

E.

Draft Date
02/04/22

CONTRACT ZONING AGREEMENT

This Agreement is between Tallmadge Charter Township, a Michigan charter township, at 0-1451 Leonard Road, N.W., Grand Rapids, Michigan 49544 (the "Township") and Mr. Mitchell Pater, of 3910 Oakes Street, S.W., Grandville, Michigan, 49418 (the "Owners").

This Agreement is based upon the following facts.

A. The Township has adopted the Tallmadge Charter Township Zoning Ordinance (the "Zoning Ordinance"), which includes the Tallmadge Charter Township Zoning Map (the "Zoning Map").

B. The Owners have an interest in certain property in the Township, which property is located on 2nd Avenue and Ironwood Drive, the legal description of which is attached as Exhibit A (the "Property").

C. The Property is included in the C-2 General Commercial Zoning District of the Zoning Map.

D. The Owners wish to rezone the Property to the Industrial Zoning District.

E. Under Public Act 110 of the Public Acts of 2006, a landowner may voluntarily offer in writing, and a township may approve, certain conditions which attach to a rezoning of property in that township.

F. The Owners have submitted a voluntary offer to engage in contract zoning under Act 110.

THEREFORE, the parties agree as follows.

Section 1. Rezoning of the Property. The Township has adopted a Zoning Map Amendment Ordinance (the "Amendment Ordinance"), rezoning the Property from the C-2 General Commercial Zoning District to the Industrial Zoning District, contingent on this Agreement taking effect. This Agreement is contingent upon the Amendment Ordinance taking effect and remaining valid.

Section 2. Condition of Rezoning. The rezoning of the Property to the Industrial Zoning District shall be conditioned upon the Owners, and any subsequent owner of the Property, complying with the following conditions, within one year after the Amendment Ordinance takes effect.

- a. Building facades facing Second Avenue and Ironwood Drive, including the north, east, and south walls of Buildings 6 and 7 as well as the east wall of Building 9 shall contain at least 70% masonry
- b. Building facades facing Second Avenue and Ironwood Drive, including the north and south wall of Building 6, the north and south wall of Building 7 shall contain at least 20% glass.
- c. The balance of all north, east, and south walls of Building 6 and Building 7, and the east wall of Building 9, shall contain a concealed metal fastener panel system.
- d. All masonry shall be a stacked stone veneer
- e. Landscaping shall be provided at the northeast corner of the property facing Ironwood Drive and Second Avenue, as shown on the site plan, including the following, which exceeds the minimum required by the Zoning Ordinance:
 - i. 18 additional ornamental shrubs
 - ii. 1 additional ornamental tree
 - iii. 1 additional shade tree

Further, the Owners shall not be permitted any outdoor storage pursuant to the Zoning Ordinance

Further, the Owners may expand the single family dwelling on the Property, as allowed by the Zoning Ordinance in the RP Rural Preserve District. Otherwise, the Owners may only use the property as permitted in the R-1 Single Family Residential District, not as permitted in the RP Rural Preserve District.

Section 3. Township Findings. The Township finds that the Owners' offer of conditions does not include uses or developments which are not permitted in the Industrial Zoning District.

The Township further finds that the Owners' offer of conditions bears a reasonable and rational relationship to the Property. Specifically, rezoning the Property to the Industrial Zoning District would be compatible with the surrounding property and compatible with the Township's Master Land Use Plan.

Section 4. Compliance. The development of the Property pursuant to this Agreement shall be subject to compliance with all Federal, State, County and Township laws and ordinances.

Section 5. Binding Nature of This Agreement. The Owners acknowledge that this Agreement will run with the Property and will be binding upon successor owners of the Property.

Section 6. Recording of This Agreement. The Township and the Owners acknowledge that this Agreement shall be recorded by the Township with the Ottawa County Register of Deeds.

Section 7. Violation of This Agreement by the Owners. If the Owners violate any provision of this Agreement, that violation shall constitute a violation of the Zoning Ordinance and shall be subject to legal enforcement action and judicial abatement action as provided by law.

Section 8. Acknowledgment by the Owners. The Owners acknowledge that no permit or approval shall be granted under the Zoning Ordinance for any use or development that is contrary to this Agreement.

Section 9. Time Period. The one year time limit for the condition in Section 2 to be satisfied may upon written request be extended by the Township Board if the Township Board finds:

- (a) There is a strong likelihood that the development of this Property in accordance with this Agreement will be commenced or completed within the requested extension, as the case may be; and
- (b) There has not been a change in circumstances that would render the rezoning accomplished pursuant to this Agreement incompatible with other zoning districts and land uses in the surrounding area or otherwise inconsistent with sound zoning policy.

Section 10. Reversion of Zoning. If the condition in Section 2 is not satisfied within the time frame or an extension of the time frame as described above, then the Property shall revert to its former zoning classification in the General Commercial Zoning District. The reversion shall be initiated by the Township Board, which shall request that the Planning Commission hold a public hearing on the reversion of the zoning of the Property and make a recommendation to the Township Board. The procedure for considering and accomplishing this reversionary rezoning shall be the same as applies to all other rezoning requests.

Section 11. Subsequent Rezoning of the Property. If the Property is subsequently rezoned to a different zoning classification or to the General Commercial Zoning District but subject to the terms of a different agreement or no agreement at all, the terms of this Agreement shall cease to be in effect. Upon the request of the owner of the Property at the time, the Township shall record with the Ottawa County Register of Deeds a notice that this Agreement is no longer in effect.

Section 12. Amendment of this Agreement. This Agreement may be amended in the same manner that the Property was rezoned to the General Commercial Zoning District pursuant to the terms of this Agreement.

Section 13. Township's Right to Rezone. Nothing in this Agreement shall prohibit the Township from rezoning all or any portion of the Property to another zoning classification. Any such rezoning shall be conducted in compliance with the Zoning Ordinance and applicable law.

Section 14. Miscellaneous. This Agreement shall inure to the benefit of and be binding upon the parties and their respective heirs, personal representatives, members, assigns, and successors. All notices and other documents to be served or transmitted shall be in writing and addressed to the respective parties at the addresses stated on Page 1 of this Agreement or such other address or addresses as shall be specified by the parties from time to time, and may be served or transmitted in person or by ordinary or certified mail properly addressed with sufficient postage. This Agreement has been executed in the State of Michigan and shall be governed by Michigan law. The waiver by any party of a breach or violation of any provision of this Agreement shall not be a waiver of any subsequent breach or violation of the same or any other provision of this Agreement. If any section or provision of this Agreement is unenforceable for any reason, the unenforceability shall not impair the remainder of this Agreement, which shall remain in full force and effect. This Agreement represents the entire understanding and agreement between parties, and all prior understandings and agreements are specifically merged in this Agreement. The captions in this Agreement are for convenience only and shall not be considered as part of this Agreement or in any way amplifying or modifying its terms and provisions.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

WITNESSES:

OWNERS

By: _____
Mitchell Pater

By: _____

TALLMADGE CHARTER TOWNSHIP

By: _____
Mark Bennett, Supervisor

By: _____
Lenore Cook, Clerk

STATE OF MICHIGAN)
)ss.
COUNTY OF OTTAWA)

The foregoing Agreement was acknowledged before me this _____ day of _____, 2022, by Mitchell Pater.

Notary Public, Ottawa County, Michigan
My Commission expires: _____
Acting in Ottawa County, Michigan

STATE OF MICHIGAN)
)ss.
COUNTY OF OTTAWA)

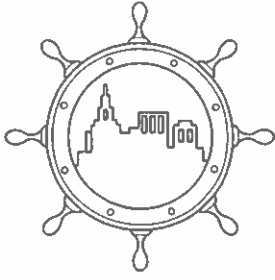
The foregoing Agreement was acknowledged before me this _____ day of _____, 2022, by Mark Bennett and Lenore Cook, respectively the Supervisor and the Clerk of Tallmadge Charter Township, a Michigan charter township, on behalf of the Township.

Notary Public, Ottawa County, Michigan

My Commission expires: _____
Acting in Ottawa County, Michigan

EXHIBIT A

PART SE 1/4, COM 787.6 FT E & 841 FT N 04D 53M W OF S 1/4 COR TH N 04D 53M W 449 FT, N 85D 07M E 428.71 FT, TH SE'LY & S'LY ALG W'LY R/W LI ST TO A PT 841 FT N OF S SEC LI, TH W TO BEG. SEC.1, T7N,R13W



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MEMORANDUM

To: Tallmadge Charter Township Board of Trustees
From: Gregory L. Ransford, MPA
Date: January 21, 2022
Re: Pater Storage Conditional Rezoning & Site Plan Review Application

Pursuant to Chapter 22 – Ordinance Amendment of the Tallmadge Charter Township Zoning Ordinance, below we provide a synopsis of a requested zoning map amendment (rezoning) to the Zoning Ordinance Map from Pater Storage to rezone 13781 2nd Avenue, parcel number 70-10-01-400-036 from the General Commercial (C-2) Zoning District to the Industrial (I-1) Zoning District. The property is approximately 5.14 acres in area and is located at the southwest corner of Ironwood Drive and 2nd Avenue.

The request for rezoning is a conditional request, which varies from a traditional request as it is specific to a use and limits the property to a related site plan and list of conditions offered by the applicant. As a result, a site plan accompanies the rezoning request. In particular, the applicant seeks to construct self-storage unit buildings on the property. The property currently contains a dwelling and related accessory buildings, which will be demolished.

Three Cs

As you are aware, the Tallmadge Charter Township Board of Trustees (TCTBT) is the approving body regarding these requests. The Tallmadge Charter Township Planning Commission (TCTPC) recommended adoption of the request as a result of their application of the Three Cs. The Three Cs include:

1. Consistency – whether the request is consistent with the provisions of the Master Plan
2. Compatibility – whether the request will be compatible with existing zoning districts as well as existing and future uses in those zoning districts
3. Capability – whether the property subject to the request is capable of supporting the uses permitted by the requested zoning district and whether it is capable of being adequately served by the related transportation network and other governmental agencies.

Below is a synopsis of the request.

Application and Property Details

As aforementioned, the subject parcel is approximately 5.14 acres in area. It contains 86 feet of frontage on Ironwood Drive and 425 feet of frontage on 2nd Avenue. Given its limited Ironwood Drive frontage, which results in close proximity to the intersection with 2nd Avenue, it is unlikely that the Michigan Department of Transportation would allow access from Ironwood Drive. We anticipate the applicant found the same, which resulted in access to the site being proposed from 2nd Avenue.

Offered Conditions

As aforementioned, the applicant seeks a conditional rezoning to operate a self-storage facility. As a part of the rezoning to the I-1 Zoning District, the applicant offered the following conditions to be placed on the use:

1. 70% masonry façade for the primary (facing Second Ave.) and secondary (facing Ironwood Dr.) exterior walls. This is exceeding the I-1 Industrial requirement of providing 50% masonry façade. The north, east, and south walls of buildings 6 and 7 will have this façade, as well as the east wall of building 9.
2. 20% glass on the north wall of building 6 (facing Ironwood Dr.) (exceeding I-1 Industrial requirement of 5%), the south wall of building 6 and north wall of building 7 (facing property entrance drive) (exceeding I-1 Industrial requirement of 5%), and south wall of building 7 (exceeding I-1 Industrial requirement of 0%).
3. The balance of all north, east, and south walls of buildings 6 and 7, and the east wall of building 9, will consist of a concealed fastener metal panel system.
4. All masonry will be a stacked stone veneer.
5. Increased landscaping at the NE corner of the property facing Ironwood Dr. and Second Ave. (exceeding I-1 Industrial and C-2 General Commercial requirements), including:
 - a. Eighteen (18) additional ornamental shrubs
 - b. One (1) additional ornamental tree
 - c. One (1) additional shade tree

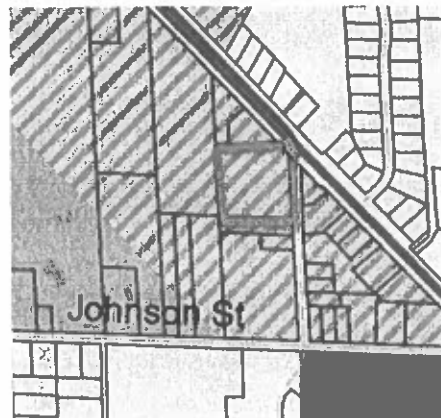
These conditions are voluntary and cannot be modified by the Township. In addition, the Township is under no obligation to accept the offered conditions and can deny the request, if desired, on the basis of undesirable offered conditions. It is important to note that the proposed self-storage facility, if approved, cannot be modified or changed to any other use without an amendment to the rezoning request and related site plan.

Master Plan Considerations

Consistency

Master Plan Map

For your convenience, below is a snapshot of the Master Plan Map showing the classification of the subject property and adjacent properties. (Legend: Yellow = Low Density Residential / Orange = Medium Density Residential / Brown = High Density Residential / {Pink and Grey Stripes = Ironwood Drive Corridor / Blue Outline = subject property).



The TCTMP map identifies the subject property within the Ironwood Drive Corridor classification. As you know, the Township intends to create an overlay district or similar zoning tool to accommodate the intent of the Ironwood Drive Corridor classification. Unfortunately, time has not permitted that process to begin. The applicant's requested Industrial Zoning may be appropriate within the Ironwood Drive Corridor classification given that this corridor is likely to be made up of commercial and light industrial uses in the future given that Ironwood Drive is a major thoroughfare. As a result, it appears that this request is likely consistent with the Master Plan Map.

Master Plan Text

Given that the TCTMP identifies the subject property within a district contrary to the request, below are related commercial and industrial provisions of the TCTMP that were considered by the TCTPC.

- Chapter One – Community Preferences of the TCTMP seeks to limit commercial and industrial growth along Lake Michigan Drive and Ironwood during the planning period. The subject property is located on Ironwood Drive. Consequently, it appears the existing commercial and the Industrial request are consistent with this priority.
- Chapter Five – Commercial Uses of the TCTMP seeks to accommodate commercial facilities that provide sufficient amounts of goods and services to meet the daily needs of a growing Township population and promote high quality commercial development through thorough site plan review, which integrates surrounding development by means of appropriate landscaping, greenbelts, façade design, adequate access, parking, and pedestrian pathways. While the request is for the Industrial District, the conditional use is undergoing site plan review, making improvements to the property, including increased façade materials and landscaping than required by the Industrial Zoning District, and will provide additional services for the growing Township population. Given this, it appears the request would be consistent with these goals from a commercial service perspective.
- Chapter Six – Industrial Uses of the TCTMP seeks to accommodate industrial facilities in the same manner as Chapter Five within the bullet point above. Moreover, an additional goal of Chapter Six is to “provide for industrial development in areas that are easily accessible by major transportation facilities.” Given that this property has access immediately adjacent to Ironwood Drive, which is a major thoroughfare utilized by multiple transportation facilities, it appears the request is consistent with this goal.

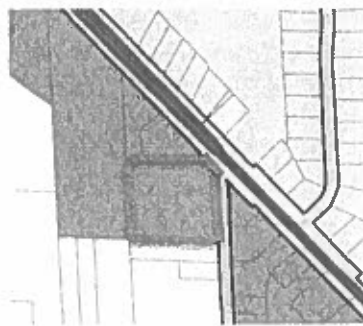
As a result of the aforementioned TCTMP findings, the TCTPC found the request to be consistent with the TCTMP.

Zoning Ordinance Considerations

Compatibility

Currently, the surrounding uses of adjacent properties consist of commercial and residential uses. The subject property abuts lots located within the C-2 and Rural Preserve Zoning Districts.

For your convenience, below is a snapshot of the current Zoning Map showing the relationship of the subject property to the surrounding zoning districts. (Legend: Yellow = Single Family Residential / Tan = Rural Preserve / Red = General Commercial / Blue Outline = subject property).



As a result, the TCTPC found the request to be compatible with the surrounding uses and Zoning Districts.

Capability

The property proposed for conditional rezoning currently contains a single-family dwelling and three accessory buildings. The applicant has stated that they intend to utilize the entirety of the parcel for self-storage. As a result and given that the request is a conditional rezoning, the TCTPC did not need to determine if all of the I-1 Zoning District Uses are capable of being supported by the subject property. Rather, the TCTPC concluded that the proposed site plan illustrates that the property is capable of supporting the use.

Recommendation

At the January 25, 2022 meeting of the TCTPC, Commissioner Terpstra provided a motion to recommend adoption, indicating that the proposed meets the Three Cs, with the offered conditions. His motion was as follows:

Motion to recommend adoption of the site plan, which includes:

- Site Plan Sheets
 - Site Plan, Existing Conditions, Sheet V-101, revised 1/4/22 by Holland Engineering
 - Site Plan, Civil Demolition, Sheet CD-101, revised 1/4/22 by Holland Engineering
 - Site Plan, Site Layout Plan, Sheet C-101, revised 1/4/22 by Holland Engineering
 - Site Plan, Grading Drainage & SESC Plan, Sheet C-201, revised 1/4/22 by Holland Engineering
 - Site Plan, General Details, Sheet C-501, revised 1/4/22 by Holland Engineering
 - Site Plan, Landscape Planting Plan, Sheet L-101, revised 1/4/22 by Holland Engineering
 - Building Elevations, Sheet 1, prepared 10/28/21 by Copperrock Construction
 - Site Photometrics, Sheet 1, prepared 9/8/21 by CTA Inc.
 - Floor Plan, Buildings 1 & 2, Sheet 1, prepared 9/2/21 by BETCO
 - Floor Plan, Buildings 3, 4, & 5, Sheet 2, prepared 9/2/21 by BETCO
 - Floor Plan, Buildings 6 & 7, Sheet 3, prepared 9/2/21 by BETCO
 - Floor Plan, Buildings 8 & 9, Sheet 4, prepared 9/2/21 by BETCO

- Product Specification Sheets
 - MCBI Architectural Color Chart
 - MCBI Panel Data Sheet
 - Eldorado Architectural Stone Document

with the following conditions:

1. Must satisfy the review comments from the Township Engineer prior to the issuance of building permit
2. Must satisfy the review comments from the Township Fire Department prior to the issuance of building permit
3. Must enclose entire site with required fencing pursuant to the TCTZO, including any temporary fencing
4. Must provide gate details prior to the issuance of building permit
5. Pursuant to the agreement of the applicant, Building 6 and building 7 shall be constructed as part of phase 1
6. Must satisfy the review comments from the Ottawa County Water Resources Commissioner from October 18, 2021
7. No outdoor storage shall be permitted
8. A conditional rezoning contract shall be executed and recorded prior to construction of the use
9. Any changes to the plan post-approval must to return to the Planning Commission for review and approval

The motion was seconded by Rypma and carried 5-0 with two members absent.

Board of Trustees Responsibility

As a result of the recommendation of the TCTPC, the TCTBT shall review the request in the same manner, pursuant to the Three Cs, and consider the attached Zoning Map Amendment Ordinance for adoption. In the instance the TCTBT supports adoption, an introduction and first reading of the Zoning Map Amendment Ordinance is necessary at your March meeting. Subsequently, the same Ordinance should have its second reading, final vote and adoption, if approved, at your April meeting.

If you have any questions, please let us know.

GLR
Planner

Attachments