

November 8, 2019

Re. Milk Pail Zoning Application #4514

To the Distinguished Members of the Kane County Board:

The Max McGraw Wildlife Foundation respectfully submits this formal Objection in opposition to Tianguis, LLC's petition to change the zoning on its property from B-3 to B-4.

The Current and Proposed Uses:

The property known as the Milk Pail property is zoned B-3 with portions that are B-4 (which permits alcohol sales). Unfortunately, the owner has changed the nature and character of the use from a restaurant to a flea market and venue for outdoor concerts and rodeos. None of the current uses are either permitted used or special used in a B-3 or B-4 zoning district. The Applicant has represented that it seeks the change to allow it to conduct picnics and weddings which misrepresents the current and proposed uses. The applicant has been operating these businesses and events without a license or permit since 2015. The property is subject to a Zoning Violation Notice (Exhibit 1).

The Zoning Board of Appeals unanimously rejected the proposed amendment on August 13, 2019 (with one abstention). The County Development Committee unanimously rejected the proposed amendment on October 8, 2019. <https://www.countyofkane.org/FDER/Zoning%20Petitions%20Documents/Letter%20of%20Objection%2010-10-19.pdf> The Max McGraw Wildlife Foundation respectfully request that the County Board vote "No" and reject the proposed zoning amendment as well.

The Surrounding Uses

The Milk Pail property is the proverbial "hole in the donut." The subject parcel is surrounded almost completely by 1300 acres of some of the most pristine, tranquil and well-preserved land in the Midwest. The remaining bordering property is primarily residential and 25 or the 26 adjacent homeowners signed a petition opposing the zoning application. (Ex. 2). The Max McGraw Wildlife Foundation, established in 1962, owns the referenced 1300 acres and is one of the premier research facilities for fish and wildlife management, as well as conservation education. Its mission is to "secure the future of hunting, fishing and land management programs of science, education, demonstration and communication." <https://www.mcgrawwildlife.org/>.

The McGraw Foundation filed a comprehensive written objection at the Zoning Board of Appeals (available on the County website at <https://www.countyofkane.org/FDER/Zoning%20Petitions%20Documents/Max%20McGraw%20objection.pdf>). The Foundation also objected at the County Development Committee.

<https://www.countyofkane.org/FDER/Zoning%20Petitions%20Documents/Letter%20of%20Objection%2010-10-19.pdf>. These Objections conclusively establishes that the current and proposed uses are illegal under the current zoning classifications and that the Applicant has engaged in such uses without permits for several years. The Objector incorporates the Objection by reference here as part of its objection to the County Board). As the transcript of the public hearing demonstrates, the McGraw Foundation introduced testimony through live witnesses and Affidavits (Ganshirt, Brandenburg and Brittain). Importantly, the Applicant has not contested the facts raised in the Objection, nor has it sought to remedy its lack of permits. These Affidavits established that Applicants activities interfere with the Foundations ongoing educational activities as well as its event planning and catering (wedding receptions) operations. Both the Foundation and area residents have complained about the noise from raucous concerts which blast sound at surrounding neighbors. The Milk Pail operations have created a tremendous burden on the county resources – requiring the Sheriff to respond to more than 120 calls for service over the past 12 months.

The noise emanating from the Applicant’s concert activities violates the County Code because no permits were sought or issued for sound amplification, concerts or staging (Ex. 3) and the County liquor code as well which requires that amplified music be constrained to the structure or premises hosting the music. Kane County Code 3-37. Indeed, the noise is so loud that it exceeds both Illinois EPA noise pollution standards as well as the permitted noise level if the Applicant were operating a steel mill or foundry:.

Octave Band (Frequency Cycles per Second)	Along Residential,Est ate or Farming District Boundaries	Along Businessand industry District Boundaries	1:26 PM	2:52 PM	July 28, 2019 Level Observed	% Excess Over Maximum Allowable
300 to 600	52	59	61.6	62	500 Hz	19%
600 to 1,200	46	53	60.7	60	1000 Hz	30%
1,200 to 2,400	40	47	53.4	53.5	2000 Hz	34%
2,400 to 4,800	34	41	44	44.7	4000 Hz	29%
Above 4,800	32	39	34	33.8	8000 Hz	6%

(Ex. 4). The Applicant’s activities have generated numerous noise and nuisance complaints to the Kane County Sheriff. These activities have significantly adversely impacted the business, scientific research and educational activities at Max McGraw and have interfered with weddings and other social gatherings at Max McGraw. Many of the neighbors who signed the petition opposing Petition 4514 have complained to the Sheriff as well – so much so that at least some have told us that the Sheriff’s deputies are there so often that they have told residents to “not complain anymore because it won’t do any good. If you complain and we write them a ticket, they will just pay it and continue doing the same thing.” This type of recidivist conduct and blatant disregard for the law is, of course, grossly unacceptable and should not be tolerated.

On October 3, 2019 the County issued another Violation Notice (Ex. 3), points out that the Applicant has been and currently is violating several sections of the Kane County Code

“pertaining to liquor, zoning and building regulations.” The Violation Notice calls out the misleading nature of the Zoning Application 4514, and the Applicant’s testimony before the ZBA, where Applicant claimed it was seeking a zoning change for a portion of the parcel to permit “weddings, parties and picnics” when in reality the Applicant is routinely conducting a flea market, rodeos, festivals and outdoor concerts, using stages and outdoor sound systems without first obtaining required permits. The Violation Notice also noted that the Applicant was permitting alcohol to be served or consumed in violation of the zoning and Liquor Code. (Ex. 3).

The Applicant’s response to these complaints and violation notices has been nothing short of a callous indifference to the rights of its neighbors. The Foundation complained about the noise issue at the Zoning Board of Appeals and to the Sheriff but rather than turn down the volume, the aberrant activity has increased. When neighbors complain, the Applicant simply turns the speakers to aim them at a different neighbor until that neighbor complains – leading to a situation of “speaker roulette” where the loser gets the speaker and the loud music and noise. Such brazen disregard for basic common decency should not be ignored. Certainly, such conduct should not be rewarded with zoning relief.

Although the Applicant did attempt to secure a permit after the second violation notice and after the Development Committee rejected the zoning application, the County denied that request citing:

1. Documentation of incidents from the Sheriff – 21 incidents in last 30 days
2. Information from the health Department relative to compliance with temporary food permits;
3. Ongoing health Department violations regarding rash and dumping;
4. Failure to provide Water Resources with required information regarding on-site grading and modifications and failure to comply with the Stormwater ordinance.
5. Site inspection with Health Department, Zoning Administrator and Fire Marshall on October 17 where numerous violations were noted, including remodeling a kitchen without a permit.

(Ex. 5).

Given these ongoing problems, the Max McGraw Wildlife Foundation has been forced to engage counsel, hire experts and significantly alter its business operations – all because the Applicant refuses to be a good neighbor. We urge the Board to follow the recommendations of the County Development Committee and Zoning Board of Appeals to reject the Zoning application out of hand and that the Applicant be required to remedy all violations and bring its activities into full compliance with all Kane County Code regulations and requirements. We request that the Applicant be required to comply with all applicable permitting requirements before it is permitted to resume any business operations. Finally, we also respectfully

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request that the Committee and the County Board ensure that staff and the Sheriff vigorously enforce all alcohol, building, zoning and other County Code provisions to the fullest extent of the law to ensure Applicant's compliance and to protect to rights of surrounding home and property owners.

Thank you in advance for your time and attention to this matter. We look forward to appearing before the County Board meeting on Tuesday November 12, 2019.

Very Truly Yours,
MAX MCGRAW WILDLIFE FOUNDATION

A handwritten signature in black ink, appearing to read "Keith L. Hunt", written over a circular stamp or mark.

By: Keith L. Hunt
An Attorney for the Foundation