

From: John Holic

Sent: Wednesday, November 15, 2017 4:06 AM

To: Fernanda Amaral <fernanda@amaralgroup.ca>; City Council <CityCouncil@Venicegov.com>

Cc: Timothy Chisholm <timothy@chisintl.com>; Edward Lavalley <ELavalley@Venicegov.com>; Dave Persson - Persson & Cohen <dpersson@swflgovlaw.com>; Kelly Fernandez <kfernandez@swflgovlaw.com>

Subject: Re: McLeod Crushing Operation is not in compliance with the pre-annexation agreement.

Dear Timothy Chisholm and Fernanda Amaral,

On behalf of Venice City Council, thank you for your comments.

Sincerely,

John Holic

Mayor, City of Venice

From: Fernanda Amaral <fernanda@amaralgroup.ca>

Sent: Tuesday, November 14, 2017 11:29 PM

To: City Council

Cc: Timothy Chisholm; Fernanda Amaral

Subject: RE: McLeod Crushing Operation is not in compliance with the pre-annexation agreement.

Mayor/Vice Mayor and Members of Council

As a participant in today's chamber council meeting, I must say your patience and job indeed is a difficult one. To be able to straddle the line as a fiduciary of the city of Venice and remain objective is commendable. What was disappointing and our observation, was the wavering and dismissal of important facts and relevant constituents concerns.

Legal interpretation is thus: "asphalt recycling is acceptable...concrete production is acceptable...make your decision based on lack of inclusion of any mention of "concrete or cement recycling" as in reality it doesn't exist and is not included in the pre-annexation agreement. That is a fact and is your legal obligation to your constituency.

Of particular interest was the comment made by councillor Jeanette Gates who indicated "that Mr. McLeod's business was not an illegal business". We do not believe that council proved beyond a doubt that in fact his business is a legal operation according to the current confines and operations as per zoning bylaws. Of further concern Ms Gates commented that when in doubt the discussions tilt toward "the applicant" is this in fact a judicial precedent or just a personal bias?

We believe that Mr. McLeod's application is in fact in full violation of the pre-annexation given that: "asphalt recycling" is acceptable there is no mention of concrete recycling.

Given this ambiguity with the zoning restrictions, would it not make total sense to air on the side of caution versus ambiguity especially of past precedent as demonstrated by the applicant?

In addition we understand:

1. The applicant had no permit/business license for said operations
2. The applicant was in violation of numerous city ordinances
3. The applicant had numerous stop work injunctions that were not adhered to
4. The applicant was potentially malicious in indicating they had spoken to members of the Venetian Board when no such conversations had taken place

All of these facts point to a strong lack of integrity and willingness to work fairly and honestly with his neighbors. And yet, as a Council are to believe that this applicant will co-operate and work in an honourable and neighbourly fashion in adhering to all that is imposed going forward on a "trust me basis" when he has failed to do so in the past.

To open the forum at the end to the meeting and allow the applicant to sculpt the motion for tomorrow's council is an embarrassment and misuse of public trust. Why was the applicant allowed to continue with his concerns, comments and lack of co-operation once council had terminated the public discussion?

However we believe that the consensus of the audience and your constituents was one of disbelief and disappointment that the important facts were indeed dismissed and not recognized.

We request that this application be denied on the basis that council must properly enforce the definitions outlined specifically in the pre-annexation agreement.

Legal interpretation is thus: "asphalt recycling is acceptable...concrete production is acceptable...make your decision based on lack of inclusion of any mention of "concrete or cement recycling" as in reality it doesn't exist and is not included in the pre-annexation agreement. That is a fact and is your legal obligation to your constituency.

Thank you for your consideration

Venice Residents
Timothy Chisholm Fernanda Amaral

From: ERIN H. CHRISTY [<mailto:echristy@williamsparker.com>]
Sent: Tuesday, November 14, 2017 12:39 PM
To: Lori Stelzer <LStelzer@Venicegov.com>
Cc: BAILEY, CHARLIE <cbailey@williamsparker.com>; kfernandez@swflgovlaw.com; Roger Clark <RClark@Venicegov.com>; dparks@grimesgoebel.com; Jerry Jasper <jjaspernc@gmail.com>; Egloff, Maggie L. <megloff@williamsparker.com>
Subject: RE: McLeod Recycling Yard - 700 Gene Green Road

Lori,

Out of respect of the City Council's time and in the interest of allowing for a more efficient meeting, our client, VG&RC Community Association, Inc., is opting not to petition for affected party status for the purpose of participating in today's hearing. While our client is an affected party with standing, it will instead present its testimony at the time of public comment, rather than using the additional time and rights it would otherwise receive in the conduct of the hearing. They believe they can make their points regarding the incompatibility of the proposed McLeod Recycling Yard and its failure to comply with applicable City regulations in the time permitted under public comment. By this email, our client is reserving the right, as an affected party having standing, to participate in any appeals or other proceedings relating to the City Council's action on this application.

Thank you very much for your time.

Erin



Erin Hope Christy
Attorney at Law
Williams Parker Harrison Dietz & Getzen
(941) 893-4007
echristy@williamsparker.com
williamsparker.com
200 South Orange Avenue, Sarasota, FL 34236



This email is a PRIVATE communication and may be subject to attorney-client privilege or attorney work product. It is intended only for the person(s) to whom this email is addressed. If you have received this email message or any attachment in error, please do not read, copy, or use it, and do not disclose it to others. Please notify the sender of the delivery error immediately by replying to this email and then deleting the original message from your system without making a copy. Thank you.

WILLIAMS PARKER
HARRISON DIETZ & GETZEN
ATTORNEYS AT LAW
EST. 1925

Erin Hope Christy
Attorney at Law
echristy@williamsparker.com
T: (941) 893-4007
F: (941) 366-3906

November 13, 2017

Via Email

Lori Stelzer, City Clerk
City of Venice
401 West Venice Avenue
Venice, Florida 34285

Re: McLeod Recycling Yard – 700 Gene Green Road Site & Development Plan Application
(Application No. 17-03SP)

Dear Ms. Stelzer,

This firm represents VG&RC Community Association, Inc. ("Venetian"), the representative association for approximately 1,350 homeowners in the Venetian Golf and River Club community located north of Laurel Road, south of Gene Green Road, and between Knights Trail and Myakka River State Park.

The Venetian community is located south of the McLeod Recycling Yard proposed by 700 Gene Green Road, LLC ("McLeod"), as reflected in its Site & Development Plan Application No. 17-03SP ("Application"), and Venetian is a registered neighborhood association receiving notice under Section 86-49(h)(4), *City of Venice Zoning Code*. Note that Venetian is referenced on the registered neighborhood list as "Venetian Golf & River Club Community Association;" however, the legal name of the incorporated Venetian entity is "VG&RC Community Association, Inc."

Venetian has standing to participate as a party and is requesting affected third party status to participate in the City Council proceeding relating to the McLeod Application. Florida case law has for decades very clearly established under what circumstances a landowner has standing in quasi-judicial zoning proceedings such as the McLeod Recycling Yard Application. The Florida Supreme Court's opinion in *Renard v. Dade County*, 261 So. 2d 832 (Fla. 1972), continues to be the principal case on this topic. *Renard* establishes the "special damages" rule, which is derived from the law of public nuisance. *Id.* at 833. The rule is based on the principle that a private landowner may not seek to abate a municipal zoning violation existing on others' lands, unless such private landowner has suffered special damages different in kind and degree from the rest of the community. *Id.* *Renard* expanded this standard to be applied when determining if a private landowner has standing as an adversely-affected party for the purpose of participating in a quasi-

judicial zoning proceeding. *Id.*

In determining whether Venetian's interest is sufficient to give standing as a party, the City Council is to consider such factors as: (1) the proximity of Venetian from the subject property receiving the zoning approval; (2) the character of the surrounding neighborhood, including the existence of common restrictive covenants and setback requirements; (3) in the case of a rezoning, what type of zoning change is proposed, and; (4) whether the petitioner seeking standing is among those entitled to receive notice under the municipality's zoning code. *Id.*

First, Venetian is located within approximately 4,500 feet, as the crow flies, from the proposed recycling plant with nothing obstructing the distance but water, across which sound carries. Second, with regard to the surrounding neighborhood, the Gene Green Planning Area, within which the proposed recycling plant is situated, is located immediately adjacent to Venetian's Low Density Residential neighborhood and planning takes into account Gene Green's proximity to residentially zoned property by creating Policy 16.25 of the City's Comprehensive Plan. This policy is "to ensure an adequate landscaped buffer between the Gene Green Sector and adjacent residential areas to protect adjacent uses from environmental impacts resulting from excavation, industrial, commercial, or other non-residential activity." Third, while no change in zoning is proposed, the use requested by McLeod requires an interpretation of the zoning code and related pre-annexation agreements. Fourth, Venetian is a registered neighborhood association receiving notice under Section 86-49(h)(4), *City of Venice Zoning Code*, and McLeod was required to provide notice to Venetian. An application of the standards under *Renard* requires Venetian being granted affected party status.

Additionally, we have reviewed the Application and find it to be inconsistent with the City's zoning code and the applicable pre-annexation agreements. Looking ahead to the City Council hearing, Venetian is an aggrieved third party entitled to challenge any decision based on inconsistency with the comprehensive plan under Florida Statutes Section 163.3215 and asserts its right to initiate and participate in any such proceedings.

Thank you for your kind attention to this matter.

Best regards,



Erin Hope Christy
For the Firm

cc: Kelly Fernandez, City Attorney (kfernandez@swflgovlaw.com)
Jeff Shrum, Development Services Director (jshrum@venicegov.com)
Roger Clark, Senior Planner (rclark@venicegov.com)
Derin Parks, Grimes Goebel, attorney for McLeod (dparks@grimesgoebel.com)
Mr. Jerry Jasper (jjaspernc@gmail.com)

4367543.v1

From: Carol and Igor Bishko [mailto:ibishko@aol.com]

Sent: Friday, November 10, 2017 8:02 AM

To: City Council <CityCouncil@Venicegov.com>

Subject: Concrete crushing plant appeal

Dear Sirs:

I implore to you to oppose the McCleod Cement Crushing appeal and please vote to deny their request.

This North Venice location has more than enough noise and dust from other industrial companies.

Please don't buckle to the threat of lawsuits and do what is best for your residents.

Sincerely

Igor and Carol Bishko

265 Martellago Drive