

DATE: February 28, 2006

TO: John Szerlag, City Manager

FROM: Douglas J. Smith, Real Estate & Development Director
Mark F. Miller, Planning Director

SUBJECT: AGENDA ITEM – REZONING APPLICATION – Proposed Binson’s Home Health Care Center, Northwest corner of Rochester and Marengo, Section 3 – R-1B to B-1 (Z 180-B)

The Planning Commission recommended denial of this item at the June 14, 2005 Regular meeting. City Management concurs with the recommendation of denial. On August 1, 2005, City Council postponed the item to the first Regular City Council meeting in March 2006:

Vote on Resolution to Postpone

Resolution #2005-08-373

Moved by Eisenbacher
Seconded by Howrylak

RESOLVED, That the *Rezoning Application for Proposed Binson’s Home Health Care Center, Northwest Corner of Rochester and Marengo, Section 3 – R-1B to B-1 (Z180-B)* be POSTPONED until the first Regular City Council Meeting scheduled for March 2006.

Yes: All-6
No: None
Absent: Schilling

Following this resolution, the Planning Commission began the task of amending the Future Land Use Plan. At the November 1, 2005 Special/Study meeting, the Planning Commission made the following resolution:

Resolution # PC-2005-11-174

Moved by: Chamberlain
Seconded by: Waller

RESOLVED, That the study area of the Future Land Use Plan amendment for Rochester Road between Square Lake Road and South Boulevard be expanded to include the section of Rochester Road between Long Lake Road and Square Lake Road, therefore making it a two-mile strip rather than a one-mile strip for a mixed-use district, including appropriate depth, space and location standards.

Yes: All present (8)
No: None
Absent: Wright

MOTION CARRIED

Expanding the Rochester Road study area increased the scope of work for the project, thereby lengthening the timeline for project completion. The March 2006 deadline would have been possible to meet only if there was a completed document ready for adoption at the time of City Council resolution in August 2005. The plan amendment process is ongoing. Amendments to the Municipal Planning Act that became effective in 2002 mandate that the amendment process is a relatively lengthy one. The attached Future Land Use Plan Amendment Process illustrates the timeline needed to adopt an amendment. It is difficult to accurately forecast when the Planning Commission will have a draft Future Land Use Plan amendment for City Council review. It is projected that a draft would be ready for City Council review by July or August of 2006.

Attachments:

1. Minutes from August 1, 2005 City Council meeting.
2. Minutes from June 14, 2005 Planning Commission Regular meeting.
3. Future Land Use Plan Amendment Process.

cc: Applicant
File / Z- 180 B

Prepared by RBS/MFM

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C-2 Rezoning Application – Proposed Binson’s Home Health Care Center, Northwest Corner of Rochester and Marengo, Section 3 – R-1B to B-1 (Z 180-B)

Resolution

Moved by Stine

Seconded by Beltramini

RESOLVED, That the R-C to O-1 rezoning request, located on the northwest corner of Rochester and Marengo, section 3, being 39,000 square feet in size, is hereby **DENIED** for the following reasons, as recommended by City Management and the Planning Commission:

1. The application does not comply with the Future Land Use Plan.
2. Making a recommendation that is contrary to the Future Land Use Plan would weaken the validity of the Plan and make it more difficult to defend future zoning decisions.
3. Rezoning this parcel to B-1 would result in the enlargement of an undesirable commercial “spot zone” along an area along the Rochester Road corridor that is planned for medium density use.
4. Approval of the rezoning request could open the door for further commercial rezoning applications along the Rochester Road corridor.

Vote on Resolution to Amend

Resolution #2005-08-372

Moved by Beltramini

Seconded by Eisenbacher

RESOLVED, That the Resolution for *Rezoning Application for Proposed Binson’s Home Health Care Center, Northwest Corner of Rochester and Marengo, Section 3 – R-1B to B-1 (Z180-B)* be **AMENDED** by **INSERTING** “BE IT FURTHER RESOLVED, That Troy City Council hereby DIRECTS the Planning Commission to consider amending the Future Land Use Plan in the Rochester Road Corridor between Square Lake and South Boulevard before the first City Council Meeting scheduled for March 2006.

Yes: Broomfield, Eisenbacher, Lambert, Stine, Beltramini

No: Howrylak

Absent: Schilling

MOTION CARRIED

Vote on Resolution Postpone

Resolution #2005-08-373

Moved by Eisenbacher

Seconded by Howrylak

RESOLVED, That the *Rezoning Application for Proposed Binson's Home Health Care Center, Northwest Corner of Rochester and Marengo, Section 3 – R-1B to B-1 (Z180-B)* be **POSTPONED** until the first Regular City Council Meeting scheduled for March 2006.

Yes: All-6

No: None

Absent: Schilling

5. PUBLIC HEARING – PROPOSED REZONING (Z 180-B) – Proposed Binson's Home Health Care, Northwest corner of Rochester and Marengo, Section 3 – From R-1B to B-1

Mr. Miller presented a summary of the Planning Department report for the proposed rezoning. Mr. Miller said appropriate planning and zoning uses in the location should be determined and an amendment to the Future Land Use Plan would be recommended, should the rezoning request go forward. Mr. Miller reported that it is the recommendation of City Management to deny the rezoning application because it does not comply with the Future Land Use Plan.

Mr. Vleck asked for information on nearby properties with respect to Consent Judgments.

Mr. Miller said a Consent Judgment on the property one block north (commonly known as the Rabbani property) allows office use on the subject property. He reported that, in general, the area has had a number of land uses, and noted more recently residential development; i.e., PUD 1 Northwyck Condominiums, Sandalwood North and South condominiums, and a proposed PUD for a mixed-use development on the northeast corner of Rochester Road and South Boulevard.

Ms. Lancaster said the Rabbani Consent Judgment is the only one in the area of which she is aware. She said both zoning plans and future land use plans are important factors in litigation cases. Ms. Lancaster said the Judge in the Rabbani case was concerned about the number of non-conforming uses in the area at that time.

John Gaber of 380 N. Old Woodward, Birmingham, attorney, was present to represent the petitioner. Mr. Gaber said the proposed use is consistent with the character of the neighborhood. He reviewed the site characteristics with respect to residential development. Mr. Gaber said the lease for the existing Binson's located on Rochester and Square Lake Roads expires in a few months and they would like to relocate in the near future. He asked that the rezoning request not be held up in the process should the Planning Commission opt to amend the Future Land Use Plan. Mr. Gaber said there was an opinion and a judgment by the Court, prior to the Rabbani Consent Judgment, finding that the uses and zoning in the area had changed significantly, and that the site would not be compatible for what it was zoned and master planned. Mr. Gaber said the McKenna report provided to the members support the changing uses and zoning. Mr. Gaber requested a favorable recommendation to the City Council.

PUBLIC HEARING OPENED

No one was present to speak.

PUBLIC HEARING CLOSED

Mr. Vleck believes the requested B-1 zoning classification is appropriate for the location, and a revision in the zoning classification would be considered in the future when the City undertakes its study of the Future Land Use Plan.

Mr. Khan said a main road is not suitable for residential use. He agreed with Mr. Vleck's comments.

Resolution # PC-2005-06-097

Moved by: Khan
Seconded by: Waller

RESOLVED, That the Planning Commission hereby recommends to the City Council that the R-1B to B-1 rezoning request, located on the northwest corner of Rochester and Marengo, within Section 3, being approximately 0.89 acres in size, be granted, for the following reasons:

1. That the property is too narrow to put residential use.
2. B-1 is the best use for this property.

Yes: Drake-Batts, Khan, Vleck, Waller
No: Chamberlain, Littman, Schultz, Strat, Wright

MOTION DENIED**Resolution # PC-2005-06-098**

Moved by: Chamberlain
Seconded by: Schultz

RESOLVED, That the Planning Commission hereby recommends to the City Council that the R-1B to B-1 rezoning request, located on the northwest corner of Rochester and Marengo, within Section 3, being approximately 0.89 acres in size, be denied, for the following reasons:

1. The application does not comply with the Future Land Use Plan.
2. Making a recommendation that is contrary to the Future Land Use Plan would weaken the validity of the Plan and make it more difficult to defend future zoning decisions.
3. Rezoning this parcel to B-1 would result in the enlargement of an undesirable commercial "spot zone" along an area along the Rochester Road corridor that is planned for medium density use.

4. Approval of the rezoning request could open the door for further commercial rezoning applications along the Rochester Road corridor.

Yes: Chamberlain, Littman, Schultz, Strat, Wright

No: Drake-Batts, Khan, Vleck, Waller

MOTION CARRIED

Ms. Drake-Batts believes the zoning should be commercial. She said denial of the request would result in a court matter.

Mr. Khan said residential zoning is improper on a main road. He agreed the matter would end up in court.

Messrs. Waller and Vleck agreed with the comments of Ms. Drake-Batts and Mr. Khan.

FUTURE LAND USE PLAN AMENDMENT PROCESS

(Effective January 9, 2002)

1. When starting the amendment process a notice of intent to amend the Future Land Use Plan, notice must be sent to:

Planning Commissions of the adjacent communities (or legislative body if there is no planning commission).

Oakland County.

Each Railroad and Public Utility owning or operating a railroad or public utility within the community.

Any government entity registered for this purpose.

SEMCOG (optional).

2. The Draft Plan is sent to City Council for review and comment.

3. **COUNCIL MUST GIVE APPROVAL TO SEND DRAFT TO ADJACENT COMMUNITIES; THE PROCESS CANNOT PROCEED WITHOUT COUNCIL APPROVAL.**

4. Draft is sent to:

All adjacent communities.

Oakland County (a signed letter indicating who in the adjacent communities was sent the draft and the dates sent must accompany the county's copy).

Each Railroad and Public Utility owning or operating a railroad or public utility within the community.

Any government entity registered for this purpose.

SEMCOG (optional).

5. Adjacent Communities, Railroads, and Public Utilities have **65 days (or 40 days for revisions)** to review and comment – comments are sent directly to the community amending the Future Land Use Plan and a copy to the county.

6. Oakland County has **not less than 75 days or more than 95 days (or 55 to 75 for revisions)** to review and comment.
7. The Planning Commission considers the comments provided and determines if changes should be made.
8. A Public Hearing on the Future Land Use Plan amendment must be held; it cannot be held until the **95-day (or 75 days for revisions)** comment period has expired.
9. Planning Commission must approve the amendment to the Future Land Use Plan by two-thirds majority vote.
10. Planning Commission sends copy of approved plan amendment to the City Council.
11. City Council **can choose, by resolution,** to approve or reject the plan amendment; this would require an amendment to Article 02.10.02 of the Zoning Ordinance.
12. If Council rejects the plan amendment it has to identify its objections in writing and the Planning Commission must revise the plan amendment to answer those objections.
13. A copy of the adopted amendment to Future Land Use Plan is sent to:
 - All adjacent communities.
 - Oakland County.
 - Each Railroad and Public Utility owning or operating a railroad or public utility within the community.
 - Any government entity registered for this purpose.
 - SEMCOG (optional).
14. At least every five years the Planning Commission shall review the Plan to determine whether to commence the procedure to amend or adopt a new plan.

APPROXIMATE TIME LINE

14 days	Notice of Intent.
60 days +	Prepare Future Land Use Plan amendment; time can vary depending upon scope of project.
2 - 4 weeks	Council Approval of distribution of Draft, THE PROCESS CANNOT CONTINUE WITHOUT COUNCIL APPROVAL
14 days	Distribution of Draft.
95 days (75 for revisions)	Review & Comment Period.
14 days	Public Hearing before Planning Commission. Approval by Planning Commission.
2 - 4 weeks	Council Approval of Future Land Use Plan amendment (if Article 02.10.02 is amended).
14 days	Distribution of Adopted Plan amendment.

TOTAL 8+ months (7+ months for revisions)

OR

2 - 4 weeks	Council Rejection w/ comments.
2 - 4 weeks	Planning Commission revises the plan to answer Council objections.
2 - 4 weeks	Council Approval of Future Land Use Plan amendment (if Article 02.10.02 is amended).
14 days	Distribution of Adopted Plan amendment.

TOTAL 9+ months (8+ months for revisions)