

5. Application #: ZA-811-07-Y (Continued from November 1, 2007)
Existing Zoning: A-1
Location: 4301 West Buckeye Road
Proposal: Request for Formal Interpretation. Appeal of Informal Interpretation letter dated September 14, 2007 by Zoning Administrator regarding a biodiesel fuel manufacturing facility.
Ordinance Sections: 303.B.1.b
Applicant: MSCP LLC
Representative: MSCP LLC
Owner: MSCP LLC
Appellant: MSCP LLC

Mr. Paul read the details of case ZA-811-07-Y and swore in individuals wishing to speak in reference to this case.

Mr. Jerry Tokoph, 2920 East Camelback Road, stated that he was 87.5% owner of Metro South Corporate Park, MSCP LLC. He said they submitted documents that outlined what the bio-diesel facility would look like and what it would do. They asked for a Formal Interpretation of an Informal Interpretation. From their review, they found no zoning codes which were close to their facility. They extensively reviewed the A-1 and A-2 codes and submitted justification on why they fit into the A-1 category. Their 700,000 square foot parcel was previously a Revlon manufacturing plant processing chemicals for lipstick, shampoos and cosmetics. He said that in many ways the processes were very similar to what they propose for their operation.

Mr. Tokoph stated that their plant will be about five acres where the Revlon parking lot was. There was no opposition from the neighbors known to them. They contacted surrounding sites such as Phelps Dodge, ITC, Dirks Moving and Storage, Angelica Laundry, as well as their tenants such as a law firm.

Mr. Tokoph said that the facility is a sound, safe, green solution to the fuel situation. Their process was the conversion of certain chemicals, fats, and oils into biodiesel fuel. He said that Mr. Fred Wellons could answer to technical questions on how it would operate, how many people would be there and why they felt it fit into the A-1 category.

Fred Wellons, 2710 Calvin, stated that he had been making biodiesel for 12 years, and he'd been in fats and vegetable oils, processing soy bean and animal fats, and making textile chemicals and metal chemicals for about 30 years.

Mr. Wellons stated that he did not know specifics about the Phoenix Zoning Ordinance but he had reviewed the A-1 and A-2 lists in an attempt to come up with a zoning classification. He compared their process with those listed and looked for similarities.

Mr. Wellons said that in his August 28th letter, he stated things that seemed to be close were breweries because they have big tanks, trucks going in and out and the handling of alcohol. He listed #73 and #99 even though they are not a petroleum fuel but because they would have bulk storage. He felt they were closer to #132, soaps and detergents. He said that most of the liquid detergents today were methyl esters that had been sulfonated. He explained that companies like Dial took fats and oils, sulfonated them, and made a methol ester and then added another further step. Some companies sometimes stopped at that point and sold that as biodiesel fuel. He felt they were pretty similar to the A-1 category.

Looking at A-2, Mr. Wellons said he found there were some similarities but not as many as in A-1. The A-2 zoning district included significant amounts of heat, and mechanical or chemical processing. He said their process included heat, pumps, and motors and the chemical reaction they used was methyl with fats and oils. Their processing was not a large amount and was closer to soaps in the A-1 zoning district.

Mr. Wellons said multiple shift work was listed in A-2. Their workforce was proposed at ten people on the first shift, five people on the second shift, and five on third shift and did not seem a multi-shift operation. Per the comparison to large scale structures, their largest structure would be an 8,000 square foot warehouse.

Ms. DeMichael stated that she made the Informal Interpretation on this request and a similar one for another site previously. She referred to both letters in the Board's packets. Her determination was that biodiesel manufacturing was not allowed in A-1 zoning.

Ms. DeMichael said the A-1 zoning district was a light industrial district which allowed residential housing. It did allow breweries but not fuel manufacturing which can be explosive. The A-1 zoning district specifically listed fuel and oil storage, but did not list not manufacturing. It was therefore not permitted by omission from the list.

Ms. DeMichael reiterated the process described by Mr. Wellons and contended that the heated manufacturing which produced a flammable product was closer to an A-2 use. Despite the agreement of Tellurian's industrial neighbors, she said any interpretation of permitted uses in a particular zoning district would apply everywhere in the city from that point forward. That presented the opportunity for a fuel production plant to occur right next to homes which are also allowed in the A-1 zoning district.

Ms. DeMichael stated that she had classified biodiesel manufacturing as an A-2 use. It was not similar to the uses presented such as breweries, or soap manufacturing and it was not storage of fuel products, but manufacturing.

Mr. Paul asked if a Use Permit was required for residential use in an A-1 zoning district.

Ms. DeMichael stated that was true but all that was needed for a Use Permit was to show no significant increase in traffic, noise, odor, or dust to allow the residential use.

Mr. Tokoph stated he did not agree with the interpretation. He stated that they would get all permits necessary. He noted that the facility was an extremely small one, not even the size of the surrounding APS substation and Southwest Gas facility. He said as everything in the area was industrial, he did not know where the nearest home was but it was a long way away.

Mr. Tokoph talked about the purchase of the property which involved moving Revlon out over a one year period. He said it was a major manufacturer involving heat, processing, and gravity feeds, with enormous amounts of H3 and H4 materials stored. He explained that because this was new technology there was no near plant to tour.

Mr. Paul agreed that it was new ground that the city would probably be looking at more frequently. He said that as he reviewed the lists of uses allowed in A-1 there were a large number of permitted uses that he thought would pose an equal or greater challenge to residences. He said he thought biodiesel could fit into the A-1 zoning list.

Mr. Gaynor asked Ms. DeMichael how close the nearest residence was.

Ms DeMichael replied staff did not look at that for Interpretations. As this was an Interpretation of an allowable use for a zoning district it was irrelevant to this site. If allowed at this site it would be allowed in any A-1 zoned property in the city.

Mr. Paul asked if Mr. Tokoph had another mechanism available to allow them to operate there.

Ms. DeMichael stated they could rezone the property to A-2, thus giving an opportunity for community input on the land use, or find another location that was already zoned A-2.

Mr. Saul commended Tellurian for their green efforts and for cleaning up the Revlon plant. He asked if there was a way to exclude residential uses, perhaps by a stipulation.

Ms DeMichael said the Board had no right to restrict the Zoning Ordinance; that was done by Text Amendment.

Mr. Tauber said his concern was the issue of precedent. He said although he could not address how any of the other uses got on the A-1 list, he was concerned about what the Board added. He felt that because they could not add protection for residences, it was not their place but that of another governing body to define what was put on the list.

Mr. Paul countered that it was specifically their place, whether they all agreed or not. He asked what would be the impact of the Formal Interpretation.

Ms. DeMichael said the impact was that if the Board overturned the Informal Interpretation, all biodiesel fuel manufacturing would be permitted in any A-1 district and all petroleum fuel manufacturing would say they were analogous to biodiesel fuel manufacturing and they too should be allowed in an A-1 zoning.

Mr. Paul asked if it would be added to the list permanently.

Mr. DeMichael explained that the Formal Interpretation would allow it as a permitted use and as the Planning Department did clean up work on the Zoning Ordinance, it would be added to the list.

Mr. Paul said that would be the case unless the City Council differed with the Board's Formal Interpretation.

Ms. DeMichael said the City Council had no role in Formal Interpretations and the next venue would be the courts.

Mr. Paul asked who amended the code.

Mr. Hamblin said that City Council amended the code if they passed an ordinance adding biodiesel but until such time the Formal Interpretation would stand.

Mr. Paul stated that theirs was not a permanent decision. If the City Council did not agree, they could elect not to pass the ordinance when it came before them.

Mr. Davis said that it was a new technology and the Board needed to commit. It was his understanding that its manufacturing process was not particularly volatile. He said he went out to the site and it was a perfect site for it.

Mr. Paul stated that the residential use was a permitted use and the Board had denied Use Permits. He said he was inclined to agree with Mr. Davis.

Ms. Thornham reminded them was that once a use was allowed in one A-1 district, it was approved for all A-1 districts. The decision was not determined by site because it was a universal application.

Mr. Davis said that if something was wrong, the City Council could react to it.

Mr. Paul stated that he did not see a new biodiesel fuel manufacturer wanting to open in an area that had residential because residents would not welcome them.

Ms. Thornham said if the precedent was set for it to be allowable, it would be harder to restrict then because the code would be on the side of allowing.

Mr. Gaynor asked if the city could appeal to the Superior Court.

Mr. Hamblin said that the city could take a special action to the Superior Court.

Mr. Tauber agreed that it was less likely to have a facility built next to homes, but it remained a possibility he was not comfortable with. He said he did not know how or when the item might come before the City Council.

Mr. Paul said his perception was that denying an important perspective business the opportunity to operate in an ideal location was an unfair precedent.

Mr. Tauber said he sympathized with that but in his understanding fuel manufacturers were not supposed to be next to neighborhoods. Regardless of the source or whether it is environmentally safe, biodiesel was a fuel.

Mr. Paul said that fuel storage was listed in the A-1 zoning district.

Mr. Gaynor mentioned that the literature stated it was biodegradable and bulk fuel storage was not biodegradable and was explosive.

Mr. Ford stated that with his 24 years as a fire captain and paramedic he saw at least 50 items on the list that appeared to be more threatening than a bio-diesel fuel manufacturing plant.

Mr. Davis MOTIONED in case ZA-811-07-Y to overturn the Zoning Administrator's decision in the Informal Interpretation and allow biodiesel fuel manufacturing in the A-1 zoning category.

Mr. Saul SECONDED the motion.

Motion CARRIED by a vote of 5-2 (Thornham, Tauber).

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Mr. Paul swore in Mr. Jerry Tokoph.

Mr. Jerry Tokoph, 2920 East Camelback Road, stated that in regard to ZA-811-07-Y he had submitted a request to continue the case to December 6, 2007 as a number of expert members could not make the date because they were out of state.

Mr. Paul asked if there was any opposition. Having received none, he called for a motion.

Mr. Gaynor MOTIONED to continue ZA-811-07-Y to the December 6, 2007 Hearing.

Mr. Ford SECONDED the motion.

Motion CARRIED by a vote of 5-0.



City of Phoenix

PLANNING DEPARTMENT

September 14, 2007

Mr. Fred Wellons
Tellurian Biodiesel
228 Main Street #5
Venice, California 90291

Re: Informal Interpretation – Biodiesel Manufacturing Facility

Dear Mr. Wellons

Thank you for your August 28, 2007 letter requesting an Informal Interpretation regarding the zoning required for a biodiesel fuel manufacturing facility. After reviewing your description of the manufacturing process and previous Informal Interpretations on the same process, I have determined that the proposed use would be permitted only in the A-2 (Heavy Industrial) zoning district. This zoning district allows the "fabrication and assembly of finished products or subassemblies..." which is consistent with what you are proposing (Section 628.B.2. of the Phoenix Zoning Ordinance).

You have explained that Tellurian Biodiesel specializes in biodiesel fuel production and would like to build a manufacturing facility in Phoenix. Your company uses recycled feedstocks such as used cooking oil, animal fats and limited amounts of methanol (10%) to produce methyl esters. Your company would not be introducing any sulfonated products into the methyl esters and the base stock will not include any petroleum oils. But, the process will require heat to produce the finished biodiesel product and to keep the feedstocks and finished products liquid during storage.

The A-2 zoning district is designed to accommodate more intensive uses of property;...industrial processes which may involve significant amounts of heat, mechanical and chemical processing, large amounts of materials transfer, extended or multiple shift operation[s], large scaled structures, etc. The A-2 zoning district allows the manufacturing of products and the "fabrication and assembly of finished products or subassemblies, so long as the primary use of the property is not the basic processing and compounding of raw materials, or food products (Section 628.B.2.).

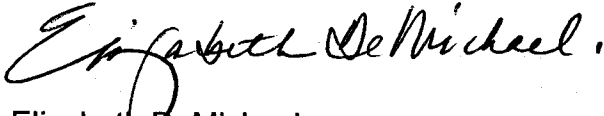
While the product your company will be manufacturing will be biodegradable and have lower sulfur content than petroleum diesel fuel, you would still be manufacturing fuel. It is not the same as, or analogous to, the manufacturing of

liquid laundry detergents. The A-1 zoning district specifically designates fuel distribution centers where fuels would be stored as a permitted use but not fuel manufacturing.

You may wish to contact the Phoenix Fire Department Prevention Bureau when you find the appropriately zoned site to determine the process for obtaining the needed certification for your manufacturing, chemical storage and waste disposal processes. You should also contact the Arizona Department of Environmental Quality and Arizona Health Department to determine if there are any state regulations or certifications that are needed for Tellurian Biodiesel to begin its manufacturing process.

What your company is proposing will provide a positive option to fuel users and I wish you luck in finding an appropriately zoned site. If you do not agree with my Informal Interpretation, you have the right to file an appeal for consideration by the Board of Adjustment. An appeal can be filed with the Planning Department, 200 West Washington Street, 2nd floor, within 15 days of the date of this letter. Information on what is needed to file an appeal can be obtained on the Planning Department website at <http://cityofphoenix.gov/planning/zonapp.html> and paying the required fee.

Sincerely,



Elizabeth DeMichael
Zoning Administrator

C: Debra Wilkins Stark, AICP
John Parks, DSD
Susan Hyatt, CEDD
Zoning Team
File