

UNFINISHED BUSINESS

2022-0393

Public Hearing and Request for Rezoning Recommendation - File Nos. PR2023-0001, PR2023-0002, PR2023-0003, PR2023-0004 and PR2023-0005 - An Ordinance to Amend Chapter 138, Zoning, of the Code of Ordinances of the City of Rochester Hills to rezone approximately 12 acres of land located west of Rochester Rd. and south of Cloverport Ave., Parcel Nos. 15-15-429-026, 15-15-429-027, 15-15-405-004 and 15-15-429-034 from I Industrial to R-4 One Family Residential District, and Parcel 15-15-429-035 from I Industrial to B-2 General Business District

Chairperson Brnabic read the request for a Public Hearing and Request for Rezoning Recommendation for an ordinance to amend Chapter 138, Zoning, of the Code of Ordinances of the City of Rochester Hills to rezone approximately 12 acres of land located west of Rochester Rd. and south of Cloverport Ave., Parcel Nos. 15-15-429-026, 15-15-429-027, 15-15-405-004 and 15-15-429-034 from I Industrial to R-4 One Family Residential District, and Parcel 15-15-429-035 from I Industrial to B-2 General Business District.

Mr. McLeod explained that the proposed rezonings are to R-4 One Family Residential with the exception of one parcel to B-2 General Business. He stated that this is the first step in the process, to hold the public hearing and for the Planning Commission to make a recommendation to City Council. He noted that City Council makes the final determination. He described the current zoning of the subject properties on the map, and described the zoning of the surrounding properties. He described the future land use designations as identified in the City's Master Plan for the subject parcels and the surrounding properties. He said that the proposed rezoning would result in most of the parcels to be rezoned to R-4 and then the easternmost portion would be rezoned to B-2 while maintaining the Flex Business Overlay on that portion.

Mr. McLeod presented the review criteria for a rezoning, and noted it is important for the commissioners to consider how the proposed rezoning designations correspond with the surrounding area, the natural environment, and the Master Plan, among other items. He noted that there was a question about whether there is a concept plan submitted at this point for a residential development for these parcels, and he stated that there is not.

Chairperson Brnabic invited the owner and attorney for one of the parcels to come to the table, and she said no speaker's cards had been received for the Public Hearing.

Christopher McNeely, attorney, stated that he appreciates the attention paid to the difficulties of this issue. He said that he believes that his client has access to Cloverport through the contiguous property that he owns, and he said rezoning the property now is premature. He said they are trying to determine when the zoning overlays and the splits occurred to look for where the access would be. He said they filed a variance request to the City also, and he said this commission should adjourn making a decision on the rezoning so that the ZBA can make their decision. He said his client has looked at trying to make an

economically feasible project under R-4 zoning but it simply doesn't make sense. He asked whether it would be fair to say that all of the parcels proposed for rezoning currently have some industrial zoning.

Mr. McLeod responded that all of the parcels have at all or at least portions zoned for industrial purposes.

Mr. McNeely said that it would be an unfair change since it was zoned industrial when they bought the property. He said his client was in the pre-planning stage with regard to a self storage development and there were discussions with the City about that. He said the plans had been fairly fully developed as a self storage facility. He said that he submitted an additional letter to the City's Planning Department and staff.

Ms. Neubauer said that the commissioners did not receive the letter and said that she didn't know anything about the ZBA meeting. She questioned why the rezoning would be premature, and said Mr. McNeely had not provided a reason for saying that. She said that the property was purchased in May of 2022 and there has not been a formal proposal for development made to the City that has been presented to the Planning Commission.

Mr. McNeely said that rezoning is unfair because they have an economic interest in the property. He said it is a significant change to rezone to R-4, and it would be a significant change from the other properties around it. He said there may not have been a formal application but they were in the pre-planning stages with the City.

Ms. Neubauer said that it appears the parcel is landlocked.

Mr. McNeely said that it is not landlocked, and he disagrees that they cannot use another property to access a differently zoned parcel. He stated that there are legal cases to back this up.

Ms. Neubauer asked whether he has those cases for her review. She said that he is basing this on one Supreme Court decision to mean that they can use a residential property to access an industrial property.

Mr. McNeely responded that it may be unconstitutional to say they can't access their property just because it would be going through another property. He said there are traffic studies that show that if the property is converted to residential zoning for development there will be more traffic volumes than if the property is developed as self storage.

Ms. Roediger said that none of the staff had previously received Mr. McNeely's email, but she made copies for the commissioners so everyone would have it now. She noted that they did submit a use variance application for the ZBA to determine whether they can use the Cloverport parcel for nonresidential purposes. She stated that staff is discussing whether this is considered a use variance or an interpretation. She noted that the City Attorney said that the fact that a ZBA application has been filed should not affect the Planning Commission from making a decision, and commissioners should not be deterred by the ZBA

application filed.

Mr. McNeely stated that it would be premature to push this rezoning through and make a recommendation since there is no planned development. He said that nothing has to change now, and only bad things can happen from that because it would be forcing the issue. He said the commissioners should let the ZBA meeting take place. He said they did a FOIA request to the City, however the City doesn't have the information about when a zoning change or splits occurred. He said they need to know whether the split came first or if the zoning came first. He said that Michigan law says that you cannot landlock a property, and the City cannot landlock a property. He said the only entity who might have the records is the County and they will file a FOIA request there.

Ms. Neubauer asked Mr. McNeely if he acknowledges that if the property were zoned as R-4 they would be able to develop it, it might just not be as financially rewarding.

Mr. McNeely said that it is not feasible to develop the property under the R-4 regulations. He said that no one was looking to make the property a green space, and zoning it to R-4 makes it impossible to develop and so therefore would be a taking of his client's property.

Mr. Hooper said that this discussion has been going on for a long time - at the September meeting the property owner requested an extension of time and that was granted. He said that it is now four months later, and the developer is still searching for things. He said that he would rely on the City Attorney's comments. He said that the property as currently zoned is undevelopable. He said this is one step of many in the process.

He moved the motion in the packet to recommend the rezoning to City Council, and it was seconded by Ms. Neubauer.

After the roll call vote, Chairperson Brnabic stated that the motion passed unanimously.

Ms. Roediger said that the First Reading for the rezoning would take place at the February 6, 2023 City Council meeting.

A motion was made by Hooper, seconded by Neubauer, that this matter be Recommended for Approval to the City Council Regular Meeting,. The motion carried by the following vote:

Aye 9 - Bowyer, Brnabic, Denstaedt, Dettloff, Gallina, Hooper, Neubauer, Struzik and Weaver

Resolved, in the matters of File Nos. PR2023-0001, 0002, 0003, 0004 and 0005, regarding the City initiated rezonings, the Planning Commission recommends approval to City Council of the proposed rezoning of approximately 5.2 acres, consisting of all or part thereof of Parcel Nos. 15-15-405-004 (part of), 15-15-329-027, 15-15-429-026, and 15-15-429-034 (part of) from I Industrial District to R-4 One Family Residential District and all of Parcel No. 15-15-429-035 to B-2 General Business District with following findings:

Findings for Approval

1. The R-4 One Family Residential District and the B-2 General Business District are appropriate zoning districts at these locations as they are compatible with the goals and objectives of the Master Land Use Plan to service residents of the community and the region.
2. Approval of the proposed rezoning will allow for uses that will complement the existing surrounding land uses and will be a logical extension of and improvement to the existing commercial business along Rochester Road.
3. The proposed rezoning is consistent with the criteria for approval of an amendment to the Zoning Map, listed in Section 138-1.200.D of the Zoning Ordinance.

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