



Rochester Hills

Minutes - Draft

Planning Commission

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Chairperson Deborah Brnabic, Vice Chairperson Greg Hooper
Members: Susan Bowyer, Gerard Dettloff, John Gaber, Marvie Neubauer,
Nicholas O. Kaltsounis, Scott Struzik and Ben Weaver

Tuesday, July 20, 2021

7:00 PM

1000 Rochester Hills Drive

CALL TO ORDER

Chairperson Deborah Brnabic called the Regular Meeting to order at 7:00 p.m. in the Auditorium.

ROLL CALL

Present 7 - Deborah Brnabic, Gerard Dettloff, Greg Hooper, Nicholas Kaltsounis, Susan M. Bowyer, Marvie Neubauer and Scott Struzik

Excused 2 - John Gaber and Ben Weaver

Quorum present.

Also present: Sara Roediger, Director of Planning and Economic Dev.
Kristen Kapelanski, Manager of Planning
Jason Boughton, Utilities Services Manager, DPS/Eng.
Maureen Gentry, Recording Secretary

Chairperson Brnabic announced that if any member of the public wished to speak on an agenda item or during Public Comment, which was for non-agenda items, they should fill out a comment card located at the back of the Auditorium and hand it in to Ms. Gentry. She advised that people might also be recognized by joining the meeting on Zoom video conferencing and raising a hand in the zoom application. Members of the public could also comment by sending an email to Planning@rochesterhills.org prior to the discussion on an agenda item. All comments and questions would be limited to three minutes per person, and all questions would be answered together after every person had an opportunity to speak on the same agenda item.

APPROVAL OF MINUTES

[2021-0280](#) June 29, 2021 Special Meeting

A motion was made by Kaltsounis, seconded by Hooper, that this matter be Approved as Presented. The motion PASSED by an unanimous vote.

Excused 2 - Gaber and Weaver

COMMUNICATIONS

There were no communications presented to the Commissioners.

PUBLIC COMMENT

Chairperson Brnabic opened Public Comment at 7:02 p.m. Seeing no one wishing to speak and no email communications received, she closed Public Comment.

UNFINISHED BUSINESS

2021-0240

Request for a Tree Removal Permit - City File No. 21-004 - for the removal and replacement of as many as 103 trees for Grace Senior Living, an 83-unit, two-story senior living facility on 2.8 acres on the south side of Walton, east of Adams, zoned RM-1 Multiple Family Residential, Parcel No. 15-17-103-002, JBD Grace Rochester, LLC, Applicant

(Reference: Staff Report prepared by Ms. Kapelanski, dated July 14, 2021, site plans and elevations had been placed on file and by reference became part of the record thereof).

Present for the discussion were J. B. Davies, BD Grace Rochester, LLC, 300 Long Lake Rd., Suite 280, Bloomfield Hills, MI 48304, Dave Fulkerson, Grace Senior Living, 985 N. Lapeer Rd., Lake Orion, MI 48362, Scott Bell, Lapham Associates, 515 E. Fifth St., Clare, MI 48617, Mark Kincer, 5920 St. Clair Hwy., China, MI 48054 and Todd Seidell, Seidell Architects, 114 N. Court Ave., Suite 201, Gaylord, MI 49734.

Ms. Kapelanski advised that the applicant was proposing to construct an 83-unit senior living facility. The matter was heard at a Special Meeting on June 29, 2021, and it was tabled due to a number of concerns. She noted that the applicant had addressed those concerns and was seeking approval of a Tree Removal Permit and the Site Plans. The concerns addressed included relocation of the dumpster, which had been at the suggestion of the surrounding condo owners; provision of a detailed plan for the nature area, including pathways; provision of a sidewalk from the main entry to the sidewalk on the east side of the building; provision of details of the interior courtyard areas; additional replacement trees around the perimeter; adding a revised landscaping plan with additional evergreen trees for screening; provision of updated renderings and elevations; changes to the underground detention system, consistent with

staff recommendation; a widening of the fire access road near the hydrant, a requirement of the Fire Dept.; and provision of a revised photometric plan adjusting the lighting levels for the interior of the parking lot. She noted that Mr. Boughton from Engineering was present, and she was also available to answer any questions.

Mr. Bell said that they had taken the comments from the Minutes and incorporated them into the plans. He talked about the nature area and the benches and amenities. He showed some photos of a typical courtyard from another facility. There was a seating area and outdoor patio and landscaping. The courtyard for the subject facility would be larger to meet the requirement. The residents would be able to garden or plant flowers. He showed a picture of lawn areas with a cornhole game and volleyball using beach balls that would be available. He stated that there was a significant change in the landscape plan, and a lot more trees were proposed. The original plan had 49 trees and 50 shrubs, and the new plan had 84 trees and 93 shrubs. That did not include the foundation plantings, which were extensive. He showed updated renderings of the elevations. They were proposing 65% of the square-footage of the façade in masonry or stone. The remaining would be either siding or cedar shake. The front façade had a lot more masonry than previously. He commented that they would like the Commission to entertain a motion to approve.

Chairperson Brnabic agreed that the applicants had done a lot of work since the last meeting, and she said that the Commissioners appreciated it. She opened the floor to public comments at 7:13 p.m.

Pam Long, 2817 Trailwood Drive, Rochester Hills, MI 48309. *Ms. Long stated that everything looked great. They (the HOA) had sent some small requests for changes to the landscaping. The applicants were going to substitute Boxwoods with ten Dwarf Korean Lilacs. They would like those replaced with evergreens, because for six months out of the year, the lilacs would not have leaves. The next request was similar; to replace three Adams Crabapple trees with evergreens for the same reason. She said that after careful deliberation about the fence, they were compromising and not asking for fencing along the north/south side of the Meadowbrook complex, but they were still encouraging them to consider the east/west fence south of the nature area. It would be wrought iron, open fencing. They considered the conversation that the residents might feel locked in, but she claimed that it would be an open, airy look. Until the trees they were planting matured, it would be a block from casual foot traffic from people on Walton, not necessarily from the residents.*

Hershel Long, 2817 Trailwood Drive, Rochester Hills, MI 48309. Mr. Long thanked the Commission for considering their concerns. He wanted to give a special thank you to Mr. Struzik, who went out and met with their Board of Directors to review the site. Mr. Long stated that the request for the fence was for their protection and to secure their community property. He maintained that shrubs and clusters of trees would not do that. He noted that there was a six-foot stockade fence that separated their community from the church, and there was an identical fence to the south that separated them from the residents on Rhineberry Rd. Their committee had originally suggested a five-foot fence to be installed in two areas - one between them and the Grace parking lot and the other between their property and the Grace building. As Ms. Long had indicated, they were willing to compromise and just have one fence by the nature area. He felt that a wrought iron fence would be open and airy so the residents would not feel confined. He claimed that it would also enhance the developer's desire for an attractive appearance. He said that after the landscaping matured, the fence would not be noticed, but it would discourage foot traffic into their community. He thought that it would be a win-win solution for the developers and for them. He said that their community hoped that they would support the request, and he thanked the Commissioners.

Burke Cueny, 2861 Trailwood Dr., Rochester Hills, MI 48309. Mr. Cueny had passed out a page (idea he said) regarding the tree area prior to the meeting. He noted that their request for a fence appeared to be unresolved. He stated that it was not sensible that the existing walkway should be in the depths of the treed area, which he felt could entice traffic. He recalled that at the July 6 meeting with Grace and the residents, Grace had stated that only two or three patients walked outside every day. He claimed that older folks disliked bugs, such as bees, gnats and spiders that would be more prevalent in the currently designed walkway. He felt that relocating the path more towards the parking lot would make it more accessible to the patients and visitors from either entrance, save Grace from having to cut a pathway in the foliage at the rear of the treed area, and save Grace from having to count trees towards replacement elsewhere. It would beautify the walkway on the west side, and the gap between its edge to the parking lot border could have stones, mulch and low maintenance hostas and annuals. There would be less bug exposure to the walkers. Both the City and Grace could proclaim that they had a dense, uninterrupted preserve in the project. If the ordinance would negate his proposed idea, it would be a waste of time, as altering the ordinance was a long process (or in his words, "a month of Sundays"). He

mentioned that garbage trucks were 21 feet long without the front forks, and he thought that the proposed location might make it hard for them to access the trash. He suggested that there would be plenty of access to the dumpster if it was located off the bottom of the parking lot. He thanked everyone.

Chairperson Brnabic asked the gentlemen if they would like to respond.

Mr. Davies thanked the Meadowbrook Association members, who he said had been great to work with and very pleasant. He said that they (applicants) were happy to concede on requests number one and two regarding replacement trees, but they were struggling with the fence. He stated that he had never seen a fence that had been aesthetically pleasing. They did not think that it would look good or that it would achieve the goal, which was to keep people from the Grace property from walking onto theirs. He claimed that people looking in from Walton would see a wall of greenery south of the parking lot, which would not need to be augmented with a fence. He did not think that people would walk through a parking lot full of cars, over a nature trail and through trees to get into the Meadowbrook area. There was originally an initiative to keep people out of the church parking lot and from crossing into Meadowbrook. They satisfied the condo's request with dense trees, and he remarked that "two out of three ain't bad."

Mr. Fulkerson believed that to do the first two, there would have to be an ordinance change. Mr. Bell thought that the Planning Commission could approve the proposed landscape plan, but he noted that the trees were required as part of the buffering.

Ms. Kapelanski agreed that they were part of the ornamental tree requirements, but the Planning Commission could accept evergreens in lieu of, if they wished. Chairperson Brnabic verified that the applicants would replace the Lilacs and Crabapples with evergreens. She personally thought that it was a good suggestion. She also agreed about the fence, and said that she did not think that a wrought iron fence was necessary. She thought that the applicants had done a very good job with the added landscaping, especially in areas where it was more needed. She was happy with the other changes made, and she mentioned moving the dumpster, although she thought that the site was a little dense. She said that she was glad that they had made the changes, but it was concerning to hear that they did not feel they had a place to move the dumpster or could lose parking, but they found a spot so it did work out. It was too tight to have a sidewalk around the establishment, and perhaps a

lot of residents could not take advantage of one, but they had to consider that oftentimes, family members took residents out in a wheelchair. Her mom had been in a larger assisted living facility that had a sidewalk around it, and she took her out in good weather, and it gave them time to talk. She was also happy that they had worked with the neighbors.

Ms. Neubauer thanked the applicants for making the changes the Commissioners had requested. She also thanked the residents for their cooperation with Grace, and noted that they had come back with only three issues, two of which had been resolved. She said that she had an opportunity to drive to their other location, which she indicated was lovely and quiet. She felt that the proposed facility would be a good addition to Rochester Hills. She thought that it was important to have that type of housing in the City. There was an aging community and unfortunately, a lot of those people were being neglected and forced into lower-grade facilities. She asked how tall the trees would be at planting in the area the fence had been requested.

Mr. Bell knew that the ordinance required a ten-foot tall evergreen. Those not required by ordinance would be eight feet tall. Ms. Neubauer asked how much space there would be between the trees. Mr. Bell believed that they would be ten-foot on center. Ms. Neubauer pointed out that arbor vitae planted at that height and spacing would provide a better barrier than a fence, and they would keep growing. She understood the environment the applicants were trying to create. She heard mention that 80% of the residents would be under a Power of Attorney (POA) or guardianship. Mr. Fulkerson agreed that it would at least be that many. Ms. Neubauer explained that it meant that they were placed there against their will and taken out of their homes, sometimes on a 24-hour notice. She stated that she was very against a fence, and she thought that if trees were planted higher than the fence and spaced appropriately, it would be a good thing. She related that Rochester Hills was notorious for woodpecker issues. She asked the percentages of cedar shake and vinyl for the siding. Mr. Bell advised that it would all be cement-based, and there would be no natural wood. Ms. Neubauer said that she hoped the residents would understand the Commission's position, and she added that they were very grateful the residents were comfortable enough to present their concerns. The Commissioners had to advocate for the people who would reside in the facility.

Mr. Struzik said that as he had mentioned at the last meeting, he felt that the type of housing being proposed was very important to have in the City. It would serve existing and perhaps future Rochester Hills'

residents. He had seen a lot of good compromises from the developer. He noted that the Meadowbrook community was very nice and quiet. He had the opportunity to tour their community and see firsthand all of their concerns. He felt that the additional landscaping would provide a natural barrier for the residents. Currently, he would not want to walk through the existing natural features, as it was not very welcoming to travel through. He felt that some of the compromises would help to better address that. He also thought that moving the dumpster was a big win, since it would have been so close to some of the residents. He was glad that the residents and developer would be proactive with regards to documenting the condition of the existing retaining wall, so that if any construction activities caused damages, they would be made whole. He thanked the residents who showed up for being thoughtful and respectful. He knew people could be very passionate about where they lived, and their feedback helped make the proposal better. If the matter moved towards approval, he said that he would like the two items that Ms. Long identified about replacing the Lilac and Crabapple trees with evergreens to be a condition of approval.

Dr. Bowyer thanked the residents and members of the Grace team who were able to talk together, communicate well and come to most agreements to make it better for everyone. She stated that the Commissioners really appreciated it when that happened in the City. She thought that it was great idea to take out the Lilacs and Crabapples and put in evergreens to create more of a barrier so people did not just have to look at the building. She noted that it would be a beautiful building with nice colors, and she would not mind looking at it. She thought that the trees to be planted would provide a continuous barrier that people would not want to walk through. She thanked the applicants for bringing their business to the City, and she thanked the residents for bringing their concerns and working with the applicants to make it more livable for both.

Mr. Kaltsounis asked how the location of the walkway in the nature path was determined and why it could not be anywhere else. Mr. Bell explained that he had worked around existing trees to preserve them. There was also a retaining wall off the south side of the parking lot, and there was a significant grade change going into the hill there.

Mr. Kaltsounis said that he wanted to make sure that there would be an eight-foot tall wall of evergreens. He noted that they would be ten feet apart, and he asked their diameter. Mr. Bell said that they wanted to leave room for the trees to grow. If they were too close together, they would not. He agreed that there would not be a solid visual wall at first; it

would take a few years for the trees to grow. He thought that an eight-foot tree would have a four to five-foot diameter radius. He pointed out that they would be positioned on the north side by the curve to help block headlights. Mr. Kaltsounis wondered if they could plant some arborvitaes to fill in the gap initially.

Mr. Fulkerson responded that the parking on the back side would be overflow. At night, there would only be staff, so there would not be as much headlight traffic as people might think. Mr. Kaltsounis said that he was more worried about keeping people from walking through to the area behind. Mr. Fulkerson said that he would be willing to add some arborvitaes. He knew exactly where Ms. Long wanted them. Mr. Kaltsounis mentioned that some things that got approved a certain way did not happen. He used the example of the Walgreen's at Crooks and Auburn, and how the shrubs did not block things as planned.

Ms. Roediger pointed out that the landscape ordinance provided spacing for the healthy, long-term growth of species. If trees were crammed in at the beginning because they wanted instant screening, it would not work. She wanted to be careful with what they were trying to achieve. If they were going to replace Lilacs and Crabapples with evergreens, the evergreens would take up more space. They needed to have some spacing or they would die, and no one wanted that. She explained that there would not be a solid wall on day one; there had to be space for the trees to grow. Mr. Kaltsounis read a condition he proposed regarding the screening.

Mr. Hooper said that he appreciated everything the applicants had done to address the comments, and he especially appreciated the revised elevations. He felt that it had been an excellent change and enhanced the beauty of the overall project. Mr. Hooper agreed with Ms. Roediger, noting that the City's landscape ordinance purposely did not require trees to be stacked closely, and there would be a three to four-year period where it would fill in. The applicants had agreed to replace the deciduous trees required by ordinance with evergreens, and he thought that was fine to achieve a more coniferous appearance. It was what the residents also wanted, and he supported it. Hearing no further discussion, he moved the following:

MOTION by Hooper, seconded by Kaltsounis, in the matter of City File No. 21-004 (Grace Senior Living), the Planning Commission grants a Tree Removal Permit, based on plans dated received by the Planning Department on July 8, 2021 with the following two (2) findings and subject to the following two (2) conditions.

Findings

1. *The proposed removal and replacement of regulated trees is in conformance with the Tree Conservation Ordinance.*
2. *The applicant is proposing to remove 103 regulated trees but saving specimen trees, therefore, no tree replacements are required.*

Conditions

1. *Tree protective fencing, as reviewed and approved by the City staff, shall be installed prior to temporary grade being issued by Engineering.*
2. *Payment into the City's Tree Fund of \$304.00 per tree if replacement on site cannot occur, prior to temporary grade being issued by Engineering.*

A motion was made by Hooper, seconded by Kaltsounis, that this matter be Granted. The motion PASSED by an unanimous vote.

2021-0241

Request for Site Plan Approval - City File No. 21-004 - Grace Senior Living, an 83-unit, two-story senior living facility on 2.8 acres located on the south side of Walton Blvd., east of Adams, zoned RM-1 Multiple Family Residential, Parcel No. 15-17-103-002, JBD Grace Rochester, LLC, Applicant

Chairperson Brnabic also wished to thank the residents for coming and the developers for working so well with their neighbors. She felt that there had been a really good compromise. The Commissioners always recommended that everyone worked together, which usually led to a much better result.

MOTION by Hooper, seconded by Kaltsounis, in the matter of City File No. 21-004 (Grace Senior Living), the Planning Commission **approves** the **Site Plan**, based on plans dated received by the Planning Department on July 8, 2021 with the following four (4) findings and subject to the following four (4) conditions.

Findings

1. *The site plan and supporting documents demonstrate that all applicable requirements of the Zoning Ordinance, as well as other City Ordinances, standards, and requirements, can be met subject to the conditions noted below.*

2. *The proposed project will be accessed from Walton Blvd., thereby promoting safety and convenience of vehicular traffic both within the site and on adjoining streets.*
3. *The proposed improvements should have a satisfactory and harmonious relationship with the development on-site as well as existing development in the adjacent vicinity.*
4. *The proposed development will not have an unreasonably detrimental or injurious effect upon the natural characteristics and features of the site or those of the surrounding area.*

Conditions

1. *Address all applicable comments from other City departments and outside agency review letters, prior to final approval by staff.*
2. *Provision of a landscape bond for landscaping and irrigation, plus inspection fees as adjusted as necessary by staff, in the amount of \$123,530.00, prior to issuance of temporary grade by Engineering.*
3. *Payment into the City's Tree Fund of \$97,888.00 prior to issuance of temporary grade by Engineering.*
4. *Replace Dwarf Korean Lilacs and Adams Crabapples and replace with evergreens, as discussed, and add additional trees, if needed, to discourage traffic, as approved by staff prior to final approval.*

A motion was made by Hooper, seconded by Kaltsounis, that this matter be Approved. The motion PASSED by an unanimous vote.

After each motion, Chairperson Brnabic stated for the record that the motion had passed unanimously. She congratulated the applicants, and Mr. Fulkerson said that they would not let them down. Mr. Hooper thanked the applicants for their investment in Rochester Hills.

DISCUSSION

[2021-0281](#) Zoning Issue Discussion - Murals

(Reference: Proposed ordinance amendment, prepared by Giffels Webster, had been placed on file and by reference became part of the

record thereof).

Present for the discussion was Eric Fazzini, Giffels Webster, 1025 E. Maple, Suite 100, Birmingham, MI 48009.

Ms. Kapelanski noted that staff had been contemplating, over the past years and since Auburn Rd. had gotten underway, how they could add or allow murals in the community. They had asked Giffels Webster (planning consultants) to look into it, and the submitted ordinance in the packet was a very preliminary idea as to how they could go about it. It would require murals to come before the Planning Commission as part of a site plan review. They would make sure that they were tasteful, and that there was some license for artistic things. They still needed to work with the City Attorney (currently Mr. Staran) to make sure the regulations were followed and that things worked. They were trying to think of a novel way to allow murals in the community

Ms. Roediger added that they had talked about it for many years, but especially for the Brooklands area. She noted the recently successful Art on Auburn. They had received some requests from various businesses to put up murals. She indicated that it might have been done a while ago, but there were complicating factors, including freedom of speech and the sign ordinance. Before they went too far, they wanted to get the Commissioners' initial thoughts and hear questions to perhaps incorporate them before they met with Giffels and the City's legal team again.

Chairperson Brnabic stated that her major concern was with the statement, "In no event will an Original Art Mural permit be granted or denied based upon the content of the mural." To her, that would open the door to any image or anything and everything. She would not want to consider murals without having some oversight. She felt that there should be a review process and some oversight on the content. She knew that some things would be positive, but there were a lot of things she would not want to see on a mural, such as political images, marijuana plants or even nudes. She had not noticed a limit on the number of buildings that would be permitted to have a mural in any given area. She really liked the new Auburn Rd. corridor, but she felt that it was pretty busy. It was a small, eight-block, narrow area with ornamental landscaping that covered the entire medians, a lot of standing art, a large piece for each street name in the median, art in the center of the roundabouts and painted street art by the parking areas. She did think that the art contest for K through 12 grade that resulted in that was

awesome. She thought that they were at risk of overdoing a good thing and spoiling the original intention. They were getting their first three-story development that would be starting soon, with a vision to develop more. She did not think that having 30-foot murals on buildings with no limit on the number or oversight would be a perk for the Brooklands or for any area of the City. That was her major concern, and her very major concern was not having a review process for the murals.

Ms. Roediger explained that in the application requirements, there would have to be a colored rendering of a proposed mural. Chairperson Brnabic restated that it said, "In no event will an Original Art Mural permit be granted or denied based upon the content of the mural." The Commission could be presented an image, but if they did not like it, it did not appear that they would have a lot to say or the ability to approve or deny the content of a mural. Ms. Roediger explained that it was in 7. Standards for Approval. A colored image would have to be provided, and the Planning Commission would decide if it was appropriate for the location. She indicated that it was a touchy topic because of determining what art was and because of freedom of speech. Murals were commonly done in other communities, and usually there was a board that oversaw things - typically a DDA. Since the City did not have a DDA, staff felt that the Planning Commission would be the most appropriate board for the City.

Chairperson Brnabic clarified that Ms. Roediger was saying that there would be an approval process, because she was unclear how that would work together with the statement she read. Ms. Kapelanski said that they still had to discuss things with Giffels and Mr. Staran in terms of free speech and how signs were regulated and those types of things. Staff was not looking for specific critiques about the exact language, but how the Planning Commission felt about having murals brought before them and having a vehicle through site plan review for applicants to get murals approved.

Mr. Hooper asked if they could drop that sentence. Ms. Kapelanski agreed that they might be able to, but it was something they had to talk more about with the City Attorney.

Ms. Roediger said that with regards to Chairperson Brnabic's comment about limiting the number in an area, she said that there had been a huge investment in the Auburn Rd. corridor, and they were trying to create a very unique place, and she felt that murals helped to do that. They were more and more common in walkable areas, such as downtown Lake Orion

or Rochester and all around Detroit. They had requests in the past that they had to turn down, although they did not want to. She felt that murals added to a uniqueness of a place.

Chairperson Brnabic said that her concern was that it was an eight-block area, and there was no limit. She asked if they would allow it on every building or every other building. She did not want them to spoil the original intention. She would not want to see the eight-block area covered with murals. Her biggest concern was the sentence she had read stating that a mural could not be approved or denied based on its content. Ms. Roediger said that they would look at it.

Mr. Dettloff stated that he was a huge proponent of things like murals. He agreed that incorporating art into a City wherever they could would give it a sense of place. He realized that there had to be guidelines, and there were things that needed to be tweaked in the proposed ordinance, and that oversight would be extremely important. Personally, he would like to see some type of design committee formed, with a member of the Planning Commission, City Council, the Planning and perhaps another Department where the proposals would start initially before coming to the Planning Commission. He said that he had a lot of experience with those kinds of things, and he would be happy to volunteer to be a part of that effort if it moved forward. He really liked the idea of an ordinance for murals, and he would support it with some tweaking of the language.

Mr. Kaltsounis mentioned that he loved going to big cities and seeing murals - the bigger the better and the more eye-popping the better. He mentioned that in Montreal, murals were painted over graffiti, and it really took off, and the graffiti stopped. He felt that the elephant in the room was murals that were political in nature. He suggested that if someone wanted to paint an American flag, there would be people complaining. He did not want the Planning Commission turned into a political organization that had to decide on something because of free speech. If they could not come up with a happy medium, he would not want murals. He did not think that it was the time, but perhaps it would be down the road. He did not want them in the middle of a political situation where there was some kind of cause, and what they had was another oil drilling situation. He stated that if they could not handle the political nature, which was akin to being harmonious with your surroundings, they were not ready for them. He asked who would determine when something was poorly maintained or when a mural would be judged with regard to maintenance. He wondered if it would be every two or five or ten years.

Ms. Roediger advised that they would be handled the same way other signs were by code enforcement. Mr. Kaltsounis said that he did not want the City to become divisive, and if murals did that, he did not think that they were ready for them.

Dr. Bowyer said that she totally agreed with Chairperson Brnabic about the content sentence she mentioned. Dr. Bowyer said that if they said that in no event could they deny something because of freedom of speech, it could become very divisive. She asked who determined something was art. She remarked that she could paint a mural on her garage, but her neighbors would hate it. She suggested that it might fall in with the sign ordinance, but she wondered who would decide if something was tasteful and fit in or if it was a statement on the side of a building. She wondered who would decide if something was art or a sign. She stated that she was all for staying away from murals.

Ms. Neubauer said that she agreed with her fellow Commissioners. She thought that the City Attorney would have a huge uphill battle. The proposed language already said things like "artistic expression," but then it used words like "content neutral." She did not believe that they equaled each other or that they could be used in the same way. She advised that everything was subject to the State and Federal Government and that ultimately, freedom of expression would always win. She claimed that they would never have the ability to regulate or deny anything. They would have to define every little thing, including content neutral. She asked how they would be able to define content neutral when there was language that said artistic expression. She felt that they were completely contradictory to each other, and that it would open a huge can of worms for the Commission. She did not think that they would ever be able to make a decision that represented the community well. She knew that downtown Rochester or Detroit allowed murals, but she pointed out that they were not those cities. Rochester was a completely different group of people with different interests. People from Rochester Hills visited downtown Rochester, but they did not want a huge downtown in Rochester Hills. She indicated that she loved art, and she was not saying that they should suppress it. She just did not think that murals were a proper expression for it. She did not think that the City Attorney would be able to properly identify and define to give the Commissioners guidance to be able to make proper decisions. She reiterated that no matter what definitions were put in, they could never make freedom of expression and artistic expression and free speech balance out with content neutral. She stated that nothing was neutral anymore; even the American flag was not neutral. She said that she was against them, and she thought that it would

be a battle none of the Commissioners would be able to fight. The language did not exist to give them enough structure to be able to make any kind of decision about something proposed to them. She said that it was unfortunate, but it was the reality of the times.

Mr. Hooper said that he was interested in it, but the devil would be in the details. What he thought was a nice-looking mural someone else might think was terrible and vice versa. He was not sure if that could be worked out. Along Ms. Neubauer's lines, if they allowed one, they would have to allow every other. He did not believe it would be allowed on garage doors, but he asked Ms. Roediger.

Ms. Roediger said that as it was proposed, it could be allowed in certain districts. It did not have to be just for the Brooklands district. KLM Bike had asked to have one (on Rochester Rd.), but staff could not allow it. She stated that it would not be allowed in residential districts, which could be part of the ordinance.

Mr. Hooper saw that murals had a timeframe and could be up for two years, and he asked if they would then be removed. Ms. Roediger said that they had discussed it, but she noted that it was just sample language. Mr. Hooper thought that it might not be a bad idea, especially if they did not like the content. Ms. Neubauer asked who would decide if the content was terrible. Mr. Hooper said that he would not like to see murals soliciting money. He wondered if they would allow artists to sign their names on them and start profiting. He knew that in New York, for example, some people had gotten quite a name from having their name on a mural. Mr. Hooper said that those were his initial thoughts. He did not want to rule them out, and he was being open-ended, and they would see where it went. He reiterated that the devil would be in the details.

Mr. Struzik said that he would love to see art murals in the City in appropriate places. He worked in Detroit, where there were a lot of them. He worked in a 15-story building, and for quite a while, they had a very large art mural where the elevator shafts were. It had been dead space, and it had been turned into a neat-looking art mural. However, there was a lot of art that he would not want his family exposed to. They frequently walked or biked through the Brooklands district. If the City had no ability at all to regulate content, he would worry about what his nine and eleven-year old would be exposed to that was considered art. He thought that at some point, there would be someone who wanted to put up something with divisive speech, and he would rather not see any divisive art work but rather, things that brought them together. With no review

process, they would be relying on applicants to have good intentions. He suggested that they could perhaps go back to their legal staff to figure out what controls the City would have. If the answer was that they had no control over content, it would be very important to have that clarified. If they did have some controls, he would like to know what they were. He hoped that they would have more discussion, because it was something that he was interested in, and that it could be an opportunity to add some awesome things to the City.

Mr. Fazzini mentioned the clause at the end of 7. Standards for Approval, and he said that it was intended to protect the City from free speech issues. For example, they would not be looking at the content of any wall signs. There would be more assurance that it would be truly a commercial message because of the type of sign that it was, but they could not judge any mural based on content or images. The main criteria should be time, place and manner standards, which applied to all signs, not just murals. They could require a time frame for display. They could regulate placement, location and how a sign was constructed, but they could not get into denying or approving any mural based on what it said. There was a lot of case history regarding it. There were still gray areas, but the intent was to provide additional assurance that if there was a desire to allow murals, they would not be judging them based on content.

Ms. Roediger had noticed that a lot of the Commissioners' concerns seemed to be related to the worst case scenarios, such as having negative messages and things of that nature. She said that many communities allowed murals, and she would think that they all shared the same concerns. She wondered if there was a way to allow and regulate murals that promoted the City as the pre-eminent place to live, work and raise a family.

Mr. Fazzini pointed out that there were some references in the ordinance about promoting the public interest, fostering a sense of place, etc., which could be cited for approval or denial. He said that some would be regulated by the compensation. The goal would be that if a dispensary across town wanted a mural to promote its business (say a marijuana leaf, for example), the compensation provision would prohibit that type of advertisement sign. Ms. Roediger noted that they wanted to bring the matter forward to hear the Commissioners' concerns and comments. They wanted to create language that gave them assurance that they would not be creating something problematic.

Ms. Neubauer asked if the City had any data from other communities

about lawsuits in other cities where a city was sued for denying a mural. She asked if they knew why something was denied and the outcome. Ms. Roediger said that they would look into it.

Chairperson Brnabic thought that was a good idea. With the current political climate, they could not assume that a business owner would necessarily not do something. A business owner might consider something artistic that did not have anything to do with advertising his business. She would not want to make any assumptions, with everything that was going on, about whether a business owner would or would not do something or whether a neighbor would or would not like something. She suggested that further investigation was needed, and she thought that Ms. Neubauer's suggestion was an excellent one.

Ms. Kaltsounis said that he was looking through images of murals in Montreal, and he saw the Montreal Canadians, a studio, and other things. He felt that murals should be about areas of the City, not a business. Ms. Kapelanski pointed out that the City could not regulate the content of signs. If a business had extra signage area allotment, it could put up any message. They could explore how communities worked with content without violating regulations.

Ms. Neubauer asked if staff could get the following data: Of the surrounding communities that had murals, she would like to know how many had been proposed and denied, and of those denied, how many had levied a lawsuit. Second, she would like to know how they could properly define artistic expression and content neutral. She heard that people could put up whatever signage they wanted, but the problem was that when a business put up signage contrary to what the community wanted, the community could go after the business. She mentioned that the murals in Ann Arbor were completely different than those in Lake Orion, which were completely different from those in Detroit. She maintained that each mural would have to reflect the values of the community, but she reminded that values were very subjective. The community was very diverse, and she felt that it would be hard for any group to get a consensus. Some of the communities mentioned were less diverse than Rochester Hills. Rochester Hills had many ethnicities, religions, family types and political views, and she felt that it would be very burdensome for a community to deal with that without more data.

Mr. Hooper mentioned that previous applicants had wanted to do things not strictly defined by the ordinance, and the City always relied on "harmonious and compatible." He felt that they were going down a similar

path. He suggested that they needed stronger language which would give broad discretion to the Planning Commission. He read the purpose from the proposed murals ordinance, which, together with adding harmonious and compatible, he thought could be defensible.

Ms. Roediger noted that there was a mural in the City currently at the back of Rochester University along the Paint Creek Trail. The fact that it could not be seen from a street allowed a loophole from the Sign Ordinance. She remarked that if there was something the community wanted, they should make it easy. She said that they had heard the comments, and staff and the consultants and Mr. Staran would look at everything, and they would gather some more data. They hoped to bring back another draft that addressed the concerns and see if there was a desire to move it forward.

Mr. Hooper had observed flagpoles flying, and he asked what prevented him from flying any flag he wanted. Ms. Kapelanski agreed that someone could put any message up they wanted on a flag.

Discussed

ANY OTHER BUSINESS

Ms. Roediger noted that she and Ms. Kapelanski had a meeting the other day regarding the greenhouse site on Crooks, north of Auburn. There were three homes also, all on about four acres, and there were some wetlands at the rear. They had been getting calls about doing something there. Several years ago, a PUD had been proposed for the site with a hotel and office, and then some townhomes and retail, which seemed more favorable. That never went through. Staff was getting more and more questions about what people could do with property zoned and planned for office, which was fairly restrictive. People were asking if the City might consider other uses, and staff wanted to see if the Planning Commission might look at other zoning districts. There had also been a request for townhomes.

Mr. Kaltsounis noted that he lived down the street, and he passed by the site a lot, and he could understand the questions. He said that the success of the Rochester House had shocked him. He did not think that a restaurant of that caliber would work in the area, but every time he drove by, it was full. He felt that there was an opportunity for something there outside of office. He was for something flexible, but he would be against something really tall because of the neighbors. If they were talking about

townhomes like the “disaster” approved in Troy, he would not be interested, but he felt that there could be flexibility with some type of PUD. Mr. Hooper stated that he would support REC. He felt that would open it to some other good uses.

Chairperson Brnabic wished Ms. Gentry well on her retirement, saying that it had been awesome to work with her over 20 years. She thanked her for all she had done and for the minutes provided.

NEXT MEETING DATE

Chairperson Brnabic reminded the Commissioners that the next Regular Meeting was scheduled for August 17, 2021.

ADJOURNMENT

Hearing no further business to come before the Planning Commission and upon motion by Mr. Kaltsounis, seconded by Ms. Neubauer, Chairperson Brnabic adjourned the Regular Meeting at 8:46 p.m.

Deborah Brnabic, Chairperson
Rochester Hills Planning Commission

Nicholas O. Kaltsounis, Secretary