

6. *Provide a performance guarantee in the amount of \$23,165.00, as adjusted if necessary by the City's Landscape Architect, to ensure the proper installation of replacement trees, island trees and shrubs, buffer trees and other landscaping. Such guarantee to be provided by the applicant prior to issuance of a Land Improvement Permit.*
7. *Change generator pad to transformer pad on Sheet L-1.*

Voice Vote:

Ayes: Boswell, Brnabic, Dettloff, Hardenburg, Hooper, Reece, Schroeder

Nays: None

Absent: Kaltsounis

MOTION CARRIED

Mr. Boswell thanked the applicants and commented that the building looked much better than before.

This matter was Approved. The motion carried.

NEW BUSINESS

2006-0235 Conditional Rezoning Recommendation (Public Hearing) - City File No.06-004 - An amendment to Chapter 138 of the Code of Ordinances to rezone three parcels of land totaling approximately 4.38 acres, located on the east side of Rochester Road, north of Avon, from B-2, General Business, to B-3, Shopping Center Business, Parcel No. 15-14-351-061, a portion of Parcel No. 15-14-351-017 and a portion of Parcel No. 15-14-351-018, Russ Shelton, applicant.

(Reference: Staff Report prepared by Derek Delacourt, dated June 6, 2006, had been placed on file and by reference became part of the record thereof.)

Present for the applicant were Russ Shelton, Shelton PontiacBuickGMC, 855 S. Rochester Road, Rochester Hills, MI 48307; Tom Sovel, Spaulding DeDecker, 905 South Blvd. East, Rochester Hills, MI 48307; and Arthur Cox, Esq., Bebout, Potere & Cox, P.C., 1000 W. University Drive, Suite 203, Rochester, MI 48307.

Mr. Delacourt pointed out that the applicant had been before the Commission several months previously for a discussion about the subject parcels. He noted that the parcels were currently zoned B-2, and that the applicant expressed interest in purchasing the properties and utilizing them in combination with his existing dealership to the north. He stated that the B-2 district did not allow new car sales, and that the parcels would have to be rezoned. When the applicant appeared before

the Commission, the idea appeared to be received favorably, although there was concern about the possibility of the parcels not being combined and used for the dealership in the future. To that end, the applicant applied for a Conditional Rezoning and proposed two conditions, which would restrict the use to a new car dealership, in combination with the parcel to the north. He advised that the parcel's width was currently non-conforming, and if combined with the southern-most parcel of the existing dealership, it would meet the width and area requirements for B-3 zoning.

Mr. Schroeder felt the matter was very self-evident and clear and he did not see a need for discussion; however, Mr. Boswell saw interest from other Commissioners.

Ms. Brnabic referred a question to Mr. Staran and to the Planning Department. She noted the previous discussion regarding Conditional Rezoning, and that it would permit the dealership to park additional vehicle inventory and also ease concerns about potential future B-3 uses on the site if Shelton decided to move or sell in the future. She had been under the impression that most of the property would be used to store vehicles, but noted that in the applicant's letter dated May 17th, the purchase would "accommodate the storage of vehicles that are now offsite but also provide increased mechanical or body shop operations within the remodeled building on the property to be purchased." She asked if they planned to remodel the entire House of Denmark building for that purpose.

Mr. Shelton responded that the front half, referred to as the bowling alley, would come down regardless of what they did. He was in the process of preparing short and long-range plans. The back portion, which currently housed a warehouse, would be used for a body shop or service department, but he said that it was hard to tell because of the way the business was changing. He indicated that they could end up with another dealership. He would like to have the flexibility to use what he could of the building and take down the front portion.

Ms. Brnabic stated that with the current plan, there would be a free-standing building serving as an automotive repair garage. She questioned the way the condition was worded, and thought they needed to consider the future because even though it could be considered incidental to the business, if something were to happen in the future, she wondered if they would be left with a row of auto repair shops. She was concerned that the wording "auto dealership use" could include mechanical repair shops. She realized that in the current dealership, everything was in the same building, and that the repair portion was usually put in back. She read the portion of the B-3 permitted uses and

expressed concern about having body shop operations. She wanted an opinion regarding the condition and how it could relate to auto repair only.

Mr. Delacourt clarified that Ms. Brnabic's first concern was that at some point in the future, if the building was converted to an auto body portion of the dealership, it could be sold off independently from the rest of the dealership and used independently, regardless of the ownership.

Ms. Brnabic confirmed that, and added that if something were sold off in the future, she would be concerned about the entire property use because the free-standing building could be separated and used for auto repair only.

Mr. Delacourt stressed that the property could not be split off as a B-3 or any other use and be used as an auto body dealership independent of a new car dealership. What Mr. Shelton was proposing would require revised Site Plan approval by the Planning Commission, and at that point, any Site Plan issues related to auto body use would be discussed. He asked if Ms. Brnabic questioned whether the dealership could be redeveloped as two smaller dealerships.

Ms. Brnabic explained that she was inquiring whether the site could somehow turn into just auto body repair if the plans changed in the future. Mr. Delacourt asked if she meant into multiple repair shops, not connected with an auto dealership. Ms. Brnabic agreed, indicating that she wished for clarification about what could happen if everything were demolished.

Mr. Delacourt stated that auto repair shops independent of a car dealership were not allowed in B-3 zoning. The condition proposed by the applicant applied to the portion he would like to redevelop. If at some point the combined parcels that met the size requirements and area requirements of the B-3 district were to be sold off and used, the only B-3 use allowed would be a car dealership. There could possibly be two separately owned car dealerships with two separate body shops if the Planning Commission approved that. That possibility existed now under the current ownership, and he noted the Fox Toyota and Fox Volkswagen, which were commonly owned but had two separate dealerships and two body shops. The possibility existed for Mr. Shelton to own two dealerships, or someone else could, but there could not be multiple repair shops that were not associated with a dealership.

Ms. Brnabic noted that answered her question, and she explained that she was aware of the purpose of the request and did not have a problem with it. She observed that most auto repair shops were not separated

from the dealership and were behind it or there was some type of connection.

Mr. Delacourt believed that in the short term, Mr. Shelton wanted to use the warehouse portion of the Denmark building for something, but he was not absolutely sure what that would be. Any use would require a modification, and the plan would have to be back in front of the Commission. In the long term, Mr. Shelton's plan would be to combine and incorporate the buildings into an efficient and functional dealership.

Mr. Shelton said that it was not unusual to have a separate body shop facility from the regular building. He gave an example of a Ford dealership in Rochester Hills that had a body shop in downtown Rochester, but he stated that he would not want that situation.

Ms. Brnabic asked Mr. Staran if he had anything to add. Mr. Staran said he agreed with the discussion, but he thought the language of the condition could be more precise. He was concerned that the way it was worded, someone could read the first condition to limit the use of the parcel to strictly display and store vehicles. It was intended to be a broader purpose. The phrase, "auto dealership/vehicle display and storage" could be rewritten, and he suggested "auto dealership purposes, including vehicle display and storage." He added that it would have to be agreeable to the applicant.

Mr. Cox said that an automobile dealership was typically service and body shop, but he thought that Mr. Staran's comment was well taken. They did not want someone to think Mr. Shelton was not doing what he said he would. He stated that Mr. Shelton had been in Rochester Hills for 47 years, which was good for him and for the community. He indicated that Mr. Shelton was a community-minded citizen, and that the last thing he would do was mislead anyone on the Commission. They had spent a great deal of money acquiring the GMC franchise. For a long time, the owner of the House of Denmark was not interested in selling his property. Suddenly, he changed his mind and they were now developing long term plans. He acknowledged that there could be more than one dealership. They would have a total of almost ten acres and they could put everything they needed on the properties. He agreed that Mr. Staran's suggested wording was an improvement to the condition, and he had no objection to adding it.

Mr. Cox continued that automobile dealership uses were permitted uses in B-3 and as evidence of Mr. Shelton's desire to get along, they agreed to apply for Conditional Rezoning because the Commission expressed concern about something other than a dealership coming in. He commented that at first they were not sure about it, because they were

not sure what would happen in the future, but they wanted to "get along."

Ms. Hardenburg stated that she also had concerns about the wording. She related that she had attended a workshop for Conditional Rezoning, and it was stressed that the City should not be tied to a specific use at a site. If they accepted the subject conditions, they would be doing that. She believed that they wanted the B-2 zoning with a condition allowing the auto dealership. Or they could rezone to B-3 with exclusions for things they did not want.

Mr. Staran advised that the only way it could be accomplished would be to rezone to B-3 and through utilizing the Conditional Rezoning tool, the Commission would be allowed to restrict the particular use. Leaving the zoning B-2 but restricting the use was known as a "Use Variance," not a rezoning. Ms. Hardenburg did not think they should say it could only be used as an auto dealership because they did not know what would happen down the road. Mr. Staran said that was the reason to restrict it. If the plans for the site did not happen, by law, the zoning would revert back to B-2. He reminded that the applicant was proposing the condition, and they needed to implement it at some point or the zoning would revert.

Ms. Hardenburg referred to the example given at the seminar, whereby a wedding chapel was built but went out of business, and they ended up with a biker bar. They found out they should not have said it could only be a wedding chapel. Mr. Staran said he was familiar with that example, and in some cases that would be a valid concern. There was no control over the viability of some businesses, and some buildings might dictate what could be built next. In Mr. Shelton's case, there would not be the same limitations due to the size of the property and its location. It had been successfully used for retail business in the past. He did not have a good answer for Ms. Hardenburg and indicated that it was more of a philosophical question.

Ms. Hardenburg said that she was interested in knowing whether down the road, if Mr. Shelton decided to sell a portion off, if it could only be used for an auto dealership. Mr. Staran said he would not be able to split the property because he needed to meet the minimum frontage and parcel size. They could split the combined parcels, but the conditions would run with the land and it could only be a dealership.

Mr. Delacourt said that the only B-3 use would be for a new auto dealership, and none of the other uses in B-3 would be allowed. The parcels would revert back to their existing zoning, which was B-2, and then any B-2 use would be allowed. Someone could always request to rezone to office or commercial. Conditional Rezoning did not mean that

the site could only forever be used for an auto dealership and that the Commission could never consider rezoning it again.

Ms. Hardenburg referred to the second condition and asked if that was a legal way to combine the sites. Mr. Delacourt advised that the condition would not combine the sites; the applicant had applied for a land combination through Assessing and the only thing holding it up was approval of the rezoning. Ms. Hardenburg asked if the parcels were combined if the current portion owned would still have five acres, which Mr. Shelton confirmed.

Mr. Hooper stated that he was not in attendance at the last meeting, and his concern regarded when the applicant came back for Site Plan approval. If the building was removed and a parking lot added, for example, he asked if there would be an issue with buffering going from B-2 to B-3.

Mr. Delacourt advised that it would bring the rezoned parcel and any development on it to the same standard held by the current development. For any Site Plan, whether it was for the newly rezoned parcels, or for a portion of the site, the City would look at it as one Site Plan. The Planning Commission would ask an applicant to come into reasonable compliance and deal with nonconformance brought into reasonable compliance. The buffers would have to be considered with the original Site Plan. Mr. Hooper thought the applicant would probably need a Buffer Modification, and Mr. Delacourt said that he would if the Commission allowed the applicant's existing dealership buffer to remain, because it was currently nonconforming. Mr. Hooper stated that he did not want Mr. Shelton to be in a catch-22 in that situation, noting that he had been a valuable asset to the community. He mentioned that he had used Mr. Shelton's dealership to purchase a car, but he did not see that as a conflict of interest.

Mr. Boswell opened the Public Hearing at 8:20 p.m. He explained the procedure for conducting the Public Hearings, and stated that any documents submitted during the proceedings would be included as part of the public record. He reminded the audience that all questions should be directed to the Chair to be addressed after the Public Hearing.

David Hooper, 244 Dalton, Rochester Hills, MI 48307. *Mr. Hooper said he was a neighbor of Mr. Shelton's. He was concerned about buffering and he would be interested in knowing the plans for the site, so he would know what he would be looking at if the request were to go forward.*

Mr. Boswell closed the Public Hearing at 8:22 p.m. He advised Mr.

Hooper that Mr. Shelton was attempting to rezone the property and would have to come before the Commission with a plan for the property. At that time, such things as buffering and lighting issues would be discussed.

Mr. Delacourt added that for B-2, the buffer requirement was a 25-foot width with a six-foot opaque screen and 20-foot Intermittent Visual Obstruction. A B-3 zoning would require 50 feet.

MOTION by Schroeder, seconded by Brnabic, in the matter of City File No. 06-004, the Planning Commission **recommends** to City Council **approval** of the request to Conditionally Rezone Parcel No. 15-14-351-061, a portion of Parcel No. 15-14-351-017 and a portion of Parcel No. 15-14-351-018, totaling approximately 4.2 acres, from B-2, General Business to B-3, Shopping Center Business with the following conditions.

Conditions:

1. *The rezoned parcels shall be used only for Auto Dealership purposes, including, but not limited to, vehicle display, storage, and service.*
2. *The rezoned parcels shall be combined with each other and Parcel No. 15-14-351-055 to the immediate north to form a single parcel.*

Ms. Hardenburg noted the wording, "but not limited to" and asked what else could go on the parcels. Mr. Staran clarified that it would not allow anything beyond auto dealership purposes.

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

Aye: Boswell, Brnabic, Dettloff, Hardenburg, Hooper, Reece and Schroeder

Absent: Kaltsounis

Mr. Boswell stated for the record that the vote was unanimous and thanked the applicants.

2006-0406

Preliminary Site Condominium Plan Recommendation - City File No. 02-009 - Grace Oaks - a two-unit site condominium on 1.1 acres. located on Hazelton, east of Livernois, zoned R-4, One Family Residential, Parcel No. 15-34-101-039, Joseph Lombardo, applicant.

(Reference: Staff Report prepared by Ed Anzek, dated June 6, 2006, had been placed on file and by reference became part of the record thereof.)