



Sheldon Neeley
Mayor

CITY OF FLINT

FLINT ZONING BOARD OF APPEALS

FLINT ZONING BOARD OF APPEALS

Meeting Minutes
September 21, 2021

Board Members Present:

Matthew Telliga, Chair
Jerry Kea, Vice-Chair
Carol-Anne Blower
Johnnetta Ricks
John E. Hardy II
Florlisa Stebbins
Ari McCaskill
Ramie Yelle

Staff Present:

William Vandercook, Zoning Coordinator
Keizzy Anpalagan, GIS Technician
Jonathon Mateen, Planner I
Joanne Gurley, Assistant City Attorney
Corey Christensen, ROWE Consultant
Lauren Marshall, Planner I

Absent:

Jacqueline Jordan
Lauren Coney

ROLL CALL:

Chairperson Telliga called the meeting to order at 6:00 p.m. Roll was taken and a quorum was present. The meeting was held via Zoom meetings. Assistant City Attorney Joanne Gurley read the Open Meetings Act adopted in Senate Bill 1108, so Commissioners could provide the location they were calling in from and how they were accessing the meeting.

Matthew Telliga, Chair – Remotely – City of Flint
Jerry Kea, Vice-Chair – Remotely – City of Flint
Ari McCaskill – Remotely – City of Flint
Lauren Coney – Absent
Florlisa Stebbins – Remotely – City of Flint

Johnnetta Ricks – Remotely – City of Flint
John E. Hardy II – Remotely – City of Flint
Jacqueline Jordan – Absent
Ramie Yelle – Remotely – City of Flint
Carol-Anne Blower – Remotely – City of Flint

ADOPTION OF September 21, 2021 AGENDA:

Chairman Telliga asked for any changes/comments to be made to the Agenda.

Commissioner Yelle questioned the two postponed cases of ZBA 21-2257 and ZBA 21-2258. Commissioner Telliga stated the two cases could be taken off the agenda.

Commissioner Kea motioned to approve the Agenda with revisions. Commissioner Blower supported the motion.



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Commissioner Telliga called for a roll call vote.

Commissioner Stebbins, yes
Commissioner Hardy, yes
Commissioner McCaskill, yes
Commissioner Yelle, yes
Commissioner Jordan, absent

Commissioner Kea, yes
Commissioner Ricks, yes
Commissioner Coney, absent
Commissioner Blower, yes
Commissioner Telliga, yes

M/S – Kea/Blower

Motion carried.

8 – yes 0 – no 2 - absent

ADOPTION OF August 17, 2021 MINUTES

Commissioner Blower motioned to approve the minutes from August 17th, 2021 with corrections. Commissioner Kea supported the motion.

Commissioner Stebbins, yes
Commissioner Hardy, yes
Commissioner McCaskill, yes
Commissioner Yelle, yes
Commissioner Jordan, absent

Commissioner Kea, yes
Commissioner Ricks, yes
Commissioner Coney, absent
Commissioner Blower, yes
Commissioner Telliga, yes

M/S – Blower/Kea

8 – yes 0 - no 2 – absent

The motion carried.

Public Forum:

No one from the public spoke.

Reports:

No reports.

Communications:

No Communications.

PUBLIC HEARING:

ZBA 21-2256: Austin Barr requests an appeal of the Planning Commission’s decision on June 22nd, 2021 to deny a Group F Special Regulated Use Permit for an Adult Use (Growing) marihuana facility at 3039 Airpark Drive North., Flint, MI (PID 40-34-100-031).

Commissioner Blower abstained from discussion and voting for this case.



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Austin Barr, applicant, presented the application. Mr. Barr stated that an indoor cannabis grow operation would not impact the Bishop International Airport and emphasized that the question to focus on is whether or not the site meets all zoning requirements set out in Chapter 50 of the Flint Zoning Code. Mr. Barr stated on February 8th, 2021 Flint City Council adopted three city ordinances to opt into the Michigan Regulation and Taxation of Marihuana Act. Mr. Barr stated that the parcel is zoned E, heavy commercial/limited manufacturing. Mr. Barr then stated the requirements of a Group F Special Regulated Use Permit for an Adult Use marihuana facility and emphasized that the parcel is within the E zoning district which is allowed in a Group F Special Regulated Use permit. Mr. Barr also stated that the property is not within 1,000 feet of a pre-K through 12th grade school, the property is not within 500 feet of a place of worship or park, and the property is not within 300 feet of residential zoning districts. Mr. Barr stated that all the information pertaining to this site was obtained in a Location Confirmation Letter dated January 23, 2021 from the Department of Planning and Development. Mr. Barr stated that 3039 Airpark Drive meets all the zoning requirements to operate as a cannabis grow facility.

Mr. Barr stated that the reason for the Zoning Board of Appeals case was based on a misstatement of fact made by Chris Yeates of Bishop International Airport. Mr. Yeates made a statement that cannabis is illegal at the federal level and that it is not permitted on airport owned property. Mr. Barr stated that Mr. Yeates discussed a letter of inquiry from the Federal Aviation Administration (FAA) to Springerville Municipal Airport in Arizona. The FAA letter informed Springerville that allowing the growth of cannabis on airport owned land could be in violation of federal grant obligations. Mr. Yeates acknowledged that 3039 Airpark Drive is not on airport owned property and is not owned by the airport, however, it is on private property.

Mr. Barr stated that Mr. Yeates expressed his concern about federal grant obligation 21 regarding compatible land use which applies to airport owned property. Mr. Barr stated that Mr. Yeates did not give examples of compatible or incompatible land use. Mr. Barr stated that Mr. Yeates mistakenly reasoned from his interpretation that privately owned property located adjacent to Bishop International Airport could potentially put AIP funding based on grant Obligation 21, however this is not true and has no factual basis. Mr. Barr stated that this statement was the deciding factor for the Planning Commission.

Commissioner Sorenson made a motion to deny stating that much more is at risk in the area based on what Mr. Yeates presented to the Commission and that she would err on the side of caution to deny the request for that reason. FAA Obligation 21 regarding compatible land use states that the airport sponsor will take appropriate action, to the extent reasonable, including the adoption of zoning laws, to restrict the use of land adjacent to or the immediate vicinity to the airport to activities and purposes compatible with normal airport operations including landing and takeoff of aircrafts. In addition, if the project is for noise compatibility program implementation it will not cause or permit any change in land use within the jurisdiction, that will reduce its compatibility, with respect to the airport, of the noise compatibility program measures upon which federal funds have been expended. Mr. Barr then stated the definition of



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compatible land use which states the compatibility of land use is attained when the use of adjacent property neither adversely affects flight operations from the airport nor is itself adversely affected by such flight operations. Land use that adversely affects flight operations is that which creates or contributes to flight hazards.

The FAA reviews the main concerns, first aircraft noise. 3039 Airpark Dr. is an existing structure and there is no concern regarding aircraft noise. Second, is the airspace, which is in regards to structure height. 3039 Airpark Drive is an existing building and already meets all the requirements for structure height. Next, is visual and atmospheric interference, the indoor cultivation facility will not produce any physical obstruction, visual obstruction, electronic interference or atmospheric disturbance, more over it will not attract any wildlife.

Mr. Barr stated he had email and telephone communication on June 24th, 2021 with Christine Nutting, airport planning specialist with the FAA Washington DC office. These communications verified the purpose of the Federal Obligation 21 regarding land use compatibility. Mr. Barr also had contact with Paul Lowe, Regional Planner for FAA Great Lakes Region. Mr. Barr and Mr. Lowe had a conversation on September 20th, 2021 verifying that the June 2, 2021 letter represents the FAA position on the matter.

Mr. Barr addressed the Through the Fence Agreement (TTF), stating that according to the FAA, 3039 Airpark Drive does not have a TTF. Barr stated that the letter shown to the Planning Board states that the City of Flint, not 3039 Airpark Drive, maintain a Through the Fence Agreement. The letter to the Commission members also stated the intent and purpose of the expired covenant and restrictions was to allow the location of general aeronautic and related activities, of which cannabis is neither. Mr. Barr stated that is not the correct logic and that it would not allow the construction company to operate in the park, the credit union office, the electric company or Comcast.

Mr. Barr stated that 3039 Airpark Drive does not have deeded access or an access agreement. 3039 Airpark Drive is planning construction of a fence on the southern property line which would not contain a gate or any way to access the road behind the building. Mr. Barr then shared a letter dated June 2, 2021 from the FAA stating there is no Through the Fence Agreement therefore there are no airport or aviation laws regulations, policies or guidelines which would impact the use of the property for the stated purpose. The letter also states that the Bishop International Airport does not have any obligations that would be impacted by this use.

Mr. Barr addressed opposition letters from neighboring businesses. Mr. Barr stated that Native X will not have any signs associated with the operations therefore there will be no visible indications of the business operations that are being conducted inside. Mr. Barr stated that just because a neighboring business does not approve of the product being made by a company does not justify denial of the application. In addition, it is unfounded to say that an indoor cannabis



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grow in an existing building would be incompatible with the other industrial activity surrounding it.

Mr. Barr showed in his presentation the distance between 3039 Airpark Drive and the two buildings of the businesses that were opposed to the Group F Special Regulated Use Permit at the Planning Commission meeting. Mr. Barr stated that court cases have recognized that the question of neighbors input in zoning cases is a question of how much influence neighbors have on other people's property. In such circumstances where the property owner has asked for a certain zoning classification, courts have stated that it is important to keep in mind that the governing authority has approved the zoning classification there by giving its permission to the land owner to use the property as the land owner desires. Mr. Barr stated that courts are dealing with the power of neighbors to deny the right over the right to use the property as the land owner desires and as approved by the governing authority.

Commissioner Telliga stated that the applicant should only be sharing what was presented to Planning Commission since that is the information the Zoning Board of Appeals will be basing their decision on.

Mr. Barr raised a last point of the Cannabis Administration and Opportunity Act which is working to decriminalize marihuana. Mr. Barr stated that the site meets the zoning requirements laid out by the City of Flint.

Commissioner Telliga opened public hearing.

Kevin Kowalski, CEO of Heleo Security, stated that his company is a licensed security company both for VIP security facilities and licensed transport for marihuana and CBD based products. His company has relations with the City of Flint police department as well as the sheriff department. Mr. Barr has retained them as his security company as well as his transportation company for his business. Mr. Kowalski stated that the property is in a zoned area for a marihuana business to be in. Mr. Kowalski also stated that the marihuana business in the State of Michigan which is licensed and regulated by the state as well as each city that has chosen to opt in is an allowable use and just because someone doesn't like the use does not mean it cannot happen. It is one of the most regulated businesses from a security stand point. Mr. Kowalski also gave the background of everyone within his security company that they employ.

Commissioner McCaskill stated the Zoning Board of Appeals is not here to apply subjectivity to whether or not a business can operate with specific zoning, the board is here to decide whether or not the decision was made within the letter of the law which is Michigan Act 110.

Commissioner Telliga also stated that the reason for the Zoning Board of Appeals was to determine if the Planning Commission ruled in error. Commissioner Telliga emphasized this is not a retrial, the board considers what was presented to the Planning Commission and if they made an error.



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Chris Yeates, Bishop International Airport, confirmed that Mr. Barr was correct that in typical compatible land use that the issue is with noise and height but it also focuses on the safety of the aircraft and airport operations. Mr. Yeates expressed his concern for the amount of security for the business. Mr. Yeates stated that the Through the Fence Agreement allows compatible land use to come into play for the safety and security of the airport. Mr. Yeates states that there are Through the Fence Agreements within the Bishop Airpark that were established when the City of Flint created the Bishop Airpark and some of them many not have transferred when the Airport Authority was created. Mr. Yeates expressed his concern that if the FAA understands that there is marihuana growing in the airpark that it may provide further investigation.

Mark Krueger, owner of E & L Construction Group, located at 3043 Airpark South spoke in opposition. Mr. Krueger also owns two lots adjacent to the proposed Group F parcel. E & L Construction employs 180 people and has construction and materials in Bishop Airpark in excess of 4 million dollars. Mr. Krueger stated his concern over security of the proposed facility and emphasized that the Planning Commission spent a lot of time reviewing the security provisions of the proposed facility. Mr. Krueger stated that their building is a few hundred feet away from the proposed site and if the proposed site had a security problem that means Mr. Krueger has a security problem. Mr. Krueger stated that everyone in the Airpark must spend thousands of dollars to protect their assets due to the admitted risk that the proposed facility brings to the airpark. Mr. Krueger also expressed his concern over the safety of his people and the armed guard at the proposed facility.

Todd Campbell, Richfield Industries, 3020 Airpark Drive, spoke in opposition. Mr. Campbell stated that the proposed use of marihuana is not in the spirit of the Airpark of industrial innovation to grow the City of Flint. Mr. Campbell stated that he feels that the proposed facility is not in the spirit of the founders of the airpark. Mr. Campbell stated that they are not against the product, they wish to protect their federally regulated employees. Mr. Campbell stated concerns about additional security and stated how it was unfair to project this additional expense onto the surrounding companies. Mr. Campbell stated that all information given by the applicant should be verified by the City of Flint so the grant funds are not put at risk.

Kevin Kowalski stated he is currently under contract at 3015 Airpark. Mr. Kowalski also stated that he does not believe that the proposed project would not hinder any development in the area rather it would bring more people to the area. Mr. Kowalski also stated that the business would bring in tens if not hundreds of people local to Flint to work at this proposed facility. Mr. Kowalski also stated that the City of Flint does not require an armed guard for the proposed facility.

Dave Buick, Chief Experience Officer with Heleo Security, stated that the last speaker was not Kevin Kowalski but an owner in the airpark.



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Mr. Barr emphasized that he is not looking for a variance but that the property falls within all of the zoning requirements.

Commissioner Telliga emphasized the reasons why Planning Commission denied the request first was the Through the Fence Agreement, second it was incompatible with adjacent land use and not compatible with the Master Plan.

Commissioner Telliga questioned the Through the Fence validity. Commissioner Kea read the Planning Commission meeting minutes that stated Commissioner Sorenson made a motion to deny PC 21-406 to Native X, LLC requests a Group F Special Regulated Use Permit for an Adult Use (Growing) marihuana facility at 3039 Airpark Drive based on incompatibilities with adjacent land use, a Through the Fence Agreement that gives access to the runway and opposition raised by surrounding businesses.

Commissioner Telliga asked Mr. Barr if the Through the Fence agreement was presented to Planning Commission. Mr. Barr stated there were two letters presented. The first letter was for 3027 Airpark Drive and that is the same letter Mr. Barr received, however, only the 3027 Airpark Drive letter was presented to Planning Commission.

Commissioner Kea asked the applicant if the information stated today was the same information presented to the Planning Commission. Mr. Barr stated the letter for 3027 Airpark Drive was read and stated in the minutes. Mr. Barr stated that the documents he provided were supporting evidence.

Cory Christensen, ROWE consultant, stated that the applicant has the right to present information that clarifies what was discussed at Planning Commission, however, they cannot provide new information or documents. Mr. Christensen stated that the Through the Fence Agreement was an item that needed clarification. Mr. Christensen also stated that the board was to make a determination on whether or not the Planning Commission's determination was based on facts of finding or based on the marihuana ordinance. Mr. Christensen also stated that the reason the Planning Commission took the neighboring business's concerns seriously was because one of the standards by which they make a decision is whether or not the community will be impacted by the approval.

Commissioner Telliga stated that he believed the only error was the Through the Fence Agreement. Commissioner McCaskill stated that he read Michigan Act 110 Section 4 and stated that it seemed legitimate and did not understand why it was denied other than public opinion. Commissioner McCaskill stated that he does not see where the land use is incompatible with the current use of Airpark Drive and any of the other structures or businesses. Mr. Christensen stated from his understanding the incompatible land use the airport was concerned about was the adjacency to the airport and the impacts it would have on the airport as well as the other businesses in the area. Commissioner McCaskill asked for clarification that the proposed



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property was not airport or federal property but private property. Commissioner Telliga confirmed its adjacent to the airport.

Commissioner Kea made a motion to reaffirm the Planning Commission decision to deny a Group F Special Regulated Use Permit for an Adult Use (Growing) marihuana facility at 3039 Airpark Drive North., Flint, MI (PID 40-34-100-031) based on the incompatibilities with the adjacent land use and opposition raised by surrounding businesses. Commissioner Hardy supported the motion.

Commissioner McCaskill stated he did not believe incompatible land use has to be substantiated other than concerns by other business owners. Commissioner McCaskill also stated that it seemed to be within the guidelines of its existing zoning and questioned where the incompatible land use comes from.

Mr. Christensen, read the Planning Commission standard that references incompatible land use. It states that the Planning Commission shall consider the community impact of the proposed regulated use including but not limited to the number of jobs created, the number of jobs that will be specifically created for City of Flint residents, and the overall impact on the character and growth of the surrounding neighborhood. Mr. Christensen emphasized the last part of the sentence “the overall impact on the character and growth of the surrounding neighborhood” is what was being focused on and stated that the Planning Commission felt it was inconsistent with the character of the neighborhood.

Chairman Telliga called for a roll call vote.

Commissioner Stebbins, yes
Commissioner Hardy, yes to uphold
Commissioner McCaskill, no
Commissioner Yelle, yes
Commissioner Jordan, absent

Commissioner Kea, yes
Commissioner Ricks, yes
Commissioner Coney, absent
Commissioner Blower, abstain
Commissioner Telliga, yes

M/S – Kea/Hardy

Motion carried –

6 – yes, 1 – no, 1 – abstain, 2 - absent

CITY ATTORNEY REPORT:

No reports.



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OLD BUSINESS:

Zoning Board of Appeals Meetings – Zoom

Commissioner Telliga stated that City Council may vote to meet in-person again starting next week. This decision may or may not affect the Zoning Board of Appeals. Commissioner Telliga stated that the City Attorney said that the ZBA will still have an opportunity, if anyone is uncomfortable, to participate remotely.

Zoning Board of Appeals Bylaws

Commissioner Telliga stated that Commissioner Jordan has only been at one meeting since moving to Zoom meetings. Commissioner Telliga also stated that her term expired in 2020 and asked staff to reach out to Commissioner Jordan today to see if she was unable to join due to technical difficulties.

Commissioner Telliga stated that Commissioner Jordan was going to be calling into the meeting today but was not in the meeting and that based on the boards bylaws she should be removed from the Board. Commissioner Telliga emphasized she should also be removed due to the fact that her term is up.

Commissioner Telliga stated that it's up to the City Council to either reappoint Commissioner Jordan or to appoint someone new. Commissioner Telliga suggested reaching out to the Councilperson of her ward to see if they can appoint someone else.

Michigan Association of Planning training and training materials

Commissioner Kea stated that once Commissioners were appointed to the ZBA they should've received the APA Zoning Board of Appeals Toolkit as well as a handout. Commissioner Yelle stated he did not have a copy of the Toolkit. Commissioner Telliga asked staff to obtain a copy for Commissioner Yelle as well as a copy for either Commissioner Jordan or the new appointed commissioner.

Commissioner McCaskill stated he believed the board needed a more in-depth training on medical marijuana ordinances. Commissioner Telliga stated that since the board will be seeing more appeals for marijuana related cases he agreed the board needed a more in-depth training. Mr. Christensen stated he will work with staff to create a training for the board. Commissioner Hardy stated that there is a companion book that goes along with the Toolkit booklet which would be good for the commissioners to have that contains case studies.

Commissioner Telliga stated that he was reappointed by City Council.



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NEW BUSINESS

No new business.

ADJOURNMENT:

Commissioner Ricks made a motion to adjourn. Commissioner McCaskill supported the motion.

Commissioner Stebbins, yes
Commissioner Hardy, yes
Commissioner McCaskill, yes
Commissioner Yelle, yes
Commissioner Jordan, absent

Commissioner Kea, yes
Commissioner Ricks, yes
Commissioner Coney, absent
Commissioner Blower, yes
Commissioner Telliga, yes

M/S –Ricks/McCaskill

The meeting was adjourned at 7:36pm.

*Motion carried –
8 – yes, 2 - absent*