

MEMORANDUM

To: Ontwa Township Planning Commission
Date: December 1, 2023
From: Andy Moore, AICP
RE: **Eddies Market Park Proposed Conditional Rezoning**

Brian Shier on behalf of Eddies Market Park LLC has submitted three requests to rezone land located generally at 27398 US-12 from A-R Agricultural-Residential to C-2 General Commercial and MFR Multi-Family Residential. At the February Planning Commission meeting, the Commission held a public hearing and, after deliberation postponed a decision on the application until the applicant provided (1) a traffic study and (2) a market study.

On February 21, 2023, the applicant's civil engineer (LRE) provided a letter that amends the original application to rezone to include an offer of the following two conditions:

1. *When rezoned to MFR-Multi Family Residential as requested in the initial petition, parcel 14-090-006-015-05 will be developed with a maximum of 48 residential units.*
2. *Parcel 14-090-006-015-05 will be allowed to exceed the 48 residential unit threshold up to the allowable density of units permitted in accordance with the applicable zoning ordinances upon the planning commission approval of a traffic impact study.*

The applicant further states the following:

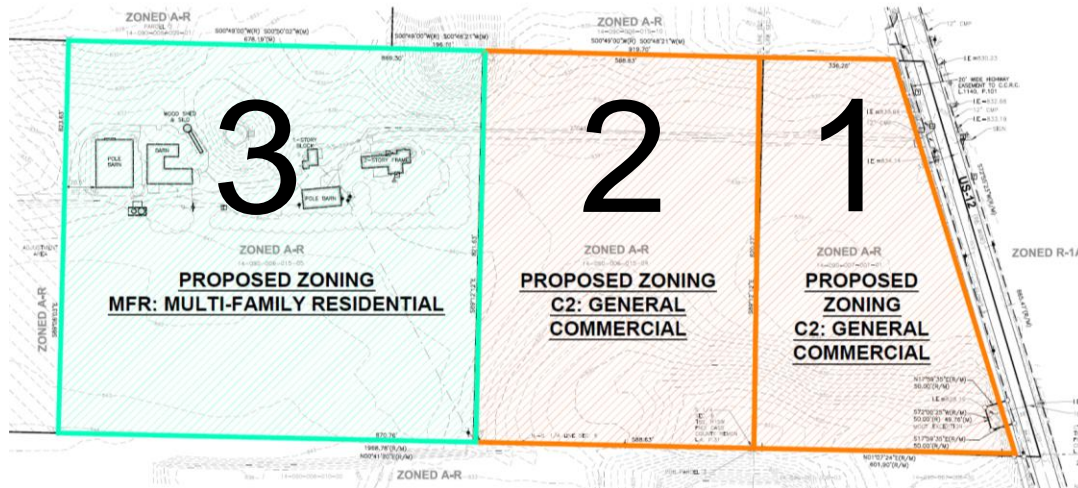
"By voluntarily establishing the maximum number of residential units below the allowable density under the current zoning ordinances, the landowner is making a good faith effort to subside the concerns noted in the planning commission meeting. By voluntarily adding conditions to the rezoning request the landowner requests that the planning commission waive the traffic report and housing report requirements for the rezoning petition.

"It is understood that a traffic impact study will likely be required at the time of a proposed improvement to the property but the landowner is not currently proposing any improvements and therefore does not have the site plan required to complete such a study."

A traffic study and housing report were provided in October 2023.

As you know, the property is located on the north side of US-12 just west of the Village of Edwardsburg, adjacent to the Edwardsburg Sports Complex. The area of the parcels involved is

approximately 36 acres. The rezoning is sought ostensibly to pursue a PUD that would contain commercial development and multi-family dwellings on the property.



The request is divided into three parts:

1. **Request 1** includes only the southerly 8.7-acre parcel (14-090-007-001-01) and the applicant is seeking to rezone this to C-2 General Commercial. (see “1” above)
2. **Request 2** includes the southerly 11.1 acres of the original 27-acre parcel located directly north of the first request. It is our understanding that this parcel has been split into its own property (14-090-006-015-04). The applicant is also seeking to rezone this land to C-2 General Commercial. (see “2” above)
3. **Request 3** includes the remaining 16.4 acres to the north of request 2 and is the rest of the original property (14-090-006-015-05). The applicant seeks to rezone this property to MFR. (see “3” above)

Review Standards. Section 22.04 (a-e) of the Ontwa Township Zoning Ordinance provides several criteria standards that must be evaluated by the Planning Commission when contemplating a proposed rezoning request. We reviewed these standards in our January 24 memorandum and our analysis of these standards has not changed substantively.

Conditional Rezoning. Conditional rezoning agreements (sometimes referred to as “contract zoning”) are not specifically addressed in the Ontwa Township Zoning Ordinance. However, Section 405 of the Michigan Zoning Enabling Act (MCL 125.3405) states as follows:

- (1) *An owner of land may voluntarily offer in writing, and the local unit of government may approve, certain use and development of the land as a condition to a rezoning of the land or an amendment to a zoning map.*
- (2) *In approving the conditions under subsection (1), the local unit of government may establish a time period during which the conditions apply to the land. Except for an extension under subsection (4), if the conditions are not satisfied within the*

time specified under this subsection, the land shall revert to its former zoning classification.

- (3) The local government shall not add to or alter the conditions approved under subsection (1) during the time period specified under subsection (2) of this section.*
- (4) The time period specified under subsection (2) may be extended upon the application of the landowner and approval of the local unit of government.*
- (5) A local unit of government shall not require a landowner to offer conditions as a requirement for rezoning. The lack of an offer under subsection (1) shall not otherwise affect a landowner's rights under this act, the ordinances of the local unit of government, or any other laws of this state.*

The Planning Commission has exercised its discretion in requesting additional relevant information that will help it understand the potential traffic impacts of the development and gain a clearer picture of the local marketplace for commercial and multi-family development.

The applicant is seeking rezoning approval that would result in not more than 48 multi-family units. If/when the development proceeds to a point where more than 48 units are proposed, then a full traffic study will be performed. Based on our reading of the conditions, the application with the offered conditions would still result in essentially un-conditional approval of the commercial rezonings, as the conditions only refer to the northerly parcel that is proposed to be rezoned to MFR.

The Eddies Market Park PUD submitted in the summer of 2022 indicated one retail building of 12-14,000 square feet, and another ten office buildings ranging from 1,500 to 6,000 square feet (although the site plan appeared to show several drive-through facilities and other buildings). As noted previously, rezoning to commercial would open up these properties to any use permitted in the C-2 district, and local market conditions would dictate what those uses ultimately will be unless specified through the PUD process. The request for commercial zoning is consistent with the Master Plan for the portion of this property that has frontage on US-12. However, we note that if the Planning Commission is concerned about traffic, many commercial uses (such as restaurants or retail uses) will likely generate just as much (or likely more) traffic as multi-family uses. Thus, while the conditions offered may help address some of the concerns related to the multi-family development, if the Planning Commission has concerns about traffic, access, and other topics for the commercial portions of the site, this would warrant further deliberation.

Housing Analysis. An opinion letter concerning the need/demand for housing prepared by CIB Planning was received. CIB Planning is a reputable planning and design firm based in Fenton, Michigan. The letter provides relevant data from the 2017 Master Plan along with additional information from the American Community Survey (ACS) in an attempt to describe the need for housing in Ontwa Township, specifically rental and multi-family housing. We offer the following comments regarding the opinion letter.

1. On page 2, the letter states that the percentage of renter-occupied housing units in the Township has decreased from 18.5% of all housing units to 17% of all housing units. While the data is accurately reported, it is worth noting that the 2021 American Community Survey (ACS) estimate of 17% is an *estimate*, not a true count, and the margin of error with this estimate is +/- 4.5%. Since the margin of error is well within the stated decrease of 1.5%, there is no statistically valid or discernable trend upon which the Planning Commission could rely. It is more appropriate to interpret this result as there being little to no change in the proportion of renters to owners in the Township.
2. We verified the data shown in the housing unit vacancy table on page 2. This is also ACS data, which comes with a margin of error of +/- 10 units. Nevertheless, it is fair to conclude that there are very few housing units available for rent in the community.
3. Page 3 discusses the State of Michigan's "Statewide Housing Plan" and states that the plan indicates that 3,000 for-lease housing units are needed in the Ontwa Township area within the next five years. We reviewed the Statewide Housing Plan and have not been able to substantiate this number, although it is common knowledge that housing supply and affordability are serious issues in communities across the state (and nation).

Traffic Study. A "Traffic Analysis Memo" was provided by Abonmarche. The memo states that the analysis "...assumes a single access point per the direction of the Michigan Department of Transportation (MDOT). The access is anticipated to have dedicated right and left-turn lanes. The access point was analyzed to determine if a signal may be warranted based on existing roadway and generated site volumes. Per MDOT, a full Traffic Impact Study (TIS) with intersection improvement modeling will be required prior to the issuance of any permits to confirm that the recommended traffic management measures are appropriate."

The study also states "it is anticipated that all noted uses will have similar distributions of trips and therefore all uses were correlated to one distribution." The memo assumes that trips to the site will come equally from the east and west along US-12.

The report assumes that the development would be constructed in four phases, with phase 1 consisting of 32 apartment units, 12,000 sq. ft. of office, 12,000 square feet of high-turnover sit-down restaurant, and 12,000 square feet of fast food/drive-through restaurants. Phase 1 would add approximately 7,300 weekday trips, with 700 trips at the AM peak hour and 565 at the PM peak hour.

Phase 2 would consist of another 32 dwelling units, plus another 2,400 square feet of office and 14,000 square feet of retail. This results in another 1,445 weekday daily trips, with another 109 during the AM peak hour and 185 during the PM peak hour.

Phases 3 and 4 are 72 and 64 residential units, respectively, adding another 537 and 486 weekday daily trips. When fully built out, the entire development would generate approximately 9,800 trips per day, with 900 AM peak hour trips and 850 PM peak hour trips.

The report also appears to conclude that left turn lanes for both east and westbound traffic will be needed at the access point for the proposed development.

The assumptions made in the traffic analysis memo seem reasonable. They should be further borne out in the formal Traffic Impact Study to be conducted further into the design process.

Conclusion and Recommendation. Ultimately, it is not up to the Township Planning Commission to decide whether or not there is a sufficient market for the proposed development. In considering the conditional rezoning, the Planning Commission should be guided by the standards of the Zoning Ordinance and other relevant land use information. Information provided by the applicant helps attempt to evaluate the likely land use impacts the proposed rezoning could have on the community.

Some large-scale projects take years, even decades, to be fully completed, and the proposed project is not envisioned to be complete until 2031, so some of the traffic and land use impacts will be gradually experienced. The Planning Commission should carefully review the phasing plan to ensure that each phase can be built out as market forces demand and that each phase will be capable of fully standing on its own and functioning as a complete development before subsequent phases are approved. This could be addressed during the site plan review process (assuming that the project is approved).

At the December 6 meeting, the Planning Commission should listen carefully to comments from the applicant and the public. Therefore, the Planning Commission must determine if the conditions offered are acceptable and recommend either approval of the proposed conditional rezoning or denial to the Township Board. The Township cannot alter the conditions proposed by the applicant without the applicant's consent; it may only choose to accept them or not accept them and make a recommendation accordingly.

The applicant is seeking to amend the zoning map, so the final decision on these requests rests with the Township Board, after a recommendation by the Planning Commission and review by the Cass County Planning Commission. We have attached a rezoning ordinance for your consideration.

As always, feel free to contact us if there are further questions.

c: Catherine Kaufman, Ontwa Township Attorney