

DISCUSSION ITEMS

3. Roadside Stands Proposed Ordinance Amendment (Public Hearing scheduled for 2/15/2000)

(Ref: Staff Memo prepared by Deborah Millhouse dated January 26, 2000 has been placed on file and by reference becomes part of the record.)

Mr. Staran provided a history of the subject proposed ordinance amendment to Section 21.07 of the zoning ordinance. Mr. Staran explained the reasons why the proposed ordinance amendment has come forward. This ordinance was initiated by City Council in November 1999 basically to remove one of the restrictions relative to roadside stands. Mr. Staran explained that the city allows and has allowed roadside produce stands to be operated with a permit on a seasonal basis subject to a number of conditions. These conditions have been essentially in the same form for many years, even decades, and reflect the then Township Board's efforts to find a balance between the tradition and desirability of having roadside produce stands available to city residents, but balancing that against the fact that they are, indeed, commercial operations and do involve traffic and some other commercial aspects. If unrestricted they could be damaging to a residential neighborhood, and they do, in fact, compete with other more permanent food stores which have to comply with various site plan requirements.

Continuing, Mr. Staran explained that one of the conditions in particular is addressed in the subject proposed ordinance amendment, that is, currently the city ordinance requires that anyone operating a roadside produce stand can only sell produce that is grown on the immediate property or grown within the city limits. Again, this condition has been in place for many years and it has been enforced by the city for many years. However, in connection with Adams Apple roadside stand on Adams Road, the city has gone to court on that and the case has gained a lot of notoriety. A number of residents have spoken very strongly to City Council about this specific stand and wonder why the city has this condition. Mr. Staran repeated that City Council did take the matter up and did initiate the subject ordinance amendment with the intention of considering it for adoption prior to the next roadside stand season which begins on May 1, 2000. The proposed ordinance amendment would accomplish some clean-up items as well as remove the condition that roadside produce stands can only sell produce that is grown within the city. This condition came to light in discussions with Adams Apple. However, given the amount of development in the city and the lack of agriculture, there are probably few, if any, other potential roadside stand operators who could effectively meet that requirement. The operator of Adams Apple happens to import the produce he sells from outside the city limits. The clean-up items that would be affected refer to just allowing Christmas tree sales and no other related greenery items. Also, for clarification, wherever the ordinance refers to single family residential subdivisions, detached condominium developments will be referenced as well.

Mr. Staran pointed out a typographical error at the top of Page 3 of the proposed ordinance amendment where "*A permit may be issued or ...*" should read "*A permit may be issued for...*".

The Chair started by stating his beginning premise that we all live in a free country. From there, government necessarily, in order to keep order, can put limitations on our behavior in all kinds of ways, from not killing to not selling in roadside stands unless under certain conditions. When the Chair reads the exclusion in the proposed change, he asks why that exclusion is there. The best reason he can come up with was that in the exercise of police power we have to have a rational basis for it and it has to be reasonably related to what we are trying to control. With that

condition included in the ordinance it seems that the city is saying that people cannot use their property in these particular areas to sell anything they darn well please, considering safety, traffic issues, and the keeping of order and aesthetic concerns. This seemed to be the most rationally based way to control activity that might otherwise arguably include selling velvet paintings, fireworks as is done in many communities. Limiting it to produce grown on property in the City of Rochester Hills was a way that the legislative body was saying that produce sales and Christmas tree sales can be allowed in our community if it is related in this way.

If we don't, we may have to allow roadside stands that sell not just produce grown outside the community, but almost anything else, assuming it is otherwise legal to do.

Mr. Staran's understanding of why this condition was in the ordinance was the same as the Chair's except that Mr. Staran believed it was the old Township Board's way to find a balance between tradition and the recognition that they are commercial operations in a community that is reaching maturity with all the attendant traffic safety and aesthetics considerations that come into play in trying to harmonize commercial businesses with residential. Mr. Staran believed it was an effort to accommodate that tradition for the current residents at that time. There were several roadside stands many years ago that operated during the summer and actually met the condition of growing and selling their produce within the city limits. However, the city has grown up now, and it has been a long time since we have seen any big-time farming operations in the community. Meanwhile, the desirability of many people to having these types of uses remains, and that is what leads to the current conflict. The city has the requirement that in order to sell it you must grow it within the city, but there is no place to grow it in the city. Therefore, under a strict application of the subject ordinance it may very well be that indirectly we have outlawed roadside produce stands in the City of Rochester Hills. The part of the Chair's comments that Mr. Staran did not agree with was that Mr. Staran would not go so far as to say that if we allow roadside stands without restrictions that we would have to allow all other types of businesses. There is a way to pick and choose certain types of businesses based on the distinctions between them as well as a reference to tradition. But it certainly would create the opportunity for, or put pressure on, other types of businesses.

The Chair clarified that he could use other examples, such as furniture sales out of the backs of trucks or other extreme examples, which may not be all that extreme. The Chair thought if we don't have it tied to what he assumed the legislative body tied it to -- to something solid, some link to the community -- then we would open the door to chipping away at what else should go on our roads and streets. Fireworks, for example, is a huge conglomerate, as he has learned from his other life. He goes up against them every single year. They hire big-time lawyers to litigate cases involving fireworks stands throughout Michigan. The communities that have not allowed them in basically do not have problems with those issues. The communities that have allowed other things, but not fireworks, run into problems.

Mr. Staran responded that there is always some risk that by opening the door a little bit, we might be inviting those types of inquiries.

The Chair asked if we eliminate this link to the City of Rochester Hills, what is our rational basis any longer for saying that other groups of sellers would not be able to come into our city and get permits. Mr. Staran responded it would be that historically we have allowed roadside stands but have not allowed other things. Even though the city has changed from agriculture to residential, it has not necessarily changed to all of a sudden start allowing things that we have not allowed in the past. Roadside produce sales have always been allowed. The only difference here is that it would not matter where it is grown. The product will be the same. Mr.

Staran saw that as being distinctly different from introducing for the first time sales of fireworks or furniture or any other type of retail activity. It's a legitimate issue and Mr. Staran did not disagree with the Chair's analysis. It is a policy call; it is something that Planning Commission and Council may have to deal with later namely if one is allowed, why not other things. The argument can certainly be made that buying fireworks and blowing them off is a two hundred year old tradition. The City just has not seen a lot of that in the community.

The Chair stated that the historic basis given for allowing roadside produce stands is why we would have a problem. The basis for allowing roadside stands in this previously rural farm community was because it was part of life here; it is not part of the community's life anymore. The basis to allow this has broken down. When it is no longer part of our community, history doesn't mean much.

Mr. Staran pointed out that certainly one of the risks is that the nature of the operations could change, and that is one of the risks that Council has thought of and will debate further when this item returns to them. Mr. Staran qualified that, as far as he knows, there has not been a great demand or a great number of inquiries in the last few years as to what the roadside produce stand regulations are. There was a roadside stand a few years ago at Crooks and M-59 that has since moved to Auburn Hills, in fact it was over this very same issue. There was also one on Dequindre a few years ago. There may have been other business reasons why the stands moved elsewhere.

Member Rosen lives at the eastern boundary to the Adams Apple property. He has often wondered over the years if it made any real difference. His guess was that he would be happier if the property owner kept doing what he is doing because he does not actually farm there; he just drives the tractor around once in a while. There is no personal impact to Member Rosen. He pondered that he could grow tomato plants on his property and if he could grow enough good ones he should be able to sell them on a roadside produce stand. This would be a fundamental change and not just a small tweak on tradition. It would be allowing processed or manufactured goods to be sold on a residential parcel, and he could easily extend that argument to furniture, which is made out of grown materials such as wood and cotton. Mr. Staran was not sure he agreed that selling furniture and clothing and such would even meet the current ordinance, let alone the proposed amended ordinance. Mr. Staran did not see how that particular point is affected by where the produce is grown. If someone is going to try to sell furniture and believes that is appropriate under the ordinance, they could make the furniture in the City of Rochester Hills now and meet the ordinance. They are not doing anything to change that.

Member Hooper's reading of the ordinance would be that anything could fall under the term "market". Mr. Staran clarified that it says right in paragraph 21.07.b. of the ordinance, "seasonal roadside stands and markets for the sale of produce and flowers when sold with produce." That's all it allows. And that hasn't changed.

Ms. Millhouse added that "roadside stands or markets" are also defined in the Definitions section of the ordinance, "shall mean a roadside stand or market is the temporary use of property or facilities for the selling of produce."

Mr. Staran added that at one time there was a problem which is being addressed by the inclusion of "wreaths, boughs, grave blankets and garland". There were a lot of holiday related products being sold that the operator was cited for; it went to court, and the judge determined that the ordinance as written only allowed the sale of Christmas trees, nothing else. It was determined administratively. It was Mr. Staran's understanding that the mayor did instruct ordinance enforcement that we were not going to apply the ordinance so literally anymore so we would allow other

holiday greenery just as a matter of administrative policy. He has suggested to the mayor if that's the way the city is going to apply the ordinance, then we should make the ordinance say so.

It appeared to Member Hooper that we were just making exclusions here and there. Every administration might have a different feeling.

Mr. Staran added that it is intended to be very limited and he tried to write it in a way that it is just limited to greenery and not other types of holiday ornaments and other paraphernalia.

Mr. Staran clarified that the proposed ordinance amendment applies only to parcels of land outside the boundaries of a recorded subdivision or a condominium development, in other words to acreage parcels.

It seemed to Member Boswell that the restriction was in the ordinance for a reason. And if it is removed, you will be affording the opportunity for someone to come in and chip away a little bit more and more until eventually anybody can sell anything they want as long as it is on their property. City Council would always have the control of approving or disapproving such requests.

The Chair asked what would be the rational basis for excluding fireworks made in Seattle, for example, and allowing apples made in Seattle. Mr. Staran did not think that the subject condition being proposed for deletion makes the difference between this ordinance being valid or not valid, or makes a difference between every commercial operation coming into town and setting up in residential areas or not. Mr. Staran believed it is only one component but does not itself make the ordinance any more enforceable.

Member Hill agreed with Members Rosen and Boswell and suggested establishing an area in the city for a farmers market instead of changing the ordinance. Member Hill did not believe the proposed change was an appropriate change for the city. Would this also apply to multiple family districts?

Mr. Staran responded that it would apply to all residential areas in the city. The only people who are restricted to selling what they grow on their own land are those in platted subdivisions and detached single family site condominiums. Mr. Staran clarified if a produce stand were located in one of the B, or business districts, there would be no restriction on where the produce is grown. Under the proposed change, the only folks that are limited to stuff grown within the city are platted subdivisions and site condominiums. Under the current ordinance, it would be only in recorded subdivisions. The only folks who would be limited under the proposed change would be those in single family homes. Anyone else can bring in a truck and create a temporary stand anywhere in the city to sell produce. There is no adverse possession when it comes to compliance with regulations. There are lawful nonconforming uses, but something that is permitted on a seasonal basis by permit cannot acquire nonconforming use status; it is a permitted use, not a nonconforming use.

Member Potere asked of what benefit is there to the community to change this ordinance. Mr. Staran responded that City Council asked for the change. Adams Apple would not be able to exist under the current ordinance, and there was a feeling that it should be allowed to continue to exist, as well as any other roadside stands. Mr. Staran could not recall any roadside stand ever being set up on a property that was already occupied or improved so no site plan would ever had been requested or approved. If a roadside stand were requested to be set up in the Meijers parking lot, for example, the city may very well require some type of site plan review because

that would be affecting the existing operation and would take up parking spaces.

Member Potere could not see the benefit to the community to changing the ordinance. It is just an easy way out. Member Potere believed City Council needs to look at this problem from the standpoint of providing a benefit to the community, and that would be in the form of something like a farmers market. Why, then, have zoning?

To Member Hill the proposed ordinance would not be fair across the board to the whole community.

Member Boswell agreed that there would be no benefit.

The Chair said it is not fair to benefit just one person. It would open the door to potential problems. Ordinance changes should not be driven by one person. The Mayor always has discretion to tell Ordinance Enforcement to not issue violations.

Member Rosen would like to see information in the next packet regarding a description of how we got to this point. Member Rosen wondered what other communities do, such as the four communities surrounding Rochester Hills and Farmington Hills as well as other comparables.

(Ref: Staff Memo prepared by Deborah Millhouse dated January 26, 2000; Letter from John D. Staran dated December 9, 1999; Proposed Ordinance Amendment dated 12/09/99.)