

Site Plan Petition 1703-SP
Site and Develop Plan Application
700 Gene Green Road LLC

McLeod Recycling Yard, Parcel 0365-00-1070, 700 Gene Green Road

Deed #2008149817 Cemex, Inc., to Cemex Construction Materials Florida LLC, November 14, 2008 and by Deed of Correction #2016091645 July 25, 2016.

Deed #2016091659 Cemex Construction Materials Florida LLC to 700 Gene Green LLC, July 25, 2016, and by Deed of Correction #2017041131, April 4, 2017.

3 Petitions for Annexation 2003-29-A, B & C, 3 Pre-Annexation Agreements, dated June 8, 2004 and Annexation Ordinance No. 2004-26, dated June 22, 2004, were all recorded together in 2004126864 (59 Pages). The Pre-Annexation Agreement covering the 700 Gene Green LLC property was covered by the R. Gene Smith and the City of Venice Pre-Annexation Agreement, which provided as follows:

“WHEREAS, the Owner owns two parcels of land comprising approximately 648 acres (hereinafter referred to as the Subject Property) located in Sarasota County, Florida, which is more particularly described by the legal description attached hereto as Exhibit “A””

6. CURRENT USE OF SUBJECT PROPERTY: APPLICABLE STANDARDS AND CONDITIONS.

...

“B. CONDITIONS: The Subject Property shall comply with the following standards during any period in which it is being utilized for the permitted uses specified above:

i. the stockpiling and recycling on the subject parcel shall be limited to concrete, asphalt, vegetative landscaping material and other aggregate products produced on the Subject Property.”

**“EXHIBIT A
LEGAL DESCRIPTION”**

[The “Legal Description” is a long metes and bounds description, plus an easement on the private roadway extending north of Gene Green Road with 3 exceptions:

Exception #1: the metes and bounds of the 30’ private roadway;

Exception #2: The 5 acres previously sold and now owned by Miami Valley Ready Mix and used as concrete block plant; and

Exception #3: The 69.4 acres previous sold and now owned by AJAX Asphalt.]

APPEAL

The Appeal requests that:

I. The VGRC Community Association “affected party status” granted by the Planning Commission be reversed.

II. The denial of the Petition by the Planning Commission be reversed.

I. The VGRC Community Association is a proper "affected party," because it was an "affected party" to the original rezoning of the 700 Gene Green LLC property when it was owned by Cemex, Inc., and rezoned by Ordinance No. 2008-07, adopted February 6, 2009. Prior to the passage of that Ordinance, an Agreement dated January 16, 2009 (Multi-Party Agreement), was entered into by Venice Mineral & Mining, LLC (successor to R. Gene Green), Cemex, Inc., predecessor to 700 Gene Green LLC, Miami Valley Ready Mix of Florida, LLC and APAC-Southeast, Inc., with the VGRC Community Association, Inc.

The stipulations set forth in Ordinance No. 2008-07, which included incorporation of the prohibitions of the applicable Pre-Annexation Agreements, were specified in the Multi-Party Agreement with the VGRC Community Association, Inc. At the time, the understanding was that Cemex planned to use the property for a concrete block plant. No one mentioned the possibility of concrete recycling because it was clearly prohibited.

II. The denial of the Petition by the Planning Commission should be sustained.

1. The applicable Pre-Annexation agreement specifically provides that "the stockpiling and recycling on the subject parcel shall be limited to concrete, asphalt, vegetative landscaping material and other aggregate products *produced on the Subject Property.*"

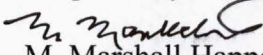
2. The prohibitions in the Pre-Annexation Agreement were incorporated into the Multi-Party Agreement dated January 16, 2009, with the VGRC Community Association, Inc., and were binding on all parties, including Cemex, Inc., "and their respective successors and assigns."

3. PID Zoning (Section 86-132) does not list concrete recycling as a "permitted use", but it does have a provision for a Special Exception by the Planning Commission for "Any industrial use not specifically permitted or prohibited which is otherwise lawful."

In the Multi-Party Agreement dated January 16, 2009, we specifically excluded a number of the "permitted uses" in Section 86-132, because of the close proximity to the residential developments. We did not include another prohibition against concrete recycling, because it was already prohibited in the Pre-Annexation Agreement what was incorporated by reference.

4. The noise and dust that would be generated from a concrete recycling plant would in my opinion create a nuisance for the single-family homes in the immediate area.

Respectfully Submitted November 14, 2017: Copy of Multi-Party Agreement to Clerk.


M. Marshall Happer III, Individually
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