

MANISTEE CITY PLANNING COMMISSION

Meeting of Thursday, November 2, 2006
7:00 p.m. -Council Chambers, City Hall, 70 Maple Street,
Manistee, Michigan

AGENDA

- I Roll Call
- II Public Hearing
 - None
- III Approval of Minutes
 - Planning Commission Meeting (10/5/06)
- IV New Business
 - 1. By-Law Review/Adoption
 - 2. Schedule Meeting/Worksession Dates 2007
 - 3.
- V Unfinished Business
 - None
- VI Other Communications
 - 1.
 - 2.
- VII Citizen Questions, Concerns and Consideration
(Public Comment Procedures on the Reverse Side)
- VIII Work/Study Session
 - 1.
 - 2.
- IX. Adjournment

Public Comment Procedures

The City of Manistee Planning Commission welcomes public comment in support of its decision-making process. To assure an orderly, fair and balanced process, the Planning Commission asks that participants at all public hearings and during the Public Comment portion of the meeting observe the following rule of procedure:

1. The Chairperson will recognize each speaker. When a speaker has the floor, he/she is not to be interrupted unless time has expired. Persons speaking without being recognized shall be out of order.
2. Each speaker shall state their name and address for the record and may present written comments for the record.
3. Speakers shall address all comments and questions to the Planning Commission.
4. Unless waived by the Planning Commission for a specific meeting or a specific speaker, public comment shall be limited to five (5) minutes per speaker, one time only. If a group of people wish to be heard on one subject, a spokesperson may be designated who may request that more than five (5) minutes be permitted for the collective comments of the group as presented by that speaker.
5. The Chairperson may request that repetitive comments be limited or abbreviated in the interest of saving time and allowing others to speak.
6. The Chairperson may establish additional rules of procedure for particular hearings as he/she determines appropriate.
7. Normal civil discourse and decorum is expected at all times. Applause, shouting, outbursts, demonstrations, name-calling or other provocative speech or behavior is not helpful to the decision-making process and may result in removal from the hearing or an adjournment.

Thank you for your interest in the work of the City of Manistee Planning Commission and for your cooperation with these rules of procedure.



PLANNING AND ZONING
COMMUNITY DEVELOPMENT
231.398.2805
FAX 231.723-1546
www.ci.manistee.mi.us

MEMORANDUM

TO: Planning Commissioners

FROM: Denise Blakeslee 

DATE: October 26, 2006

RE: November Planning Commission Meeting

Commissioners, the next meeting of the Planning Commission will be on Thursday, November 2, 2006 at 7:00 p.m. in the Council Chambers. We have not received any requests for this meeting and will be working on housekeeping items.

By-Laws:

The By-Laws the Planning Commission is operating under reflects the old Zoning Ordinance and they must be updated/adopted to reflect the new ordinance. So we would like to see the new By-Laws reviewed and updated during the November meeting.

For consistency it would be best if all City Boards and Commissions were to operate under the same guidelines (parliamentary procedures). We know that it will take some time for City Council to review and determine if they want to change from Robert's Rules to another guide such as Modern Parliamentary Procedures. With this in mind staff has incorporated language in the By-Laws to reflect that the Planning Commission shall operate under generally accepted parliamentary procedure *as adopted by City Council for all Boards and Commissions within the City of Manistee.*

This change in the language provides for the Planning Commission to operate under the same parliamentary procedure as City Council (currently Robert's Rules of Order). In the event that City Council wants to operate under another parliamentary procedure (such as Modern Parliamentary Procedures) we would not need to amend the By-Laws.

I have enclosed a copy of the most recent draft By-Laws that reflect the aforementioned change, the new Municipal Zoning Act and noticing for Special Meetings. Please review so we can discuss and hopefully adopt the By-Laws at the November meeting.

Meeting Dates 2007:

Members were given a list of possible Meeting/Worksession Dates for 2007 at the October meeting. There were two Meeting dates and one Worksession Date that may be in conflict due to holidays/events.

The April 5th meeting is the day before Spring Day (Good Friday).

The July 5th meeting is the day after Independence Day (4th of July).

The November worksession falls on November 15th (opening day of deer season)

While we were working on the Zoning Ordinance Re-write and the Worksessions were lasting in excess of three (3) hours we changed the starting start time for worksessions from 7:00 p.m. to 6:00 p.m. Does the Planning Commission want to keep worksessions at 6:00 p.m.?

Please call if you are unable to attend the meeting. Happy Halloween - See you next Thursday!

:djb

**CITY OF MANISTEE
PLANNING COMMISSION
BY-LAWS AND RULES OF PROCEDURES**

1. AUTHORITY

These By-laws and Rules of Procedures are adopted by the Planning Commission of the City of Manistee, County of Manistee, (hereinafter referred to as the Commission) pursuant to Public Act 110 of 2006, as amended, the Michigan Zoning Enabling Act, the City of Manistee Zoning Ordinance, and the Public Act 267 of 1976, as amended, the Open Meetings Act.

2. OFFICERS

2.1 Selection. At the December meeting, the Planning Commission shall elect a chair, vice-chair and secretary who shall serve for the next twelve (12) months and who shall be eligible for re-election. Vacancies in an office of the Commission shall be filled at the next regular meeting of the Commission. The membership shall elect one of its members to fill the vacancy until the next annual election.

2.2 Duties. The chair shall preside at all meetings and shall conduct all meetings in accordance with the rules provided herein.

The vice-chair shall act in the capacity of the chair in the absence of the chair or in the event of a vacancy in the office of chair; in which case, the Commission shall select a successor to the office of vice-chair at the earliest practicable time.

The Secretary, or a Recording Secretary appointed by the Commission, shall be responsible for the preparation of minutes, keeping of pertinent public records, delivering communications, reports, and related items of business of the Commission, issuing notices of public hearings and performing related administrative duties to assure efficient and informed Commission operations. In the event the Secretary is absent, the chair or acting chair shall appoint a temporary secretary for such meeting.

2.3 Tenure. The officers shall take office immediately following their election. They shall hold their office for a term of one year, or until their successors are elected and assume office.

3. MEETINGS

- 3.1 Meeting Notice. Notice of all meetings shall be posted at City Hall on a date established by the Commission. The notice shall include the date, time and place of the meeting. Any changes in the date or time of the regular meetings shall be posted and noticed in the same manner as originally established. When a regular meeting date falls on or near a legal holiday, the Commission shall select suitable alternate dates in the same month, in accordance with the Open Meeting act.
- 3.2 Attendance A member may be removed from office by the appointing City Council for neglect of official duty or misconduct in office after being given a written statement for reasons and an opportunity to be heard thereon. Un-excused absences may be reason for removal and three (3) un-excused absences in a row, and shall be reported in writing to the City Manager.
- 3.3 Special Meetings. A special meeting may be called by two members of the Planning Commission upon written request to the Secretary or by the Chairperson. The business which the Planning Commission may perform shall be conducted at a public meeting of the Planning Commission held in compliance with the Open meeting Act. Public Notice of the time, date, and place of the special meeting shall be given in a manner as required by the Open Meeting act, and the Secretary or Recording Secretary shall provide notice to commission members by writing, telephone, or e-mail.
- 3.4 Quorum. In order for the Commission to conduct business or take any official actions, a quorum consisting of at least five of the nine members of the Commission shall be present. When a quorum is not present, no official action, except for the closing of the meeting may take place. The members of the commission may discuss matters of interest, but shall take no action until the next regular or special meeting. All public hearings without a quorum shall be scheduled for the next regular or special meeting and no additional public notice is required provided the date, time and place is announced at the meeting.
- 3.5 Public Hearings. Hearings shall be scheduled and due notice given in accordance with the provisions of the Acts and Ordinance cited in Section 1. Public hearings conducted by the Planning Commission shall be run in an orderly and timely fashion. This shall be accomplished by the following procedure.

1. The Chair of the Planning Commission shall announce that a public hearing will be conducted on a request.
2. The Chair shall read the public hearing announcement as published in the newspaper and give a brief description of the hearing subject and the public notice procedure.
3. The Chair shall announce the following hearing rules:
 - a. The Chair will recognize each speaker. When a speaker has the floor, he/she is not to be interrupted unless time has expired. Persons speaking without being recognized shall be out of order.
 - b. Each speaker shall state their name and address for the record and may present written comments for the record.
 - c. Speakers shall address all comments and questions to the Planning Commission and comments will be limited to the subject matter of the Public Hearing.
 - d. Unless waived by the Planning Commission for a specific meeting or a specific speaker, public comment shall be limited to five (5) minutes per speaker, one time only. If a group of people wish to be heard on one subject, a spokesperson may be designated who may request that more than five (5) minutes be permitted for collective comments of the group as presented by that speaker.
 - e. The Chair may require that repetitive comments be limited or abbreviated in the interest of saving time and allowing others to speak. Everyone shall have an opportunity to speak before someone is allowed to speak a second time.
 - f. The Chair may establish additional rules of procedure for particular hearings as he/she determines appropriate.
 - g. Normal civil discourse and decorum is expected at all times. Applause, shouting, outbursts, demonstrations, name-calling or other provocative speech or behavior may result in removal from the hearing or an adjournment.
4. Once all public comments have been stated, the Chair shall close the hearing. Any voting member of the Planning Commission may initiate a motion to close the hearing.
5. Public Hearings shall be carried out in the following format:
 - a. The Chair shall open the hearing.
 - b. The Applicant shall present any comments and explanation of the case. Applicants presentation shall not be subject to the five (5) minute limitation.
 - c. The City staff and any consultants serving the City shall present their reports.
 - d. The hearing will be opened for public comment.
 - e. The public comment period will be closed.
 - f. Deliberation and discussion by the Planning Commission.
 - g. Disposition of the case by the Planning Commission.

3.6 Motions. Motions shall be restated by the Chair before a vote is taken. The name of the maker and supporter of each motion shall be recorded.

3.7 Voting. An affirmative vote of the majority of the Commission shall be required for the approval of any requested action or motion placed before the Commission. Voting shall ordinarily be by voice vote; provided however that a roll call vote shall be required if requested by any Commission member or directed by the Chairperson. All members of the Commission including the Chairperson shall vote on all matters, but the Chairperson shall vote last. Any members may be excused from voting only if that person has a bonafide conflict of interest as recognized by the a majority of the remaining members of the Commission. Any members abstaining from a vote shall not participate on the discussion of that item.

3.8 Order of Business. A written agenda for all regular meetings shall be prepared as followed.

The order of business shall be:

Call to Order.

Roll Call

Approval of Agenda

Approval of Minutes

Public Hearings

New Business

Old Business

Public Comments and Communications concerning items not on the agenda

Correspondence

Staff Reports

Members discussion

Adjournment

A written agenda for special meeting shall be prepared and followed, however the form as enumerated above shall not be necessary.

3.9 Rules of Order. All meetings of the Commission shall be conducted in accordance with generally accepted parliamentary procedure as adopted by City Council for all Boards and Commissions within the City of Manistee.

3.10 Agenda Items. For an item to be considered at a regular Planning Commission meeting, it must be submitted to the City Community Development Department no later than the established policy of the City prior to the next scheduled Planning Commission Meeting.

4. MINUTES

- 4.1 Preparation. Commission minutes shall be prepared by the Secretary or Recording Secretary of the Commission. The minutes shall contain a brief synopsis of the meeting, including a complete restatement of all motions and recording votes; complete statement of the conditions or recommendations made on any action; and recording of attendance. All communications, action and resolutions shall be attached to the minutes.

5. OPEN MEETINGS AND FREEDOM OF INFORMATION PROVISIONS

- 5.1 All meetings of the Commission shall be open to the public and held in a place available to the general public.
- 5.2 All deliberations and decision of the Commission shall be made at a meeting open to the public.
- 5.3 A person shall be permitted to address a hearing of the Commission under the rules established in subsection 3.5, and to address the Commission concerning non-hearing matters at the time designated for such comments.
- 5.4 A person shall not be excluded from a meeting of the Commission except for breach of the peace, committed at the meeting.
- 5.5 All records, files, publications, correspondences, and other materials are available to the public for reading, copying, and other purposes as governed by the Freedom of Information Act.

6. COMMITTEES

- 6.1 Executive Committee. The Executive Committee of the Planning Commission shall consist of the Chair, Vice -Chair and Secretary. The Executive Committee shall be the Joint Ordinance Review Committee.
- 6.2 Ad Hoc Committees. The Planning Commission or Chair of the Planning commission may establish and appoint ad hoc committees for special purposes or issues, as deemed necessary. No more than four members of the Planning Commission may serve on an ad hoc committee at any given time. Committee appointments shall be made at the first regular meeting held in January of each year or at the time the committee is formed.

6.3 Rules of Procedure. All Sub-committees are subservient to the Planning Commission and report their recommendations to the Planning Commission for review and action and shall be conducted in accordance with generally accepted parliamentary procedure as adopted by City Council for all Boards and Commissions within the City of Manistee.

7. ANNUAL REVIEW OF BY-LAWS

The Commission shall annually review their By-Laws at the regularly scheduled meeting in January .

8. AMENDMENTS

These rules may be amended by the Commission by a concurring vote to subsection 3.7, during any regular meeting, provided that all members have received an advanced copy of the proposed amendments at least three (3) days prior to the meeting at which such amendments are to be considered.

I HEREBY CERTIFY that the above Bylaws were adopted the ____ day of _____, 2006.

Maureen Barry, Secretary

Approved by the City of Manistee Council

Date

Robert Goodspeed, Mayor

Planning Commission
Meeting/Worksession
Dates 2007

CALENDAR FOR 2007

Holidays are highlighted in yellow

Meeting Dates (Blue) Worksession Dates (Green)

January 4 January 18

February 1 February 15

March 1 March 15

April 5 April 19
(Day before Good Friday Holiday)

May 3 May 17

June 7 None

July 5 None
(Day after 4th of July Holiday)

August 2 None

September 6 September 20

October 4 October 18

November 1 November 15
(Opening Day of Deer Season)

December 6 None

Planning Commission needs to decide if the bolded dates should be changed due to conflicts with holidays.

Also meetings are held at 7:00 p.m. and Worksession are held at 6:00 p.m. the Planning Commission needs to determine if the times should remain the same or if the Worksessions should be changed to 7:00 p.m.

JANUARY							JULY						
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14	15	16	17	18	19	20	15	16	17	18	19	20	21
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FEBRUARY							AUGUST						
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MARCH							SEPTEMBER						
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APRIL							OCTOBER						
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MAY							NOVEMBER						
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JUNE							DECEMBER						
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MEMO TO: Manistee City Planning Commission
Manistee City Council

FROM: Mitch Deisch, City Manager



DATE: November 1, 2006

SUBJECT: City Council Policy #3

**City Manager's Office
231-398-2801**

At the October 19, 2006 Planning Commission Work Session a question was raised regarding City Council Policy #3. Attached is a copy of this policy. The question regarding Council Policy #3 centers around why Planning Commission involvement was not included in the potential sale of 19.48 acres of City owned property located on Red Apple Road to Wal-Mart.

After reviewing the Council Policy with City Attorney and Staff, it is my belief that the intent of the policy was to accomplish several things:

1. Ensure the City was receiving a fair price for the property being disposed.
2. Involve the Planning Commission to ensure the Master Plan was being complied with regarding the proposed use of the disposed property.

In regards to the proposed sale of City owned property to Wal-Mart, several issues are important to identify:

1. The property in mention is located in Filer Charter Township. During the past five years that I have been City Manager, and based upon research of City owned property sales since the policy was adopted in 1988, Council Policy #3 was never used when selling City owned property outside of the City limits. A potential sale of residential lots located in Filer Township was referred to the Planning Commission in 1992, but did not result in a sale. An example of the policy not being followed is the sale of three parcels in the Renaissance Industrial Zone located in Manistee Township since 1999.
2. The recently updated Planning Commission Master Plan deals with all the property located within the City of Manistee. No City property located outside of the corporate limits, except for the Renaissance Industrial Park, is included in the City Master Plan.

This is not coincidental. Rather, the property is governed by the Master Plan and Zoning Ordinance of the community in which they are located. Both the Manistee Township and Filer Township Master Plans are reviewed in the City of Manistee Master Plan.

3. The City of Manistee did ensure that the property in mention was to receive fair market value return on the sale of City owned property. Placing the property out for competitive bid is one method to obtain fair market value, but not the only way.

In order for the City to remove the State of Michigan reverter clause, a licensed State of Michigan-approved appraiser was required to appraise the property based upon its highest and best use. The City of Manistee contracted with Appraiser Mike Tarnow with Northern Michigan Real Estate Consultants to perform the appraisal. Appraised value for the entire 40+/- acre former City Landfill parcel is \$79,500. This equates to less than \$2,000 per acre. The Wal-Mart offer was \$100,000 per acre.

When reviewing Council Policy #3 and reviewing Administration and Council's past practice on how the policy has been used, it is my professional opinion that the intent of the policy was to deal with City owned property located within the City limits. City Council is being requested to amend City Council Policy #3 to clarify that City owned property located outside of the City limits is exempt from Planning Commission review as well as competitive bidding.

MDD:cl

Enclosure

cc. Jon Rose, Community Development Officer



PLANNING AND ZONING
COMMUNITY DEVELOPMENT
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MEMORANDUM

TO: Mitch Deisch
FROM:  Jon Rose
DATE: October 20, 2006
RE: Council Policy 3

You asked for my recollections of the Development of the Renaissance Zone, Renaissance Industrial Park, and sale of lots within Renaissance Park as those activities related to Council Policy 3 (Policy and Procedure for Sale of City-Owned Property).

It is important to note that I was not with the City of Manistee in 1988 when the policy was adopted and have no special knowledge of intent beyond what the policy says.

The Renaissance Zone Development was begun in the fall of 1995. The County Planning Commission formed a committee with representatives of the Villages of Kaleva and East Lake, Manistee and Filer Townships, the EDO, MESC, and the City of Manistee. In September of 1996 the County submitted an application for Renaissance Zone Status to the State. This application was co-signed by the Chief Elected Official of the six affected Municipalities.

In June of 1996 the City of Manistee received a Release of Reverter Restriction from the MDNR allowing the sale of the property.

Review of the Planning Commission Minutes for this period supports my belief that the only involvement of the Planning Commission was an occasional status update from City Staff. Planning Commission was asked to adopt, and subsequently did unanimously approve an amendment to the Zoning Ordinance to add specific regulations to those properties inside the City Limits which were included in the Renaissance Zone Application.

Beginning in September of 1996 a Planning Committee was formed to discuss creating an industrial park on the City owned property on M-55. This committee included two members of the Manistee Planning Commission. In January of 1997 this committee unanimously voted to adopt the Site Plan and pursue Platting. They then unanimously voted to disband the Planning Committee.

City Council sold Lot A to Elmer's for \$71,000 in March of 1999. In February of 2001 City Council approved a purchase agreement with Distributed Power in the amount of \$55,600 for lot 5 in the Renaissance Park. Most recently, City Council approved the sale of Lot 3 to MetalLine for \$35,000. None of these property sales were referred to the Planning Commission.

I believe the lack of Planning Commission involvement was not accidental, but rather consistent with the intent of the Policy. City owned property outside the City Limits is perceived as an asset to be managed by City Council rather than a part of the City subject to Land Use Planning.

To further bolster my assertion that the policy was intended to apply to property within the City, I quote from the policy: *"This process will insure that the property is developed in the way which the City deems in the best interest of the future development of the City."*

POLICY AND PROCEDURE
FOR THE
SALE OF CITY OWNED PROPERTY

The City of Manistee accepts proposals from persons interested in purchasing City owned property. In order for the City to receive an optimal price for the property, the following policy and procedure shall be followed.

The properties owned by the City of Manistee fall into three categories:

1. Parks, roadways and municipal properties which should not be considered for sale.
2. Those properties of vacant or occupied land which have no future value or use by the City.
3. Those properties, vacant or occupied, that the City would like to market with specific anticipated uses or development.

PROCEDURE:

1. Properties offered for sale or requested for sale (that do not fall into an anticipated use category) by a buyer should be referred to the Planning Commission by the City Manager.
2. The Planning Commission will determine category (future use) and in consultation with the City Manager and City Assessor, recommend a minimum price. Those properties which are designated as having desired specific anticipated uses or development will be recommended for sale with development guidelines to be adhered to by the buyer. This process will insure that the property is developed in the way which the City deems in the best interest of the future development of the City.
3. Upon review by the Planning Commission a recommendation will be forwarded to the City Council.
4. If the City Council concurs with the recommendation, the City Manager will be instructed to advertise and accept bids for the sale.
5. The received bids will be reviewed by the Council. A bid which does not meet the recommended price may be refused or accepted by the Council. If the bid is acceptable to the Council, the Council will give public notice of the following:

- a. a description of the property.
- b. the tentative accepted price, and
- c. an offer to sell the property to any interested buyer at a price which is greater than the tentatively accepted price.

An open competitive bidding situation is created.

6. The period of time to accept this (or these) increased bids will be no longer than fifteen (15) days. If the public notice generates subsequent bids, the Council will instruct the City Manager to initiate the bid procedure again. This procedure will continue until a single highest bid is obtained.
7. Upon final acceptance of the bid, the City Council formally resolves to sell the property to the highest bidder and instructs the City Manager to execute the deal.

Properties to be leased by the City should be executed in a similar manner.

Council Policy Adopted: April 5, 1988

STATE OF MICHIGAN
MANISTEE COUNTY CIRCUIT COURT

SAND PRODUCTS CORPORATION, a
Michigan corporation,

Plaintiff/Appellant

vs.

CITY OF MANISTEE, a Michigan city;
CITY OF MANISTEE PLANNING
COMMISSION, an entity organized and
operating as part of the local government of the
City of Manistee,

Defendant/Appellee.

Case No. 06-_____ -AA

Honorable James M. Batzer

CLAIM OF APPEAL

Christian E. Meyer (P56037)
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Attorney for Plaintiff

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(231) 723-8333
Attorney for Defendant

Plaintiff/Appellant Sand Products Corporation claims an appeal from the "City of Manistee Planning Commission Resolution of Denial Special Use Permit, Case Number PC-2006-01 Sand Products Corporation" entered October 5, 2006, in the City of Manistee Planning Commission.

Sand Products Corporation further states its claim of appeal as follows:

PARTIES, PROPERTY AND JURISDICTION

1. Plaintiff/Appellant Sand Products Corporation ("Sand Products") is a Michigan corporation with its principal place of business at 60 Kercheval, Suite 200, Gross Pointe Farms, Michigan 48236.

2. Defendant/Appellee City of Manistee (the “**City**”) is a Michigan city organized under the laws of the State of Michigan.

3. Defendant/Appellee the City of Manistee Planning Commission (the “**Planning Commission**”) is an entity organized and operating as part of the local government of the City of Manistee and is authorized under the laws of the State of Michigan.

4. The Defendants have their principal offices at 70 Maple Street, Manistee, Michigan 49660.

5. Both Defendants are located within Manistee County, Michigan.

6. Sand Products owns the property shown as Phase 1, Phase 2, and Phase 3 on Site Plan No. 021146B, Revision #3 dated May 16, 2006 (the “**Site Plan**”), and attached hereto as Exhibit A (collectively the “**Property**” and each a “**Phase**”).

7. The Property is located in the City of Manistee, Manistee County, Michigan and almost completely surrounds the body of water known as “Man Made Lake.”

8. Sand Products duly applied for and was denied by the City of Manistee Planning Commission a special use permit for a planned unit development by adding Phase 3 to the existing planned unit developments and configuring the road and parcels in Phase 2 all as shown on the Site Plan (the “**Phase III PUD**”).

9. A final decision denying its application for the above-referenced special use permit for the Phase III PUD was issued by the Planning Commission on October 5, 2006. See attached Exhibit B (“**Resolution of Denial**”).

10. Sand Products brings this claim of appeal pursuant to applicable Michigan law, including but not limited to, Michigan Constitution Article VI Section 13, Michigan Constitution

Article VI Section 28, MCL 125.3101 et seq. (Public Act No. 110 of 2006), MCL 600.1615, MCR 7.101 et seq., and the City of Manistee Zoning Ordinance.

11. This court has jurisdiction over this appeal under MCL 125.3101 et seq. and the City of Manistee Zoning Ordinance because it is an appeal of an adverse decision by the City of Manistee Planning Commission denying Sand Products' application for a special use permit for a planned unit development.

12. Venue is proper in this court under MCL 600.1615 because the Planning Commission is a municipal body which exercises its governmental authority to hear and decide special use requests in Manistee County, and its principal office is in Manistee County.

GENERAL ALLEGATIONS

A. History of Property.

13. Sand Products is in the business of mining and transporting sand.

14. For approximately 40 years Sand Products mined sand from the Property, thus creating Man Made Lake. In or about 1975, Sand Products ceased such mining and since that time the Property has remained vacant.

15. Given the beautiful views and access to water provided by Man Made Lake and Lake Michigan, Sand Products concluded that the highest and best use of the Property would be for residential development.

16. The City of Manistee agreed with Sand Products and in April of 2003 the parties entered into two agreements: the Man-Made Lake Property Area Exchange Agreement and the Man-Made Lake Access Agreement (the "**Agreements**"). The Agreements are attached as Exhibit C.

17. The Agreements provided, among other things, that the parties would swap properties to aid in the development of the Man Made Lake area, that Sand Products would provide for public access to Lake Michigan and Man Made Lake, that the City would “cooperate with” Sand Products in developing the Property as a planned unit development (“PUD”), and that certain easements and vacations necessary to accomplish the parties’ purposes would be entered into and/or adopted. See Exhibit C.

18. Sand Products completed all of its obligations to-date under the Agreements and was merely waiting for approval by the Planning Commission of the Phase III PUD before completing its remaining obligations.

B. History of Planning Commission Action.

19. In April of 2003 the Planning Commission approved Sand Products’ application for a special use permit to develop Phase I and Phase II as residential PUD’s.

20. Phase III is zoned R-1.

21. Under R-1 zoning, multiple homes could be built on Phases II and III without any special use permit.

22. On January 24, 2006, Sand Products applied for a special use permit for the Phase III PUD to allow five homes to be built on Phase III. The application is attached as Exhibit D and states, among other things, that a special use permit for the Phase III PUD “would allow a more orderly, better planned and higher quality development than strict compliance with the terms of the [zoning] ordinance” and that all necessary permits would be obtained before construction. Exhibit D at 2 and 3.

23. The Phase III PUD application was later revised to include four (rather than five) homesites, to move the road to the east side of Phase III, to reduce the size of the lots, to

substantially increase the amount of lakefront public access property in Phases II and III, to provide for public parking, and to provide a public boardwalk. These changes are detailed in the correspondence and documents attached as Exhibit E, the original and revised site plans attached as Exhibit F, and the final Site Plan attached as Exhibit A.

24. The minutes of the Planning Commission meetings at which the Phase III PUD application were discussed are attached as Exhibit G. These minutes were obtained from the City of Manistee's website and some are still shown as being in "draft" format.

25. Prior to the September 7, 2006, Planning Commission meeting, the City of Manistee Fire Chief submitted a memorandum conditionally approving Phase III PUD application upon final engineering review. See Exhibit H. The Fire Chief also spoke in favor of the Phase III PUD application at the September 7, 2006, meeting.

26. Prior to the September 7, 2006, Planning Commission meeting, the City of Manistee Engineer submitted a letter conditionally approving Phase III PUD application upon final engineering review. See Exhibit I. The City Engineer also spoke in favor of the Phase III PUD application at the September 7, 2006, meeting.

27. Prior to the September 7, 2006, Planning Commission meeting, the City of Manistee Attorney submitted a letter setting forth certain conditions he had concluded should be included in any approval of the Phase III PUD application. See Exhibit J. Sand Products has no objection to these conditions, and in fact, they are necessary conditions for any development of Phase III anyway.

28. Prior to the September 7, 2006, Planning Commission meeting, the City of Manistee Community Development Director submitted a memorandum outlining all of the conditions set out above and others recommended by him to be included in any approval of the

Phase III PUD application. See attached Exhibit K. Sand Products has no objection to any of these conditions.

29. In that memorandum, the Community Development Director further set out the Special Use Review Standards and the Planned Unit Development Decision Standards applicable to the Planning Commission under the City of Manistee Zoning Ordinance. See attached Exhibit K.

C. Applicable Statutory and Zoning Ordinance Requirements.

30. MCL 125.3502 and 125.3503 allow the City of Manistee to establish special use and planned unit development requirements in its Zoning Ordinance, which the City has done.

31. Such requirements must comply with MCL 125.3502 and 125.3503.

32. MCL 125.3504 further provides as follows:

Sec. 504. (1) If the zoning ordinance authorizes the consideration and approval of special land uses or planned unit developments under section 502 or 503 or otherwise provides for discretionary decisions, the regulations and standards upon which those decisions are made shall be specified in the zoning ordinance.

(2) The standards shall be consistent with and promote the intent and purpose of the zoning ordinance and shall insure that the land use or activity authorized shall be compatible with adjacent uses of land, the natural environment, and the capacities of public services and facilities affected by the land use. The standards shall also insure that the land use or activity is consistent with the public health, safety, and welfare of the local unit of government.

(3) A request for approval of a land use or activity shall be approved if the request is in compliance with the standards stated in the zoning ordinance, the conditions imposed under the zoning ordinance, other applicable ordinances, and state and federal statutes.

(4) Reasonable conditions may be required with the approval of a special land use, planned unit development, or other land uses or activities permitted by discretionary decision. The conditions may include conditions necessary to insure that public services and facilities affected by a proposed land use or activity will be capable of accommodating increased service and facility loads caused by the land use or activity, to protect the natural environment and

conserve natural resources and energy, to insure compatibility with adjacent uses of land, and to promote the use of land in a socially and economically desirable manner. Conditions imposed shall meet all of the following requirements:

(a) Be designed to protect natural resources, the health, safety, and welfare, as well as the social and economic well-being, of those who will use the land use or activity under consideration, residents and landowners immediately adjacent to the proposed land use or activity, and the community as a whole.

(b) Be related to the valid exercise of the police power and purposes which are affected by the proposed use or activity.

(c) Be necessary to meet the intent and purpose of the zoning requirements, be related to the standards established in the zoning ordinance for the land use or activity under consideration, and be necessary to insure compliance with those standards.

(5) The conditions imposed with respect to the approval of a land use or activity shall be recorded in the record of the approval action and remain unchanged except upon the mutual consent of the approving authority and the landowner. The approving authority shall maintain a record of conditions which are changed.

33. The City of Manistee's Zoning Ordinance must meet the requirements MCL 125.3502-125.3504.

34. Section 1802 and Section 1807(G) of the City of Manistee's Zoning Ordinance set out the standards for Planning Commission review and approval of the Phase III PUD application. They are attached as Exhibit L.

D. The Resolution of Denial.

35. At its meeting on September 7, 2006, the Planning Commission voted to deny the Phase III PUD application. See Exhibit B.

36. At its meeting on October 5, 2006, the Planning Commission approved the minutes of the September 7, 2006, meeting and also adopted the Resolution of Denial attached as

Exhibit B officially denying the Phase III PUD application and stating the Planning Commission's reasons for denying the application.

37. To the best of Sand Products knowledge, there is no transcript or ability to obtain a transcript of the September 7, 2006, Planning Commission hearing, although Sand Products has used its best efforts to see if a tape may exist from which a transcript could be prepared. Please see correspondence attached as Exhibit M.

38. A news article of the Planning Commission meeting of September 7, 2006, is attached as Exhibit N.

COUNT I – CLAIM OF APPEAL

39. Sand Products incorporates by reference the allegations made in all previous paragraphs.

40. Sand Products claims an appeal from the Resolution of Denial entered October 5, 2006, in the City of Manistee Planning Commission.

41. This Claim of Appeal is timely made.

42. The Planning Commission failed to find by competent material and substantial evidence on the whole record that the Property does not meet the City of Manistee Zoning Ordinances standard for a special use permit for planned unit development that would allow Sand Products to develop the Phase III pursuant to its submitted planned unit development.

43. In addition and alternatively, the Planning Commission's decision does not represent the reasonable exercise of discretion granted by law to the Planning Commission.

44. In addition and alternatively, the Planning Commission's decision does not comply with the Michigan Constitution, the laws of this state, and/or the City of Manistee's Zoning Ordinance.

45. In particular, and without limiting the generality of the foregoing, Sand Products submits the following response to the Resolution of Denial:

1. The use shall be deemed not compatible with adjacent land use, the natural environment, and the capacities of affected public services and facilities, and that such use is not consistent with the public health, safety and welfare of the residents of the City of Manistee and the benefits of the development shall not be achievable.

Response: This simply sets a standard and does not constitute a finding of fact. Moreover, as a conclusory statement it is simply wrong. Adjacent land use to the immediate north, south, and east is residential. Housing to the south is much more dense. The proposed lot sizes are larger than the adjacent lots in the same district to the north. Sand Products owns a significant portion of the property around Man Made Lake and the remainder is owned by the City which already agreed to this development as part of the Agreements.

Further, there is no testimony or documentation supporting the Planning Commission's position that the proposed use is not consistent with the public health, safety and welfare. In fact, Brian Sousa, PE, Wade Trim (the City's engineer) testified that although the site was challenging, the proposed road and sewer system were not extraordinary or even uncommon. He provided the expert opinion that the road and sewer could be successfully constructed with proper engineering techniques. In addition, the affected public services and facilities are currently granted to the City of Manistee through a lease from Sand Products.

2. The proposal is within a High Risk Erosion Area as determined by the Michigan Department of Environmental Quality and is subject to special consideration, review and evaluation.

Response: Sand Products has acknowledged from the beginning that the site is regulated under Part 323, Shorelands Protection and Management of the Natural Resources and Environmental Protection Act. Over 50% of the Lake Michigan shoreline is regulated under this statute. There is nothing in the statute that suggests residential housing is incompatible or even unwise within these regulated areas. In fact the statute sets up the appropriate standards and protocol to ensure new construction is reasonably secure from erosion.

The Site Plan meets or exceeds all standards in the Act. Sand Products has even agreed, as a contingency to final approval of the P.U.D., to submit the plan to the MDEQ for review. The legislation provides no statutory requirement for such approval but Sand Products offered this submittal as a demonstration of good faith.

Finally, Sand Products has the right to use man engineered systems to secure the Property from erosion, making the likelihood of a threat to the health, safety, and welfare of the public minimal. This was confirmed by the City Engineer from Wade Trim when speaking of the likelihood that erosion would compromise the Property in the future.

3. Lake Michigan water levels are near record lows, as illustrated by the US Army Corps of Engineers report titled "Lake Michigan Lake Levels 1960-2006" from their Monthly Report for "Michigan-Huron" giving a false sense of the actual size of the property in questions.

Response: The submitted Site Plan (Exhibit A) shows topographic contour lines that identify land elevation relative to sea level. The current water elevation and ordinary high water mark were clearly labeled. Project boundaries are above the 100-year flood plain and all proposed lots are well above any lake levels ever recorded. Sand Products is not attempting to utilize property outside of these bounds for acreage credit when calculating density.

4. The Planning Commission is considering in this decision that favorable conditions today may not continue in the future. The proposed homes are located on a sand dune that separates Man Made Lake and Lake Michigan. This sand dune has historically been breached due to natural erosion and fluctuations of Lake Michigan water levels opening Man Made Lake to Lake Michigan. Sand dunes by nature are subject to drifting and moving sand as well as water erosion. The Planning Commission understands that historical analysis of the subject property illustrates the fluctuations that has left the subject property undevelopable in the past. It is only due to historically low water table levels and the application of engineering methods to stabilize and increase the dunes size that the applicant is able to pursue developing the dune at this time - natural conditions may change again subjecting the property to natural elements. Prudent natural hazard mitigation principles dictate not developing in known areas where the environment will most likely compromises human activity.

Response: Sand Products' preparation of the submitted Site Plan included consideration of the State of Michigan's recession rate analysis and update, provided by the MDEQ. This analysis evaluates site conditions from 1938 through 1989. This analysis included the brief period when the breach occurred and is referenced in the Department's field notes. This condition was temporal and easily mitigated. In fact, the breach may be largely attributed to adverse conditions created by the adjacent structure, installed by the City perpendicular to the shoreline, immediately adjacent to the Property.

Moreover, while some of the property between Man Made Lake and Lake Michigan was flooded when Lake Michigan rose to a historical high and washed over the property, the property is some 16 feet higher now, and the entire project

is above the 100-year flood plain. The City Engineer from Wade Trim upheld this view at the September 7, 2006, Planning Commission meeting.

5. The Planning Commission has approved the development of Phase 1 and Phase 2 of the parcel in question and recognizes that when the site is reviewed as a whole the environmental considerations do not allow the development of a Phase 3 but believes the applicant has been allowed to take advantage of their economic backed expectations of their property.

Response: Sand Products is not at this time making a takings claim, and this "finding of fact" has no relevance to the statutory or zoning ordinance standards that the Planning Commission is bound to follow.

6. While not required by State regulations but within the right of the Planning Commission when reviewing a PUD as per the requirements of the City of Manistee Zoning Ordinance finds that locating utilities (water, sewage, etc.) between and within close proximity of two bodies of water, within an unstable sand dune, in a State designated High Risk Erosion Area not in the best interest of the public health, safety and welfare of the residents of the City of Manistee as those utilities are in jeopardy of being subjected to an unusual amount of environmental stress that may cause a public health, safety and welfare issue.

Response: There was no testimony or documentation that the sand in this location was unstable. In fact, engineering tests required by the city as part of this review demonstrated the soil is well suited for construction and has significant load-bearing capacity. The City Engineer testified that in his professional opinion there was nothing unusual or hazardous about the road or sewer construction provided it was properly engineered. The applicant has agreed to submit engineered drawings as a contingency to the P.U.D. approval. There is nothing in State law that prohibits the construction of the utilities as proposed. The city has already acknowledged that Part 323, which regulates high risk erosion areas, does not prohibit or even regulate the utilities.

7. The Planning Commission finds that the location of the driveway in such close proximity to Man Made Lake, with an understanding that Man Made Lake Water levels fluctuate over time, is unsuitable to support proper access to the site. Issues such as stabilization – erosion (landslide) be considered.

Response: The road is located next to Man Made Lake at the very request of the Planning Commission. The original site plan (Exhibit F) depicted the road well away from Man Made Lake. After meeting with the Planning Commission, Sand Products followed the suggestions of the Planning Commission and designed a road much closer to Man Made Lake. The road is designed to be above the 100-year flood plain and would accommodate any conceivable fluctuation in future water elevations. The City Engineer testified this road was not unusual and

could be accomplished with appropriate engineering, including techniques that would stabilize the slopes and prevent slumping or erosion.

The proposed placement of the road also provided for a public use band between the road and the lake. Public use currently only exists through a lease between Sand Products and the City. This lease can be cancelled with 90 days notice.

8. That there are agreements between Applicant and the City that need to be resolved.

Response: In fact, the Agreements between the City and Sand Products require the City to cooperate with Sand Products in designing the Property as a PUD. There is nothing to "resolve" as Agreements clearly state what are the obligations of each party and Sand Products had no objection to the City Attorney's request that approval of the Phase III PUD application be conditioned on the completion of those obligations.

46. Sand Products' application for the Phase III PUD satisfied all of the statutory and Zoning Ordinance requirements set forth above in Section C.

47. The Planning Commission had no legitimate basis for its finding that Sand Products' application for special use permit for planned unit development failed to satisfy the requirements for granting such special use under the City's Zoning Ordinance and/or statutory requirements.

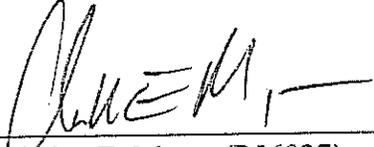
48. Therefore, the Planning Commission's decision is contrary to Michigan law and the City's own Zoning Ordinance and must be reversed.

WHEREFORE, Sand Products respectfully requests that this Court either grant its appeal and find that the Phase III PUD should be granted a special use planned unit development permit as applied for by Sand Products, or alternatively, reverse the Planning Commission's decision. Sand Products also requests an award of costs and other such relief as the court deems appropriate.

Dated: October 24, 2006

WARNER NORCROSS & JUDD LLP

By: _____


Christian E. Meyer (P56037)

Business Address:

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111 Lyon Street, N.W.
Grand Rapids, Michigan 49503-2487
(616) 752-2000 – telephone
(616) 752-2500 – fax
Attorneys for Petitioner

October 23, 2006

Mr. Roger Yoder, Chairman
Manistee City Planning Commission

Re: Proposed Filer Township Ethanol Plant

Although action may have been taken by the City Manager and Council on the attached August 16, 2006 letter regarding the proposed Filer Township ethanol plant, I have seen no evidence of that fact.

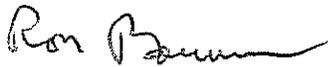
This is a citizen request that the Manistee Planning Commission take action to perform a complete and thorough evaluation of possible negative impacts on the City. Pending completion of that study it is suggested that the City request Filer Township to place a hold on issuing a building permit. The City may decide to intervene in the Filer Township permitting process if the study shows unacceptable impacts to Manistee.

In addition to possible health impacts on area residents from plant discharges coupled with existing industrial effluents, the attached letter addressed the effect that delivery of plant materials would have on City traffic and emergency responses.

Two other issues also have potential significant impact on the City - depletion of the City water supply aquifer (ethanol plants are huge consumers of water) and further pollution of Manistee Lake. Over the years I have been told by many persons with site knowledgeable that it was highly contaminated by the old drop forge and chemical plants. Action is needed to determine the exact degree of soil pollution and to assure that contamination is contained during plant construction. Plant operating discharges to Manistee Lake also need to be completely defined and evaluated. Serious pollution of Manistee Lake could effect salmon and steel head migration and our local fishing and boating income - in addition to general lake usage and our reputation as a progressive City suitable for development.

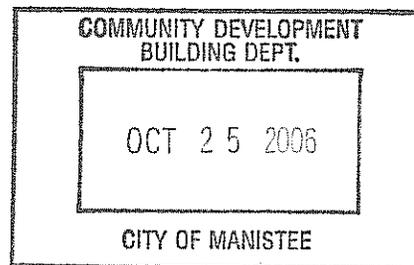
The attached letter also addresses the impact on future development of the East River Street area.

Thank you.



Ron Bauman
807 Dinsen Street
Manistee, MI 49660

Cc: Jon Rose



August 16, 2006

Robert Goodspeed, Mayor
City Council Members
Mitch Deisch, City Manager
David Bachman, Chief of Police
Jon Rose, Community Development Officer
Sid Scrimger, Fire Chief

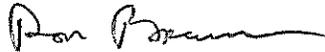
Re: Proposed Filer Township Ethanol Plant

Attached is an August 11th letter to the Manistee News Advocate which has not yet been published.

I do not have sufficient information on the proposed plant to have an opinion regarding its net impact on the overall Manistee area community - nor do I intent to become further involved in the issue. However, the attached letter contains several questions that are pertinent to the City of Manistee including public safety and future development within the City including the east River Street area.

Please take appropriate action to determine if the City should intervene in the Filer Township permit process. Constructing a major plant in a location where all supplies must be shipped through the center of Manistee in a disruptive manner should be of concern to the City.

Thank you.


Ron Bauman
807 Dinsen Street
Manistee, Mi 49660

August 11, 2006

Editor
Manistee News Advocate
55 Maple Street
Manistee, MI 49660

In addition to positive impacts on the community the proposed ethanol plant in Filer Township will have negative impacts. Its location puts the plant into an "urban site" rather than a "rural site" category. Therefore public health and safety impacts and negative economic effects need special study. Along with other plant data the following information should be made available for evaluation by Filer Township, City and County officials and the public.

River and rail traffic

The developer has said that the plant will require one or two freighter deliveries per week and one or two train shipments of unspecified length each day. River traffic currently averages one freighter per week during the shipping season; therefore the plant could triple the number of bridge openings for large ships. One or two long unit trains per day would be a very significant increase in rail traffic. The increased traffic is based on the assumption that steam will be available from the Tondu Plant. If that assumption is incorrect, the above increase in river and rail traffic is understated.

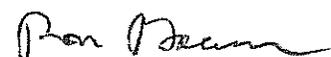
The additional river and rail traffic would increase the probability that emergency medical and fire services would be delayed. Such delays could be tragic. The Maple Street Bridge, owned and operated by the City, would likely require additional maintenance and could encounter operational problems. Emergency response manpower and facilities may be required on both sides of the river and rail line. These possible impacts should be carefully evaluated.

Plant emissions

The developers have acknowledged that plant emissions will include lead, mercury and arsenic which all have a serious negative impact on public health. The developer's statement that, "the emissions are considerably less than other industries" is totally non-responsive. To fully evaluate health impacts of all atmospheric discharges a very complete atmospheric dispersion analysis is required and should be demanded by local authorities. Public exposure rates under worst case conditions need to be known and evaluated by qualified consultants.

Specific information on other discharges such as odors and contaminated wastes should be provided by the developer.

Prior to making a decision on behalf of area residents and visitors regarding construction of the plant, local officials should make a thorough analysis of all plant impacts (positive and negative) based on actual design and operating information and not on preliminary concepts. At this time important questions require answers for detailed evaluation.


Ron Bauman
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723-2520