

Tuesday, March 16, 2004

REGULAR PLANNING COMMISSION MEETING held at the City of Rochester Hills Municipal Building, 1000 Rochester Hills Drive, Rochester Hills 48309, Oakland County, Michigan.

Chairperson Eric Kaiser called the meeting to order at 7:30 p.m. in the auditorium.

ROLL CALL:

Present: Chairperson Eric Kaiser; Members William Boswell, Deborah Brnabic, Melinda Hill, Greg Hooper, Nicholas Kaltsounis, James Rosen, Audrey Ruggiero
Quorum Present.

Absent: Member Kristen Myers

Also Present: Ed Anzek, Planning Director
Derek Delacourt, City Planner
John Staran, City Attorney
Maureen Gentry, Recording Secretary

MINUTES FOR APPROVAL:

Regular Meeting of February 17, 2004

MOTION by Hooper, seconded by Ruggiero, that the Minutes dated February 17, 2004 be accepted as printed.

Voice Vote:

Ayes: All
Nays: None
Absent: Myers

MOTION CARRIED

COMMUNICATIONS:

- A) Planning & Zoning News dated January, 2004
 - B) Letter from S. Morris dated 02/27/04 re: Agenda Item 2
 - C) Letter from M/M E. Chaney dated 02/21/04 re: Agenda Item 2
 - D) Ordinance Amendment Nos. 137-140
 - E) Planning Oakland, dated Winter 2004
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NEW BUSINESS:

2. Final Planned Unit Development (PUD) Recommendation City File No. 02-027 – Public Hearing

Project: City Place, a proposed mixed-use development on approximately 28 acres
Request: Final PUD Recommendation
Location: East of Rochester Road, north of Hamlin
Parcels: 15-23-300-035, 15-23-301-002 and part of 15-23-152-002 zoned R-4, One Family Residential
Applicant: G&V Investments LLC
2565 Rochester Road
Rochester Hills, MI 48307

(Reference: Memo to Staff Report prepared by Derek Delacourt, dated March 12, 2004 has been placed on file and by reference becomes part of the record hereof.)

Mr. Kaiser noted that this Agenda item had been scheduled two weeks ago, but after reviewing the documentation, he was concerned about the many open-ended issues. He indicated to Staff that based on his experience, a resolution during the meeting would be difficult to come by. Mr. Galvin and Mr. Gilbert were contacted and they agreed it would make sense to clear up as many of the open-ended items as possible and the March 2, 2004 meeting was cancelled.

Mr. Kaiser explained that they would hear from Staff and the applicant, he would open the Public Hearing and then initiate discussion between the Planning Commission members. He noted that the Planning Commission's mission would be to come up with a recommendation to City Council. City Council could track this recommendation, reject it, or discuss another variation. He asked Mr. Galvin to introduce the applicant and his representatives.

Mr. Galvin thanked the Commission for the opportunity to deal with the issues in the Staff Report. They believe they have dealt with the bulk of them and are prepared to discuss any that might remain open.

Mr. Galvin first introduced Mr. Bill Gilbert, G&V Investments, 2565 S. Rochester Road, Rochester Hills, MI 48307; Mr. Mark Abanatha, Alexander V. Bogaerts & Associates, P.C., 2445 Franklin Road, Bloomfield Hills, MI 48302, Architects; Felino (Joel) Pascual, Calvin Hall & Associates, 29895 Greenfield Rd., Suite 102, Southfield, MI 48076, Landscape Architect; Mr. John Wright, MCS Associates, Inc. 41150 Technology Park Dr., Suite 102, Sterling Heights, MI 48314, Engineers; Roger Walther, Parsons, 26777 Central Park Blvd., Suite 275, Southfield, MI 48076, Traffic Engineer; Jeff Wagner, Vice President of Fifth Third Bank; and Joe Galvin and Ruth Swartout, Miller, Canfield, Paddock and Stone, PLC, 150 W. Jefferson, Suite 2500, Detroit, MI 48226.

Mr. Delacourt stated that the applicant was requesting a recommendation for a proposed mixed-use PUD. The applicant had appeared before the Planning Commission and City Council for a pre-application workshop and for Preliminary PUD approval. The applicant had also appeared before the City's Historic Districts Commission (HDC) several times to discuss the proposed relocation and renovation of the historic structure on the site. The HDC passed a Resolution of Support that contained conditions they would like addressed prior to final approval. The applicant has met with Staff to address some language issues in the PUD Agreement and other issues in the Staff Report. The property is zoned single-family residential and master planned for mixed-use development. He clarified that a reference to a B-1 (General Business) underlying zoning in the text of the Agreement had been discussed at length and that all parties were agreement that it was correctly noticed for B-2 rezoning and that any notice of B-1 should be changed.

Mr. Kaiser clarified that the applicant has always said B-1 was fine and would work. He wanted it clear that as this progressed, B-2 would be no more or less dense given the PUD contract from both sides; it was a distinction without a difference. He wanted it made clear that the applicant had never requested B-2 because they want a more dense development. Mr. Staran concurred with that statement.

Mr. Galvin said he wished to use Mr. Delacourt's letter as a baseline to open the discussion. He said that Mr. Delacourt raised as remaining issues the Rochester Road right-of-way, open space, final Site Plan approval and land division. He referred to land division, and said they did not wish the document to be treated as affecting the land division. They do not have a problem with Mr. Delacourt's recommendation to remove references to land divisions and/or combinations that have not been approved by the City, and want the bank to be able to proceed with a separate site plan. It would be necessary for them to use the existing tax parcel descriptions in one fashion or another. He asked Mr. Delacourt if he was concerned about that and Mr. Delacourt said that Staff was concerned that by approving the PUD Agreement it would be an applied land division. Both the bank and the overall PUD have options – to submit a land division, a

condo/office separation, or something else. If the PUD document was approved, Staff would want any reference to new legal descriptions removed from it.

Mr. Kaiser clarified it was clear from both sides that if the contract were approved, there would be no intent to create a land division, nor any rights vested regarding the proposed land division by the PUD Agreement. Mr. Galvin said they want the Commissioners and the public to understand that they would seek to quickly create a separate parcel description for the bank's parcel so the bank could proceed.

Mr. Galvin referred to the open space provision mentioned by Mr. Delacourt and felt it would be easy to deal with. They believe there is sufficient open space shown on the plan. Mr. Delacourt has suggested that the Planning Commission determine whether that is acceptable and they hope the Commission will. He referenced final Site Plan Approval and said he felt this plan should stand on its own merits and that the consideration of this plan was materially different from any other PUD seen by this body. This Plan includes parcels which are master-planned for mixed-use development. The physical bases for the plan have been well studied. The engineering plans for these facilities have been previously developed to a point where he did not believe it needed to come back before the Planning Commission and the City Council for final Site Plan review. He stated that the PUD Ordinance allows the Site Plan to be approved by Staff. He felt that was in the Ordinance for a specific reason – because it was anticipated that the kinds of questions dealt with in a Final Site Plan review were the kinds of questions Staff ought to deal with in an ordinary situation. He added that those reasons justify the deletion of the condition in the motion. The final substantive issue for them concerned the Rochester Road right-of-way. They discussed this in prior meetings, and they understand that the City adopted a proposal for a plan which would have a 180-foot right-of-way; the State, who has jurisdiction, has indicated that it was not going to require a future right-of-way of 180 feet. The State is satisfied with the proposed right-of-way of 150 feet for the future. They understand that Staff independently inquired about this and the State gave them the same confirmation. He felt it was not necessary or realistic to deal with a 180-foot right of way, because it was not something anyone here would ever have to deal with. The improvements proposed do not encroach upon the 150-foot right-of-way and they agree with Mr. Delacourt's recommendation. They do not agree it would be appropriate and respectfully decline to voluntarily dedicate the right-of-way. They understand the Commission would study these issues, but he felt his articulation was clear about the applicant's desires with respect to the issues raised. He concluded that the applicant respectfully requests a recommendation of approval of the City Place PUD to City Council, subject to the conditions in the potential motion, with the deletion of the dedication requirement and deletion of the fact that Final Site Plan approval be done other than by Staff.

Mr. Kaiser asked about Final Site Plan approval and if various City departments that would usually conduct technical reviews had done them. Mr. Delacourt said that some had, but that none had fully approved technical compliance of the Site Plans. Mr. Kaiser referred to the prior PUDs, mentioning Papa Joe's as an example, and asked if technical reviews were completed for that. Mr. Delacourt said that some departments had recommended approval at this point in the process. Mr. Kaiser asked if the applicant had ever submitted a plan to accommodate the 180-foot right-of-way, should it come to pass. Mr. Delacourt replied that none of the plans had shown "no development" within the 180-foot right-of-way. Mr. Kaiser asked if any alternative plans had been submitted. Mr. Delacourt replied no. Mr. Kaiser opened the Public Hearing.

Debbie Geen, 3128 Walton Blvd., Suite 187 Rochester Hills, MI Ms. Geen read a letter she prepared on behalf of the Residential Vision Committee of Rochester Hills, dated March 15, 2004 (on file with the Planning Department): "Our committee, the Residential Vision Committee of Rochester Hills, is opposed to the rezoning of the property by Gilbert and Vennettelli that will negatively effect the quality of life of residents in Eddington, Winchester Village, Sycamores and Meadowfield condominiums. Also, all the residents of Rochester Hills would be negatively affected by breaking the Master Land Use Plan for our City. There have been far too many rezonings from residential to commercial by the City Council whether by a rezoning vote or a Consent Judgment. This rezoning would create tremendous traffic problems on

Rochester Road, as well as creating more cut-through traffic through the previously mentioned subdivisions. The nightmare of this rezoning request is that it can be a legal precedent to rezone the hundreds of vacant acres zoned residential that are owned by the Bordine Nursery. The Planning Commission represents the voice of the community in changes for the zoning that can either be for the common good or the detriment of residents. Property is so valuable in Rochester Hills that residential zoning further protects the property owners that are neighbors to the property. We need your professional analysis of the rezoning request and a no vote to protect us. Some members of City Council tried to divide the community by pitting one section of the City against the entire City of Rochester Hills. This unrepresentative logic must stop to make our City government a fair and unbiased representation of the hardworking taxpayers of Rochester Hills. We look forward to your decision tonight.

Mr. Dave Bassett, 624 Essex, Rochester Hills, MI Mr. Bassett said that he had come to represent the citizens of Rochester Hills who have come to believe they do not have a voice in the City government. He indicated that he looked at the plan before the Commission and it showed a strikingly familiar plan to one presented in the summer of 2002. He came because he was still optimistic and was trying to inspire the City toward a vision of a Rochester Hills that they will be proud of for years to come. He thinks that will be possible because the City's Planning Commission has proven to be very conscientious. One way to achieve this Rochester Hills is to effectively work with PUDs. He thinks however, that when PUDs are misused, the City is often circumventing the will of the residents by not achieving the best future for Rochester Hills. He was not convinced that the plan would make the Rochester Hills of year 2020 seem like a great place. A PUD should always be a win-win. The developer should win something, but he has not really seen what the residents of the City would be gaining from this PUD. The PUD was created to allow the developer to do things they would not normally be allowed, and for the City to gain something. There is negotiation and benefits for the City. He said that some would observe that the developer could do more disastrous things without the use of a PUD. He felt that was a thinly veiled threat and he did not think it was a reason to approve the PUD unless it was very convincing it was good for the City. The residents are fortunate that the developer is Mr. Gilbert, who has been a member of the community for a long time, has contributed a lot and has benefited from his relationship with the City. Mr. Bassett said he hoped that a plan would be created that the residents could embrace and be proud of, and he hoped that the Commission would require more hard work before approving this application. He asked the Commission to please try and persuade the residents that the PUD would be a win for the City. He lastly asked that the zoning issue of B-1 and B-2 be further explained.

Hector Urteaga, 1578 Farnborough Dr., Rochester Hills, MI Mr. Urteaga stated that this plan would indeed be good for the City, but it should be a win-win for the residents as well. At a previous meeting, he expressed his concerns about the density and this plan shows the current homes against the new development. There would be traffic problems, noise, accidents and a bigger risk. He can see the future. He noted that Rochester Road is one of the most dangerous roads in Oakland County. He looked at the MDOT plans for the next five years and saw that they do not intend to widen Rochester Road. He stated that there is an increase in traffic every year and there are 46,000 cars per day every 24 hours, and a narrow highway is not sufficient for anyone. MDOT has no plans in the next five years to widen Rochester Road. He felt they should consider safety as a priority. There is a high rate of accidents in this area. People like to come to Rochester Hills but the citizens are becoming unhappy. They might not be happy enough to remain in the City. A lot of people used to have nice thoughts about the City, and he said people first came here because of its nature and how the urban and nature worked well together. That would go away with this project. He asked the Commission to consider safety and density, and the children of the future.

Stevie Morris, 1276 Pembroke, Rochester Hills, MI Ms. Morris referenced two letters she sent in (on file in the Planning Department and listed under Communications). She stated that she has lived in Eddington Farms for 13 years and has been on the Board of Directors for eight years. Her number one concern was safety and she noted there were no sidewalks in her subdivision. Her subdivision has recently been connected with Arcadia Park, Eddington Woods, and Rochester Meadows off Avon Road is in the

planning stages. All of these subdivisions will use Eddington Boulevard to get out onto Rochester Road. She was almost killed twice last week and will not allow her 16-year-old daughter to leave the subdivision onto Rochester Road. She noted there was no mention in the document of a traffic light for the area between Hamlin and Avon roads. She stated that if City Place was to be put in, there must be a traffic light somewhere along Rochester Road. She mentioned drainage and said that when the developer signed off after developing Eddington Farms, there was a drainage problem. The Board has been fighting it for the last 13 years. She asked where the drainage would go from City Place and asked if it did go into Eddington Farms, if they would have to foot the bill. She stated that there is much traffic on Rochester Road now and she asked if MDOT had approved the plan, because the roads could not handle the additional traffic from new development. In September of 2002, the residents were told that this development would look like a downtown Rochester. She could not envision that in this location. In downtown Rochester, the speed limit is 25 miles per hour. Along Rochester Road at this site, the speed is 50 miles per hour. People would have to brake to get in here. She asked them to think of the residents and the traffic, and asked if any of the Commissioners lived in Eddington Farms. She said she would welcome a visit from them to see what it was like to exit onto Rochester Road during rush hour.

Mr. Kaiser closed the Public Hearing. He referenced the B-1 and B-2 zoning issue and asked Mr. Staran if the notice was published in the paper. Mr. Staran replied that it was noticed as a rezoning to B-2, and B-2 allows a more intense use than a B-1 zoning district. Mr. Delacourt said a B-2 allows B-1 uses and additional uses. Mr. Kaiser said the applicant had requested, from the beginning that the rezoning would be to B-1, and that is what is in the PUD Agreement. He explained that because the notice went out as B-2 it would be under consideration as that this evening. Mr. Kaiser mentioned his comment about this being a distinction without a difference, and said this application involved a PUD contract between the applicant and the City of Rochester Hills. Each side is supposed to get a benefit, and the City would be allowed more from the developer, in terms of buffer, the kinds of structures that go in, landscaping, or the mixed-use, for example. The applicant might get more than they would through the normal zoning procedures, which would require certain modifications or waivers. He clarified that this particular PUD, as it goes through the process, would end up being consistent with either B-1 or B-2 zoning districts. Because it was noticed to the public as B-2, the Commission goes forward with that request. The bottom line is that the applicant is not asking for anything more than what was presented in the PUD application. The issue for the Commission, and ultimately City Council, is whether they approve the PUD and the zoning becomes irrelevant at that point. Mr. Kaiser asked Mr. Delacourt if he knew anything about the MDOT plans.

Mr. Delacourt advised that MDOT had reviewed the plan in portions, and that they would have to Permit any access or curb cuts as part of Final Site Plan approval. Mr. Kaiser indicated that if City Council approved the plan, MDOT could theoretically require the applicant to redraw the plan and at that point, since it would not be in conformity with the PUD, the applicant would have to come back for re-recommendation and approval. Mr. Delacourt noted that the 180-foot right-of-way was a product of the City's Master Thoroughfare Plan, and that MDOT acknowledged a proposed right-of-way of only 150 feet. If the City and MDOT were to come to an agreement to expand to 180 feet, the scenario would be different. Mr. Kaiser asked if he knew of MDOT's plans to widen Rochester Road. Mr. Delacourt said he was not aware of any plans to do so at this time. Mr. Kaiser said the consultants for the City previously determined that as Rochester Road was modified through Troy, that effort would continue at least up to Avon or the City of Rochester. Mr. Delacourt stated that MDOT acknowledged that no funding was available for additional work on Rochester Road. Mr. Kaiser asked him about a traffic light for Rochester Road.

Mr. Delacourt answered that there had been discussions about the realignment of Yorktowne to put a signal at Meadowfield Drive. MDOT would have the final decision about the location of a traffic light. Mr. Kaiser asked if there was an estimate of when this issue would be resolved, and Mr. Delacourt said he was not sure. Mr. Kaiser asked if this was out of the City's hands. Mr. Delacourt replied that the City could have an

impact, but the decision would be MDOT's. Mr. Kaiser asked Mr. Galvin to respond to the residents' comments.

Mr. Galvin advised that the material submitted dealt with the traffic safety, and he said that the existing road conditions are what they are, and they do not believe this project would exacerbate them in any material respect. They have observed that any adhoc development of this parcel would be inconsistent with the Master Plan and would create more traffic problems. He stated that this plan was not in defiance of the City's Master Plan, and that the PUD proposal was fully consistent with, and the only available rezoning mechanism to implement, the Master Plan. The physical aspects of the plan and the benefits to be brought to the City include better traffic control, both on Rochester Road and within the land itself; provision of a housing type that is different from, and badly needed, in the City; and a provision of mixed uses which they feel the City would benefit from materially. They believe this is a win-win plan, which, he noted, had been in negotiations since before 2002.

Mr. Kaiser asked the applicant's traffic consultant to discuss the traffic problems that might occur and how this PUD might be a better approach to developing this site.

Mr. Walther gave a background and said that a traffic impact study was provided. This study looked at the development sites that have recently been approved, and the sizes of the developments, and using studies of similar developments, a conclusion was reached that showed trips generated by each use and the impacts. Before they applied traffic from a new development, they had to see what counts were already there. The two critical intersections, Avon and Rochester and Hamlin and Rochester, basically control how traffic is carried. Mr. Gilbert had asked them to look at the cut-through potential. He said it was typical in the last 30 years to have cul-de-sac roads rather than grid roads. The intent in designing those was to not have cut-through traffic. He indicated that the new development would certainly have an impact and would generate traffic. They looked at the existing level of services of the routes already built and he noted that Rochester Road is a major artery, which carries a lot of traffic. In the study, Rochester Road showed it would operate at a poor level of service, but that could already be the case. They found that the developments already approved would, in fact, generate more traffic on Rochester Road than this development would. This development's impact in terms of delay would be minimal. Mr. Kaiser asked for more specifics. Mr. Walther said they looked at seconds of delay for a peak time. For the existing traffic at the Rochester and Avon intersection during the morning peak hour, a driver would experience about 80 seconds of delay, on average. In the afternoon, it would be 124 seconds of delay. With the approved developments added, in the morning the delay would increase to 164 seconds and in the afternoon it would approximately double. Considering traffic from the proposal, the delay in the morning would be increased 7-8 seconds and in the afternoon about 10 seconds.

Mr. Kaiser asked if he was familiar with the signaling system used throughout Oakland County and if the system constantly monitored overall changes in traffic from new development. Mr. Walther said it did, but noted that there were limits to any system. The number of lanes plays a part also. The system adapts to traffic conditions and tries to adjust to the traffic situations. Mr. Kaiser said that when Mr. Walther discussed delay, he asked if it was premised on the current signaling system remaining as is. Mr. Walther advised that within the system, there were certain minimum and maximum times that could be permitted and his study was based on those times. Mr. Kaiser asked him to discuss safety as it relates to the site as proposed, and if developed under the current zoning.

Mr. Walther said that under the current zoning, developed with single-family homes each parcel owner would have a basic right to access the road, or a driveway. There could be eight or nine parcels generated and a conflict analysis showed there could be a number of moves vehicles could make against opposing traffic. Every movement has a point of potential conflict. If there were two concentrations versus ten, the conflict points would be reduced by 80%. The potential for a crash would be reduced by that much. The traffic would be distributed along a greater area and a driver on Rochester Road would have to be very attentive at this section. He stated that the exposure from

a safety hazard with more access points is certainly a lot greater than if the site were developed as a PUD.

Mr. Kaiser brought up a scenario and asked if there were nine drives on this site rather than two, and traffic was flowing north on Rochester Road, what effect cars exiting or entering the road would have on the traffic flow.

Mr. Walther responded that any points of entrance could cause a change in the profile of the speed of a vehicle going along. A very cautious driver might slow, but one that was not so cautious might not slow at all and it might cause a freeway-type situation. Introducing a lot of driveways might not leave a uniform traffic flow and there would be potential for accidents.

Mr. Kaiser asked if he had any knowledge about a traffic signal. Mr. Walter noted that they were asked to do a warrant analysis for that, which is a technical study showing crashes and volume. A signal would not be warranted if only one criterion was met, but if a number of them were met the signal might be justified. Signals too close together might break down the ability to time them or to get progression. Under the existing conditions, they could not strongly warrant anything at Eddington.

Mr. Boswell asked Mr. Walther if Eddington were moved across from Drexelgate if it would warrant a signal. Mr. Walther said it was probable, but they only looked at Eddington and he would need to look at the volumes on Drexelgate. He felt it would be desirable to line up those roads.

Mr. Kaltsounis noted that he had heard from many people about the problem of trying to turn left out of Eddington Blvd. If this PUD were approved, there would be about 600 trips a day per household. There would be significant volumes added at that intersection. He said that turning left out of Drexelgate, using the center lane, and leaving Eddington left into the center lane, produces the same situation as seen in front of Hampton Village. Mr. Kaltsounis asked if this interlock situation would warrant a light, and whether Mr. Walther had studied the volume of cars leaving this intersection and cautioned that it would be a dangerous situation.

Mr. Walther said they did turning-movement counts at Eddington Blvd. between 7-9 a.m. and between 4-6 p.m. In the morning, there were 22 right turns and 62 left turn movements. In the afternoon, there were 23 right turns and 30 left turns. This was done during the peak hour. He indicated that those numbers were not easily quantifiable. In the morning exiting Drexelgate leftbound, there were 4 vehicles, and in the afternoon there were 11. Mr. Kaltsounis asked about turning right out of Drexelgate and Mr. Walther said there were 68 in the morning and 79 in the afternoon. Mr. Kaltsounis said he was not convinced a light was *not* needed at Eddington.

Mr. Kaiser asked about drainage. Mr. Wright said he could not address drainage problems for the Eddington Farms subdivision, but he said the drainage for the proposed site would be addressed via the detention basin to be located on the eastern edge of the site. All the stormwater would be contained and released at an agricultural rate to the Honeywell County Drain that traverses through the site. The drain heads easterly and is governed by the Oakland County Drain Commission, but the applicant would have the right to access it. The drainage is going there already. Mr. Kaiser asked him to explain why he felt there would be no additional drainage problems for Eddington Farms if the proposal were built. Mr. Wright said that the contours of the land flow toward the drain. The way the site is designed, with an enclosed storm sewer system and maintained with catch basins, everything is directed toward the detention basin. Mr. Kaiser asked what he meant by releasing water at an agricultural rate. Mr. Wright said that non-developed flow is at a certain rate and when a site is developed and there are more impervious areas, the flow is directed through the pavement system to the detention system. The City assures that the site will meet a technical compliance for storm drainage. Two governing agencies also review the design. Without knowing what occurs at Eddington Farms, he could not really address that problem, but he could say that the proposed site would stand on its own and would account for all the drainage on the property and that bordering it.

Mr. Kaiser referenced Mr. Delacourt's memo and the right-of-way for Rochester Road. Mr. Rosen clarified that the City of Troy proposed a 180-foot right-of-way 10-12 years ago. They accomplished that from I-75 up to 16 ½ mile road. There was a project to go from there to Long Lake in 1999 and Rochester Hills was trying to get ready for 20-30 years later when it reached Rochester Hills. It might be technically accurate to say that nothing is in the works at the moment, but Rochester Road cannot stay as it is. In 50 years it would be one mile an hour, bumper to bumper, for many hours of the day. The City might be forced to raise funds to do something. He thinks a 180-foot right-of-way is the best 50-year solution for that road. He said that looking at the plan, it showed a setback of 54 feet to the front of the buildings on the west side. If they lose 15 feet of right-of-way they would not even meet the front setback. He felt that was a big deal that should be resolved now.

Mr. Wright said that the right-of-way was measured from the centerline of Rochester Road, and currently, it showed 66 feet, and the buildings were shown outside of that. With a 150-foot right-of-way, they would have to dedicate another nine feet to MDOT, which includes the parking stalls, and the plan currently reflects that. Mr. Rosen asked why it would not be 15 feet. Mr. Wright said that 66 plus nine is 75 feet, which would be the requirement for that side of the road. Mr. Rosen clarified that the building would be 54 feet away from the current right-of-way. Mr. Abanatha confirmed that. Mr. Rosen said that the setback would only be 39 feet if the right-of-way was 180 feet, and the setback in B-2 is 50 feet. He felt that was a serious imbalance and that the plan would be nonconforming in the future. Mr. Delacourt said that would be true if the PUD Agreement did not acknowledge that the front yard setback would be less, and there was the ability to include that. Mr. Abanatha said that was being demonstrated on the plans. Mr. Rosen said that would mean that the City would be giving away the buffer from the right-of-way with four-story buildings; or, in other words, there would be four-story buildings 39 feet from the edge of the right-of-way.

Mr. Galvin commented that a cityscape often has much higher buildings at the right-of-way or sidewalk, and the notion is that this is a cityscape. Mr. Rosen said he knew Mr. Galvin did not respect his opinion on this matter – Mr. Galvin said he did – but he stated that this is a suburban community. There are things that could be done to give a little leeway; however, he felt the combination of a 39-foot setback from a 50-mile per hour road with four-story buildings was too much.

Mr. Kaiser said Mr. Galvin mentioned that no one would be around if the 180-foot right-of-way were built. Mr. Kaiser said that might be correct, but that is not what the Commissioners plan for. They plan for the future and this decision could impact those future people in terms of their safety and their ability to move through a community and if the Commission does not provide for right-of-way, it would cost the future population a lot of money to acquire it here. If this matter was not addressed, the members have to feel very comfortable that they might cost people in the future millions of dollars. He asked Mr. Gilbert to show a plan that addressed the eventuality of a 180-foot right-of-way. The plan could show underground parking, for example, or taller buildings, or having buildings removed, for example. There was no plan like that in the submission.

Mr. Kaltsounis said he shared Mr. Kaiser's beliefs, but he was unsure about a four-story building standing than 40 feet from the road with cars whizzing by. He felt it would definitely have a negative impact on the development and that it could be a serious issue.

Mr. Hooper asked if the applicant could show the 180-foot right-of-way on the plan and dedicate it, but have an agreement with MDOT to use it and submit an alternate plan. Mr. Kaiser said this would ultimately be a decision by City Council. He said he was not offended by the fact that the buildings would be up against the road. He was not bothered by the plan in general, and he felt it was innovative and positive. He was not convinced the applicant could not come up with a proposed way of dealing with the 180-foot right-of-way, and he emphasized that not addressing it would be a grave oversight.

Mr. Rosen said that some of the alternatives Mr. Kaiser mentioned existed, but that they were expensive. The applicant could not just move the parking 15 feet. Something had

to give – perhaps the Site Plan - or there would have to be more rigorous solutions than they normally see. He agreed with Mr. Kaiser that they should show the 180-foot right-of-way or show a triggering plan for it.

Mr. Kaltsounis said Mr. Galvin mentioned previously that the 180-foot right-of-way would make or break this development. He commented that if this was such an important issue, he was surprised to not see anything about it in the documentation. He asked what happened between then and now.

Mr. Galvin said he believed they responded with a number of suggestions, and that those suggestions could be dealt with at such time as a triggering event occurred. He said it was a question of “from whose point of view?” and if they failed to properly weigh the concerns that the Commission had about the “not immediate” future, they apologize for that. He felt the notion was the reality of something happening in the next 20-50 years. He realized there were ways to approach this using a triggering event. He thought it would be unlikely that they would volunteer, and they did not feel it was necessary to ask for, immediate dedication for a right-of-way that the MDOT might never require. On the other hand, what he was hearing made sense from a point of view other than his own. There was a disproportionate impact on the applicant’s side of the road, the way the plan sits within the City. If it were evened off, he felt there would be less likelihood of an impact. He suggested that if the Commission believed that the applicant’s point of view was correct; they could set a condition that before Council considered the item, a plan could be submitted to them showing a triggering event. The starting point for the applicant is the immediate future. They ask only that that vision not impede their ability to proceed, but they would accept the Commission’s conditions.

Mr. Kaiser indicated that the applicant would not raise his hand and voluntarily do something, so he suggested that the Commission could make a recommendation that included an alternative submission.

Ms. Brnabic indicated that the development on its own was very attractive and she did not have a problem with the design. She did have a problem with the density and the height proposed. She referred to the American House, which has three-story buildings, and she said those were moved back off the road. She felt that being so close to Rochester Road would almost make the development look like a monstrosity. She mentioned the safety and traffic problems. They did not know what would happen with MDOT and she felt a traffic light would be sorely needed. She noted that a lot of factors would be considered by MDOT, including budgeting, and if they decided to widen the road, she would like to see the developer help with the costs of a traffic light. The development would add a lot of traffic and she was bothered by the closeness of the buildings to the road. Mr. Kaiser asked her about the right-of-way issue and if the Commission should stay with the 180 feet in the Transportation Plan. Ms. Brnabic felt that showing the 180 feet was the right thing to do.

Ms. Ruggiero agreed and said it was the responsibility of the Commission to do that for the future residents of the City and to protect their financial interests. Mr. Boswell said he lived through the Master Plan and the Master Thoroughfare Plan, and although he did not feel the applicant had to dedicate the property now, he felt they needed to make a plan for the 180-foot right-of-way, in case it was needed.

Ms. Hill agreed with the 180-foot right-of-way. She recalled that Cavalier Office Building to the north complied with that. When they worked on the Transportation Plan, they said they really needed to look at the future and they needed a 180-foot right-of-way for the future. They are planning for 30 years in the future and something is going to have to give on Rochester Road. If they do not prepare for that and only address “today” it would add another problem to those they already have. She agreed with the recommendation from Staff about dedicating the 150-foot, and looking at a plan for the 180-foot right-of-way.

Mr. Kaiser mentioned that if this proposal were on Livernois or another road that was not a main trunk and used like Rochester Road, the number of years of planning into

the future might change, but he felt they needed to look beyond 30 years because it *is* Rochester Road and because of the future costs.

Mr. Rosen noted that Staff suggested dedicating to 180-feet with an agreement in place to allow use of the property for as long as it was not needed. He asked if the Commission was not in favor of that. Mr. Kaiser said the applicant should show that the right-of-way would be 180 feet, and the applicant would be able to utilize it until such time as a triggering event occurs. At that time, the applicant would no longer be able to utilize the right-of-way and would have to use a suggested alternative.

Mr. Hooper asked why a deceleration taper was not shown in front of the bank off Rochester Road. Mr. Gilbert replied that it would be when they get into the technical review, and that the bank's engineers considered that and know it is important to have for their customers. Mr. Hooper asked if they recommend approval, if they would be accepting the plans in the packet, with conditions. Mr. Kaiser confirmed that, but said the understanding would be that the plans would have to be brought into technical compliance. The Commission would be agreeing to this plan, with the particulars in the PUD Agreement, subject to compliance with all the technical requirements of the City. Mr. Hooper said he would like the Planning Commission to have Final Site Plan review.

Mr. Kaiser asked Ms. Hill why City Council ignored the recommendation of Staff and the Planning Commission for the previous PUDs that required Planning Commission approval of the Final Site Plan. He asked if it was to generate tax revenues for the City more quickly, which he acknowledged was a legitimate consideration.

Ms. Hill stated that there was an extreme amount of pressure to get the project started and some felt that one more review would cause too much of a delay and that the roadwork could not be in place in a timely manner. Her position was that if everything were so close to being done, if a little more review was needed, it would not cause a timing issue. However, people persuaded otherwise. Mr. Kaiser asked if that was the articulated reason. Ms. Hill replied that it was, and that she had emphasized that a PUD should provide more control over a project. If the Council members wanted control, it was puzzling why they would so willingly give it away. The arguments were that because of the timing, the roadwork would not get done for the projects, if more time were spent in front of Council and Planning Commission.

Recess 9:40 p.m. to 9:50 p.m.

Mr. Kaiser asked Mr. Galvin to present a map showing the west side of Rochester Road, in relation to the application. The proposed entry was pointed out, as was Drexelgate. Mr. Kaiser noted that a traffic light was discussed for the future, for somewhere in this area.

Mr. Galvin said he was under the impression that it was a done deal, that the City had acquired right-of-way from Cavalier Office and planned to realign Yorktowne with Meadowfield and add a light. It was his understanding that the engineering had actually been done to relocate Yorktowne.

Ms. Hill said it had been moving along, but there were issues about how the dealership to the north would handle its entrance. The project was supposed to happen this year, but she did not know what point it was at.

Mr. Anzek stated that the Yorktowne realignment had been on track for construction this year. He advised that there were bids in for that work, but that some complications had surfaced. One was that warrants had not been verified for a signal and there was no guarantee there would be one at that intersection. It has been further complicated because one of the MDOT recommendations was that the dealership close its southern driveway, which would prompt an access onto the newly realigned Yorktowne. The Yorktowne Homeowners Association objected to this driveway and the dealership would be unable to unload vehicles. Additional land area would be required and they would like Yorktowne, once vacated, to become the dealership property for their loss of maneuverability. If vacated, the right-of-way would become the ownership of the Homeowners Association of Yorktowne and they would have control. They have asked

for significant payment and the dealership is not willing to make that. The whole matter has turned into a state of confusion, and there seems to be no resolution. Staff has had numerous meetings with both the Association and the dealership together, and Staff recently received a letter from the Yorktowne Homeowners Association listing their opinions and demands in writing. Staff is putting together a memo to Council seeking direction and guidance on this matter. MDOT has indicated that they might consider leaving the southern driveway open to serve the dealership, but they are not willing to guarantee a signal until the roadwork is done and warrants are met. Mr. Kaiser commented that it was funny how quickly the motivation for safety could go by the wayside for cash.

Ms. Hill referred to the comments regarding safety and what would and would not happen with Rochester Road in the near future. She said she was concerned that the entrance for the proposed project did not line up with Drexelgate for the potential for a light. If Rochester Road were a boulevard, she would not be really concerned, but she could envision a light at Drexelgate and an aligned entrance to the proposal.

Mr. Kaiser agreed that (lining up) might make sense for a number of reasons, and he asked Mr. Gilbert his thoughts. Mr. Gilbert said they looked at moving Eddington Blvd. at one time. He noted that Eddington Blvd. was not a proposed entrance – it existed. Trying to deal with the right turn radius, vacating it, and aligning it would be a very difficult task, and would probably be more of a hassle than using what exists. He mentioned the traffic issue and said that with the Pulte Development to the East and with Eddington Woods to the north, people can now get out to John R. People are finding different ways to go, and they determined it did not make sense to move Eddington Blvd.

Mr. Kaltsounis raised the issue of Final Site Plan Approval. He said he looked over the Site Plan over the weekend and felt he needed more information. He mentioned the City Walk plan, and said it had much more detail for the buildings. He would like more of the dimensions shown. He visited the property and asked how much of the area that drops down would be filled to make it level with the rest of the land. He wondered not only how that drop-off would be addressed, but was concerned with other issues like that. Mr. Kaiser agreed the plan was not ready, but said the question was whether they leave final review for Staff. He recalled a conversation about how the Commissioners frequently trust Staff to approve Site Plans. He felt that if Staff recommended letting Planning Commission and City Council have Final Site Plan review, the Commissioners should listen.

Mr. Boswell mentioned the fact that Staff could recommend a project, but if the Planning Commission found fault, applicants would question it. He indicated that was the job of the Planning Commission, even if it might be irritating to some people. He would like the opportunity for final review, and if the project went forward without that condition, he stated he would not vote for it, no matter how much he liked it.

Mr. Kaiser said it was suggested for the recent PUDs, which he felt were distinctly different from this one, that there was a desire to move them along because of the timing of the road improvements and to accommodate school traffic. He asked Mr. Delacourt if that was a driving component as to why Council did not follow the recommendation in that area. Mr. Delacourt agreed that was discussed when the decision was made.

Mr. Kaiser said he felt this site was also different from the other PUDs because of its proximity to the road, the current speed limit of the road, and because the adjacent properties were more sensitive. He did feel there were fewer technical reviews for this project than for the other PUDs at the same point. Mr. Delacourt agreed for some issues, but said they are as far along in the process. He explained that different City departments had reviewed this, although it has not had an official technical review and response like the Papa Joe's and City Walk PUDs.

Mr. Kaiser stated that for those reasons, he would agree with Mr. Boswell. The fact that there is a lack of urgency, the location of this site, the issues Mr. Hooper outlined, and

that the adjacent properties are distinct because of their intensity and nature, are reasons to require the Final Site Plan to come back for review.

Mr. Kaiser asked the Commissioners if they felt there was enough open space. He asked Mr. Delacourt where open space could be added. Mr. Delacourt said he would not suggest a specific place, and explained that the mention of the open space was consistent with language for other PUDs that had been reviewed. Some of the open space on the plan would be regulated wetlands and not really be usable, but he wanted the Planning Commission to just consider this issue on the Site Plan.

Mr. Kaiser said that when he reviewed the plan, he felt that short of dropping three or four buildings, he did not see what would be gained with dropping just one. He did not see the benefit to adjacent properties or for the development itself. They have to keep in mind that they have to approve a plan that would also benefit the people who would live in this development. He felt that the plan was actually pretty good regarding open space.

Mr. Hooper referred to the wetlands and said his analysis showed the mitigation would be short, if done as proposed. Mr. Delacourt replied that the City's Wetland Consultant had reviewed the Restoration Plan submitted by the applicant and was comfortable with it. As part of the Site Plan approval, a Wetland Use Permit would be required and the consultant would make a recommendation regarding that to the Planning Commission. Mr. Hooper indicated the mitigation was short by about .88 acres, which would also affect the Site Plan. Mr. Gilbert deferred to his wetland consultant.

Mr. Williamson explained that his staff worked on a Restoration Plan a while back. They did it using earlier concept plans for the site. Typically, in a situation like this, they would provide additional detail at the time of Final Site Plan approval to incorporate all the necessary details of the project. They would have to apply to the State and the community for approvals for the road crossings. Once the final engineering detail was generated, the fill areas would vary. He believed Mr. Hooper was correct about the mitigation, but he said it still had to be fine-tuned.

Mr. Rosen clarified where the retention basin would be and how far the parcel went to the east. He referred to open space and suggested that in the second row of buildings, the second building to the south could be removed and a park added. He was not really advocating it, but wondered if it would make sense.

Mr. Gilbert responded that the whole project was developed over a long period of time. They have tried to establish a certain level of quality, achieved using an equation. They could give up some of the density, but would give up some quality. Without the density to support the high quality specs – masonry, for example – it would not work. They could use a garden-variety condominium, but he did not feel it would be as attractive. Just to pull out a building would not really be beneficial, and he noted that the project would be market driven. People who would buy here might not necessarily share the views of people who want a house with a large lot. This would appeal to people who like the urban feel and look. Many young people and real estate writers have expressed that this would be a cool project; others feel it would be too dense and too tall. The economics of the project would be affected if a building were pulled out.

Mr. Rosen thought they could get premiums if more amenities were used, that is, the more space dedicated to amenities, the more money they could get. Mr. Gilbert suggested that the only building that could leave a discernible amount of open space would be the more northerly building, but he did not think the premium gained would be worth it. He advised that the percentage of open space would be significant. Mr. Kaiser asked if people would be able to walk around the wetland area. Mr. Gilbert said that the Landscape Plan showed walks that meander throughout the project and to the neighborhood retail.

Mr. Kaiser asked for input regarding the height of the buildings. Ms. Ruggiero responded that the only issue she was struggling with about height was the imbalance from the other side of Rochester Road. Coming up Rochester Road, the aesthetics

would show a gross imbalance because there is a very low development on the west side of the road. She felt the project was beautiful, but she could envision the height differences.

Mr. Rosen expressed that the appearances of the buildings, with the exception of the four-story ones, were excellent. When he drives by a four-story building, he is struck by how overpowering it looks. As Ms. Brnabic mentioned, the high buildings for American House were back far enough off the road. He felt the tall stories would be a detriment and would be distracting, and he felt Ms. Brnabic was right that it would look odd compared to what was around them. He felt it would be a simple change to go from four to three stories with a peaked roof, and it would take that imposing feeling away.

Mr. Kaiser said he felt the scale would be correct for this setting. Ms. Ruggiero's thought was a legitimate one, but he did not know if her concern would be lessened if there were three-story buildings, especially with the amount of frontage the site would have. He gave credit to the designers and architects and said that for Rochester Road, the other side notwithstanding, he felt the scale would be perfect. They have to think about how Rochester Road would evolve. He felt this would be the first step in recognizing where Rochester Hills was going, in certain places. He felt this would be the right thing to do and the right place to do it.

Ms. Ruggiero said she likened this project to a section of Woodward, which has taller office buildings and residential on the other side. Woodward has boulevards, though, which soften the tall buildings. Mr. Kaiser noted that Rochester Road was to become a boulevard someday and that more growth would occur.

Mr. Kaltsounis said that this could be compared with other current developments near the road, and he mentioned the condos at Maple and Coolidge in Troy and the condos in Royal Oak by the freeway. He observed that if the right-of-way were 180 feet, the buildings would be right at the road. He felt it would be acceptable the way it was now, but he was not sure how it would look that close.

When Mr. Kaiser asked him his thoughts, Mr. Boswell indicated that the project did not bother him, and the more he looked at the site and the plan, the less it bothered him.

Mr. Kaiser said there was a question at a previous meeting by someone in Meadowfield Condos, who asked if there would be noise bouncing off the high buildings. He said that the people to the east would be helped because it would block the noise from Rochester Road. He asked about the sound impact to the west.

Mr. Galvin said he understood that without some source of amplification, there would just be a continuation of the attenuation of the sound as it progressed back across the street. They did not do further studies because there did not seem to be a substantial scientific base. Mr. Kaiser clarified that people might hear the same sound twice. Mr. Galvin did not think it would get back across the street.

Mr. Kaiser asked if there were trees that could be used for buffering, because he felt there would be detrimental sound for the people on the west side of the road. He asked Mr. Gilbert to come back with a report showing that the sound would not be a detriment to the people on the west side or whether it could be dealt with in some fashion.

Mr. Rosen said there would be a difference, because sound pressure levels are additive and traffic noise that is radiating to the west would continue as it is today. Traffic noise radiating to the east would bounce off and go west. There might only be a 10% increase, but the challenge would be to minimize the reflection. They would not be able to change the sound going directly to the west, but they would be able to minimize or break up what bounced off the buildings. He added that having four stories would probably be no different than having three.

Mr. Rosen referenced page eleven (11) of the PUD Agreement regarding minor modifications up to a 10% increase in the size of the building. He asked what was added to the other PUD Agreements. Mr. Delacourt retrieved a copy of the PUD Agreement for Papa Joe's and they discussed whether to use the same language,

which made no reference to a 10% increase. Mr. Rosen said if the site were any more cramped it would not look right. Mr. Kaiser asked if anyone wanted to argue for something other than that. He asked the applicants if there was a scenario which would explain a need for a 10% increase.

Mr. Abanatha stated that they were trying to set up the project to meet market demand. They added building alternatives within the PUD Exhibits to try to show how all the buildings would be compatible. On the Site Plan, they showed various opportunities for the building locations. If there were a differential of square footage within the footprint of the building, it would give a design parameter for a better product and would be to their benefit. It would not change the footprints. Within the footprints, there could be various buildings. He felt it would be beneficial to have a range, but he did not know if it would be an end all.

Ms. Brnabic asked for an example of the largest building. Mr. Abanatha said it would be a 200 or a 600 number. He referenced the largest footprint on the plan and he said it could get smaller. Ms. Brnabic asked for the square footage of the units. Mr. Abanatha said the units would be from 1,100 to about 2,000 square feet. Ms. Brnabic clarified whether they meant that the largest unit could change by 200 square feet.

Mr. Abanatha said that the massing would not change dramatically. If the Planning Commission was comfortable with the overall aesthetics of the project and the applicant could have flexibility to increase the size of the units by 10%, for better marketability, it would be to everyone's benefit and would not impact the open space or aesthetics. They are committed to the footprints on the plan, but within the volume, and for the ins and outs, there might be some adjustments.

Mr. Rosen asked how many square feet would be in the total development. Mr. Abanatha said they would not know that until it was filled. He would have to evaluate each building. Mr. Rosen said if there were 300 units at an average of 1,500 square feet each, that would be 450,000 square feet, plus 35,000 for the retail. Mr. Gilbert said if they built more office, they would drop the number of residential units. He said that the Site Plan showed the largest possible footprint, and they would like flexibility so the envelope could change, but not get larger. Mr. Rosen said that some of the residential buildings move in as they go up and he clarified that Mr. Gilbert wanted to be able to move them out, closer to the edge of the envelopes. He asked if that would only happen with the residential buildings. Mr. Gilbert believed that would be right. Mr. Abanatha said that the retail across the front would be fixed and would not expand. Mr. Rosen said he changed his opinion, and agreed 10% would not be a significant difference. All they would be doing is bumping out certain areas. Mr. Gilbert said they could also get smaller, because it would be market driven. Mr. Rosen asked if that should just apply to residential. Mr. Gilbert agreed it should, and Mr. Rosen thought they could allow this flexibility for the residential properties.

Mr. Rosen suggested adding language to the end of paragraph sixteen (16), on page eleven (11) so it would be consistent with the language in paragraph 11(1) on page seven (7). He also suggested that on page eleven (11), paragraph sixteen (16), the language was confusing regarding signing the document. They agreed to take out the word "both" and to insert the word "and."

Mr. Delacourt verified that for page C-6, the footprints were indicated by the dotted lines surrounding the buildings, and he noted that some of the building types would not take up the full footprint. The applicant was not asking for an increase in the footprints, just the ability to have larger or smaller buildings within those footprints. The different building types might cause a reduction or an increase of 10% in the building size, as long as the footprint stayed the same.

Mr. Kaiser suggested adding language regarding the flexibility of the building sizes. Mr. Delacourt said that the height limitations would stay the same and that language would be fine if the Planning Commission was satisfied with the size of the footprints. Mr. Abanatha noted that the architecture would have the spirit and intent of that shown on

the plan, and he explained that was why so much time and effort was spent developing the building types.

Ms. Hill indicated that she understood the footprint issue, but she wondered if the buildings shown now fill the footprints. Mr. Abanatha referred to page C-6 and replied that there were a couple of envelopes shown specifically for the purpose of detailing that some of the buildings would be smaller. Ms. Hill referred to a previous comment of Mr. Rosen's and agreed that things were workable and that she liked the look of the development, but that it certainly would fill the site. She said she did not feel the buildings needed extra room and she would not like to see a different look when it was completed. She noted that developers tend to "go big" if it is allowed, and she felt there was enough room to do what they wanted, without requiring a potential increase.

Ms. Ruggiero commented that the beauty of the project was the tiering of the buildings and the fact that they would not be big boxes or look like military housing. She would be fearful that they would become big apartment boxes, rather than having the architecture shown, if the applicant chose to increase them.

Mr. Gilbert felt that would be violating the spirit of the PUD Agreement, as shown in the Exhibits. If there were substantive changes, the Planning Commission would not have approved it. He stated that someone else would get a bite of the apple in the process. If Planning Commission desired a final review, the applicant would have to come back with individual Site Plans that had been technically reviewed. If suddenly the development did not meet the spirit of the overall Plan and what was agreed to, the Planning Commission would not approve the Site Plan. He did not feel this was about making them bigger, but rather it was to have flexibility and about having a market-driven project. The project would not have any less open space. This would just give the architects flexibility, and he reiterated that the buildings might be downsized to keep the product a little more affordable.

Mr. Kaiser referenced paragraph twelve (12) on page nine (9) and said it was somewhat confusing. He said he knew what the topic was about (timeframe for completion of the project), but he wondered if it said all that it should. He read, "The owners of each separately owned parcel agree to commence construction of improvements on that parcel within two years of the date of Final PUD approval. Mr. Kaiser asked Mr. Delacourt his opinion of what "improvements" meant.

Mr. Delacourt replied that would be any type of permanent building or land balancing activity. Mr. Kaiser said that there was a big difference between building and land balancing. Mr. Delacourt agreed. Mr. Kaiser believed that improvements meant land balancing, but the sentence only referenced commencing work, and he questioned whether that could mean just putting in a berm, pushing some dirt, or something else and then stopping. He felt that would mean they had complied with the term "commencing" in the Agreement, but he did not feel that went far enough. Mr. Delacourt agreed that the way it was written, it could mean that. Mr. Kaiser felt they had to deal with making sure the applicant kept going once they commenced, and he felt the way to deal with it would be to put in an end date. He mentioned he spoke with Mr. Staran about this and it was determined that the Planning Commission could add such a date in the Agreement. Mr. Kaiser asked Mr. Gilbert his thoughts.

Mr. Gilbert said that the bank would start construction tomorrow if they could get a permit. The bank has been very patient with this process and their parcel has been under contract for quite some time. They have cooperated 100%, even with the architectural features to be used. He indicated he had no concerns about the commencement part. Mr. Kaiser suggested that would be a different parcel. Mr. Gilbert said it would be part of the overall development. Mr. Kaiser said that the way the paragraph is written, it makes it sound like two separate parts. He asked Mr. Gilbert's plan for the rest of the development.

Mr. Gilbert replied that in some respects, he thought it would have already been underway by the middle of 2004. Mr. Kaiser suggested adding that the applicant had to commence with the project within two years of final approval, and be completed within

three to four years thereafter. Mr. Gilbert was not sure what it meant to commence on the entire project and said they would start in one area. Mr. Kaiser said they could build the bank as a part of the PUD, which would satisfy commencing within two years. Mr. Gilbert said that with a project of this size, it would probably take a little more research to give an answer. They would go as quickly as the market would allow, but to estimate selling so many units a year would be hard to garner at this point. He mentioned the project Mr. Kaltsounis brought up, at Maple and Coolidge, and said they sold 150 units right away. His project could be a two-year deal or a five-year one. It was hard to say, so he would have to be cautious about what was agreed upon. Mr. Kaiser agreed and said Mr. Gilbert should be cautious, but he felt the paragraph as written did not say what was expected of the developers. He proposed that they commence on the entirety within two years and add an end date. He acknowledged that perhaps they could not decide that this evening. Mr. Gilbert said that could be worked on between now and when they go before Council, to see if they could come up with something within reason. He added they would certainly go full bore if they were approved.

Ms. Hill advised that the end date for the City Walk PUD was five years. Although she was not sure if that would apply in this instance, she would also like to see some indication of an end in this Agreement. Mr. Kaiser suggested the paragraph show that improvements for the entirety of the PUD, which include the bank, commence within two years, and that the entirety of the PUD shall be completed within five years, or something reasonable.

Mr. Galvin clarified that the notion of phasing would be dropped and the PUD would be treated as a single project, the commencement of substantial construction would begin within some agreed upon period of time, and that the completion to the two years would be legitimate, and there would be an outside termination date. He asked if the Commission would entertain a request by the then owners of the property to be able to have an extension clause, with that date not being unreasonable. Mr. Staran said he did not have a problem with that, but he wondered what would happen if five years came and the applicant were 50% or 75% complete. He asked the Chair what he would envision at that point. Mr. Staran said they could not say the PUD was not going to work, because they would have over half of it completed. He said they had used a term of five years with City Walk, but that was a smaller development that would begin and be completed, or not be started at all. In this case, it would be foreseeable to have the project done building by building, and he wanted to make sure they all have a fairly good idea of what the consequence of not adhering to the deadlines would be.

Mr. Kaiser said that a possible remedy should be added for the situation Mr. Staran described, whether it is a reversion to a Land Conservancy or Open Space or something else. Perhaps the proportion of residential to commercial would change. Mr. Staran said he would give the matter more thought.

Mr. Rosen asked the representative from the bank to come to the microphone and asked if they were ready to go forward with the design and layout in the submitted plan. Mr. Wagner said they had provided substantial technical documents already, with the intent that as soon as the process allowed, they would move forward. The bank would be the first component of the PUD to be built. Mr. Rosen verified that the bank had its own driveway.

Mr. Rosen asked if anything would happen on the Detroit Edison property. Mr. Gilbert said there was no agreement to do anything on that property, which abuts the PUD parcel.

Mr. Hooper referred to total square footage, and said he realized the mixes would change, but he indicated that the maximum square footage was usually put in a PUD Agreement. Mr. Kaiser said that page three touched on that topic and it showed maximum retail and office and for the bank, and a maximum number of units. Mr. Hooper requested a total for the whole development.

Mr. Abanatha felt it was in the document, but said the square footage of the residential units might go smaller and if the 10% flexibility were left in, it would change the total.

Mr. Kaiser asked Mr. Abanatha for the total square footage for the entire development. Mr. Abanatha said it would be market driven. Ms. Ruggiero asked for the worst-case scenario for the maximum square footage. Mr. Gilbert answered that if they just built the seven buildings along Rochester Road and the bank, the small amount of retail for that would be about 15,000 square feet. For that scenario, there would be no more than 305 condominium units. If they built an office building along Rochester Road or behind the bank and replaced one or two of the buildings, everything would have to work. In no case could they build more than 35,000 square feet of retail. If they had to take out two buildings, the number of units would be reduced because of parking. It was not contemplated that there would be much office demand because of the market. It is in the Plan for flexibility, and the spirit and character of the architecture of the residential buildings would be used. He reiterated there would be a reduction in the number of units if there were an increase in one of the other uses. He agreed it might not be stated clearly, and he said they would work on that.

Mr. Galvin clarified that Mr. Hooper was asking if the applicants knew what the maximum potential square footage for the residential would be. The answer is that they do not. The computation of it is an exercise based on what the buildings would be and a derivable number, but they do not have it tonight. Mr. Hooper said they had, in the past, used a number of 267,000 square feet for the overall development. Mr. Gilbert said he did not recall that. Mr. Gilbert said it would primarily be a residential development, and they did put maximums in for retail and office. He did not know the exact square footage. Mr. Galvin said Mr. Abanatha did a quick calculation, using 305 potential units at 2,000 square feet each, which was not a likely size. Mr. Abanatha said that would not include garages, which are part of the buildings, so his largest estimate would be 610,000 square feet for the residential components, without the garages, and the bank and the retail would have to be added. Mr. Gilbert said it really could not happen along Rochester Road because they would have to be small units or they would have to expand the buildings by 50%. He emphasized that the worst-case scenario really could not happen. Mr. Anzek determined that the maximum potential would be 645,000 square feet.

Ms. Hill said that the square footage had been presented for the buildings along Rochester Road, and if the biggest type of building were added in the back, it could be calculated. She questioned why they would use 2,000 square feet for the units when the building size was included. She stated that it was possible to put a maximum square footage in the Agreement. Mr. Abanatha said they could do a calculation based on what is submitted, if that is a number Council should see. They could come up with that approximation, but he said he could do the math tonight.

Ms. Hill felt that because of the B-2 request, which opens up the possibility of drive-thru restaurants, she would like the Agreement to exclude those. She did not mind drive-thrus for the bank, but she did not want any type of drive-thru restaurant for this development. Mr. Gilbert said he did not either, and said he would agree to that language. Mr. Kaiser read additional conditions for the motion (refer to Conditions 6-11 below).

MOTION by Boswell, seconded by Hooper, in the matter of City File No. 02-027 (City Place), the Planning Commission **recommends** that City Council **approve** the Planned Unit Development. Such approval shall include the Planned Unit Development Agreement and Exhibits dated January 26, 2004 (as may be amended by City Council) and constitutes an amendment to Chapter 138 of the Code of Ordinances to rezone Parcel Nos. 15-23-301-002, 15-23-301-035, 15-23-152-002, currently zoned Single-family to B-2, General Business District with a PUD Overlay, with the following five (5) findings and subject to the following eleven (11) conditions.

Findings:

1. The proposed PUD has met the qualifications of Section 138-1002 of the Zoning Ordinance.

2. The City's Master Plan identifies the subject site for future mixed-use development. The proposed development is consistent with that recommendation.
3. Dedication of additional road right-of-way, increased design and aesthetic controls, and the ability to restrict undesirable uses are substantial public benefits of the proposed PUD that could not be achieved under the B-2 district alone.
4. The PUD will not create an unacceptable impact on public utility and circulation systems, surrounding properties, or the environment. Moreover, the proposed PUD will improve public utility and circulation systems.
5. The proposed PUD has been designed to promote convenient vehicular and pedestrian circulation within the site.

Conditions:

1. (Section 8 Streets and Utilities) Revise language to indicate dedication of the City's Master Planned ROW and the use of a Hold Harmless agreement between the City and Applicant. Also, include language that the applicant will demonstrate the ability to provide for any lost required parking on revised PUD plans.
2. That any reference of Land Divisions be removed from PUD Text and Exhibits prior to final approval.
3. That the Final Site Plans shall require review and recommendation from the Planning Commission and final approval from City Council.
4. That the applicant shall make any modifications necessary at the time of Final Site Plan Approval to meet Engineering or Fire Department Requirements.
5. That the PUD Agreement recites that no decrease or reduction in wetland mitigation requirements is being allowed or authorized by the PUD, which would come through the Wetland Use Permit process, if used.
6. That the applicant amends the PUD to show that a 180-foot right-of-way is the proposed right-of-way and further, that the applicant is to accomplish the 150-foot right-of-way dedication. The PUD shall further recite that the PUD, as built, may use and develop in that 180-foot proposed right-of-way, as defined in the Master Plan and Master Thoroughfare Plan of the City of Rochester Hills, but that uses in the proposed 180-foot right-of-way shall be vacated or moved according to an approved plan to be implemented upon the occurrence of a certain triggering event that indicates a need for City use for traffic or other reasonable purposes to accomplish the overall health, safety and welfare of the community. That the language in the PUD that accomplishes a proposed plan and triggering event be approved by City Staff and City Attorney, prior to submission or approval of the City Council.
7. That the proviso included on page seven (7), regarding City Staff approvals, also be included at the end of paragraph sixteen (16) on page eleven (11).
8. That paragraph sixteen (b) (16)(b) on page eleven (11), shall read "not more than 10% increase in the size of any building, as shown on any approved Site Plan, but in any event, no building shall ever be larger than the footprint shown on page C6 in the proposed PUD Agreement."
9. That on page eleven (11) paragraph seventeen (17), the word "both" be deleted and the word "the" inserted in its place.
10. That paragraph twelve (12) on page nine (9), regarding phases of construction, be rewritten and that there be specificity as to when the commencement of improvements and/or construction of the entirety of the PUD site be commenced,

and that there be language to show when it shall be completed. "The entirety of the PUD will be completed" language shall be inserted in the PUD, which provides that extensions "may" or "may not" be "barred" or "allowed" as approved by the City Attorney, as long as the requests are reasonable. Also, paragraph twelve (12) on page nine (9) shall include remedy, in case there is failure by the applicant to comply with the terms of completing the PUD.

Mr. Kaltsounis asked Ms. Hill if she meant drive-thrus for pharmacies also. She replied that she was including pharmacy, coffee shop, or any other drive-thrus, except those for the bank.

11. That there be no drive-thrus, except for the bank, on the site.

Mr. Kaiser asked Mr. Staran about the change in zoning that would occur by this recommendation, citing the By-Laws which say that anything affecting zoning requires an approval by at least five members of the Planning Commission.

Mr. Staran replied that approval of the B-2 zoning, as well as approval of the PUD overlay, would be subject to that rule, as they are technically rezones. Mr. Kaiser clarified the Commission would be doing that tonight by making a recommendation, and Mr. Staran agreed.

Ms. Hill referenced that there was an error in the notice and that the Commissioners were considering B-2 zoning. She said she was still concerned that, although this would be a binding contract, that if, hypothetically, the contract ended, the underlying zoning would be B-2. That is different from B-1 in that it allows for more commercial development. It bothered her that because of an error, they were allowing a zoning issue to turn into something different. It would not affect this PUD, but it did not seem as clean as it should be, and she wondered how long it would take to re-notice it for due process and public input.

Mr. Staran cautioned that courts do very strictly construe the procedural requirements for rezonings. In this case, to rezone to a category that was different than what was noticed and advertised, could arguably be defective. One option the Commissioners have, if there is a concern, is to not act on this matter; another is to go ahead and act on it. It would take a few weeks before this matter would be before Council. If the Planning Commission wanted to consider going to B-1, it could be moved forward as is, and in the meantime, could be noticed as B-1 rezoning for the next available meeting.

Ms. Hill felt that could happen without hindering it getting on Council's Agenda in an appropriate timeframe. Mr. Staran said it would have to be re-noticed and there would have to be another Public Hearing before the Planning Commission and a recommendation to City Council. He did not feel Council could rezone to B-1 if the Planning Commission did not have another Public Hearing.

Mr. Kaiser said he felt there were other options. He said that Council could, based on being alerted, reject this proposal, arguably based on this reason alone, and make the process start all over again – so nothing would be carved in stone by what the Commission did tonight. He was not suggesting that, however. He also noted that Mr. Staran has stated that the PUD would run with the property. Mr. Staran said that it definitely would, and would be recorded with the Registrar of Deeds. Mr. Kaiser said that even if Mr. Gilbert were out of the picture, the PUD would be attached to this land and no one could do anything contra to this PUD. Just as the PUD could be arguably breached and held for naught, the zoning could be changed. Mr. Staran said that was correct.

Mr. Delacourt said that he and Mr. Staran discussed this issue and that not only would this be a rezoning to an underlying zoning district, there would be a second rezoning that would take place. If the PUD Agreement were to go away, it would not revert back to B-1 or B-2, it would revert back to a PUD overlay. Any applicant that wished to develop it under the current zoning would have to submit a PUD Agreement for approval. He added that the PUD overlay would have to be taken away.

Ms. Hill questioned if the whole contract did not take place, if the PUD overlay would be part of the contract, and if the contract were dissolved, if the land would revert to the underlying zoning.

Mr. Staran said it would not be un-zoned. The worst-case scenario would be that if the PUD Agreement, by virtue of a termination clause arising or some other reason, did not occur, it would not be un-zoned, but the underlying zoning would apply to the property. It would not go back to what it is now, in this case a residential zoning.

Mr. Delacourt believed that was different than what he and Mr. Staran had discussed. Mr. Delacourt said that Council would approve three motions; one, a rezoning to an underlying B-2 zoning; the second rezoning to a PUD overlay, which would be shown on the zoning map as a PUD zoned property; and third, a motion regarding the PUD Agreement. If the PUD Agreement terminated at some point, the land would not revert back to B-2, it would revert back to the PUD, without an agreed upon contract.

Mr. Staran said it would depend upon how the Agreement read and he said he would have to research it. He read from the Ordinance, Section 138-1006, sub-paragraph nine (9): "The Agreement may include specific terms or conditions regarding the expiration or revocation of the PUD zoning designation." Therefore, it could provide, in the Agreement, for the PUD zoning designation to go away, but that would not make the underlying zoning go away, it would remain in effect.

Mr. Gilbert said he did not think the contract provided that the PUD zoning would go away. Mr. Staran said it could, but this one did not.

Mr. Rosen said that if Mr. Gilbert did not proceed, and the contract defaulted, the PUD zoning goes away and they would be left with B-2. If City Council changed the PUD zoning to eliminate the PUD zoning, there would be B-2 left.

Mr. Delacourt said it was his understanding that without that clause in the Agreement, the underlying PUD zoning would not go away. The Agreement could stipulate that if this contract ended, that the PUD zoning would go away. They do not want that in the Agreement, especially because of the discussions about reverting to underlying zoning. Staff's opinion is that it should only revert back to the PUD zoning, and anyone who wanted to further develop the property without additional rezoning would have to submit a new contract for the City to negotiate.

Mr. Staran agreed that was correct. He did not believe the Commissioners would want the subject property to be B-1 or B-2 unless it was in connection with the PUD project proposed. If the project were not to happen, the Commissioners would prefer it to revert to the current zoning, if anything. What is contemplated now is that the PUD Agreement would be binding, and if, for whatever reason, Mr. Gilbert did not proceed, they would have to add remedies for that, but he did not think that among them would be that the property would become B-1 or B-2 zoned property. Before anyone could do anything with the property, they would have to convince the Commissioners and the Council members that they should allow anything under the property under than what is provided in the PUD overlay zone and Agreement.

Mr. Kaiser referenced paragraph fourteen (14) and clarified that it addressed this matter.

Ms. Hill said that was fine and she was not opposed to seeing this property developed as a PUD. Developing it this way was established in the Master Land Use Plan, but if the PUD Agreement were dissolved, the underlying zoning would be B-2, which could allow for a totally different looking PUD that what had been proposed.

Mr. Staran said it would be B-2 with the PUD overlay. Ms. Hill said there would be an Agreement as to part of what would be developed there, but if the Agreement went away, hypothetically, the PUD overlay zoning would mean nothing other than someone could develop a PUD with underlying zoning, unless they cared to change it. If it were to be rezoned to B-1, the uses would be less. She said an applicant for this property

would now be able to develop something similar to the PUD at the corner of Tienken and Rochester, which was recently rezoned B-2 with a PUD overlay.

Mr. Staran explained that the only way the contract would go away would be if there was some type of defect in the procedure that caused it to be nullified, or if both parties wanted it to go away. Ms. Hill said there was a technicality with the underlying zoning. Mr. Kaiser said it was not a technicality, and that it was very clear in the Agreement that this PUD Agreement would be on that piece of property, no matter what Mr. Gilbert did. If he violated the terms or did not proceed, the PUD would be all anyone could do on this property, period. Mr. Staran advised that was correct. Ms. Hill asked if that would be forever. Mr. Kaiser said forever, or until both parties agreed to modify the contract.

Roll call vote:

Ayes: Boswell, Brnabic, Hill, Hooper, Kaiser, Kaltsounis, Rosen, Ruggiero
Nays: None
Absent: Myers

MOTION CARRIED

Mr. Kaiser said that City Council would hear this recommendation, and he hoped that by that time, Mr. Galvin and Mr. Gilbert would decide that everything the Commission did tonight was the right thing, and that the applicants would not fight them on the Site Plan approval so this process would move along.

DISCUSSION:

SmartZone Overlay Zoning – Dan Casey, Economic Development Manager. This item was postponed due to the late hour.

ANY OTHER BUSINESS:

Planning Commission Representative to the Zoning Board of Appeals.

Motion by Boswell, seconded by Ruggiero, the Planning Commission hereby **appoints** James Rosen, Vice Chairman of the Planning Commission to be its Representative to the Zoning Board of Appeals for a one-year term to expire March 31, 2005.

Voice Vote:

Ayes: All
Nays: None
Absent: Myers

MOTION CARRIED

NEXT MEETING DATE:

The Chair reminded Commissioners that the next regular meeting was scheduled for April 6, 2004.

ADJOURNMENT:

Hearing no further business to come before the Planning Commission, the Chair adjourned the regular meeting at 12:05 a.m., Michigan time.

Eric Kaiser, Chairperson

Maureen Gentry, Recording Secretary

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