

M E M O R A N D U M

TO: Village of Seneca
Planning Commission
City Council
City Mayor
c/o Village Attorney, Robert Russo

DATE: July 5, 2023

Objection

To the Proposed Text Amendment to Allow in Industrial Zoned "Barge Terminals" as a Special Use

As you are aware I represent several community members and local businesses that (1) objected to the application by Illinois & Michigan Oil, LLC (IMOL) to construct and operate a 106 Barge Fleeting Facility on their property, before its withdrawal; and (2) object to the Village's proposed zoning text amendment to allow Barge Terminals as a special use in an industrial zoned area.

I. Background

IMOL originally submitted its application for a special use permit to install and operate a 106 Barge, barge fleeting operation on their property with the Village in April of 2023. IMOL's property extends approximately 2.5 miles east and west and is on the south side and abuts the Illinois River. The proposed barge fleeting terminal will be approximately 2.3 miles in length. The property is narrow and extends to the eastern boundary of the Village. Unincorporated Grundy County is to the south. It is my understanding that the property currently does not have access to the Village's sewer and water and that any road which accesses the site has not been dedicated to the Village. The property is zoned industrial. Pursuant to the current zoning ordinances, a barge fleeting operation is neither a permitted use or allowed as a special use in an industrial zoned area.

At the May 10, 2023 planning commission meeting the application was withdrawn because the applicant could not obtain the permit sought under the current ordinances. Shortly thereafter, the Village announced its intent to amend their zoning ordinances to allow as a special use

barge terminal operations in industrial zoned areas. Pursuant to the statements made by the Mayor and members of the planning commission, the Village believes it is necessary to make this amendment to avoid litigation and to control the size of the operation outside of the court system.

II. Objections

A. Overview

Without waiving any available challenges to the legality of the annexation agreement which annexed the subject property, this objection to the proposed text amendment is being filed. The grounds for objection are as follows:

1. The zoning ordinances as written and adopted are presumptively valid. Adopting the proposed text amendment can be reasonably viewed as an accommodation to IMOL and actually create a more favorable record for IMOL to challenge the actions of the Village if their application is ultimately denied.
2. The current ordinances do not define "Barge Terminal". The term only appears at table 10-4-4T.
3. The proposed text amendment is inconsistent with the 2008 Comprehensive Plan and the codification of the relevant parts of the comprehensive plan into the zoning ordinances at sections 10-4C-0, et seq. (Industrial District) and 10-4E-0, et seq. (Riverfront District).
4. The applicable standards for recommendation and approval of Special Use Permits set forth at 10-8-1(F) will be applied differently depending on whether the subject property is zoned industrial or riverfront.
5. The proposed text amendment is reactionary to the IMOL application and IMOL will be the primary beneficiary thereof.

B. Argument

1. Validity of current zoning ordinances.

The zoning ordinances as written do not allow for barge terminal operations in industrial zoned areas. This was the intent of the comprehensive plan adopted in 2008 and as incorporated in the applicable ordinances 10-4C-0, et seq. (Industrial District) and 10-4E-0, et seq. (River Front District) which were adopted in 2010. In addition, table 10-4-4T is consistent with 10-4C-0 and 10-4E-0 which were also adopted in 2010.

It is unlikely a challenge to the current zoning ordinances by IMOL will be successful. Courts have stated that a zoning ordinance is a legislative judgement and, therefore, is presumptively valid. A party challenging the validity of a zoning ordinance must show by clear and convincing evidence that the application of the ordinance is arbitrary and unreasonable, and being of no substantial relation to the public health, safety or welfare. However, even if the presumption of validity is weakened in the absence of a comprehensive plan, the burden of proof remains on the party challenging the ordinance to establish its invalidity by clear and convincing evidence. The adoption of a comprehensive plan that incorporates valid zoning goals increases the likelihood that the zoning of a particular parcel in conformity therewith is not arbitrary or unrelated to the public interest. See Ward v County of Cook 68 Ill. App. 3d 563, 1350 Lakeshore Association v Casalino, 352 Ill. App. 3d 1027.

The applicable Village ordinances have been in place since 2010. In addition, the Village has its 2008 comprehensive plan to rely upon. In my opinion, what gives the Village great weight in defending its current ordinances is the fact that the ordinances have been in place for 13 years, and parts of the findings of the comprehensive plan were directly codified in the ordinances. In particular 10-4C-0, et seq. is verbatim to the comprehensive plan. The comprehensive plan at page 27 states, with regard to Recreation, as follows: "From Memorial Day through Labor Day, the Village experiences a tremendous tourist draw of boaters, campers and bikers due to its marinas, access to the Illinois River, and proximity to the Woodsmoke Ranch and the I&M Canal corridor/trail. The recreation land use category is

geared toward seasonal boating, camping and biking activities as well as complimentary businesses and services that meet the needs of the tourists and related activities."

And 10-4E-0: River Front District, states as follows: "From Memorial Day through Labor Day, the village experiences a tremendous tourist draw of boaters, campers and bikers due to its marinas, restaurants and access to the Illinois River. This land use category is geared toward seasonal boating and camping activities as well as complementary businesses and services that meet the needs of the tourists and related activities."

The comprehensive plan at page 28 states that the Industrial land: "category provides opportunities for high intensity industrial uses, including warehousing (buildings over 100,000 square feet in area), manufacturing, and processing uses. This land use category will have access to arterial roadways, railroads, and/or waterways. Industrial land uses are to be well buffered from incompatible land uses, by solid screening, such as fencing or walls in combination with intense landscaping treatment. When possible, industrial establishments should be located an appropriate distance away from other less intense uses."

It further proceeds: "Existing industrial development is concentrated along the Illinois River. The *Future Land Use Plan* provides new industrial opportunities north of railroad and along the east of Route 6 with some lower intensity business park development proposed as a transition between residential and industrial development opportunities is good for Seneca because of its proximity to the Seneca Road/I-80 interchange."

10-4C-0, Industrial Uses states as follows: "This land use category provides opportunities for high intensity industrial uses, including warehousing (buildings over 100,000 square feet in area), manufacturing, and processing uses. This land use category will have access to arterial roadways, railroads, and/or waterways. Industrial land uses are to be well buffered from incompatible land uses, by solid

screening, such as fencing or walls in combination with intense landscaping treatment. When possible, industrial establishments should be located an appropriate distance away from other less intense uses."

Read together, the stated intent of the future land use plan is to utilize the Illinois River and undeveloped properties along the river for recreation. Whereas, the future land use plan states the intent to refocus industrial growth from the Illinois River to north of the railroad and along East Route 6. This is consistent with the buffering requirements of the Industrial ordinance.

Seneca has a well-established comprehensive plan and zoning ordinances that in my opinion will withstand court review. Conversely, a sudden change in the ordinance, immediately after the IMOL application and withdraw, coupled with the fact that the change will only impact property owned by IMOL or its principles may reasonably be found to be arbitrary and capricious. In particular, if found contrary to the existing comprehensive plan and the priorities set forth therein.

2. Barge Terminal is not currently defined

The current ordinances do not define "Barge Terminals". The only reference to "Barge Terminals" in the zoning ordinances is at table 10-4-4T. Of interesting note is that the application of IMOL refers to the facility as a barge "fleeting" facility. Before any text amendment is presented for vote, it is my opinion that "Barge Terminal" should be defined. The types of permissible barge operations should be defined by looking at the following factors: The number of barges; The number of tugs necessary to move barges; The rate of movement of barges in and out of their moorings; The product being moved by barges; Whether barges are to be loaded, repaired, and maintained on site. These standards should be addressed ahead of time to predetermine the minimum acceptable impact for the community such as traffic, noise, fumes, odors, and the impact on public facilities and services, including fire protection.

Further, by way of comparison, the existing barge sites east of the rail road bridge are accessory to the existing principal use of each parcel. Whereas, the proposed IMOL project has no principal use associated with their proposed barge fleeting facility.

3. Inconsistent with the comprehensive plan

The stated intent of the land use plan as adopted in the zoning ordinances is to promote the Illinois River for recreational uses and direct industrial growth north of the railroad along east Route 6. Enabling an industrial barge operation on the river is incompatible with this purpose. Further, the requirement that industrial uses be well buffered from incompatible uses cannot be met if construction is adjacent to water.

4. Application of special use standards to industrial zoned areas vs. recreational use areas

The key element for review when applying 10-8-1(F) standards to an application for a special use is whether the proposed use will be harmonious with and in accordance with the general objectives of the land use plan, the zoning ordinances and with the existing or intended character of the area. The view of what is harmonious will weigh heavily on the current zoning of the land. What is harmonious to industrial is not harmonious to riverfront. The character of the area is inherently different. The priority of recreational uses set forth in the comprehensive plan and the riverfront zoning district indicates the intent was to only provide barge terminal operations in a riverfront zoned area so as to make sure the recreational priorities are not disrupted.

5. The proposed amendment is reactionary

But for the application of IMOL, the proposed text amendment would not be contemplated. Further, IMOL's property is only one of two vacant riverfront properties zoned industrial. Note: It appears that these are the only two industrial sites which appear to be east of the railroad bridge and outside the

parameters of the Seneca Port District. And, whereas there are two industrial sites adjacent to the river, the IMOL site fronts 2.5 miles of river and the other site has 1 mile or less of river front access.