

CITY OF STERLING HEIGHTS  
NOTICE OF PUBLIC HEARING

The Ordinance Board of Appeals held a public hearing at 7:00 p.m. on January 30, 2017 at the Sterling Heights Municipal Center, 40555 Utica Road, Sterling Heights, MI in the Council Chambers, 586-446-2360. At this meeting the Board (1) considered variance requests of petitioners and (2) conducted hearings on abatement of nuisances relating to the property and property owners itemized on the following agenda.

AGENDA

1. Chairman Pitrone called the meeting to order at 7:00 pm
2. Roll Call                    John Pitrone - Chairman, Juli Sala - Secretary, Robert Ervin, Benjamin McMartin, Paul Zdzieblowski (excused), Michael Stickney, Denice Gerstenberg - City Development Director, Paul Geiger - Code Enforcement Officer, Dana Vietto - Recording Secretary
3. Report from City Liaison - Denice Gerstenberg
  - a. All petitioners were notified by first class mail about tonight's meeting. Remove the following items from the consent agenda as they have been cleaned up prior to the meeting - G17-0004, G17-0006, G17-0008 & G17-0009.
4. Removal of Consent Items to New Business
  - a. Moved item 6 to New Business                    9a. G17-0005 Tartaglia, Alfred (Trustee) - 11528/11540 Fifteen Mile Road
5. Approval of Agenda  
Motion by Ervin, supported by McMartin, to approve agenda  
Yes: All. Motion carried.
6. Consent Agenda  
Moved by Ervin, supported by McMartin, RESOLVED, to approve the Consent Agenda as amended:
  1. To approve the minutes of the regular meeting of December 12, 2016, as presented.
  2. G17-0001    Deutsche Bank c/o Ocwen Loan Servicing, LLC - 13250 Grand Haven Drive  
RESOLVED, to declare that a public nuisance exists on the property commonly known as 13250 Grand Haven Drive and to direct the Code Official to abate the violations identified in the attached staff reports which give rise to this finding immediately. The Board also authorizes and approves the imposition of a lien against the property, in the amount of the cost of abatement incurred by the City, as permitted by the applicable city ordinance.
  3. G17-0002    Manchester-S.H. Devel CO, LLC - 7566 Metropolitan Parkway  
RESOLVED, to declare that a public nuisance exists on the property commonly known as 7566 Metropolitan Parkway and to direct the Code Official to abate the violations identified in the attached staff reports which give rise to this finding immediately. The Board also authorizes and approves the imposition of a lien against the property, in the amount of the cost of abatement incurred by the City, as permitted by the applicable city ordinance.
  4. G17-0003    Mattie, Sunds & Alyas, Safa - 4288 Bieber Drive  
RESOLVED, to declare that a public nuisance exists on the property commonly known as 4288 Bieber Drive and to direct the Code Official to abate the violations identified in the attached staff reports which give rise to this finding immediately. The Board also authorizes and approves the imposition of a lien against the property, in the amount of the cost of abatement incurred by the City, as permitted by the applicable city ordinance.
  5. G17-0007    Irving Plaza, LLC - 34180 Van Dyke  
RESOLVED, to declare that a public nuisance exists on the property commonly known as 34180 Van Dyke and to direct the Code Official to abate the violations identified in the attached staff reports which give rise to this finding immediately. The Board also authorizes and approves the imposition of a lien against the property, in the amount of the cost of abatement incurred by the City, as permitted by the applicable city ordinance.

7. Public Hearing

8. Old Business

a. G16-0158 Sunnybrook Golf Bowl & Motel- 38950 Van Dyke

Code Enforcement Officer, Paul Geiger, stated as of today there were some changes to the property. Pictures were shown at this time. Mr. Geiger stated that this case was originally started on June 10<sup>th</sup> 2016. It is being revisited tonight it is to be considered for obsolescence. On October 31<sup>st</sup> the sign was refaced and now advertises two other bowling alleys. One is in Sterling Heights and one is in Troy. The original plan has the address of 38950 Van Dyke and states on it regarding the Sunnybrook property at 7191 East Seventeen Mile Road. It was approved for a variance by the BZA on March 2<sup>nd</sup> 2001. Everything on the plan for the sign relates to Sunnybrook. It was an off premise sign that is obsolete. No matter what the Board votes tonight the bottom of the sign needs to be fixed, as a health and safety item.

Don DeNault, City Attorney, was present. Mr. DeNault stated that he is here for the Board. He stated that the property owner is here tonight with counsel to talk to you about the decision of the City that the sign has become obsolete. The City's position is that the Board is limited to whether or not the sign has become obsolete. He can answer any questions for the Board. It does have history and has been in front of the Board before. The owner petitioned the Court to have another chance to come in front of the Board on the premise that they did not get notice. The Court honored that request and that is why they are here before you tonight.

Mr. Pitrone asked when the sign was refaced recently did it require any permit process. Mr. Geiger stated "No." There was no permit pulled for that re facing and now it advertises for other locations, nothing about Sunnybrook. It does state that they can change the wording in the consent judgement. The assumption is it would be wording related to Sunnybrook.

Randy Shank, owner, was present. William Webb, general counsel, was present. Mr. Webb stated that he has been Sunnybrook council for over 30 years. He asked the Board if all members received the memorandum he sent. They did. On January 25<sup>th</sup> he sent the City Council a settlement offer. Mr. Pitrone stated that it is not relevant to this case. The Board is here tonight to hear the facts of the case of the sign that went along with the business there and the business is now gone. The sign has been changed and is advertising some other business that is not in our City. Mr. Webb suggested that this Board postpone the hearing until the City Council wants to accept the settlement or not. Mr. Webb stated that the new issues brought up by Mr. Geiger about the bottom of the sign pulling away will be fixed right away if there are any safety issues. Mr. Pitrone asked Mr. Webb if he has been notified of being on the Council agenda. Mr. Webb stated, "No." Mr. Pitrone stated that he thinks we should proceed as normal.

Mr. Webb stated that he wants to know what the statutory authority of this Board to direct the destruction of this property. He stated that the City Attorney's office thought it fell under the Home Rule Act. They have looked at the Home Rule Act and he can't find anything in it that suggests that this type of Board can direct the destruction of a persons' property. Mr. Webb stated that this is not an act to remove a safety hazard. This is a destruction of something because the City Manager initiated a complaint that he thought the sign was obsolete. Mr. Webb wants to know what type of authority this Board has. He wants to see the statute in which this Board operates. He asked if the Board is able to give him that information. Mr. Pitrone stated, "No."

Mr. Webb stated that the key feature is that it is no longer Sunnybrook that is being promoted. The consent judgement has no reference that Sunnybrook has to have wording pertaining to Sunnybrook. A long time ago the court approved that Sunnybrook would take down the old sign and put up a new sign. The consent judgement stated that they did not need to go back to the City to change any wording on the sign. There are no restrictions in that consent judgement as to what the wording could say. Mr. Webb stated that Sunnybrook property didn't discontinue its

business, the phone number continued to be active and they continue to take in money. They are continuing the same service through other bowling facilities. The consent judgement did provide if there was a health or safety

issue then the City could raise that issue. They could come back and complain regarding health and safety issues. Mr. Webb stated if they destroy the sign then it obviously constricts Sunnybrook's constitutional right of commercial speech. They have to prove to destroy the right of this commercial speech it promotes a substantial government interest. The government interest is the City Manager and other people that don't like the sign. That doesn't rise to a substantial government interest. If the sign was falling down and causing a health or safety issue then that would be an issue.

Mr. Webb stated that Sunnybrook did not receive notice of the previous hearing. When Mr. Geiger sent a notice of violation they acknowledged receiving it. They received the notice for tonight's hearing. Mr. Webb stated that he thinks their state constitutional fair and just treatment rights clause was violated.

Randy Shank stated that he has been the owner since 1998. From 1987 to 1998 he was the general manager of the 27-hole golf course, motel and banquet center. Mr. Shank stated that Mr. Geiger sent him a notice of violation. He had a 35 foot old sign that needed to be changed to a nicer sign at a great expense. Mr. Shank stated that after he looked at his old agreement he didn't have to take it down. He left Mr. Geiger a message. Mr. Shank stated that he still conducts business to Boyd Enterprises. He stated it is still a corporation and is offering the same services as Sunnybrook.

Mr. Sala asked if they were notified of tonight's meeting. Mr. Webb stated that the judge said they needed a two week notice and they were notified within that time of tonight's meeting. Mr. Sala asked Don DeNault if the sign is allowed if there is not a building there. Mr. DeNault stated that the answer would be no. The City's zoning ordinances prohibits off premise signs or what people commonly understand to be billboards. No one is permitted to have a piece of property in the City of Sterling Heights to put up a sign that advertising things that are not occurring on that property. Mr. Sala stated that it is his understanding that the consent judgement is not explicit as to anything in regards to the location of the sign being off premise. It does not guarantee that the sign being off premise is allowed as an off premise sign. Mr. DeNault stated that it refers to non-conforming signs in zoning terms. Back in the day when this was disputed in court the issue was the fact that they erected this sign on an island that does not have business activities on it. When the zoning ordinances came into effect it made that sign non-conforming. It didn't meet those ordinances that came into existence. It was there first. It became a non-conforming use. It was a sign that was installed prior to the zoning ordinances. Mr. DeNault stated that the consent judgement in front of the Board states that the City should not take action that would affect the existence of the sign on the basis that it is a non-conforming sign. Mr. Sala asked if they are hearing this case on the basis of obsolescence. Mr. DeNault stated that the basis of obsolescence is the only decision that the City has brought to the Board. Mr. Sala asked if the obsolescence of the sign then make it non-conforming or is it completely un-related. Mr. DeNault stated that it is completely un-related. A non-conforming sign would be a sign that is there in that state before the ordinances took effect. Once the ordinances took effect though a person has a non-conforming use you don't have a right to change that. It can be kept but can't be changed. Non-conformity is very different than obsolescence under the zoning ordinance. A sign can't be allowed if it's become obsolete because of discontinuance of the business, service or activity.

Mr. Webb stated that on the consent agreement states that Sunnybrook may amend the sign wording at any time but should maintain the decorative element on the top portion of the sign. The decorative element shall not be changed without approval from the City which approval will not be unreasonably withheld. The City of Sterling Heights has the right to enforce health and safety violations pertaining to the sign. Provided however that the City of Sterling Heights will take no further action that will effect the existence of the sign on the basis that it is a non-conforming sign. Mr. Sala stated that is why he asked the question if the Board is ruling on non-conforming or obsolescence. The Board is ruling on obsolescence.

Mr. Webb referenced the Zoning Ordinance in section 28.13.E, No person, entity, owner, business, or tenant shall allow an obsolete sign to be maintained on property for more than 30 days after same has become obsolete because of discontinuance of the business, service, or activity which the sign advertises, relocation to another site, or for any other **reason**. The fact that the obsolete sign is nonconforming shall not be construed as modifying any of the requirements of this **section**. He stated that there has been no discontinuance. Mr. Pitrone stated that he took a few notes down when Mr. Webb was talking. Mr. Pitrone noted that he is not advertising a current business in that location. The business at Seventeen Mile Road has been discontinued. Mr. Pitrone stated that this trumps the other locations. It seems that common sense should prevail. The business is gone and no one is golfing anymore, in that location. The business has been discontinued. The sign for that business should be removed.

Mr. Webb stated that assuming the ordinance is applicable the business has not been discontinued. The Seventeen Mile Road portion of their business is gone. Sunnybrook Golf, Bowl and Motel Incorporated have been continuing the business despite that portion being gone. They continue to take calls and promote their business. There has been no discontinuance of the business. Mr. Webb stated that the property in Sterling Heights where this sign exists is owned by Sunnybrook. Mr. Pitrone stated that the current business is gone in that location and the business has been discontinued in that location. Therefore common sense states that the sign in that location should also go and the sign was refaced.

Mr. McMartin asked them to clarify the contractual relationships between Sunnybrook and the other establishments. Mr. Webb stated that there are signed contracts that facilitate Sunnybrook's continuation in this business relationship with the two establishments. Mr. McMartin asked if the business relationship is more than just renting the sign out to the other two establishments. Mr. Webb stated that he doesn't think it is fair to get into a public forum regarding Mr. Shank's business dealings. He has signed contracts with these two other establishments. He thinks it is fully consistent with the terms of the consent judgement. Mr. McMartin asked Mr. DeNault under the sign ordinance as defined are the signs tied to the physical location that they reference. Mr. DeNault stated that the off premise zoning ordinance states that the sign must pertain to where that sign is located on that same parcel. In this case it was never conforming once the ordinance came into effect but it was there first. A conforming sign is tied to the business activities of the premises that are being allowed to advertise.

Mr. Sala stated that typically when a business relocates to a different location they are not allowed to keep the old sign off premise, they relocate the sign with the business. The business that was being advertised on this sign was taken down or relocated and so the sign should follow where that business is being continued. Mr. Pitrone agreed. Mr. Webb stated that applies to on premise signs. This sign is an off premise non-conforming sign for more than 50 years. You can't apply the rules that apply to on premise or off premise signs today for this non-conforming sign. Mr. Pitrone stated that the sign was intended for the business on Seventeen Mile Road. Mr. Webb stated that the consent judgement states that they have the right to change any wording on the sign without any City approval. It does not say that they can only change the wording for the property on Seventeen Mile Road. Mr. Pitrone stated that part is understood, it is common sense. It is not a billboard. It is common sense that the sign for that business is only for that business and now that business is gone. To say that it is for another business miles away and one in another community is such a stretch he is surprised the argument is being made. Mr. Webb stated that the consent judgement states that Sunnybrook has the right to amend the wording anyway they want. Mr. Pitrone stated that there are always restrictions on that. They can't put any words they want on that sign and he knows it. Mr. Pitrone stated that they are not going to put up obscene words on the sign and they are not going to maintain a sign for a business that is no longer there. That seems to be perfect common sense.

Mr. Ervin asked Mr. DeNault if the City wanted to move on this matter after the sale in 2015 they could have. Mr. DeNault stated that once the sign became obsolete the ordinance states it has to be removed within 30 days. Mr. Ervin stated that at one point the sign stated poker room and that is probably what the sign change was intended for. Mr. McMartin stated that they are only here to discuss obsolete. The respondent owns the property. They have a consent judgement to have the sign off site identifying a business. The court order is not specific to requiring that it stays with Sunnybrook and everyone had the opportunity to do so when they sat down. Mr. McMartin doesn't see anything in the ordinance that says an obsolete issue can't be corrected by getting the sign up to date. He agrees that the intent was for Sunnybrook but he doesn't see it in the order.

Mr. Webb stated that he will be requesting a copy of the DVD of this hearing for court.

Moved by Sala, supported by Stickney, RESOLVED, to declare that a public nuisance exists on the property commonly known as 38950 Van Dyke and to direct the Code Official to abate the violations identified in the attached staff reports, which give rise to this finding immediately. The Board also authorizes and approves the imposition of a lien against the property, in the amount of the cost of abatement incurred by the City, as permitted by the applicable city ordinance. The motion is on the basis that the sign is obsolete.

Yes: Ervin, Pitrone, Sala, Stickney

No: McMartin. Absent: Zdzieblowski. Motion carried.

9. New Business

- a. G17-0005 Tartaglia, Alfred (Trustee) - 11528/11540 Fifteen Mile Road  
Code Enforcement Officer, Paul Geiger, stated as of today there were some changes to the property. Pictures were shown at this time.

The owner was not present. His son was present. Mr. Tartaglia stated that he was just informed of the violations and his father is in Florida. He is asking for more time to talk to the tenant and have them clean it up. If the tenant won't take care of it then he will have it cleaned up.

Moved by McMartin, supported by Ervin, RESOLVED, to declare that a public nuisance exists on the property commonly known as 11528/11540 Fifteen Mile Road and to direct the Code Official to abate the violations identified in the attached staff reports, which give rise to this finding immediately. The Board also authorizes and approves the imposition of a lien against the property, in the amount of the cost of abatement incurred by the City, as permitted by the applicable city ordinance.

Yes: Ervin, McMartin, Pitrone, Sala, Stickney

No: None. Absent: Zdzieblowski. Motion carried.

10. Public Participation

11. Adjournment

Motion by Ervin, supported by McMartin to adjourn the meeting.

Yes: All. Motion carried.

The meeting was adjourned at 7:57 pm

Respectfully submitted.

Robert Ervin

Chairman  
Ordinance Board of Appeals  
Appeals

Juli Sala

Juli Sala - Secretary  
Ordinance Board of