

## PLANNING AND ECONOMIC DEVELOPMENT

2006-0294 Request to approve an amended Consent Judgment pertaining to Adams/Hamlin Development Co. v. the City of Rochester Hills, Case No. 2004-060730-CZ, entered on April 20, 2006 and specifically regarding two parcels of land totaling approximately 28 acres, located at the northeast corner of Hamlin and Adams, Parcel Nos. 15-29-101-022 and -023; Rochester Hills, Oakland County, Michigan

**Sara Roediger**, Planning and Economic Development Director, and **Kristen Kapelanski**, Planning Manager, were in attendance representing staff. Also in attendance were **Seth Mendelsohn** and **Eric Bell**, Goldberg Companies, **Tyler Tennent**, Dawda, Mann, Mulcahy & Sadler, PLC, **Arthur Siegal**, Jaffe Law, **Rachel Smith**, PEA, **Bret Stuntz**, AKT Peerless, and **Thomas Wackerman**, ASTI Environmental.

*Ms. Roediger stated that the subject property consists of 28.5 acres on the northeast corner of Adams and Hamlin, and is a former illegal landfill with contaminated soil. She noted that the parcels are zoned one-family residential. She explained that a consent judgment governs the site for court-ordered development of the property which is the result of a very controversial rezoning request from 2005 and 2006 to rezone the property from single family to B-2 General Business.*

*She stated that the City held a number of public hearings and at the time of the original rezoning request it was denied by the Planning Commission and City Council. The applicant took it to court and as a result, the Consent Judgment was entered April of 2006 outlining the rules for development of the property. She explained that in order to amend the existing Consent Judgment, an agreement is required between the property owner, the City and the court. She noted that the existing Consent Judgment allows for almost 100,000 square feet of office and 72,000 square feet of retail, with a number of buildings allowed ranging from one to two-story, with uses varied for restaurants, retail, medical office, professional office and a drive-through. She pointed out that the property owner has the right to begin construction of the site plan under the existing Consent Judgment right now.*

*She stated that an alternative proposed will allow for 386 luxury apartments and residential use. She noted that it would maintain many of the important elements discussed at the many meetings in 2006, including a large buffer to the north, and an entryway at the corner of Adams and Hamlin. She commented that changing the use from nonresidential to residential increases the environmental cleanup that must be done, and she noted that **Thomas Wackerman**, ASTI Environmental, the City's environmental consultant, was also in attendance to answer any questions. She mentioned that Mr. Wackerman was on the original team for the Consent Judgment.*

*She reviewed the proposed plan, noting that it goes from two-story buildings along the residential line to three and four stories along Hamlin. The plan would*

provide for a cleanup of the property to a nonresidential standard, with the majority of the property cleaned up to a residential standard. A decree for no further action would be given from the State, and the majority of the property would be a clean site. She mentioned that the cost of cleanup increases dramatically for the proposal, from \$3.5 million to a \$12.6 million investment. An amended Brownfield Plan would be developed with the reimbursement moving from 15 to 20 years.

She commented that while increased traffic is a concern, the current Consent Judgment is estimated to increase traffic by 10,100 trips per day; while the proposed residential use would reduce that number to an estimated 2,000 to 2,700 trips per day.

**Mr. Wackerman** noted that he prepared a memorandum for the meeting packet, and he commented that this property needs to be cleaned up. He pointed out that the proposed Consent Judgment includes a voluntary cleanup, with part of the property cleaned up to unrestricted residential and the rest restricted nonresidential. He explained that the Michigan Department of Environmental Quality (DEQ) will have active oversight and approval of the cleanup process. He noted that there has been some remediation since 1984; and he commented that the eastern parcel is where most of the contamination lies, with a lesser degree of concern for the western parcel. He noted that the property will be re-split, with Parcel B farthest to the east resulting in nonresidential restricted closure. Engineered, administrative and active controls will be in place, and the parcel will have casual use such as parking. The remainder of the property will have active remediation and will have unrestricted residential closure, with no need for further action to that parcel and a no further action letter issued. He noted that Parcel B will have documentation of due care compliance protective of human health and the environment. There will be removal of soil, and installation of a slurry wall and clay wall constructed around that part of the property. A cap on top will encapsulate the worst of the contamination. He stressed that engineered controls will allow use of the property, and he noted that these controls do not exist now and the property continues to deteriorate. He pointed out that vapor controls will be in place for the buildings, with optional methane or vapor vents installed if any is found. He stated that a Brownfield Plan will be the document that enforces and defines the cleanup. He mentioned that Parcel B will have a component that specifies long-term care and maintenance to provide these protections.

**Ms. Roediger** stated that tonight's request is to consider approval of amending the Consent Judgment. If approved, the next steps will be for the City Attorney to finalize and execute the Amended Consent Judgment with the applicant and the Court. Following that process, the site plan will be reviewed by the Planning Commission with recommendations to City Council. She pointed out that the alternative in not amending the Consent Judgment is that the site will be developed as per the current Judgment.

**Mr. Bell** stated that he is one of the owners of the Goldberg Company, and he explained that it is a family-owned business that has been constructing residential properties for more than 60 years. He noted that they are generational holders of real estate and want to own and manage the properties.

*He stated that their properties are high-quality apartments with the best finishes and community amenities such as pools, fitness centers, and community gathering spaces. He stressed that this is important because of the environmental concerns and expectations.*

***Mr. Mendelsohn** noted that when the company first looked to Rochester Hills, it was asked what it could do with the environmental and traffic concerns. He pointed out that cleanup for their project will cost approximately four times what cleanup for a retail project would be, and the goal will be to have unrestricted residential cleanup of the property. He noted that the project proposed will have one-quarter of the estimated traffic increase with four times the amount of cleanup. He stated that the company wants to ensure that their development will fit in with the residential character of the community.*

**Public Comment:**

***Jim Lannen**, 2865 Portage Trail Drive, questioned whether the sewage plan and storm drain would impact his subdivision, if new residents will cause the schools to go over capacity, and if a four-story residence would set a precedent in Rochester Hills.*

***Dawn Harimoto**, 3106 Quail Ridge Circle, commented that the Consent Judgment has vague terms, and questioned why the main entrances do not have to adhere to zoning requirements. She questioned whether the only exercise facilities would be outdoor, and whether the Planning Commission would have the right to make any recommendations that are contrary to the plan submitted.*

***Deanna Hilbert**, 3234 Quail Ridge Circle, commented that she did not see a placard posted on the property; however, she knew that there had been a meeting with the neighborhood to the north. She stated that it was a contentious issue when the Consent Judgment was first made, and suggested that there might be more interest in neighborhoods beyond the 300 foot line. She questioned whether allowing four stories would lead to high rises across the street or in other places in the City, whether the residents will be safe with the additional traffic concerns, what Vice President Morita's opinion is on the safety of the development of a former superfund site.*

***Larry Schloss**, 2851 Current Drive, stated that his home is to the northeast of the subject property, and he recalled cleanup activities to date on the site. He commented that the area has been a problem for Rochester Hills for years, and the City should not rush to accept a proposal that would seek to set aside an existing Consent Judgment.*

***Scot Beaton**, 655 Bolinger, stated that a bad decision was made in 2006 which the City is paying for again this evening. He commented that landfill sites should be turned into parklands. He questioned what parking space sizes would be and why the applicant was asking for an additional 76 spaces beyond the 656 spaces required by the Ordinance. He mentioned that \$3,000 would be given to abutting homeowners for landscaping and questioned why the buildings would be 60 feet in height and whether there had been any discussions with mixed use*

buildings with the developer. He stated that a new public hearing should be held.

**President Tisdel** questioned what storm storage and storm drain plans are proposed.

**Ms. Smith** responded that the storm and sanitary sewers are separated in Rochester Hills. She noted that there are two existing sanitary sewer stubs, one on Rapids Way and one near the northeast corner of the property. She pointed out that the Master Plan provides for any development on this property to connect to those stubs and the connections are already on the site. She stated that the sanitary sewer service would be through public sewers and would flow through the neighborhoods. She noted that an underground storm detention system would provide for the release of flow to the east to the City's park property and an engineered wetlands system. She stressed that the storm flow would not go through the subdivision at all.

**President Tisdel** questioned whether there would be a delay in taxes collected for the school system.

**Mayor Barnett** responded that much of the school's funding is by pupil count. He noted that the Rochester Community School System is actually experiencing a slight decline in the school population and welcomes new students. He mentioned that School Superintendent Robert Shaner stated that the district is excited about the prospect of new students.

**President Tisdel** questioned what percentage of occupancy would be anticipated to be families.

**Mr. Mendelsohn** responded that they are not expecting more than a few students as the development would be more likely to attract empty nesters and millennials.

**Mr. Bell** pointed out that the development is covered by Fair Housing laws and the company has an absolute commitment to Fair Housing practices.

**President Tisdel** questioned whether there were other four-story residences in Rochester Hills.

**Ms. Roediger** responded that City Apartments is a four-story complex going up at the southeast corner of Tienken and Rochester Roads, and Samaritas (formerly Danish Village Apartments) is also a four-story building.

**President Tisdel** questioned whether there were vague terms in the proposed Consent Judgement.

**John Staran**, City Attorney, explained that the mandated Consent Judgment is intended to be a blueprint with an authorization to proceed with the concept and parameters presented. He noted that some parameters are general and some are specific, and should be considered step one. He stated that should the Amended Consent Judgment be approved this evening, the next step would be for the applicant to go further in the planning process including engineering and

*presentation of a detailed site plan which will go to the Planning Commission for fine-tuning of the project. He noted that while the look and layout would have to be consistent with the general concept presented here, the Planning Commission would work with the developer to come up with plans to come before City Council for final approval. He pointed out that the cleanup activities would have to go through a review of the Brownfield Redevelopment Authority with public hearing and recommendations to come back to City Council at a later date. He stressed that there will be a number of additional public meetings, public hearings and refinements, and noted that Council will have all the details on what the look and layout of these buildings will be for final approval.*

**President Tisdel** questioned whether this item should have been posted as a public hearing.

**Mr. Staran** responded that it is being conducted similar to a public hearing; however, there is no requirement for a public hearing on a consent decree. He stated that Council is consistent with past practice and is obviously listening to residents and obtaining feedback. He commented that this is the first of several more public meetings that will be occurring before anyone puts a shovel in the ground.

**President Tisdel** requested information on the continuity of look to the development and where the workout and gathering facilities would be located.

**Mr. Mendelsohn** responded that these will be luxury apartments with interior corridors. He noted that modification must be made from the way it was originally written to account for the interior entry. He explained that code is written referencing entryway to apartments, and stated that the interior entryways to each apartment may not face the street. He stated that a large three-story clubhouse will be approximately 10,000 square feet in size and will have a pool, gym with fitness equipment, meeting spaces, leasing office and outdoor space for gas grills.

**President Tisdel** questioned whether the applicant considered adding retail and restaurants.

**Mr. Mendelsohn** responded that while that was considered, that style does not work with most developers and these types of developments have not succeeded throughout the country. He pointed out that a mixed use would add a tremendous amount of extra traffic that the community does not want.

**President Tisdel** stated that status quo is off the table and the area will be developed. He noted that Council can move forward with the Amended Consent Judgment or move on with development under the current Consent Judgment.

**Ms. Roediger** concurred, noting that the Consent Judgment currently dictates what will happen. She stated that the developer's team approached the City approximately one year ago with a concept plan, and once Staff felt comfortable with what was being proposed, it is being brought to Council. She mentioned that two closed sessions of Council were held in December, and a neighborhood open house was held in January to present the project and receive input from

the 13 abutting homes. Furthermore, a mailing was undertaken to all properties within 300 feet and an additional email to those attending the open house. Two new four-by-six-foot signs were placed on the property facing Hamlin and Adams last Tuesday. Staff has been working with the applicant to finalize the Consent Judgment.

**President Tisdell** noted that cleanup funds ran out previously for the property and efforts are being undertaken to prevent that from happening again.

**Mr. Wackerman** pointed out that this was not a Federally-listed Superfund site. He explained that cleanup was attempted by the DEQ; however, funds ran out. He stressed that this is why a development is necessary as it generates the needed tax increment financing. He noted that part of the Brownfield Plan is to estimate what those costs will be and make sure that the project will be funded.

**President Tisdell** questioned the number of parking spaces requested.

**Ms. Roediger** responded that parking will be reviewed as a part of the site plan process. She noted that guest parking will be needed as well. She pointed out that the applicant is proposing a number of garages.

**Council Discussion:**

**Vice President Morita** stated that under this plan, a provision calls for payment for landscaping to the 13 abutting landowners. She explained that as she is one of those landowners. As such, she has asked for a provision to be included to remove her and her husband from this provision as long as she has an interest in their home. She stated that the draft Consent Judgment does not have this provision included, refers to the wrong number of property owners, and does not refer to the elevations. She noted that because Council's draft resolution is missing some significant terms, she is not comfortable approving it as currently drafted. In response to Ms. Hilbert, she stated that she thinks it is a great project and is excited that the developer is coming to the community and will be making the property safe. She commented that while she does not think anyone is thrilled with the prospect of a four-story development, the density is required in order to support payment for the cleanup. She noted that the four-story buildings will be closer to Hamlin, and will hopefully block freeway noise in the adjacent subdivision. She commented that it is certainly better than what is under the existing Consent Judgment. She stated that she is in agreement with moving forward; however, she suggested that the resolution language be changed to accommodate what needs to be accomplished tonight taking into consideration that there is more information needed.

**Mr. Staran** stated that Council is aware of the project and there has been discussion among the development team and City Staff for several months. He noted that the City would receive the input from the public and Council tonight and discuss and incorporate this input into the document. He stated that the resolution gives the Mayor and Staff the flexibility to work with the applicants.

**Vice President Morita** stated that she would prefer to have the Consent Judgment amended to take tonight's discussion into consideration and return it

to Council at the next meeting. She suggested that the resolution be revised to reflect Council's approval of moving forward with an Amended Consent Judgment which will be subject to final approval of Council at a subsequent meeting.

She mentioned that the right turn lane heading north on Adams currently ends at Portage Trail. She commented that neighbors have been trying to work with the Road Commission for Oakland County to try to get a dedicated right turn lane for this entrance; however, there has been no funding for its development. She questioned whether consideration of this lane could be added as a part of the Consent Judgment. She commented that it is a dangerous corner when people are turning, and the development will add 2,000 to 2,500 more trips in and out of the property. Perhaps the developer would consider this as well.

**Dr. Bowyer** commented that it is a beautiful development and will benefit from cleanup monies increased to \$12.67 million. She questioned who would be performing the testing, whether the clay wall installed would be deep enough to encapsulate the contamination, and who will be in charge of maintenance going forward.

**Mr. Wackerman** responded that as it would be a voluntary action program, the developer would be doing all testing and documentation to send to the DEQ. The DEQ would review the documentation and determine the adequacy of the cleanup. He noted that the walls and slurry wall will tie in with the underlying clay and provide a box to contain the contamination.

**Mr. Stuntz** stated that much of this will be determined in the field; however, he would estimate at least 15 feet of clay. He noted that the clay will be two-foot in width all around the contamination. He stated that the property owner of the parcel will have due care and compliance. He commented that within the Brownfield Plan itself, there is 30 years of operation and maintenance for that parcel specified, and he stated that it would include inspection and repair of the cap. He noted that once in place and field testing completed in the first year or two, the cap will be fairly stable over time. He stated that funding would be provided by the property owner going forward.

**Dr. Bowyer** mentioned comments made this evening encouraging mixed use.

**Mr. Mendelsohn** responded that mixed use encourages more a transient type of resident. He noted that they have found that the type of tenant attracted to their development wants a nice quiet neighborhood as opposed to the hustle and bustle of retail.

**Dr. Bowyer** commented that while the City would like landfills to go "green", the City does not own them. She stated that by moving to apartments rather than retail, traffic would be reduced. She noted that while Hamlin can handle the traffic, Adams cannot.

**Mr. Hetrick** agreed with Vice President Morita's changes to the resolution presented. He noted that the property must meet residential standards once cleaned up, and he questioned whether any venting would be above and beyond

what is required.

**Mr. Deel exited at 8:52 p.m.**

**Mr. Wackerman** concurred, noting that it would result in unrestricted residential closure of the property allowing anything that would be allowed in a residential setting. He stated that venting would be an extra precaution for lenders.

**Mr. Hetrick** questioned whether the Planning Commission will have any influence as to how the site plans will be developed.

**Ms. Roediger** responded that it should be viewed similar to a Planned Unit Development process, with conceptual, planning and final stages.

**Ms. McCardell** commented that environmental cleanup is important to her and she is grateful to see a residential cleanup happening to this property. She stated that she has learned that having this type of cleanup provided by Federal agencies is nearly impossible. She noted that she is glad to see this will result in fewer trips for vehicle traffic. She commented that she would concur with Vice President Morita's suggested changes to a resolution for approval; and would like to see some sort of contribution toward a turn lane, noting that it would show good faith on the part of the developer.

**Mr. Deel re-entered at 8:55 p.m.**

**Mr. Kubicina** stated that he is excited about the cleanup of this area, and noted that the project will be right next to Innovation Hills. He commented that this will make the park that much more attractive.

**Mayor Barnett** stated that when first contacted by the developer, the City was interested to see if this would move forward. He noted that market conditions are hot in the City right now. He commented that it is evident that if Council does not move forward this evening, the developer is ready to move forward with the current Consent Judgment within 60 to 90 days. He noted that viewing the proposed project renderings next to each other gives a perspective of the differences. He stressed that this particular residential project will result in one-quarter of the traffic of the previously-approved Consent Judgment. He mentioned that two weeks ago Council heard from residents expressing traffic concerns regarding the Premier Academy project, and he noted that residents prefer less traffic over more, residential development over commercial, and more cleanup of the site over less.

**Ms. McCardell** stated that this decision is not fear-based and Council has looked at the project individually. She commented that it appears that it will be a good deal for Rochester Hills.

**Mr. Deel** expressed his thanks to Vice President Morita for suggesting language for the resolution, noting that he wants to have the full and final version of the Amended Consent Judgment in front of him before he approves it. He stated that Council is left with a legacy of an illegal dumpsite and wants to leave a legacy of a clean site for future generations. He commented that while it is not



*a problem that the City has created, it will be a problem that it will solve.*

***President Tisdell** stated that this is not a lesser of two evils and is a good thing for the City. He commented that obviously the applicant will be a part of the final edits to the Consent Judgment and will be fully aware and in agreement before it comes to Council for approval.*

**A motion was made by Morita, seconded by McCardell, that this matter be Adopted by Resolution. The motion carried by the following vote:**

**Aye** 7 - Bowyer, Deel, Hetrick, Kubicina, McCardell, Morita and Tisdell

**Whereas**, in settlement of zoning litigation in the case styled Adams/Hamlin Development Co v City of Rochester Hills, Oakland County Circuit Court Case No. 2004-060730-CZ, a Consent Judgment was entered on April 20, 2006 concerning the approximately 28 acres of real property located at the northeast corner of Adams and Hamlin Roads; and

**Whereas**, that Consent Judgment contemplated and permitted environmental remediation and mixed-use office/commercial development of the subject property pursuant to a brownfield redevelopment plan; and

**Whereas**, the contemplated remediation and redevelopment has not occurred, the subject property has changed ownership and a new prospective developer proposes to remediate and develop the subject property with a higher level clean-up and a multi-family residential development pursuant to a brownfield redevelopment plan; and

**Whereas**, the City Council supports the proposed project, and in order to proceed it is necessary to modify and amend the 2006 Consent Judgment.

**Resolved**, that the Rochester Hills City Council hereby approves moving forward with an Amended Consent Judgment which will be subject to final approval of Council at a subsequent meeting.

**Be It Further Resolved**, that the Mayor, City Administration and City Attorney are authorized to move forward with preparing an Amended Consent Judgment for presentation to and final approval by City Council at a subsequent meeting and to prepare any other documents necessary to effectuate and implement the Amended Consent Judgment on behalf of the City.

**Be It Finally Resolved**, that the City Attorney is authorized to undertake the necessary actions to arrange for the Amended Consent Judgment to be entered by the Court and recorded at the Register of Deeds.

**2018-0027**

Request for termination of the Brownfield Plan for the Hamlin/Adams site, two parcels of land totaling approximately 28 acres at the northeast corner of Hamlin and Adams, zoned by Consent Judgment, approved by City Council on November 29, 2006

***Sara Roediger**, Planning and Economic Development Director, stated that there is a current Brownfield Plan on the Adams and Hamlin property which has resulted in approximately \$500,000 in taxes taken. She noted that the State Act states that after two years with no construction, the City has the right to terminate a Brownfield Plan and allocate the monies back to the taxing jurisdictions. She commented that originally it was thought that the City would*

receive interest on the monies; however, that is not the case. She pointed out that the City will receive a little over \$100,000 back.

**Mr. Hetrick** questioned whether the ability to terminate the Brownfield Agreement was at all related to the Consent Judgment.

**Ms. Roediger** responded that the City could have terminated the Brownfield Agreement at any point in the past nine years. She stated that any project going forward will have a new Brownfield Plan.

**A motion was made by Morita, seconded by Kubicina, that this matter be Adopted by Resolution. The motion carried by the following vote:**

**Aye 7 -** Bowyer, Deel, Hetrick, Kubicina, McCardell, Morita and Tisdell

**Whereas**, on November 29, 2006, the Rochester Hills City Council approved a Brownfield Plan for the environmental remediation and mixed use office/commercial redevelopment of approximately 28 acres of real property located at the northeast corner of Hamlin and Adams Roads in the City of Rochester Hills, Oakland County, Michigan, more particularly described as:

Parcel No. 15-29-101-022

T3N, R11E, SEC 29 PART OF W 1/2 OF NW 1/4 BEG AT PT DIST S 00-33-37 E 120.85 FT FROM NW SEC COR, TH N 88-30-46 E 836.53 FT, TH S 38-06-17 E 750.59 FT, TH S 76-30-50 W 1327.14 FT, TH N 00-33-37 W 878.45 FT TO BEG 18.80 A 1-24-00 FR 002

Parcel No. 15-29-101-023

T3N, R11E, SEC 29 PART OF W 1/2 OF NW 1/4 BEG AT PT DIST N 88-07-26 E 841.94 FT FROM NW SEC COR, TH N 88-07-26 E 759 FT, TH S 01-26-07 W 674.52 FT, TH S 76-30-50 W 291 FT, TH N 38-06-17 W 750.59 FT, TH N 01-50-10 E 126.65 FT TO BEG 9.20A 01-24-00 FR 002

**Whereas**, the Brownfield Redevelopment Financing Act, at MCL 125.2664(8)(b), provides that a brownfield plan may be terminated by the City Council for an eligible property if the project for which eligible activities were identified in the brownfield plan fail to occur for at least 2 years following the date of the resolution approving the brownfield plan; and

**Whereas**, in accordance with statute, the previous owner/developer, the current owner, and the prospective purchaser of the subject property have been given more than 30 days advance written notice and an opportunity to be heard at a public meeting prior to termination of the Brownfield Plan; and

**Whereas**, the remediation and redevelopment of the subject property contemplated under the Brownfield Plan never commenced nor occurred, and upon information and belief, the prior owner/developer no longer owns nor has an interest in the subject property. Furthermore, neither the prior owner/developer, the current owner, nor the prospective purchaser have objected to termination of the Brownfield Plan.

**Resolved**, that the Rochester Hills City Council hereby terminates the Brownfield Plan previously approved on November 29, 2006 for the subject property.

**PUBLIC COMMENT for Items not on the Agenda**