

Condition:

1. Page five, Section 138-4.425 (3), add the word "business" before days in the last sentence.

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

Aye 9 - Boswell, Brnabic, Dettloff, Granthen, Hooper, Kaltsounis, Reece, Schroeder and Yukon

2015-0097

Request for Recommendation - An Ordinance to add new Article VI Pipelines to existing Chapter 94, Street, Sidewalks and Certain Other Public Places to the Code of Ordinances of the City of Rochester Hills, Oakland County, Michigan to regulate the construction and permitting of pipelines in the City, repeal conflicting or inconsistent Ordinances and prescribe a penalty for violations.

MOTION by Kaltsounis, seconded by Schroeder, the Rochester Hills Planning Commission hereby recommends that City Council adopts an Ordinance to add new Article VI Pipelines to existing Chapter 94, Streets, Sidewalks, and Certain Other Public Places, of the Code of Ordinances of the City of Rochester Hills, Oakland County, Michigan to regulate the construction and permitting of pipelines in the City, repeal conflicting or inconsistent Ordinances and prescribe a penalty for violations.

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

Aye 9 - Boswell, Brnabic, Dettloff, Granthen, Hooper, Kaltsounis, Reece, Schroeder and Yukon

Chairperson Boswell stated for the record that the motions had passed unanimously. He thanked Mr. Staran, the Planning Commission and the citizens involved, and advised that the matter would move back to City Council.

NEW BUSINESS2015-0093

Public Hearing and request for Rezoning Recommendation - An Ordinance to amend Chapter 138, Zoning, of the Code of Ordinances of the City of Rochester Hills to rezone two parcels of land totaling approximately 1.06 acres, located on the east side of Rochester Road (3841 S. Rochester Road and vacant), south of M-59, Parcel Nos. 15-35-352-019 and 15-35-352-067 from B-5, Automotive Business to B-2, General Business, Dave Leshock on behalf of Auto City Investments, Inc., Applicant

(Reference: Staff Report prepared by Sara Roediger, dated April 7, 2015 and associated Rezoning documents had been placed on file and by reference became part of the record thereof.)

Present for the applicant were Dave Leshock, Vice President of Auto City Investments, Inc., 14165 N. Fenton Rd., Suite 202, Fenton, MI 48430 and Louis Ciotti and Scott Sonnenbar, Real Estate Consultants, 27995 Halstead Rd., Suite 150, Farmington Hills, MI 48331.

Mr. Anzek advised that Mr. Leshock had been working with Staff for some time, trying to do a redevelop for the site. Mr. Leshock would like to build a small retail center and replace the gas station. As they had heard from others, the gasoline business was difficult. Mr. Leshock would need to make a significant investment in the property to keep the gas station up, so he would like to go in a different direction. Mr. Anzek said that B-2 zoning was not unique in the area; the property immediately to the north was B-5, but all the other properties on the east side of Rochester Rd. (south of M-59) were currently zoned B-2. The Master Plan did call for office for the area in the future, but he considered that the retail center could service the office buildings.

Mr. Leshock stated that the existing operation was at a very low profit mode, and they needed to find an alternate way to succeed in business. He felt it was a dynamite opportunity, and that retail would do very well in that location.

Mr. Yukon noted that under the criteria for amendment of the zoning map, number six stated that the redevelopment of the site should be able to safely accommodate anticipated traffic, but under the findings for denial, it stated that it could increase the potential for development with higher trip generation rates in the area. He did not think they could determine that without a traffic study. Mr. Anzek said that was correct. It was a presumption put out for discussion, but Staff's position was to support it. He felt that there was a lot of traffic in and out already, and he could presume the traffic would be higher with retail, but it would depend on the mix. He reminded that they could not discuss a site plan at this point and explained that it was a finding for consideration.

Mr. Reece said that under the findings for denial, item three said that the applicant had only submitted verbal evidence that a reasonable return could not be realized. He asked if there was any financial documentation to support that statement. Mr. Anzek said that Staff typically took the word of the applicant, because the economics of a business were not really

within Staff's purview. They wanted to know it would work, and Mr. Leshock's assessment in working with his real estate team was all they had, and nothing further had been requested.

Ms. Brnabic noted the comment, that the applicant could not receive a reasonable return with the gas station, but she stated that she had seen it done at a station at Auburn and Dequindre. It was a small lot, and the building was demolished, and a larger convenience store was added. The gas station was always busy, and she would assume that it was very profitable. The station had previously been closed for several years. She took the perspective that the applicant would just rather have another option for the property, and she questioned whether there was no possibility for a reasonable return with the current situation.

Mr. Leshock responded that he was not familiar with the gas station Ms. Brnabic was referring to, but he stated that he was an expert in the business. He had 22 locations and 130 employees, and he had been in business for 39 years, so he assured that he knew how to run a gas station and how to make a profit. He knew when a station underperformed. The subject station was the worst of his 22 locations. He commented that he would be happy to open his books to anyone, but it was not hard to figure out - someone just had to visit it. Seeing that another station was busy did not mean someone was profitable. They could be selling gas at low prices. He said that his wife talked about how Kroger sold gas for \$1.99, and he said that he just shook his head because cost was \$2.40, and there was no way it would work at \$1.99. If people drove by a busy gas station, he reiterated that it did not guarantee profitability. The subject gas station was 60 or 70 years old, and the canopies were 30 years old. The tanks in the ground were from 1990. He agreed that someone could update the station, and he did look at that. He did two in the past and it cost \$2.5 million each. He noted that he was in his stations every day, and he remarked that he was a worker. He had been inundated from developers calling him. The subject property was under contract for one year with a developer that wanted to do a retail center and gas station. A problem developed with the finances, and he backed out of the deal, but he later called and wanted to get back in. Mr. Leshock said that seven different groups had approached him about developing the site. When he talked to Mr. Anzek about it, Mr. Anzek said that they had heard from a lot of people, but they had never seen the owner come in and talk about the property. Mr. Leshock said that he wanted to be a face that they all knew. He advised that his company was 100% gas stations, and they did not do anything else. He believed that he had experts in the retail business that would make the property

fabulous. His vision was to do something beautiful, sharp and clean. If he put \$2.5 million in redeveloping the gas station, he would not get the return. He had run the pro-formas. His banker was convinced, and Mr. Leshock joked that he was the most important person.

Ms. Brnabic asked if there was a c-store attached to the gas station. Mr. Leshock said that it did have a small footprint c-store - about 800 square feet with nine cooler doors. Years ago, it was two service bays, and they blocked the doors and added a walk-in cooler.

Mr. Kaltsounis said that in looking at the proposal, and he realized that they could not look at a site plan, he could imagine what could be put in B-2 zoning. It seemed to him that they were putting shopping centers up like crazy. The area was Master Planned for office, and he would personally like to stick to that. There was a lot of studying for the area that determined office, with the potential to use M-59 as a conduit, and he noted the corridor across Rochester Rd. His vote would be to deny with finding one: Approval of the Rezoning could facilitate all uses in the B-2 district, which is contrary to the Master Land Use Plan vision for the future development of this area of the City.”

Chairperson Boswell opened the Public Hearing at 7:46 p.m.

Geoff Simpson, 55 Eastlawn, Rochester Hills, MI 48307 *Mr. Simpson wanted to confirm that the City had no idea what would be going in. He said that Eastlawn was just a strip of asphalt, and it looked like an airport runway. He claimed that if any traffic was pushed to Eastlawn, it could endanger the kids. He did agree that the buildings submitted with the packet looked really good.*

Chairperson Boswell closed the Public Hearing at 7:47 p.m.

Chairperson Boswell acknowledged that several different possibilities could go into a B-2 district, such as offices, a small shopping center, and child care. If it was Rezoned to B-2, any one of the items that were permitted and even Conditional Uses, such as a drive-thru, might go there. With a B-5 zoning, the applicant would be limited to gas stations, car washes, repair shops or tire sales. He could not say what would be there if a Rezoning was approved. Under Conditional Rezoning, the applicant could tie the Rezoning to a site plan. In this particular case, the applicant could put anything in, such as dry cleaners, health and exercise clubs, restaurants with drive-thrus, etc.

Mr. Kaltsounis moved the following motion, seconded by Mr. Yukon:

MOTION by Kaltsounis, seconded by Yukon, in the matter of City File No. 15-003 (3841 S. Rochester Rd. Rezoning) the Planning Commission **recommends denial** to City Council of the proposed rezoning of parcel no. 15-35-352-019 and 15-35-352-067 from B-5 Automotive Business to B-2 General Business with the following finding:

Finding for Denial

1. Approval of the rezoning could facilitate all uses in the B-2 district, which is contrary to the Master Land Use Plan's vision for the future development of this area of the City.

Mr. Dettloff said that Mr. Leshock referenced that he owned 22 other locations, and he asked if he owned and operated those or if any were leased. Mr. Leshock advised that he owned them. Mr. Dettloff observed that it would be Mr. Leshock's first venture as a landlord for a facility. Mr. Dettloff cautioned him to make sure, because there were a lot of so-called real estate people who could blow a lot of smoke. He hoped that Mr. Leshock aligned himself with the right partners moving forward.

Mr. Leshock said that he believed he had. He was dealing with Landmark Real Estate, and he felt that they were as good as they got.

Mr. Simpson, who spoke earlier, said that he got a letter from someone who wanted to buy his home. He asked if that had anything to do with the Rezoning request. He wanted to make sure no one was being forced to move.

Chairperson Boswell said that was not the case. Mr. Simpson's property was zoned Residential, and it would stay that way. Chairperson Boswell said that he avoided that strip of Rochester Road as much as he could. When he did have to go through there, he thought it looked pretty seedy, although the Discount Tire looked up to date and modern. He could understand Mr. Leshock wanting to tear down the gas station, because there did not appear to be a lot of cars using it. Putting in a small retail center might not be the best idea, but he was not sure. He could sympathize that as it stood, the gas station was probably not going to stay open much longer unless major changes were made. He said that he was a little torn on this one.

Mr. Leshock said that he asked Mr. Anzek a few days ago about a

Conditional Rezoning, because he figured it might be brought up. It was his understanding that Conditional Rezoning would tie a project to the Rezoning, and he could not change it to any other uses allowed under B-2. He said that he was very open to that procedure. He felt that it was disingenuous to just deny the request by saying there could be a myriad of other uses there. He maintained that it was not what he was about. He was noted as a pillar of the community in the Fenton area, and everything they did was above board. He had been before many municipalities arguing the same cases most of his adult life, and he knew what the Commissioners were concerned about. He asked that he be able to do Conditional Rezoning. He would present a site plan and say exactly what it would be. He mentioned that the Oakland Press had a rendering of the project, and it was the one he had submitted for the packet. He wanted to put in a beautiful, boutique shopping center to serve the area. It would not be very large, and he felt it should lend some credibility to what they were trying to accomplish.

Chairperson Boswell responded that the Commissioners knew that Mr. Leshock had the best of intentions. He reminded that circumstances could change, and they never knew what could happen. They had run into it many times over the years. They knew a person meant exactly what he said, and they wanted to vote for him, but things could happen, and something else could end up being there. The person could have to sell for some reason, and someone else who bought the property could do something the City really would not want there.

Mr. Anzek agreed that Mr. Leshock inquired about a Conditional Rezoning. Mr. Anzek said that he had honestly advised him that he did not think it was necessary because he looked at the site, and the gas station and the Tire store were the only places along Rochester Rd. between South Boulevard and M-59 zoned B-5. Everything else was zoned B-2, and that was why Staff recommended continuing with B-2. Mr. Leshock had already been through concept review with Staff and gone to some expense, but if the Planning Commission was more comfortable with Conditional Rezoning, Mr. Anzek felt that would be fine. It would just take some time. Mr. Anzek really had not thought there would be an issue with a B-2 Rezoning. He thought B-2 could be supportive of future office use. It was certainly the Planning Commission's call whether they wanted to go with the motion or postpone and have the applicant come back with a Conditional Rezoning.

Mr. Hooper agreed that the station needed an overhaul with some reinvestment, and he felt for the applicant. With regards to the future use,

he would not be opposed to a Conditional Rezoning. His only concern would be a fast food restaurant. He would be absolutely opposed to that. He commented that everyone had the best of intentions coming forward, but the next request could be for a Conditional Use for a drive-thru. If they did a Conditional Rezoning and restricted the uses under B-2, he would not be opposed to that at all. To do a straight B-2 and then have the chance the applicant might come back with a fast food restaurant would be his biggest fear. He agreed that the site needed reinvestment, and it needed to improve to get a return on that investment.

Mr. Anzek believed that the concept plan showed an end cap for a drive-thru, but it would not be fast food. It would be more like a coffee shop, or perhaps another Tim Hortons. He knew that Tim Hortons was looking for a location in that area. He did not believe it would be the level that Mr. Hooper was referring to with fast food.

Mr. Hooper said that everything else had to work as well. The site was small. He suggested a condition such as eliminating the drive by the access on Eastlawn, and said that it would be a huge benefit if there was only one access onto Rochester Rd.

Ms. Brnabic agreed with Mr. Hooper. She would prefer a Conditional Rezoning, because it would be more specific. The Commission had seen it happen where a plan was in place, and then a property was sold. She asked if a Conditional Rezoning for the site would transfer to any future owner if the property were sold. Mr. Anzek said that a new owner would have to follow the Conditional Rezoning. If the new owner tried to change it, that would have to come back before the Planning Commission.

Mr. Kaltsounis wanted Mr. Leshock to know that the Commissioners were not against him, and they trusted he was a good businessman. He explained that the Commissioners had to consider everything allowed in a new zoning district. He thought that even though Mr. Leshock had provided a rendering, that a lot of the Commissioners might be tired of that type of development, especially with a drive-thru. He observed that the property was closer to residents than any of the others with a drive-thru. It was a bit concerning to have headlights coming into homes from a drive-thru. He said that he would be willing to consider a Conditional Rezoning, but he would not like to see a drive-thru. It would be hard to encourage it so close to residents. He said that he would withdraw his motion to deny and recommend postponing to a later date. Mr. Yukon agreed to withdraw.

Mr. Anzek said that if the Planning Commission was in agreement, the proper procedure would be to ask Mr. Leshock to withdraw his application for B-2 zoning and allow Staff to work with him to bring it back as soon as possible for a Conditional Rezoning. He asked for clarification about the drive-thru, and asked if an end cap coffee shop was not supportable. He pointed out that the retail markets were all moving to that offering.

Mr. Kaltsounis suggested that it might be good to have a concept review before the Planning Commission. Mr. Anzek said that Mr. Leshock had put a lot of work into it, so Mr. Anzek felt it could be brought forward as a Conditional Rezoning, noting that time was urgent to help with reinvestment of the site. Mr. Leshock agreed to withdraw his application.

Chairperson Boswell summarized the outcome and said that as Mr. Kaltsounis said, it was nothing personal. It was just that the Commissioners had been there before. Mr. Leshock said that he understood. He complimented the Planning Department, and he said that he was really impressed with the community. He told Mr. Kaltsounis that he did not take anything personally. Mr. Dettloff added that Mr. Leshock had picked a good group with Landmark.

Withdrawn

2006-0226

Request for Planned Unit Development Agreement Recommendation - City File No. 03-009 - Enclaves of Rochester Hills PUD, a proposed 26-unit residential development on two parcels totaling approximately 30 acres, located on the east side of Rochester Road, north of Tienken (north of Cross Creek Sub), zoned RE, Residential Estate, Parcel Nos. 15-02-177-001 and 15-02-102-023, TJ Realvest, LLC, Applicant

(Reference: Staff Report prepared by Sara Roediger, dated April 2, 2015, PUD Agreement and Final Site Plans had been placed on file and by reference became part of the record thereof.)

Present for the applicant were Tom Cooney, TJ Realvest, LLC, 54153 Deer Ridge Ct., Rochester, MI 48307 and Ralph Nunez, Design Team Plus, 975 E. Maple, Suite 210, Birmingham, MI 48009.

Mr. Anzek outlined that the PUD was in front of the Planning Commission in May 2014 for Preliminary PUD review. Design features, layout and proximity to neighbors were discussed, and it was recommended for approval. The matter went to the City Council in June 2014, and Council approved it unanimously. The applicant had been working on the engineering since then. The City Attorney had signed off on the PUD