

**ROSEMOUNT PLANNING COMMISSION
REGULAR MEETING PROCEEDINGS
NOVEMBER 28, 2023**

CALL TO ORDER/PLEDGE OF ALLEGIANCE

Pursuant to due call and notice thereof, a regular meeting of the Rosemount Planning Commission was held on Tuesday, November 28, 2023, at 6:30 PM in Rosemount Council Chambers, 2875 145th Street West.

Chair Kenninger called the meeting to order with Commissioners Whitman, Rivera, Reed, Hebert, and Thiagarajan.

Staff present included the following: City Administrator Martin, Public Works Director Egger, Community Development Director Kienberger, City Attorney Sathe, Senior Planner Nemcek, Planner Hogan, and Community Development Technician Grant.

ADDITIONS TO AGENDA

None.

AUDIENCE INPUT

Michael Pekarik - 13572 Delwood Way Rosemount, MN

Questioned who the planning commission and city staff work for and what the planning commission's purpose is.

Chair Kenninger clarified that the Planning Commission is appointed by City Council to serve Rosemount residents and the community---they are not elected, and it is a volunteer position with a small stipend of thirty-five dollars (\$35) per meeting. Kenninger stated that there is no direct interaction with the Metropolitan Council. Commissioners receive information from city staff, workshops, open houses, and recommendations are made to the City Council based on that information. City Administrator Martin verified that the planning commission is an advisory board to the City Council, in which the Metropolitan Council does not require or demand anything from the commission or city council.

Kayla Hauser - 14569 Dahomey Ave W Rosemount, MN

Hauser wished to discuss safety in the city of Rosemount, as it pertains to technology for future generations. She asked if any procedures or policies will be put in place regarding technological safety issues.

Chair Kenninger stated that the Planning Commission primarily oversees decisions regarding land use, while policies are of concern to the City Council.

Amy Bergum - 7189 Clayton Ave Inver Grove Heights, MN

Bergum read out loud a "New World Order" agenda to the commission and audience.

CONSENT AGENDA

Motion by Kenninger **Second by** Reed

Motion to approve the Consent Agenda

Ayes: 6.

Nays: None. Motion Carried.

- a. Minutes of the October 24, 2023 Regular Meeting
- b. Request by US Home, LLC, for Approval of the Talamore 4th Addition Final Plat

OLD BUSINESS

PUBLIC HEARINGS

- a. Request by CA Gear for approval of Rezoning, a Major Amendment to the Custom Apparel Planned Unit Development Agreement, and a Conditional Use Permit to construct a 7,400 square foot addition onto the existing sportswear manufacturing and athletic training facility.

Planner Hogan reviewed the proposal by CA Gear for a 7,400 square-foot addition to the existing athletic manufacturing facility. The addition would include a tap house, golf simulators, and outdoor seating.

Commissioner Comments:

Chair Kenninger asked if the change of business would still be subject to the PUD given the rezoning. Community Development Director Kienberger replied yes. Commissioner Reed confirmed with Planner Hogan that noise levels would be in conformance with standards and that there is a tree line by the railroad tracks. Reed asked if there was parking on the street open to the public. Planner Hogan stated that there is parking on Canada Circle. Commissioner Reed and Commissioner Thiagarajan asked about the unisex and men's restrooms, with Thiagarajan stating that the building officials may not approve only a unisex and men's restroom in the addition.

Commissioner Whitman asked how many seats there would be on the rooftop patio. Planner Hogan deferred to the applicant. Whitman asked if there is a limit to the amount of outdoor seating with the rezoning. Planner Hogan stated that there are limits on parking regarding the rezoning versus seating. Whitman asked if barriers/fences on the rooftop would be reviewed, Planner Hogan confirmed yes. He asked if any traffic analysis had been done on the intersection of Highway 3 and Canada Circle. Hogan stated that there is no study to her knowledge and mentioned that Canada Circle is being extended east. Community Development Director Kienberger noted that a traffic analysis is not required in this process and that highway 3 is a Minnesota state highway, which has not raised concerns for the state.

The public hearing was opened for comments.

Public Comments:

Nathan Bry - 13402 Avila Ave Rosemount, MN

Bry is the applicant for CA Gear. He clarified that the unisex bathroom is open to all and that the

amenities are the same for both restrooms, similar to other companies and organizations' newer initiatives. Commissioner Rivera asked if the tap house addition would have the same hours as the athletic facility. The applicant clarified that the hours would be similar, to act as a place for parents and the community to gather and relax during sports, etc.

Chad Byersdorfer - 14345 Cimarron Ave W Rosemount, MN

Byersdorfer asked if there were going to be any plans for food service along with the tap house. Bry answered that there are already concessions in the athletic facility and there is a potential for Neapolitan pizza down the line and/or food trucks. Commissioner Whitman asked about other potential future plans. Bry stated that there is a back room, in hopes of opening it for a card-trading area.

The public hearing was closed for comments.

Motion by Kenninger Second by Reed

Motion to close the Public Hearing

Ayes: 6.

Nays: None. Motion Carried.

Motion by Kenninger Second by Whitman

Motion to

1. **Motion** to recommend the City Council adopt an ordinance rezoning the property from BP PUD – Business Park Planned Unit Development to BP/C4 PUD – Business Park/General Commercial Planned Unit Development.

Ayes: 6.

Nays: None. Motion Carried.

Motion by Kenninger Second by Hebert

2. **Motion** to recommend the City Council approve a Major Amendment to the Custom Apparel Planned Unit Development Agreement, subject to:

- a. Conformance with all requirements of the City Engineer as detailed in the Engineer's Memo dated November 20, 2023, and associated Stormwater Review Memo dated November 20, 2023.
- b. Approval of a sign permit application for any new signage on the site.

Ayes: 6.

Nays: None. Motion Carried.

Motion by Kenninger Second by Whitman

3. **Motion** to recommend the City Council approve a Conditional Use Permit for Custom Apparel allowing operation of an outdoor seating or dining area for eleven or more seats, subject to the following conditions:

- a. Approval of a building permit.
- b. Secure a liquor license for the taproom and for the outdoor dining areas and must follow all City standards for a taproom as regulated by the license.
- c. All driveways and parking areas shall be capable of supporting access by emergency vehicles and equipment.
- d. No public address system, music, or TV located on the patio shall be audible from

noncommercial or nonindustrial use or district.

Ayes: 6.

Nays: None. Motion Carried.

- b. Request by Jimnist, LLC., for Preliminary and Final Plat approval and PUD Final Site and Building Plan approval.

Senior Planner Nemcek presented the proposal by Jimnist LLC to build a data and technology campus on UMore property.

Commissioner Comments:

Chair Kenninger asked if the change to block 2 lot 1 into an outlet needed to be called out separately or not. Senior Planner Nemcek requested commissioners to add the outlot change to the first recommended action. Kenninger asked what the anticipated length of construction would be. Nemcek answered the anticipated construction length is three to five years per discussions between city staff and the applicant. Kenninger reiterated that the city is prepared to accommodate the expected water usage of the site. She also stated that the noise level is expected to be two to fifteen decibels below the maximum threshold for noise levels in a residential area. Commissioner Reed asked if most of the traffic would be going through the temporary signal light on Blaine Avenue via the temporary construction exit on the site. Nemcek stated that Dakota County is planning to put a traffic light there should the need necessitate such an installation down the line.

Commissioner Whitman asked if the project would have a public hearing before the City Council. Nemcek clarified that this item will not have a public hearing at the City Council as state law only requires one public hearing. Whitman asked if the AUAR is allowed by state law, to which Nemcek confirmed it is and is updated every five years. The 2023 update is currently in the process of being completed. Community Development Director Kienberger clarified that the city contracts with outside services to make sure the environmental review is in accordance with state law and city code. Whitman asked if all requirements are met, does the Planning Commission have to recommend approval. Nemcek deferred to the City Attorney, in which he stated that it is up to the Planning Commission to determine whether the proposal meets the established criteria. He clarified that the commissioners need to treat applicants all similarly and fairly, regardless of end user. City Administrator Logan clarified that there are other governmental organizations that handle discretionary concerns such as safety.

Commissioner Rivera asked if there is an agreement between the city and the company to have this facility established for a minimum time period in Rosemount. Community Development Director Kienberger answered no and that this is a private transaction, thus there is no contractual arrangement in regard to the length of time, end user, etc.

The public hearing was opened for comments.

Public Comments:

Trisha Sieh - 767 Eustice St. Paul, MN - Kimley Horn & Associates

Sieh is staff for Kimley Horn & Associates and is present on behalf of the applicant. She clarified that the noise limit is determined by MN state statute by use, and that the noise level is below the lowest maximum threshold for residential properties, which is at 50 decibels---the anticipated noise level will be two to fifteen decibels below that threshold . Chair Kenninger asked for input on environmental

studies and contamination, to which Sieh deferred to the UMore representative, Krueger.

Leslie Krueger - 319 15th Ave SE Minneapolis - UMore Park Representative

Krueger is the UMore representative. She stated that there was no groundwater contamination found within the site, and that the soil contamination levels met residential soil standards via extensive studies by the University of Minnesota. There is contamination of soil south of the property, but none was found within this project's site.

Jake Andre - Xcel Energy Representative

Andre stated that Xcel's internal planning team spent months to ensure the solution for the proposed project is not detrimental to the surrounding community or region. He also noted that there are many checkpoints within regional, state, and federal agencies to oversee transmission connections. Andre stated electricity usage is not a concern for the proposed project, the cost is fully paid by the project team, and the upgrades will most likely increase the energy resilience for the surrounding community.

Karin Miller - 17985 Jacquard Path Lakeville, MN

Miller asked where the water and electricity supplying the campus would come from and if Rosemount residents would have their supply rationed or limited. Miller expressed concern about EMF radiation impacts on Rosemount residents, transparency, and involved parties pertaining to the project. Miller asked what data will be collected, how it will be used, and how privacy will be protected.

Chad Byersdorfer - 14345 Cimarron Ave W Rosemount, MN

Byersdorfer is a project manager at Flint Hills Resources, and asked why Project Bigfoot is allotted several variances regarding architectural requirements. He asked about long-term plans ten to twenty years out pertaining to energy usage. Byersdorfer commented that this project appears to be more of an industrial use versus business park use.

Allen Bartelt - 4042 151st St W Rosemount, MN

Bartelt recalled the contaminated soil growing up in Rosemount, and stated that the soil needs further studying and testing.

Sharon Brown - 4425 Summer Ct Eagan, MN

Brown expressed concern for further testing of the soil.

Marla Lindner - 15615 Eddy Creek Way Apple Valley, MN

Lindner expressed concern about soil contamination of heavy metals and EMF radiation impacts on human health. She had concerns regarding data and information privacy.

Michael Pekarik - 13572 Dellwood Way Rosemount, MN

Pekarik asked about other hypothetical options versus the project being proposed, and whether it would be approved. He expressed disapproval of the project and concerns about data privacy.

A five-minute recess was held at 8:35 pm. The meeting resumed at 8:40 pm.

Lorraine Ufken - 3454 Crumpet Path Rosemount, MN

Ufken asked for an example of another place in Dakota County that is structured and fenced like the proposed project. She stated there should be an independent study of the land because of pollution

issues and concerns. Ufken expressed disapproval of the project.

Kathy Pritchard - 15703 Crystal Path Rosemount, MN

Pritchard presented the findings of the ex-parte communications reports filed for the state of Minnesota. She didn't understand why the variances were needed or why there was a nondisclosure agreement for the project.

Julie Barner - 9836 Alaureate Ct Inver Grove Heights, MN

Barner asked who the data center would serve and expressed concern about 15-minute cities and neighborhoods, providing an analogy to Oxford, England.

Susan Ferrozzo - 1646 240th St W Farmington, MN

Ferrozzo asked if city staff and commissioners knew what 50 decibels sounds like. She also expressed concerns about community representation.

Kayla Hauser - 14569 Dahomey Ave W Rosemount, MN

On the record, Hauser stated "On October 12th, the Star Tribune reported that they would like to not only add to our community's development, but the PUC on Thursday unanimously accepted power agreements between Xcel Energy and Meta. The contract included a discounted rate and contributions from Meta to fund Xcel's diversity and equity inclusion program." She asked if Rosemount residents would get discounted rates from Xcel since a big corporation is getting a discounted rate. Hauser asked how this project would help the youth and the next generation. She expressed concern for soil pollution and asked what those steps are for reparation and mitigation in the case of natural disasters.

Erik Martin - 15702 Crystal Path Rosemount, MN

Martin stated that the project should not be approved just because it went through consultants who reviewed related documents, such as the AUAR. He expressed concern about air pollutant emissions, tax increases, and involved parties.

Todd Blackwood - 14146 Ailesbury Ave Rosemount, MN

Blackwood stated how Rosemount has a small-town feel, and that the project would take away from that. He personally addressed Commissioner Whitman about how this project would benefit the community and his family.

Raul Estrada - 8302 143rd St W Apple Valley, MN

Estrada stated that the UMore Park land has been in turmoil with the Dakota tribes in relation to legal ownership of the land. He said that the public hearing seems to be more of a courtesy, with everything decided already, with a lack of transparency. Estrada expressed concerns about the affordable housing that will accompany following the development of the project.

Kim Zottneck - 801 Golden Meadow Rd Eagan, MN

Zottneck asked why data centers are being built in the county, how the EMF radiation would impact human health, and stated that this project seems to be going forward regardless of what the public say.

Jennifer Timmerman - 13848 Belmont Trl Rosemount, MN

Timmerman stated she attended the open house and appreciated the city's effort in communicating with residents of Rosemount. She approved of the project and thought it would be a good extension by

the DCTC campus along highway 42.

Maria Petrinko - 2219 24th Ave S Minneapolis, MN

Petrinko stated that if the decision was already made before the people decide, they would receive a presentment from the grand jury for violating the trust of the people.

Jane Jensen - 16135 Gauntlet Ct W Lakeville, MN

Jensen asked where the city of Rosemount falls regarding the need for funding and if that is a deciding factor for the development of this site. She asked what say or right the city has in this transaction, what steps and legal options citizens could take in this process to have further discussion, and if there are bonuses for the University of Minnesota.

The public hearing was closed for comments.

Motion by Kenninger Second by Reed

Motion to close the public hearing

Ayes: 6.

Nays: None. Motion Carried.

Commissioner Comments:

Chair Kenninger asked for clarification on water supply, water usage, and the water tower. Senior Planner Nemcek deferred to Public Works Director Egger. Egger explained that the water system layout is within a chapter of the comprehensive plan, which is updated every ten years. This property was forecasted for the intense water usage required by the project, and a water tower was planned for that intersection already. The development would result in the platting necessary to dedicate the portion of land for a water tower. Egger clarified that the water usage was intended for business park land use and there would not be a well on that lot.

Chair Kenninger asked Senior Planner Nemcek to speak about the variances allowed for this project. Nemcek stated that the variances were allowed with further conditions set by city staff, and that they work with various property owners to conform to the city code on a case-by-case basis. Chair Kenninger asked what governing bodies oversee the validity of testing for things such as soil pollution. Nemcek answered that the remediation study of UMore Park was supervised under the Minnesota Pollution Control Agency (MNPCA). The property is to be developed on a small portion of UMore Park which has shown no pollution.

Chair Kenninger asked about the EMF radiation impacts as it correlates to the site. Xcel Energy representative Andre stated there was a third party consultant that executed the environmental assessment of UMore Park; the assessment and information about EMF radiation can be found attached to their permit approval earlier this year. Andre shared that the Public Utilities Commission (PUC) is the governing body appointed by the governor to protect the physical safety of residents, finding insufficient evidence of negative side effects on humans from the level of exposure per the project. The safety standards are adhered to and enforced on a federal level.

Chair Kenninger asked Senior Planner Nemcek and Community Development Director Kienberger how the planning process worked for this project compared to other projects and the timing of the project. Nemcek replied that the planning process for the proposed project is similar to other projects approved

and built in the past, such as the Home Depot distribution facility. Kienberger noted the articles published in the city newsletter that inform and provide information explaining the planning process, and why certain projects are confidential. Senior Planner Nemcek stated how the city follows Minnesota state statutes with regard to the timeline of approving a project, and that the project is consistent with other project timelines. City Administrator Martin verified that steps have been taken by city staff that go above and beyond engaging with the public than what is required and typical for other projects.

Chair Kenninger asked what the next steps are in the planning process for this project for public knowledge. Senior Planner Nemcek said the project will go to City Council at its next meeting, in which the action is the official approval to move forward with closing the ownership deal of the property and further permit applications. Commissioner Reed asked if there were back-up power plans. Kimley Horn Representative Sieh answered there are a few backup generators, in which no air permit by the state will most likely occur due to the insignificant number of generators. Sieh stated the other mechanical and cooling equipment is used within the buildings, as a dry cooling system, resulting in a lower water usage than expected.

Chair Kenninger asked for clarification between the project being intended as business park use and not industrial use. Senior Planner Nemcek stated that low buildings with physically internal operations and office space designate the project as business park use, and not for industrial use. Chair Kenninger asked what rights the city has pertaining to this proposed project. City Attorney Sathe stated it is the Planning Commission's role to compare this proposal to the standards that have been established by the City Council for this type of project as it pertains to land use standards.

Commissioner Whitman stated that it is not feasible for every response to be put in writing to the first speaker who requested it earlier in the audience input portion. Whitman asked if the City Council approves this project, is it going to be supported by written findings or include written findings? Senior Planner Nemcek clarified that written findings are typically used for a denial of an application and deferred to the City Attorney. City Attorney Sathe clarified that a finding would state that the project meets the established criteria and standards for approval, or whether it isn't for denial.

Chair Kenninger asked for clarification on affordable housing within the city. Senior Planner Nemcek answered that there are a few income-restricted housing in Rosemount, which is not Section 8 housing, but the majority of multi-tenant projects are market-rate housing.

Commissioner Whitman asked if the city has authority to impose a condition for renewable energy on this project. Senior Planner Nemcek answered that the city code does not have a requirement for that. Kimley Horn representative Sieh answered that the company has strong sustainable goals and the project will be offset by renewable energy in other areas. Commissioner Thiagarajan asked if the project is seeking any certification, such as LEED. Sieh answered that those are guidelines for the company for building, but they will not seek the current certification.

Commissioner Rivera asked what the protocol would be if the Planning Commission decided to put a pause on approving the project application. Senior Planner Nemcek answered that if more research into the project or studies needed to be done, then a motion to do so before final approval would be acted upon. Community Development Director Kienberger deferred to the City Attorney. City Attorney Sathe reiterated that the type of information gathered if there was a pause on approval, would have to be related to the authority making decisions the Planning Commission has pertaining to land use. Sathe

stated that there should be a particular item that is questionable to a commission member.

Commissioner Whitman pointed out that the latest AUAR will remain valid from its adoption date, which has passed. Whitman questioned the validity and reliability of the AUAR since the 2023 one is not yet adopted. Senior Planner Nemcek stated the 2023 AUAR is in process. Since the last update, the development has been consistent with the scenarios of the 2018 AUAR, and in the city staff's opinion, the 2018 AUAR is still valid. Nemcek noted that the AUAR already anticipated business park use in the northeast region of UMore Park, thus this project is consistent with the AUAR. Commissioner Reed asked if a condition could be put on as part of the approval of the project, requiring that the AUAR legal process is met before final approval. Nemcek said it could be added for AUAR review before approval, and if a condition was added, it would be put into the plat approval. Community Development Director Kienberger suggested the option to add verbiage of verification of the applicability of the current AUAR to this project, which is regularly done by other Planning Commissions and City Councils. Kienberger stated staff's recommendation to have conformance with the AUAR by the time City Council reviews the application. Chair Kenninger asked if the verification of the AUAR document could be done before the next City Council meeting. Kienberger said that cannot be answered right now, but it would be something City Council would have to consider in their approval of the project. Commissioner Reed recommended to Chair Kenninger and Community Development Director Keinberger to add a condition to the approval of the AUAR validation.

Motion by Kenninger Second by Reed

Motion to recommend the City Council approve the ROSEMOUNT TECHNOLOGY ADDITION preliminary and final plats subject to:

1. Approval of a subdivision agreement.
2. Payment of a fee in-lieu of park land dedication in the amount of \$2,252,500.
3. Payment of all required development fees contained in the subdivision agreement.
4. The plat shall be updated to dedicate a drainage and utility easement over Wetland 471 and its associated buffer.
5. Conservation easements shall be dedicated over the two onsite wetlands and their buffer areas.
6. The plat shall be updated to rename Lot 1 Block 2 in the northwest corner of the plat as an outlet.
7. The applicability of the existing AUAR shall be verified before any action is taken by the Council.

Ayes: 6.

Nays: None. Motion Carried.

Motion by Kenninger Second by Reed

Motion to recommend the City Council approve the Final Site and Building Plan for the Project Bigfoot Planned Unit Development, subject to:

1. Approval of the ROSEMOUNT TECHNOLOGY ADDITION preliminary and final plats.
2. Submittal of a landscaping surety of \$204,930, to be released following one year of survival.
3. Payment of \$920,000 in-lieu of replacement trees.

4. Temporary parking and contractor lay down areas shall be restored and landscaped following construction.
5. The temporary construction access from County Road 42 shall be removed, and the right of way restored, following construction.
6. The landscape plan shall be updated to include a foundation planting schedule that meets the minimum requirements of the city code.
7. A sign permit application shall be submitted prior to the installation of any onsite signage.
8. Conformance with the requirements of the City Engineer contained within the memo dated November 22, 2023.
9. Conformance with the requirements of the Fire Marshal contained within the memo dated November 21, 2023.

Ayes: 6.

Nays: None. Motion Carried.

NEW BUSINESS

None.

DISCUSSION

Chair Kenninger stated the next meetings on Monday, December 18th, and in 2024: Tuesday, January 23rd, and Monday, February 26th.

ADJOURNMENT

There being no further business to come before the Planning Commission, the meeting was adjourned at 10:16 p.m.

Respectfully submitted,

Alysha Grant
Community Development Technician