

**MINUTES
CITY OF FARMINGTON HILLS
PLANNING COMMISSION REGULAR MEETING
FARMINGTON HILLS CITY HALL – COMMUNITY ROOM
February 28, 2019, 6:30 P.M.**

Chair Schwartz called the Planning Commission meeting to order at 6:30 p.m. on February 28, 2019.

Commissioners Present: Brickner, Countegan, Goerke, Mantey, McRae, Schwartz, Stimson,

Commissioners Absent: Orr, Turner

Others Present: City Planner Stec, Staff Planner Lawrence, City Attorney Schultz,
Planning Consultants Arroyo and Tangari

APPROVAL OF AGENDA

Chair Schwartz suggested that Items A and B be reversed, and Item E added: Recreational Marihuana.

MOTION by Mantey, support by Stimson, to amend the agenda as follows:

Item B. Orchard Lake Road and Thirteen Mile Redevelopment Area be moved to Item A and discussed first.

Item A. Clothing Donation Bins be moved to Item B and discussed second.

Add Item E. Recreational Marihuana.

MOTION carried unanimously.

REGULAR HEARING:

A. Orchard Lake Road and Thirteen Mile Redevelopment Area.

City Planner Stec explained that now that the Road Commission of Oakland County had presented their plans and schedule for Orchard Lake Road, at a recent study session City Council had asked that the Planning Commission revisit the idea of rezoning and/or developing an overlay district for a portion of Orchard Lake Road, to incentivize mixed-use there. When the Commission had looked at this in 2013, pushback from realtors combined with uncertainty regarding what was going to happen with Orchard Lake Road had ended consideration of rezoning the area.

City Planner Stec said that the Road Commission had announced that it was going to construct a roundabout at the intersection that accessed Best Buy/Aldi's/Burlington Coat Factory to the east, and Hunter's Square to the west. A boulevard between the new roundabout and the one located at 14 Mile Road would also be constructed. Other existing curb cuts to Hunter's Square would be closed.

Roundtable discussion included:

- Because the boulevard and the new roundabout would enhance safety in the area, federal dollars could be tapped for this project.
- There would be no changes to Orchard Lake Road south of the new roundabout.
- One of the things that had been discussed in 2013 was whether commercial zoning could be extended north of 13 Mile Road to Firwood, and east of Orchard Lake to the golf course. The commercial

properties that fronted the east side of Orchard Lake Road between 13 and 14 Mile were so shallow they were unlikely to redevelop unless there was a way to deepen their lots, or a way to encourage wholesale redevelopment from Orchard Lake Road to the golf course on 13 Mile Road.

- The consensus of the Commission was that the residential areas on Eastfield and Greening did not lend themselves to commercial development. Commercial development there was unlikely for a variety of reasons. One important challenge was the ever-increasing traffic and very difficult left-turns on Orchard Lake Road.
- Was there a way to inventory the Orchard Lake properties between 12 and 14 Mile Roads in order to document which properties needed renovation and even demolition?
- Was there a way to provide an incentive for developers to demolish one-story buildings and construct walkable multi-storied developments?
- When this type of re-zoning had been attempted in 2013, the property owners had not been the ones speaking against it. Rather realtors had come to a meeting in the field and opposed the changes.
- The retail environment was changing quickly due to online shopping and the decline of brick and mortar stores.
- The shopping areas directly affected by the new roundabout, as well as the area east of Orchard Lake Road and south of Northwestern Highway, should be of primary concern.
- Was it possible to allow outlots at Hunter's Square? The shopping center often had quite a bit of available parking, especially toward Orchard Lake Road. On the other hand, there might be lease agreements that guaranteed that the visibility of the stores would not be blocked.

Seeing that discussion had ended, Chair Schwartz asked for a motion that showed the intent of the Commission.

MOTION by Brickner, support by McRae, that the Planning Commission direct its efforts regarding possible rezoning and/or the development of an overlay district for the area from the Orchard Lake Road/14 Mile Road Roundabout south to Hunter's Lane on the west and Whitewood on the east, as well as the area east of Orchard Lake Road, described approximately as the properties bordered by Northwestern Highway to the north, the PUD to the east, and Washburn to the south.

Motion carried unanimously.

Additionally, Chair Schwartz asked City Planner Stec to provide minutes from the meeting when City Council requested that the Planning Commission revisit its 2013 study of Orchard Lake Road, in order to further define and understand Council's request.

B. Clothing Donation Bins.

City Planner Stec explained that donation bins were often placed on properties in a haphazard fashion, sometimes without the permission of the property owner. They were found in different colors, sometimes in poor repair, and sometimes with donated or unwanted items stacked nearby. Donation bins could have a blighting impact. Additionally, some containers were placed in a manner that obstructed pedestrian and vehicular circulation, sight distance, and parking spaces.

Recent case law noted that donation bins were a form of free speech, but local ordinances could regulate speech in terms of the placement, size, appearance, and manner of operation of the bins.

City Planner Stec said that the City was considering licensing donation bins, with property owners being responsible for obtaining the license. Some limitations on appearance could be included in the licensing process.

City Attorney Schultz further explained that currently donation bins were not permitted in the City. However, the 2014 case, *Planet Aid v City of St. Johns [Mich]* supported the bins by finding that the containers themselves were a form of free speech and were protected by the 1st Amendment. An outright ban was not recommended. Any licensing ordinance would be speech-related, and the bin would not be regulated as a structure. A licensing ordinance could regulate reasonable time, place, and manner for the speech represented by the bin, just as a sign was regulated.

Draft language had been provided by Giffels Webster for a possible ordinance or code amendment regarding donation bins. City Attorney Schultz had also supplied draft language.

Roundtable discussion included:

- Sometimes property owners did not want the bins – which had already been placed without permission – on their property.
- Because this was a speech issue, the ordinance could not require the bins be screened.
- Donation bins did not necessarily represent charitable endeavors.
- Donation bins should not take up required parking spaces, though sometimes there was so much empty parking space that enforcement might be difficult to justify.
- Under a licensing ordinance, property owners would need to pull the permit and be responsible for insurance, liability, etc. Property owners would also receive citations, if those should become necessary.
- If the City wanted to limit the number of donation bins on a property, it would have to answer 1st Amendment questions, such as: Did limiting the number of bins keep the bin owners from getting their speech out to their intended audience?
- If donation bins were being placed without owners' permissions, it became a trespass issue for the property owners to address. However, some owners did give permission.
- How severe was the issue in Farmington Hills? If it was not too severe, was separate regulation really necessary?
- The City needed to address the issue because currently the ordinance did not allow donation bins at all. This put the City in a position of not allowing something that was allowed by current law under the recent court action.
- Time, place and manner regulation could regulate cleanliness, which could be considered a standard for conduct. On the other hand, the blight ordinance might already address that issue.
- Farmington Hills offered a service of picking up clothing and other re-useables packaged in a labeled bag and left at the curb on rubbish removal day; that might keep the use of donation bins down.

Planning Consultant Arroyo reviewed the draft language presented this evening, which gave certain parameters for donation bin placement, signage, etc.

Suggested placement and construction prohibitions included a prohibition against placing the bins on a vacant lot, visual or physical obstructions to vehicular or pedestrian traffic, placement in fire lanes, etc.

Suggested placement and construction requirements could include a requirement for a secure lock, placement so the access door was toward the interior of the zoning lot, requiring that a bin must be

painted a solid color, be no higher than 7 feet or greater than 84 cubic feet, be set back at least 10 feet from any property line and 25 feet from any driveway, street or sidewalk.

Additionally, no more than 2 collection containers would be allowed per zoning lot, with exceptions for lots over 10 acres. Bins must be separated by a minimum distance of 1,000 feet from another collection container, and 500 feet from property that was zoned for residential use.

Suggested signage requirements regulated the size of a required identification plate with the name, mailing address, email address, website and phone number of the operator. Additional signage could be on 3 sides of the bin and not exceed six square feet per side.

Discussion followed:

- Perhaps the only regulations that should be considered should be directly related to health, safety, and welfare issues. On the other hand, other regulations addressed land use issues, not zoning issues, and could be included.
- The draft language appeared to be defensible under the terms of the 2014 case.
- The ordinance could include an appeal process, for someone who could legitimately claim to need a donation bin that was not a solid color, or that needed a bigger sign, etc.

Chair Schwartz summarized the discussion that if the draft language met the terms of the law, staff should be directed to bring back to the Commission a draft ordinance that could be discussed further. City Attorney Schultz said he felt the language presented this evening would be defensible under the law.

Commissioner Countegan said he supported the City's ordinance complying with current law, and regulating those things that affected health, safety and welfare of its residents. He opposed language that tried to regulate how a donation bin looked or regulate the bins in terms of dimensional standards such as setbacks, and felt that blight issues could be enforced under the blight ordinance.

City Planner Stec thanked the Commission for their comments, and noted that staff would bring draft language to the Commission for further discussion, as requested.

C. Commissioner Training Session

City Planner Stec explained that it had been some time since the last Planning Commission training, and staff would like to schedule a commissioner training session that would address process around the Capital Improvements Plan, as well as information regarding the Master Plan, Zoning Ordinance, Motions, etc.

Commissioners would be notified via email date options for the training.

D. Zoning Ordinance Amendments

City Planner Stec reviewed the following potential zoning ordinance amendments:

1. *Accessory outdoor dining areas for restaurants B-2, B-3, B-4, and ES Districts.* Consider reducing the minimum setback from RA districts if the outdoor seating area was separated from the RA district by a building.
2. *Indoor Recreation Facilities in B-3:*
 - Redundancy with items 2 and 4 of Section 34-4.19 regulating minimum distance from RA districts.

- Indoor Recreation Facilities over 3,300 square feet were listed as a principal permitted use in the B-3 district. However, Section 34-4.58.1 stated that the use may not exceed 3,300 square feet. 34-4.58.a was not referenced for the use as listed under Principal Permitted Uses for the B-3 district.
3. *Indoor Recreation Facilities in general:*
 - From an administrative standpoint the various definitions of indoor recreation uses, health and fitness studios, dance studios etc. made it difficult to apply the ordinances. Consider consolidation and update of regulations.
 - There currently was not an established parking standard for some types of indoor recreation uses such as gyms. Consider adding a standard.
 4. *34-5.16 Exterior Lighting:*
 - *Subsection 3.1.* Change reference to table 34-5.16.3.A from “following” to “preceding” or move table (administrative cleanup).
 - Due to the high intensity/brightness of the new LED light sources, did the Commission want to consider requiring light source shielding for lights on poles abutting RA districts? Based on lighting spec sheets provided for past projects the shields were readily available from the manufacturer.
 5. *Temporary Uses Section 34-7.14.6.E.c.:*
 - References Section 34-3.26.16., but this section no longer existed. The uses exempt from 34-7.14.6.E. were in Sections 34-3.26.34-3.26.14 and 15
 6. *Tow Truck uses and accessory vehicle storage/impound lots* were not clearly addressed in the zoning ordinance.
 7. *Maximum Building Heights:* Ceiling heights were increasing from the industry standard of 10-20 years ago. This applied to residential and non-residential uses. This would be researched and a recommendation would be presented to the Planning Commission.
 8. *Corner Clearance for signs at the intersection of road rights-of-way and private entrance drives:* Consider a reduction from 25 feet to 10 feet distance from driveways and entranceways.

The consensus of the Commission was to move forward with these zoning ordinance amendments, with the following comments:

Regarding the exterior lighting amendment, a question was raised as to whether or not the change could be put in the Code or otherwise written so non-compliant lighting would not be grandfathered.

Commissioner McRae mentioned that LED lights around windows on Orchard Lake Road needed continual enforcement. All parking lot lights needed to be parallel to the ground; this was currently required but violations remained.

Regarding Maximum Building Heights, was there a definition of “story”?

Regarding the Corner Clearance amendment, the Commission asked for graphics to show examples of what the change would accomplish.

Commissioner McRae asked if the ordinance addressed placement of bank ATMS in front yards. If it did not address this, he would like for this to be discussed.

E. Recreational Marihuana.

City Planner Stec explained that draft language had been provided this evening regarding a zoning text amendment and a city code amendment that would prohibit recreational marihuana establishments in the City.

After recreational marihuana was approved by voters last November, the State had a year to issue regulations and guidelines. At their last meeting City Council had indicated that they wanted to prohibit recreational marihuana establishments, at least until the State issued guidelines regarding such uses.

City Attorney Schultz further explained that the marihuana initiative that was approved in November related to personal conduct, and also to businesses/land uses.

Personal conduct involved the amount of marihuana that a person over 21 could possess on their person and how much could be stored at home, etc.

There was also a provision in the law that impacted business uses, including retailing on a commercial level. The State had 1 year – until December 2019 – to issue guidelines that would impact all commercial recreational marihuana retailers, and retailers would need a state license.

Municipalities could adopt an ordinance relating to commercial retailers, either opting out of allowing such uses entirely, or limiting the number in the community. Other regulations regarding time/place/manner might also apply.

City Attorney Schultz continued that the draft ordinance language provided this evening was an “opt out” ordinance, but it was also clear in the draft code amendment that: *Adoption of such an ordinance does not preclude, and this section is not intended to preclude the City from further studying and revisiting the issue at a later date.*

City Attorney Schultz explained that medical marihuana was still regulated under the 2008 initiative, and was not affected by the recent vote to legalize recreational marihuana.

Chair Schwartz indicated he would entertain a motion to set the Zoning Text and Code Amendments for public hearing.

MOTION by Countegan, support by Goerke, that the Planning Commission set Zoning Text Amendment 1, 2019 and City Code Amendment 1, 2019, prohibiting marihuana establishments within the boundaries of the City, for public hearing at the March 21, 2019 Planning Commission meeting.

Motion carried unanimously.

PUBLIC COMMENT None.

COMMISSIONERS' COMMENTS

Chair Schwartz commented on the attractive appearance of the new motel development off Hamilton Court.

ADJOURNMENT:

Seeing that there was no further discussion, Chair Schwartz adjourned the meeting at 8:00 p.m.

Respectfully Submitted,
Dale Countegan
Planning Commission Secretary

/cem