

<b>STATE OF MICHIGAN</b>  <b>CITY OF DETROIT</b> <b>DEPARTMENT OF</b> <b>APPEALS &amp; HEARINGS</b>  <b>ADMINISTRATIVE</b> <b>APPEALS BUREAU</b>	<b>OPINION AND ORDER</b> <b>OF</b> <b>HEARING OFFICER</b>	<b>DAH SHOW CAUSE</b> <b>HEARING NO.:</b> 23-SCH-01
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Address: 2 Woodward Avenue, Suite 1004, Detroit, Michigan 48226

Telephone No. 313-224-0098

Buildings Safety Engineering & Environmental Department Coleman A. Young Municipal 2 Woodward Ave., Ste., 412 Detroit, MI 48226
<b>Attorney, bar no., address, and telephone no.</b> Jason H. Harrison (P31297) City of Detroit Law Department Coleman A. Young Center 2 Woodward Ave., Ste. 500 Detroit, MI 48226 (313) 237-5085 jason.harrison@detroit.gov

V

Greenfield Supply Center, LLC AKA Green Valley Properties 12627 Greenfield Detroit, MI 48227
<b>Attorney, bar no., address, and telephone no.</b> Michael F. Wais (P45482) Howard & Howard Attorneys, PLLC 450 West Four Street Royal Oak, MI 48067 (248) 723-0361 mwais@howardandhoward.com

## OPINION AND ORDER

Claimant, City of Detroit Buildings, Safety, Engineering and Environmental Department (BSEED) issued a notice of intent to revoke land use on October 25, 2022, alleging reasonable grounds exist to revoke the land use rights granted to the respondent, Green Valley Properties, LLC (GREEN VALLEY). Pursuant to Section 50-5-73 of the 2019 Detroit City Code (City Code), GREEN VALLEY was required to appear before this Court to show cause and present evidence as to why the land use grant conditions have not been violated and whether the land use should not be revoked. Based on the testimony and evidence presented, this Court finds no reasonable basis to revoke the land use in this matter.

## **I. BACKGROUND**

On October 30, 2018, BSEED issued a land use grant and approved GREEN VALLEY to operate a concrete crushing business, located at 12625 Greenfield in the City of Detroit. The effective date of the grant was November 13, 2018. GREEN VALLEY began operating shortly thereafter.

Under the land use grant, GREEN VALLEY was required to operate the business in compliance with fifteen (15) grant conditions. After grant approval, BSEED issued a certificate of occupancy and approved a site plan for the property.

On June 24, 2022, BSEED performed an inspection of the GREEN VALLEY property. The BSEED inspector determined that GREEN VALLEY was out of compliance with some of the 2018 grant conditions. The inspector issued a correction order to GREEN VALLEY on July 5, 2022. On October 4, 2022, a subsequent inspection was performed by the same BSEED inspector, which caused an emergency correction order to be issued to GREEN VALLEY. Both correction orders referenced the violations which were found during the dates of each inspection. Each correction order contained very similar violations; however, the latter emergency correction order included an additional violation related to a geotechnical report, that BSEED required GREEN VALLEY to provide. On October 25, 2022, BSEED sent GREEN VALLEY a notice of intent to revoke land use.

## **II. STANDARD OF REVIEW**

Pursuant to City Code Section 50-5-74 (Revocation; Required Findings), BSEED may revoke land use rights upon making one or more of the following findings:

- (1) That the land use grant, variance, or permit was approved based on erroneous or misleading information or misrepresentation.

- (2) That the terms or conditions of approval of the permit have been violated, the use has become a nuisance and/or is injurious to the adjacent and surrounding property owners or the applicant has failed to comply with all applicable local, state, and federal codes and ordinances; or
- (3) That there has been a discontinuance of the exercise of the entitlement granted by the permit for a continuous period of at least six months.

In this matter, BSEED allegations rest solely on finding #2.

The rules and procedures of the Department of Appeals and Hearings are promulgated in Section 2-111 of the 2012 Detroit City Charter and Section 3-3-3 of the City Code. Administrative Rule 3.1416 of the Department of Appeals and Hearings, Administrative Appeals Bureau, mandates that the hearing officer shall determine whether the decision of the department or agency was contrary to the facts of the case such that the administrative decision appears arbitrary or motivated by something other than facts presented to the administrative department or agency. The hearing officer may only overturn the administrative decision if the decision was unreasonable under the circumstances.

### **III. ANALYSIS**

In this matter before the Court, BSEED alleges that GREEN VALLEY has committed the following violations:

- Failed to maintain an effective fugitive dust plan.
- Illegally expanded its business operations (salt dome, retail center and repair garage)
- Failed to pave all roads within the property with asphalt or cement.
- Failed to keep the site nonvisible from the public right of way.

- Failed to abide by applicable provisions of the Detroit Property Maintenance Code.
- Failed to provide a Geo technical report to BSEED.
- Failed to secure permits from BSEED, requiring a finalized building permit with photographs and measurements of the piles of aggregate on the site.

BSEED Inspector, Gordon Glenn, testified that he performed property maintenance inspections of the site on June 24, 2022, and October 4, 2022. He determined that grant condition #6 was in violation, which requires all roads on the site to be maintained with asphalt or cement. He found that the main interior road on the site was a gravel road. However, subsequent testimony and evidence revealed that GREEN VALLEY's 2018 site plan, that was approved by BSEED, prior to the opening of the business, has the gravel road in place. Further testimony revealed that the BSEED and GREEN VALLEY agreed that the gravel road would be allowed, to "mitigate storm water run-off." However, a separate agreement was not memorialized in writing by the parties. BSEED did not proffer any testimony or evidence to the contrary. Therefore, this Court finds that BSEED permitted GREEN VALLEY to operate the site with the gravel road in place as part of the approved site plan.

BSEED argues that GREEN VALLEY failed to comply with condition #10 of the land use grant, which requires GREEN VALLEY to try to keep dust down to every extent possible. Testimony from Mr. Homas Hassanien, Environmental Specialist 3 of BSEED, contends that he received complaints from residents and businesses around the site regarding excessive dust, allegedly caused by GREEN VALLEY's operation. Mr. Hassanien stated that he conducted several visits to GREEN VALLEY site and found

excessive dust in the area. BSEED also proffered 2 videos, both showing trucks driving along the Greenfield service drive and dust being generated as the trucks traveled along the street. It was unclear as to the source of the dust, whether it was from the street or dirt falling off the trucks. More importantly, BSEED proffered no evidence showing that these trucks were related to GREEN VALLEY's operations. No evidence was presented showing the trucks exiting or entering the GREEN VALLEY site.

Additionally, BSEED presented Mr. Albert Ramsey, a resident who lives about a mile from the GREEN VALLEY site. He testified that he drives by the GREEN VALLEY site daily and has witnessed heavy dust in the area. He further stated that his vehicle, located at his home, is regularly covered in dust.

In response to the allegation that it violated condition #10, GREEN VALLEY produced evidence and testimony, showing that it employs water trucks and street sweeper trucks that conduct daily dust mitigation procedures, on the site property, as well as on the public streets, within a quarter mile around the site. Activity logs of the water truck and sweeper trucks were introduced into evidence. Additionally, evidence and testimony from GREEN VALLEY was presented through Alyssa Beall, a certified emissions tester, employed by NTH, which is the project consultant at the GREEN VALLEY site. She testified that she conducts quarterly fugitive dust emissions testing on the site. Her test data was based on a scientific process, known as Method 9 testing, which according to both BSEED and GREEN VALLEY, is the scientific standard for dust emissions testing. Evidence and testimony regarding GREEN VALLEY testing data, going as far back as March 2022, clearly shows that dust emissions on the site were consistently within the acceptable ranges. BSEED failed to present its own emissions testing data to the Court.

Based on the testimony and evidence proffered, his Court finds that GREEN VALLEY did take reasonable steps to keep dust down on and around the site.

BSEED further alleges that the construction of a salt dome on the GREEN VALLEY site is an illegal expansion of the business onto adjacent properties, which is in violation of grant condition #4. This land use grant condition called for the combining of (3) three parcels of land into one address. Testimony and evidence show that the parcels were combined in 2019. However, BSEED contends that the salt dome parcel was not identified in the land use grant, and therefore, it must be added to the main parcel that the other three parcels are a part of. Testimony and evidence show that since late 2022, the parties have discussed having a special land use hearing, to add the salt dome to the main parcel. Mr. Chris Jackson, a business consultant for GREEN VALLEY testified that the salt dome was built in early 2022. He further testified that the sole purpose of the salt dome is to store salt that GREEN VALLEY buys and in turn sells the salt to the public in the winter. Mr. Jackson stated that the Detroit Zoning Department told him that the salt dome was a by-right use structure, like a garage, because it was being used for storage of salt only. He further stated that he paid a permit fee to the zoning department, pertaining to the salt dome but Zoning never denied or approved the permit. In response, BSEED contends that GREEN VALLEY failed to procure the proper permits to construct the salt dome. This Court finds that at the time the operation of the salt dome does not constitute an illegal expansion of business on to an adjacent property. At the time it was built, it was an independent/separate operation from GREEN VALLEY's primary business for concrete crushing.

The next land use grant condition that BSEED alleges that GREEN VALLEY violated relates to grant condition #8. This condition mandates that the concrete and cement materials on the site shall not be visible from the rights-of-ways. Grant condition #7 requires that an 8-foot dirt berm and an 8-foot-high chained link fence, which must be placed on the berm, to be maintained along the perimeter of the multi-acre site. BSEED Inspector Glenn testified that a section of fencing was missing on the Fullerton Street side of the site. BSEED failed to present any physical evidence in support of the allegation. Based on testimony and evidence of the parties, this Court finds that GREEN VALLEY did not violate land use grant #8 nor #7.

BSEED alleges that GREEN VALLEY failed to abide by applicable provisions of the Detroit Property Maintenance Code. In support of this allegation, BSEED proffered two correction orders that were issued by Inspector Glenn to GREEN VALLEY. The first correction order relates to an inspection conducted by Inspector Glenn on June 24, 2022. The second order is an emergency correction order that pertains to his inspection done on October 4, 2022. All violations listed in the first correction order were listed in the latter emergency order. However, the emergency correction order ordered GREEN VALLEY to provide a geotechnical report to BSEED.

Based on the correction orders, BSEED ordered GREEN VALLEY to arrange for an interior inspection. Inspector Glenn also testified that he visited the site and inside of the retail center several times after June 24, 2022. He further stated that he was never denied the opportunity to conduct an inspection of the retail center at any time. Mr. Jackson testified that he called BSEED to set up an interior inspection.

BSEED alleges that GREEN VALLEY failed to obtain an annual certificate of compliance. Mr. Jackson testified that GREEN VALLEY paid an invoice fee for the Renewal of Certificate of Alternate Compliance on December 8, 2021. It is unclear to the Court if the payment applied to 2021 or 2022. However, GREEN VALLEY did not present a 2022 certificate of compliance for the retail center in this hearing. BSEED alleges that GREEN VALLEY failed to pay the prescribed inspection fee. Mr. Jackson contends that GREEN VALLEY paid the inspection fee. However, GREEN VALLEY did not present evidence of payment. BSEED alleges that GREEN VALLEY failed to obtain a DAH clearance. Mr. Jackson testified that GREEN VALLEY paid a DAH clearance fee prior to June 24, 2022. However, GREEN VALLEY did not present a DAH clearance. Mr. Robert Watson, BSEED Supervisor, testified that a retail center that GREEN VALLEY opened after it started operations in 2018, had been issued a certificate of occupancy, but still needed an interior inspection to get a certificate of compliance. He further stated the retail center needed to have a review by the City of Detroit Board of Zoning Appeals. However, the correction orders do not specifically mention anything about the need for zoning approval. Mr. Watson stated that GREEN VALLEY has a working repair facility on the site that needs to be inspected so that it can obtain a certificate of compliance. The correction orders mention nothing about the repair facility needing zoning approval. However, GREEN VALLEY has failed to persuade this Court that it was in compliance with the property maintenance codes that were cited in the correction orders.

BSEED alleges that GREEN VALLEY failed to provide a required geotechnical report for the aggregate piles in the BSEED emergency correction order issued on October 7, 2022. BSEED argues that under the authority of the Michigan Building Code,



Sections 104.4 (Inspections) and the City Code Section 8-15-16, that it has the right to compel GREEN VALLEY to provide a geo-technical report related to the aggregate piles and their impact on the soil stability.

Based on testimony from Mr. Hassanien, Mr. Watson and Inspector Glenn, the height and weight of the aggregate piles raised concerns about the stability of the soil, particularly, considering a ground collapse event that occurred in November 2021, at the site of a Detroit business located at Dearborn St. and 4<sup>TH</sup> Street. BSEED witnesses testified that following this incident, they became more concerned about the pile heights at the GREEN VALLEY site and the number of piles.

The 2018 development site plan, which was approved by BSEED mandates that the pile heights are not to exceed 50 feet high. BSEED argues that they believed that aggregate pile heights on the GREEN VALLEY site were higher than 50 feet and that the pile locations were not consistent with the 2018 approved site plan. In its emergency correction order, inspection date on October 4, 2022, BSEED ordered GREEN VALLEY to perform soil stability testing on the site and to submit a geotechnical report. Witness testimony confirms that BSEED requested Detroit City Council to consider drafting a pile height ordinance. The City Council initiated discussions on the matter. BSEED argues that it communicated their concern about the soil stability to GREEN VALLEY, between June-July 2022. In response, GREEN VALLEY submitted soil testing data from 2019 and 2020 to BSEED in August, to convince BSEED that the site was stable and there is no risk of ground collapse. BSEED informed GREEN VALLEY that the 2019 and 2020 test data was not sufficient and required soil stability testing be done and a geotechnical report submitted to BSEED. Mr. Richard Burns, Senior Vice President of NTH, the project consultant for

GREEN VALLEY, testified that GREEN VALLEY provided information and assistance in working with City Council and BSEED regarding the proposed pile height ordinance. Mr. Jackson testified that it would have been unreasonable, due to the significant cost, for GREEN VALLEY to have a geotechnical report performed at that time, since City Council was still in the process of discussing the criteria or scope of a pile height ordinance. Testimony and evidence showed that the City Council ultimately decided not to move forward with drafting the ordinance. GREEN VALLEY engaged NTH to conduct soil stability testing and requested approval from BSEED to proceed with the soil testing. Mr. Hassanien testified that he granted approval for GREEN VALLEY to proceed in March 2023 and GREEN VALLEY submitted a geotechnical report to BSEED on July 6, 2023. BSEED retained Mr. Richard Anderson, a professional civil engineer, to review the report. He was presented to the Court as a rebuttal expert witness for BSEED. He stated that the GREEN VALLEY geotechnical report lacked information, information that he believed should have been in the report. He testified that the aggregate pile heights on the GREEN VALLEY site, mentioned in the report, were acceptable. However, he admitted that he never visited the GREEN VALLEY site. He also testified that no BSEED official stated to him that a soil failure or collapse was imminent at the GREEN VALLEY site.

Additionally, GREEN VALLEY contends that the pile locations are consistent with the approved site plan. BSEED did not present compelling evidence to persuade this Court that the aggregate piles were higher than 50 feet; that there were more piles and that the pile locations were inconsistent with the approved site plan. Furthermore, this Court finds that GREEN VALLEY'S decision to wait and see if the City Council was going to adopt pile height legislation was reasonable, under the circumstances. Finally, this Court agrees

with BSEED, in that it may compel GREEN VALLEY to provide a geotechnical report. However, based on the evidence and testimony presented, BSEED failed to persuade this Court that BSEED had a reasonable basis, in this case, to compel the production of a geotechnical from GREEN VALLEY because BSEED's concern of a soil collapse was not based on fact. The Court finds that on October 25, 2022, the date that BSEED issued the Notice of Intent to Revoke Land Use letter, GREEN VALLEY's operations did not pose a risk to public safety health and welfare to the community.

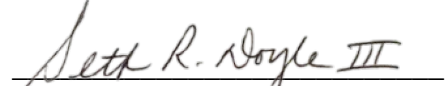
In BSEED'S pre-hearing brief, filed June 20, 2023, BSEED mentions that GREEN VALLEY has failed to secure permits from BSEED, requiring a finalized building permit with photographs and measurements of the piles of aggregate. This Court believes that it has adequately addressed this allegation, based on the testimony and evidence placed on the record, as it relates to permits and pile aggregate measurements.

### **III. CONCLUSION**

The central question in this case is whether GREEN VALLEY has violated the terms or conditions of approval of the grant, has become a nuisance and/or is injurious to the adjacent and surrounding property owners or has failed to comply with all applicable local, state, and federal codes and ordinances. (City Code 50-5-74) Although this Court finds that GREEN VALLEY non-compliant with some of the requirements under the BSEED property maintenance code, the Court finds that GREEN VALLEY was in substantial compliance with the conditions of the land use grant. Testimony and evidence related to the material facts of this case, as of October 25, 2022, the date the notice to revoke was issued, was most probative in assisting this Court in reaching its decision.

Accordingly, this Court finds that BSEED's decision to revoke GREEN VALLEY's land use grant is not reasonable under the circumstances.


Dated: September 11, 2023

  
Hearing Officer Seth R. Doyle III

**CERTIFICATE OF SERVICE**

I certify that on this date a copy of this Opinion and Order was personally served upon the respondent or their attorney(s) by electronic mail and/or by first class mail.

September 11, 2023  
Date

  
Signature