

**MINUTES
REGULAR MEETING OF THE
CITY OF CLEVELAND BOARD OF ZONING APPEALS
TUESDAY, FEBRUARY 14, 2017 AT 12:00 PM
CLEVELAND MUNICIPAL BUILDING 190 CHURCH STREET NE**

The regular meeting of the Board of Zoning Appeals was called to order by Charlotte Peak, Chairman, at 12:00 noon.

Members present included Ray Garner, Charlotte Jones, Clint Taylor, Ed Brown and Dan Moore.

Staff present included Corey Divel, Senior Planner, Darla Jenkins, Executive Secretary, Jonathan Jobe, Director of Development and Engineering Services, Melinda Carroll, Assistant City Manager/Operations,

Legal Counsel present included John Kimball, Attorney for the City of Cleveland.

Others present included Brenda D'Agata, Andy Brown, John Kinder, and Travis Henry.

The minutes of the October 11, 2016 meeting were presented for approval.

Dan Moore made a motion to approve and Clint Taylor seconded the motion. A vote of 5-0 passed the motion.

There were no Public Hearings.

There was no Old Business.

In New Business,

- a. Request for setback variances by Alvin Calhoun at Stuart Ave NW (Tax Map 49F Group F Parcel 1.02). Property is zoned CH Commercial Highway zoning district (pg1).**

Dan Moore made a motion to approve and Clint Taylor seconded the motion. A vote of 5-0 passed the motion.

- b. Request for administrative review by Brenda and Larry D'Agata for property located at 1700 South Lee Highway (Tax Map 57H Group F Parcel 3.00). Property is zoned CH Commercial Highway zoning district (pg5).**

Charlotte Jones: Request B, request for administrative review by Brenda and Larry D'Agata for property located at 1700 South Lee Highway. Is there anyone here for that

Brenda D'Agata: I am.

Charlotte Jones: Would you like to come to the podium, please, and state your name for the record?

Brenda D'Agata: I am Brenda D'Agata.

Charlotte Jones: Brenda D'Agata? Did you get that in there?

Brenda D'Agata: We received a letter stating the city failed....to properly screen our business which they told us to get screens and we did exactly that. We don't feel that its..... screen that front and screen the back, both ways, and that's exactly what we did. Now there is another business at the other end that is not screened that way but it has nothing to do with us. They've referred us to an option that was to give.... let us stay there for two (2) years unless we elected to do an overlay and in the future. We'll discuss that and it had to...for some reason it said we had to abide by the regulations in ordinance 13-205 which I have. I'm not sure exactly what it has to do with us because it simply about automobiles. And we do not buy automobiles. So we were kind of wondering what everybody was talking about.

Dan Moore: You've never purchased automobiles?

Brenda D'Agata: We don't do automobiles.

Corey Divel: That was just included in the ordinance so.... Let me back up a little bit... just for a little context.... The city received a complaint probably been over a year now, regarding two separate operations (unknown) cycling collection center. And really if you look at the ordinance I think it would it would fall under salvage yard as well. We received a complaint. We investigated. It turns out both of them had been operating out of zone. Mrs. D'Agata business had been in several locations over the last twenty-five (25) years, something like that.....

Brenda D'Agata: Twenty-seven (27) years now.

Corey Divel: Twenty-seven (27) years, all over... in the vicinity of South Lee Highway, not always right on South Lee Highway.

Brenda D'Agata: Real Close.

Corey Divel: Close to it. The best I can tell, none of them were actually appropriately zoned. They had no reason to think that it wasn't. They got their business license. By law you are required to give a business license. They thought they were fine.

Found out they were operating out of zone. Went through a process between city council and planning commission. We amended the zoning. What they essentially did is amortize the use out. Even though you haven't been legal we are going to give you two (2) years to find somewhere else to go instead of just shutting you down today. Give you two (2) years but you have to meet the requirements of what the ordinance was. It's on page eleven (11), 2016-17. And, it references requirements essentially the main one is that you have to... All areas which are.... which hold, stores or sort or receive any materials or goods for the purposes of supporting a salvage yard or recycling collection center must be screened so that the operation, which is one of the key words, I think, there... so the operation is not visible from the front or side view of the property. And it references the other ordinance only because it...it's only kind of a catch all. It doesn't necessarily apply to this one at all. If it's

Brenda D'Agata: We have screens...that conceal it.

Corey Divel: If it's.....

Brenda D'Agata: We have trailers that hold the steel. We have roll offs that hold the aluminum and the red metals come in at night. One in the bar building. Because the city had decided to they want to take our business and give it.... As the city... (unknown) as the newspaper called it. This is a Sampson.....David and Goliath...we're unfortunately David...the little guy. We have done everything humanly possible to please them. If they want...What I really realize that they want us to invest \$5,000 - \$10,000 to put up big things. Why would I do that for two (2) years? It states specifically screens. Screens is what I have up. If that changes, then yes, I am perfectly willing to do the fencing or the metal or whatever like that. At our age, frankly, we... we worked our way up from being small, small...really not even, in your opinion a business, to a company that owns their own property. We buy and sell. We deal with a company is mutually dealing with us. We have been told by them that Keasler who is the other guy wants them to do business with him and they have refused because they work exclusive with one person in the area and that's a lot of the problem. I don't work for the city, ok? For twenty-five (25) years before this happened, I filled out my forms every year just like I'm supposed to stating exactly what we did. An employee of the city took this information. An employee of the city entered this information in. Probably part of...I don't know whose fault it is. We did what we thought was (unknown) right. When we bought this property, we went through a title company. They didn't find it either. Frankly, we had a lot of trouble even finding out for sure that it was. I asked you and you couldn't come up with a date. We finally went to the courthouse and just dug and found the date. I feel that's it's as much as the city's fault as it's ours, if not more. They hire people. They train people. Or they hire the person that trains these

people. If there was a problem with this zoning, they had twenty-five (25) years to say, "Oops, there might be a problem here." But they didn't until a wealthy man wanted to take our business.

Charlotte Jones: Can I ask you a few questions? On the....

Brenda D'Agata: Certainly.

Charlotte Jones: Two (2) years ago, when you met with the city, you guys agreed to the stipulations of the amortization....

Brenda D'Agata: No its not two years until.....I don't have the date.

Corey Divel: Yea...well.... yea ...the ordinance was passed in athe final reading was passed in June 27, 2016.

Charlotte Jones: Ok

Corey Divel: And so what the date was, they gave them two (2) years from probably the first reading or planning commission, I'm not sure of what that date, May 9, 2016. They have two (2) years from that date. So they have a little over a year left.

Brenda D'Agata: Which we had trouble getting a lot of information

Corey Divel: And

Brenda D'Agata: One thing I know about government, they like paper. We fully expected to get something in the mail.... Returned receipt proving we received what they wanted. We haven't got anything.

Charlotte Jones: On the....

Brenda D'Agata: What I know is the information I've gotten from Mr. Henry and Corey and from the newspaper.

Charlotte Jones: On the left side of the property, there's a sign that says, "Can-it Recycling", and there's garage.

Brenda D'Agata: I'm sorry. What?

Dan Moore : ????? Look on page 8.

Charlotte Jones: There's a garage and Can It Recycling.

Brenda D'Agata: That belongs to Metal Man.

Charlotte Jones: Ok. Is that your property?

Brenda D'Agata: We own the business. Yes. That's....

Charlotte Jones: Ok. That's what we are referring to. If the property is in your name....

Brenda D'Agata: That doesn't matter. It has nothing to do with Can It Recycling. There is a half screen there....as you'll notice in the picture as a curtesy.

Charlotte Jones: Right.... And you've screened the right side....

Brenda D'Agata: Totally up.....Which one are you looking at?

Charlotte Jones: And down the side which I haven't seen.

Brenda D'Agata: There is another one here now. As I showed you...

Charlotte Jones: Are you sure?

Brenda D'Agata: Well, it's in my pictures. You can see it.

Charlotte Jones: So the left side of the Can It does have a top canopy now? You have screen up here.

Brenda D'Agata: Sorry. There's screen right along in here. And this part there's screen as you saw in the picture that covers that but this end is not because that's not Can It Recycling. We decided we had to do another business. We were ready to sell this business and retire when we were.... For lack of a better word, attacked. We are old enough to retire. This is our home. That's what we planned to do.

Charlotte Jones: When is the last time you took pictures?

Brenda D'Agata: (Unknown)

Corey Divel: Those photos are from Thursday or Friday...I think they are Friday... in the packet.

Charlotte Jones: When did you put up new.....more screen?

Brenda D'Agata: Those are not from Friday.... cause (unknown).... I'm thinking pictures.

Dan Moore: On page 8? Those pictures right there?

Brenda D'Agata: I don't think so.....this looks like they are coming down from the hill. This was made.....this is the same thing. It was made. And they are on top of the hill, I can see what they are doing.

Corey Divel: Some of them.

Brenda D'Agata: I'm directly across the road in the median, shooting across. They said to....and then the other one is from the side. Now this part that belongs to Metal Man....no it's not.

Charlotte Jones: But that is your property.

Brenda D'Agata: Yes, it's our property.

Dan Moore: You would agree that we can see the operation though.

Brenda D'Agata: In this you can't..... in this.

Unknown: Unknown

Brenda D'Agata: What they've done, they've shot it coming down over a hill to shoot down and I see what they are saying, but if I was high enough I could see the bald spots starting in his head, too, but that's not the way it gets done.

Charlotte Jones: But above the can...the one that says "steel yard", the yellow sign on the left side of the property.

Brenda D'Agata: is Metal Man's.

Charlotte Jones: Ok. But that...that is just an eight (8) foot screen or seven (7) foot screen all away across there. You didn't do any additional above it.

Brenda D'Agata: No we didn't. Because it did belong (unknown).

Charlotte Jones: But that is your property.

Brenda D'Agata: It is our property.

Charlotte Jones: OK. Whether the business inside there is not your business or not, it's still your property. That's what they are saying. That entire property needs to be screened at the top like you did the right side.

Brenda D'Agata: It is our property. It is our business that we are trying to start another business. Going to have to do something. They are going to take ours from us.

Dan Moore: You got to comply.

Charlotte Jones: So the left side is what they are saying going to have the additional screening. Cause you can still see it. It's your property whether its three (3) separate businesses inside that property. That entire property has to be screened.

Brenda D'Agata: Let me look at the letter from Mr. Henry. In our opinion, they were strictly talking.... I mean, that's the way we felt because that's the only thing anybody's ever discussed was our business. It just says we failed to do it. We could but that's really not what we were told to do to start with was to block Can-It Recycling with a higher screen and we did.

Charlotte Jones: You see how we would have trouble differentiating that because Can-It Recycling looks like your sign is on the left side of the property so you would have to have screen up here and down the side to comply.... (unknown).

Brenda D'Agata: So you want us to do it like this one.

Charlotte Jones: Yes. The additional.

Brenda D'Agata: And do the additional screening.

Charlotte Jones: Mr. Travis...err... Henry. Would you like to speak to that? Would that suffice the city's request?

Travis Henry: Yes. I think. I think our goal is just to follow the ordinance should the screen so you can't see the operation from the road going by it. And clearly as this photograph shows, you can see their operation, you can see the scrap metal, you can see several items that are visible. But I think is they had taller screening, all the way....

Brenda D'Agata: like this? That's the front of the building.

Travis Henry: Yea. I am not sure what side that is.

Brenda D'Agata: When you face it, it would be toward the right.

Travis Henry: Yea, I think that...

Brenda D'Agata: You can see the roof

Travis Henry: Yes, mam. I think that's the point. Just screening so you can't see the scrap metal or the operation. I think that's what the city wishing you would do. That's the complaint we received on this. (unknown)

Corey Divel: And so...And just to be clear maybe to clarify their roll, you would interpret since there's a little bit of latitude in there. We tried to give them ...you know you have to screen it. And the notice is sort of on the property owner. It is potentially a little vague. But that's what the Board of Zoning Appeals job is to interpret what the zoning means and if they are actually complying with it.

Travis Henry: Yea, the.... that's after.... the ordinance is pretty broad so that the property owner can however mechanism they come up with screening as long as it's not visible from the street from the front view or side view. That's in compliance with the ordinance.

Charlotte Jones: So you knew they had twelve (12) foot trees. The twelve (12) foot trees per say...blocks it.

Travis Henry: Is a screen. That's right.

Charlotte Jones: A screen.

Travis Henry: That's right.

Charlotte Jones: Is not technically a screen, screen. They could use anything that could block....

Travis Henry: Well and that's part with the other property owner...it's one of the questions that's further down that they've raised. By they've complied.... basically their recent letter.....We are willing to do what the city that works with us to tell us what needs to be done. In this position the city has really gone above and beyond to try to help as much as they can. It's not in compliance They've given them the opportunity to continue to operate for a period of time so long as they screen it. But we are asking that they do.

Dan Moore: That doesn't sound unreasonable, does it?

Brenda D'Agata: Because it's so vague, we took it to mean the only thing the city had ever discussed with us was Can-It Recycling. I don't see how we could have interpreted Metal Man in it.

Travis Henry: I think in terms of the property and the owner of the property, that's not necessarily the business.

Brenda D'Agata: I know what you are saying but I didn't go to law school like that...(unknown).

Travis Henry: I think that's what we are saying that it refers to the property owner and that's what the ordinance refers to. And that's what we

Brenda D'Agata: And reading your (unknown)

Corey Divel: And I didn't actually realize that reading it you can't distinguish.

Travis Henry: I didn't know there were two (2) separate businesses there until today.

Brenda D'Agata: That was in a letter I sent you.

Travis Henry: Ok.

Brenda D'Agata: And your ordinance in your letter stated interpretation we're concerned the property for a business as a salvage yard or recycling center. It doesn't say anything else about Metal Man. If it had of, we'd a done it. But your letter....

Travis Henry: But my letter also refers to the total parcel, mam. That's what the reference.....

Corey Divel: Could you clarify maybe what Metal Man is?

Brenda D'Agata: Metal Man is.....

Corey Divel: Cause it. Without knowing it would be something....

Travis Henry: A salvage yard....

Corey Divel: Yea, a salvage yard. Exactly. A collection center.

Brenda D'Agata: No. its buying.....a lot of businesses need steel; they need aluminum: they need stainless steel. We've sold quite a bit of it. And, yes, we do have a sales tax number and are paying sales tax on it. You know, people working on the county roads recently come down and bought several pieces of steel. They need it. It preventing them from having to go to Chattanooga or somewhere like that. The business license that I've got from your office and we discussed it.

Corey Divel: I think we discussed it.

Brenda D'Agata: It's Metal Man. You were out that day.

Corey Divel: I think Trav.... I think Mr. Henry and I discussed it as well. Now that you're talking about it...it's coming back.

Brenda D'Agata: Metal Man and what was the terminology?

Corey Divel: I don't remember.....I don't remember the name. (unknown)

Charlotte Jones: So it's a steel yard.

Brenda D'Agata: No. Not necessary. Also.....

Charlotte Jones: The left sign that says steel yard..... is that Metal Man?

Brenda D'Agata: Metal Man is steel or..... I'm....

Corey Divel: Ferrous or non-ferrous? Is that what we are referring to?

Brenda D'Agata: No.

Corey Divel: No?

Brenda D'Agata: We looked it up cause we wanted to make sure it fit and it did.
Um...I guess.....

Charlotte Jones: So you agree that they are talking about entire property and the left side would need the additional screening to comply down the left side.

Brenda D'Agata: Yes.... I do now but.....since Mr. Henry's letter specifically states interpretation of ordinance concerning the use of.... of the property for a business as a salvage yard or recycling center. I had no reason to think it was talking about anything else.

Travis Henry: With all due respect, Ms. D'Agata, the reference on my letter is to the parcel, the tax parcel which is all of your property. And it has the property addressed in your tax.... (unknown)....so I wasn't distinguishing between business. We were dealing with the actual parcel, the entire parcel.

Dan Moore: It doesn't seem unreasonable.

Unknown: Unknown

Brenda D'Agata: Oh, Ok. Well, see what we read was this.....

Charlotte Jones: Yea, she does to the left side, on the right side, Then that would suffice the city.

Brenda D'Agata: We can do that.

Travis Henry: Do you agree?

Corey Divel: Well, I don't know how to say it.

Charlotte Jones: So we make a motion that she comply, by adding screen to the left side.

Corey Divel: Well, your interpretation would be that if she added, she would be in compliance. That is what you all would need to say. I think. Does it sound appropriate?

Travis Henry: Yea and I think that as long as it's not visible, that's, that's what the ordinance says. And I think that...if that's the steps they take, then.....

Brenda D'Agata: So you mean you want us to screen the other business, as well as the recycling. Ok.

Travis Henry: Yes, Mam, all of your property would be what the city's position would be.

Charlotte Jones: Need a motion, please.

Dan Moore: So make a motion to comply.

Ray Garner: Second

Dan Moore: As the right side of the business has been done.

Unknown: Yea.

Dan Moore: I'm sorry.

Multiple voices speaking.

Charlotte Jones: You need to say if the left side. If she does additional screen on the left side, then it would be in compliance.

Dan Moore: Ok. I make a motion.... If I'm backwards.

Corey Divel: Yea. (Unknown) Appropriate language.

Ray Garner: Just to complete the screening of the rest of the property.

Brenda D'Agata: Of the other business.

Multiple voices: Unknown

Travis Henry: What if it was worded (unknown)....

Dan Moore: Worded, please.

Travis Henry: If property owner screens the remainder of the property consistent with what has already been done, the portion that fully blocks the view, if they do that and it's not visible that that would comply.

Charlotte Jones: I have a motion on the floor. Mr. Moore do we have a second.

Ray Garner: Second.

Unknown Voices.

Charlotte Jones: Who's our second? Mr. Garner?

Corey Divel: Mr. Garner.

Charlotte Jones: Call the roll please.

Darla Jenkins: Dan Moore

Dan Moore: Yes.

Darla Jenkins: Ray Garner

Ray Garner: Yes

Darla Jenkins: Charlotte Jones.

Charlotte Jones: Yes

Darla Jenkins: Clint Taylor

Clint Taylor: Yes

Darla Jenkins: Ed Brown

Ed Brown: Yes

Darla Jenkins: Thank You.

Charlotte Jones: Ok, thank you for coming. Do we have any staff reports?

Corey Divel: That's all I have.

Charlotte Jones: All right. Does anybody have anything else to say? Move for adjournment. Thank you for coming.

There was no Staff Reports:

There was no Board Member Reports.

The meeting adjourned at 12:20 P.M.

