

TO: Thomas D'Izzo, Spartyville City Manager

FROM: Samuel Hetherington, Spartyville Community and Economic Development Director

DATE: February 16, 2021

RE: Carl Macintosh Request for Variance and Rezone Application

## INTRODUCTION

This memo is regarding a 4-acre parcel owned by Mr. Carl Macintosh of Macintosh Manufacturing, Figure 1. The parcel is currently zoned Recreational Development and Open Space (RD). Mr. Macintosh has submitted a request for a use variance so that he can store wooden pallets manufactured by his company on the lot. He has also applied for a rezone of the lot from RD back to Industrial (I-1).

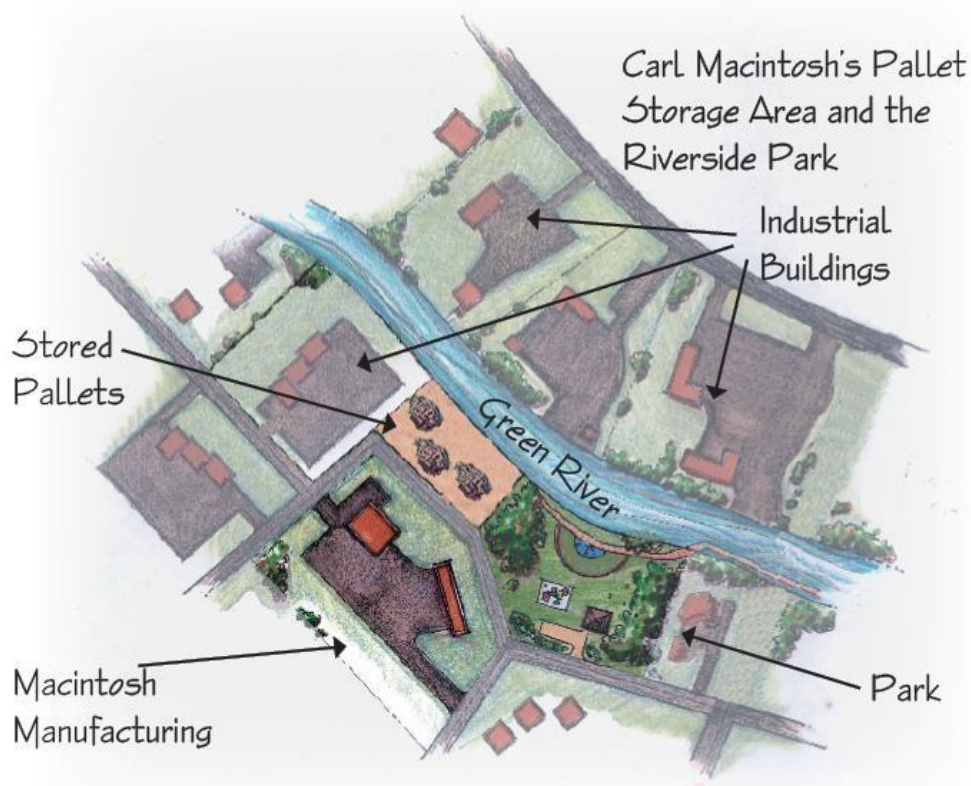


Figure 1: Macintosh lot and surroundings

## BACKGROUND

The following is a timeline of events regarding this case:

- 2018 January - Citizens surveyed by Jake, the Spartyville Planner. Citizens ranked both recreation and new industrial development as important community needs. Findings never published or made public.

- 2018 June - New master plan adopted recommending the Macintosh site be rezoned to RD. One of the key master plan goals is to increase recreational opportunities for area residents, especially along the river.
- 2019 January - Macintosh lot rezoned from I-1 to RD.
- 2020 January - Carl Macintosh begins using lot to store 30' high stacks of pallets. Residents complain about "Pallethenge".
- 2020 January to present – Jake, the Spartyville Planner, repeatedly tells Carl to remove pallets but Carl refuses. Carl submits request for a use variance as well as an application to rezone property back to I-1 from RD. Several allegations of ethic breaches related to the situation are made.

## RECOMMENDATIONS

I recommend approving a temporary use variance for Carl Macintosh effective immediately while his application for rezone is considered. I recommend that within this variance there be a restriction on the height of the pallet stacks to 16'. Prior to the ZBA review of Carl's application, I recommend that Jake's survey results be reviewed, and community participation be solicited in order to better determine whether a legitimate public objective was being accomplished by the initial rezone from I-1 to RD. I recommend Jake be removed from this case while I discuss ethics issues with him. I recommend an investigation into the Planning Commission regarding possible ethics violations. I recommend an investigation into possible contamination on the Macintosh lot.

## DISCUSSION

At first glance this appears to be an open and shut case. Carl's lot was vacant and unused at the time of the change in zoning from I-1 to RD disqualifying it as a nonconforming use (Beyea, 2021), Carl did not object to the rezone at that time, the rezone was compatible with the master plan goals, pallet storage is not an allowable use in the RD zone, therefore Carl is in violation of the ordinance and must cease the activity. However, considering recently revealed information, it is not that clear. It has come to my attention that the results of a survey used to determine the public's community goals were never published or shared with the public. These results were relied upon for the new master plan that was adopted in 2018 June. The results showed public support for *both* increased recreational opportunities and new industrial development. Jake, who was responsible for the survey, is known to be supportive of "greening" the waterfront area and there is suspicion he may have selectively chosen which survey data to highlight in the master plan. This information calls into question whether the original zone change to RD of Carl's land accomplished a legitimate public objective.

With the RD zoning Carl is unable to make viable economic use of his land. He cannot expand his manufacturing facilities. He cannot realistically sell it to anyone but the city. Two consistent standards that all land use laws must meet are that they accomplish a legitimate public objective and that they allow the landowner some economically viable use of the land (Nolon, 2006, p8). Both standards are possibly not true in Carl's case.

Carl claims that the Planning Commission rezoned his property specifically for the purpose of lowering its value so they could purchase it to expand the adjacent park and calls this a case of takings. Jake has revealed that indeed there may be truth to this claim. The Fifth Amendment's Takings Clause says, "nor shall private property be taken for public use, without just compensation" (U.S. Const. amend. V cl. V). If the claim is true, rendering Carl's property useless to him and deliberately driving down its market value

while perhaps not technically a takings, since no one is forcing Carl to sell the land, is still a serious ethics violation by those involved and must be addressed.

Several AICP ethics codes (Barrett, 2001, p203-213, Beyea ,2021) may have been breached by Jake:

- Give opportunities for meaningful citizen participation - by not sharing the survey results Carl and other nearby business owners or their employees did not get to have a say in the initial rezone from I-1 to RD decision. Did Carl even know of the rezone?
- Do not perform work when there is a conflict of interest - Jake's preference for the RD zoning and "greening" of the waterfront could be interfering in his decision making.
- Planners who know of unethical conduct must report it - Jake heard about the plan to try and reduce the value of Carl's land so it could be bought cheaply, he should have reported it.
- Illegal conduct must be reported even if it means revealing confidential information – Sometime after 2020 January Carl revealed to Jake concerns about possible contamination on the lot, Jake should have told someone. If contaminated this is a major problem for land so close to the river and for potential future recreation land where people picnic and play in close proximity to the ground.

## CONCLUSION

Like most planning decisions, there is not a black and white answer in this case. There are reasons to side with Carl and reasons to not to. No one wants a Pallethenge in their community, but I believe there are options that would provide a win-win solution for all parties, for example tree planting along the river. In light of the serious ethics violations discussed above, I suggest we step back and take another look at what the public's objectives really are before deliberating on Carl's rezone application. In the meantime, Carl should be granted a temporary use variance to store his pallets in stacks no higher than 16'. I will take Jake off the case, but I am confident that I can sort out the ethics issues with him. Investigations into the Planning Commission ethics allegations and the possible contamination of the Macintosh lot must commence immediately.

## REFERENCES:

Barrett, C. D., & American Institute of Certified Planners. (2001). *Everyday ethics for practicing planners*. Washington, D.C: AICP.

Beyea, W., (2021). UP365 Lecture Notes 1/21/21-Introduction to Planning Ethics. Michigan State University.

Beyea, W., (2021). UP365 Lecture Notes 2/11/21-Zoning II. Michigan State University.

Nolon, J. R., & Salkin, P. E. (2006). *Land use in a nutshell*. St. Paul, MN: Thomson/West.

U. S. Const. amend. V cl. V.