

**NEW BUSINESS**

2011-0431 Request for Rezoning Recommendation (Public Hearing) - File No. 05-042 - Two parcels totaling approximately 7.3 acres on the west side of Dequindre, south of Washington, from RE, Residential Estate to R-1, One Family Residential district, Parcel Nos. 15-01-277-015 and 15-01-278-006, Damian Kassab, Little Winkler, LLC, Applicant.

*(Reference: Staff Report prepared by James Breuckman, dated October 27, 2011 had been placed on file and by reference became part of the record thereof.)*

*Present for the City of Rochester Hills (applicant) were Ed Anzek, Director of Planning and Economic Development and James Breuckman, Manager of Planning.*

*Mr. Anzek recalled that a discussion regarding the subject properties was held at the October 4th Planning Commission meeting concerning density. Staff had met with Mr. Damian Kassab of Little Winkler, LLC and Mr. Vito Terriaciano of Arteva Homes regarding re-establishing Little Winkler Estates, which had been approved for the site in 2006. They found that the Preliminary Plan had lapsed, and that the property had been subsequently Rezoned to RE, Residential Estate, which required one-acre minimum lots. Little Winkler had been approved when the property was zoned R-1, One Family Residential, which required a 20,000 square-foot minimum lot size or a little less than half-an-acre. The average lot size of Little Winkler was 22,500 square feet. In looking at the surrounding properties, Staff noted that the properties to the north, east and south were of similar size or smaller than those in R-1 zoning, and Winkler Mill Estates, directly to the north, was zoned R-1. Across Dequindre, in Shelby Township, the lots averaged 12,000 square feet, which were closer to the City's R-3 district. To the south, in Rochester, the lots averaged 14,000 square feet, more similar to the City's R-2 district. When the subject property was Rezoned in 2009, it was done uniformly and everything not subdivided was made RE. Letters were sent to the property owners, advising them of the Rezoning and offering to meet if they wanted further explanation.*

*Mr. Anzek stated that Staff felt that it would be more appropriate to Rezone the subject property back to R-1 because of the surrounding development and was now bringing it before the Planning Commission as a City-initiated Rezoning request. To the west, there were two lots, one of which was 1.4 acres and one a little over two acres which would be appropriate to remain RE. There was a large lot further to the west zoned*

RE, and there had been discussions about putting in a 10-unit development several years ago. Mr. Anzek added that he had received a couple of letters prior to the end of the day, and he advised that he would address them after public comments.

Chairperson Boswell opened the Public Hearing at 7:08 p.m.

**Robert White, 56187 Dequindre Rd., Rochester Hills, MI 48307.** Mr. White thanked the Commission for the opportunity to speak. He stated that earlier this year, he and his wife became owners of 56187 Dequindre Rd., one of the two parcels to the west that were adjacent to the subject properties now under consideration for Rezoning to a higher density. His neighbor's house at 56495 Dequindre also shared the dedicated easement - a long driveway - that traveled through the subject property and which gave them access to Dequindre Rd. He noted that he was one of the people who had submitted written comments to the Commissioners. He said that he wished to speak about process; the process they undertook before they purchased their home; the process the City undertook in Rezoning the subject properties four years ago; and the process which the potential developer was seemingly trying to sidestep. They felt that they were very lucky to find their home. It was a great home on a large lot, surrounded by similarly sized properties and nestled among large, mature trees. Before they moved forward with their purchase, they took a deliberate process of due diligence. That included multiple conversations with the energy department and environmental experts about the gas lines in the easement to the south of the property. It included long discussions with the previous owners about maintaining the natural pond and features on the property. It included a detailed land records check to determine the nature of the easement, and it included much examination of the Rochester Hills Planning Commission and City Council records regarding the two vacant properties to the east (the subject properties). He said that he personally visited the City's Planning Department in May of 2011 to determine the status of the Little Winkler Estates development. He was told the City had not heard anything from the applicant in a long time. The Staff confirmed that the Preliminary Approval granted in November of 2006 had expired, since the developer had never returned to seek Final Approval. He was also informed that the properties had since been Rezoned from R-1 to RE, which meant that, according to Staff, even if the developer wanted to, he could not come back with the same plan. They comfortably moved ahead with their purchase, given the knowledge that an agent of the City had told them that there was no danger of the Little Winkler Estates plan being revived. They also felt confident in their assessment because the City had moved

forward with its own planning process shortly after the Little Winkler Estates development had received Preliminary Approval. The City made the decision to adjust the zoning on the lots to RE, which fit in with almost every other property in the northeast section of the City. He pointed to a map on the overhead screen, and said that the subdivision in Rochester to the south was separated by a very large easement and a lot of tree stands. To the east, across Dequindre Rd. was a major development. The properties to the north were all zoned RE, with the exception of the development on Carter, which was R-1.

Mr. White said that it was difficult for him to understand why the same Planning Staff, after just one meeting with the developer and no notice or input from the surrounding property owners, decided to endorse a Rezoning back to R-1. To suddenly claim that the previous Rezoning to RE might not have been thought through enough, seemed to undermine the hard work of the Master Plan in the first place. They were left with a developer who failed to seek or receive Final Approval for a project and who refused to respond to the City's notice that the property was being Rezoned. The developer did not even make a phone call to better understand what the official City notice might mean for his property. He seemingly had not paid taxes on the property in several years, but he now wanted a "second bite of the apple." Mr. White wondered why the City was so willing to change the underlying zoning for the property owner and the developer. It did not seem as if either had demonstrated much respect for the City's development process. The property owner simply brushed aside the City's Master Plan process, and the developer was treating the requested Rezoning as a fait accompli. He expected the City to rubber stamp the Rezoning, regardless of the City's stated desire to protect the estate-like nature of the nearby properties in the northeast part of the City. Mr. White said he knew this because on the front page of the Arteva Homes website, the company listed the Little Winkler Estates project, renaming it Winkler Estates, and stated that it was the most prominent project it had going in Oakland County. The developer was selling the houses currently. The 2006 Site Plan was provided as the basis for the development, and they were currently taking reservations and collecting earnest money deposits of \$2,500.00 from prospective home buyers. He had spoken with the Arteva Sales Manager for the project. He told Mr. White that they had already taken a deposit from one customer and expected as many as three more soon. They were planning to break ground as soon as possible. He was told by the Manager that as soon as they had sold five units, they could break ground. Mr. White thanked the Commissioners.

**Deanna Hager, 1841 Carter Rd., Rochester Hills, MI 48307.** Ms. Hager thanked the Commissioners for listening to her comments. She stated that she and her husband had lived on Carter since 1993, before any development. They thought they were pretty protected in the area because of the intent to keep it estate-like. At this point, they were not interested in seeing half-acre lots as approved in 2006. They had experience with developers saying they would keep trees, but they did not. They had neighbors who stood in front of bulldozers to try to protect trees. They were concerned about the trees, lot sizes, construction noise, and five houses versus ten houses. She acknowledged that it might be somewhat selfish, but it was the culture of the area. She referred to property values, and said that everyone was concerned about them these days, and it was very important to them. Also, privacy was very important and what kept the value where it was. She said that if someone drove in the area they could get a feel about it. She concluded that she echoed everything Mr. White mentioned in his letter.

**Debbie Prachaseri, 1860 Carter Rd., Rochester Hills, MI 48307.** Ms. Prachaseri stated that she had lived at the above address for 26 years. She said that her home was on 8/10ths of an acre. She thought that most of the houses on Carter Rd. were more than half-acre lots. Most of the homes had mature trees. Looking at the map for Little Winkler Estates, it appeared that many of the trees in the middle of the property would be removed. She asked how many trees were on the property and how many would be removed. She asked if the new lots would have mature trees. She said that builders were able to retain trees, and each lot would have some mature trees. There were some wonderful, huge pines that currently lined the driveway to the two properties to the west, and she said she would hate to see all of those trees taken down. It appeared to her that only the perimeter trees would be retained, which she did support especially along Dequindre, which blocked the noise from traffic. Another concern was the building timeframe, and the neighbors hoped it would be short if something were built. She mentioned wildlife, and said there was a concern because the community would be gated at the front. They were concerned it would push the deer paths onto Carter Rd. and onto the subdivision to the south. She said that she would like to know how many houses on Carter were on less than half-acre lots.

**Rob Link, 1956 Carter Rd., Rochester Hills, MI 48307.** Mr. Link said that he had lived on Carter with his family since 1996. He stated that it was a beautiful area, and he was concerned about a reduction of lot sizes for the development. He did not agree to going down to smaller lot sizes. The trees were a great concern, not only for all the reasons heard, but

from a drainage perspective and water absorption in the area. He did not want to see trees removed from the spaces, and he noted that the trees had been tagged. He said that the trees provided shade and sound buffering and helped with drainage. Regarding the lot size change and the layout, he said he would really like to understand the plans for the drainage and the pond. Water ran off many of the lots on Carter into the lower grade and into the pond off of Dequindre. If there was buildup, they would get water coming back onto the lots adjacent to it. From a construction perspective, he would not want to hear a lot of noise during the early morning weekends. He had heard noise from the other side of Dequindre early in the morning, and he did not think it was right to have that kind of noise pollution. He reiterated that most concerning were the lot sizes and the drainage.

**Terry Willingham, 1171 Miners Run, Rochester, MI 48307.** Mr.

Willingham said that he was on the opposite side of where people who spoke lived, but they represented his concerns very well. When they moved into the area four years ago, they looked at 200 houses. They chose their house because it backed up to where Little Winkler Estates would be, and it was quiet with a lot of trees. He commented that it was a sanctuary. There was a lot of wildlife, deer, fox and coyote. There were 20 species of ducks and swans, and he remarked that the trees were wonderful. When they moved in, they were told similar things, such as that they would not have to worry because the area would never change. He was concerned about maintaining the trees. He liked that the plan showed the trees being preserved along the border. It was important to him that the pond did not get disturbed; he understood it was protected. The hillside on the opposite of the pond was where a lot of animals congregated. It looked like there would be a house right in the middle of that area, and zoning to smaller lots would allow that to happen. He was also concerned about the wall on Dequindre. If that were completely enclosed, it would create a problem for the animals that crossed Dequindre, and they would be funneled to small sections on the side. That would cause congestion on Dequindre. He did not want to see a situation where there would be construction for multiple years.

**Mike Callahan, 1169 Miners Run, Rochester, MI 48307.** Mr. Callahan thanked the members for the opportunity to voice his concerns. His concern was the pond and wetland. He commented that the pond was beautiful. There were many ducks that came in the spring and fall. He would like to see everything done to protect the area. A few years ago they had a family of swans on the pond in the summer, and his kids loved looking at the pond. Almost every night there were deer roaming through

the area. He would like everything possible done to protect the wetlands.

Chairperson Boswell added that he had received a letter from Mr. and Mrs. Robert White and an email from Ms. Melinda Hill, and said they would be made part of the public record. The letters were in opposition to the proposed Rezoning for reasons similar to what was heard by the neighbors. Seeing no one else come forward, Chairperson Boswell closed the Public Hearing at 7:25 p.m.

Mr. Anzek responded to the residents, saying that he appreciated all the input. He noted that Mr. White's letter was received late in the day, and he wished to address some of the issues. Mr. White did not mention procedures outlined in his letter regarding Michigan Public Act 579. Mr. Anzek explained that Public Act 579 dealt with Conditional Rezoning, which was recently adopted in the State. It had been used by the City on a couple of occasions. Conditional Rezoning limited the use of a property, unlike if something was in a commercial district, for example, where anything from a tattoo parlor to a restaurant was allowed. In a single-family situation, there was really no difference in the RE versus R-1 district in terms of permitted uses. He was not sure how Public Act 579 would apply. Mr. White had raised the issue of process. Mr. Anzek said that in 2007 the Master Plan was adopted; however the Rezoning was done in 2009. In May, when Mr. White visited City Hall, he was told that the Little Winkler Estates project had lapsed and that the land had been subsequently Rezoned to Residential Estate. Mr. Anzek mentioned property values, and said that he had never seen a residential development built in the City that affected someone else's residential property values. Property values had been declining, but they were beginning to flatten. It had no direct relationship with adjacent residential developments. A question was raised about how many trees would be removed. He advised that it was a platting question. The City had a Tree Conservation Ordinance, which required 37% of the regulated trees to be saved on site. He thought that had been worked out during the original Site Condo process, and he would have to research the location of tree preservation.

Mr. Anzek noted that the City limited hours of construction to 7 a.m. to 7 p.m. on weekdays and Saturdays. Sundays required a special approval from the Mayor to work or to work past the hours of 7 p.m. other days. Since he had been at the City, it was his understanding that there had only been one occasion where a Mayor had approved that, and it was for the M-59 construction deadlines, to work at midnight. He was not sure how the gating would affect the wildlife, and said it would be more of a Site

*Plan question rather than Zoning. Regarding drainage, the plan that was tentatively approved in 2006 showed a retention pond in the southeast corner of the development. The water might drain to the pond, but it would be channeled and piped to the retention area. Since that time, there had been new engineering standards adopted by the City that would probably require enlargement of the detention basin. He clarified that the request was a zoning question, not a Subdivision Control Act or One-Family Site Condo Ordinance question. A lot of questions raised would be dealt with in the platting or site condo process - the drainage, access, trees, etc. He talked about the pond, and said he believed it was remaining intact as on the original plan. He did not believe it was a regulated wetland because of its size, and that it did not have direct inlet into a waterway.*

*Mr. Anzek clarified that the subject question was about density. The parcels were at one time zoned R-1. Through the process, Staff identified the northeast portion of the City, the north central portion of the City and a large neighborhood immediately west of City Hall as appropriate for Residential Estate zoning, because the predominant number of lots within those areas were an acre or more. The subject parcels were Rezoned RE after the Preliminary Site Condo Plan was brought forward. The parcels were treated as two large tracts of land which would be appropriate for RE at that point. On closer examination, knowing that the densities to the south, north, east and that the Carter Rd. subdivision was zoned R-1, it seemed appropriate to zone the subject parcels what they were originally.*

*Mr. Yukon clarified that the parcels to the north were currently zoned R-1. He asked about the parcels in Rochester, which averaged 14,000 square feet, and if that was comparable to R-1. Mr. Anzek was not sure about the zoning categories in the City of Rochester. Mr. Yukon said that currently, the pond was in the southwest corner and if the development went through, the retention in the southeast corner would be by Dequindre. He asked if the water would drain to the pond. Mr. Anzek said that the water runoff from impervious surfaces created with the development should be channeled through storm drainage and curb and gutter system to the retention area by Dequindre. The natural sheet that fell on the grasses would still go to the pond.*

*Mr. Kaltsounis summarized that the request was for a Rezoning. With a Rezoning request, the Commissioners did not look at property sizes other than average property sizes of the zoning district. They would not look at ponds, deer tracks, trees or anything else - it was a Rezoning. They did not look at where the roads would go, where the gates would go, etc. He directed comments to Mr. Kassab, the developer, and suggested that if*

he went forward, he should take note - there were a lot of neighbors in the room that were concerned. The Planning Commission was very interested in how builders and developers interacted with their neighbors. No matter what happened, the applicant would likely be back before the Commissioners, and he recommended that they got to know the neighbors and listened to their concerns. He emphasized that the Commissioners always recommended that developers worked with the neighbors to try to resolve any issues.

Mr. Kaltsounis stated that he was part of the Master Plan process when they looked at areas of the City and the lot averages of different districts. The northeastern corner became RE, which was new. They tried to bring the zoning in line with what the lot sizes were. Outside of that, there were particular parcels they looked at to see if they should make changes and to see what they could do with properties to make them beneficial to the City and the neighbors. In hindsight, although the subject parcels were reviewed, it would be one of those developments that fit a certain template. That was why the City was looking at it again. He was not concerned about development for that property at this point. If someone came forward with an R-2 development, he would probably say no. When he looked at a Rezoning, he also looked at the surrounding area. The subject properties would fit into an R-1 more than an RE district. If he was looking at it again at a Master Plan meeting, he would leave it at R-1. There were still hurdles to cross with its development, and the neighbors would be part of the process. Hearing no other comments at that point, he moved the following motion:

**MOTION** by Kaltsounis, seconded by Dettloff, in the matter of City File No. 05-042, the Planning Commission recommends to City Council approval of the request to rezone Parcel Nos. 15-01-277-015 and 15-01-278-006 (7.3 acres) from RE, Residential Estate, to R-1, One Family Residential District.

Chairperson Boswell restated the motion noting the mover and seconder and asked for any further discussion.

Mr. Hooper asked if the parcels were zoned R-1 for the previous 30-40 years (before 2009). Mr. Anzek believed that there had been no significant Rezonings since 1992. It had been R-1 from at least 1992 until 2009. Mr. Hooper clarified that from the inception of the City until 2009 it was zoned R-1 and then it was Rezoned in 2009 to RE. He felt that was a significant factor. Also, he reminded that the new engineering standards for detention ponds would significantly affect the size of the



pond on the site, and it would probably result in fewer than ten lots. It was his opinion, but he thought there would be a loss of one lot if it went forward, which would result in the remaining lots being even greater in size. He said that a question was raised about half-acre lots, and in studying the previous plan for Little Winkler, seven of the ten lots were greater than half an acre. He felt that R-1 zoning was appropriate for the two parcels.

Mr. Reece said that if the parcels stayed as RE, at 7.3 acres, they might have gotten five or six homes at the most. There was a relevant question asked about the Carter Rd. lots and the actual sizes of those. He would be curious to see if the actual sizes of the existing R-1 Winkler Mill Estates lots were greater than 20,000 square feet, as compared to the proposed Little Winkler Estates lot sizes. The question to him was whether it would be compatible with the majority of the existing developments in the area. It was on the fringe of being significantly compatible with the development to the north. A couple of areas had larger lots, but the reality was that many of those properties at one time were larger areas also, and there were lots of deer, fox, wild life and trees where the homes people lived in today were. That had to be balanced in terms of looking at a Rezoning. The question he had was about the existing development to the north and whether the lots were compatible with the 22,500 square-foot lot sizes submitted as Little Winkler.

Mr. Anzek said he would do the calculations and let the Commissioners know. The 22,500 square-foot lot size for Little Winkler was an average, and there were probably some larger.

Mr. Hetrick said that since most of the questions folks had were about trees and features of the development, he recommended that they could come back before the Commission at the time of consideration of Site Condo Approval. He asked when the development to the north was built, and Mr. Anzek thought it was in the 1960's.

Chairperson Boswell asked if the properties west of Little Winkler were zoned RE, which Mr. Anzek confirmed. Chairperson Boswell said that given the fact that the subject properties were on Dequindre and that the Carter Rd. properties were R-1, he would have to agree that R-1 was more appropriate. If they were further in and away from Dequindre, he would be of a different mind.

Hearing no further comments, Chairperson Boswell called for a vote.

**Recommended for Approval to the City Council Regular Meeting**

**Aye** 7 - Boswell, Brnabic, Dettloff, Hetrick, Hooper, Kaltsounis and Schroeder

**Nay** 2 - Reece and Yukon

*Chairperson Boswell stated for the record that the motion had passed seven to two.*

## UNFINISHED BUSINESS

**2011-0381** Discussion regarding a proposed Zoning Ordinance text amendment to allow gas stations in B-3 Zoning Districts as Conditional Uses

*(Reference: Cover memo and ordinance amendment prepared by James Breuckman, dated September 28, 2011 had been placed on file and by reference became part of the record thereof.)*

*Mr. Breuckman referred to his memo, which had some draft language that reflected comments from last month's meeting. There were also some aerial photos and pictures of other gas stations in the area that were supplementary to the proposed language. He wanted to go through the draft language and see what the Commissioners felt. They had talked about how gas stations would be permitted. The language was drafted to permit them as an accessory use that would require a Conditional Land Use Approval. The language said that gas stations might be permitted as an accessory use to a principal use with a minimum floor area of 40,000 square feet in the B-3 district, and both would have to be located on the same parcel. The next item talked about minimum lot area and that such uses may only be permitted on a parcel of ten acres or greater. He showed a map with various lot areas in the B-3 district in the Rochester Rd. corridor. They tested a few parcels of varying sizes to see how a gas station might lay out on those parcels. They put the Speedway station from the northwest corner of Rochester and Tienken to scale on each site, including the 31-acre Meijer site. They also showed how much area a gas station would occupy on the (almost) ten-acre site at the corner of Auburn and John R. They put another one on the southeast corner of Rochester and Hamlin, which was an 11.7-acre parcel. He wondered what the Commissioners thought about the ten-acre requirement.*

*Mr. Kaltsounis said that he was still not a fan of it. After the last meeting, he found out that the Kroger by South Boulevard and Crooks in Troy was going to put in a gas station in the front parking lot. He wondered what would be next. He could see future cluttering of developments and brownfields. He was not a fan of having gas stations out in the open. If*