# Rochester Hills

## Minutes

## Planning Commission

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

**Tuesday, October 14, 2014** | **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** 8 - William Boswell, Deborah Brnabic, Gerard Dettloff, Dale Hetrick, Greg Hooper, Nicholas Kaltsounis, C. Neall Schroeder and Emmet Yukon

**Absent** 1 - David Reece

Quorum present.

Also present: Ed Anzek, Director of Planning and Econ. Dev.
Sara Roediger, Manager of Planning
John Staran, City Attorney
Maureen Gentry, Recording Secretary

## APPROVAL OF MINUTES

**2014-0415** September 16, 2014 Special Meeting and September 16, 2014 Regular Meeting

**A motion was made by Schroeder, seconded by Hetrick, that this matter be Approved as Presented. The motion carried by the following vote:**

**Aye** 8 - Boswell, Brnabic, Dettloff, Hetrick, Hooper, Kaltsounis, Schroeder and Yukon

**Absent** 1 - Reece

## COMMUNICATIONS

A) Planning & Zoning News (2) dated July and August 2014
B) Oakland Press Article dated Oct. 14, 2014 re: Oil & Gas Ord.
C) Copy of power point presentation re: Oil & Gas Ordinances

## NEW BUSINESS

**2014-0146** Public Hearing and request for Recommendation - An Ordinance to 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.

**2014-0368** Public Hearing and request for Recommendation - An Ordinance to add new Article VI Pipelines to existing Chapter 94, Streets, Sidewalks, and Certain Other Public Places, of 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.

*(Reference: Memo prepared by Ed Anzek, dated October 10, 2014 and draft Ordinances had been placed on file and by reference became part of the record thereof.).*

*Chairperson Boswell announced that if anyone wished to speak at the Public Hearings, that a card should be filled out and turned in to the Recording Secretary, but he advised that once the Public Hearings started, he would not accept any more cards. He noted that litigation was in process, which he stated was not for this discussion and was off limits. The matter of the park leases was not part of the agenda; there would be a discussion about two Ordinances and how people felt about them. He hoped that people would be civil, and he commented that it would be very easy to give an opinion without attacking anyone's character.*

*Mr. Anzek advised that for about a year, the City Council had been dealing with oil and gas concerns from residents. Jordan Development had been seeking leases throughout the northwest part of the City, primarily along the Tienken corridor. Some residents were not in support of that program and had made their opinions known. After many discussions, Council directed Mr. Staran to draft proposed Ordinances for consideration. Mr. Anzek advised that oil and gas exploration was regulated by the MDEQ, and that the City had numerous meetings with them. Mr. Staran had done some comparative analysis and prepared two draft Ordinances - one regulating oil and gas wells and one for pipelines. At the August 25, 2014 City Council meeting, Council passed a moratorium on any oil and gas pursuits in the City. There was a Senate Bill 1026 recently introduced in Lansing, which was associated with oil and gas exploration. That Bill gave a little more strength and power to local communities to control oil and gas exploration. Council referred the Ordinances to the Planning Commission to review and make a*

*recommendation, which Mr. Staran would discuss further.*

*Mr. Staran stated that currently, the City did not regulate oil and gas wells or drilling, but it did regulate the processing end of it. On the other hand, the State of Michigan very extensively regulated all of the oil and gas exploration and development processes. The question the Commission would begin to grapple with was to what extent could and should the City, at the local level, attempt to enhance the State regulations. In 1990, there was a Michigan Supreme Court decision that arose out of Addison Township, which talked about a township's attempt to regulate oil and gas drilling. In that particular case, the Court held that townships were totally pre-empted from regulating oil and gas drilling under the Zoning Enabling Act. At the same time, the Court left the door open due to some technical difference in the language in the Act as it pertained to cities and villages - it left the door open for them to regulate. In 1994, the Natural Resources Environmental Protection Act (NREPA) was enacted. It was a comprehensive State law which consolidated most, if not all, of the State's environmental regulations. The significance of that was that it gave authority over oil exploration and development to the Supervisor of Wells at the Michigan Department of Environmental Quality (MDEQ). After NREPA, there was another court decision out of Alcona County in 1998, which struck down a County's effort to require a soil excavation permit pursuant to a Soil Excavation Ordinance and apply it to a proposed oil well site. In that case, the Michigan Court of Appeals said it could not be done. Under NREPA, the State Supervisor of Wells had exclusive and complete jurisdiction over oil drilling and exploration. He noted that case was really the last reported appellate court decision on the topic, although there had been some unreported litigation and a few things in the circuit courts.*

*Mr. Staran commented that local governments, including Auburn Hills and Rochester, were all over the board about this matter. It ranged from no regulation whatsoever in many municipalities, including Rochester Hills, to the other extreme, as in Ann Arbor, which totally prohibited oil wells. They had to recognize that if they did conflict with State law, there could be very serious consequences. The Planning Commission was well aware of State law pre-emption, the principals of exclusionary zoning and the takings law. When people were deprived of a property or constitutional right and the court later found in favor for them, the City could face significant and substantial damages. He had tried to develop Ordinances which did not conflict with State law, but which did, to a lawful degree, attempt to deal with the incidental and nuisance aspects of oil exploration, which had unnerved a lot of people and had been a source of*

*great concern. The real challenge was in finding out how far they could go with that, and the Planning Commission had been tasked with coming up with local regulations that could be recommended to the City Council.*

*Mr. Staran advised that he was directed by Council to prepare Ordinances for consideration, and he had done two things. He prepared an Oil and Gas Ordinance, which pertained to oil and gas wells, and that would be a Zoning Ordinance amendment. He had also drafted a Pipelines Ordinance, which dealt with the pipelines that would be constructed in connection with an oil and gas well, which would then transmit the crude oil or gas to a processing facility. The Ordinances were drafted based on his review of the law, and also on trying to be consistent with State law. He had reviewed sample Ordinances from other communities.*

*Mr. Staran clarified that the proposed Zoning Ordinance amendment would try to control the nuisance and incidental aspects of an oil drilling operation while trying to stay within the bounds of what State law permitted. The most significant thing about the Ordinance was that it would get the City involved in the process. Currently, without an Ordinance, the City was basically just an observer to what the MDEQ might do through its oversight and regulation process, for which the City now had no say. Regarding local oversight, anything proposed in the City would have to comply with applicable Federal and State laws, just like any other land use in the City. There were some dimensional requirements for setbacks: 300 feet from a road right-of-way and non-residential buildings; 450 feet from residential buildings; and 330 feet from an adjoining property line. The 450 feet from residential buildings was something he was sure would be brought up during public comments, but it was straight out of State law for populations over 70,000. In some other communities, such as Auburn Hills, they had boosted that to 1,000 feet. There had been a proposed House Bill by Representative Barnett out of Farmington Hills which sought to amend that law to make it a 1,000-foot setback on a statewide basis, but it never made it out of committee.*

*Mr. Staran related that one thing that had been brought up by the public at City Council meetings was the lack of any type of baseline assessment or environmental reporting. There was a concern that the City would not know what impact those operations would have on the City. They did not know what the current conditions were with regards to natural features and wetlands and how they might be impacted. The Ordinance would require that all the environmental information prepared for submitting a permit application to the MDEQ would need to be provided to the City at the*

*same time. The Ordinance would require sites to be completely enclosed with a fence. It would require measures to prevent dust and fumes and odors. It would apply the performance standards that were in the Zoning Ordinance and make them applicable to oil and gas drilling operations. It would apply the City's exterior lighting standards, which required the shielding to be downward, and that light could not spill onto adjoining properties. There would be height restrictions for each zoning district, which the exception of the temporary drilling rigs. He had been told that there were six to ten of those in the State, and they moved around. They were about 100 feet tall, and they were temporarily out for the initial drilling, which was about a three-week process. There would be a requirement that the City Engineer had to be satisfied with run-off controls and discharge, not only to adjoining properties, but also into the watercourses and sewers. A site had to be kept in a clean and orderly condition. It would also give the City Engineer some authority to control truck routes. There would be a Type E buffer required. Storage or processing operations on the well site, restricted to industrial areas in the City by Ordinance now, would be prohibited.*

*Mr. Staran next referred to the proposed Pipelines Ordinance. He explained that it was not a Zoning Ordinance amendment, but a proposed regulatory Ordinance. It was not something that the Planning Commission would ordinarily weigh in on and it did not require a Public Hearing, but it ran hand in hand with the oil and gas regulations. The Ordinance would regulate the flow and gathering lines. There were a lot of pipelines in the City, and there was clear Federal and State law pre-emption when it came to interstate transmission pipelines. The City had several of those through it already, which were regulated by the Federal government only. The City or the State had no say over those. There were also intrastate pipelines, where product was transferred through pipes from one point to another as part of commerce. They were regulated exclusively by the Michigan Public Service Commission. Mr. Staran was talking about pipelines associated with any oil or gas well site, where the crude oil or natural gas from the well site would be moved to the processing facility or to one of the inter or intrastate pipelines. The City had the authority to regulate those within reason. He pointed out the definitional section and the engineering requirements designed. The Pipelines Ordinance would involve the City Engineer quite a bit. The Ordinance would require a number of safety mechanisms, such as automated pressure monitoring which would detect and automatically shutoff any pipelines if there were leaks detected. Pipelines would have to be placed in a way that they did not interfere or disrupt any other utilities or easements. There was a requirement for a fairly significant*

*emergency response plan to be prepared and submitted for the City's review. The Council provided some review of the Ordinances, but there had not been a lot of in depth discussion at the Council level. The Ordinances had been presented to the Planning Commission to do the "yeoman's" work. He advised that the Commissioners should not view the Ordinances as something not to be changed and moved to Council. The Commissioners should view it as a blank canvas to paint, to add to, to supplement, to tweak, or to start over. They would eventually present something to Council with a recommendation, hopefully, for approval.*

*Mr. Anzek referred to a map on the overhead. It was first shown to Council at the August 25th meeting. Staff wanted to see where a drilling site could go using the MDEQ standards of 450 feet from a residential structure. He had excluded areas zoned industrial on the map because in some of the earlier discussions, industrial areas might allow drilling for oil. He stated that across the Tienken corridor, there were very few sites that would support a well site based on MDEQ's standards. The oil industry advised that it took about two acres to set up a drilling site, and it was fairly hard to find a two-acre site. He cautioned that everything could go away if an individual property owner, having enough land, chose to lease his land to an oil exploration company. He had not tested any other distances at this point.*

*Chairperson Boswell said that it appeared to him that with the exception of Oakland University's property, almost everything else that could support a site was former landfill property. Mr. Anzek agreed, pointing out the east and central landfills and those along the north side of M-59.*

*Mr. Hetrick referred to the Pipelines Ordinance, and he had observed that there was a hold harmless clause, but there was no such clause in the zoning amendment. He asked if that was done on purpose. Mr. Staran said that it was, because in the Pipelines Ordinance, there was an actual permit the City would issue. Under the Oil and Gas Ordinance, there would not be a permit issued. The permit would be issued by MDEQ, but there would local regulations that applicants would have to operate under. They would not actually be obtaining approval from the City. The hold harmless provision went in conjunction with the permit the City would issue. The City would not be vouching for a pipeline, but the oil company would be held fully and solely responsible for any damages they might cause or for any liability that might occur. Mr. Hetrick clarified that it would just be the case for the Pipelines Ordinance, and he questioned where the liability was in the Oil and Gas Ordinance. Mr. Staran advised that there would still be liability, whether it said it in the Ordinance or not.*

*It was just like any other land use in the City; if anyone or any company caused personal injury or property damage, they would be held accountable for the damage. Mr. Hetrick asked if the City would share in the liability in a drilling situation. Mr. Staran did not see that as being the case. The liability stemmed from actions taken. If the City was not directly involved in the land use - the oil well or drilling - and there was a problem, it would be up to the oil company to deal with any damages caused.*

*Prior to opening the Public Hearing, Chairperson Boswell noted that he had 26 cards. He asked that comments be limited to three minutes. He cautioned that during the Public Hearing, there would be no banter back and forth between the speakers and Mr. Staran, Staff or the Planning Commissioners. He stated that the purpose of a Public Hearing was for the Planning Commission to gather information, and they would take notes so they could answer any questions after the Public Hearing.*

*Chairperson Boswell opened the Public Hearing at 7:38 p.m.*

***Scot Beaton, 655 Bolinger St., Rochester Hills, MI 48307*** *Mr. Beaton said that he would like to challenge Mr. Staran, and he felt that the best way would be with precedent. Two decades ago, there was a Wetlands Ordinance written in Rochester Hills. The City took a leadership role in how to protect the wetlands. There was a 25-foot buffer zone incorporated from DEQ regulated wetlands, and the wetlands themselves were protected, which could be considered a taking. There were many developers who were upset that the City was taking their rights away to build homes. He claimed that the Ordinance had never been challenged. He felt that the City could definitely go beyond what the State regulated with regards to an Oil and Gas Ordinance. They set the precedent with a Historic Districts Ordinance and with the Woodlands Ordinance, and none had ever been challenged except one time he could recall. He thought that the Planning Commission did a great job listening to the residents when it came to the truck depot. He said that they did a fantastic job of listening to the residents regarding the mobile home park. They had historically set a precedent of doing a marvelous job of listening to the residents, incorporating what the residents had to say and with legislation they would move on to City Council. His recommendation was to have an open Public Hearing of discussion, listen to the residents, accept the material the residents presented and make a recommendation, taking all that information, to send it back to Staff and the City Attorney first before they voted on anything that would go to City Council. He asked them to not adopt an Ordinance this evening, because he felt that it would defeat*

*the purpose of having a Public Hearing. He asked them to re-write the Ordinance, incorporating what the people had to say. He stated that the community had the right to have their words on paper in the Ordinances of Rochester Hills, just like they did with the Wetlands, Woodlands and Historic Districts Ordinances. He referred to the setbacks in the Rochester and Auburn Hills Ordinances, which stated 1,000 feet. If the residents wanted 1,500 feet, they should put 1,500 feet in the proposed Ordinance. He stated that it was no different than the 25 feet they put in the Wetlands Ordinance. It was beyond the State's regulation. The City of Rochester was requiring a cash bond of $250k before any rig could be drilling. He asked why that was not in the Ordinance. Rochester required a $2 million proof of insurance in case something went wrong. He asked why that could not be in the Ordinance. He felt that one of the most important things that should be in the Ordinance, very much like the Adult Businesses Ordinance, where the City found gentleman's clubs to be such a detriment to the character of the community, would be to write that it would be harmful to the residential and commercial property values. If they could write that Ordinance, he did not know why they could not write that in the Oil and Gas Ordinance. He claimed that drilling was a detriment to property values. He asked why, just because the State did not require it, the City could not state it. He asked the Commissioners again to listen to the residents, who had been at this quite a while. He was sure they could come up with something that would show leadership, and he was sure they could write a better Oil and Gas Ordinance than anyone in the surrounding area.*

***Clark Barrett, 1376 Kingspath Dr., Rochester Hills, MI 48306*** *Mr. Barrett said that he was glad that Mr. Staran said that the Ordinance was considered a throw-away draft (a statement Mr. Staran corrected). Mr. Barrett said that thus far, the City had generated Ordinances to protect them away from the wellhead oil and gas activities, but he stated that the proposed copy/paste document did almost nothing beyond current DEQ regulations and existing Ordinances. For ten months, the residents had offered to craft Ordinances together, but the work was done behind closed doors. First, he claimed that the Council hid behind the pending litigation, penalizing the people by doing no work. Then the Council refused their input. They have asked for bigger setbacks, better trucking regulation, property bonding and baseline water testing, and the City had offered them regurgitated regulations.*

***Hannah Barrett, same address****. Ms. Barrett said that she was a third grader at Musson Elementary, where they had a gas pumping station 600 feet from her school. They often smelled gas on the playground or in the*

*school. She stated that it was not good for children. Sometimes, it smelled bad at her home, which was over a mile away. In class, they learned that the Mayor's most important job was to protect the people, but she said that the new rules did not do anything to protect them. She said that gas and oil drilling really should not be near homes or schools, and she concluded by saying, "Don't drill the Hills."*

***Philip Barker, 1434 Bur haven, Rochester Hills, MI 48306*** *Mr. Barker said that he did not see any difference in the Ordinances proposed from the protections the State had in place. The State put those protections in place to protect the rural areas and not necessarily a city with a high density population such as Rochester Hills. He asked that the Planning Commission deferred back to Staff and legal to incorporate language to have stronger enforcements, such as the City of Rochester and Auburn Hills had. He would also like to see an enhancement for the setback to 1,500 feet from homes, schools, hospitals, stores or occupied dwellings. If 1,500 feet was good enough for the oil capital of the world, Dallas, he wondered why it would not be good enough for Rochester Hills. He would like to see language added that put in solid restrictions for tanker truck traffic on roads and a no-through truck traffic Ordinance regarding cut-thrus in neighborhoods. He would like to see limits on noise, lights, odors and the hours of operation. He agreed with Mr. Beaton about the cash bond, meaning $250k cash the City would hold onto, and to have to carry a $2 million liability insurance policy to do business in the City. He felt that there should be a full impact statement for Class A roads, and there should be a Conditional Use required. He asked that the Commissioners engaged the power given to them when the State was first incepted. It was the Home City Rule, and it had been tested by precedence time and again since 1847. He maintained that a City did have the power to enact its own laws and Ordinances that were different from other communities in the State.*

***Pablo Fraccarolli, 1263 Cobridge Dr., Rochester Hills, MI 48306*** *Mr. Fraccarolli said that he was speaking for Mike Powers, who had to step out. He said that Mike wanted to share a couple of things. At a City Council meeting in Auburn Hills, there was a representative from the MDEQ who addressed questions regarding noise related to oil and gas operations. A resident asked what would happen if he was 451 feet away from the operation - if he would hear or smell anything. The DEQ representative said that he would, but he would get used to it. The second point was that recently, Governor Snyder was taking questions on a radio program call in show for oil and gas in residential areas, and the Governor said that there should be a way for local communities to work*

*out a compromise regarding the operations in residential areas.*

***Lee Zendel, 1575 Dutton Rd., Rochester Hills, MI 48306*** *Mr. Zendel stated that the following was not even a sentence on its own - it was a simple clause in a longer sentence in the Fifth Amendment to the Constitution of the United States, commonly known as the "Takings Clause." He read, "Nor shall private property be taken for public use without just compensation." He commented that it was very simple. Mr. Zendel noted that the U.S. Supreme Court had held that "Many regulatory takings disputes arise in the context of land use regulation. The Supreme Court does not require government compensation when such regulations substantially advance legitimate government so long as the regulations do not prevent a property owner from making economically viable use of his property." He stated that Michigan decisions at heart were questions of takings. The DNR got hit with a $90 million judgment for not allowing some drilling in Michigan. A 75-acre public park was given to a developer in lieu of a $70 million judgment from the City of Novi. $31 million, plus an estimated 15-year tax abatement was given to a company in Sterling Heights. On top of those settlements, if a judge or jury could be convinced that a constitutional right had been violated or denied, the attorney fees and costs could be added to those numbers. He urged the City to be very cautious in interposing its regulations in an area that DEQ had successfully regulated for over 80 years. He maintained that further ignoring the Takings Clause of the U.S. Constitution could be very costly to the City, and he added that larger companies were quicker to sue than small developers.*

***Melinda Hill, 1481 Mill Race, Rochester Hills, MI 48306*** *Ms. Hill said that she was somewhat surprised that the same proposed Ordinance had come forward that was presented in April, and that very little change had been made since that point. She was not in favor of seeing laws put on the books that the City could not enforce, and she felt that would be a waste of everyone's time and efforts. In this case, however, she would have preferred to at least see a preamble stating the desires of the community. The State Act talked about wanting to regulate its resources, and she did not feel that having oil and gas drilling was safe within a highly dense, residential community. As the map showed, a lot of the drilling could not happen in the residential areas, but she did feel they were dismissing the fact, especially in the northeast area of the City, that there were large, estate-sized parcels where, if residents decided to sign off, a rig could be placed. Regarding regulations for height and landscaping, she did not think that the City's Zoning Ordinance should be relied on. It allowed much greater heights than Rochester or Auburn*

*Hills. She was talking about permanent structures; in residential areas, homes could be 30 feet and in Industrial, buildings could be 42 feet high, and she felt that was excessive. She also did not think a Type E buffer was good enough, and she felt that they could go a lot tighter with those regulations. She felt that they could stress things they would like to see in the community, even though they might not currently have regulations to go over the State regulations. She did not think they had gone far enough, and she was not sure they had looked far enough at some other aspects. Those items could be stated, and she stressed that they should be more proactive with the Ordinance, with the knowledge that they might not be able to actually regulate to a certain extent. She felt it could be worded appropriately to put them in a good position, rather than waiting and sitting back and just doing the status quo. She reiterated that the City was too dense and too residential, and she could see why House Bill SB 1026 was written. She felt that it could be very helpful to the City, and she hoped they would do more to try to promote it. She was sorry the City sat back, and she was sorry to say that they had opened the door early on and invited drilling within the community.*

***Nancy Lewis, 3223 Parkwood, Rochester Hills, MI 48306*** *Dr. Lewis thanked the Commission for giving her the opportunity to speak. She was present to urge the Commissioners to adopt more comprehensive Ordinances for oil and gas drilling in order to protect the health of the community and the environment. Local Ordinances gave the City the ability to protect public health and safety. She stated that while oil and gas production disasters were relatively uncommon, their effects could be profound. They were analogous to what health care professionals referred to as sentinel events, which were events that should never happen. An example of a health care sentinel event would be a planned surgery for a right leg amputation that resulted in the left leg being removed. Of the millions of surgeries done in the U.S. each year, 0.5 % were associated with wrong site or wrong patient errors. However, nearly every hospital in the U.S. had changed the way in which they prepared patients for surgery. They changed their policies and procedures in order to prevent errors, not because those errors were common, but because their effects were so catastrophic. She suggested that the City could use that same perspective in looking at oil and gas disasters. Although they were uncommon, their effects, particularly in residential areas, could be profound, and everything possible should be done to prevent their occurrences. Strong, comprehensive local Ordinances were a reasonable and appropriate addition to Federal and State regulations to ensure the safety of gas and oil drilling and production. While the proposed Ordinances were great for newspaper headlines, and they could*

*say they had passed Ordinances, she believed that they were insufficient to protect the health, safety and quality of life of the citizens of Rochester Hills. The Ordinances needed to include larger setbacks, baseline water and soil testing, enhanced reporting of oil spills, and greater limits on truck traffic, hours of operation and waste water disposal. She stated that Ordinances gave the City to prevent events that should never happen. She again encouraged the Commission to work toward a better solution to protect the health and welfare of the citizens.*

***Timothy Maurer, 854 Ravine Terrace, Rochester Hills, MI 48307*** *Mr. Maurer stated that he was a 35-year resident of Rochester Hills. He owned two homes, had two children, and had two dogs. Mr. Staran had made a comment that before the Ordinance, the City was an observer. Mr. Maurer felt that even with the Ordinance, the City would still be an observer. It seemed to be a regurgitation of State law. He thought that the Planning Commission did most of the work for the City, and he thought they were a talented group of individuals. He hoped that they would not rubber stamp the Ordinances, because it would now only be used for headlines.*

***Erin Howlett, 3597 Aynsley, Rochester Hills, MI 48306*** *Ms. Howlett thanked the Planning Commission, and she appreciated their deliberations and time. She said that she looked forward to the first appearance of the Ordinance draft. She corrected that the Supervisor of Wells was actually a division of the MDEQ called the Office of Oil, Gas and Minerals. They had a separate and distinct mission statement. She also pointed out that the term local processing facility should be local production facility. She noted that it was the first time the Ordinances had been in front of the Planning Commission, and she said that she was looking forward to a series of meetings. They were promised at least three such visits to Planning Commission with plenty of time for open public comment. Over the last several months, she and other residents had spent an extensive amount of time speaking with the State's top regulator, the Supervisor of Wells, to define specifically and legally the parameters that cities could mitigate oil and gas activities. The City was full of attorneys and financial professionals, who took this seriously. They did not want to put forth anything that would not hold up. She realized that Auburn Hills had spent a tremendous amount of time and had passed an Ordinance. She thought that the Pipelines Ordinance was good, and she thanked Mr. Staran and Councilwoman Morita. She was disappointed in the Oil and Gas Ordinance, after reading the 148 pages of Michigan oil and gas regulations. She recognized that the proposed Ordinance was a re-statement of current law for the most part. She appreciated the effort of*

*finally getting to an Ordinance after two years, but she felt that they needed to go back to the drawing board. Regarding being concerned about litigation, she mentioned that Auburn Hills spent about five months on its Ordinance and really dug in and spent a lot of time on the legal end. They put in the strictest setbacks, and they also received an additional written promise from Jordan and West Bay that there would be no residential siting whatsoever. The Auburn Hills Ordinance was approved after there was a signed lease with a church near Tienken and Squirrel. There had been no lawsuits from private property owners or from oil companies. They could now say that there was some "proof in the pudding." She acknowledged that there might be a property owner willing to lease. Mr. Brower from Jordan mentioned on the record that he was interested in about ten acres of private property on the southeast corner of Tienken and Adams, just north of Nowicki Park. There were two homes that were currently empty, and they had been for a number of months. She had been told by West Bay that they only needed one acre to site a well. She expressed that she looked forward to digging in and having more citizen input, and she thanked Mr. Zendel for mentioning takings. She noted that takings went both ways, which was a discussion for another time. The six-month moratorium was in wait of potential passing of SB 1026, but also in development of Ordinances, and she stated that they had plenty of time to work on the Ordinances. She referred to the second page of SB 1026, which was a restatement of current law. The hurdle to get the waiver was that they needed to get past the Supervisor of Wells on two things: "Waiver will be granted if the Supervisor of Wells determines the location will not cause waste, and there is no reasonable alternative for the location of the well." That was current law, but she did not see where the local control was.*

***Joe Doyle, 1446 Burhaven Dr., Rochester Hills, MI 48306*** *Mr. Doyle said that he had been a Rochester Hills resident for more than a decade. He looked over the draft Ordinances in some detail, and he hoped that one would be amended substantially. To him, it looked like an Ordinance that was designed to give the impression that the Mayor and City Council were looking out for the interests of Rochester Hills' residents. He stated that they were not and they had not. Over the last ten months, they had been very resistant to input of almost any variety. They let people talk, but they virtually totally ignored them. In terms of the draft, he felt that the essential and meaningful elements were basically missing. They talked about setbacks, which he felt were important. It was not very long ago that the city of Dallas, Texas, where people knew about oil drilling, passed an Ordinance for a 1,500 foot setback, which he felt was a substantial distance. The reason they did that was because Dallas was populated by a lot of oil executives, and they understood the risks involved.*

*Apparently, the Mayor and City Council had taken a fairly light view of it. Exxon Mobil's CEO sued to stop drilling in his area, citing the risk of fires, explosions and traffic and property value reductions. He questioned why, if it was not good enough for that CEO, it was not good enough for the folks in Rochester Hills. The reasons Dallas asked for a 1,500-foot setback was because when they had fires and explosions, and they had them in Michigan and people had been killed, fire departments had frequently not been able to get within 1,000-1,500 feet of the fire to put it out. His hope was that the setback would be looked at a little more closely. He thought that they might consider that before drilling started, there should be some samples taken of the water. If there was a problem such as a leak, and he claimed that there had been a lot of leaks in Michigan, it was very serious. If pre samples were not taken of water before the drilling started and there was a problem, there would be no legal recourse. The courts would want proof that the developer actually polluted the water. They had talked about spills, and currently in Michigan, oil companies had to report any spills of 42 gallons or more. If a regular person spilled five gallons of oil into a reservoir and did not report it, he or she would be arrested. He thought that oil companies should have to report any and all spills of toxic materials so it could be addressed by the proper authorities. They would know in advance that they needed to pay close attention. He was also requesting that a citizen's draft of an Oil and Gas Ordinance, which would be sent to all the members, be entered into the public record.*

***Denise Doyle, 1446 Burhaven Dr., Rochester Hills, MI 48306*** *Ms. Doyle stated that it was an important evening for the City as the draft for gas and oil drilling was being presented to the citizens. The Ordinance was meant to be a vital piece of legislation to protect the City. They wanted to maintain Rochester Hills as a green, environmentally friendly city, viewed by other municipalities nationwide as a model community to live. The City was rated number nine across the nation as the best small city in which to reside, and she stated that they should keep it that way. After reading the draft, she had grave concerns as it presently stood. The first was the proposed setbacks. The current setback for residentially zoned buildings was a mere 450 feet. She stated that viewing, listening to and smelling a drilling facility a football field away from a home was unacceptable. In Texas communities, where drilling was rampant, setbacks were well over 1,000 feet. Auburn Hills and Rochester had recently drafted Ordinances which adopted stringent setbacks more than twice what Rochester Hills was proposing. In the Pipelines Ordinance, in the section relating to regulated pipelines, 94-201, parts d and g stated that a permit would be required for pipelines in residential areas, which*

*must be reviewed and approved by the City Council before installation. The majority of the residents that she had encountered did not want residential drilling, and she indicated that there should be no residential drilling. There were too many inherent dangers involved. The Ordinance did not specifically stipulate and mandate pre-drilling water and air baseline testing should oil and gas exploration actually occur. She questioned how the public safety, mentioned in the draft Ordinance, could be taken seriously or be monitored if there was no baseline as a reference. She wondered, in the event of a nightmarish leak, which would hopefully be remediated before too much damage occurred, how post testing of water and air could be deemed reliable without a baseline for comparison. Those were issues that she and many of her neighbors had voiced concerns about. She asked that those things be taken into consideration in the continued drafting of the important Ordinances, and that the City worked with the residents cooperatively. She thanked the Commission for the opportunity to take part in what could be a momentous, positive decision for now and the future of Rochester Hills. She stated that they should keep Rochester Hills a safe and desirable community to raise children and grandchildren, and with luck, even great grandchildren.*

***Kristen Klick White, 56187 Dequindre Rd., Rochester Hills, MI 48306***

*Ms. Klick White stated that she lived about a half mile from the Shelby well. She thought that Mr. Staran had given one legal opinion on what they could do to protect the City, and that was essentially to defer to State law and to apply the nuisance provisions of the City's Zoning Ordinance. She felt it was one opinion, but Auburn Hills, Rochester and Ann Arbor had determined that there was another opinion. She thought that Rochester Hills could do more to protect the City from the harmful impacts of drilling and to keep it one of the best places to live. Reading through the regulations for the Supervisor of Wells, it stated that cities of over 7,000 had special status that counties and townships did not have. The Zoning Enabling Act did not prevent cities from regulating the location of wells as it did for counties and townships. She thought that they needed to look at the proposed Ordinance a little more closely. If they were not going to restrict drilling to only industrial areas, where she felt it belonged, then she thought that the setbacks should be farther. They had talked about 1,500 feet, and she would add that it should also be 1,500 feet from wetlands and sensitive habitats. A lot of the white areas on the map were in wetland areas, and she stated that it was not where they wanted drilling. She liked the part of the Ordinance where they would seek an environmental impact statement, but it was a prospective document that showed what might happen. If there was drilling, it would*

*not tell exactly what was happening. If the requirements for limiting air emissions and preventing groundwater contamination were meaningful, she thought that they also needed to require ongoing monitoring. She noted that the violations would cost $500 for each, which she stated was a meaningless amount. For there to be any impact on companies, she thought that should be increased to something useful, or compliance should be tied with a refusal of permission to travel roads or with a restriction on a pipeline permit. She also thought that the Ordinance was missing a notification requirement. Residents deserved to know when a well, pipeline or drilling operation was going to be located near their home, and ten days was not enough for someone to prepare and respond.*

***Adelia Macker, 171 Lonford Dr., Rochester Hills, MI 48309*** *Ms. Macker stated that she hoped it was a draft stage of the Ordinance, and that they did not have drilling. If they did, she thought they needed to address that one day down the line, the companies would stop drilling, because there would be no more oil, and they had to have a provision that said that they had to bring the land back to where it was when they started. If they ripped trees down, they should be put back up. She said that there were many areas where that provision was not put in place, and those lands were now virtually unusable, so she stressed that it needed to be addressed.*

***Dairdre McGlothlin, 3583 Charlwood Dr., Rochester Hills, MI 48306***
*Ms. McGlothlin mentioned that Rochester Hills was listed in the top ten for best places to live recently, and she felt that the City could lead the way and deserve that recognition if they established a benchmark for gas and oil drilling Ordinances in the City.*

***Rachelle Stephens, 1529 Grandview Dr., Rochester Hills, MI 48306***
*Ms. Stephens said that their neighborhood had gone through a nice time. She awoke one Sunday to a tornado going down her street. There was no warning and in the two minutes that it touched down and ripped through the neighborhood, it left in its wake a lot of destruction. She said that they were resilient people, however. They went door to door to make sure no one was harmed, and they were continuing to improve things. The City was very supportive, and she thanked all who came out to help in their time of need. She said that she was not comparing the oil and gas issue with a tornado, because oil and gas issues were preventable. She asked the Commission to listen to what the residents had to say. She was glad it was a draft, and she wanted to make sure that provisions were added to protect the residents and their children. She said that it was a miracle that*

*no one was hurt from the tornado, and she said that they should not wait for another miracle in the new age.*

***Sonia Milton, 779 Dartmouth, Rochester Hills, MI 48307*** *Ms. Milton noted that she had lived in Rochester Hills for 36 years, and she had seen some "dumb" things the Council had allowed. She did not want to see any more. She wanted to remind everyone that oil companies were notorious for allowing spills. They would rather pay the fine than repair things. They had seen what BP did to the ocean, and then they put ads on television saying that everything was cleaned up when it was not. She indicated that it could also be done to the City, and she asked them not to let the oil companies do it.*

***Judy Dignam, 1601 Stonecrest, Rochester Hills, MI 48307*** *Ms. Dignam said "ditto."*

***Jeannie Morris, 1398 Burhaven, Rochester Hills, MI 48306*** *Ms. Morris mentioned that she had not spoken before the Planning Commission prior. She said that she was born in the City, went to school here and was now raising a family. She had 35 years invested in the community, and she was proud of Rochester Hills. She said that she was glad that they were to the point of looking at a draft, and she hoped that they would consider it a starting point, rather than a white piece of paper. In the community, she maintained that there were a lot of highly educated, intelligent professionals. The draft had been looked at by the Wayne State University environmental law attorney and director. It had also been looked at by an environmental and a municipal attorney, who were friends. Their feedback was that the Zoning Ordinance was very weak. It complimented what was said at a State level, nothing more. It was not strong enough to protect residents, and she stated that it would not work. She mentioned a gentleman named Jim Olson, who was an attorney that put together Ordinances for municipalities. He was currently helping Shelby Township. She was not sure if Mr. Olson had reached out to Rochester Hills, but she had heard that he reached out to Rochester, Auburn Hills and Macomb, to try to share information so the information they paid for could be shared in this community. Mr. Olson was putting together the Shelby Township Ordinances; he had also crafted Ordinances for Cannon Township, near Kalamazoo, and in the U.P. Other communities were working with their residents in the spirit of trying to protect their communities. Mr. Beaton had encouraged a cash bond, some insurance and that the Ordinances not be adopted at the meeting. Ms. Morris said that the community was offering lessons learned. Mr. Beaton also said some things that she felt were justifiable. With the*

*mobile home park and trucking facility, it did appear that the Planning Commission was trying to protect the residents, and the residents needed them to continue to do that. The setbacks were a big concern for her. In Colorado, there were municipalities with 900-foot setbacks and in Texas, they had 1,200 to 1,500-foot setbacks. In Pennsylvania, there was a fire that lasted for two days. It burned so hot that no one could get within 1,000 feet for 48 hours. If there were homes, schools, churches and businesses within that 1,000 feet, the Planning Commission would be holding in their hands a shared responsibility for what might happen to people. In the Chevron fire, there was one person killed and several people injured, so it was a very serious issue. She mentioned that Auburn Hills was able to creatively work with the oil company to put in a clause for no residential drilling. She stated that it was impressive. They also heard mention about public takings, and she said that she wanted to put that into perspective. There was a time when people could smoke anywhere. They knew there were issues, but they were not being addressed, because it would violate people's personal rights. Over the last 30 years, there had been quite an about face in how people dealt with smoking. Smoking used to be allowed anywhere in restaurants or other places, and now it was not allowed. The situation with oil and gas would be very similar. Just as much as people had rights to their property, so did she, and she stressed that she did not want any drilling on hers. She mentioned that Mr. Doyle talked about a draft that was put together. There was a group of residents that had worked very hard to put together a draft that made a significant impact. She passed out copies to the Recording Secretary for the Commissioners and the record.*

***Nancy Major, 1545 Colony, Rochester Hills, MI 48307*** *Ms. Major thanked the Commission for the opportunity, and she said that she appreciated all the efforts being put into the Ordinances. She agreed with the other speakers' points, and she did not feel that the Ordinances were strong enough. She was particularly concerned about the 450-foot setback. She questioned why they would just settle for the State minimum.*

***Don Hughes, 3744 Bald Mountain Rd., Auburn Hills, MI 48326*** *Mr. Hughes noted that he lived in Auburn Hills. He wanted them to strongly take into the consideration the Ordinances that Auburn Hills recently passed. Auburn Hills restricted oil and gas activities to industrial areas only. He thought it was critical when Auburn Hills restricted injection of any waste back into the ground once a well was completed. If there was a dry well, companies could now bring in materials from other cities or counties and inject it back into the ground, potentially contaminating it in*

*the future. Although not included in the Auburn Hills Ordinance, he would strongly recommend that the City required baseline water testing. If there was no proof of how the water was before drilling started, there would be no recourse if there was an accident. Those were critical measures that needed to be taken, not only to protect the neighborhoods, but also to protect the surrounding neighborhoods, cities and townships. If they were waiting for the Senate bill to pass, it put everyone at risk, because that bill did not protect smaller communities. He thought that the Planning Commission should take all necessary steps within their legal rights to restrict activity as soon and as much as possible, and he hoped that the Planning Commission would choose to implement meaningful Ordinances to protect the residents.*

***Jen Salvalaggio, 2982 Powderhorn, Rochester Hills, MI 48309*** *Ms. Salvalaggio stated that she was a 25-year resident of Rochester Hills. She was glad the City was drafting an Ordinance. She would like them to consider a 1,500-foot setback. She felt that it was realistic, noting the fire cases. She also thought that $500 to an oil company would be what $.05 would be to her. If the City was going to charge her $.05 to park somewhere she was not supposed, she would still park there and pay the $.05. She thought the amount should be $500k. That might make the companies think before they did something they were not supposed to do. She also thought the companies should have to do quarterly water and air testing. The City would set it up, and the companies would pay the bill.*

***John Przybysz, 3120 Primrose Dr., Rochester Hills, MI 48307*** *Mr. Przybysz stated that the whole situation was the bottom line, and nothing else. Like proof from the past, starting in January 1997, the City did have Ordinances in effect, and they were broken by the Planning Commission. He would not say who was on the Commission then, and he would not attack, but the gentlemen were still on the Planning Commission. He stated that Ordinances could be broken.*

***Carrie Schochet, 3101 Salem Dr., Rochester Hills, MI 48306*** *Ms. Schochet said that she was born and raised in Rochester Hills. She lived in Chicago for 11 years and just returned about two years, because there was no better community in America where she wanted to raise her two children. It had been really disheartening to hear about the potential activity in a community that she knew and loved. They all knew that oil and gas drilling would harm the community. She had done research, and there were a lot of chemicals - known carcinogens - injected into the ground during the process. Methane gas and toxic chemicals leached and could contaminate nearby groundwater. Methane concentrations in*

*an area where there was this type of activity were 17 times higher in wells near fracturing sites. There had been thousands of cases of water contamination, as well as sensory, respiratory and neurological damage due to ingested contaminated water. There was potential for explosions, noise and light pollutions and other negative impacts. She agreed that there were a lot of smart people in the room, and she had been very impressed with the amount of research and thought people had put into their comments. She really hoped that the Commissioners would listen and come up with a stronger Ordinance. She felt that the proposed Ordinance was really weak, but it was a start. She hoped the Commissioners would do everything they could to protect the citizens of Rochester Hills. She said that there were a lot of places she would rather be, mainly with her family, and she was saddened that she had to be at the meeting. She echoed the sentiments of previous speakers and some things she felt should be in the Ordinance were the setback of 1,500 feet, the baseline testing, ongoing monitoring, bonding, notification requirements and as Auburn Hills had required, keeping it to industrial areas only. She hoped the Commissioners would help the community thrive and be a safe place to live. She asked that they take the citizen's voices and input to heart. She reiterated that they were really blessed to have so many smart, educated people in the community, and she would like them used as resources to protect everyone.*

***Sheila Shah, 838 Croydon, Rochester Hills, MI 48309*** *Ms. Shah stated that she had lived in Rochester Hills for 35 years. She resented the fact that she was never given a vote. She felt that the citizens should have been allowed to vote on whether or not they wanted oil drilling before a lease was signed with the oil companies. They knew that the City was beautiful. There were beautiful parks and green spaces and wildlife, and it was a great place to raise children. They wanted it kept as it was. They all knew that oil and gas drilling would change the quality of their lives. It was not an industrial city. They had a quiet life with beautiful green areas, and they did not want to change the nature of the community. The citizens of Rochester Hills should have had a vote before the Council signed a lease with the oil companies saying they could drill in the parks. She wanted to know why it was never on a ballot. They had intelligent people in Rochester Hills, and they should have been allowed to vote on their future before their quality of life was changed forever.*

***Martin Wreford, 1349 Sandy Ridge, Rochester Hills, MI 48306*** *Mr. Wreford asked about access. He said that if a mythical person with ten acres gave permission to drill on his property, but the oil company found that access would be much easier through Mr. Wreford's property, he*

*wondered if he would be protected. He asked if there was a legal definition of adequate protections built into the Ordinance, because he could see that as an area of dispute.*

*Chairperson Boswell closed the Public Hearing at 8:44 p.m. He asked Mr. Staran if he would like to comment.*

*Mr. Staran said that he appreciated Mr. Beaton's legal lessons, but Mr. Staran had been at it for 30 years. He stated that Mr. Beaton had made a very gross over simplification of pre-emption law. The example of the 25-foot buffer zone was really not a good example, in his opinion. 25 feet and 1,500 feet were not similar, despite the representation. Mr. Staran was quite familiar with the buffer zone Ordinance, because he was the one that wrote it. There was specific authority in the Wetland Protection Act for local Ordinances. Consistent with that, the City adopted the additional setback. The issue with regards to oil and gas was that there was not that specific authority, but rather, an explicit statement in the Natural Resources Environmental Protection Act that arguably, and clearly, vested the exclusive right to regulate oil and gas drilling with the State of Michigan. It was the same type of pre-emption language that had been held by Michigan courts to pre-empt local regulation with regard to similar language in the school code, with regard to school siting and school construction, and with State correctional facilities. Although he appreciated the comment about the Natural Features Setback, it indicated that it was really apples and oranges. It was not a precedent, and it was not similar. It did not mean that they could not or should not talk about setbacks. He thought that it rang louder and more clearly among the comments than anything else, and it was something the Planning Commission would take a very serious and thoughtful look at. There was a comment made that the State law with regard to setback was intended for rural communities and not densely populated communities. He could appreciate the opinion shared by a number of people, including Planning Commissioners, that 450 feet perhaps seemed skimpy compared to what it could be. The 450-foot setback was only for communities with populations over 70k. They could all disagree that it was enough, but it was not intended for rural communities. For communities under 70k, the setback was only 330 feet. There was a comment that the Ordinance should have a preamble setting forth a more implicit statement of intent, and he felt that would be a good idea. That could be worked on through the process. Several speakers commented about the penalties clause. He wanted to clarify that penalties for most Ordinance violations throughout the State of Michigan were a $500 fine, and there was a good reason for that. That was what the Home Rule*

*Cities Act said the maximum should be. It was also what the City's charter said was the maximum. It was the most the City could charge for a single violation. The Ordinance did provide that every day a violation existed, it would be considered to be a new violation. That was just the fine aspect of it. If there was a violation of the Oil and Gas Ordinance, they were less compelled to go after the $500 fine. Usually, the first resort was to seek a court injunction that would stop the violation in its track. Although their hands were somewhat constrained by the $500 maximum fine, which had not been increased since the 1920s, he thought it was something the legislators should look at. There was nothing in the Ordinances that would prevent the City from seeking injunctive relief. There was a question about restoring the property after drilling was done and gone. The Planning Commission might consider specific reference not only to restoration, but reference to the City's Tree Conservation Ordinance. There was no reason why, if trees were removed in the course of an oil and gas operation, that it should be treated any differently than any other residential or non-residential land use in the City. The Tree Ordinance regulated that if people removed trees, there was oversight as to whether it was necessary to remove the trees, and to the extent the trees were removed, there was a requirement that those trees be replaced. If they could not be replaced on site, money would be placed in the City's Tree Fund, and it would be used to plant right-of-way trees, etc. There was a comment that no injection wells should be allowed. That was a provision in the Auburn Hills Ordinance, but it had not been addressed because there had never been any discussion or proposal to have an injection well in the City. That did not mean it could not happen, and it was certainly something that could be looked at. Most of the comments highlighted the principal difference if they were to put the Ordinances side by side (the City's draft, what Auburn Hills had adopted and what the City of Rochester was considering). The principal differences were that Auburn Hills had the provision regarding no injection wells, and it did restrict oil well siting to Industrial zoning only, and it also had a 1,000-foot setback. Those were things for the Planning Commission to consider, but when they did, he reminded that they had to be mindful. They had to not only consider the potential pre-emption issue, but as with any decisions that the Commission and City Council made, whether it was for Site Plan Approvals or Conditional Land Use Approvals, they had to operate within the confines of the law - both the statutory and the constitutional laws. They had to be mindful of property rights, takings, civil rights, and they had to balance the competing interests at the same time. When they compared with other Ordinances, they needed to take into account all of the relevant circumstances. When Auburn Hills restricted oil wells to Industrial zoning, they (Rochester Hills) needed to consider if that would*

*work in Rochester Hills or not. They had to consider whether Auburn Hills' Industrial zoning was as clustered as the City's to the M-59 Corridor and to the Tienken and Rochester area, or whether Auburn Hills' was more scattered. They might have more industrial property than Rochester Hills. They needed to consider the setbacks. Mr. Anzek had provided a map showing 450-foot setbacks and where drilling could be. Mr. Staran thought that if the Commission was going to consider increased setbacks, the map needed to be updated. They needed to understand the cause and effect. For everything they changed, they had to determine what it would do. At the end of the day, they had to determine if it was an Ordinance that not only would protect the residents and the character of the community, but also be one that would be sustainable in the event of a legal challenge and one that also respected and recognized the rights of property owners to utilize not only the surface of their lands, but also their subsurface rights. It was a typical balancing act, and he hoped that the nine Commissioners could come to a well thought and appropriate decision.*

*Chairperson Boswell noted that the last gentleman asked if there was a legal definition of adequate protection in the Ordinance regarding access.*

*As Mr. Staran understood the question, it was whether there was anything in the Ordinances that would allow someone from the oil company to access one's property. He stated that the answer to that was "no." That would be trespassing, and no one could enter someone's property without the owner's permission. He clarified that they were talking about entering onto the surface of the property. There was a process called compulsory pooling, whereby, if someone did not agree to voluntarily lease his subsurface oil and gas rights to an oil company, the company could put a block together and could go to the State Supervisor of Wells and seek a compulsory pooling order, which, if approved, would allow the oil company to extract oil and gas from beneath the surface. It would not allow the oil company to enter a person's property without permission. There was also a question of where the Ordinance had a definition for adequate protection for access. Mr. Staran stated that adequate was not a defined term. Adequate would have the plain meaning ascribed to it. It was a term that the Planning Commission could change, or to which it could affix a particular definition, but currently, it applied the plain meaning of the word.*

*Mr. Kaltsounis stated that he appreciated everyone coming out and their passion. He explained that the Planning Commission was a technical arm of the City Council. Council had sent the Ordinances to the Planning*

*Commission to review and to come back with a recommendation. One of the subjects raised was "takings." The Commissioners had to walk a fine line when it came to takings and a development. He gave a recent example of the Shell gas station on South Boulevard and Crooks. Before the current owners, there were four curb cuts (entrances) from the roads. There was road construction, and the Road Commission said that the gas station could only have three cuts. He used to buy gas there, and he noticed that their prices were very high - a lot higher than everyone else's. He did not realize that they were in litigation with County for a taking. The gas station owners claimed that closing the extra curb cut was taking away business. That might have been speculation, and it could have been the high prices. The gas station won $1.3 million from the County, and the County took over the building. Those were things the Commissioners had to consider with every development. They were now considering a new subject. He had been on the Commission for 12 years, and it had never been talked about. There were Ordinances in front of them, which were written by someone else and researched by a committee. The Commissioners would put their heads together and make a recommendation. He took nothing away from Mr. Staran for proposing what he did. It was part of the process. Mr. Kaltsounis had a lot of thoughts, and it would be his intent to make a motion to postpone to further discuss certain topics brought up today, and there were others he would like to discuss.*

*Mr. Kaltsounis said that he would like to discuss decisions related to takings. He would like to increase the scope of the discussion, for example, to find out if there had been any Federal takings. He questioned whether other states had comparable takings litigation. He stated that he was a very data-driven person. He felt that data had driven every Ordinance the City had, and data was the reason why they were doing what they were. Data was what held up in court. He would like to see what data was out there that they could add to the discussions. He would like to know what cities had paid for what in Michigan and what had happened in other states and with the Feds. State laws could be overrun by the Federal laws. Depending on who would like to enforce what, it was what they had to deal with. It was one of the fine lines they had to judge. He said that he would like to have a discussion with the MDEQ to know the background of oil drilling. He would like to further discuss the definition of a residential area. He wondered whether commercial areas counted as a residential area and whether there had been any court cases surrounding that. He looked at the map Mr. Anzek had provided, and he speculated that he lived the closest to most of the areas that could be drilled. He was a football field away from one area, two football fields away from another, and about four from a third area, so he could be*

*impacted. Mr. Kaltsounis noticed that the Rochester Ordinance governed schools. The Planning Commission did not have any governance over schools, and he wondered if the schools could be involved in a takings claim. Mr. Kaltsounis felt that the Ordinance needed to state that no fracking or injection wells would be allowed. He understood that there were not any there today, but the Commission had dealt with many cases where someone figured it out. He wanted to make sure that if it was figured out that the City was protected. There was a thought about baseline water testing, for testing before, during and after drilling, and he felt that was something they definitely needed to look into. He asked again about getting data from other places that had drilled and what they had dealt with. In the proposed Ordinance, there was no mention of whether someone could drill in the middle of a wetland. He thought they needed to consider wetlands and floodplains and how drilling applied, and whether there were any other examples. Mr. Kaltsounis stated that he would definitely like to discuss the Tree Conservation Ordinance. He pointed to the beam above everyone's head, and said that it was there because of past data, and there were standards for structure and weight. He asked how the City was protected by what went underground. He would like to discuss that with the MDEQ. He commented that he could put a Dixie straw underground and say it was a pipeline. He was interested in seeing what would go underground. The City had standards for roads and for a lot of things, but he did not know what the standards for pipes were. He thought that might be a question for the MDEQ. The subject of residential areas and if there should be drilling allowed was mentioned. He recalled that Mr. Rosen (former City Council member) mentioned back in the 1970's that one day, people would build on all the landfills. There had been developments asking to build houses on landfills. There was a large development proposed for the former Suburban Softball landfill site. He asked how they would be affecting future development in the City. There was a Brownfield Ordinance, and he questioned what the data would show as to how that Ordinance would work in the case of a spill or after someone left. He understood that drilling was allowed, but he wondered what data they had of the effect of a well after it was done. He wondered if the City would be stuck with a bunch of spotted landfills that they could not do anything with. He mentioned bonds, and said that he thought it was a great idea. He felt that the buffers should be enhanced a little more. He mentioned correct reporting of a spill and he asked what was there today, or what data they had. If he built a building with a substandard roof and it fell on his head, things would happen really quickly. He asked the current reporting process for spills and what safety standards were in place. He thought that might be a question for the MDEQ. He asked if the City had proper equipment to*

*handle a leak or a fire and if groups, such as the MDEQ, should recommend certain plans. He recalled playing football under a dome and he heard a huge roaring sound, which turned out to be a pipeline breaking up in Oakland Township. If there was a well that caught on fire, he asked what plans the City needed so they could prepare for such a situation. He suggested that it should be looked at on a technical level. A lot of people complained about hydrocarbons, and he asked what data was out there that had studied hydrocarbons and development that could be used tangibly and possibly in a court of law. He asked what data was there to show why they were proposing different things for protection and so forth. There were third parties that regulated oil and gas drilling instead of the City - someone to look at the water, someone to look at how things were drilled - and he wondered if they might want to consider using a third party. Mr. Kaltsounis reiterated that he would like to make a motion to postpone, but he wanted to hear more discussion, if any.*

*Mr. Hooper said that regarding the draft, the City had a moratorium in place for six months, and there was no rush to recommend the Ordinances to City Council. He believed that it would take several drafts and multiple meetings. He stated that there definitely would not be a decision at the meeting, so there was no fear of an immediate Ordinance being recommended to Council. It would take some work for things that the residents wanted, the Commissioners wanted and the City Council wanted.*

*Mr. Hooper said that there were some things he was o.k. with that he did not feel were subject to a Federal or State violation: A cash bond; the $2 million pollution liability insurance; baseline environmental testing, which he felt should be a standard in the course of business; reporting requirements - there was a paragraph in the proposed Ordinance, and he thought they could look at it to strengthen it; not allowing injection wells after completion of the well; restoration of the property after the wellhead was removed back to an "as found" condition; and larger buffers, such as Rochester required, which were 12-foot buffers. He wondered if there could be a legal challenge if the buffers were larger depending on the zoning districts, but he thought they could require them. He thought that they could have a discussion about whether or not 12 feet was the right number or if it should be even larger, and about what the spacing of the trees should be. He stated that they should be coniferous, not deciduous trees so the leaves were green year round. Regarding a noise management plan, the City had an existing Ordinance for noise, and he felt that they could look at that to see if some tweaking could be done that would apply specifically to oil and grass drilling operations. The City had*

*an existing Ordinance for hours of operation. The hours of operation would not apply to the installation of the well, because when a well installation was started, it was mandatory that it be a 24-hour per day operation. Mr. Staran thought that was a question they might want to add to Mr. Kaltsounis' list for the MDEQ. They knew that it was the preferred practice of oil companies, that once they got started drilling they liked to run 24/7 until the drilling was done. Whether there was an engineering, safety or other technical reason for that or if it was because the oil companies found it convenient was an important question to answer. Mr. Hooper would like to explore whether the hours of operation would apply to drilling or if the temporary installation of the well would not be applicable to the hours of operation in the Ordinance or if it would apply after the well was established. Mr. Hooper said that there was a question raised about smell, and he had no problem putting in something about smell management. He was familiar with landfills. The City has had different types of odor mitigation efforts, so he was interested in finding out what the industry had regarding odors and how they were able to control and confine them.*

*Mr. Hooper brought up things he felt might be legally challenged. He asked if Rochester Hills could restrict oil and gas drilling to specific zoning classes so that it would not be subject to a takings lawsuit. Mr. Staran said that was a big question that went right to the heart of the issue about whether they had authority. There was the authority under the Zoning Enabling Act; the question was whether NREPA had taken that away. There were regulations, from total exclusion and total prohibition in Ann Arbor to no regulations whatsoever in many other communities, including Rochester Hills. He felt that the key to answering whether they would be successfully challenged would be that if they did restrict oil wells either by restricting where they might be located through zoning or through 1,000 or 1,500-foot setbacks or some combination, they had to see where it left them. They had to keep in mind the takings law and that this type of operation or use, unlike someone who wanted to locate an office building, where the City could determine an office building could be centered in the City, when it came to oil exploration or any mineral type of exploration, the City could not just arbitrarily put them someplace. They had to be placed somewhere reasonable and feasible for the companies to reach the oil reservoirs. Part of the analysis would be to figure out where the oil reserves were. That data should be available, and they needed to find out to what extent they could be reached from industrial. They had been told by the oil companies that through the horizontal drilling process, they could reach a mile or two from the actual well site. That flexibility might help the City in limiting the location of the wells. If*

*they were to totally exclude and make it impossible to have oil exploration in the City, he felt that would be a difficult fight. There would be a number of things going against them if challenged, from a State law standpoint, from a case law standpoint and from a State policy standpoint. That did not mean that they necessarily had to allow the oil companies to control the destiny of the City and put wells wherever they wanted. They needed to thoughtfully consider if locations could be restricted by zoning districts, by setbacks, or by both, and those would probably be the two areas they spent the most time on.*

*Mr. Hooper observed that Auburn Hills had three times the amount of industrial area Rochester Hills did. So for them to say they were restricting it just to industrial and not to residential was a fairly easy argument, because they had a significant amount of industrial areas available to place a well, where Rochester Hills did not. Rochester Hills was predominately residential. He asked if a question could be asked of the Attorney General to get a ruling that Rochester Hills could place restrictions beyond the State's for setback and zoning to see if that would carry some weight towards an Ordinance.*

*Mr. Staran agreed that it could carry some weight. It might provide some clarification, recognizing that an Attorney General opinion, unlike a court decision, was not necessarily binding. They could expect that it would be influential and respected. If Mr. Hooper was asking if the Attorney General should weigh in on how far the City could regulate, Mr. Staran said that it was like chicken soup. It could not hurt.*

*Mr. Hooper asked about raising the fine. Mr. Staran had stated that $500 was the injunctive relief, and Mr. Staran confirmed that there was nothing they could do about raising that limit. Every community in Michigan had been dealing with that since the 1920's. Until such time as the Home Rule Cities Act was amended, if ever, to adjust that, there was nothing they could do to increase it. He asked them to keep in mind that if there was a violation of a local Ordinance, there was a good chance that it could be a violation of State law and MDEQ's permitting process also. The State of Michigan was not subject to the same limits, and it had the ability to levy much higher fines than communities did.*

*Mr. Hooper recommended that the Planning Commission requested City Council to seek an Attorney General opinion regarding restricting drilling of oil and gas wells to specific zoning districts and about increasing the setbacks to more than what was permissible by State law for a predominately residential community of more than 70,000 residents. He*

*recalled that the City had asked the Attorney General previously for an opinion. There was an issue with the City of Rochester and the OPC, and they went to the Attorney General.*

*Mr. Hetrick thanked the residents for their input, and he said that it was very helpful and presented in a thoughtful way. Mr. Hetrick said that he was, by and large, in support of most of the things said, in terms of the bonding, the insurance, etc. Given what Mr. Hooper had suggested about an Attorney General opinion, some things Mr. Hetrick wanted to mention might be pre-empted by that, but he wanted to suggest them as opportunities. He suggested that the setback be increased to 1,000 from residential. He suggested that items six and eight be replaced by the language that was in the Auburn Hills Ordinance related to fumes, dust, odors and those types of things. Item nine, height limitations, could also take the specific language from Auburn Hills, as it seemed to apply to Rochester Hills. They talked about baseline testing and monitoring, and he felt that would fit into item ten. Mr. Kaltsounis had suggested an idea about hydraulic fracturing, and Mr. Hetrick agreed that should be added in the Ordinance. It could state that "hydraulic fracturing and any related liquid or chemicals associated with it are expressly prohibited in the City." The Auburn Hills clause about injection wells seemed relevant to them, as well. Those were the items he felt needed to be added or improved upon in the proposed Ordinance. He also thought they would have to do another reading or two before it got to a final draft. He added that he would support a motion to postpone.*

*Mr. Schroeder thought that his predecessors had done an excellent job of covering what they had to look at, but he had a few comments. The setback was the predominant concern. His concern was that cities, village and townships were subjects of the State. They were subject to the State laws. They could try, but they should not pre-empt a State law, because they could put the City in a very vulnerable situation, which could cost a lot of money. He cautioned that they should be very careful in handling the setback. If the City required an additional amount of setback, they could be sued and easily lose. That was a big concern of his. One of the speakers made a comment about drilling in the parks. Mr. Schroeder stressed that there would be no drilling in the parks. He did not believe that fracking was necessary in the area, although he agreed that they should put something in the Ordinance. He pointed out the white area on the map in the northeast corner of the City, and said that in 1980, a company put in nine wells and extracted oil there. The wells and the oil were gone. In the Pipelines Ordinance, page two 94-201 (e) it called for eight-inch lifts in compaction and on page four in 94-202 (b) it*

*called for five-inch lifts in compaction. He said that they should both be eight inches. He also thanked the audience for being attentive in its conduct, and he appreciated everyone coming and giving input.*

*Mr. Kaltsounis wondered if there would be a laundry list for the Attorney General after their discussion. Mr. Hooper said that they would be asking about things that were subject to a legal challenge. If there were other things the Commission felt that might be subject to a legal issue, they could include those. Mr. Kaltsounis wondered if they should draft an Ordinance and then send it for discussion. Mr. Hooper did not believe so, and he thought they should try to get it right the first time.*

*Chairperson Boswell said that they would be asking if a city of over 70,000, primarily residential, could exceed State regulations. Mr. Kaltsounis said that in order to make a decision such as that, he felt that data would be good to have. It could point out many situations where people had been subjected to fumes, for example. If a person from the MDEQ brought up at an Auburn Hills meeting that there were various situations where it had happened, it might hold up in court. He felt that the discussion had to be backed up with some type of data, so they could go to the Attorney General and say that something needed to happen because of this and that. That was what he was looking for. If they asked and the Attorney General said no per case law, if they had shown proven items, Mr. Kaltounis thought it would be helpful. He asked Mr. Staran what he thought.*

*Mr. Staran advised that the Attorney General would answer purely legal questions, and that the Attorney General did not make any factual determinations. If Mr. Kaltsounis was looking for factual data at the State level, there was 70 years of experience and records with the MDEQ. They could tell about every well of the 30,000 or so that had been drilled in the State since 1930. That information was available. They were not navigating unchartered waters in that respect. If they had specific questions to ask the MDEQ, they could provide the data, but he did not think they were in a mode to have to create data - it was out there. Mr. Kaltsounis asked if they should go to the Attorney General with that supporting data to show why they wanted to do something. Mr. Staran said that he did not see how that would help, because the Attorney General would answer a legal question if he believed that it was appropriate. His answer would be limited to what was permissible under the law and not what the Attorney General thought was a good idea. That was not his prerogative; it was the State Legislator's prerogative.*

*Mr. Kaltsounis then made a motion to recommend that City Council requested an opinion from the Attorney General with regards to drilling in residential areas based on the negative effects on the community due to smells, sounds, vapors, and so on.*

*Mr. Hooper said that he would rather not be so restrictive. He would like to ask if, in a town of 70,000 people, the City could restrict oil and gas drilling within the community, specific to certain zoning classifications. That would mean no residential allowed, and that it could only be in Industrial or Commercial zoning. It would be an all encompassing decision about whether the City had the ability to restrict oil and gas drilling in the community. Along with that, they could ask about the setback requirements and whether the City could go beyond what the State currently dictated for a town of 70,000. He stated that it would be a yes or no answer. After that, they would craft the Ordinance.*

*Mr. Staran said that he got the drift of where the Planning Commission was going, but he felt that it would be a big mistake for the Commissioners to try to draft questions for the Attorney General. He advised that it was a strictly legal matter, and the answer they got would only be as good as the question posed. They had to ask very specific questions, and he suggested that they simply make the request to City Council to seek an Attorney General opinion that would clearly advise the City on the limits and extent the City might regulate oil and gas exploration and development by local Ordinance. It would be left to the collective effort of Council and the City Attorney to develop the specific questions to be presented for the Attorney General's consideration. He noted that there would be an additional step. Neither the Planning Commission nor the City Council had the authority to directly request an Attorney General opinion. They would need to enlist a State Representative or Senator to actually submit the request for them.*

*Mr. Kaltsounis clarified that the Attorney General would look at previous case laws pertaining to drilling laws and Ordinances. Mr. Staran agreed that the AG would look at case law and statues, which were the same things Mr. Staran was looking at. Mr. Kaltsounis said that if there was an issue with smell or sound that really had not gone to court, the Attorney General could not make a recommendation. Mr. Staran said that those were fact specific. There had been over 30,000 wells drilled in the State of Michigan. Someone could not say that each one of those wells has had the same experience as far as smell, sound, etc. Mr. Staran said that it was really not relevant to what the Attorney General's opinion would be. Mr. Kaltsounis clarified that it would not be relevant because there was no*

*court case that decided something. Mr. Staran said that there might be, but any court case decided would have been decided based on the specific facts of the case. There would be no court case that said that all oil wells created noise problems or that all oil wells created odor problems. It would be no different than when the Commissioners met. They had to look at the specifics of each case, and what was appropriate in one place might not be appropriate in another. He stated that they had to be careful about broad brushing something. Mr. Kaltsounis asked why the City held everyone to the same building standards. He asked if they should broad brush one thing versus another. If he built a building, it had to be constructed in the same manner as another, based on the City's Ordinances. Mr. Staran said that had to do with skilled trades and engineering. Mr. Kaltsounis asked why they could not follow the same standards in the case of stench or noise with an oil well in past case law. Mr. Staran commented that they were talking apples and oranges. Mr. Kaltsounis was talking about construction and building design as opposed to what was happening at a specific site. If someone fired a cannon in the middle of a forest no one could hear it. If it was fired off in the middle of the Auditorium, everyone would be running for cover. When they were talking about fact issues, they had to look at the circumstances in which those facts arrived. The Attorney General would not make those kinds of determinations, if he looked at something at all. He would look at the cases, the statues, and he would determine what they were or were not permitted to do. Mr. Kaltsounis said that he was not sure if he agreed about the broad brush, because he thought that they did that in a lot of places. He mentioned that in front of every Ordinance in the City, there was a preamble. That preamble stated what the City was concerned with and why the Ordinances were brought forward. They were concerned with the well being of people, for example. He asked why he could not take the past things that other people were concerned with and relate it. He said that he disagreed with Mr. Staran in that sense. Mr. Staran had already said that they could add a preamble to the Ordinance. Mr. Kaltsounis said that he was trying to build that case, and he wondered how they did that. He asked where the data was to discuss it. He agreed with Mr. Hooper. If they were just asking the Attorney General if they could or could not do something above State laws and he said no, but Mr. Kaltsounis had a lot of smell and other problems to relate that no one might have sued about, he thought it would be case law that would be permissible. If they did get sued, he questioned what would they use, and he thought they would use that type of case law - a city had a problem with a stench 4,000 yards away. He did not think that was a broad brush. He thought it was something they could relate. That was the data quest he was on. They could put the pieces together and say the City was doing*

*something, and it could build the preamble accordingly. He did not see data for anything right now. He did not see data for the pipes or for anything and if they had a problem, they would not know how to cover it. He wondered if they should add those items to the questions for the Attorney General if they had the data. They could show the Attorney General cases where there were problems with stench and sound, etc., and that the City wanted to be covered because of those types of things.*

*Mr. Staran stated that it would not be relevant to an Attorney General opinion. It might be extremely relevant to an Ordinance they were drafting, but he really did not want to debate it. He said that he had been doing it for 30 years, and he understood how the Attorney General worked, and he understood how to pose a legal question.*

*Chairperson Boswell said that it was like going to an appellate court. They would look at something and say that the law said one thing, and they did not care about everything else. They would tell someone to go to his Legislator to have the law changed, and the Attorney General might tell them that also.*

*Mr. Hetrick asked what Mr. Staran had suggested for a motion. Mr. Staran said that he believed that some of the Commissioners thought there would be merit to requesting an Attorney General opinion, and his suggestion was that the request needed to be along the lines of asking for an opinion as to the legal limits and extent by which a City of its size might regulate, through local Ordinance, oil exploration and development activities.*

*Mr. Hetrick felt that would cover what they wanted. He believed that it would cover some of the issues that Mr. Kaltsounis was after in terms of noise, etc., because the City could regulate those potentially. Mr. Staran said that was all included when he referred to oil exploration development activities. It would include everything to do with, and any of the incidental effects related to, oil exploration and development.*

*Mr. Kaltsounis said that he would rescind his motion if someone else would like to make a motion pertaining to their discussion.*

***MOTION** by Hetrick, seconded by Dettloff, the Rochester Hills Planning Commission hereby requests that City Council seeks the Attorney General's opinion that would clearly advise the City on the limits and extent by which a City of its size might regulate, through local Ordinance, oil and gas exploration and development activities in Rochester Hills.*

*Mr. Kaltsounis said that the reason for how he would vote was not because he had a problem going to the Attorney General and asking for his advice. The AG would say that he had not heard of any problems, so the City could not regulate something. Mr. Kaltsounis thought that they needed to have evidence of some type of hardship to give the Attorney General and ask for a recommendation in the case of a hardship based on the past cases. Mr. Staran said that it would not matter. The Attorney General construed the law. Mr. Kaltsounis was trying to build a case for the State Legislature. They were the people who wrote the laws. The Attorney General read the laws; he did not change the laws, and he did not read something differently into them other than what was said. That was why Mr. Staran was saying that the points Mr. Kaltsounis was making, although he was not saying they were not good points, they were just not relevant for an Attorney General, were points that needed to be made to the Michigan House of Representatives in Lansing. They were the people who could change the law, and they were the people who could look at SB 1026 and adopt it or make it even stricter. A gentleman spoke earlier and asked why apply that Bill to communities of 70,000 instead of smaller communities. Mr. Staran stated that the Attorney General did not do that, because it would be exceeding his authority. He read, construed and interpreted the laws. The extraneous fact had no bearing on that analysis, and that was the point Mr. Staran was trying to make. Mr. Kaltsounis was questioning the wisdom of the laws, not the interpretation. The Attorney General would just tell them what the laws said. Mr. Kaltsounis clarified that the Attorney General would not make a recommendation with regards to the other facts. Mr. Staran said that might be the Governor's job. Mr. Kaltsounis said that it might be a subject where they had to go down certain paths. Mr. Staran thought that the path of the Attorney General was the wrong one. There were other paths that were more appropriate to take. Mr. Kaltsounis said that he understood.*

*Ms. Brnabic said that aside from the Attorney General discussion, she noted that there were several things discussed that could be additions or revisions to the Ordinance. She asked if, before they met again, some of those would be revised and presented. She meant the suggestions for bonds or baseline testing, for example. She did not think revising those things would be overstretching the Commission's authority with regard to the State law. Mr. Staran thought that they needed to figure out where they were going with it. They could request all kinds of information, but he wondered what they would do with it. If a company came in and they were required to give a file cabinet full of information, he questioned who would review it and what they would do with it. He questioned who might have*

*the technical expertise to do something with it or if it was redundant. It could be something the MDEQ was already looking at. Those were all questions the Commissioners needed answers to, and he said that he did not pretend to have all the answers. It was part of the research process. Some were fairly straight forward, and if the Planning Commission wanted those changes, including baseline testing, that was fine. They had to think it all the way through. Ms. Brnabic was talking about baseline testing of the water supply. Mr. Staran said they had to determine things like where the testing would be, and if it would be City-wide or within 100 fee - things like that he needed to be given more specific direction. He was not an expert on water testing. If Ms. Brnabic was asking if he could bring back an Ordinance, he could, but he was not sure what the Commissioners wanted it to say. They could agree on the concept, but the devil would be in the details. He thought it was something they should look at, but he was not sure he would have specific language at the next meeting. He said he would try, but he did not think they would have all the answers for the next meeting. There were other resources that would have to be involved. There had been a lot of questions raised with regards to engineering and technical things for which experts would be needed. They might need the City's environmental consultant to be at a meeting to answer some of those things. They might need the City Engineer to answer some things, and the MDEQ should be able to share a wealth of information.*

*Ms. Brnabic said that she did not expect to have something by the next meeting. She wondered if some of the suggestions would be dealt with after receiving more information. Mr. Staran said that he would hope that through the process that they would be able to address everything that had been brought up. They would either make changes or determine that it was not appropriate to make changes. Ms. Brnabic asked if the Commission could get more information about takings. Mr. Staran asked what they might want. He could point them to the law library, and they would probably have two walls full of books on takings. If they needed specific information, such as cases involving oil and gas regulation where there had been takings, then that was available. He asked if there was something more they needed to know or if they needed numbers. Ms. Brnabic said that if they had some examples of case law in regard to takings, it would be helpful.*

*Mr. Kaltsounis said that he was just asking for a one pager of cases that related to what they were talking about. That is, those that might get them into trouble or not. Ms. Brnabic thought that Mr. Kaltsounis would want the entire case to understand it. Mr. Kaltsounis said that if they had a list,*

*they could look at it on a case by case basis. Mr. Staran said that he would do his best, but if they wanted a one page case of takings law, there were volumes. Mr. Kaltsounis said he was looking for cases that Mr. Staran would recommend that they should be aware of in regards to what they were doing.*

*Ms. Brnabic clarified that the motion was specific about sending a request to Council to make a request of the Attorney General There were other things she wanted dealt with that were not in that motion. Mr. Staran said that if the Planning Commission was going to ask City Council to seek an Attorney General opinion, it could do so, but he did not think it was necessary nor would he recommend that everything stopped and waited for that. There were multiple processes going on. There was no guarantee that the Attorney General would even touch it. They had no control over how much time that could take, and it could take months and months for the Attorney General to say he was not even going to issue an opinion. In the meantime, they had a lot of work do to, so he would recommend that the Commission should act on the motion, but he said that they still needed to be working on proceeding with the Ordinances and gathering data and hearing from consultants. The aim would be to ultimately have an Ordinance and recommendation for Council.*

*Ms. Brnabic referred to Senate Bill 1026, and she asked if that law went into effect if it would void current leases. Mr. Staran said it would not, and that it had nothing to do with the current leases. It might make it difficult for the oil company to take advantage of those leases, but the government could not impair private contract rights. That was in the Constitution. He said that it had been represented publicly that there were several hundred private oil and gas leases that had been obtained in Rochester Hills. It had also been represented that every single one was a non-developmental lease. That meant that there was no right, under a non-developmental lease, to actually drill a well on the property. The property owner would be leasing the rights to the oil, gas and minerals beneath the property's surface, but it would be up to the oil company to extract those from an offsite location. None of those leases would authorize actual drilling. Senate Bill 1026 addressed the actual drilling. It would say that "in communities with a population of 70,000 or more, there was no oil drilling." It was brought up by one of the speakers that there was a provision in that Senate Bill, which was carried over from State law, that there was the ability of the Supervisor of Wells in an appropriate case to waive that restriction. If that passed, it would appear to prohibit any oil wells from being drilled in Rochester Hills.*

*Ms. Brnabic said that the Bill talked about granting a waiver and she read, "It would be subject to public meetings." She asked if that meant public meetings in a specific city. Mr. Staran was not sure. He thought he heard a comment that there were hundreds of pages of administration regulations, and he would need to look. He did not know if the hearings would be in a city or at the MDEQ office.*

*Chairperson Boswell remarked that the reason he asked for a motion about the Attorney General in the first place was because he thought that would be an easy one to get out of the way without further discussion. Hearing no further discussion, he called for a voice vote.*

*Voice Vote:*

*Ayes: Boswell, Brnabic, Dettloff, Hetrick, Hooper, Schroeder, Yukon*
*Nays: Kaltsounis*
*Absent: Reece*

*Mr. Anzek said that in the spirit of trying to make future meetings productive, he asked the Commissioners and residents to advance him any questions specific in nature that might be provided to the MDEQ before meeting with them. He did not want to give them vague questions and get the history of oil drilling. If they wanted to know about water and water protection, he wanted to hear what the MDEQ had to say. If they just brought the MDEQ in for a presentation and fired questions at them, they might not be prepared or bring the right people.*

*Mr. Staran agreed that depending on the questions, there would be different people from MDEQ prepared to answer them, so he said it was very important to have the right people. Mr. Anzek reminded that he was inviting the residents to submit questions also. Mr. Kaltsounis agreed that he would rather have the DEQ make one trip, and he said that if anyone had questions about his points, that they should let him know so he could clarify.*

*Chairperson Boswell wondered if the next meeting should just include the MDEQ or if they wanted experts in other fields to come. Mr. Kaltsounis said that he would leave that up to Staff and the Chair. Mr. Anzek explained that he needed some time to get the questions and to find out about the DEQ's schedule to be able to organize a meeting. Chairperson Boswell thought that the next meeting would be a special meeting, and Mr. Anzek agreed that it would be worthwhile to dedicate a meeting specifically to this subject.*

***MOTION*** *by Kaltosunis, seconded by Yukon, that in the matter of File Nos. 2014-0146 and 2014-0368 (Oil and Gas and Pipelines Ordinances), the Rochester Hills Planning Commission hereby postpones both items to a later date to be determined by the Chair and Staff to meet with the MDEQ and other appropriate consultants.*

*Voice Vote:*

*All Ayes*

*Chairperson Boswell thanked the audience members for staying for the discussion and for providing information.*

*Mr. Schroeder wanted the audience members to understand that it would be a prolonged matter, because a Senate Bill took a long time. It had to go to a committee, and the committee could choose to not even consider it. He doubted that would happen, though. There were a lot of Senators putting in their two cents and going to their constituents, and he stated that people would not imagine what would be in the Bill when it was done. To him, the concern was the setback, and the only solution to it would be to get the State to change the law along with the Bill. It was possible that they might not get that answer for a very long time, and the City had no control over the process.*

## ANY OTHER BUSINESS

*There was no further business to come before the Planning Commission.*

## NEXT MEETING DATE

Chairperson Boswell reminded the Commissioners that the next Regular Meeting was scheduled for October 21, 2014.

## ADJOURNMENT

Hearing no further business to come before the Planning Commission, and upon motion by Mr. Kaltsounis, Chairperson Boswell adjourned the Special Meeting at 10:15 p.m.

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William F. Boswell, Chairperson
Rochester Hills Planning Commission

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Nicholas O. Kaltsounis, Secretary