Rochester Hills

Minutes

Planning Commission

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Chairperson William Boswell, Vice Chairperson Deborah Brnabic
Members: Gerard Dettloff, Julie Granthen, Greg Hooper, Nicholas O. Kaltsounis,
David A. Reece, C. Neall Schroeder, Emmet Yukon

Tuesday, March 24, 2015 | **7:00 PM** | **1000 Rochester Hills Drive**

CALL TO ORDER

Chairperson William Boswell called the Special Meeting to order at 7:00 p.m. in the Auditorium.

ROLL CALL

Present 9 - William Boswell, Deborah Brnabic, Gerard Dettloff, Julie Granthen, Greg Hooper, Nicholas Kaltsounis, David Reece, C. Neall Schroeder and Emmet Yukon

Quorum present.

Also present: Ed Anzek, Director of Planning & Economic Dev.
John Staran, City Attorney
Maureen Gentry, Recording Secretary

Chairperson Boswell outlined the procedure for the Public Hearing, and noted that Mr. Staran was present to answer any questions. He welcomed new Commissioner Julie Granthen.

COMMUNICATIONS

A) Email from J. Morris, dated 3/18/15 re: Oil and Gas Ordinance
B) Email from P. Barker, dated 2/11/15 re: Oil and Gas Ordinance
C) Email from A. Gilson, dated 3/24/15 re: Oil and Gas Ordinance
D) Planning & Zoning News dated January 2015

UNFINISHED BUSINESS

2015-0097 Request for Recommendation - An Ordinance to add new Article VI Pipelines to existing Chapter 94, Street, Sidewalks and Certain Other Public Places to the Code of Ordinances of the City of Rochester Hills, Oakland County, Michigan to regulate the construction and permitting of pipelines in the City, repeal conflicting or inconsistent Ordinances and prescribe a penalty for violations.

2014-0146 Public Hearing and request for Recommendation - An Ordinance to amend Section 138-4.300, Table of Permitted Uses by District; add new Section 138-4.425; and re-number existing Sections 138-4.425 through 138-4.445 of Chapter 138, Zoning, of the Code of Ordinances of the City of Rochester Hills, Oakland County Michigan to regulate oil and gas wells, repeal conflicting or inconsistent Ordinances and prescribe a penalty for violations.

(Reference: Memo prepared by Ed Anzek, dated March 17, 2015 and draft Ordinances had been placed on file and by reference became part of the record thereof.)

Mr. Anzek provided an overview of what the Commissioners needed to accomplish and a summary of the revised Ordinances. He advised that City Council had extended the six-month moratorium for oil and gas drilling. The meeting was scheduled and noticed as a Public Hearing, and everyone that had previously spoken was sent a notice. If the Commission was agreeable to recommending adoption of the proposed Ordinances, the matter would be moved as quickly as possible to a City Council meeting. There would be a first and second reading at Council, and the Ordinance would go into effect seven days after the second reading.

Mr. Anzek reminded that the Oil and Gas Ordinance was an amendment to the Zoning Ordinance, and the Planning Commission oversaw the Zoning Ordinance. The Pipelines Ordinance was in a different chapter of the codified Ordinance, and it would not be under the Planning Commission's purview to enforce, but Council requested that the Planning Commission review and provide recommendation regarding that Ordinance.

Mr. Anzek went over the main points of the revised Ordinance:

- *The Ordinance will restrict oil and gas wells to Industrial Zoning as a permitted use. It clarifies that processing, storage and refining are conditional uses in the Industrial district.*

- *The setback (or distance from) for oil and gas wells has been increased to 1,000 feet from residential dwellings, places of worship, schools, hospitals, child care center and public parks. The Ordinance expressly states that this does not restrict or prohibit underground horizontal or directional drilling, which is what Auburn Hills has in its Ordinance.*

·In addition to providing a copy of the EIA that the well owner/operator files with the MDEQ, the owner/operator must provide the City with a hydro-geological study and must install at least one groundwater monitoring well and must provide the City with test sample results. This is consistent with the new Supervisor of Wells Instruction.

·The perimeter fence must be at least six feet high.

·All operations must be conducted in accordance with MDEQ's "best practices" in regard to odor, dust, noise, and nuisance control.

·Exterior lighting must be shielded and comply with Zoning Ordinance exterior lighting standards.

·The well owner/operator must conform to the Performance Standards in the Zoning Ordinance regarding dust, odors, noise, etc.

·Completed well head structure is limited to 22" in height.

·Measures or controls must be satisfactory to the City Engineer regarding drainage, run-off or discharge of hazardous materials. No off-site discharge of stormwater is allowed except to an approved drainage system.

·All brine, mud, wastewater, chemicals and waste must be properly disposed of to prevent infiltration or damage to any water wells, wetlands and watercourses.

·Injection wells are prohibited.

·The site must be kept in a clean and orderly condition.

·Landscaping to limit public view must be provided in accordance with the City's landscape and screening requirements. A Type E buffer must be provided.

·The City Engineer must approve roads and routes for trucks and equipment traffic.

·The well owner/operator must provide emergency contact information and an emergency response plan.

·Hydraulic fracturing ("fracking") is prohibited.

Mr. Anzek showed a map which represented areas that were 1,000 feet from residential, schools, places of worship, day care centers and parks, and there were virtually no areas in the northern half of the City that met those criteria. The Industrial areas had red hatch marks, and the white marks under the red hatch marks were permitted zones where drilling could occur. He showed an MDEQ composite map with their standards that prohibited drilling. He noted that the City had no jurisdiction over Oakland University. The former Suburban Softball site would be permitted, but it was a landfill. The City had accepted some Industrial areas, but the MDEQ standards regarding private and public occupied structures in the Industrial Parks would limit activity there.

Chairperson Boswell referred to page five, item three, the last sentence and read, "The owner or operator shall provide the results of the sample analysis to the City Engineer within seven days after the results are available." He asked why they would have seven days. He commented that he gave blood regularly, and several doctors got the results as soon as it was available. He questioned why the City could not get the results simultaneously - when the owner/operator got it.

Mr. Staran agreed that was a good point. When he drafted the Ordinance, his intention was to have seven days as the outside parameter. He thought it could be revised to say "as soon as possible or within seven days at the latest." Chairperson Boswell felt that two days or even 24 hours would be more than enough time. It seemed a little odd to him that the operator could sit on it for seven days. If there was bad news, the City would want to know right away. Mr. Staran said that it would not be a problem to shorten that timeline.

Chairperson Boswell referred to the same page, item six which read, "Measures shall be implemented at the oil and gas well site to prevent and control any objectionable dust, noise, etc." He observed that if those things were prevented, they would be under control. If they were not prevented, then they would have to be controlled. Mr. Staran suggested that the "and" could be changed to an "or." He knew that the preference would be to prevent something, recognizing that in some cases, given the nature of the operation, there would be some noise or dust that was not entirely preventable, but they would want it to be controlled to the extent feasible.

Chairperson Boswell mentioned page six, number seven and noted that the word "shall" was missing. He read that it should state "Exterior lighting shall be shielded." Regarding the Pipelines Ordinance, page three, item (3) b., he pointed out that the lettering should be corrected to replace the c., d. and e. with numbering, to which Mr. Staran agreed.

Chairperson Boswell noted page five (g) (1) and said that "digital file format" should be in parentheses. On page eight at the bottom, he added that utility casements should be changed to utility easements.

Mr. Hooper referred to the Pipelines Ordinance, page five, f (10), and read, "At least ten (10) days prior to the commencement of any Pipeline Construction, the Pipeline Operator shall give written, mailed notification to all residents, tenants and property owners located adjacent to the proposed Pipeline." He asked how they would define adjacent. He asked if it was similar to a 300-foot mailing from a property that the City did for other projects.

Mr. Anzek responded that it would be similar to a notice for a Tree Removal Permit, and people that abutted the boundary line would be notified. Mr. Staran agreed, and said that if they wanted it farther, it could be modified to say that. Mr. Hooper suggested notifying people within 300 feet. Mr. Anzek said that would not be a problem, and Mr. Staran said that he would change the wording.

Mr. Hooper referred to the Oil and Gas Ordinance. He pointed out items 4. and 15., which he thought said the same thing. He felt that they could drop 4. and keep 15., which was a little more extensive. Mr. Staran suggested that they could be consolidated.

Mr. Hooper said that in comparing a sister city's Ordinance, he observed that it required a cash bond. It read, "No drilling, completion or operation of oil and gas wells or other wells drilling for oil or exploration shall occur until the operator provides the City with a cash bond in the amount of $250,000.00 per well to cover potential damage to roads and City property and to ensure site restoration. Such bonds shall be placed with a bonding company." He believed that meant a paper bond, not a cash bond, which was totally different. He asked about adding that to the City's Ordinance.

Mr. Staran said that a $250k cash bond would probably be considered unreasonable. The reason he did not add it to the Ordinance was that unlike the sister city's Ordinance, whereby a permit was actually issued for

oil and gas drilling, the proposed Ordinance had requirements that an oil and gas developer would have to comply with, but there was no separate City permit required, other than they would need to go through Site Plan Approval. Since there was no permit required, and recognizing that the MDEQ already required a $250k blanket bond from anyone getting an oil and gas drilling permit from them, he did not add it to the Ordinance. They did not have a bond requirement for any other use permitted in the Industrial district, and he wanted to be consistent. Mr. Hooper asked if the insurance provision would have the same answer, which Mr. Staran confirmed. He added that he was not aware of any land use in the City where someone was required to submit insurance.

Mr. Hooper recalled that the possibility of raising fines had been discussed. There was a civil fine in the nominal amount of $500 in the Ordinance, and he asked if they could allow for anything different. Mr. Staran advised that the Home Rule Cities Act had set $500 since 1928. The City was bound by that, and the City's Charter said $500 was the maximum. Because the Oil and Gas Ordinance would be part of the Zoning Ordinance, the Zoning Ordinance provided that each and every day a violation continued, it was considered a separate offense. Someone could be cited on multiple occasions. For serious violations, it had been the City's policy not just to issue a ticket, but rather to proceed to Circuit Court to seek the appropriate injunction order to stop the violation.

Mr. Hooper noted that sister cities required a 12-foot tall buffer versus the City's Type E Buffer. Mr. Anzek explained that would be a six-foot fence or wall, and they usually did a dense green wall with landscaping. The operators would probably want a fence for security. If the drilling was for three weeks, it would be hard for shrubbery to grow. Mr. Hooper asked if the intent of the Type E Buffer was for the final restoration of the well head. Mr. Anzek said that the purpose was to create a setback for the operation from any adjacent activity. There would be a 50-foot wide buffer and a six-foot wall or hedge of trees. Mr. Hooper said that a Type E Buffer was an eight-foot high opaque screen at three years after planting. He asked about the equipment still on site after a well head was installed, noting it could be taller, and he suggested that they needed something taller than a Type E screen. Mr. Hooper considered that if the finished product was 12 feet tall, that they would only be putting in an eight-foot tall screen. Mr. Anzek noted that there were many contractors around town with taller equipment with six-foot fences for screening. If a processing operation was going to be somewhere for a while, it would require a Conditional Use Permit, and the Planning Commission could deal with the screening at

that time on a case-by-case basis. Mr. Hooper summarized that item 5. would require an eight-foot height.

Mr. Hooper commented that compared to when they started the process toward an Ordinance, it had come a long way. Many things had changed in law and case law along the path, and other communities had done different things. The proposed Ordinance was an amalgamation of the knowledge they had gleaned over the last year-and-a-half to get the best possible Ordinance they could that was defensible and that would not put the City at risk to be sued.

Mr. Kaltsounis noted that in the Pipelines Ordinance, Section 94-205 on page six, there was language about emergency response plans and reporting. In the Oil and Gas Ordinance, there was a smaller section that talked generally about what to do. He thought they would want the language that was in the Pipelines Ordinance also in the Oil and Gas Ordinance. In that Ordinance, page seven, it said, "The owner or operator shall provide to the City's emergency responders any information necessary to assist the City's emergency responders with an emergency response plan and hazardous materials survey establishing written procedures to minimize any possible hazard resulting from the operation, and shall further provide the emergency responders with a means to contact a responsible representative of the owner or operator on a twenty-four (24) hour basis." He felt that there was more "meat on the skeleton" in this section. Mr. Staran agreed that could be copied over.

Mr. Kaltsounis asked if there was anything in the Ordinance that would require the operator to let the City know what had happened during the DEQ's review of a site. If the DEQ came in and did not like certain things and wrote the company up, he wondered if the City would be notified of that. He clarified that if there was a site sliding in the wrong direction, the City should not be surprised.

Mr. Staran replied that the City would be notified directly by the State of any permitting applications or activities. He felt that the City would prefer to get that notice from the DEQ rather than the applicant. Mr. Kaltsounis asked if permitting activities meant someone would be drilling or if it would include that someone was at a site for five years, and the MDEQ found that a problem arose. He wondered about the overall condition of a site as the State visited it.

Mr. Anzek said that he could not recall if the new rules from the SOW would automatically require that notification, but he was confident that if

there was an active well, the City would have a close relationship with the MDEQ. He suggested that the City could put something in the Ordinance about getting notified by the MDEQ. Mr. Kaltsounis said that he would like the City to get that type of information if there were problems at a site. Mr. Anzek said that typically, if there was a spill or any type of detriment, the City would be notified. Mr. Kaltsounis said that he was not really talking about spills, because he felt that was covered in the Pipelines Ordinance under 94-205. He would like to know about basic, daily operations, such as not having two people on site or having something missing or paperwork not being in order.

Mr. Staran asked what the City would do with that information. He advised that the State was responsible for overseeing the operation of the well. They had the team of certified geologists, which the City did not have. The City was not responsible for permitting or oversight. He wondered what the City would do that the State would not. He said that it had been part of the problem from the get go with developing the Ordinance. City Hall did not have the resources or expertise to mimic what the MDEQ did. That was why State and Federal law had put those agencies in charge of oversight. The City was trying to focus on the initial siting and trying to protect the neighborhoods and way of life. If there should be a well, but he observed in looking at the map that the chances appeared to be fairly remote, the MDEQ should do its job as they had with over 60,000 wells in the State over the last 80 years. State regulations required the City to submit all kinds of records and reports that just went into some file cabinet in Lansing, and he was cautioning about creating a paperwork bureaucracy or false expectations for the residents that the City ultimately was on the job and able to oversee things. The City would have to create an oil and gas department and staff it with geologists. Mr. Kaltsounis did not feel that it would have to go that far; it was more about knowing if there were 20 incidents the State reported. He agreed that the State should be on top of it. Mr. Staran stated that if a company was violating a State permit or law, there were ramifications. Mr. Anzek felt that the City would be close bystanders. He reminded that the City had three code enforcement officers who routinely patrolled the City, and they could easily put it on a daily check.

Ms. Brnabic referred to item 15. of the Oil and Gas Ordinance. She noticed that in the new SOW Instructions, page three, number two that a timeframe was included. She read, "A permittee shall communicate with the local fire marshal and emergency responders to explain and describe the timing, sequence and critical points at the drilling operation at least seven days before moving a drilling rig to the well location and on an

as-needed basis during drilling operations, and shall provide the fire marshal and emergency responders with a means to contact a representative of the permittee on a 24-hour basis." She wondered if that would be a good addition to the proposed Ordinance.

Mr. Staran said that he had not attempted to mimic everything that was in the State regulations. He remarked that if he did, the Ordinance would be 150 pages long. That requirement was in the SOW Instruction, so it was the law. They could put it in the local Ordinance, but he did not think it would enhance it. It was something that the MDEQ would require, whether they said it in the City's Ordinance or not.

Ms. Brnabic indicated that they had included some of the new SOW Instruction, but since the proposed Ordinance would restrict gas and oil wells to Industrial zoning as a permitted use, it seemed as if the City might not meet the conditions in the SOW Instruction. It said that the high population density site meant an oil and gas well location where all the following conditions existed, and b. stated that the well location was zoned exclusively for residential use by the local zoning authority at the time a permit application was received by the MDEQ. They had used a lot of the SOW Instruction, but she questioned if the City would qualify now that the Ordinance as proposed would restrict as and oil wells to Industrial zoning. It would not be for areas zoned exclusively residential.

Mr. Staran said that was a good point. Key to the proposed Ordinance was to make sure that the well sites would not occur within residential. That was the most important thing in the proposed Ordinance for the Planning Commission to deliberate.

Ms. Brnabic agreed, but if they were referring to the new SOW Instruction, then because of the statement that "all of the following conditions had to exist for a high density area to qualify," she questioned whether the City would when it referred only to Industrial zoning.

Mr. Staran could see what Ms. Brnabic was talking about. It defined some terms, and used those terms, but it was not self limiting to only high population density sites. The Instruction would apply to any oil and gas development in high population density areas. Ms. Brnabic said that the City would be considered a high population density area, but she did not think all the conditions existed in the City that were in the SOW Instruction. She said that she was not requesting that anything be changed; she just had a question about whether the City had to follow all the conditions.

Mr. Staran said that some of the things in the Instructions were things that the MDEQ derived from its review of local Ordinances and its deliberations and conversations over the past six months, or since they had done a deep dive into the matter. They were things the City was already working on when the SOW Instruction came out. He put the proposed Ordinance together, and he tried to mimic some of the language. He was not necessarily pulling the idea from the Instruction. He thought that from a legal perspective that it made some sense to the extent that they were working on the same concept to try to utilize and mimic what the State was doing, which was usually a good idea when it came to enforcement or legal interpretation. He was not suggesting that what was in the proposed Ordinance was deriving the authority to do that from the SOW Instruction. He was suggesting that what they were doing was consistent with what the State was also doing.

Mr. Reece asked for a clarification or change to the Pipelines Ordinance on page two, Section 94-201, item e. He read in part, "The Pipeline Operator shall backfill all trenches and compact such trenches to ninety five percent (95%) standard density proctor in eight inch (8") lifts." In Section 94-202, General Regulations (page 4 (b)), it referred to five inch lifts. He believed they should both say eight-inch, which was the standard.

Mr. Hooper stated that Ms. Brnabic was spot on with her points. He asked if they could state in the Oil and Gas Ordinance that "All requirements in the SOW Instructions 1-2015 shall apply to any well siting in Rochester Hills." If the SOW Instruction was trying to define high density residential and it only applied there, the City would be saying that anything the Instruction stated shall apply to any well siting in Rochester Hills. He asked if that was legally defensible. It would take care of what Ms. Brnabic had brought up as far as the conditions in the Instruction.

Mr. Staran said that he would look at it to see if there was something that did not or should not fit, but otherwise, subject to that review, he felt that what Mr. Hooper suggested could be done.

Ms. Brnabic referred to page five (3) of the Oil and Gas Ordinance and the interpretation of drilling completion. She wondered if it meant when a well had reached its permitted depth or if it meant when the drilling had stopped.

Mr. Staran said that it was beyond drilling. It meant that the well was no

longer in operation, and it was time to cap and abandon it. The word completion was used throughout the State regulations. Ms. Brnabic noted that there could be a rather long time span for a well to be in operation, and Mr. Staran agreed it could be 25 years. Ms. Brnabic asked if they would only require water sample testing prior to commencement of drilling. She realized that three to six months following drilling completion, another sample would be required, but she questioned the time in between if the operation went 10 or 15 years, and why another water sample was not being required during all that time. She asked if they should think about requiring something in between, since they did not know how long a well would be active.

Mr. Staran understood the question, and he said that they were talking about two different things. However, if it was confusing to Ms. Brnabic, it would probably be confusing to other people, and they might have to work with the language. When it talked about completion in paragraph two, it meant that the operation was done, and all the oil and gas had been extracted, and it was time to cap the well. In paragraph three, they were talking about the commencement of drilling operations and the completion of drilling. That would happen within a three to four week period, not 20 or 30 years. Ms. Brnabic clarified that it was when it reached a permitted depth. Mr. Staran added that they were trying to get baseline information upfront and after the drilling and periodically afterwards, so they could monitor whether there were any issues resulting from an operation. He said that he would look at the language to make it clearer.

Hearing no further discussion from the Commissioners at this point, Chairperson Boswell opened the Public Hearing at 7:55 p.m. He asked that any comments be directed to him, and related that after the Public Hearing, questions would be answered.

Lee Zendel, 1575 Dutton Rd., Rochester Hills, MI 48306 *Mr. Zendel said that before the City had a single hauler situation, the waste haulers had to get an annual license. Part of that involved filing quarterly reports with regards to tonnage and what happened, etc. Back then, he would occasionally FOIA those reports. It turned out that quite often, the reports were neatly filed, but they did not notice if they had them all. There were major haulers that had gone nine months without filing anything. The question was not just about getting a report, but having someone do something with it. The Oil and Gas Ordinance required an Environmental Impact Statement. He asked who would get it and what would be done with it, if anything. It was the same story with the report required for water*

sampling six months later. He indicated that apparently, for the first time in Michigan history, the MDEQ did not properly supervise the cementing of the well through the water table, and there would be a report. He read, "The owner or operator shall provide the results of the sample within seven days after the results are available." He remarked that it was shutting the barn door after the horse was gone. The City would say one thing, and the State of Michigan would be more stringent. The City said, "shall install at least one groundwater monitoring well," but he did not think that would do it, because they did not know which way the water would gradually go. The MDEQ wanted three water wells in the ground. He referred to paragraph six and asked what was wrong with stating that "All operations shall be conducted in accordance with the best practices determined by the MDEQ." He asked why they needed the other part of the sentence (for the production of oil, gas and hydrocarbons in urban and residential areas). Under item 14 he read in part, "No drilling rigs, construction vehicles, tanker trucks, etc. shall be moved over the public roads and streets under the City jurisdiction." He asked if all roads in the City were under its jurisdiction.

Mr. Staran advised that there were County and State roads, which were under other agencies. The City only had authority to control roads under its jurisdiction to the extent that this type of traffic would be allowed on State or County roads. Most likely, State and County roads were not where they would have a problem, and that was where they would expect that type of traffic. They would be more concerned with the local roads. Mr. Zendel said that the Ordinance talked about tanker trucks. He asked if that meant trucks carrying crude oil. He recalled that Councilman Tisdel mentioned that there were 22 gas stations in the City getting tanker trucks full of gasoline all the time. He asked if that would restrict them. Mr. Staran said that he would answer after the Public Hearing, as Chairperson Boswell had requested.

Mr. Zendel said that the Chair was quite right at the start of the meeting when he mentioned certain words. Mr. Zendel noted that there were four words in front of the Supreme Court of the United States, and he stated that words mattered. He concluded that he did not know if the City Engineer knew anything about chemistry.

Scot Beaton, 655 Bolinger St., Rochester Hills, MI 48307 *Mr. Beaton said that Mr. Hooper already did an excellent job of answering some of his questions regarding bonding and insurance. He asked if the fox was watching the henhouse, and if the applicant would be the one delivering the pre-study of the property. He thought it might be smarter if they had*

some kind of mechanism where an outside professional agency surveyed the site first (which the applicant would pay for). The consultant might say that the industrial property was already polluted. He thought that an independent service might be more appropriate. He asked the mechanism, if they were stuck in 20 years with an undevelopable brownfield, for instance, and the ground was contaminated, to get a property cleaned. The City would be stuck with a property it could not sell. He asked if they could put something in the Ordinance to guarantee that the property they got back would be in the same shape as when the well started.

Philip Barker, 1434 Burhaven, Rochester Hills, MI 48306 *Mr. Barker thanked the Planning Commission for taking up the challenge of putting together the Ordinance. He knew there were a lot of things to consider, and a couple of things had stood out with the process over the last year-and-a-half. He asked what type of notification citizens would receive from the City when a permit had been applied for, and if there would be a public notification after the MDEQ received a permit application. Regarding water testing, he believed that it should be done at least annually, not just at inception. If a permit was issued, and it was likely to be the horizontal style, he felt that there should be directional water testing also done annually, based on the direction of the drilling, in quarter-mile increments away from the well head site. Regarding bonding, he liked the idea of a cash bond versus a paper bond. He thought that a $250k cash bond was something the City should seriously look at before issuing a permit. He felt that there should be at least a daily fine, and the City should also look at the fines for industrial-type activities and consider a graduated method based on the type of violation. He did not like the idea of a cyclone fence with slats. He thought something more attractive to mask activity would behoove the City. As a City with Home Rule, there was the right to make Ordinances for anything that happened after the well site. That meant things like having a Pipelines Ordinance. One thing he saw lacking in the Ordinances that needed to be addressed down the road was a gas and oil processing plant Ordinance. Other cities that had introduced this type of industry had specific Ordinances for the processing plant operations, such as above ground petroleum storage tank Ordinances or a hazmat business plan. If there was an accidental release, he wondered what type of Ordinance would be in place for that. He wondered how to prevent accidental releases from happening. He mentioned a hazardous waste generator Ordinance and some sort of incident response plan the City needed to have on a City-wide basis for the industry. He suggested an industrial safety Ordinance, which the City might already have, and some sort of community warning system in the*

event of a catastrophe. He thought they should have the ability to have unannounced inspections of the processing plant. There should be Ordinances for underground storage tanks for the processing facilities. He noticed that in some of the cities that had those in place, there were many air monitoring devices around the cities to alert residents in the event of a catastrophic release of carcinogenic air born material that could affect the residents.

Izzy Khapoya, 729 McGill Dr., Rochester Hills, MI 48309 *Ms. Khapoya noted that the presentation showed where drilling could not happen and areas where it could occur but were not conducive because of landfills, but she questioned where drilling could occur. She said that the 1,000 buffer would not apply to horizontal drilling, and she claimed that the Auburn Hills Ordinance had something about that, and she wondered why Rochester Hills did not. She claimed that if the horizontal was not limited, it could possibly go into residential areas. She asked if an operator could approach Oakland University and get a deal going with them. She felt that the question Mr. Kaltsounis had raised was very valid. She said that it was happening in their backyards, and to just leave it up to the State, unless something catastrophic happened, was not responsible. She thought that in other states, the agencies that had been involved had not done a very good job, and that those states had been suffering with water pollution and so on. If there was a well dug, she wondered how the City could just let the State do the job of monitoring. She indicated that they might not do a good job, and the City needed to police things and demand that standards be raised to the extent that the City was not open to a catastrophe. She reiterated that Mr. Kaltsounis' question was very valid, and that it needed to be addressed in a wider sense than just putting a report in a file and forgetting about it. She thought that monitoring the water quality once a year was absolutely not enough. If she had the powers, she would have it monitored monthly, and she suggested that it could be required every three months. People who had a background in science knew that once water was polluted, it would be impossible to clean it. A year was not often enough, in her opinion.*

Chairperson Boswell closed the Public Hearing at 8:12 p.m. He asked Mr. Anzek to address Ms. Khapoya's questions.

Mr. Anzek advised that regarding where an operator could drill, based on the Ordinance and the map, it was the white areas underneath the red hatch marks. Those were Industrially-zoned districts where the Ordinance permitted drilling. It would be up to the operator to find suitable land to make the drilling occur. He pointed out that there were not many places in the City, and most sites were developed. Regarding horizontal drilling,

he understood that if an operator was restricted to a surface site, the operator had a right to get to the oil.

Mr. Staran said that was correct. He believed there was an inaccurate statement about horizontal drilling. The Rochester Hills Ordinance read identically to Auburn Hills', and Auburn Hills did not regulate horizontal directional drilling. He actually lifted the language word for word out of the Auburn Hills Ordinance in that regard.

Mr. Staran advised that Oakland University was a State institution on State land, and the City had zero regulatory authority over the school. If an oil exploration company wanted to locate there, it would have to deal with OU and the State.

Mr. Anzek said that in response to Mr. Zendel's question about tanker trucks, the proposed Ordinance did tie it to the operation of oil and gas drilling. Mr. Staran agreed that the Ordinance did not apply to gasoline tanker trucks that came and went every day through the week. It only related to the tankers that serviced oil drilling sites.

Mr. Anzek noted that Mr. Beaton raised a good question as to a site that was already contaminated. Mr. Anzek felt that was the whole purpose of establishing a baseline. They would discover what was at the site up front and how it progressed or digressed. Mr. Staran said that Mr. Beaton's question also related to who did the study, and Mr. Staran said that for virtually all the requirements in the City, whether it was a tree study, an environmental assessment study, water or traffic study, the City always relied on the applicant to provide the information. It was then reviewed by the City's consultants. That was how it was done at the State level also. The City did not do studies for applicants. Mr. Anzek added that the work would have to be signed and sealed by a certified professional.

Chairperson Boswell advised that the City had a wetland consultant, for example, to check out and confirm natural features on a site. Mr. Beaton had asked if the City should have a brownfield consultant. If an applicant came to the City with a brownfield assessment of a property, Chairperson Boswell asked who verified that. Mr. Anzek said that it would ASTI. Mr. Wackerman, the President of ASTI, had done a very thorough job for the City for the past 14 years and had tracked and monitored ground water migration for several brownfield sites in the City. Mr. Staran said that the MDEQ's team of geologists would also monitor.

Mr. Anzek said that regarding notification, for the issuance of drilling and

since a permit would not be issued, there would be no formal action by the City. Regarding a processing plant, it would require a Conditional Use Permit, which would require property owners within 300 feet to be notified of a meeting.

Mr. Staran said that Mr. Barker raised a good point. Anyone who had paid attention over the last year or so knew that one of the paramount concerns from the residents was about the notice to residents and how to make that happen. The way the Ordinance was currently drafted, since there was no permit required by the City, there would be no standard notification procedure. That did not mean that the City, as a matter of policy or executive order, could not have some type of protocol to notify residents when something arose, whether it was reports submitted, or an application to drill or about noncompliance. The City could look at that and to what extent the Planning Commission wanted to roll that into the Ordinance would be something to be deliberated.

Mr. Kaltsounis asked about the process to obtain a well in order to gain mineral rights, and if that would be a way to notify the residents. Mr. Staran clarified that he meant when the oil company was approaching residents. He said that the City did not necessarily know about that, unless the company also came to the City to seek rights. It was a private transaction between the oil company and the residents. Leases had to be in place before anyone applied for a permit from the State. Mr. Kaltsounis mentioned the 1,000 foot buffer. Mr. Staran said that was just for the drilling site. The drilling unit was different. It could be much larger, and a company would have to secure all the mineral rights from all the property owners within that proposed unit.

Mr. Hooper mentioned the suggestion about adding that "all of the requirements in the SOW I-2015 shall apply to any well siting in Rochester Hills." In the SOW Instruction, it stated that the permit applicant shall provide notice to all owners of record of any public or private structures within ¼ mile of a proposed well location seven days prior to submitting a permit application, which he stated was notification. Mr. Anzek agreed, and said it was a greater distance than required with a Conditional Use request. Mr. Staran said that was a good idea to add, and he said that it was a little different than what Mr. Kaltsounis was asking. He was asking about the very beginning when a company was trying to get lease interest. That was a point before the point that the SOW Instruction was talking about, but they did want to get reasonable advance notice to the residents that lived nearby and might be affected.

Mr. Kaltsounis said that when he looked at the map that showed where drilling could occur, even with a 1,000 foot buffer, it showed that he lived within a mile of most of the drilling areas in the City. Coming into the process, he was concerned, and he had a lot of questions. He talked with Mr. Staran. The Commission had a meeting with the MDEQ, although he could not be there, but he became well educated by reading and listening to the Minutes. He thought that the process they had gone through on a technical level was very thorough, and he was happy with the results of the Ordinances. He moved the following motion, seconded by Mr. Schroeder. He added: "with corrections per the meeting of March 24, 2015" to the motion.

***MOTION** by Kalatsounis, seconded by Schroeder, the Rochester Hills Planning Commission hereby recommends that City Council adopts an Ordinance to amend Section 138-4.300, Table of Permitted Uses by District; add new section 138-4.425; and re-number existing sections 138-4.425 through 138-4.445 of Chapter 138, Zoning, of the Code of Ordinances of the City of Rochester Hills, Oakland County, Michigan to regulate oil and gas wells, with corrections per the meeting of March 24, 2015, to repeal conflicting or inconsistent Ordinances and prescribe a penalty for violations.*

Chairperson Boswell wondered if they were asking for enough changes to warrant the Ordinances coming back to the Commission for another review before it was sent to Council. There were several things with different verbiage they had requested to be added. He asked the Commissioners if they wanted to see the Ordinances again.

Mr. Staran went over the changes he had noted. He said that if the Commissioners were satisfied that he could make the changes, they might not need to see it again. Water testing was changed to be required every six months until the well was capped, and Mr. Schroeder confirmed that the reports would come directly from the MDEQ.

Mr. Reece thought that they had come a long way, and they had studied the Ordinances thoroughly and for a long period of time. He felt that there were enough substantial changes that they owed it to themselves and to the residents to take one last review and then send it on to Council. He did not think they needed another Public Hearing, but just one last look before moving it forward.

Mr. Dettloff asked if that had to be done at a meeting or if it could be reviewed independently. Mr. Staran advised that it would have to be done

at a meeting. Mr. Dettloff thought that Mr. Staran had picked up all the comments from the Commissioners. Mr. Anzek said that there was a Special Planning Commission meeting scheduled for April 7, 2015, and they could bring the matter back then. He advised that as soon as the changes were submitted, the Ordinance would be posted on the website so residents could look at it.

Mr. Kaltsounis withdrew his motion, agreed to by Mr. Schroeder, and moved the following:

***MOTION** by Kaltsounis, seconded by Schroeder, that the Rochester Hills Planning Commission hereby tables the request for consideration of the Oil and Gas and Pipelines Ordinance Recommendations until the April 7, 2015 meeting to review the requested corrections.*

Voice Vote:

Ayes: All
Nays: None
Absent: None ***MOTION CARRIED***

Chairperson Boswell stated for the record that the motion had passed unanimously.

ANY OTHER BUSINESS

Chairperson Boswell asked about the Harvard Place project at School and John R, noting that they had leveled all the trees, but it was just sitting. Mr. Anzek acknowledged that they did not work through the winter, but they were now going forward fairly quickly with infrastructure.

NEXT MEETING DATE

Chairperson Boswell reminded the Commissioners that the next Special Meeting was scheduled for April 7, 2015.

ADJOURNMENT

Hearing no further business to come before the Planning Commission, and upon motion by Mr. Kaltsounis, Chairperson Boswell adjourned the Special Meeting at 8:43 p.m.

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William F. Boswell, Chairperson
Rochester HIlls Planning Commission

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Nicholas O. Kaltsounis, Secretary