



Legislation Text

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File #: 21-0168, Version: 1

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**CITY COUNCIL AGENDA ITEM**

**ACTION REQUESTED:**

Concur with staff's recommendation and deny petitioner's requests for: (1) rezoning the subject property from I District to OCI District; (2) a Preliminary Plat of Subdivision; (3) a conditional use for a PUD and Preliminary PUD Plat; (4) conditional uses for retail, restaurants, residential, and two hotels; and (5) various deviations, for CityGate West (PZC 20-1-022)

OR

Concur with the petitioner and pass the ordinance for: (1) rezoning the subject property from I District to OCI District, (2) a Preliminary Plat of Subdivision; (3) a conditional use for a PUD and Preliminary PUD Plat; (4) conditional uses for retail, restaurants, residential, and two hotels; and (5) various deviations, for CityGate West (PZC 20-1-022)

**DEPARTMENT:** Transportation, Engineering and Development

**SUBMITTED BY:** Allison Laff, AICP, Deputy Director; Pat Lord, Senior Assistant City Attorney

**BOARD/COMMISSION REVIEW:**

The Planning and Zoning Commission considered PZC 20-1-022 on November 18, 2020 and December 16, 2020 and voted to recommend approval of the requested entitlements other than the hotel proposed on Lot 11, subject to the conditions recommended (approved 9-0).

**BACKGROUND:**

The subject property consists of approximately 60.226 acres at the southwest corner of IL Route 59 and Ferry Road. The property is currently zoned I (Industrial District) and consists largely of vacant land, as well as the vacant Odyssey Fun World building. Inter-Continental Real Estate & Development Corporation (Petitioner) proposes CityGate West (CGW), a development that includes: seven restaurant sites; two multi-tenant retail sites; 19 acres of open space; two 5-story mixed-use buildings with a combined total of 410 residential units; one medical office building; and two hotels (one on Lot 11 and one on Lot 15).

The petitioner's requested approvals for CGW are detailed in the attached (see List of Requested Entitlements).

**DISCUSSION:**

**Summary of Staff's Recommendation for Denial**

As of January 26, 2021, staff was recommending approval of PZC 21-1-022 except for the limited service hotel proposed on Lot 11, and subject to the conditions recommended by the PZC.

Just prior to publication of the agenda, staff received an email from the petitioner's attorney advising that it is his clients' position that they do not support the rezoning of the subject property unless the hotel on Lot 11 is included in the approval as originally petitioned (email attached).

Furthermore, PZC agreed with the condition proposed by staff which required future phasing approvals necessary to ensure a mixed-use outcome for the project. The petitioner's attorney also advised on January 27, 2021 that they are opposed to the inclusion of the phasing condition.

**Based on these issues (summarized above, and further described below), staff has had to change its position and now recommends denial of the CGW petition.**

**1. Limited Service Hotel on Lot 11**

- Based on the proposed hotel square footage and lack of any banquet space, the hotel proposed on Lot 11 does not meet the intent or definition of a full-service hotel and is more appropriately defined as a limited service hotel.
- Petitioner's attempt to rely on off-site amenities (Top Golf & Whirlyball) located outside of the subject PUD to satisfy the full-service requirements of the proposed hotel is not acceptable.
  - o To allow the approach suggested by petitioner, (namely that since Top Golf and Whirlyball are located close by, they should be allowed to be counted toward CGW PUD amenities required by the Code) will negate the intent of the Code.
  - o If the City allows the CGW development to count off-site amenities as part of the components required by the City Code for their development, other petitioners will likely seek the same accommodation for their developments. Such an approach will significantly dilute Code requirements and is specifically inconsistent with the intent of the full-service hotel policy established by the City Council in the early 2000s. Staff receives many requests for new limited service hotels throughout the City and consistently notes no support for them based on their inability to meet the zoning requirements.
- The PZC recommended approval of PZC 20-1-022 except for the limited service hotel on Lot 11 (vote 9-0). One Commissioner (Commissioner Bansal) noted support for the hotel on Lot 11 but joined the unanimous vote for approval of the project minus the hotel on Lot 11.

**2. Attempting to Ensure a Mixed-Use Development**

Since submittal of the CGW project, staff has requested additional detailed information to ensure that the proposed CGW development will be constructed and maintained as a mixed-use development, including the overall phasing for the project.

- o Because the petitioner has indicated that this level of detail cannot be provided at this time, staff developed extensive conditions to permit a detailed future review and approval process once this information is available. The Conditions originally proposed in the Ordinance make it more likely that the development, as presented to the City by CGW, will be achieved. Such an approach is not atypical; significant conditions were also imposed in conjunction with City approvals for complicated developments such as Naperville Crossings, Atwater, and Heritage Place.
- Staff's support for the proposed residential phase was contingent on the development of the

CGW campus as a mixed-use development. Staff's primary concern has been that the residential phase will be built first, and then due to changing market conditions and/or financial limitations, the proposed retail, restaurant, and hotel/banquet component will not be built.

- On January 26, 2021, the petitioner's attorney first confirmed to staff that the residential phase will likely go first and that it will take at least 5 years to complete.
- On January 26, the petitioner's attorney indicated that his clients do not support the proposed Condition F/Phasing requirements. In response, staff drafted alternate language removing a required phasing plan and proposing instead that:
  - (1) The residential phase be built concurrently with another phase of the project, or
  - (2) A non-residential phase be built prior to issuance of an occupancy permit for the residential phase.
- The petitioner rejected this alternate language for Condition F on January 27, 2021 and noted that staff's concerns are unfounded for the following reasons:
  - (1) there are non-residential uses contained on Lot 4 in addition to the proposed 410 residential units,
  - (2) Top Golf and WhirlyBall are integral to the CGW development, and
  - (3) the petitioner's proposed timing of construction should resolve the City's concerns regarding phasing.
- **Staff disagrees the petitioner's changes to Condition F of the Ordinance:**
  - The two apartment buildings include a total of 850,278 square feet, of which 28,880 square feet is allocated to non-residential uses (as denoted on the residential building calculations). In addition to being a relatively small amount of space for retail and/or office, these spaces may be difficult to fill without a larger commercial draw on surrounding phases.
  - As noted above, Top Golf and WhirlyBall are independent businesses that not included within the CGW PUD.
  - In Condition F as proposed by staff, and the alternate proposed language for Condition F, (both rejected by the petitioner), staff was attempting to incorporate a means for the City to review and approve project phasing to encourage a mixed-use outcome. The timing provisions requested by petitioner (which are actually more generous than the timeframes required by Code and are the subject of a requested deviation by the Petitioner) are already included in Conditions G and H and do not need to be repeated in Condition F; moreover, they offer the City no protection with respect to phasing of the project.
    - If petitioner does not, or is unable to, proceed with the development within the required timeframes (or at all), the City's only viable recourse will be to revoke the remainder of the PUD.

If a revocation occurs, this could conceivably leave the City with a 410-unit apartment complex and no other mixed use on the site (other than first floor uses described above).

Furthermore, the property would then default to the OCI zoning and would not be bound by any of conditions or provisions set forth in the CGW ordinance.

***Naperville School District 204's Objection***

School District 204 objects to the residential component of the CGW development. Further, School District 204 is currently seeking a text amendment to update the District 204 donation tables which will be brought to the City Council in early 2021. The School District has submitted a letter outlining the basis for their objection and indicating why a negotiated settlement as proposed by the petitioner is not acceptable.

**Conclusion**

For the reasons noted above, staff recommends denial of CGW as requested by the petitioner.

***Related Files***

N/A

**FISCAL IMPACT:**

N/A