

## DISCUSSION

### 2022-0393

Discussion of Rezoning of Parcels #15-15-429-026, #15-15-429-027, #15-15-405-004 and 15-15-429-034 from single family residential and industrial to single family residential; and Parcel # 15-15-429-035 from industrial to general business

*Chairperson Brnabic introduced the item for the discussion of Rezoning of Parcels #15-15-429-026, #15-15-429-027, #15-15-405-004 and #15-15-429-034 from single family residential and industrial to single family residential; and Parcel #15-15-429-035 from Industrial to General Business and asked the property owners to come to the front table.*

*Mr. McLeod explained that at the September 20th Planning Commission meeting the commissioners agreed to a 60 day stay of any action based on the discussion with one of the affected property owners. The rezoning discussion is prompted by a City Council action on August 29th, in which they referred three of the properties to the Planning Commission for consideration of rezoning to single family residential, as a result of discussions during the Flex Business Overlay district rezonings. At that time, the discussion for these properties was about the appropriateness of the current industrial zoning. He referred to the properties on the screen and noted the outline includes five properties, the westernmost of which is City-owned property. He referred to the current zoning designations on the map and said that the area that is not cross hatched is the area that City Council was focused on; there are landlocked pieces of property that are zoned industrial but there is not access to the parcels through another industrial property as required. He explained that the properties would have to be accessed through Cloverport through residential property or through Rochester Rd. which would mean going through business zoned property, and noted that it is not likely they would be able to access to the south due to elevation changes. With regard to the City's Future Land Use Plan, most of those areas are also master planned for single family residential. He noted that staff determined that the developer's concept plans were not really feasible. He said staff requested additional information which hopefully they have brought tonight which would provide some direction. He said that the 60 day stay that the property owner asked for has been satisfied, and it is up to the Planning Commission to decide how to move forward.*

*Chairperson Brnabic noted that the Planning Department had requested additional information before the agenda packet was posted and asked the property owner why that information was not provided.*

*Christopher McNeely, attorney, said that this is a complicated process because the property is landlocked. He said that there are residential lots that are under common ownership that are zoned residential. He questioned how a property becomes landlocked. He explained his background in real estate litigation and said that he does not speak the same language in the same way. He said that the problem is going back in seeing when the zoning changed and looking at the parent parcels. He explained they had some issues in dealing with the architect who was going to make the proposals. He said he went back and tried to listen to President Deel's comments and the suggestion to make their proposal consistent with the properties around it. He commented that his client is open to*

those ideas, they are doing an economic analysis and looking at how many lots they could get. He stated that it is difficult to get anything to work economically for single family homes, and he is trying to get involvement with the city attorney. He said there may be a possibility of a PUD where they could still conform with the requirements the City Council would like to see but having to convert their original concept to use it as something else. He noted that the reason why they haven't provided additional information is that the architect that was working with them overloaded their schedule, and they weren't able to get him to do anything of great substance to present. He said they are asking for more time to talk with the city attorney and sort out their litigation issues with regard to where things may lie with easements and the landlocked property. He said that there should be something that would allow the property to still to be used, there should be something in the history of the property that makes sense for them and the City of Rochester Hills.

Chairperson Brnabic asked for clarification from Mr. McNeely if they are asking to not be rezoned as residential, and asked if Mr. McNeely understands there is an access problem.

Mr. McNeely responded that he understands there is an access issue but the history of how this happened needs to be investigated. He requested this should be tabled for 60 to 90 days because there is no rush to make this decision. He said that any action to recommend to City Council to rezone would create a negative impact on the property and on his prospects for getting something else done. He said that he works with the right kind of people who know about PUD's and density.

Ms. Roediger responded that this site was discussed quite a bit during the Flex Business Overlay discussions and staff researched the history. She said that as far back as City records could be found it has always been zoned industrial and the property to the north has always been zoned residential. She said there was probably a split from the property to the south since that is also zoned industrial. She said that at one point the property was an old farm that was subdivided. She said that it isn't known how the situation came to be and there were no zoning changes in the last 50-70 years. She suggested that the owner could check from the County Register of Deeds about past splits and ownership.

Mr. McNeely said that the property was subdivided at some point from a property that was not zoned industrial, which had access and was not land locked. He explained that is the basic Michigan law - you don't want land wasted, it should be put to its highest and best use. He said that when you have a parent parcel and divide off a parcel you can't landlock it. He said that such a property would be left with an easement through the parent parcel for ingress and egress. He said there is a lot of paperwork to go through but he does not want to focus on that; he wants to develop this as industrial property. He said that if it gets zoned residential that changes their plans dramatically. He asked for more time to get to the bottom of some of these divisions. He said in the same time frame he move forward with new architects and talk with the city attorney about how that could be put together as a variance or a rezoning request.

Chairperson Brnabic asked if the other person at the table is the property owner. Mr. McNeely replied that he is a representative of the LLC that owns the property. Richard Stephens introduced himself as a managing member. Chairperson Brnabic said that four public comment emails were included in the packet regarding this item, from Ron Peckens, Gigi Colanbini, Pamela Wallace and Andy Krupp and she said that they were supportive of the rezoning to residential or maintaining the property as green space. She opened the floor for public comment at 7:23 p.m.

Andrew Krupp, 168 Cloverport said that they have a wonderful and beautiful neighborhood, and they want their neighbors to have a good and reasonable development. He said that the property owner knew the property was landlocked. He said that he understands it is a challenging piece of property. He said that lots of representatives for this property have all talked about the challenges of this property, and they knew this prior to their purchase. He said that Cloverport has to remain steadfast in protecting their safety on that road. He said that he would be happy to see a single family development that is reasonable, and not a PUD with houses jammed in there using access to their street. He said they will be advocates if there is a good and reasonable development proposed.

Pamela Wallace, 168 Cloverport said that said that Cloverport is the oldest platted sub in Oakland County, and it was the first place that African Americans were allowed to live, and there is lots of history there. The residents involved in this conversation want to see the development completed mindfully and to see a balance and upholding ordinances. She said that all of the ordinances are in place for a reason. She said it was her understanding was that Mr. McNeely was one of the owners (he responded that he is not). She said that there was a lot of time to vet this information, this has been public and readily discussed and they purchased the property anyway. She said that they do their due diligence and they take risks, this was a risk and the question is now how to balance the needs of the neighborhood. She said we now have a situation where we have people knowingly entered into this and may now ask for variances or a PUD. She said she doesn't want to have higher density on this property. She said if there is not enough income to be generated with a residential development they should have considered that before. She said the residents don't want to see this happen in other situations, where people buy property and then ask to get around the rules. She said this is a big issue not just for Cloverport but for the city.

Chairperson Brnabic closed the floor for public comment at 7:35 p.m.

Dr. Bowyer stated that when they bought the property they may not have noticed it was landlocked for the industrial use. She said that if the Planning Commission moves forward today, that doesn't stop the property owner from moving forward with a PUD. She said that she understands they want a stay for another 60 days; however that will not resolve the landlocked problem. She said that to move forward with the recommendation to rezone to residential does not impinge on development of a PUD. She said that the recommendation to move forward to rezone to residential will result in the property no longer being

*landlocked. Dr. Bowyer made the motion in the packet.*

*Mr. McNeely said that there is no great benefit to pushing this through today and there is a negative. He said that they didn't know the property was fully landlocked, and it was initially communicated that it was not. He said this may be a zoning issue for litigation, and if it is pushed through may have to be litigated. He said that if the rezoning can be pushed off then that issue doesn't have to be addressed and they can look at what kind of residential they can do. He said that if it is pushed to a decision it leaves him with the options of a nasty letter or a lawsuit which they don't want to do. He said that he has been a member of this community for a long time and is happy to hear that it is the oldest platted sub in Oakland County.*

*Dr. Bowyer asked for confirmation that the property owner would consider a residential development.*

*Mr. McNeely responded yes, he is trying to look at ways to do a residential development and that is his primary focus right now.*

*Chairperson Brnabic said that there is a motion on the floor. She told Mr. McNeely that she understands that he wants time to look at the perspective of different residential development options, and asked whether he understands that it is landlocked since it is zoned industrial.*

*Mr. McNeely said that the mechanism that the city attorney advised as the proper avenue was through a variance, a rezoning or a PUD so the problem he sees pushing it through for residential is that there is no need to do that at this moment. He said that it may force them to look at other options for them to protect their corporation and investors. He said to table for 60-90 days will allow them to engage their architect. He noted that since they own the property it is just going to sit there, he doesn't see it as a positive step to force it. He said that his client would be more engaged in looking at the residential option if this is not forced.*

*Chairperson Brnabic restated the motion on the table from the packet and asked if there is a second.*

*Dr. Bowyer said this needs to move forward because the commissioners don't want the idea of the property being landlocked, and nobody is stopping the possibility of construction on the property.*

*Mr. McNeely responded that if they have time to look into this and come back they may find the solution to make residential work. He said that there is a lot of paperwork for this property for them to review deeds and property transfers.*

*Dr. Bowyer said that moving forward to set the public hearing for the rezoning will not stop them from submitting an application for a PUD, however it will stop the property from being landlocked.*

*Mr. McNeely said that it is a taking because commissioners are saying it is landlocked but it may not be landlocked, there may be an easement across*

someone's property to allow access.

*Dr. Bowyer said that right now it is not a taking because the property is landlocked.*

*Mr. McNeely said that property cannot be landlocked, that someone has to have an easement across their property for access.*

*Ms. Roediger explained that there are a lot of questions about the action tonight. The property owners are asking for more time to investigate. It's up to the Planning Commission if they want to grant this additional time. It is correct that if they submitted an application for an industrial development tomorrow it could not be processed. She noted that Mr. McNeely is correct in that how to potentially develop the property as industrial would be to ask for a use variance for the residentially zoned properties on Cloverport. She said this would be highly unlikely to be granted. She noted that the city has the right to rezone property at any given time and in keeping with the City's Master Plan, the future land use for these properties is residential. Thorough the flex business study there was a lot of discussion about the proper use for these properties, and across the board residential was the use that was discussed that makes sense. Tonight the Planning Commission needs to balance giving more time to the applicant to look at their alternatives with the fact that the future land use for the property is residential.*

*Mr. McLeod noted that December may not be the best time to have this on the agenda based on another public hearing, the commissioners may want to consider January 17th.*

*Chairperson Brnabic asked for comments from the other commissioners.*

*Mr. Struzik said the parcel is landlocked and not developable, and the commission is looking to provide a solution that is also compatible with the future land use plan. He suggested the January agenda, to keep the ball moving and to not indefinitely put it off. He said this would be steps toward making a decision but the property owner would still also have an opportunity to do their work.*

*Mr. Weaver noted that the property owner appears to be very interested in being harmonious with neighbors and residential properties. He asked the owner regarding their objection to keep options open, in case they find something that would make the property non landlocked, and asked how this action would keep them from pursuing developing the property.*

*Mr. McNeely said that he would like to be able to talk with his client and keep their options open, in case they find an easement. He said that his client can't be in a position to give up his rights. He said that he doesn't see the urgency of putting it on any agenda, there would be no harm in delaying it.*

*Dr. Bowyer amended the motion to set the public hearing for January 17th and Mr. Weaver seconded the motion. Mr. Weaver noted that the January date gives the owners the time that they need.*

*Chairperson Brnabic noted there were additional public comment cards received and reopened the floor for public comment..*

*Claire Levy, 694 S. Rochester Rd. said that she owns ten acres to the south of this land and would like to have it geared toward residential. She said that she had been asked her to sell her property for industrial purposes but she said no, she loves living here for the natural features and it was a mistake to introduce an industrial zone to her property and the property in question. She said she is looking for a grant to keep her property natural and she would not allow a cut through on her property for industrial purposes. She feels that residential is the most harmonious for the community. She said when Lifetime Fitness went in it changed the water, lighting and traffic flow in that area. She said there are steep slopes and stands of 80 yr. old pine trees. She said she is a nature lover and feels it is a respite for all humanity to use this property gently for all residents.*

*Gigi Colanbini, 201 Cloverport thanked the commissioners for not stopping the process; he said they have been in this conversation for a long time. He said that a reason to move forward is to address the continued questions out for all of the impacted neighbors. He said that if the property can be converted to a greenspace the animals who live there would all appreciate it.*

*Chairperson Brnabic closed the floor for public comment and reread the motion by Bowyer on the table, and it was seconded by Weaver to schedule the public hearing for January 17, 2023. After the roll call vote, she said the commissioners would see the property owners on January 17.*

**A motion was made by Bowyer, seconded by Weaver, that this matter be Approved to establish a public hearing on this item for January 17, 2023. The motion carried by the following vote:**

**Aye** 7 - Bowyer, Brnabic, Denstaedt, Dettloff, Gallina, Struzik and Weaver

**Excused** 2 - Hooper and Neubauer

**Resolved**, that the Rochester Hills Planning Commission hereby establishes a public hearing for the Planning Commission's regular meeting of January 17, 2023, to consider rezoning the following Parcels: #15-15-405-004, #15-15-429-026 and -027, and #15-15-429-034, from R-4 Single Family Residential and I Industrial to R-4 Single Family Residential; and to consider rezoning Parcel #15-15-429-035 from I industrial to B-2 General Business.