

planning stages. All of these subdivisions will use Eddington Boulevard to get out onto Rochester Road. She was almost killed twice last week and will not allow her 16-year-old daughter to leave the subdivision onto Rochester Road. She noted there was no mention in the document of a traffic light for the area between Hamlin and Avon roads. She stated that if City Place was to be put in, there must be a traffic light somewhere along Rochester Road. She mentioned drainage and said that when the developer signed off after developing Eddington Farms, there was a drainage problem. The Board has been fighting it for the last 13 years. She asked where the drainage would go from City Place and asked if it did go into Eddington Farms, if they would have to foot the bill. She stated that there is much traffic on Rochester Road now and she asked if MDOT had approved the plan, because the roads could not handle the additional traffic from new development. In September of 2002, the residents were told that this development would look like a downtown Rochester. She could not envision that in this location. In downtown Rochester, the speed limit is 25 miles per hour. Along Rochester Road at this site, the speed is 50 miles per hour. People would have to brake to get in here. She asked them to think of the residents and the traffic, and asked if any of the Commissioners lived in Eddington Farms. She said she would welcome a visit from them to see what it was like to exit onto Rochester Road during rush hour.

Mr. Kaiser closed the Public Hearing. He referenced the B-1 and B-2 zoning issue and asked Mr. Staran if the notice was published in the paper. Mr. Staran replied that it was noticed as a rezoning to B-2, and B-2 allows a more intense use than a B-1 zoning district. Mr. Delacourt said a B-2 allows B-1 uses and additional uses. Mr. Kaiser said the applicant had requested, from the beginning that the rezoning would be to B-1, and that is what is in the PUD Agreement. He explained that because the notice went out as B-2 it would be under consideration as that this evening. Mr. Kaiser mentioned his comment about this being a distinction without a difference, and said this application involved a PUD contract between the applicant and the City of Rochester Hills. Each side is supposed to get a benefit, and the City would be allowed more from the developer, in terms of buffer, the kinds of structures that go in, landscaping, or the mixed-use, for example. The applicant might get more than they would through the normal zoning procedures, which would require certain modifications or waivers. He clarified that this particular PUD, as it goes through the process, would end up being consistent with either B-1 or B-2 zoning districts. Because it was noticed to the public as B-2, the Commission goes forward with that request. The bottom line is that the applicant is not asking for anything more than what was presented in the PUD application. The issue for the Commission, and ultimately City Council, is whether they approve the PUD and the zoning becomes irrelevant at that point. Mr. Kaiser asked Mr. Delacourt if he knew anything about the MDOT plans.

Mr. Delacourt advised that MDOT had reviewed the plan in portions, and that they would have to Permit any access or curb cuts as part of Final Site Plan approval. Mr. Kaiser indicated that if City Council approved the plan, MDOT could theoretically require the applicant to redraw the plan and at that point, since it would not be in conformity with the PUD, the applicant would have to come back for re-recommendation and approval. Mr. Delacourt noted that the 180-foot right-of-way was a product of the City's Master Thoroughfare Plan, and that MDOT acknowledged a proposed right-of-way of only 150 feet. If the City and MDOT were to come to an agreement to expand to 180 feet, the scenario would be different. Mr. Kaiser asked if he knew of MDOT's plans to widen Rochester Road. Mr. Delacourt said he was not aware of any plans to do so at this time. Mr. Kaiser said the consultants for the City previously determined that as Rochester Road was modified through Troy, that effort would continue at least up to Avon or the City of Rochester. Mr. Delacourt stated that MDOT acknowledged that no funding was available for additional work on Rochester Road. Mr. Kaiser asked him about a traffic light for Rochester Road.

Mr. Delacourt answered that there had been discussions about the realignment of Yorktowne to put a signal at Meadowfield Drive. MDOT would have the final decision about the location of a traffic light. Mr. Kaiser asked if there was an estimate of when this issue would be resolved, and Mr. Delacourt said he was not sure. Mr. Kaiser asked if this was out of the City's hands. Mr. Delacourt replied that the City could have an

and that there be language to show when it shall be completed. "The entirety of the PUD will be completed" language shall be inserted in the PUD, which provides that extensions "may" or "may not" be "barred" or "allowed" as approved by the City Attorney, as long as the requests are reasonable. Also, paragraph twelve (12) on page nine (9) shall include remedy, in case there is failure by the applicant to comply with the terms of completing the PUD.

Mr. Kaltsounis asked Ms. Hill if she meant drive-thrus for pharmacies also. She replied that she was including pharmacy, coffee shop, or any other drive-thrus, except those for the bank.

11. That there be no drive-thrus, except for the bank, on the site.

Mr. Kaiser asked Mr. Staran about the change in zoning that would occur by this recommendation, citing the By-Laws which say that anything affecting zoning requires an approval by at least five members of the Planning Commission.

Mr. Staran replied that approval of the B-2 zoning, as well as approval of the PUD overlay, would be subject to that rule, as they are technically rezones. Mr. Kaiser clarified the Commission would be doing that tonight by making a recommendation, and Mr. Staran agreed.

Ms. Hill referenced that there was an error in the notice and that the Commissioners were considering B-2 zoning. She said she was still concerned that, although this would be a binding contract, that if, hypothetically, the contract ended, the underlying zoning would be B-2. That is different from B-1 in that it allows for more commercial development. It bothered her that because of an error, they were allowing a zoning issue to turn into something different. It would not affect this PUD, but it did not seem as clean as it should be, and she wondered how long it would take to re-notice it for due process and public input.

Mr. Staran cautioned that courts do very strictly construe the procedural requirements for rezonings. In this case, to rezone to a category that was different than what was noticed and advertised, could arguably be defective. One option the Commissioners have, if there is a concern, is to not act on this matter; another is to go ahead and act on it. It would take a few weeks before this matter would be before Council. If the Planning Commission wanted to consider going to B-1, it could be moved forward as is, and in the meantime, could be noticed as B-1 rezoning for the next available meeting.

Ms. Hill felt that could happen without hindering it getting on Council's Agenda in an appropriate timeframe. Mr. Staran said it would have to be re-noticed and there would have to be another Public Hearing before the Planning Commission and a recommendation to City Council. He did not feel Council could rezone to B-1 if the Planning Commission did not have another Public Hearing.

Mr. Kaiser said he felt there were other options. He said that Council could, based on being alerted, reject this proposal, arguably based on this reason alone, and make the process start all over again – so nothing would be carved in stone by what the Commission did tonight. He was not suggesting that, however. He also noted that Mr. Staran has stated that the PUD would run with the property. Mr. Staran said that it definitely would, and would be recorded with the Registrar of Deeds. Mr. Kaiser said that even if Mr. Gilbert were out of the picture, the PUD would be attached to this land and no one could do anything contra to this PUD. Just as the PUD could be arguably breached and held for naught, the zoning could be changed. Mr. Staran said that was correct.

Mr. Delacourt said that he and Mr. Staran discussed this issue and that not only would this be a rezoning to an underlying zoning district, there would be a second rezoning that would take place. If the PUD Agreement were to go away, it would not revert back to B-1 or B-2, it would revert back to a PUD overlay. Any applicant that wished to develop it under the current zoning would have to submit a PUD Agreement for approval. He added that the PUD overlay would have to be taken away.

Ms. Hill questioned if the whole contract did not take place, if the PUD overlay would be part of the contract, and if the contract were dissolved, if the land would revert to the underlying zoning.

Mr. Staran said it would not be un-zoned. The worst-case scenario would be that if the PUD Agreement, by virtue of a termination clause arising or some other reason, did not occur, it would not be un-zoned, but the underlying zoning would apply to the property. It would not go back to what it is now, in this case a residential zoning.

Mr. Delacourt believed that was different than what he and Mr. Staran had discussed. Mr. Delacourt said that Council would approve three motions; one, a rezoning to an underlying B-2 zoning; the second rezoning to a PUD overlay, which would be shown on the zoning map as a PUD zoned property; and third, a motion regarding the PUD Agreement. If the PUD Agreement terminated at some point, the land would not revert back to B-2, it would revert back to the PUD, without an agreed upon contract.

Mr. Staran said it would depend upon how the Agreement read and he said he would have to research it. He read from the Ordinance, Section 138-1006, sub-paragraph nine (9): "The Agreement may include specific terms or conditions regarding the expiration or revocation of the PUD zoning designation." Therefore, it could provide, in the Agreement, for the PUD zoning designation to go away, but that would not make the underlying zoning go away, it would remain in effect.

Mr. Gilbert said he did not think the contract provided that the PUD zoning would go away. Mr. Staran said it could, but this one did not.

Mr. Rosen said that if Mr. Gilbert did not proceed, and the contract defaulted, the PUD zoning goes away and they would be left with B-2. If City Council changed the PUD zoning to eliminate the PUD zoning, there would be B-2 left.

Mr. Delacourt said it was his understanding that without that clause in the Agreement, the underlying PUD zoning would not go away. The Agreement could stipulate that if this contract ended, that the PUD zoning would go away. They do not want that in the Agreement, especially because of the discussions about reverting to underlying zoning. Staff's opinion is that it should only revert back to the PUD zoning, and anyone who wanted to further develop the property without additional rezoning would have to submit a new contract for the City to negotiate.

Mr. Staran agreed that was correct. He did not believe the Commissioners would want the subject property to be B-1 or B-2 unless it was in connection with the PUD project proposed. If the project were not to happen, the Commissioners would prefer it to revert to the current zoning, if anything. What is contemplated now is that the PUD Agreement would be binding, and if, for whatever reason, Mr. Gilbert did not proceed, they would have to add remedies for that, but he did not think that among them would be that the property would become B-1 or B-2 zoned property. Before anyone could do anything with the property, they would have to convince the Commissioners and the Council members that they should allow anything under the property under than what is provided in the PUD overlay zone and Agreement.

Mr. Kaiser referenced paragraph fourteen (14) and clarified that it addressed this matter.

Ms. Hill said that was fine and she was not opposed to seeing this property developed as a PUD. Developing it this way was established in the Master Land Use Plan, but if the PUD Agreement were dissolved, the underlying zoning would be B-2, which could allow for a totally different looking PUD that what had been proposed.

Mr. Staran said it would be B-2 with the PUD overlay. Ms. Hill said there would be an Agreement as to part of what would be developed there, but if the Agreement went away, hypothetically, the PUD overlay zoning would mean nothing other than someone could develop a PUD with underlying zoning, unless they cared to change it. If it were to be rezoned to B-1, the uses would be less. She said an applicant for this property

would now be able to develop something similar to the PUD at the corner of Tienken and Rochester, which was recently rezoned B-2 with a PUD overlay.

Mr. Staran explained that the only way the contract would go away would be if there was some type of defect in the procedure that caused it to be nullified, or if both parties wanted it to go away. Ms. Hill said there was a technicality with the underlying zoning. Mr. Kaiser said it was not a technicality, and that it was very clear in the Agreement that this PUD Agreement would be on that piece of property, no matter what Mr. Gilbert did. If he violated the terms or did not proceed, the PUD would be all anyone could do on this property, period. Mr. Staran advised that was correct. Ms. Hill asked if that would be forever. Mr. Kaiser said forever, or until both parties agreed to modify the contract.

**Roll call vote:**

Ayes: Boswell, Brnabic, Hill, Hooper, Kaiser, Kaltsounis, Rosen, Ruggiero  
Nays: None  
Absent: Myers **MOTION CARRIED**

Mr. Kaiser said that City Council would hear this recommendation, and he hoped that by that time, Mr. Galvin and Mr. Gilbert would decide that everything the Commission did tonight was the right thing, and that the applicants would not fight them on the Site Plan approval so this process would move along.

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**DISCUSSION:**

~~SmartZone Overlay Zoning~~ — Dan Casey, Economic Development Manager. This item was postponed due to the late hour.

**ANY OTHER BUSINESS:**

~~Planning Commission Representative to the Zoning Board of Appeals.~~

~~Motion by Boswell, seconded by Ruggiero, the Planning Commission hereby appoints James Rosen, Vice Chairman of the Planning Commission to be its Representative to the Zoning Board of Appeals for a one-year term to expire March 31, 2005.~~

**Voice Vote:**

Ayes: All  
Nays: None  
Absent: Myers **MOTION CARRIED**

**NEXT MEETING DATE:**

The Chair reminded Commissioners that the next regular meeting was scheduled for April 6, 2004.

**ADJOURNMENT:**

Hearing no further business to come before the Planning Commission, the Chair adjourned the regular meeting at 12:05 a.m., Michigan time.

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Eric Kaiser, Chairperson

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Maureen Gentry, Recording Secretary

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