STAFF REPORT

DATE: 07/27/2023

TO: Bel Aire City Council
FROM: Jay Cook
RE: Agenda

STAFF COMMUNICATION

FOR MEETING OF	8/1/2023
CITY COUNCIL	
INFORMATION ONLY	

SUMMARY:

ZON-23-01. **Proposed re-zoning approximately 63+ acres zoned Agricultural District (AG) to Planned Unit Development - Industrial District (M-1). The current use is farm ground.**

General location:

- Southeast corner of Hwy 254 and Rock Rd. (Location Map included)

Applicant/Agent:

- Property Owner: Webb254, LLC, Steve Barrett (Managing Member)
- Agent: Phil Meyer, Baughman Company, PA

Background Information:

- A zone change has been requested from the Agricultural District (AG) to the Planned Unit Development – Industrial District (M-1)
- The Planned Unit Development - Industrial District (M-1) is intended to encourage innovation in commercial and industrial development, through designs allowing for a more efficient use of land, incorporation of new technologies in urban land development, and incorporation of a greater variety and flexibility in type, design, and layout of structures.
- Use Regulations. No building, structure, land, or premises shall be used, and no building or structure shall hereafter be erected, constructed, reconstructed, moved or altered except in conformance with those uses provided for below.
    - Permitted uses: The following uses shall be permitted by right in the Planned Unit Development - Industrial District (M-1), subject to all applicable development and performance standards:
        - Commercial office and retail uses pursuant to a Planned Unit Development.
        - Manufacturing and industrial uses pursuant to a Planned Unit Development.
- The subject property is currently undeveloped. The agent of the applicant stated that the platting and PUD process was the next step assuming the zoning change was approved.
- A zoning exhibit, identifying the zoning designations of surrounding properties is attached for reference.
- The Planning Commission held the required public hearing for the zone change request on July 13, 2023.

    - Prior to the public hearing, staff was contacted by 3 individuals via email that were in support of the zoning change. Staff was also given a written communication from a member of the Heritage Hills Subdivision titled "Alternative Proposed Findings of Fact for 7/13/23 Planning Commission Meeting" that spoke in contrast to the findings of fact provided by staff.
    - During the public hearing, several individuals spoke both in favor and in opposition to the zoning change.
        - Those in favor, spoke to the history of the property, the opportunity to bring jobs into Bel Aire, and to encourage the growth of the City from a residential community to a full-service community with diverse city services.
        - Those opposed to the zoning change, spoke with concerns of traffic, property values, zoning without a buffer, noise pollution, and the underdevelopment of Rock Rd. as it exists currently.
- Following the public hearing, the Planning Commission considered several factors and adopted the Staff's recommended findings, added some of its own and voted unanimously to recommend that the City Council approve the requested zone change.

Legal Considerations:

- All conditions precedent to the Council's consideration of this requested zone change have been satisfied, including notification of surrounding properties in accordance with State law.
- Rezoning a specific tract of land is a quasi-judicial proceeding and disclosure of *ex parte* communications is recommended.
- A protest petition was filed with the City Clerk within the Statutory 14-day protest period following the public hearing which changes the voting threshold of the Council for approval, and Staff has found the petition to be sufficient to require a 75% approval requirement for the City Council.
- In accordance with State Law and Bel Aire City Code, the Council may take one of the following actions when considering adoption of the requested zone change (with the protest petition filed).
    - Adopt the recommendation of the Planning Commission and approve the zone change by a three-fourths vote (5 votes).
    - Override the recommendation of the Planning Commission by two-thirds majority vote (4 votes) and disapprove the zone change. IF this option is selected, the City Council must adopt findings of fact in support of the motion.
    - Return the recommendation to the Planning Commission with a statement specifying the basis for the Council's failure to approve or disapprove (4 votes).

Findings of Fact

The following are the rezoning factors the Planning Commission considered, a brief explanation of each factor, and staff's opinion on findings for each factor. For each factor, the additional findings of the Planning Commission are indicated in red.

1. **CHARACTER OF THE NEIGHBORHOOD:** *(Factual description of the application area and surrounding property as to land usage, density, intensity, general condition, etc.)*

a. The subject property is on the north edge of the current City limits and development area.
b. The subject property is the last piece of four lots between Rock and Webb Rd, which other three (3) parcels have already been zoned M-1 for commercial/industrial purposes.
c. Currently, the neighborhood is characterized by agricultural, institutional, commercial, industrial, mixed-use, and residential multi-family but is a good prospect for large mixed-use due to its peripheral location in the City limits.
d. The subject property is a logical placement for an Industrial PUD due to its proximity to a major highway (Hwy 254) and the arterial Rock Rd.
e. Property is AG but has always been intended for M-1 since its acquisition.
f. Understanding the degrees of difference in zoning, U.S. 254 and neighboring M-1 zoning needs to be taken into account.
g. This factor marginally favors rezoning even when acknowledging the low density housing to the west.

2. **ZONING AND USES OF PROPERTIES NEARBY:** *(Factual description of surrounding property as to existing zoning and land uses.)*

Direction/Area	Zoning Classification(s)	Land Use(s)
North/Sedgwick County	Agriculture County zoning	Farming/Ranch Use
South/Bel Aire	C-1 "Neighborhood commercial, office and retail, R-3 "Single-family residential" R-5 "Garden and patio homes, townhouses and condominiums"	Apartments, office, condos, Northeast Magnet School
East/Bel Aire	M-1 "Planned Unit Development – Industrial"	Vacant
West Northwest/Kechi	R-1 "Single-family residential", C-3 "Heavy commercial", I-1 "Industrial"	Single-family, Northpoint Centre Commercial, KDOT

3. **SUITABILITY OF THE SUBJECT PROPERTY FOR THE USES TO WHICH IT HAS BEEN RESTRICTED:** *(How is the property currently zoned and what uses are allowed on the property? Are there uses suitable given surrounding zoning and site criteria? Are the current allowed uses the only ones that might be appropriate for the property?*

a. The property is currently zoned Agricultural District (AG) which is intended to maintain and enhance agricultural operations and preserve agricultural lands utilized for crop production or the raising of livestock.
b. The "holding zone" for newly annexed land in the City is Agricultural and this parcel has been given that zoning classification since annexation.

c. While the subject property continues to be suitable for AG zoning, the opportunity for development through a PUD or other zoning classification would provide development opportunities and growth opportunities for the city.
d. In the Jobs Focus Scenario of Bel Aire growth delineated in the Master Growth Plan adopted by the City, the area between Rock and Webb along Hwy 254 was planned with the potential for large-scale mixed use or commercial.
e. The subject property is proximate to existing development, has suitable topography for development, and is located in an area where infrastructure and services are available to be extended to support development.
f. The subject property is a logical placement for an Industrial PUD due to its proximity to a major highway (Hwy 254) and the arterial Rock Rd.
g. Given the history of the City's purchase, it was always expected and known this will be commercial property.
h. This factor strongly favors rezoning and should be weighted heavily.

4. **EXTENT TO WHICH REMOVAL OF THE RESTRICTIONS WILL DETRIMENTALLY AFFECT NEARBY PROPERTY:** *[Can the uses allowed in the requested district by good neighbors to existing development?* ***This is a subjective question.*** *The focus should be on facts, not fears, and should be based on issues that zoning can address (e.g., allowed uses, minimum lot sizes, height, setbacks, traffic, etc.)*

a. The proposed planned development is located along the Hwy 254 corridor where such uses are likely and beneficial. Site development standards such as screening and landscaping requirements will mitigate detrimental effects from planned development on nearby residential or other uses, both required or proposed.
b. Traffic generation will be likely with the zoning change, but studies and engineering are currently underway along Hwy 254, Rock Rd., and Webb Rd. to mitigate negative impact of added traffic to surrounding developments and to ensure the safest, most effective route to any other development.
c. The Planned Unit Development - Industrial District (M-1) requires a screening and buffering plan per the Zoning Regulations that will benefit properties west and south of the subject property. The PUD also gives staff the opportunity to review plats and plans before any building commences to ensure other properties are not negatively affected by the development.
d. This factor strongly favors the zoning change. Traffic concerns can be addressed in the PUD process.

5. **LENGTH OF TIME THE SUBJECT PROPERTY HAS REMAINED VACANT AS ZONED:** *(Factual information, but its importance may be somewhat subjective. A property may be vacant because the current zoning is unsuitable, but there may be other reasons not related to zoning. Some examples might be a glut of available property of the same zoning district, financing problems, land speculation, fragmented ownership, lack of available public services, or other development problems.)*

a. The property is currently vacant and has been so since annexed in 2003.
b. Strongly favors rezoning. AG was a "placeholder" in this case, although this should not be weighted as heavy as other factors in this case.

6. **RELATIVE GAIN TO THE PUBLIC HEALTH, SAFETY, AND WELFARE BY DESTRUCTION OF VALUE OF THE APPLICANT'S PROPERTY AS COMPARED TO THE HARDSHIP ON OTHER INDIVIDUAL LANDOWNERS:** *(The protection of public health, safety, and welfare is the primary basis for zoning. The relationship between the property owner's right to use and obtain value from their property and the City's responsibility to its citizens should be weighed.)*

   a. The proposed rezoning to a PUD will be developed in accordance with the City's development standards that will mitigate any potential hazards to the public health, safety, and welfare.
   b. If successfully developed into an industrial project, the City will gain a significant number of local, high-paying jobs which will attract additional residents and promote surrounding development of other commercial, retail, and residential development. The result is potentially a material increase in the tax base, city services, and quality of life in the City.
   c. Staff cannot anticipate the effects on property values. If developed, surrounding property values may increase significantly from the economic activity. Decrease of property values for residential property immediately adjacent to an industrial site is also possible.
   d. If the zone change is disapproved, the value of the applicant's property will presumably be diminished because the PUD request will not be allowed.
   e. This factor strongly favors the change and is very important to the future of the City.

7. **CONFORMANCE WITH THE COMPREHENSIVE PLAN:** *(Does the request agree with the adopted plan recommendations? If not, is the plan out-of-date or are there mitigating circumstances which speak to the nonconformity?)*

   a. While the Comprehensive Development plan is somewhat dated (not reflecting surrounding property subsequently zoned M-1 PUD), the vision map adopted by the Governing Body in 2014 nonetheless has the subject property as a potential commercial zone with surrounding mixed use. Increasing the intensity level of the subject property to M-1 PUD would not be unreasonable or create burden for other possible development trends of the City.
   b. The following are aspects of the Comprehensive Development plan that support the zoning change.
   c. Goal 1: Land should be developed within the corporate boundaries which continue the high quality of life for the citizens of Bel Aire and to produce efficient and effective delivery of public services to the growing community.
      Objective 1: Encourage congruent land uses that are compatible and developed in a lowest-impact method to adjacent properties.
         Recommendation b. Focus higher-impact developments on the peripheral of the city.
   d. Goal 4: The City must support economic development and diversification to ensure a stable and healthy financial growing community supports the development through the subsequent objectives:
      Objective 2: Maximize revenue generated from developments which will provide the most return for the investment and land use.
         Recommendation b. Ensure location of development is planned in an orderly process (a PUD would ensure this type of development)

Recommendation c. Ensure zoning and building policies reflects progression of development.

Objective 3: Move from sole residential community to a full-service community with diverse city services. The inclusion of possible large-scale development would encourage the development of other services (i.e., desirable businesses to follow).

e. This favors approval, although commercial (set forth in the Plan) is not exactly industrial. The concerns in degree change can be addressed with PUD.

8. **PROPERTY OWNER OPINIONS:** *The opinions of other property owners may be considered as one element of a decision in regard to the amendment associated with a single property, however, a decision either in support of or against any such rezoning may not be based upon a plebiscite of the neighbors.*

   a. An initial public hearing held prematurely on May 11, 2023 produced some public opinion (mostly residences west of Rock Road) opposed to the rezoning. Cited concerns included traffic, safety, lighting and property values. Subsequently, a protest petition from some property owners was filed on May 24, 2023 which addresses some of the factors differently than staff. The Planning Commission has been provided a copy of this petition.
   b. While residential property owners on the west side of Rock Road have offered opposition, staff believes most concerns can be properly addressed in the Planned Unit Development and Site Plan review.
   c. This factor is marginal and could lean either way. The residential property owner's opinion is recognized to be mostly opposed, but concerns are outweighed by other factors.

9. **RECOMMENDATION OF PROFESSIONAL STAFF:** *[Should be based on the evidence presented, the factors, adopted plans and policies, and other technical reports (e.g., Capital Improvement Programs, facility master plans, etc.) which speak to the topic and staff's best professional judgement.]*

   a. Based on the preceding findings, staff recommends approval of the zone change request.
   b. Professional staff has a history of doing the right thing as the development stage occurs with PUD and other planning.
   c. The Infrastructure concern (particularly traffic) is marginal but still favors zone change.

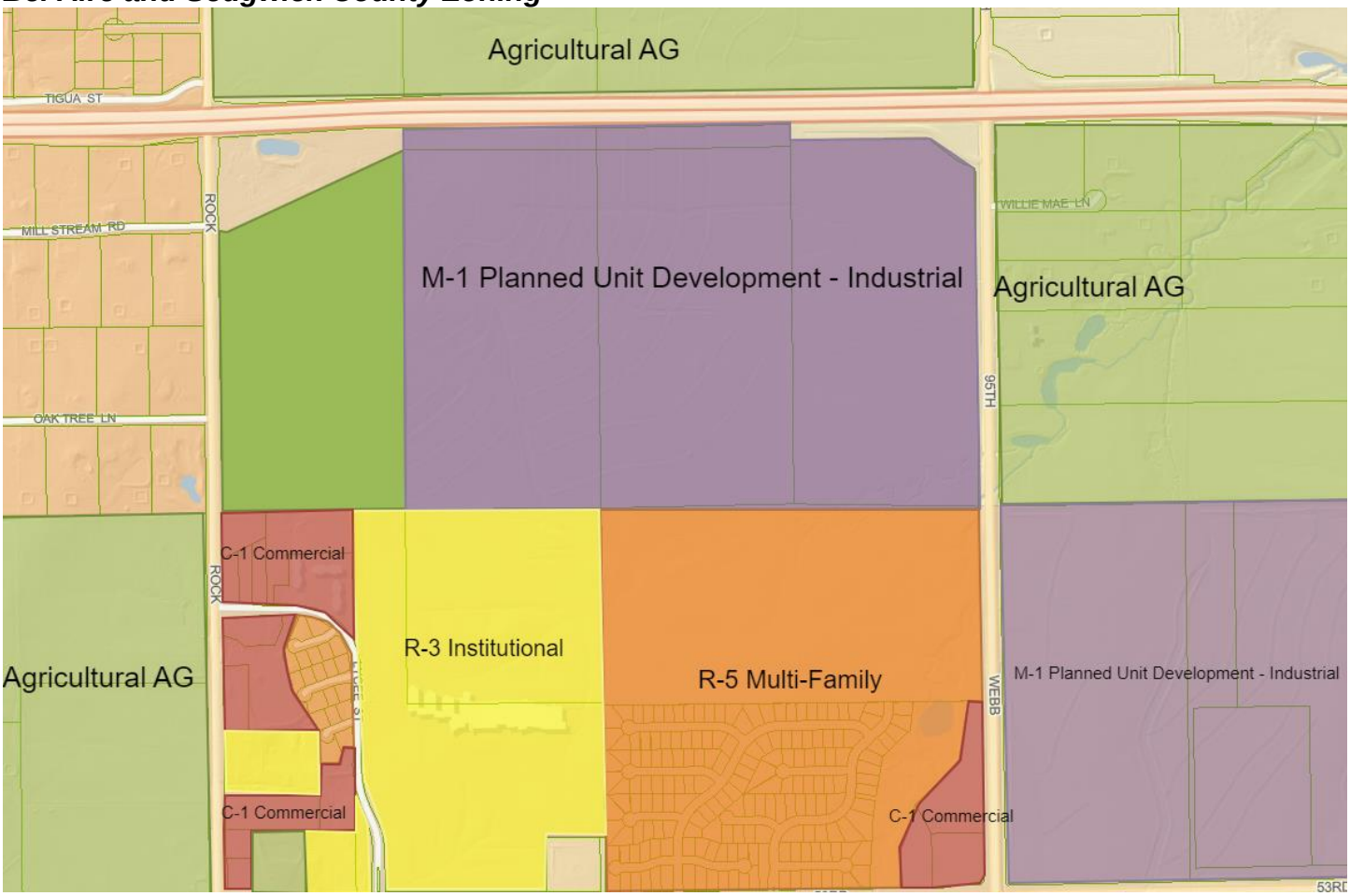
Recommended Motion:

- Adopt an ordinance changing the zoning of the subject property from Agricultural District (AG) to Planned Unit Development - Industrial District (M-1) based on the Planning Commission's findings of fact.

Included

- *Zoning exhibit, identifying the surrounding properties in Bel Aire, Sedgwick County, and Kechi*

Bel Aire and Sedgwick County Zoning



Kechi Zoning