



CITY COUNCIL AGENDA ITEM

Date: May 15, 2017

To: Honorable Mayor and City Council Members

From: Lori Grigg Bluhm, City Attorney
Julie Quinlan Dufrane, Assistant City Attorney

Subject: Tollbrook LLC v. City of Troy

Enclosed please find a copy of a federal lawsuit that was recently filed against the City of Troy by Tollbrook LLC. Tollbrook owns three parcels of property, located at 3086, 3114 and 3142 McClure in the City of Troy. Tollbrook applied for conditional rezoning for the parcels, from one family residential zoning to Big Beaver Form Based District zoning. This application, proposing 140 new apartment units on three residential parcels, was recently denied by the Troy City Council, and Plaintiff filed this lawsuit shortly thereafter.

Plaintiff's lawsuit alleges that the City of Troy violated its substantive due process rights under the 5th and 14th Amendments of the United States Constitution. Plaintiff also alleges that Council's decision was arbitrary and capricious and not rationally related to the governmental interest of protecting public health, safety, and welfare. Plaintiff asserts that its application and proposed site plan are consistent with the City's Master Plan, and satisfy all five criteria considered for conditional rezoning, as set forth in the City's Zoning Ordinance, Section 16.04(C)(3)(a-e). Plaintiff also argues that Council's decision to deny the rezoning application was unrelated to legitimate land use considerations, including but not limited to neighbor opposition. Plaintiff also asserts a claim under 42 U.S.C. §§ 1983 and 1988, alleging that the City's denial of the conditional rezoning application deprived it of due process rights.

This case has been assigned to United States District Court Judge Mark Goldsmith. The Court will issue a scheduling order shortly after appearances are filed in this case.

Attached is a proposed resolution which authorizes our office to represent the City's interest in this matter. Please let us know if you have any questions or concerns.

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

TOLLBROOK LLC, a Michigan
limited liability company

Plaintiff,

vs

Case No. 17 -
Hon:

CITY OF TROY, a Michigan
municipal body,

Defendant.

COMPLAINT

Plaintiff Tollbrook LLC (“Tollbrook”), by and through its attorneys, Williams, Williams, Rattner & Plunkett, P.C., states for its Complaint against Defendant City of Troy (“City”) as follows:

INTRODUCTION

This case arises out of the City Council’s unconstitutional denial of Tollbrook’s lawful request to conditionally rezone certain property located in the City from the R-1B District (One Family Residential) to the BB District (Big Beaver) for purposes of developing a multi-family housing project known as The Lofts. Tollbrook’s property is located within the area designated as “Big Beaver” in the City Master Plan. On February 14, 2017, the City Planning Commission voted 7-0 to recommend to the City Council approval of Tollbrook’s conditional

rezoning request and revised site plan. The Planning Commission determined the following factors were positively demonstrated by Tollbrook:

- (a) Site design, and specifically the conditions offered by the applicant through the site plan, protects public health, safety, and welfare.
- (b) The application is consistent with the Master Plan.
- (c) Conditions offered by the applicant are consistent with the zoning district proposed.
- (d) The site can be serviced with public facilities.
- (e) Conditions offered by the applicant insure compatibility with adjacent land uses and provides the appropriate transition features to mitigate impact of use, intensity and massing.

The City Council then unlawfully denied Tollbrook's conditional rezoning request on April 10, 2017. The public hearing portion of the City Council meeting on April 10, 2017 was dominated by written and vocal public opposition to Tollbrook's conditional rezoning request based on a multitude of enunciated "Not In My Backyard" reasons completely unrelated to legitimate land use, zoning or planning reasons and Tollbrook's constitutional rights.

PARTIES, PROPERTY, JURISDICTION AND VENUE

1. Tollbrook is a Michigan Limited Liability Company located in Oakland County, Michigan.

2. Tollbrook is the owner of three parcels of property (tax identification #s 3086, 3114 and 3142) located on the east side of McClure Road, north of Big Beaver, totaling 2.57 acres ("Property").

3. The City of Troy is a Michigan municipal body located in Oakland County, Michigan.

4. This Court has original subject matter jurisdiction over the federal questions asserted herein pursuant to 28 U.S.C. §1331.

5. The actions or occurrences alleged in this Complaint occurred in Oakland County, Michigan. The City is a Michigan municipal body, therefore, personal jurisdiction exists in this District.

6. Venue is proper in the Eastern District of Michigan, Southern Division, pursuant to 28 U.S.C. §1391(b) and (c).

FACTUAL ALLEGATIONS

7. Tollbrook submitted a request to the City on or about June 14, 2016 to conditionally rezone the Property from the R-1B District (One Family Residential) to the BB District (Big Beaver) for purposes of developing a multi-family housing project known as The Lofts ("Lofts").

8. In cooperation with various comments and ideas from the City Planning Commission, Tollbrook resubmitted its conditional rezoning request to the City for reconsideration by the Planning Commission on July 27, 2016, December 9, 2016 and January 30, 2017; in each instance Tollbrook made considerable substantive changes to the proposed Lofts site plan.

9. The final Lofts conditional rezoning request, submitted to the City on January 30, 2017, was conditioned under state law on Tollbrook's development of a tiered 3-story to 5-story, 140-unit multi-family project with 223 designated parking spaces, pursuant to a revised site plan, for which Tollbrook also sought approval ("Lofts Request").

10. The Property is located within the area designated as Big Beaver in the City Master Plan.

11. The Big Beaver Master Plan designation responds to the recommendations set forth in the City's Big Beaver Corridor Study, which promotes flexibility with land use relationships including higher density, vertically integrated mixed-use commercial, office, and residential towers.

12. The City's Big Beaver Corridor Study and Master Plan promote redevelopment with a greater mix of land uses, particularly new residencies, but also encourages the use of prominent ground floor retail, restaurants, and cafes allowing visual interest and activity for visitors and residents.

13. Additional residential uses along and peripheral to Big Beaver road promote the goals of the City's Big Beaver Corridor Study and Master Plan including transforming Big Beaver into a destination or "people place" characterized by round-the-clock activity and an exciting nightlife; promoting redevelopment opportunities along the corridor; maintaining and improving

existing businesses along Big Beaver; and transforming the corridor into a pedestrian-friendly environment.

14. Specifically, page 48 of the City's Big Beaver Corridor Study calls for the Property to be developed through a mixture of possible uses such as residential, retail and office uses.

15. The Zoning Ordinance at Section 16.04.C identifies five (5) findings that the Planning Commission should evaluate when considering a conditional rezoning petition.

16. A conditional rezoning should only be recommended for approval by the Planning Commission to the City Council upon a finding and determination that all of the following criteria are satisfied:

- (a) The conditions, proposed development, and/or proposed use of the land are designed or proposed for public health, safety, and welfare purposes.
- (b) The conditions, proposed development and/or proposed use are not in material conflict with the Master Plan, or, if there is material conflict with the Master Plan, such conflict is due to one of the following:
 - (i) A change in City policy since the Master Plan was adopted.
 - (ii) A change in conditions since the Master Plan was adopted.
 - (iii) An error in the Master Plan.
- (c) The conditions, proposed development and/or proposed use are in accordance with all terms and provisions of the zoning district to which the land is to be rezoned, except as otherwise allowed in the Conditional Rezoning Agreement.

(d) Public services and facilities affected by a proposed development will be capable of accommodating service and facility loads caused by use of the development.

(e) The conditions, proposed development and/or proposed use shall insure compatibility with adjacent uses of land.

(Zoning Ordinance Section 16.04.C)

17. The Planning Commission, City staff and outside planning consultants considered each of the above factors at several public meetings prior to February 14, 2017 (specifically, during prior Planning Commission meetings on July 12, 2016, August 9, 2016 and November 1, 2016) and recommended and requested that Tollbrook make certain changes to the Lofts site plan, that Tollbrook then accepted, and that would eventually evolve into Tollbrook's final January 30, 2017 Lofts Request.

18. Among other changes made by Tollbrook to the Lofts site plan at the request of the Planning Commission, City staff and planning consultants, precedent to the submittal of the final Lofts Request:

- Tollbrook reduced the number of stories from 6 to 3 along the northern edge of the building and transitioning to 5 stories further south;
- Tollbrook reduced the number of residential units from 152 to 140;
- Tollbrook increased the building set back as an additional transitional feature along northern property line, which is adjacent to single family residential, from 60 feet to 131.12 feet;
- Tollbrook revised the mix of units to provide 63 efficiency units;

- Tollbrook added to the site plan 24 onsite parking spaces; and
- Tollbrook agreed to the removal of landscaping along the northern and eastern property line in order to accommodate additional onsite parking.

19. Tollbrook also submitted a traffic study related to the Lofts Request that demonstrates no negative impact on surrounding area roads, land uses or the public in general related to the Lofts Request.

20. The Lofts Request complies with all (i) local zoning requirements in the BB District, including parking; and (ii) City and Oakland County requirements and standards relating to: (a) civil engineering; (b) traffic engineering; (c) environmental; (d) infrastructure; (e) police; (f) fire; and (g) emergency rescue.

21. The Planning Commission determined the following factors were positively demonstrated by Tollbrook in the Planning Commission's February 14, 2017 unanimous recommendation (vote 7-0) to City Council to approve the Lofts Request pursuant to Zoning Ordinance Section 16.04.C:

- (a) Site design, and specifically the conditions offered by the applicant through the site plan, protects public health, safety, and welfare.
- (b) The application is consistent with the Master Plan.
- (c) Conditions offered by the applicant are consistent with the zoning district proposed.
- (d) The site can be serviced with public facilities.

- (e) Conditions offered by the applicant insure compatibility with adjacent land uses and provides the appropriate transition features to mitigate impact of use, intensity and massing.

22. City management also publicly supported the Planning Commission's recommendation of approval of the Lofts Request to City Council, including design considerations, further announcing at the April 10th City Council meeting certain infrastructure improvements to be completed in connection with the Lofts Request, a portion of which would be paid for by Tollbrook.

23. The public hearing portion of the City Council meeting on April 10, 2017 was dominated by written and vocal public opposition to Tollbrook's conditional rezoning request based on a multitude of enunciated "Not In My Backyard" reasons completely unrelated to legitimate land use, zoning or planning reasons and Tollbrook's constitutional rights.

24. The City Council's decision to deny approval of the Lofts Request on April 10, 2017 (vote 4-3) was a direct reaction to perceived public opposition and/or other reasons completely unrelated to legitimate land use, zoning or planning reasons and Tollbrook's constitutional rights.

25. The City Council's decision to deny approval of the Lofts Request on April 10, 2017 was a final legislative decision by the City.

26. Tollbrook is without remedy except to seek appropriate relief from this Court.

COUNT I
DENIAL OF SUBSTANTIVE DUE PROCESS
UNDER THE FEDERAL CONSTITUTION

27. Plaintiff hereby incorporates by reference the foregoing Paragraphs as though fully set forth herein.

28. Tollbrook has legally protected property and liberty interests in utilizing the Property for all lawful purposes.

29. Tollbrook's proposed use of the Property is lawful under federal, state and local law.

30. The City, by its actions and inactions, on April 10, 2017, with respect to denial of the Lofts Request, has denied Tollbrook its right to substantive due process under the 5th and 14th Amendments to the United States Constitution.

31. No reasonable or rational governmental interest which bears a substantial relation to the public health, safety or welfare was advanced by the City's denial of the Lofts Request on April 10, 2017.

32. The City's decision to deny approval of the Lofts Request on April 10, 2017 was arbitrary and capricious, shocks the conscience and fails to advance any legitimate governmental interest or purpose.

33. To the extent the City Council voted to deny approval of the Lofts Request based solely on public opposition or other reasons unrelated to legitimate land use and zoning planning reasons, said decision was unlawful, irrational,

arbitrary, capricious, fails to advance any legitimate governmental interest or purpose and shocks the conscience.

WHEREFORE, Plaintiff prays that this Honorable Court:

- a) Compel the City by affirmative injunction to issue all approvals and permits necessary to reasonably accommodate the Lofts Request.
- b) Enter an injunction preventing the City from interfering with Tollbrook's use of the Property consistent with the Lofts Request.
- c) Grant Tollbrook its attorneys' fees, expert fees and other damages as provided by 42 U.S.C. § 1988(b), 42 U.S.C. §1983 and/or other law.
- d) Grant any other relief this Court deems fair and just.

COUNT II
VIOLATION OF 42 U.S.C. §§1983 and 1988

34. Plaintiff hereby incorporates by reference the foregoing Paragraphs as though fully set forth herein.

35. 42 U.S.C. §1983 provides that every person who under color of any statute, ordinance, regulation, custom, or usage of any state or territory, subjects or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges or immunities secured by the Constitution and laws shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

36. The Civil Rights Attorney's Fees Awards Act of 1976, 42 U.S.C. § 1988(b), specifically provides for an award of attorney's fees payable by the defendant to the prevailing plaintiff in any action or proceeding to enforce 42 U.S.C. §1983.

37. The City is a "person" for purposes of 42 U.S.C. §1983 and 42 U.S.C. §1988(b).

38. As described above, the actions and inactions of the City, acting under color of state law, in violating Tollbrook's substantive due process rights under the United States Constitution, constitute a continuing violation of 42 U.S.C. §§ 1983 and 1988.

WHEREFORE, Plaintiffs pray that this Honorable Court:

- a) Compel the City by affirmative injunction to issue all approvals and permits necessary to reasonably accommodate the Lofts Request.
- b) Enter an injunction preventing the City from interfering with Tollbrook's use of the Property consistent with the Lofts Request.
- c) Grant Tollbrook its attorneys' fees, expert fees and other damages as provided by 42 U.S.C. § 1988(b), 42 U.S.C. §1983 and/or other law.
- d) Grant any other relief this Court deems fair and just.

WILLIAMS, WILLIAMS, RATTNER & PLUNKETT, P.C.

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Dated: May 4, 2017