema representing Grand Rapids Gravel spoke stating they are asking the same application, looking to put in a 22 ½ acre lake with gravel underneath it and over a 10-year period after that is done make some sort of residential housing after that. The real change would be the approach, the housing there doesn't want to leave, so we will work around them. The trail is a concern with safety but they are going to do the best they can with making it work and should know in the fall the trail location. They want to start immediately. There is no problem with the condition #14 or #15.

Charlie Whaley who resides at 2175 Bowes Rd questioned the lighting at night and where the entrance would be. Dykema stated entrance will be on the west portion of the property and lighting would only be during hours of operation.

Chair Barker closed the Public Hearing.

It was agreed upon by all parties that condition #14 was the best option.

The following documents support the findings of fact and the decision of the Planning Commission:

1. Special Land Use Application dated September 4, 2020 and March 3, 2022.
2. Lakeshore Environmental Hydrogeological Certification dated July 1, 2020.
3. Intent to establish easement for non-motorized trail and related documents submitted in October 2020 by Williams & Works.
4. Application narrative and review of site design standards dated September 1, 2020.
5. Memo from Grand Rapids Gravel Company that includes an introduction and project overview dated March 3, 2022.
6. Mining Site Plan, Aerial Photo, and End Use Plan last revised November 4, 2020.
7. Williams & Works staff report dated October 9, 2020 and April 6, 2022.
8. Black Canyon Process Equipment "Safety Data Sheet" received 11/9/20.
9. "Method of Mining" narrative (undated) received 11/9/20.
10. Verbal testimony provided by the applicant and the City's planning and engineering consultants (Williams & Works) at Planning Commission meetings held on October 12, 2020, November 9, 2020 and April 11, 2022.

Findings

The approval process for a special land use requires attention to the specific provisions contained in the City's Zoning Ordinance applicable to such operations. The Planning Commission adopts the findings as outlined in the Williams & Works memorandum dated October 9, 2020 as its findings related to this application, and further finds that the zoning ordinance requirements have been satisfied.

The City further find the following facts with respect to applicable provisions of the Michigan Zoning Enabling Act (MCL 125.3205):

- i. There are valuable natural resources on the property.
- ii. There is a need for those valuable natural resources by the applicant or in the market served by the applicant.
- iii. The applicant has provided sufficient documentation that no very serious consequences would result from mining. Thus finding of no very serious consequences was made after considering the following factors:
 - a. The relationship of extraction and associated activities with existing land uses.
 - b. The impact on existing land uses in the vicinity of the property.
 - c. The impact on existing property values in the vicinity of the property and along the proposed haul routes, based on credible evidence.
 - d. The impact on pedestrian and traffic safety in the vicinity and along the proposed haul routes.
 - e. The impact on other identifiable health, safety, and welfare interests in the local unit of government.
 - f. The overall public interest in the extraction of the specific natural resources on the property.

Based on the foregoing review and findings of facts, the proposed special land use and site plan is subject to the following conditions:

1. Prior to issuance of any City permits, the applicant shall have paid all application, permit, reimbursable escrow, and other fees related to the request.
2. The applicant shall continually comply with applicable ordinances, codes, and requirements of the City of Lowell.
3. The proposed special land use shall comply with all applicable federal, state, and local requirements, and copies of all applicable permits shall be submitted to the City.
4. The applicant shall comply with any stipulations from the City Engineer, Lowell Area Fire Department, or other City officials.
5. The applicant shall receive approval and comply with any stipulations from the Lowell Area Fire Department regarding emergency vehicle access.
6. The applicant shall receive a driveway permit from the City of Lowell.
7. All structures and buildings shall comply with the setback requirements of the Industrial and River's Edge districts. No machinery shall be erected or maintained within 50 feet of any property or street right-of-way. Further, no cut or excavation shall be made closer than 50 feet to any street right-of-way line or property line.
8. All necessary development permits shall have been issued by appropriate local, state, and federal authorities, including a floodplain permit, approval, or letter of no authority from the Michigan Department of Natural Resources under authority of Act 451, of the Public Acts of 1994, as amended. Where a development permit cannot be issued prior to the issuance of a zoning compliance permit, a letter from the issuing agency indicating intent to issue contingent only upon proof of zoning compliance may be acceptable.
9. Dust shall be controlled on the subject property through the use of water, dust palliative, and the ongoing maintenance of the paved access drive. Dust control shall comply with the air quality requirements of the Michigan Department of Environment, Great Lakes, and Energy (EGLE) or subsequent department. Any debris tracked on Bowes Road from the site shall be removed as soon as practicable.
10. The applicant shall maintain existing trees along the property boundaries to function as a buffer between uses.
11. Hours of operation (including loading) shall be between 7:00 AM and 5:00 PM Monday through Friday (excluding federal holidays) and 7:00 AM and 2:00 on Saturdays (excluding federal holidays). The mine shall not operate outside of these hours, or on Sundays or federal holidays.

12. The applicant shall designate an area for fuel and lubricant storage on the site plan and submit measures for safety and preventative for final Zoning Enforcement Officer approval.
13. Fencing shall be located along property boundaries as shown on the November 4, 2020 site plan and be at least six feet in height. Fencing shall be placed no closer than 50 feet to the top or bottom of any slope.
14. The applicant shall cooperate with the city in its efforts to obtain a permit to construct the trail in approximately the currently defined 20-foot-wide easement illustrated on the plans. Should the current location not be permit able, the applicant shall cooperate with the city to modify the alignment to a mutually agreed upon location as needed in order to obtain the permit.
15. The applicant shall place appropriate "Keep Out / Danger" signs around the premises, not more than 150 feet apart.
16. Stockpile height shall not exceed 45 feet.
17. The proposed berm shall be between 5 and 7 feet tall. Slopes of the berm shall not exceed 1:3.
18. Natural screening in the form of rolling topography, vegetation, and tree lines shall be preserved as much as possible to maintain the general character of the City, public rights-of-way, and neighboring properties.
19. Noise on the site shall not exceed sixty (60) decibels at any property line.
20. The applicant shall submit a written annual report to the Planning Commission, which shall include a summary of progress on the site, the amount of material removed, any complaints received and their resolution, any updates to the project schedule, and other items deemed necessary by the planning commission.
21. The applicant shall submit a performance bond in the form of a letter of credit, a certified check, a cash bond, or an insurance policy with the City of Lowell named as an insured party in the amount of \$120,000. The bond shall be released when all conditions stipulated in the Special Land Use permit have been met and the mining and restoration activities (excluding future residential development as illustrated on the end use plan) are complete. The guarantee shall be reviewed annually and adjusted accordingly based on market conditions at the time and the amount of mining remaining to be completed.
22. The applicant shall deposit with the City Treasurer the sum of \$5,000 to serve as a monitoring/enforcement escrow account. This sum will be kept by the City in a separate, interest-bearing account. All expenses incurred by the City of Lowell in the monitoring the subject gravel/sand extraction operation and enforcing the provisions of this special land use permit and the City of Lowell Zoning Ordinance with respect to the same (including legal and administrative expenses) may be paid by the City from the monies in this account. If the balance in this escrow account falls below ½ the above amount, the City Clerk shall notify the applicant of this fact and the applicant shall within 14 days of the date of the notice, deposit the sum necessary to restore the escrow account to its original balance. If at the conclusion of reclamation of the subject property there remains any money in the escrow account, it shall be returned to the applicant.

IT WAS MOVED BY BARKER and seconded by ELLIS that the Planning Commission recommend approval of the Grand Rapids Gravel Special Land Use Reapplication at 2014 Bowes Road with the conditions of approval 1 through 22 as listed above.

YES: Commissioners Gadula, Ellis, Chambers Schrauben, Plank, Cadwallader and Chair Barker.

NO: None.

ABSENT: None.

MOTION CARRIED.

7. **STAFF REPORT.**

There was no report.

8. **COMMISSIONERS REMARKS.**

Commissioner Gadula reminded everyone of the cookie walk this weekend.

Commissioner Chambers suggested everyone stop on the Showboat for the cookie walk, the money that is raised will go to wildlife.

9. **ADJOURNMENT.**

IT WAS MOVED BY CADWALLADER and seconded by CHAMBERS to adjourn at 8:22 p.m.

DATE:

APPROVED:

Bruce Barker, Chair

Susan Ullery, Lowell City Clerk