

October 10, 2019

Re. Milk Pail Zoning Application #4514

To the Distinguished Members of the Kane County Development Committee:

On September 15, 2019 we wrote you on behalf of The Max McGraw Wildlife Foundation to object to the Zoning Petition #4514, which was on the September 17, 2019 Development Committee agenda. The Max McGraw Wildlife Foundation submitted a formal written objection to you at that time. In light of the objection and pending problems with the parcel, the matter was tabled but will appear again on the agenda for Tuesday October 15, 2019. The Max McGraw Wildlife Foundation again respectfully requests that you reject Zoning application #4514 and deny any zoning relief as the Kane County Zoning Board of Appeals did when it unanimously rejected the re-zoning request (with 1 abstention) at its September 10, 2019 meeting.

The purpose of this communication is to update you on several recent developments.

First, Kane County has issued a Violation Notice to the owners of that parcel. (Attached as Exhibit 1). Specifically, the October 3, 2019 Violation Notice, 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 Applicant also routinely violates the liquor provisions of the Kane County Code by serving liquor, and allowing the consumption of liquor on the B-3 portion of the property (which does not permit the sale or consumption of liquor) and by violating provisions relating to amplified sound at liquor establishments. The Kane County Code requires business serving liquor to ensure that any amplification of music or other sound is maintained within the boundaries of the structure or property and that it not be heard beyond those boundaries. The Applicant flagrantly violates these provisions weekly.

Indeed, the Applicant misled the County in requesting its permits indicating that the venue would be used for weddings, picnics and a flea market, not the raucous music festivals and rodeos it regularly conducts – which are neither permitted nor special uses in either B-3 or B-4 zoning districts.

As we pointed out in our prior correspondence, 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.

The Applicant’s response to these complaints has been nothing short of a callous indifference to the rights of its neighbors. We 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, it should not be rewarded with zoning relief.

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. It has commissioned several sound studies conducted by a nationally recognized, environmental engineering firm who concluded that, on numerous occasions, Applicant’s unlawful activities generate sufficient sound volumes to violate not only Illinois EPA and Pollution Control Board standards, but also produce more noise than a foundry, steel mill or mining operation would be permitted to generate under current Kane County standards.

We urge the County Development Committee and the County Board 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 also respectfully 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 Development Committee on Tuesday, October 15, 2019.

Very Truly Yours,
MAX MCGRAW WILDLIFE FOUNDATION

A handwritten signature in black ink, appearing to read "Keith L. Hunt", is written over a circular stamp or seal that is partially obscured by the signature.

By: Keith L. Hunt

BEFORE THE KANE COUNTY ZONING BOARD OF APPEALS

In re the Zoning Application of Tianguis, LLC)	
)	Petition No. 4514
Applicant)	Parcel 03-25-226-004
)	

AFFIDAVIT OF TRACI BRANDENBURG

I, Traci Brandenburg, being first duly sworn, on oath, state that if called to testify I could competently testify as follows:

1. I reside on the Max McGraw Wildlife Foundation. I serve as the Director of McGraw’s Pepper Family Center for Conservation Education.

2. One of the main missions of the Max McGraw Wildlife Foundation is conservation education. Each year, we offer programming to more than 3,000 participants – area schools, scout troops, community groups such as the Elgin Boys and Girls Club as well as area special needs groups. We offer classes dealing with our natural heritage including fishing, archery, hunter safety and wildlife management as well as summer camps, sensory hikes, bird walks, butterfly rearing and releasing, habitat restoration, water ecology and Illinois animals.

3. As the Director of McGraw’s Pepper Family Center for Conservation Education and a resident of the McGraw property, I have noticed a significant change in my ability to do my job as a result of the loud music/noise coming from the Milk Pail property. A large portion of our conservation education programming is scheduled on the weekends. The noise from the music is a huge disruption and has the potential to make participants, including Foundation financial supporters, reluctant to return to the

Foundation. Three specific areas that we use to instruct are not being utilized due to the music and its effect on our ability to teach.

4. At McGraw, we wish to spark an interest in the outdoors by providing a place to learn. The Foundation's 1250 acres of land and water has managed to withstand the increase of urban sprawl all these years. It would be a shame if our community that so desperately needs natural areas no longer encourages preservation of this resource.

5. I am not opposed to the Milk Pail property making a reasonable use of its property – a use that is consistent with, and considerate of, its surroundings.

Unfortunately, this has not been the case and therefore I oppose any change in zoning which would serve only to exacerbate the present problems and further interfere with McGraw's educational mission by the requested expansion of activities and uses on the Milk Pail site.

I declare under penalty of perjury that the foregoing statements are true and correct to the best of my knowledge and belief.

Traci Brandenburg

Traci Brandenburg

Subscribed and Sworn

Before me on this 8th

day of August, 2019.

Cynthia D Seibt

Notary Public



BEFORE THE KANE COUNTY ZONING BOARD OF APPEALS

**In re the Zoning Application of
Tianguis, LLC**

Applicant

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**Petition No. 4514
Parcel 03-25-226-004**

AFFIDAVIT OF KYLA BRITTAIN

I, Kyla Brittain being first duly sworn, on oath, state that if called to testify I could competently testify as follows:

1. I am employed at the Max McGraw Wildlife Foundation as the Director of membership and Special Events.. One of my functions is to give tours to individuals interested in membership or those wishing to hold an event our venue.
2. On Sunday afternoon, July 21, 2019 I was conducting a tour of a family considering our facilities for a wedding reception. While giving the tour we were inside the building with all windows and doors closed. We could easily hear the music coming from the Flea market at the Milk Pail even though we were indoors and were on a portion of the Max McGraw Foundation approximately 2000 feet away.
3. The music was so loud that the doors and windows were actually shaking (vibrating) from the sound. One of the guests on my tour expressed concern about the noise and asked "is it always like this?" The group voiced concern about having a wedding at our facility because of the noise. The volume of the music was clearly disrupting our conversation and therefore interfering with the Foundation's business opportunity to host a wedding.

4. The music was so loud that I was able to make a recording of the music on my iPhone while standing on the patio where dining guests are usually seated. A true and correct copy of this recording is available at <https://youtu.be/CuHjVqOzDWM>

5. We could not seat any members to dine on the outdoor patio due to the noise on that date.

6. When I left to go home at the end of the day, several hours later, I could still hear the music.

I declare under penalty of perjury that the foregoing statements are true and correct to the best of my knowledge and belief.

Kyla A Brittain

Kyla Brittain

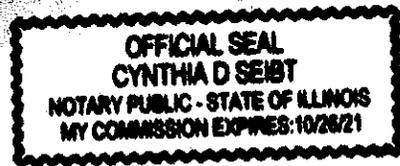
Subscribed and Sworn

Before me on this 8th

day of August, 2019.

Cynthia D. Seibt

Notary Public



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Kane County Development Committee Meeting - Objection to Zoning Petition 4514- Milk Pail

🕒 You replied on Sun 9/15/2019 9:06 AM

KH

Keith Hunt

Sun 9/15/2019 8:43 AM

Barreiro <tbarreiro@kanecoboard.org>; Chairman Martin <jmartin@kanecoboard.org>



Objections to Milk Pail.pdf
65 KB

⏷ Show all 3 attachments (585 KB) Download all Save all to OneDrive - Hunt & Associates, P.C.

Hon. Members of the County Development Committee:

The Max McGraw Wildlife Foundation objects to the Zoning Petition #4514 which is on the agenda this Tuesday, September 17, 2019. The Kane County Zoning Board of Appeals unanimously rejected the re-zoning request (with 1 abstention) at its September 10, 2019 meeting. We ask that you also deny the request.

The Max McGraw Wildlife Foundation is one of the most pristine, tranquil and well-preserved and managed lands in the Midwest. The Foundation's approximately 1300 acres almost completely surrounds the Milk Pail property, with the remaining border being adjacent to a residential neighborhood. The Foundation is one of the premier research facilities for fish and wildlife management as well as conservation education. Scientists and researchers from around the globe conduct research through and at the Foundation. A short 60 second video on the Foundation can be viewed at https://youtu.be/3_86AAG5t-A.

The Applicant's current activities are disruptive to surrounding property owners and interfere with the quiet and peaceful enjoyment of surrounding properties. Neighboring residents are very upset by the Milk Pail's flea market activities and have signed a petition in opposition to the zoning request.(attached) Currently, the Milk Pail property hosts a weekend flea market which, by itself, is neither a permitted nor a special use in either a B-3 or B-4 zoning district. The Applicant now seeks to greatly expand its activities to allow increase its alcohol sales, beyond the 6 currently existing bars. Indeed the stated purpose in the zoning application is to permit alcohol sales throughout the entire property, rather than in just part of it. This business operation is plagued with many problems requiring the County Sheriff to have more than 120 calls for service to the site in the past

COUNTY OF KANE

**DEVELOPMENT & COMMUNITY
SERVICES DEPARTMENT**
Mark D. VanKerkhoff, AIA, Director
Building Officer
Zoning Enforcing Officer



County Government Center
719 Batavia Avenue
Geneva, Illinois 60134
Phone: (630) 232-3480
Fax: (630) 232-3411
Website: www.co.kane.il.us

October 3, 2019 via email and hand delivered on October 4, 2019

Ed Romero and Bruce Oehlerking
Tianguis LLC
14N630 State Route 25
East Dundee IL, 60118

Re: Zoning Petition 4514 and recent events and scheduled event in violation of various sections of the Kane County Code

Dear Mr. Romero and Mr. Oehlerking,

Your petition for rezoning for the above property under Petition 4514 is currently in process. It is scheduled to be on the agenda for the County Development Committee on October 15, 2019.

The County has been made aware of recent events and activities which are violations of various sections of the Kane County Code, including, but not limited to, the sections that pertain to liquor, zoning and building regulations. We are also aware that another event is publicized to be held on October 6, 2019.

Your submitted petition stated that the area labeled "weddings and parties" on the original site plan and labeled "Events Center" on the revised site plan dated 8/9/2019 would be "an outdoor area to accommodate various entertainment venues". In Mr. Oehlerking's subsequent testimony at the public hearings conducted by the Zoning Board of Appeals, he stated; "Back in 1990 we were doing just very, very well with picnics. The Dot-combust came, everybody couldn't have -- the corporations couldn't do it anymore. My belief is we can resurrect that again. So that's part of it and make that into --it's somewhat of a -- not recreating but something we want to do going into next season. This will enable large groups of corporation people to have team building events mostly during the daylight hours, and we shut them down at 9:00. That's by our choice." He later stated this in response to a question about the use of the outdoor area; "Some of that is to be determined yet how it's all going to be because we don't have vendors lined up and have the zoning lined up." (quotes from Transcript of Public Hearing - Petition 4514, Volume II Conducted on September 10, 2019)

The County has received noise and other complaints about events held in the area of your property currently fenced in to the south and west of the building used for banquets. Picnics and parties are permitted uses under the current zoning, but B-4 zoning is required in order to serve alcohol in the fenced in area. The County has evidence that outdoor concerts with an unpermitted stage, an unpermitted outdoor food/bar counter and an unpermitted rodeo have been held in the fenced in area. These types of events are not permitted under the current zoning. If you want to propose these uses in your current petition, you will need to specifically stipulate what uses and related details (such as number and types events, number of attendees, hours, etc.) you propose. In addition, since outdoor concert venues and rodeo are not defined and listed as permitted or special uses in the Zoning Ordinance, you will either need to revised the zoning petition to a Planned Unit Development (PUD) and include these proposed uses or work with County staff to develop a corresponding text amendment to the Zoning Ordinance for these uses.

In addition, be reminded that serving alcohol in this area is not permitted under the current zoning and subsequently not permitted in this area as part of the current liquor license. The County has evidence that patrons have been served and/or consumed alcoholic beverages at events in the fenced in area currently not zoned or licensed for alcohol to be served.

In terms of the event publicized to be held on October 6, 2019, this letter is official notice that holding this event would be a violation of the Kane County Code. In the event you decide to proceed with the event you would be in violation of the Kane County Code which could result in court costs and fines. Please also note that serving or selling of alcoholic beverages, charging a cover fee, or otherwise taking money in exchange for alcoholic beverages in areas not zoned for such uses are violations of the State and County liquor codes.

If you have any questions regarding this letter please give me a call at my office 630-232-3451.

Sincerely,



Mark D. VanKerkhoff, AIA
Zoning Enforcing Officer and Building Officer

Cc: Marzenia Vandeburgt, KC States Attorney Office
Barbara Garza, KC Liquor Commission
Christopher Collins, KC Sheriff's Office
Kane County Board Office

Objections to Milk Pail Complex Rezoning

The undersigned object to the Rezoning of the Milk Pail property to allow additional areas where alcohol can be served. The Milk Pail already serves alcohol and generates excessive noise and traffic and is not consistent with residential uses in the area.

	SIGNATURE	PRINT NAME	ADDRESS
1.		SHIRLEY LEDIN	1000 DUNDEE AVE
2.		KENNETH C. DIECKS	1000 Dundee Ave
3		LISA KWILAS	1020 Dundee Ave
4		JENNIFER HARSCHAUER	1020 Dundee Ave
5		PATRICK BURKE	32W941 ALBERT DR
6		JACYLN M. BRANDON	32W941 ALBERT DR
7		MARIJANE GOFF	32W919 ALBERT DR
8		DAVID NIEMIEC	32W761 HECKER
9		KIMBERLY NIEMIEC	32W761 HECKER
10		JAMES WILBRANDT	32W931 HECKER
11		SUZANNE L. WILBRANDT	32W931 HECKER
12		MATILDE BARRERA	14N750 CASTLE
13		JORGE C. PEREZ	14N759 CASTLE AVE
14		JEFF ANNIS	32W875 HECKER
15		JAKE ANNIS	32W846 HECKER
16		GARY THOMPSON	32W846 HECKER
17		MARCUS RABINCAN	32W867 HECKER
18		MARK REIMERS	32W798 HECKER
19		KATHY GLEFKE	32W816 HECKER
20		RICK GLEFKE	32W816 HECKER
21		STEVEN A. LYNCH	32W694 HECKER
22		HELENA WILSON	32W694 HECKER
23		BILL-SHANK	32W880

24	Ed Nemic	Ed Nemic	324826 Albat Dr. E. Under
25	Chris Wood	Chris Wood	14 N 869 Castle Ave
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