

City of Howell  
Planning Commission  
May 18, 2016  
611 E. Grand River Avenue  
Howell, MI 48843

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The regular meeting of the Planning Commission was called to order by Chairman Streng at 7:00 p.m.

PRESENT: Mayor Nick Proctor, Robert Spaulding, Erin Britten, City Manager Shea Charles, Paul Streng, Maryanne Vukonich, Jeanette Ambrose, Community Development Director Tim Schmitt, Dick Carlisle of Carlisle Wortman Associates, City Attorney Dennis Perkins and Recording Secretary Deanna Robson.

ABSENT: Jan Lobur.

GUESTS: Tony Kisiel, Jamie Stewart, Fire Chief Andy Pless and Debbie Fazica.

**APPROVAL OF APRIL 20, 2016 MINUTES**

**MOTION by Ambrose, SUPPORT by Spaulding, “To approve the April 20, 2016 minutes as presented.” MOTION CARRIED (6-0-1).** Commissioner Vukonich abstained.

**CALL TO THE PUBLIC**

None.

**STAFF REPORT**

Timothy Schmitt, Community Development Director, provided updates in addition to his staff report, noting that staff has received favorable pricing for the McPherson Park Drive reconstruction project and is working with the Michigan Department of Transportation to move the project forward. Staff has recently received a request for installation of a micro cellular tower, prompting review of the Metro Act language and how it applies to these towers, as well as the impact of the newer, lower cost technology. Mr. Schmitt also informed the Commission that staff has received a new site plan from Regal Recycling to address outstanding issues (the previously approved site plan has expired), and the property owner is expected to pay all unpaid fines before Planning Commission review in June.

Commissioner Spaulding inquired about the clothing donation bins at the vacant gas station at the corner of Barnard and Grand River. Mr. Schmitt responded that there has been a proliferation of donation bins locally in the past six months; the City of St. Johns has recently addressed the issue; and the issue will probably need to be addressed by the Planning Commission in the near future. Donation bins placed on vacant properties are sometimes not maintained or become targets for dumping or vandalism, and bins on non-vacant properties are often placed in locations obstructing motorists' views. The bins at Crossroads Town Center are currently obstructing the view at a vehicle turning location. City Manager Charles noted that City Attorney Perkins and Mr. Carlisle concur with Mr. Schmitt's comments and support the need for the issue to be addressed by the Commission in the near future. Discussion followed regarding placement,

storage, screening and removal requirements for trash and recycling receptacles. Commissioner Spaulding added that the bins at Crossroads Town Center were previously placed in a location that obstructs drivers' views, and have since been moved to another poor location. Mr. Kisiel responded that permission has not been granted for the bins to be on his property, adding that he has requested that they be removed but they inevitably return to the property.

**PUBLIC HEARINGS:**

**#16-006 – 102 & 202 West Highland Road – Crossroads Town Center – Conditional Rezoning from MXD to B-2**

Community Development Director Schmitt introduced the topic by stating that the public hearing initially appeared on the April agenda but at that time the applicant expressed a desire to make some changes to the proposed conditional rezoning request. Since then the applicant has submitted a revised request and a new public hearing is required in accordance with the City ordinance.

Chairman Streng opened the public hearing at 7:10 p.m.

Dick Carlisle of Carlisle Wortman Associates reiterated that the conditional rezoning request was originally submitted for last month's agenda, but clarification was needed on the form and in the proposed agreement to make sure that the proposal was clear. He added that a conditional rezoning request is submitted voluntarily with conditions that the applicant perceives to be favorable to the community – and terms are not negotiated by the Planning Commission. Mr. Carlisle referred to page 2, section 1, subsections b and c, noting the following:

- The applicant is proposing that all restaurants, including fast food drive throughs, shall be subject to SLU approval.
- Notwithstanding subsection b, all uses in common to B-2 and MXD zoning shall be permitted. B-2 zoning will govern whether uses are permitted as of right.
- The proposed rezoning also allows for fueling stations, automobile repair stations, freestanding automobile related and automobile service uses under Special Land Use – these are not currently permitted in the MXD, but are permitted in B-2 zoning.

Mr. Carlisle stated that his conclusions regarding the rezoning of this property remain the same as they have been in the past, and that the offered proposal is not sufficient and not compliant with the Master Plan to rezone the property to B-2. He added that the proposal is not a good precedent for the corridor; the majority of the site has been developed under the MXD ordinance; only two sites remain undeveloped; the number of uses that would be permitted under Special Land Use approval is in conflict with the specific intent of the MXD; and auto uses are inconsistent with the long-standing intent for the district. He added that the current rezoning request is more limiting, but no more acceptable than previously submitted proposals.

City Attorney Perkins noted that the City has an experienced group of Commissioners who are well versed in rezoning requests and fact finding. He stated that a recommendation to City Council is necessary and asked the Commission to cite the facts and circumstances supporting their votes in order to have a complete record.

Commissioner Ambrose asked if this request would qualify as spot zoning and Mr. Carlisle confirmed, adding that the request is inconsistent with the Master Plan and isolating an area to include permissible uses where otherwise those uses would not be allowed. Discussion followed and Mr. Carlisle continued that spot zoning deviates from a longstanding policy set forth in the Master Plan, including a specific zoning category established for a specific area. He added that there is a risk of setting a precedent that is inconsistent with the Master Plan.

Jamie Stewart, attorney for Mr. Kisiel, confirmed that Mr. Carlisle's description of the proposed agreement is accurate in terms of the limitations. She added that her client received criticism that his request was too broad when it was initially submitted, and it is now legally as narrow as it can be without questions as to whether or not it is a valid rezoning agreement. Ms. Stewart asserted that spot rezoning frequently occurs with any type of conditional rezoning, and disagreed that it would set a precedent. She stated that the properties are unique and that her client has been unable to develop the parcels in question within the last fourteen years. Ms. Stewart then referred to Mr. Carlisle's report dated May 11, 2016 and disputed his findings with the following remarks:

- The proposed agreement is not inconsistent with the Master Plan and there is a fundamental misunderstanding of how limited the proposal is. Eight of the ten uses are already allowed within the MXD, and of the two remaining uses is the requirement that all types of restaurants require Special Land Use approval. She added that drive throughs are not a departure from MXD zoning because the MXD allows drive throughs that are incidental to a standard restaurant, however, standard restaurants require more property than the size of either of the parcels in question. Traffic would be addressed via a traffic study through the Special Land Use process.
- The existing MXD ordinance already allows the Kroger fueling station, and the proposed agreement only allows for uses permitted in both zoning districts. She added that the intent is to allow uses that will be accessory or incidental to the fueling station, like a car wash, and offered to eliminate the car dealership as a permitted use.
- Considering the wide variety of possible uses, MXD is not viable zoning; and she asserted that the City is taking from her client by not allowing viable use of his property.

Mayor Proctor stated that he supports zoning flexibility and agrees with the majority of the proposal, with the exception of the addition of automobile accessory uses. Ms. Stewart responded that the objective was only for the addition of a car wash, noting that the use is currently included in the B-2 as well as MXD ordinances because it is incidental to the fueling station. She offered to limit the automobile reference to a car wash. Mr. Kisiel added his interpretation that it is clear in the definition of the MXD ordinance that a car wash would be allowed as it would be incidental to the fueling station. Mayor Proctor raised his concern that under the current proposal there would be no restrictions as to the type of car wash that could be built on the property. Ms. Stewart responded that it would be subject to Special Land Use approval, but there would be no further limitations on the car wash in the ordinance. She offered again to eliminate other automobile uses except for the car wash, particularly because it runs hand in hand with the fueling station. Mr. Kisiel remarked that if a car wash were constructed, it would be upscale. He noted that the property has been vacant for fourteen years; and he could solicit another pizza shop for the development – and could right away, but he has been trying to

expand the uses of the property. City Manager Charles asked Mr. Kisiel for confirmation that the property is developable without rezoning. Mr. Kisiel confirmed but added that he would like some additional uses versus a cluster of pizza shops; asserting that another pizza shop would not be fair to the existing businesses in the development. Chairman Streng asked Mr. Kisiel why he did not submit a request for a car wash as opposed to a rezoning request. Mr. Kisiel responded that his actions were based on a business standpoint; these are sophisticated developers (Taco Bells and car washes with chains of facilities) who would not pursue development with a specially permitted use. He claimed that Taco Bell rejected opening a store in the development due to the way that the current ordinance reads, and Tim Horton's refused due to sunk costs. Ms. Stewart stated that there is no way to petition for facilities such as Taco Bell or Tim Horton's under the existing ordinance. Commissioner Spaulding noted that a fueling station is allowed as one of the uses in the proposed rezoning agreement; Ms. Stewart responded that that use would be eliminated. Commissioner Spaulding inquired if an additional fueling station would be a violation of Mr. Kisiel's agreement with Kroger and Mr. Kisiel responded that it would not, but he will not be putting another fueling station in the development.

Debbie Fazica, 132 West Highland, Suites 101, 201, and 301, stated that she runs two existing businesses in the Crossroads Town Center owned by her mother, Inga Burdt of Anfang Properties, and she has permission to speak on her mother's behalf. Ms. Fazica noted that her business has increased approximately 8% since the Kroger fueling station opened. She voiced her support of the proposed conditional rezoning request and presented a petition signed by customers who would like to see a drive through restaurant within the development. The petition was entered into the public record.

Tony Kisiel, Crossroads Town Center, pronounced that he had data to share and has been begging for rezoning for fourteen years, adding that fourteen years is a long time for the property to be vacant. He cited his interpretation of the "takeaways" from the March 16, 2016 City of Howell/Howell Township Joint Planning Committee Meeting: drive throughs with restaurants are highest and best uses of the Crossroads Town Center property; Crossroads was planned and built for traffic to allow restaurants with drive throughs; the proposed request is atypical of a development like Crossroads; and something is wrong with the property if it has been vacant for fourteen years. Mr. Kisiel stated that his rezoning request is for less than a 6% change in the land mass of the property, and everything else in the MXD ordinance will remain the same. He added that the Master Plan needs to be flexible, and began reading from a document and commenting that there are challenges in commercial vacancy in mixed use sites; sites need to be developed along Highland Road; and the plan is to develop nothing and to allow for twelve to fourteen years with no changes. City Attorney Perkins asked for the name of the document from which Mr. Kisiel was claiming to quote and Mr. Kisiel responded that it was the last update of the Master Plan. Mr. Kisiel professed that there are advantages for approving his request: people want it; he has signatures showing support; and the request is atypical for a development like Crossroads. He quoted from information that he provided with a previous rezoning request – the claim that property values appreciate higher than the normal average when a Starbucks is located nearby; and added that Starbucks would be one of the targets for his development. He referenced a list of 208 people that he does business with on a continuous basis, adding that he does not have a customer out of that list. He also alleged that the rezoned development would add close to

\$100,000 to the City tax base. Mr. Kisiel requested favorable consideration, and added that in order to show good faith he would remove the car wash from the request.

Chairman Streng requested clarification that the only change now included in the proposed request was for drive throughs. Ms. Stewart responded that the revised agreement would include eight uses included in the MXD and B-2 ordinances, as well as drive throughs with a Special Land Use request. Mr. Carlisle clarified that the revised request would include all types of restaurants, including drive throughs. Mr. Kisiel interjected that he wished to reiterate that a standard restaurant will not fit on the property based on the size of the parcels and the fueling station.

Commissioner Ambrose inquired if the lots could be combined to create sufficient space for a standard restaurant. Mr. Carlisle affirmed, and Chairman Streng noted that it would be a change to the site plan. Discussion followed regarding the other lots, redeveloping the sites, and the lot owned by TCF Bank.

City Manager Charles asked for confirmation that there are avenues under MXD to apply for conditional rezoning with a site plan and Mr. Carlisle confirmed. City Manager Charles refuted Mr. Kisiel's claim that developing the property would result in \$100,000 per year in new taxes, noting that the development would have to have a Total Cash Value of \$12,000,000 to generate that amount in taxes, and adding that the fueling station was an investment of only \$1,500,000.

Community Development Director Schmitt noted that the rezoning request must be an agreement that the applicant expressly offers. Discussion followed regarding the ordinance language in section 4.06(i)(3)(B).

Chairman Streng closed the public hearing at 8:04 p.m.

Chairman Streng asked for confirmation of the conditional rezoning offer. Ms. Stewart offered a revised proposal with the removal of the allowance of any automobile related uses contained in section 4.06(i)(3)(B), which includes automobile filling stations, repair garages, service stations, car washes and dealerships. Ms. Stewart stated that eight out of the ten uses are already allowed: the ninth is for all types of restaurants (which will remain in the proposed agreement) and she voluntarily offered to remove the tenth use for all automobile related uses. City Manager Charles requested confirmation that the only physical change being offered was elimination of the sentence on page 3 of the proposed conditional rezoning agreement which states: "In addition, the use contained within the B-2 district in Article 4, Section 4.06(i)(3)(B) shall also be allowed". Ms. Stewart confirmed.

**MOTION by Proctor, SUPPORT by Spaulding, "To recommend approval to the City Council of the conditional rezoning amendment for Crossroads Town Center (#16-006) from MXD to B-2 for lots 102 and 202, with the provision that the sentence allowing automotive uses is struck, with the clear understanding that the change was offered by the applicant."** Dick Carlisle stated that the agreement will be revised prior to presentation to City Council. Commissioner Ambrose asserted that she is sympathetic to Mr. Kisiel's request as a

business owner; adding that the fueling station changed the development and increased activity on the property. She noted that while she is glad to hear that business has improved at the Pet X store, she stopped visiting the development after the fueling station opened. Ms. Ambrose continued that she takes proposed changes in the development very seriously; and she used the Planning Commissioner's handbook to ensure that she was fulfilling her duties in reviewing this request. As a result of her research she confirmed that Planning Commissioners are not elected officials, but representatives of the people; the tax base should not affect decisions of the Commission; the Commission's role is to allow for developments that are consistent or in character with a planned development of the community and reject that which is not; Commissioners should weigh all interests; and decisions must be based on the long-term interests of the community. Commissioner Ambrose continued that she believed that the site was a good location for drive through restaurants before the current development existed, but it does not work as it stands. Finally, Commissioner Ambrose commented that she would not go against Master Plan and would therefore vote against the request.

Commissioner Spaulding stated that he was comfortable that the applicant removed the provision regarding automobile related uses; the restaurants will still be subject to Special Land Use requests; and the Commission will still have some governing restrictions.

City Manager Charles concurred with some of Commissioner Ambrose's comments. He also noted the impact of the deviation from the Master Plan, precedent set, and spillover effect that may occur with the large undeveloped parcel to the west. He added that the 202 lot is adjacent to a residential site, and two residents expressed concern at the April regular meeting. City Manager Charles stated that contrary to the assertion that the current zoning amounts to taking from the property owner, opportunities remain within the current zoning for the applicant to bring forward conditional requests, and the developer articulated that the property was still developable under current zoning.

Chairman Streng commented that the public hearings were posted, advertised in the newspaper, and property owners within 300 feet were notified of the meeting. He added that there has not been a negative public response and he has received no complaints, noting that it was a tough decision but he will support the request.

**MOTION CARRIED (5-2).** Commissioners Ambrose and Charles opposed.

**#16-012 – 1211 West Grand River Avenue – Howell Area Fire Authority Storage Building – Site Plan and Special Land Use**

Chairman Streng opened the public hearing at 8:26 p.m.

Community Development Director Schmitt stated that the request is subject to a Special Land Use request but meets all standards of the R-2 district. Fire Chief Andy Pless stated that the building will be used for storage space. Commissioner Ambrose inquired if the amount of space will be sufficient. Chief Pless responded that the Fire Authority will need to expand the training space in the main building in the near future. Commissioner Vukonich asked about the height of the windows and Chief Pless replied that the windows are elevated to prevent people from

breaking in and stealing equipment and/or files – the storage area will contain sensitive files that must be kept secured.

Chairman Streng closed the public hearing at 8:30 p.m.

**MOTION by Proctor, SUPPORT by Britten, “To approve the Site Plan and Special Land Use application (#16-012) for the Howell Area Fire Authority located at 1211 West Grand River, parcel id number 4717-35-100-088, to allow for a 2,400 square foot storage building to be constructed to the rear of Fire Station One, subject to the following conditions:**

- 1. Building permits are required for any work to commence.**
- 2. The project shall meet all other applicable ordinance standards.”**

**MOTION CARRIED (7-0).**

**#16-013 – Signs in the South Michigan Form Based Code District – Text Amendment**

Chairman Streng opened the public hearing at 8:32 p.m.

Community Development Director Schmitt introduced the topic to the Commission stating that currently there are no standards in the ordinance for signs in the Form Based Code district. Dick Carlisle added that the proposed sign ordinance refers to signs within specific districts and attempts to relate use groups. He commented that the only variations from other sign requirements in conventional districts are the recommended 5 foot setback and overall height limitation to 8 feet.

Chairman Streng closed the public hearing at 8:35 p.m.

**OLD BUSINESS**

**Capital Improvements Plan**

Community Development Director Schmitt stated that the Capital Improvements Plan (CIP) draft was introduced at the regular meeting in April and added that another draft will be presented in June with a public hearing.

**OTHER BUSINESS**

**MOTION by Spaulding, SUPPORT by Ambrose, “To excuse Commissioner Lobur from the May 18, 2016 Planning Commission meeting.” MOTION CARRIED (7-0).**

Chairman Streng asserted that it is not easy to go against staff recommendations; fourteen years and hundreds of hours have been spent on this development; and staff’s work is appreciated and their expertise is recognized.

**MOTION by Spaulding, SUPPORT by Proctor, “To adjourn the meeting at 8:40 p.m.” MOTION CARRIED (7-0).**