



Rochester Hills

Agenda Report

1000 Rochester Hills Drive
Rochester Hills, MI 48309
(248) 656-4660
Home Page:
www.rochesterhills.org

File Number: 2006-0052

File Number: 2006-0052 **File Type:** Ordinance **Status:** For Adoption
Version: 7 **Reference:** N/A **Controlling Body:** City Council
Regular Meeting
Requester: Planning/Development **Cost:** **Introduced:** 01/11/2006
File Name: Steep Slope Ordinance **Final Action:**

Title: Acceptance for Second Reading and Adoption - An Ordinance to amend Chapter 138 of the Code of Ordinances and create Section 138-1082 for the purpose of regulating alteration, construction activity, or any other activity that would alter the natural contour of steep slopes within the City limits, to prescribe a penalty for violations, and to repeal inconsistent or conflicting ordinances.

Notes:

Code Sections:

Agenda Date:

Indexes: Ordinance

Agenda Number:

Sponsors:

Enactment Date:

Attachments: Agenda Summary.pdf, Agenda Summary 061307.pdf, Letter McKenna 050907.pdf, Steep Slope Ord 052507.pdf, Resolution 061307.pdf, Resolution.pdf

Enactment Number:

History of Legislative File

Ver- sion:	Acting Body:	Date:	Action:	Sent To:	Due Date:	Return Date:	Result:
---------------	--------------	-------	---------	----------	-----------	-----------------	---------

1 Planning Commission 12/20/2005 Discussed

Notes: ***Steep Slope Ordinance:** Mr. Delacourt noted that the Commission was provided the first draft of the Ordinance, currently being reviewed by the City Attorney and Staff. Members of the Clinton River Watershed Council (CRWC) had recently gotten a copy and had also provided input. Staff wanted the Commission to review it for structure and how it would work. The Ordinance mirrored the City's Wetland Ordinance as to permit requirements and would cover single-family plot plans as well as larger residential developments. The Ordinance would require an amendment to the City's Natural Features Setback Ordinance to classify the slopes as a natural feature. They had identified a buffer of 25 feet for identified steep slopes, based on the existing functionality and success of the Natural Features Ordinance. To do any work within that buffer would require a modification, the same as a wetland buffer. To work in a slope, a permit would be required.*

Mr. Hooper referred to percentages mentioned (15%, 25%) under Applicability, created using the angle at the base of the toe of the slope. He asked if 15% was a one-on-six slope, and if 25% was a one-on-four. Mr. Hooper stated that in his line of work, they created slopes with one-on-three sides all the time. Mr. Delacourt explained that creating was different than working on existing. He believed the Ordinance regarded preventing working on an existing slope, but said he would check into it. Mr. Hooper asked about page 14, which discussed a moderately steep slope covering a horizontal area of 1/3 of an acre and a very steep slope covering 1/5 of an acre. He said he would not like a situation where a Site Plan had five acres of berms at one-on-three side slopes. Mr. Delacourt reiterated that it should not apply to the creation of slopes. Mr. Hooper asked about existing developments with a berm with a one-on-three-sided slope to be adjusted. Mr. Delacourt said a permit would be required for the additional work to show the Commission there would be no negative impact to the existing slope. Mr. Hooper said he would not want to create a situation where they would prohibit work. He understood they were trying to protect the natural features, not landscaped berms mowed weekly. Mr. Delacourt said he would make sure the language was clear.

Mr. Hooper asked if 1/3 of an acre and 1/5 of an acre regarded something horizontal or something measured on the slope, noting that there would be quite a difference depending on how those were measured. Horizontal would be less prohibitive than if it were measured along a slope.

Mr. Schroeder shared the same concerns. He indicated that people liked to maximize the use of their property by having vertical drop offs, so they had to be careful about the height requirements and that it did not become an Ordinance for new construction. People would be confused about "25%," and he suggested that they include a couple of triangles with numbers 1 on 4 on page three.

Mr. Anzek recommended adding descriptive drawings of a toe slope and bluff and how it should be measured or defined.

Mr. Kaltsounis felt that they should include the type of vegetation for replacement species. Mr. Delacourt advised that any time a permit was required, all seed mixes and vegetation had to be approved by the City's Landscape Architect. They could add a sentence regarding that. Mr. Kaltsounis stated that big problem with slopes were pipes and erosion. He wondered if they could add that no drainage pipes would be allowed down the slopes. He asked about the map showing steep slopes and if there should be a time limit for completion. Mr. Delacourt advised that it had been done as part of the natural features inventory and said it could be included as an exhibit with the Ordinance amendment. Mr. Kaltsounis asked if it would be updated with each Master Land Use Plan and Mr. Delacourt said there was not a requirement that it be updated at a certain interval, but he would

look into it.

Mr. Hooper summarized that the Planning Commission would approve the permits. He asked about Engineering Services' role and Mr. Delacourt said they would be involved with single-family plot plans. He would add to the Ordinance that any application not subject to Planning Commission approval would be reviewed by Engineering.

Mr. Dettloff asked if the City Attorney had reviewed it and Mr. Delacourt advised that he seemed agreeable with the structure.

Mr. Kaltsounis asked if the fines of \$1,000 and \$2,000 per day were determined long ago and had not been adjusted for inflation. Mr. Delacourt said he did not know but would find out. Mr. Kaltsounis thought that the issue was too important to assess such low fines, and that they should be upped significantly.

Ms. Hardenburg asked if a copy of the Ordinance could be mailed to individuals who had steep slopes on their property to make them aware of the permit requirements. Mr. Delacourt said that the City would enforce the Ordinance upon new homeowners, but there was a question about grandfathering exemption. He would ask Mr. Staran if reconstruction on existing homes was exempt from the Ordinance or if the City could apply it. They could make people aware there was a new Ordinance rather than mail the whole thing.

Mr. Hooper opened the discussion for public comments at 8:39 p.m.

Dan Keifer, 719 Fieldstone Dr., Rochester Hills, MI 48309 Mr. Keifer stated that he was representing the Clinton River Watershed Council, of which he had been a paid staff member for four years. He noted that he had studied the Clinton River through Rochester Hills in quite a bit of detail, especially with regard to the steep slopes. He was pleased to hear some of the Commissioner's comments, because he felt this was a very important Ordinance in terms of protecting the natural features, a valued aspect of the community character. It was also important in terms of protecting property values and preventing significant property damage. His comments were mainly toward the Clinton River Corridor. When there was a lot of storm water runoff in the streams and rivers they needed protection the most. He showed some photos of the unique aspects of the slopes. He referred to an event last July, during a thunderstorm, and showed a stream gauge of the Clinton River, and noted the dynamic equilibrium and sensitivity to erosion damage and instability. He advised that most slopes sat with very loosely-formed soils - sand and gravel - that did not take much of an erosion scar to create significant damage to the neighboring property and the river itself. He showed a home in Rookery Woods on a slope that had eroded significantly. He pointed out the foot of Cloverport, which was upstream from the Hidden Ridge development approved a couple of years ago, as an

example of how fragile and dynamic the river slopes were. He showed a slope downstream from Streamwood Condos, where about 30 feet of frontage on a 12 or 15-foot slope was taken out. Regarding pipes and storm drains, he showed a view of River Trail, looking about 20 feet down to the riverbank, and the stormwater outfall put through the steep slope about 20 year ago. The storm pipe failed because the water kept working at the base and it created the erosion point. He offered to work with Staff and the Commission to make sure the Ordinance was a useful document for all to help take care of the slopes and the rivers.

Andy Krupp, 168 Cloverport Ave., Rochester Hills, MI 48307 Mr. Krupp noted that he lived on the street in one of Mr. Keifer's photos. He stated that he had an opportunity during one of the past storms to be able to see how fast erosion could occur. During the May storm he sat outside and watched a 10 x 10 foot piece of land drop into the water. He stressed that an adequate Steep Slope Ordinance was important. He referred to the Hidden Ridge project and said that five year ago, there was talk about the setbacks and the impact they would make. Even though the plan was approved, there were difficulties. He passed out a letter to the DEQ written by the developer of Hidden Ridge, who might have to scrap the plan after getting an analysis of the slopes. The bluffs were 55 feet and dropped almost straight down. He proposed six units and several would only be ten feet from the crest of the bluff. Mr. Krupp quoted from the letter: "As discussed in the geotechnical report, slope stability analysis demonstrated that if the slope was not buttressed and erosion protection installed, the slope would likely experience periodic landslides. Over time, the landslides would likely involve progressively greater volumes of soil upslope and along the riverbank. One option was considered involving supporting condo units four and five on deep foundations that extend below the river level and allow the slope toe to naturally stabilize over time." Mr. Krupp stated that the units would be 55 feet from the river and there would be foundations dug very low. He questioned whether that would be economic for the developer. "Letting the slope naturally degrade as noted above would likely involve significant loss in trees on the slope. This would not only be contra-productive to the goal of the deed restriction, but could cause the owners of condo units four and five to have concern about the stability of their foundations. This perception of possible foundation concerns could make it difficult for homeowners to sell their units or could result in the units being sold at below market value." He thought they had a wonderful opportunity to take a look at the problems with the slopes for the people, for the natural features and for the developers. He asked that they make the Ordinance something that would take care of things in the community. He mentioned that the property at the end of Cloverport had been owned for over 50 years and a recent appraisal showed that the owner had lost an acre and a half of land in the last 30 years.

Ms. Pamela Bratton Wallace, 168 Cloverport Ave, Rochester Hills, MI 48307. Ms. Wallace said she had been working on steep slopes for the last six years, and in that time she studied a number of different communities.

She spoke to the proposed 25-foot setback. In her study, she found that the minimal setback was about 25 feet and the maximum was up to 250 feet. There were a lot of severe slopes in the area and she felt it was important to pay attention to the degree. She recommended that they consider the possibility of a graduating setback that would be dependent upon the severity of the slopes. She praised the Commission for the work and she commented that it was a necessary road on behalf of steep slopes in the community.

Tim Gauthier, 2593 S. Christian Hills, Rochester Hills, MI 48307 Mr. Gauthier stated that he was present to voice his support for a strong Steep Slope Ordinance. He was very encouraged by the discussion, and he thanked the Planning Department and the Commission for the work done so far and for the work ahead. The Clinton River was just starting to recover in the water quality and trout populations from what it was many years ago. There were a lot of sins of the past that could not be corrected, but he indicated that hopefully, through the Ordinance, they could prevent some of those sins in the future. They had an opportunity to protect some very special natural features of the City. He suggested that they not just codify what had been done, but try to adopt best practices.

Mr. Hooper agreed with Ms. Wallace and said that a graduating scale was something they should definitely look into. Mr. Delacourt also agreed, and said he spoke with Mr. Keifer about the 25 feet, which had been taken from the Wetland Ordinance, and Mr. Keifer had made the point that wetlands were very stable, but steep slopes were changing.

Mr. Kaltsounis said they needed the scale, but they should also consider the base material. For example, where there was sand on the river, they needed a different factor. He referred to Hidden Ridge and asked if they had pulled necessary permits to keep the approval from expiring. Mr. Anzek said that Mr. Smitha (the developer) had gone through a lot of the imposed conditions - a slope analysis and submission of the final PUD Agreement, which had been signed. Mr. Delacourt said that Mr. Smitha was still in conformance with the PUD and he had done what was necessary. They were under construction review but had not received a Land Improvement Permit and had not submitted the final Site Plans that addressed the conditions of City Council.

Mr. Kaltsounis referred to Hidden Ridge and said that slope and foundation were things he remembered mentioning to the applicant and saying they would be a problem. Mr. Delacourt thought the reason the project was not being pursued so adamantly was because of those issues.

Mr. Anzek asked Ms. Wallace to bring forward other Cities' Ordinances that Staff might find helpful. Mr. Delacourt thought there would be a revised draft by January 17th and any questions or thoughts should be emailed to him before then.

Notes: Chairperson Boswell asked Mr. Anzek to provide a brief introduction to the proposed Steep Slope Ordinance included in the packet.

Mr. Anzek stated that the proposed Steep Slope Ordinance was being distributed for review by the Commission, and explained it was a result of the Master Land Use Plan update, which had included a Natural Features Inventory. He noted that about four (4) years previously, the Planning Commission and City Council wrestled with a development on a steep slope. At that time the City did not have the appropriate standards or tools in place to adequately deal with that situation, and a resolution was negotiated through the use of a Planned Unit Development (PUD) type proposal to pull proposed structures off the hillside. He stated at that time the City went forward to get a proper plan in place, along with a proper understanding of the City's steep slopes, wetlands issues and tree stands. He commented that rather than wait until the Master Land Use Plan was adopted, Staff felt it would be better to have the Ordinance adopted and put in place, which would provide the proper controls for future development.

Mr. Anzek asked that each Commissioner thoroughly read through the proposed Ordinance, to determine if they felt they could stand on the standards to defend steep slopes, if a development is proposed for it. He stated he had reviewed the proposed Ordinance several times, and questioned whether the Ordinance would provide the proper standards to effectively deal with restricting development by protecting hillsides. He noted the proposed Ordinance was complicated and detailed, which is why Staff wanted to give the Commissioners some additional time to review it. He explained a Public Hearing was scheduled for August 15, 2006 regarding the proposed Ordinance, and noted an attorney from City Attorney John Staran's office would be present. He noted the proposed Ordinance had been drafted by McKenna and Associates, and a representative from McKenna and Associates would be present at the August 15, 2006 meeting to present the proposed Ordinance. He requested the Commissioners begin reviewing the proposed Ordinance.

Chairperson Boswell asked how much discussion should be held at this meeting since the Public Hearing would be held in two (2) weeks.

Mrs. Brnabic stated she had some comments and questions regarding the wording in the proposed Ordinance, and suggested those items be discussed prior to the Public Hearing.

Mrs. Brnabic referred to Page 11, Paragraph (3) Inspections, Violations, and Fines, subparagraph (a) which reads:

(a) *Inspections* Any site for which an application has been submitted shall be subject to inspection at any reasonable time, including weekends and holidays, by the reviewing authority or its designated representatives. Notice will be provided to

applicants of any site inspection that is to be performed on a weekend, a legal holiday or between the hours of 6:30 p.m. and 8:00 a.m.

Mrs. Brnabic stated that although that wording was probably included for a reason, she questioned the phrase "any reasonable time", and then the inclusion of holidays, or the hours of 6:30 PM to 8:00 AM. She questioned whether 1:00 AM was a reasonable time for an inspection, or whether Christmas Day would be a reasonable time for an inspection. She thought there would have to be a special circumstance that would warrant an inspection as the paragraph stated. She suggested that if the second sentence was included, then the words "any reasonable time" should be deleted from the first sentence. She thought that inspections conducted at 1:00 AM or on Christmas Day should only be done because of a special circumstance.

Chairperson Boswell asked if Mrs. Brnabic objected to the word "reasonable". Mrs. Brnabic stated she did not believe the words "reasonable time" should be included. Chairperson Boswell asked if the sentence should state "at any time". Mrs. Brnabic stated she would leave "a reasonable time" out of the sentence. Chairperson Boswell noted the word "time" would have to be left in the sentence.

Mr. Anzek explained it was his understanding that the first sentence gave the right to look at the sites on weekends and holidays at a reasonable time. If the inspection could not be done between 8:00 in the morning and 6:30 at night, then the applicant or the property owner had to be notified that someone would be on their property in the evening after 6:30 or before 8:00 in the morning. He clarified the first sentence provided for reasonable time entry without notice, and the second sentence required notice if the inspection would be after 6:30 at night or before 8:00 in the morning.

Mrs. Brnabic stated she did not object to that, but felt that the way the sentence was worded, it appeared that any site would be subject to inspection at any reasonable time, including weekends, holidays and the hours of 6:30 PM to 8:00 AM. She did not think a holiday could be viewed as a reasonable time.

Mr. Anzek stated he did not think of the word "holidays" as meaning Christmas, but rather holidays such as Labor Day, which typically fell on the day before a regularly scheduled Planning Commission meeting. He noted the Commissioners might go out to view a property on Labor Day just because a meeting was scheduled for the next day.

Mrs. Brnabic pointed out there was no distinction included in the wording of the proposed Ordinance, and stated she wanted to mention it. Chairperson Boswell agreed that stating "any reasonable time, including weekends and holidays" in the first sentence, and then in the next sentence including

weekends and holidays as an exception requiring notice was confusing.

Mr. Anzek understood the second sentence to mean weekends or holidays after 6:30 PM or before 8:00 AM. He suggested the entire second sentence of subparagraph (a) could be deleted. Chairperson Boswell was not sure the second sentence could be deleted because that eliminated the notice to the applicants.

Mrs. Hardenburg stated the first sentence applied to the hours of 8:05 AM and 6:25 PM, which allowed an inspection at any time; however, if it was a holiday, and the inspection would not take place until 7:00 PM, then notice had to be given to the applicant.

Mrs. Brnabic stated she still questioned the word "reasonable". She agreed the option to give notice should be included for circumstances that required giving notice.

Chairperson Boswell pointed out that the first sentence said "reasonable time, including weekends and holidays", and the second sentence said "except on those occasions" the applicant or property owner had to be notified. He did not think the word "reasonable" needed to be included.

Mrs. Hardenburg pointed out that notice was not required unless the inspection was going to be after 6:30 at night, otherwise the applicant did not have to be notified.

Chairperson Boswell stated the second sentence read "... on a weekend, a legal holiday or between the hours of 6:30 p.m. and 8:00 a.m."

Mr. Anzek suggested the second sentence could be deleted, and inspections be made at a reasonable time. He did not think any Commissioner would go out at 1:00 in the morning to make a site inspection.

Mrs. Brnabic agreed, but stated that specific hours had been included, and she was bothered by the word "reasonable". Mr. Anzek stated that subparagraph would be reviewed again for clarity.

Mrs. Brnabic referred to Page 11, Paragraph (4) Fines, which read:

". . . , for the first offense shall be punishable by a fine of not less than \$1,000 per day of offense. Each subsequent offense shall be punishable by a fine of not less than \$2,000 per day."

Mrs. Brnabic asked if there was some discretion, because the sentence read "not less than".

Mr. Anzek explained that typically fines included in the Zoning Ordinance were spelled out in the section, and that was what the City prosecuted on,

which was the basis for going forward. He did not think it was a fine that would be levied by the Planning Commission, but rather if a violation occurred, they would be cited by the Code Enforcement Officers, and those fines were what the City would seek in terms of damages. He stated in this instance, if damages occurred to hillside slopes, the City would like to see more severe fine amounts to encourage quick remedy. He pointed out that oftentimes Code Enforcement violations took ninety (90) days to get through the court, and the City would want to move quickly on violations involving slope disruption or incorrect procedures.

Mrs. Brnabic asked if the words "not less" should be included, or whether the fines would be set at One Thousand (\$1,000.00) Dollars and Two Thousand (\$2,000.00) Dollars.

Mr. Anzek stated he would defer to the City Attorney regarding this item, since the City Attorney had reviewed the proposed Ordinance with the consultant.

Mrs. Brnabic stated she would like to know why the paragraph was worded the way it was or whether there was discretion involved with the words "not less".

Mrs. Brnabic referred to Page 12, Paragraph (k) **DEFINITIONS**, and wondered why the Zoning Board of Appeals was included, noting she had not seen a reference to that Board in the proposed Ordinance.

Mr. Anzek stated that there was a statement about an appeal process to the City Council because this was considered more of a site plan issue rather than a variance issue.

Mrs. Brnabic stated that did not explain why the Zoning Board of Appeals was included under "Definitions".

Mr. Anzek suggested the applicant might have a right to seek a variance from the standards because it was part of the Zoning Ordinance.

Mrs. Brnabic stated she was not questioning that right, she just had not noticed anything in the proposed Ordinance that referenced the Zoning Board of Appeals. She pointed out that the other definitions were included because they were referenced in the proposed Ordinance.

Mr. Anzek stated that the Ordinance referenced an appeal section to the City Council, but if an applicant sought relief from the standards, they would appeal to the Zoning Board of Appeals.

Mrs. Brnabic referred to Page 1, Paragraph (a) **FINDINGS and PURPOSE**, subparagraph (a), which reads:

"(a) The establishment of regulatory and conservation practices to prevent disturbances of steep slopes is needed to protect the public health, safety and general welfare."

Mrs. Brnabic stated that after reading that sentence, she questioned of "who or what", whether it would be the City, the Community, the citizens, or the environment; and if "who" was not specifically stated, she recommended the word "the" be removed. The sentence would then read:

"(a) The establishment of regulatory and conservation practices to prevent disturbances of steep slopes is needed to protect public health, safety and general welfare."

Mr. Anzek agreed with that suggestion, and noted he had also circled the word "practicable" in the third sentence of that paragraph, which he believed should read "practical".

Mrs. Brnabic stated she considered the wording extremely important because one word could make a difference to the translation of anything.

Mr. Kaltsounis explained for the benefit of Commissioners that were new on the Commission that this proposed Ordinance came about because of a project called Hidden Ridge. He asked about the status of that particular project.

Mr. Anzek stated that project had several conditions put on it due to the slope, and they had hired an engineer to conduct a slope analysis, and a soils analysis. He noted that the City's Engineer, Paul Davis, had reviewed those reports and signed off on the project. He thought the project going forward depended on the applicant having the resources and wherewithal to begin spending on infrastructure.

Mr. Kaltsounis stated that when the Hidden Ridge Project came before the Commission, the Clinton River Watershed Council had provided a picture of a house located in the Rookery Woods Subdivision that was falling into the Clinton River. He invited the Commissioners to go to the subdivision located at Hamlin and Adams and take a look at the houses, which were Six Hundred to Seven Hundred Thousand (\$600,000.00 to \$700,000.00) Dollar homes, and that were actually falling into the river.

Mr. Kaltsounis explained when the homes were built, there were trees along the slope, and the slope consisted if a sandy loom. He stated that the homeowners wanted to see the river, so they removed the trees. The trees had actually been the footing for the stability of the sand the houses were sitting on. He noted that on top of that, the homeowners ran their gutter lines halfway down the hill, and there were evident signs of erosion because the water from the gutter pipes destroyed the side of the river and the river started moving closer to the homes. He indicated when he was there about

two years ago looking at the homes, one homeowner had a retaining wall that had ripped out, and they were considering driving steel columns in to provide stabilization.

Mr. Kaltsounis stated with respect to the Hidden Ridge Project, if steel columns were put in for the foundations, the steel columns would have to be driven down past thirty-five (35) feet to get into the foundation underneath the river. He stated that was why the Commission was looking at the proposed Steep Slope Ordinance, and it was definitely something the City needed.

Mr. Kaltsounis referred to Page 11, Paragraph (3) Inspections, Violations, and Fines, subparagraph (a), the sentence regarding the times of 6:30 PM to 8:00 AM, and suggested the evening time be changed to 9:00 PM, noting he typically looked at properties around 8:00 PM.

Chairperson Boswell asked whether that section pertained to the Commissioners, or rather the City's enforcement officials. He noted the Commission would not be levying fines.

Mr. Anzek stated that the way the proposed Ordinance was written, the Commission was considered a reviewing authority, and explained that designated representatives would be Planning Staff or Code Enforcement Staff. He suggested the second sentence could be deleted; the Commission could determine what was reasonable, and when the application was completed, the applicant would be informed that their site might be visited by members of the Planning Commission or City Staff at a reasonable time.

Mr. Kaltsounis referred to Page 11, Paragraph (3), subparagraph (i) (Restoration), and asked who paid for the restoration if all the trees were removed. He felt that section was open-ended the way it currently read.

Mr. Anzek stated if twelve-inch (12") trees were removed, it would be hard to replace them with twelve-inch (12") trees and have any success with them. He suggested that not only restoration, but also "an acceptable means" of re-establishing the stability of the slope should be looked into further.

Mr. Kaltsounis noted that section currently read:

"The Engineering Services Department shall have the authority to direct the violator to restore the steep slope area to its condition prior to violation, insofar as that is possible within a reasonable time..."

Mr. Kaltsounis asked who would pay for that restoration, noting that paragraph also referred to "an adequate performance guaranty".

Chairperson Boswell stated that if the violator did not pay for it and put it back into proper order, at that time the City would take them to court, which

would include restoration costs and the fines levied by the City until it is restored. He thought that would be a retroactive amount.

Mr. Anzek suggested that it might be beneficial to include a paragraph indicating that the City reserved the right to enter and make the appropriate restoration as needed. He stated that it would not be practical to wait three (3) months for a resolution, noting a couple heavy rainstorms would destroy the slope. He stated he would discuss that matter with the City Attorney.

Mr. Kaltsounis encouraged the Commissioners to take a look at the homes in the Rookery Woods Subdivision. Mr. Anzek noted that one of the homes could be seen from the Adams Road bridge heading southbound on Adams looking toward the west. He pointed out that was the best example in the City; however, there were many more examples in the Community where poor techniques led to destabilized banks, and that every heavy rainstorm destroyed more of the slopes.

Mrs. Hardenburg stated she would like to ask her questions at this meeting as she would not be present at the August 15, 2006 meeting. She referred to Page 2, Paragraph (a) **FINDINGS and PURPOSES**, subparagraph (1)(d), which reads:

"(d) Regulation can allow the reasonable use of private property by encouraging flexible development..."

Mrs. Hardenburg asked about the thought behind or reason for that statement. Mr. Anzek explained the thought behind that statement was that everyone had a right to a reasonable use of their property, and as part of that right, if the City could achieve a better, stabilized bank by being flexible in design, and that one of the intent clauses of using the PUD process was environmental concern. He said that if a developer was entitled by zoning rights to save two units, and if the City could request that those two units be clustered or brought further away from the hillside, that was what the City hoped to achieve with a flexible approach.

Mrs. Hardenburg referred to Page 2, Paragraph (b) **APPLICABILITY**, subparagraph (2) Presumption, which states:

(2) Presumption. A steep slope inventory map indicates that location of known steep slopes within the City. Steep slopes may also exist that are not indicated on the map..."

Mrs. Hardenburg asked why some steep slopes would not be indicated on the map. Mr. Anzek explained that topography was a point in time, and a shift, change or alteration of property may have occurred between the times the aerials are completed, and steep slopes might develop due to erosion. He noted the Natural Features Inventory was currently five (5) years old, and was the reason the City would require very explicit surveys with any

application. He stated those surveys would be built into the City's GIS program.

Mrs. Hardenburg referred to Page 3, Paragraph (c) **REGULATED ACTIVITIES**, subparagraph (2) Allowable Activities in a Steep Slope Setback Area, and asked why the City would be exempt.

Mr. Anzek stated that the City always exempted itself as part of sovereign immunity. Mrs. Hardenburg commented she had a problem with that, because she personally thought the City should set the standards, particularly if the City was going to hold others to the standards. Mr. Anzek stated that was standard language included in zoning ordinances regarding municipal operations and municipal uses, which included not just city hall buildings, but service garages; fire and police stations, or a shelter in a park.

Mrs. Hardenburg asked if that would affect current conditions or if some buildings would be "grandfathered". Mr. Anzek stated the proposed Ordinance, if passed, would probably create legal, non-conforming uses. He explained buildings may have been legal at the time they were built, but subsequent ordinances and standards came into place that made them non-conforming.

Mr. Anzek asked if that paragraph should be deleted. Chairperson Boswell suggested the City Attorney be consulted about why municipal buildings were typically exempted. He also questioned why municipal buildings would be exempted, but felt there must be a reason it was included in every ordinance.

Mr. Anzek stated that the Clinton River Watershed Council, and others involved with the open space committee, would be invited to attend the Public Hearing, and he thought there would be much good discussion and dialog. Based on that, he did not believe the proposed Ordinance would be recommended by the Planning Commission at the August 15th meeting to go forward, but rather there would be subsequent changes. He suggested if the Commissioners had additional comments prior to August 15th, they be forwarded to the Planning Department Staff.

Mr. Anzek stated the Commission should be critical of whether they felt the proposed Ordinance had the "teeth" necessary. He pointed out that the Commission would not want to be negotiating during a meeting, but rather it would be better to have the standards in place.

Mrs. Brnabic asked if the questions asked at this meeting would be addressed prior to the August 15th Public Hearing. Mr. Anzek stated they would be worked on. Mrs. Brnabic stated she would like to have the answers to her questions prior to the Public Hearing, and be notified of any changes made prior to the Public Hearing.

Mr. Anzek stated that the discussion and questions would be forwarded to Attorney Staran and to McKenna Associates to review and respond. He indicated that if the answers were not clear, the Planning Commission would be consulted.

Mr. Hooper commented that he thought this was a great step from the last time the Commission discussed steep slopes. He referred to the sliding scale for setbacks and diagrams which made it a more "user-friendly" ordinance.

Chairperson Boswell called for any other comments. No other comments regarding the proposed Steep Slope Ordinance were received.

3 Planning Commission 08/15/2006 Discussed

Notes: (Reference: Memo prepared by Ed Anzek, dated August 9, 2006 had been placed on file and by reference became part of the record thereof.)

Present for the applicant were Amy Chesnut, McKenna Associates, Inc. 235 N. Main St., Suite 105, Northville, MI 48167 and Trey Brice, Hafeli, Staran, Hallahan, Christ & Dudek, P.C., 4190 Telegraph Rd., Suite 3000, Bloomfield Hills, MI 48302, representing City Attorney John Staran.

Mr. Anzek noted that a Public Hearing had been scheduled for this matter. He recalled that the Ordinance was brought forward several months ago for a discussion, and that it was discussed at the August 1st Planning Commission meeting. He assured that people had been notified about the meeting, observing that there was no one in the audience. He had spoken with several people who were interested, including Mr. Dan Keifer of the Clinton River Watershed Council, who had questions about some of the issues in the proposed Ordinance.

Mr. Anzek stated that the City was treading in new territory, without many models to go by or to research. McKenna Associates had researched other cities and found only a one or two that could be used as examples. He introduced Trey Brice, an associate of Mr. Staran's, who was representing the City on legal matters. Mr. Anzek stated that the Ordinance was a result of a couple of things: Previous developments which had steep slopes, but for which the City did not have appropriate standards and tools; and challenges regarding environmental concerns such as woodlands and natural habitats. When they began the Master Land Use Plan update, one key element was to prepare a Natural Features Inventory. They identified the components of the City that were worthy of protection, including steep slopes, heavily wooded areas and wetlands that drained into the rivers. They wanted to be in a better position to defend an Ordinance, without being seen as arbitrary and capricious. He asked Ms. Chesnut to walk through the proposed Ordinance, and said they would address Mr. Keifer's questions, which were copied to the Commissioners and became part of the record. He advised that he had a copy of the approved plan for the Hidden Ridge PUD off Cloverport, and that he would show how the proposed Ordinance standards would have applied

and what type of building areas would have resulted. The Commissioners could then judge whether the proposed Ordinance would be a fair and realistic way of protecting and preserving, while allowing reasonable development to occur.

Ms. Chesnut explained that she would go through each section and talk about the intent. The first section, **(a) FINDINGS and PURPOSE (1) Findings**, proposed four findings. The first regarded establishing regulatory practices to protect public health, safety and welfare; the next dealt with erosion and sedimentation and that the disturbance of steep slopes aggravated those; the third dealt with the importance of steep slopes as environmental features and the fact that they contributed to the quality of the natural beauty of the City; and the fourth acknowledged that regulation could allow reasonable use of private property and encourage flexible development design so as to avoid disturbance of steep slopes. She indicated that the Ordinance was not prohibitive so that someone could not touch a steep slope at all. It was similar to the Woodlands and Wetland Ordinances, which allowed going into those areas providing certain criteria were met. Ms. Chesnut continued that the second part of that section, **(2) Purpose**, dealt with the purpose of the regulations and why the Ordinance was being established. The intent was to provide a reasonable balance between individual property owners and the public interest. They wanted to be able to give the City the "teeth" to deal with sensitive areas, to maintain natural features and to prevent impacts of steep slopes.

Ms. Chesnut discussed the next section, **(b) APPLICABILITY**, which stated how the provisions would be applied to a site. The steep slopes were divided into three areas: Moderate Steep Slopes, Very Steep Slopes and Bluff Steep Slopes, all defined by a gradient percentage. It stated that the City would prepare an inventory map of all steep slopes (the Natural Features Inventory had been prepared by Dr. Niswander of Niswander Environmental). They presumed that the map indicated all the known steep slopes and that there could be some yet to be identified.

The next section dealt with **(c) REGULATED ACTIVITIES** and what would be permitted in the steep slope setback and inside a slope area. From the top of the slope, a setback would be measured. It was similar to the natural features setbacks and wetlands. Regarding the activities allowed, any activity located outside the steep slope setback area would not be subject to regulation, but anything within it would be. The section dealt with the exempt requirements, such as normal maintenance like mowing, trimming vegetation, or removing dead vegetation. Maintenance of existing roadways or walkways, berms, municipal buildings, stormwater detention and basins fell within that category. Activities that would require a Permit from the Planning Commission would be anything constructed, operated or maintained for a development on a slope or within the setback, including erecting buildings or utilities, depositing or removing material or other grading.

Ms. Chesnut next referred to (c) **REGULATED ACTIVITIES (4) Steep Slope Setback**, and noted that there was a different setback for different types of slopes - the steeper the slope, the greater the setback required.

Regarding (d) **REVIEW CRITERIA, General Criteria**, Ms. Chesnut stated that they established five general criteria an applicant would have to meet in order to get a Steep Slope Permit approved. Those included that structures shall be designed in a manner that averted or minimized alteration of the slope; feasible alternatives to the proposed action; suitability of the proposed activity; the affect of the proposed activity on the protection of steep slopes; and the availability of mitigation measures that could be added to a proposal. The next section (d)(2), **Specific Criteria**, listed particular criteria of a Site Plan that would be reviewed during a Permit request. The grading, cut and fill, ground cover, soil and sedimentation control, stabilizing cover, measures for control of erosion and fill material had to be considered and approved.

Section (e), **DETERMINATIONS**, stated that in order for the Planning Commission to grant a Steep Slope Permit, they had to find the eight findings identified. They had to make sure the proposed activity would be accomplished in a manner that would not adversely affect the protection of existing wetlands, water bodies, endangered species, slope failure, erosion and adjacent properties; that it was compatible with the public health and welfare; that it could not practicably be relocated on the site and that burden of proof of compliance was demonstrated. Any impact had to be mitigated or not affect the area greatly.

The next section described was (f) **REVIEW PROCEDURES and SUBMITTAL REQUIREMENTS**. The Planning Commission would be the body that reviewed Steep Slope Permits in conjunction with a Site Plan, Special Use, Plat or Condo Plan. If the applicant did not require those approvals but would be impacting a steep slope, the Engineering Services Department would review the Permit for approval. Section (f)(2), **Submittal Requirements**, listed what needed to be included in all Permit applications. Section (f)(3) **Review Procedures**, stated that the Planning Commission would consider all of the general and specific design standards listed previously during the application process. The Commission could approve an application with or without conditions, or it could be denied.

Section (g) **PERMITS**, talked about what would be included in a Permit, the limitation of a lot that might be disturbed, setbacks, that Permits had to be displayed, the expiration or extension times, and performance guarantees required.

Ms. Chesnut referred to the next section, (h) **APPEALS**, and said they might discuss that further because there were questions about who could review an appeal. The Ordinance was written originally so that the Zoning Board of Appeals (ZBA) heard appeals, but there was discussion about the appropriateness of City Council being the entity for appeals. She noted that

a Site Plan could be appealed to the City Council. She advised that Section (i) **ENFORCEMENT**, would be revised because it would be part of the Zoning Ordinance and the fines and penalties should be consistent between the two. She mentioned that they were working on it with Mr. Staran. Section (j), **Notice, Conflicts; Severability; Effective Date** was added as basic Ordinance language. Section (k), **DEFINITIONS**, was added using graphics to clarify some of the terms.

Mr. Boswell opened the Public Hearing at 7:51 p.m. Seeing no one come forward, he closed the Public Hearing.

Mr. Anzek noted Mr. Keifer's comments, copies of which had been provided to the Commissioners prior to the meeting. In response, Mr. Anzek had brought a copy of the Hidden Ridge PUD, a six-unit development on a slope west of Rochester Road just south of the Clinton River that was approved in 2002. He had applied the standards contained within the Steep Slope Ordinance to the site, noting that Mr. Keifer did not think the Ordinance, as written, would have made a difference in how the site was eventually developed. Mr. Anzek demonstrated that it would have. He took 100-foot distances and calculated the slope percentages. He showed that the slopes averaged 34-56%. Using the standards in the Ordinance, anything less than 40% would require a 25-foot setback and anything over 40% would require 50 feet. That would mean that for the six units approved, only one would possibly be buildable. One of the larger impacts would have been to the stormwater detention area. That would include a structure, as defined, and it would have had to be respective of the setback. He thought it demonstrated that the proposed Ordinance would establish a standard that could be measured and used to set a framework in which a development might be considered acceptable. There were a lot of questions raised by doing the exercise, and he thought they would have to go back to the drawing board for some things. He observed that slopes, and the top of slopes, did not run in straight lines. He determined the top of slope by calculating a 50-foot distance whenever there was a slope less than 15%. The question arose about measuring the top of slope. He wondered if they would take an average, three points to the corner or two points to the corner and one to the middle and average, or if they should take the most severe. If something across the back of a property changed from 36% to a 42% slope, the setback would run diagonally. He questioned what would be fair and reasonable from which to base the measurements. He thought they needed to revisit and establish whether three points of measurement or at the median, middle point or average should be used. He believed that the standards in the proposed Ordinance were reasonable. If they made the Ordinance prohibitive, they could get into a takings claim. He felt they should put standards in place to work with a developer to achieve the desired results and preserve slopes.

Ms. Chesnut referred to Mr. Keifer's email regarding clarity about what a steep slope and steep slope setback was. She believed it differentiated

between the two, but she asked if the Commissioners had questions. She referred to Mr. Keifer's comment that the Ordinance did not clearly state what was NOT permitted in the Steep Slope area. She said that it did not list what was prohibited; the Ordinance regulated activities and said nothing was allowed without a Permit. The Ordinance was crafted to regulate what could occur, while providing something reasonable for a developer. The city could evaluate an impact to a steep slope based on criteria without just saying nothing could happen. She reminded that Section (c) (3) Regulated Activities, stated what activities a Permit would be required for, and what activities would be allowed without a Permit were stated also. Stormwater retention basins or berms would be allowed, and the intention was that existing basins and landscaped berms would not be regulated because those might exceed the requirements. Mr. Keifer had mentioned road construction and municipal buildings, and he felt they should be treated no differently than private construction. She asked how the Commission felt about that, and if municipals buildings should be exempted.

Mr. Brice stated that it was generally accepted practice that governments were already exempted from their own rules, mainly for financial reasons. Mr. Anzek asked if they were obligated to put that in the Ordinance. Mr. Brice said it was not obligated, but there was standard language they could add. Mr. Boswell asked if there had been a test case or if it was just something that was accepted. Mr. Brice answered that it was just accepted. It was quite often challenged with prisons and schools, but it never went far, because it was just the way things were. It was a state-by-state law and the Federal government was exempt from their laws. Ms. Brnabic recalled that Ms. Hardenburg had asked about it, but she was also curious about it.

Ms. Chesnut noted Mr. Keifer's remark that he would like the Ordinance to state that nothing should be permissible on a slope and that no Permits should be given for grading, cutting, filling or anything else. He also felt they should add what type of permanent vegetative cover should be used and where. Ms. Chesnut stated that they could add something about it, but she preferred that it not be specified, and said it could be looked at on a case-by-case basis. Regarding removing topsoil in the setback area, the Ordinance did not say someone could or could not; it said that if someone were permitted to do that, it would have to be stored on site and reused. She noted that Mr. Keifer thought Engineering Services should be involved in all Permit reviews, and although the Ordinance did not specifically state it, they were already a part of the Site Plan review process.

Mr. Anzek recalled that Mr. Hooper asked about decks projecting off the back of the homes in Hidden Ridge, suggesting that they should decide whether they would support any decks built into the setbacks. Architectural projections were allowed currently in some cases, but decks (and rainwater) could alter a steep slope. He asked if they should limit projections off a building. He also mentioned that the word creep was used, and he thought it should be in the (k) **DEFINITIONS** section.

Mr. Anzek brought up the appeal process, noting that it had been discussed at length. They had to decide whether the ZBA or City Council would hear an appeal. If there was a Variance requested, it would go to the ZBA. If an applicant did not agree with a denial of a Permit, he questioned who would hear the appeal. Ms. Chesnut thought there should be a Public Hearing regarding a Permit application. Mr. Boswell agreed they should require a Public Hearing. Mr. Anzek said that the new Zoning Act required all residents within 300 feet to be notified, not just property owners.

Mr. Anzek referred to his calculations for Hidden Ridge, stating that he did not want to be biased or slant the line one way or another. He thought the applicant would still have a reasonable use of the site, and it would allow accommodation of roads and structures. It would be up to the Commission whether or not to grant a Permit. The applicant was not entitled to highest and best, just reasonable. Mr. Brice related that under the law currently, governments could restrict something so much it could be considered unreasonable. He was not a proponent of that, and he felt a reasonable approach was more prudent. As long as there was any economic return of the property, it was not considered a taking.

Mr. Yukon referred to (a) **FINDINGS AND PURPOSE** (1) Findings d., and asked how the Ordinance defined reasonable use of property and flexible development, and what criteria would be used. He asked if it would refer to the Master Land Use Plan or to case law. Ms. Chesnut answered that the Ordinance defined it under (d) **REVIEW CRITERIA**, and the application would have to meet the criteria.

Mr. Yukon said that given the fact that the Natural Features Inventory had been done, and given the presumption that there were steep slope areas in the City not detected, he asked how they would determine if a property was in a steep slope area if it was not in the Inventory. He asked if they would physically study the area.

Mr. Anzek said that with any Site Plan submittal, it was required that a topography be included and signed by a certified professional. They had to show where the slopes, if any, were, so that would be the triggering point. Ms. Chesnut added that a preliminary grading plan was also required.

Mr. Yukon asked about the time period regarding the disturbance of steep slopes being "completed within one construction season," and about not leaving disturbed areas bare and exposed "during the winter and spring thaw periods" under (d) **REVIEW CRITERIA** (2) Specific Criteria f. Mr. Anzek thought that would become the burden of the City's Landscape Architect or the Code Enforcement Officers.

Mr. Schroeder referred to (b) **APPLICABILITY**, noting that it dealt with percentage of slope. He thought it was incomplete and confusing. He

referred to page 14, and the graphic shown to define the slope as "rise over run. He remarked that it was much more meaningful than a degree. He suggested that they use the words "vertical over horizontal." He referred back to **(d) REVIEW CRITERIA (2) Specific Criteria** e., which mentioned "two horizontal to one vertical" at the end of the sentence, and suggested that "one vertical" should come before "two horizontal." In **(b) APPLICABILITY**, first paragraph, where it read a 25° slope, it would be one vertical, four horizontal (25°); 15° would be one vertical, 6.7 horizontal; and 40° would be one vertical, two-and-a-half horizontal. Mr. Anzek clarified that he supported ratio rather than percentage. Mr. Schroeder said he would support both, but he felt the ratio was more important. He liked the use of the graphics, and suggested that they label the lines vertical and horizontal in the graphic used for SLOPE on page 14. Mr. Boswell suggested that it also be drawn more to scale.

Mr. Anzek thought they could also demonstrate graphically how the top of the slope was defined. Mr. Schroeder noted that the definition was on page 15. Ms. Chesnut clarified that he meant how the setback was measured from the top of slope. Mr. Anzek said something could be at a 15% grade, but at an average of 100 feet. Mr. Schroeder stated that the defined length should be clearer and quantified. He also suggested that by **(b) APPLICABILITY**, they add little triangles and a sketch to define it, so it was not so confusing. He asked permission from the Chair to go through the Ordinance page by page and for Commissioners to comment.

Beginning with page one, **(a) FINDINGS AND PURPOSE (1) Findings** c., Mr. Schroeder suggested that they add "stabilizing" or "deep root" before vegetation in the first sentence, since things such as grass had roots that were too shallow. Mr. Reece added that the City's Landscape Architect could advise regarding examples of vegetation that would work. Mr. Anzek indicated that they could add examples in the Ordinance of acceptable vegetation.

Mr. Schroeder referred to **(b) APPLICABILITY**, and suggested that they add "refer to page 14 for definition of slope" to the paragraph. Mr. Hooper reiterated that they should add "Top of Slope" to the graphic on page 14. He thought there could be an issue raised regarding averages. For example, the developer of a site like Hidden Ridge might indicate half-way down a slope and say it was the top of the slope, measure the setback from there and start the development. They needed to make it clear that the applicant had to use the correct location, not midway down, but he was not sure how they could reasonably do that. Mr. Schroeder thought the sketch would be a start. Ms. Chesnut agreed it needed further clarification, although it was stated that it had to be between the top and the toe of the slope. Mr. Reece asked Mr. Anzek where the toe of slope was measured from for his demonstration, and if it was defined from the property line. Mr. Anzek said he went from where he first saw the topography start to spread out. He used 100 feet from the top, which was convenient, to get a general average. He

did not want to measure at the toe and end up with a lesser percentage over the average. Mr. Reece agreed that people would do that. He thought that the key would be the definition of the top of the slope, because they could get 15 different opinions from 15 different engineers. Mr. Yukon asked if they had any slopes where it would come down, flatten out, create a new starting point and stop again. Mr. Anzek said there might be. Mr. Reece did not believe they would find a distinct definition for top of slope in engineering vernacular to fall back on.

Mr. Hooper asked if they were concerned about a change in percentage going up the slope that now defined it as the top of a slope. He agreed someone could say that the top of his slope was farther down. Mr. Anzek suggested it might be as simple as saying that "the top of slope would be defined as the midpoint of a distance having an average slope no greater than 15%." Ms. Chesnut felt they were almost there, but they needed to cover the items mentioned. Currently, the top of slope was defined as where the grade became greater than 15%, and toe of slope was the base or bottom of the slope where the ground surface abruptly changed to a significantly flatter grade of less than 15%. They had to run through some scenarios and make sure it was how they wanted. Mr. Reece thought a graphic depiction would help clarify it.

Under **(c) REGULATED ACTIVITIES**, Mr. Hooper mentioned that Mr. Keifer suggested adding prohibited activities, and he asked if it was possible if another paragraph could be added stating that "anything not listed in (2) Allowable Activities on a Steep Slope or in a Steep Slope Setback Area would not be allowed." That would generally give a definition of prohibited activities. Ms. Chesnut said they could add it, but she indicated that prohibited activities would be anything someone did not have a Permit for. Mr. Anzek questioned if they should add things like playground equipment. Mr. Hooper thought there was an easier way without listing everything, noting that everyone was looking for exclusions.

Mr. Brice agreed it should be nicely vague. In either **(c) REGULATED ACTIVITIES**, (2) Allowable or (3) Regulated Activities, they could say "only those items listed would be allowed," or "except for something listed, it would not be allowed." Mr. Anzek agreed, indicating that if they did not list something as prohibited, someone would argue it was permitted by inference.

Mr. Schroeder referred to **(c) REGULATED ACTIVITIES (2) a. Allowable Activities on a Steep Slope or in a Steep Slope Setback Area**, and indicated that if mowing and trimming were allowed, all the stabilizing growth could be removed, so he thought it should say, "all mowing and trimming not detrimental to the stabilizing growth." Mr. Reece thought that in some instances, dead trees across slopes had a protective nature. Mr. Hooper agreed that dead trees protected riverbanks.

Mr. Reece referred to (2) Allowable Activities on a Steep Slope or in a Steep Slope Setback Area, d., which permitted construction of new roads or expansion of existing roads in a public right-of-way. He questioned if the road in Hidden Ridge would have been permitted if it had been in a steep slope or setback, or if the paragraph was referring to public roads. Ms. Chesnut said it was intended to mean public roads. Mr. Anzek wondered how they should deal with driveways. In the example of Hidden Ridge, if the standards were applied, there would have been very little room at the western part of the development. Ms. Chesnut said the developer would need a Permit. The Ordinance was stating that a new road could be constructed, and if it was going to be a private road, a Permit would be needed. Mr. Boswell suggested that it say, "construction of new public" roads. Mr. Hooper said that regarding driveways, it was his understanding that they could not exceed 15%, so he thought it would prohibit putting a driveway on a steep slope. Mr. Anzek said it would be similar to a Wetland Use Permit, because someone could cross a wetland to get to upland, developable areas, provided the wetlands were mitigated. He wondered if they would allow crossing steep slope areas to get to buildable areas.

Mr. Schroeder asked if Municipal buildings and uses should be listed under (2) Allowable Activities on a Steep Slope (listed as e.). Mr. Anzek thought they should strike it out. Mr. Reece and Mr. Schroeder agreed. Mr. Reece thought the City would be hard-pressed to build in an area like that, noting it would be much more expensive.

Mr. Brice referred to (c) **REGULATED ACTIVITIES** (1) Allowable Activities Outside of a Steep Slope Setback Area, which said that any activity located outside of a steep slope setback area shall not be subject to the requirement of this section. He thought it should say steep slope or setback areas, stating that the way it read, someone could build within the steep slope. Ms. Chesnut said she would make that correction. Mr. Brice referred to (2) g. Allowable Activities on a Steep Slope or in a Steep Slope Setback Area and read: "The creation or alteration of landscape berms less than 10 feet in height or stormwater management retention or detention basins." He asked if the City did not want to regulate those. Ms. Chesnut said that was correct. She thought there might be a more appropriate place to put that sentence, but she explained that the intent regarded the fact that the City had a lot of detention basins and existing berms, and they would probably be creating some, and it was not the intent to regulate those slopes. Mr. Hooper suggested taking it (g) out. Ms. Chesnut thought they had to put it somewhere for clarity. Mr. Hooper agreed it should not be a defined use and should be moved to another section.

Mr. Schroeder referred to (d) **REVIEW CRITERIA** (1) General Criteria a., and said it should somehow include "maintaining the stabilized condition", so someone did not just take everything out. He referred back to (c) **REGULATED ACTIVITIES**, (4) Steep Slope Setback and suggested they add "1 vertical on 4 horizontal (25%)" rather than just 25%, and that they do

the same type of calculation for a. and c.

Mr. Brice asked what would happen if, inevitably, along a river there was erosion that somehow changed the average of the slope. He asked if there was a definition about something "determined at the time of the Site Plan," for example. He noted the River behind the Rookery Woods Subdivision, which was digging into a couple of lots and changing where the toe was. He wondered whether someone wanting to add a deck could end up with a nonconformance, and if they would be grandfathered, or how that would work. Ms. Chesnut agreed a date should be added, and suggested a date when the Plan was reviewed or approved, and basing the criteria on that date. Mr. Schroeder reminded that a river meandered, and noted that the Clinton River by City Hall had changed from when the building was done.

Mr. Anzek suggested that they require an applicant to provide slope calculations, which would be reviewed for accuracy. Mr. Schroeder said they could also ask the applicant to note any changes in the conditions of the slope during the process.

Mr. Schroeder moved to **(d) REVIEW CRITERIA (2) Specific Criteria e.**, and said they discussed changing the words vertical and horizontal around. He referred to the last line of h., which said the "Building Inspector may modify time periods." He asked if that could be an Engineer or someone else. Mr. Anzek said that there was a Grading Inspector in the Building Department. Mr. Hooper also referred to h., and suggested adding "stabilizing" before permanent vegetative cover and defining what would be allowed as cover. He did not want someone to think they could just seed and mulch. Mr. Anzek added that they could give an example and note that it had to be approved by the City's Landscape Architect.

Mr. Yukon referred to **(2) Specific Criteria f.** on page 5 and said it talked about completing within one construction season. He asked if that season should be defined. Mr. Hooper asked if it would be defined as one year from the time they started work. Mr. Anzek said he thought the intent of the section was clear - they did not want something to sit dormant through the winter and spring thaw because of the risk of erosion. He said they would look at it. Mr. Schroeder suggested one growing season. He recommended that they add "rainy season" along with the winter and spring thaws.

Ms. Brnabic asked if they would add something about the City's Landscape Architect approving the vegetative cover. Ms. Chesnut said the Landscape Architect did review and approve that part of the Site Plan, so she thought it would be up to the Commission if it should specifically be stated. Mr. Boswell suggested that they put in a definition for "permanent, stabilizing vegetation under **(k) DEFINITIONS** and add "or as approved by the City's Landscape Architect."

Mr. Reece referred to **(e) DETERMINATIONS** on page six and asked who on

the Commission could determine that the manner in which the activity was accomplished was done appropriately. He was not sure if the Commission was qualified to make that determination. The work could be accomplished a lot of ways, and it was like an architect prescribing means and methods to a builder, for example. It was not something an architect specified. Mr. Schroeder thought it would be determined in the engineering reviews. Mr. Boswell advised that the Commission usually relied on the engineers and consultants to tell them if something could be done a certain way. Mr. Reece asked if the Commission was the reviewing authority. Mr. Boswell agreed it was, but he indicated that they had a lot of help from the consultants and Staff. Ms. Chesnut said it was the same as it was for Wetland Use Permits.

Mr. Schroeder referred to **(f) REVIEW PROCEDURES AND SUBMITTAL REQUIREMENTS (2) Submittal Requirements** e. and recommended adding "professional surveyor" and deleting "other qualified person." He referred to e. iii., which said the map shall be sealed by a professional land surveyor, and he thought it should also say "or professional engineer." The last paragraph referred to USGS datum, and he advised that it was not really used much. He suggested using NAVD 88, the Oakland County Mapping datum, which include FEMA maps, and to ask Mr. Moore of Engineering Services what system of maps to use.

Mr. Reece wondered if a contour map could be prepared by a professional engineer or a licensed professional surveyor, noting they were two completely different practices.

Mr. Anzek mentioned that in Florida, a certified professional engineer had signing rights over an architect, landscape architect and surveyor. If a plan was submitted by an engineer and included architectural drawings, it was acceptable in Florida. Mr. Hooper did not think an engineer would overrule an architect on a building. Mr. Reece said that when he worked in Florida, they required an architectural seal on the architectural drawings. Mr. Anzek said it was an old law that engineers ruled, but communities stopped accepting that. Mr. Anzek wondered if a topographical survey should be sealed by an architect. Mr. Reece thought it should be done by a professional land surveyor. Mr. Schroeder noted page eight, h. i. and suggested adding plantings to the sentence.

3 Planning Commission 08/15/2006 Discussed

Notes: Referring to page ten, **(h) APPEALS, (2) Final Determination by City Council or Zoning Board of Appeals**, Mr. Hooper stated that he supported City Council being the reviewing authority that heard appeals, and he indicated that he did not believe it was something the ZBA should hear. He clarified that it was not an interpretation of law, it was an appeal of a Site Plan issue, and the other members concurred with the change.

Mr. Anzek referred to **(g) PERMITS (1) Content** a. on page nine and said that an expiration date was required on a Permit. He noted that Site Plans were

in effect for a year and could be extended for one year administratively and for another two by the Planning Commission. He asked how they should handle timeframes for Steep Slope Permits. Mr. Schroeder recommended that they be consistent. Mr. Anzek advised that there was not consistency with approvals for plats and condos, because the Subdivision Control Ordinance did not allow administrative approvals. Mr. Hooper felt it should be applied the same as a Site Plan. Mr. Brice asked if a new survey would be required after two years. Mr. Hooper said they could define it such that anything older than three years would need a new survey. Mr. Anzek suggested that upon a field investigation to determine there were no changes, the first extension could be granted administratively.

Mr. Schroeder referred to **(i) ENFORCEMENT (1) Civil Infraction**, which read that a person would be "guilty" if they violated the provision of the Chapter. He suggested it be changed to "responsible." He was concerned because if a slope started changing, they had to get right on it, not wait for all the processes.

Mr. Anzek advised that when an applicant proposed a stormwater detention system, they were required to submit the right of entry under emergency situations. He asked if it would be appropriate to add it to this Chapter (**(i) ENFORCEMENT**). Mr. Schroeder strongly agreed, and stated that it should be done the same way as was done with detention ponds. Mr. Anzek said the City could require a bond or get a lien.

Mr. Schroeder noted that the penalties would be taken out of the above Chapter and put in another Ordinance. Mr. Hooper said they could substitute the language Mr. Staran used in his email for (4) Fines on page 12. Mr. Schroeder talked about (6) Enforcement, on page 12, and asked if the Building Department should be listed along with Engineering Services. Mr. Anzek suggested that it say, "The Mayor, or his or her designee."

Mr. Schroeder asked if anyone had comments related to page 13, under **(k) DEFINITIONS**. Mr. Hooper reminded that they were going to add a definition for "creep" and "permanent, stabilizing vegetative cover."

Ms. Brnabic asked if the definition for "Zoning Board of Appeals" would be removed, since City Council would hear appeals. Mr. Anzek asked Mr. Brice, who thought all things would go to City Council. Ms. Brnabic agreed if there was no reference to the ZBA, that it should be removed from **(k)**.

Mr. Schroeder turned to page 14, STEEP SLOPE and noted that they had talked about adding "vertical" and "horizontal" into the definitions for 1. MODERATELY STEEP SLOPE, 2. VERY STEEP SLOPE AND 3. BLUFF SLOPE.

Mr. Anzek said that in his calculations he used the definition for slope, including the horizontal area of 1/3 of an acre, and so on. He indicated that

he had found the exercise to be very helpful. He advised that he would choose a few other sites at random and do the same thing, to see how it applied. Mr. Boswell suggested doing it for Rochester College, because they were going to be cutting into the slope as shown on their Master Plan. Mr. Anzek agreed, and said they also planned to fill a finger-wetland that bisected the site and to mitigate it. Mr. Schroeder thought that 1/3 of an acre was too big to use in the description of a Moderately Steep Slope, noting it was the size of most lots. He thought the threshold should have been smaller. The decision was to change the area of a Moderately Steep Slope to 1/5 of an acre; of a Very Steep Slope to 1/10 of an acre and a Bluff Slope to 0 to 1/5 of an acre. Mr. Anzek also said he would use the calculations on a few examples to see if it seemed reasonable.

Mr. Brice noted that they used the term WORK PERMIT in (k) **DEFINITIONS**. He said they defined work from it, but thought the Ordinance only read "Permit" throughout. Mr. Anzek thought Work Permit referred to the Land Improvement Permit issued by Engineering Services, which actually allowed the removal of dirt. Ms. Chesnut would look at that to make sure there was not a conflict.

Mr. Dettloff noted that once the Ordinance was adopted it would be used for all Plans that came forward. He asked about a site with an erosion problem, and asked if the City could go back and enforce something. Mr. Anzek said it would be very hard to impose retroactively. Mr. Brice agreed, noting that once something was approved, it was approved, and there might be a legal nonconforming situation whereby sites became grandfathered. Mr. Anzek questioned when a development would be vested, and Mr. Staran advised him that it was vested when a Land Improvement Permit was issued.

Seeing several people who arrived late, Mr. Hooper asked Chairman Boswell if he would entertain their comments, to which he agreed.

Paul Miller, 1021 Harding Ave., Rochester Hills, MI 48307 Mr. Miller referred to (1) Allowable Activities on a Steep Slope (page 3) and wondered whether the Ordinance could be construed as preventing existing homeowners from having a large garden on a moderate slope of 15% or more. Even construction of a non-permanent shed on a slope that was cut into would not be allowed, as it appeared. He asked if the Ordinance would apply to any Site Plan turned in, whether action had taken place prior to approval.

Mr. Anzek agreed that sheds and gardens would become regulated activities that would need a Permit. Mr. Miller clarified that any disturbance of a vegetative cover on a slope would be permitted. Mr. Anzek said it would become an enforcement issue, but the City would try to educate the public. He added that until someone received a Land Improvement Permit, the Ordinance would be applied, noting that was the same reason Site Plans had expiration dates. If new Ordinances were approved, compliance would be

required.

Mr. Miller clarified that if a shed were being installed or garden put in, they might want to think about allowing it on a certain sized area, so if someone wanted to put in a five-foot strip of tomato plants, they did not have to hire a professional surveyor to do a topo. There had to be a dividing line, because it would almost prevent planting a tree. He thought they needed to be careful about the regulation. He did not think the bulk of the degradation would come from activities like those.

Mr. Anzek agreed they did not want it to be a detriment to planting trees or appropriate vegetation or minor things such as that. They needed to educate people, but they could create some lower threshold points to permit the activities Mr. Miller mentioned.

Andrew Krupp, 168 Cloverport, Rochester Hills, MI 48307 Mr. Krupp thought a big issue was determining the top of the slope. He stressed that they should have an Ordinance that had "meat" and be something they could grasp. Having a clear definition of, and who would determine the top of, slope was very important. He said it was mentioned that someone might want to build a deck after they had moved in. He was not clear whether they would not have to go back and get a Permit because their home was already approved before the Ordinance. He wondered what would happen if there was erosion and the deck could not be built. He asked if they would use the date of when the building was first built. Mr. Anzek said that like any legal non-conforming use, what existed was legal, and what was added had to come into compliance with current Ordinances.

Mr. Krupp commented that the City was headed in a great direction and that it was wonderful to see the Ordinance being brought forward. He commended the City on a wonderful job and Mr. Niswander for plotting the natural features.

Ms. Brnabic referred to **(g) PERMITS**, and that the first extension could be administratively approved, and then have to come back to the Commission if another extension were needed. She noted that there was an unwritten policy currently about when natural features areas had to be re-looked at. Mr. Anzek said it was being imposed, and if someone wanted to argue, they could challenge it. In working with developers and applicants, it was easy to argue that a five-year old tree survey was not valid because things grew and changed, as demonstrated routinely. The City could require updates, and if someone did not want to provide them, the Plan would sit until they did. The City needed accurate data to do an accurate analysis. Ms. Brnabic agreed, stating that steep slopes could change rapidly or slowly. She wanted to know whether there would be an update of the conditions of the slopes if a plan came back for an extension to the Planning Commission.

Ms. Chesnut said they could look at the language, but the intent was that it

would be inspected. Mr. Anzek said that even after Staff finished a Site Plan review, before it came to the Commission, he thought there needed to be a field validation that the data submitted was still good. The Plan might be almost two years old before the Commission saw it. The topographical survey could be required to be updated before it came to the Commission. He agreed they had to have a little more aggressive time schedule for this than with trees and wetlands.

Mr. Yukon asked if it would be required for all applicants. Mr. Anzek thought there should be some flexibility, because a site might be small enough that it could be verified with Engineering Services inspectors. There were two that worked on stormwater and drainage issues, and they could look at a survey to confirm whether everything was intact. Mr. Yukon pointed out that it was important to be consistent with every applicant. Mr. Anzek added that photos of the slope might be required in conjunction with the application documentation.

Mr. Hooper asked the anticipated timeframe for bringing the Ordinance forward. Mr. Anzek believed that the major issue was identifying the top of slope. They might bring back a draft to see if it was agreeable. He was still concerned how setbacks would be measured in relationship to a proposed structure(s) and how it would work when the lines meandered. He wanted to write and test something for a few sites first. Mr. Hooper suggested it would be another month for the final draft, and then it would be ready for Council a month or so later. Mr. Boswell asked if there was a reason another Public Hearing could not be held. Mr. Anzek thought it would be a good idea, and advised that they would re-advertise. Mr. Brice thought that because of the changes, it almost was like looking at something new, and he felt there had to be another Public Hearing.

Mr. Reece referred to "top of slope" and stated that it might be advisable to survey a few Engineering firms to get a response of their definition. It might shed some light on how to approach it. Mr. Anzek advised that HRC, OHM and Spaulding DeDecker were all on the qualified list.

Mr. Krupp asked if there was another community that the City was looking at for examples of how they determined the top of slope. Rather than reinventing the definition, he thought they could use another City's example. Mr. Anzek said there was only one other City they found in the State, so it was new territory. He believed it would be defined somewhere, and the challenge was to find something very quantifiable - not subjective - to avoid arguments. Ms. Chesnut noted that Emmet County and Shiawassee and Huron's Watershed Councils also had draft Ordinances. She would follow-up to see if another city had adopted something.

5 Planning Commission 05/15/2007 Discussed

Notes: (Reference: Letter and Steep Slope Ordinance, dated May 9, 2007, from James Breuckman of McKenna Associates, were placed on file and by reference became part of the record thereof.)

Chairperson Boswell explained the procedure for the Public Hearing, and asked for speaker cards to be filled out in advance.

Mr. Anzek advised that Staff was forwarding the final draft of the Steep Slope Ordinance. He recalled that the Planning Commission had a workshop in August 2006, at which the Ordinance was heavily scrutinized and commented upon, so Staff went back to the drawing board. Several meetings were held, including a major technical meeting in January with Mr. Brice from Mr. Staran's office, Mr. Breuckman, the Engineering consultants and Staff members, and they went through it page by page. They came up with revisions, met again, and were finally at a point they felt comfortable with the draft. It was complicated, but they felt it was defensible, and that it met the intent.

Mr. Breuckman stated that the Ordinance had been analyzed by many sets of eyes. He covered the points in his letter, noting that a key point was that the Ordinance was a permissive Ordinance. The City was not trying to prevent development; the Steep Slope Ordinance was similar to the Tree Conservation Ordinance or the Wetland Ordinance. It set forth guidelines by which a Steep Slope Permit would be required, and set specific regulations on the activities that would and would not require a Permit. They wanted to make sure that development improvements proposed on or near a regulated slope were reasonable, and that the necessary measures were taken to prevent the slope from failing in the future. Orderly and properly done development on or near a steep slope could still have very serious impacts on the integrity of the slope, which could impact neighboring properties. He stressed that it was a critical piece of regulation. One change they made was that the Ordinance now applied to moderate, very steep and bluff steep slopes that were located within 200 feet of specified water courses in the City, including the Clinton River, the Paint Creek, Sargent Creek, Stony Creek and their tributaries. The Ordinance regulated very steep and bluff slopes that were located farther than 200 feet from one of those water courses. They also added that a moderate steep slope had a grade of 20% or more; previously it was 15%. He noted that very steep slopes had a grade of 25%, and bluff steep slopes had a grade of 40% or more. The Ordinance also established steep slope setback areas, measured from the top and the toe of the slope. The length of the setback was based on the severity of the slope. He advised that the top of slope setback for a steep slope was 15 feet, that it was 25 feet for a very steep slope and 50 feet for a bluff slope. There were also toe of slope setbacks, from the bottom of the slope, so that if there was erosion or slope failure there would be some area before getting into construction, and also so someone did not start cutting into the toe of the slope, which could destabilize it. The setbacks were 15 feet for moderate or very steep slopes, and 25 feet for a bluff slope.

Mr. Breuckman continued that a property owner or developer had to secure a Steep Slope Permit when they proposed to conduct a regulated activity on a

steep slope and within a steep slope setback area. If all construction activity were outside that setback area, no Permit would be required. He advised that some things allowed included normal ground maintenance that did not require disturbance of the existing terrain, such as mowing, trimming of non-deep root vegetation, basic maintenance, the planting of vegetation that did not require the removal of existing deep-root vegetation, and the disturbance of steep slopes under temporary emergency conditions, as determined by Engineering Services, where the disturbance was necessary to protect persons or properties from present and imminent danger. Someone could maintain and repair existing roads, driveways, walkways and retaining walls; construct new public roads in an existing public right-of-way or expand existing roads in a public right-of-way; and perform public health and safety activities and emergency uses. He summarized that regulated activities included constructing, operating or maintaining any use or development; erecting or installing buildings or other structures, improvements or utilities; depositing or removing material; land balancing; removing deep root vegetation; and constructing, operating or maintaining a storm water outlet sewer.

Mr. Breuckman next discussed the approval process, stating that who the approving body was depended upon the nature of the activity proposed. The Planning Commission would approve a Steep Slope Permit in conjunction with a Site Plan or Plat, if required. Engineering Services would approve the Permits for all other applications, including single-family plot plans. Engineering Services would review Permit applications for plans that eventually went to the Planning Commission and make recommendations. The Ordinance would list what was required for a Steep Slope Permit application, but the reviewing authority could also request additional information to evaluate the proposal, such as soil data, geology studies, flora and fauna and hydrology.

Mr. Breuckman referred to Section (d) REVIEW CRITERIA, which set forth general and specific review criteria for the Planning Commission and/or Engineering Services to follow when evaluating a Permit request. Those pointed toward the general suitability of a slope for development and the potential impact of development on a slope. The specific criteria dealt with technical issues, such as grading plans establishing deep root vegetative cover, driveway and road locations, the angle of cut and fill slopes, etc. Section (e), DETERMINATIONS, listed the considerations the reviewing body had to make to approve a Steep Slope Permit. The review criteria in Section (e) would serve as the metric by which the application was measured.

Chairperson Boswell asked if there was a determined length of slope from the top to the toe.

Mr. Breuckman stated that moderate and very steep slopes would have a 10-foot vertical elevation change in order for them to qualify. If there was a

little four-foot bump in the ground, they would not regulate it. Bluff slopes would need a 15-foot vertical elevation.

Chairperson Boswell expressed that he read the Ordinance several times before he started to understand it better. It seemed to him to be very complicated, and that they were trying to cover every situation that could arise, but he was not sure it could be done any other way without prohibiting everything on a steep slope.

Mr. Hooper referred to (b) APPLICABILITY, item (4) b. and read, "Moderate and very steep slopes covering a horizontal area of 5,000 square feet or less are exempt from the provisions of this Section 138-1082." He asked if that would be measured along the slope or if it was a plan view to determine the 5,000 square feet.

Mr. Breuckman said they would basically be taking a horizontal slice of the slope - looking at a plan view. Mr. Hooper indicated that there could be a significant difference, and that it would be more restrictive if it were measured along the slope itself because they would achieve 5,000 much more quickly. Mr. Breuckman agreed, and Mr. Hooper suggested they might need to discuss it further. He mentioned permit and inspection fees and said he did not see much mentioned, other than a reference to Chapter 110 of the City's Code of Ordinances.

Mr. Breuckman said that Mr. Davis of Engineering Services brought it up, and they and they talked about "payment of the required fee." He explained that the proposed Ordinance would be part of the Zoning Ordinance, and the Zoning Ordinance had a section for fees that covered everything regulated by the Zoning Ordinance. The City would have to update its fee schedule to include steep slope fees. Mr. Hooper asked if the fee structure would be in line with everything else.

Mr. Anzek said they were working with the Engineering Staff to estimate the costs. For example, the Engineering Department was the reviewing authority for single-family homes, and they estimated it would take about an hour and cost about \$60 to do a steep slope review. Regarding Plats and Plans, they would do the same, and the more complicated the site, the more time it would take. The City charged an estimated fee up front for Plats and Plans that would take a development through two reviews. If it took more, the escrow fund had to be replenished.

Mr. Hooper echoed Chairperson Boswell's point that it was an extensive Ordinance, but indicated that the slopes were obviously a resource the City intended to protect. He pointed out the amount of effort put forth and complimented everyone involved.

Mr. Anzek agreed it was extensive, and noted that there were not a lot of models to follow. The City was entering new territory, and he complimented

McKenna and Mr. Breuckman for the hard work. He recalled that Dr. Niswander of Niswander Environmental had drafted the first copy.

Mr. Schroeder stressed that it was a complicated subject. People did not understand how sensitive the slopes were, and once damaged, what the damage to the ecology was, and how difficult it was to correct a situation. There had to be an understanding that did not currently exist. He concurred with Mr. Hooper about the surface area versus the horizontal area, stating there was a big difference. He referred to page 4, and said that at first it appeared clear, but after Ms. Hardenburg pointed it out to him, he agreed it could confuse someone not familiar. He read a. under Allowable Activities: "Normal ground maintenance that does not require disturbance of existing terrain, including mowing and trimming of non-deep root vegetation that is not detrimental to the overall stability of the slope, provided that such activity does not involve regrading or disturbance of the soil surface, and further provided that such activity conforms with all other applicable laws and regulations." He said it was clear to him, but that it would not be to a novice. Ms. Hardenburg asked if the area could be mowed. Mr. Breuckman said that someone could mow and trim non-deep root vegetation (a lawn). Mr. Schroeder suggested that the paragraph be looked at, and Mr. Hooper agreed it could be simplified.

Mr. Schroeder referred to (f) REVIEW PROCEDURES AND SUBMITTAL REQUIREMENTS, (2) b., and said it asked for the street address of a property, but he noted that if a property were vacant it would not have an address. He suggested they ask for street address or sidwell number. He referred to page 16, (k) DEFINITIONS for Deep Root Stabilizing Vegetation, and read: "Native grasses that qualify as deep root vegetation include Little Bluestem, Pen Sedge, Canada Wild Rye, Bottlebrush Grass, and Indian Grass." He did not believe they should list five items when there were five hundred items that could qualify. He thought people would only think those five qualified when there were many more. It was decided that the City "would maintain a list of acceptable trees and grasses."

Chairperson Boswell referred to page 4, (c) PERMITTED AND REGULATED ACTIVITIES (2) a. and clarified that normal ground maintenance included mowing of turf grass that did not disturb a slope. Under (3) b. of Regulated Activities it read that "erecting or installing buildings or other structures, improvements, or utilities" would be regulated, but the exception would be fence construction, "which was a permitted activity." He did not see anywhere else that said fences were a permitted activity until that point, and suggested that a fence would be a disturbance to a slope.

Mr. Schroeder explained that if it was just a simple fence post and it was cemented in, it would not be much of a disturbance. Chairperson Boswell said he agreed, but he was referring to fences he had seen that were not simple and that could be very disturbing. Mr. Breuckman said that Mr. Davis (City Engineer) had asked about fences. Mr. Breuckman was not sure if they

should add some bounds.

Ms. Hardenburg referred back to the section about normal ground maintenance. She was curious because it said normal grass could be mowed, but she wondered if they were saying someone had to mow grass. She questioned whether it would conflict with another Ordinance that only allowed grass to get so high or the City would cut it.

Mr. Breuckman said the proposed Ordinance would allow trimming of grass, but it did not mean someone had to trim. Mr. Staran agreed it did not say someone could not mow, nor did it require someone to mow. It meant that mowing was not considered an activity that required a Permit. He felt it would help to reword the paragraph. Mr. Breuckman said he would clarify the paragraph. The intent was that, to keep a neat and orderly appearance, someone was allowed to mow turf grass, and to trim and maintain deep root and non-deep root vegetation. Some prairie grasses could be burned every year or cut in the fall and that would be fine. Removal would be the problem. If deep root trees were stabilizing the slope, they would not want to disturb them, other than to trim or prune them. Mr. Anzek said people had steep slopes in their yards that were grass, and the City would like them to keep maintaining them, but to not change the soils or regrade. There were steep slope areas that were part of the natural features setback that the City would not allow mowed.

Mr. Kaltsounis referred to fences, and said they were required around reservoirs of a certain slope. He did not remember ever requesting a fence off of a naturally-formed steep slope - there was a setback and someone could not go into the area. Mr. Schroeder noted that the basic difference was that one was man-made and one was natural. Mr. Anzek advised that the City did not require Permits for fences. He felt that the intent was to make it clear that fences were exempt, but it would also be part of a condition of a Steep Slope Permit. He recalled that in the past things like split rail fencing or boulder walls had been required to demarcate a natural features setback line. Signs had also been used, although they seemed to disappear. He did not feel the intent would be to have the slope defined with a fence at the top of it. Perhaps that would become a condition of approval with Site Plans. Mr. Kaltsounis agreed they should add protection.

Chairperson Boswell opened the Public Hearing at 8:38 p.m. He reminded the audience that all questions should be directed to the Chair.

Andrew Krupp, 168 Cloverport Ave., Rochester Hills, MI Mr. Krupp noted that he had been before the Commission quite a few times. He wanted to give the City and Mr. Anzek due credit for their persistence in looking at this important issue, and for continuing to work on the Steep Slope Ordinance. He felt it was very important, and he had input in the process for over five years. At times it seemed like it would never happen, and he wished it was done five years ago. He wondered if the setback was far enough, and if it

could be defined further for steep slopes by a volatile body of water with a lot of erosion, versus an inland slope without the erosion. The steepness and grade might be the same, but there would be two different dynamics. He asked if soil types could be considered. He thanked everyone for the time and energy spent.

Mr. Schroeder explained that regarding the soil types, the Ordinance addressed the angle of repose, which was a characteristic of the soil - sand versus clay - so it was addressed in the Ordinance (under (d) REVIEW CRITERIA (1) d.).

Anthony Randazzo, 2617 Beacon Hill Dr., Auburn Hills, MI Mr. Randazzo said they were there a little late in the game. They owned a property on Rochdale, which they had been working on since 1998. He alluded to a document he had sent the Commission, but Staff had not gotten the information. He said they had never been noticed about the proceedings, and he wished that they could have been, because they were deeply affected as a result. He stated that they made 16 different submissions to the City regarding their site (known as Andover Woods). He said that he recently read the Minutes from past meetings, and he noted that some Commission members were sympathetic towards the cause of some developers. He was deeply concerned about the environment, but he felt there were some developments that should be considered as grandfathered. They had spent hundreds of thousands of dollars and had been requested to give up land, which they did. They rezoned their property from a multiple zoning to single-family cluster to accommodate the residents. A large portion of their land, which they could have developed, was given to the DEQ. They would not have done that if they had known about the Ordinance. There was a bridge that went through Rochdale and there was wetland and floodplain work required, and they did extensive studies. He asked the Commissioners to put themselves in his position. There were very few in the audience who were affected as a result of a nine-year process. They had been diligent, and had done everything that had been required - given up land and satisfied neighbors - and now it was being taken away from them. He asked the Commissioners how they would feel. Mr. Schroeder asked how he was affected, and he answered that in essence, they could not develop the property. If he had been aware of the Ordinance, he would have been much more vocal, and would have tried to work out a grandfather clause. He did not think it was fair because they worked diligently, but there were constant hurdles. He was asking for a small amount of consideration or a short tabling.

Mr. Schroeder said he was very familiar with the property. He could not picture the affect of the Ordinance on the Sargent Creek, and said he would have to see the plan. Mr. Randazzo referred to the west side of Rochdale, where they gave up land in a Conservation Easement. Originally there were 200 apartments approved for the area for Mr. Erb, a property owner. Mr. Randazzo said they reduced that back, and he was happy to comply, to have

the least impact. He acknowledged things had worked to their benefit regarding the wetland and floodplain studies. He reminded that he had gotten the land rezoned from multiple to RCD because of the topography. As a result, they were being penalized. He did not believe they were recently noticed (per Planning Staff's records, they were).

Mr. Schroeder agreed that the original Erb plan had no consideration for the wetlands. Mr. Randazzo said his plans did, and he had done everything that had been requested. Mr. Schroeder asked if he had taken the proposed Ordinance and applied it to his Site Plan. Mr. Randazzo said they had, and it had an adverse affect, particularly on the west side of Rochdale. He stated that he had been at the process for ten years, and he asked if it was fair for the City to tell him his efforts and time were irrelevant. Mr. Schroeder said he understood.

Mr. Anzek indicated that Mr. Randazzo was correct; the City did not notify him when the Ordinance was first considered and had not done a quick analysis on his site. When Mr. Randazzo and his consultants came in and discussed a floodplain study earlier in the year, it was then realized by the City's Engineering consultant that there was terrain that would meet the threshold criteria. No further analysis was done because at that time, Mr. Randazzo fell under the Moratorium and was alerted to the potential. Mr. Anzek felt it was ironic that the City rezoned the property to RCD to preserve the natural features of the site, and he hoped that zoning would respect the slopes already. He stated that more analysis was needed to see if there were impacts. Mr. Schroeder advised that Oakland County's floodplains were remapped as of September 2006, which would have to be looked at also.

Mr. Randazzo said he felt this was way too much of a litigious society, and that it affected the business aspect of life and it hurt society, particularly Michigan. They had to make it easier to do business in Michigan and to be fair. Not even considering his development, he wondered where the State was going, and if they would try to make things fairer and better. He did not want to defend, he was asking for fairness.

Mr. Breuckman said he was not sure of the impacts of the Ordinance to Mr. Randazzo's project. He reminded that it was structured as a permissive Ordinance. The reason why it was so complicated was because there were a lot of criteria for evaluating when it was appropriate to go into the setback area. The Ordinance would not arbitrarily remove anyone's rights to develop their land.

Chairperson Boswell said that the City did rezone Mr. Randazzo's property to RCD, and he did not see that they were ruling out his development. He realized it might be a little more difficult to develop, and he pointed out that the Ordinance would allow activity that protected the natural features more than if the land were flat.

Pamela Wallace, 168 Cloverport, Rochester Hills, MI Ms. Wallace said that she came to the meeting because she had been working for about seven years on the Ordinance. She stated that it was a hugely impacting issue for the City, and that they could not make a change without impacting someone. They were trying to protect the environment, but they were also trying to protect the structures and the safety of the slopes. They were not just looking to preserve for the sake of preservation; they were talking about a clear and present safety issue. In the seven years she had been working on it, it was realized that a lot of people did not understand steep slope development. The Ordinance came to light because they had slopes failing in the City and houses that were starting to slide down bluffs. In terms of losing things, she wanted to sympathize with Mr. Randazzo, because her family lost several hundred thousand dollars in Huntington Woods when they declared a historic district and her 100 year-old family home was a part of it. Her grandmother had expected a certain amount of money for her home but did not get it. She stated that, unfortunately, fair was not an easy thing to define. The properties left were very difficult properties to develop. The people who bought the properties probably had some awareness of that, and that was why the process was taking so many years. She believed that they had come to the conclusion that the Ordinance needed to be in place to keep everyone safe, but she did not know if they would be acting responsibly if they did not look at more than just safety. If they tried to determine if it was safe to develop on slopes, she thought they would be working against everything they had been trying to do. She hoped it was not a subjective issue but an educated, well-researched issue that would be taken forth with clear intention about why these things had to happen in the community. She hoped the Commission would consider taking the Ordinance forward in consideration of everything that had come before the City up to this point. She would like to see the setbacks a little further, but she respected all the work that had gone into it, and she thanked them for the hard work.

Mr. Bob Lindh, Urban Land Consultants, 8800 23 Mile Rd., Shelby Township, MI Mr. Lindh said he represented a client developing The Villas, on Harding Ave. He noted that they had been at it for quite a few years, perhaps even longer than Mr. Randazzo had. They were still planning to move ahead with the project, and now that the Ordinance looked as if it was going to be enacted, it might prohibit some density for them. He had not read the Ordinance, and his client would like to get on with the project, but the moratorium was in place. He recalled that 30 years ago, he worked for a firm and the City solicited architects to design a City Hall. 30 years ago, his firm made a presentation to place the building on top of the slope behind City Hall. He asked if City Hall would meet the proposed Ordinance. He did not believe it would with a 50-foot setback from the top of slope. He asked if they were trying to make things more difficult, because for years there had been a lot of good construction on steep slopes. Unfortunately, some bad things happened, and the City was trying to prevent that, but he felt that a lot of it could be solved with smart engineering. He concluded that slopes had

been built on for hundreds of years with the right mix.

John DeMoss, Group 2 Associates, 44511 Gratiot, Clinton Township, MI 48036 Mr. DeMoss stated that he and his partner owned property at 285 Cloverport. They bought the property some time ago, and did not have the history of everyone else, but they wanted to develop it. He had talked with Mr. Delacourt, who told him not to bother because a moratorium was coming. A large number of months went by before the moratorium was put in place or they would have had plans in the hopper when it went into affect. They felt they should be grandfathered in, and even if they were, they would agree with the spirit of the Ordinance. If they were not bound by it, they would live up to 90% of it without anyone twisting their arms. He felt it was a great idea and that the safety of the slopes was important. He pointed out (d) REVIEW CRITERIA (1) c., which stated that structures should be sited on existing level areas of the site. He thought it meant that houses or decks could never intrude into the steep slope. He did not think that was a permissive statement.

Mr. Breuckman said that the point of the Steep Slope Ordinance was to make sure that any development or improvements proposed on or near a regulated steep slope area were reasonable and that necessary measures were implemented to prevent the slope from failing.

Mr. DeMoss thought the whole Ordinance would allow for flexibility in design, and for balancing the rights of the public and the landowners. He understood why the sentence about structures on level areas was there, but he thought it was an overreaction to past abuses. They were committed to a green building plan and were working closely with the Clinton River Watershed Council and Mr. Keifer. They would never want to create a project that would damage the beautiful site they purchased. If they designed it right, and proved to Staff and the Planning Commission that they were protecting the safety of the slopes and were following the spirit of the Ordinance, he did not feel they should have a sentence that said they could never build on a steep slope. There was a steep slope on their property where they could charge millions for each house built into it. There were breathtaking views, but they would never do that because they could not guarantee the integrity of the slope. There was another portion of the property where the slope was much more gradual and there was a great deal of mature, deep-root vegetation to hold everything in place. It would be a fairly simple matter to design a house that would have minimal intrusion into the slope and that would not impact, in any negative way, the integrity of the slope. He felt each project had to be handled on a case-by-case basis, and some developers would understand the spirit of the Ordinance and the City would be happy with what they saw, even if there was minimal intrusion into the less severe steep slopes. There would be other developers that would never get it, and the City would be unhappy with what they did, even if they never intruded into the steep slopes. He asked that the sentence be removed. He said the Ordinance claimed to be flexible, and it seemed to be for the most part, but that one

sentence seemed out of place. The other concern he had regarded (e) DETERMINATIONS (7). The earlier drafts outlined "that the proposed regulated activity could not practicably be relocated on the site so as to eliminate or reduce the disturbance of the steep slope area." The current draft added the words, "or reduced in size" after "on the site." He said that sounded relatively harmless, but that the standard of allowing property owners a reasonable use of their property seemed to be missing. Taken to an extreme, a developer could have a project with 50 homes and 49 of those homes could have a minor problem with the Ordinance and be disallowed. According to this one addition, the Commission might allow the building of one house but not the other 49. He thought they needed to look at the spirit of the Ordinance - to preserve the safety of the slopes. He stated that he was an attorney as well as a developer. He read the Ordinance a number of times, and it tried to cover every possibility because he understood his brother attorneys liked to litigate. He hoped that when he was in front of the Commission that they looked at the spirit of the Ordinance to see whether it had been followed and whether he tried to preserve the safety of the steep slopes. He hoped that they did not look at every single word in an Ordinance that tried to cover every possible contingency, and rule them out because they did not follow a particular sentence or two when they followed the spirit of the Ordinance.

Sam LoChirco, 3151 Mariett Ct., Shelby Township, MI Mr. LoChirco said he had a piece of land on Harding that he had been trying to develop for 20 years. He had been building for almost 40 years, and if a builder knew what to do on a slope, he could make a house look better with a different view. For his project, they would use a retaining wall with wolmanized wood by the river and they would not have an erosion problem. He indicated that Rochester Hills was a beautiful city. If they enforced a strict Ordinance, he could not come to the City any more. He did not see anything wrong with building on a slope, and he felt that they could work with the City. He thought they were splitting hairs, and if they could not do business, they would have wasted a lot of time and money. They were good enough to pay the taxes on the land. He asked why they had to fight each other. At first he was going to put the road through from Harding to the Ravines, but to make people happy, he did not do that. They did everything they could to make things happen for his development and he did not know what else he was supposed to do anymore. He would like to work together, and he had a good engineer, and it was time for something to be done.

Chairperson Boswell clarified that Mr. LoChirco had been working on a development for 20 years. Mr. LoChirco said he liked Rochester Hills because it was not flat. He had built houses on slopes, which people liked, and they were by a river, and none had fallen down. He built in Quail Ridge and nothing had fallen down. They would leave the vegetation and use cement and wood, and he said it would not be a problem. He reiterated that he paid taxes but that soon he would be left with no density. The road and slope would take up room, and they should be able to get three units an

acre. They gave land to the DEQ and he did other things required, and he stated that he would like to get his project done.

Chairperson Boswell said he did not understand - Mr. LoChirco had been working on his project for 20 years, but the moratorium had been in place for only five months. Mr. LoChirco said that every time they came in to the City there was something new. He did not see why everything had to be so hard. The last issue was the moratorium, and the issue of the slopes was something new. He said he had a good reputation, and he would not want see his houses falling down and ruining the neighborhood.

Chairperson Boswell asked Mr. LoChirco what he would like him to answer. Mr. LoChirco wanted them to look at his project and tell him what he had to do. Chairperson Boswell commented that was what the Planning Department was there to do.

7 Planning Commission 05/15/2007 Discussed

Notes: **Dan Keifer, 719 Fieldstone, Rochester Hills, MI 48309** Mr. Keifer said he was on the staff of the Clinton River Watershed Council and was present to show their support for the Ordinance. He commended everyone involved and the amount of research, thought and deliberation that had gone into it. He felt they were having a wonderful discussion that explained the Ordinance and the need for it. As was pointed out, it was very important that people understood it was a permissive Ordinance that allowed many things. It clearly provided for the permitting process. It was a difficult Ordinance to craft because, as Mr. Anzek said, there was not a lot of precedence in terms of geology, water and land, like the City of Rochester Hills had, to go by. He thought that a lot of the concerns could be clarified with how the Ordinance defined where the slope began. That was an incredibly important part of the Ordinance. It was a good night to have the discussion because 340 days of the year there was no issue with the slopes. It was the last 20 or 30, when they had such rain, and the streams and rivers were five to fifteen times their volumes, creating a tremendous amount of hydrology at the bottom of the slopes, that they had to focus on the water around the watercourses. The Watershed Council had received a surprising number of calls over the last year from residents who had bought a home along a watercourse and suddenly found they had a problem in their backyards. He thought it was crucial for everyone to understand how the Ordinance was important, not just for development and construction, but for operation and maintenance. For the homeowners down the road who did not have the understanding of deep root vegetation, they would have an understanding of what water and gravity did when they went together, and they would have an understanding of the watercourse behind their houses that looked beautiful most of the year but was a problem when it rained. They had heard from people in King's Cove, Quail Ridge, Rookery Woods, Crestwood, and Stony Creek, so it was not an isolated problem. He thought the Ordinance was good for developers so it was clear what they could do to move forward. He thanked the City for a well-researched Ordinance and the Planning Commission for taking the time to understand the issue.

Tom Stevenson, 708 River Bend Dr., Rochester Hills, MI 48307 Mr.

Stevenson stated that his home was adjacent to Mr. LoChirco's property. He had been the President of his Homeowner's Association for about 14 years, and he had been following the project for about 18 years. He said he wanted to remind Mr. LoChirco that until six months to a year ago, there was never anything mentioned about a Steep Slope Ordinance, yet his plans had been knocked down at least 15 times for different reasons. If it was going to go forward, it should have done so a long time ago, but it was a problem piece of property. The slope was severe, with a 35-foot drop from the crest of the hill to the toe behind his home, and 50 feet from top to bottom. He noted that Mr. LoChirco did not submit new plans to the City for about two years and the project just sat there. He questioned why Mr. LoChirco did not attempt to do something if he was concerned. It seemed as if he wanted to do something now because the City was adopting an Ordinance, but it seemed too late.

Chairperson Boswell closed the Public Hearing at 9:24 p.m. He called for a recess at 9:25 p.m., and called the meeting to order at 9:38 p.m.

Chairperson Boswell asked Mr. Breuckman or Mr. Anzek if they would reply to the items brought up during the Public Hearing.

Mr. Anzek said it was mentioned that City Hall could not be built as it was if the Ordinance was in place, and he agreed. City Hall sat on a very steep slope, and it did not meet the setback. He pointed out that the City had spent about \$30,000.00 in bank stabilization projects because of it. The roof outlets were directed over the bank and they caused erosion problems. That was exactly the type of thing the Ordinance would protect. If City Hall were proposed today, it would be up to the applicant to demonstrate that they had taken reasonable efforts to protect the bank or locate something elsewhere on the site. Mr. DeMoss had stated that he bought his property some time ago. Mr. Anzek clarified that he bought it in the fall of 2006, after his realtor had met with Mr. Anzek, and after which Mr. DeMoss received copies of the Steep Slope Ordinance in process at the time.

Mr. Breuckman said that City Hall could get built today, but it would have to go through the Steep Slope Permit process. The Ordinance set up the process to show that an activity did not impact or degrade a steep slope. This was not stopping anyone from doing anything allowed; it was making sure that all the proper engineering was completed. As a few speakers noted, with proper engineering and if things were done the right way, development near a steep slope could occur. There was a statement by Mr. DeMoss about the wording "structures should be sited on existing level areas of the site," and he pointed out that it was the classic difference between "should" and "shall." It was permissive versus non-permissive language. He clarified that "shall" was a mandatory or restrictive word, and that "should" was a permissive word. He said it was a guiding statement, but not a

requiring statement, and that there was discretion.

Mr. Kaltsounis commented that they had engaged in interesting conversation. There were developers on one side, and residents on the other side, of the auditorium. Several years ago, he became a Commissioner and was thrown into the Arcadia Park and Hidden Ridge situations. Hidden Ridge was a development they went back and forth about. It was on a sandy slope and he did a lot of research as to what would happen to the area. He looked at the homes at Rookery Woods that were designed right and for which the developer had all the best intentions, but that ended up on slopes that were eroding. He believed that all the developers present had the best of intentions. He was concerned about the weekends after the developers were out, because that was when they started to have problems. They talked about drainage pipes into the Clinton River that eroded the sandy loam base. There were trees to be removed to get the sight line. Those items helped the Commissioners go forward with an Ordinance. Hidden Ridge bothered him for several reasons. It was a PUD and prepared according to the Ordinance, but they did not protect the property the way it should have been. The houses were built at the end of the slope and the slope was sandy. He voted yes for the development because they were supposed to go by the book. The book stated that there were certain requirements by which to judge the development, and it passed those requirements. He did not think it would probably ever be built. There had been a lot of studies done, and it was found they would have to dig down 35 feet to the river basin and put in foundations. When they were done with that project, they realized there was something wrong with the current Ordinance that needed to be corrected, and natural resources that needed to be protected. Regarding grandfathering in developments, he understood the plight of some developers, but as a Commissioner, he would have a hard time recommending it for projects on land that would suffer the same fate as the homes were today. He thought Mr. Randazzo did a good job of pleading his case, and Mr. Kaltsounis did consider the issue, but he questioned how he could approve something that could fall into the river one day because of what happened on the weekends. It would be the same thing that bothered him with Hidden Ridge. The proposed Ordinance covered a lot of the things the City had issues with today. Regarding the grandfathering issue, he thought that it should be considered at the Council level. Council would read the Minutes and take the Commission's recommendations, but the discretion was theirs. He moved the following motion:

MOTION by Kaltsounis, seconded by Schroeder, that the Rochester Hills Planning Commission recommends to City Council approval of an Ordinance to add Section 138-1082 to Chapter 138, Zoning, of the Code of Ordinances of the City of Rochester Hills, Oakland County, Michigan to add regulations for the alteration, construction activity, or any other activities that could alter the natural contour of steep slopes with the following condition.

Condition:

1. That minor corrections be made per the discussion of May 15, 2007.

Chairperson Boswell agreed with Mr. Kaltsounis about grandfathering a development and causing the very problems they were trying to eliminate in the first place. He also agreed that the decision would not be the Planning Commission's; it would be a Council decision.

Mr. Dettloff said that as a Commissioner, he would always be a proponent of good development. He had the utmost confidence in the Planning Staff, who was charged with working to the fullest extent with developers to get good quality projects. Their mission was not to hinder, but to help as much as they could. He believed the Ordinance was a tool that could be used toward the issues raised. Hopefully, projects that had been out there for awhile could move forward, with the objective of protecting the natural features of the community.

6	Planning Commission	05/15/2007	Recommended for Approval	City Council Work Session	Pass
---	---------------------	------------	--------------------------	---------------------------	------

Notes:

Aye: Boswell, Brnabic, Dettloff, Hardenburg, Hooper, Kaltsounis, Schroeder and Yukon
 Absent: Reece

7	Planning Commission	05/15/2007	Discussed		
---	---------------------	------------	-----------	--	--

Notes:

Chairperson Boswell stated that the motion had passed unanimously, and said that even though he believed the Ordinance was complicated, he thought it was workable and a good document. Ed Anzek thanked the Planning Commission for their guidance, and noted that the matter would be sent to a City Council work session.

6	City Council Regular Meeting	06/13/2007	Accepted for First Reading by Resolution		Pass
---	------------------------------	------------	--	--	------

Notes:

Anzek - First identified 4 yrs ago..proper analysis, did natural features as part of MLUP. Natural feature they want to preserve. Also identified steep slopes and where they are in city. Adopt Steep slope ordinance. 1.5 yrs long project. Jim Breckman, McKenna here tonight. Timeline of project...developers, engineers participated. Grading inspector, Mr. Staran COUNTER 711
 Mayor suggested a moratorium be considered. CC requested PC consider a moratorium. January 10, 07 accepted for 2nd reading. Several times this item has been discussed. Drawings included in packet identifying bluff lines.

Jim Breckman, McKenna, key points he wants to identify. Why we did what we did. point of ordinance is to regulate what not to prohibit. Devleopment near steep slopes is done correctly. Findings and purpose section - opinion of body looking at application - minimum disturbance is necessary. Not prohibiting or preventing use of property. Remainder - item B - bad things that could happen.
 Subsection C - why steep slopes are good. Section D, page 2 speaks to proper mitigation implemented - not negatively impact environmental features. Sometimes necessary. REgulating comes in here.

Ordinance defines 3 types of slopes, moderate, steep, bluff. Clinton Rvr,

Stoney,..regulated slopes. Very steep slopes and bluff slopes are regulated even if not near water. Top and toe of slopes. Setback area due to steepness of slope. Landowners must retain a permit to develop this area in steep slope

Sec C subsection 2, page 3...allowed in steep slope area. COUNTER 887
Regulated activities include constructing operating use or installing material, removing vegetation.

Who approves steep slope permit. Depends on nature of activity. PC in conjunction with site plan, plat. Eng svcs approve for all other, single family plot plans. Eng Svcs will review and provide recommendation to PC

Pg 10 of Ord. - detailed soil studies. sandy vs clay Left to review body if nec.

Pg 7 - Pg 10 what should be looked at when evaluating. Criteria. Potential impacts of development on slopes.

Specific criteria - angle of cut and fill slopes.

Quick overview of how ordinance works. Appeals of permit decision to go to City Council. This is stated in ordinance. ..Counter 997 grandfathered

Duist - question about appeal. Why City Council.

Anzek - similar to ZBA appeals

McKenna - state law says who you can/want to appoint.

Public Comments:

John Demoss - Group 2 Assoc. 285 cloverport, consider themselves as green builders. w/ or w/o ord. This ordinance more like a book than a law. Parts are wonderful. Counter 1102 From a bldrs perspective this is a city willing to work with us. Other parts are like Thou Shall Not. if read literally, it will throw out everything else already ready. Purpose is to protect steep slopes. Do not deny projects even if they dont live up to literal ord.

Bob Lindh, Lack Consult, repres. Sam LaChirco, waiting for answer approved under old guideline. Property on Harding St. This project ongoing for years. Last submittal, cut to 69 units to 54. Under ordin, only able to have 27 units. I don't think its fair, maybe thats why we have an attorney.

Sam LaChirco, Landlord of property. Last steep slope on east side creek. Far north of river, used retaining wall. Challenge of bldg house. Enforce steep slope the way the ordinance calls for, they will lose property. What is his constitutional right. He pays taxes. Why this big issue. I see nothing wrong, building steep slope for years. Old days use wolmanizing wood for retaining walls. They dont' use this process any more. They have engineers, they have a good process now. I want to finish this job. Because someone has had a bad experience, dont punish us. I do it right. When I started this project had black hair, now it is white. Steep slopes are a plus, better than flat land. Cof RH very respected for this. People don't like it because his property is handy for them to walk their dogs, drop grass clippings

Ken F 248 Shagbark Drive, Counter 1325, Sargent Creek, Lockmore lack is fed by sargent creek, filling with sediment. Glad PC presneted this ordinance to city Council to adopt. Does not believe grandfathering should be allowed to develop these properties.

Clinton rvr watershed ours to protect. If you approve, not protecting our watershed.
Recd ltr from CoRH inviting to help

Lynn Rizzo, 1360 New Life Lane, borders sargaent creek and heart peace herpes hill sub. Owned by Erb Lumber Edgemeer Enterp (parent of Erb Lumber) is selling property to Mr. LaChirco. Here to talk about steep slope issue. Counter 1433. Slope behind Pizza Hut, This area here to talk to about tonight. Asked for agreement to be included in packet, also e-mail each of the CC members. For over 20 yrs coming to CC and telling them and Mayor, Mr. Thysen, Erb Lumber met with residents. He asked them not to stand in way of development - agreed to leave a green belt between develop and single family homes. Mr. Thysen said he would have papers drawn up. Because of this residents agreed to rezoning. 75' greenbelt agreed upon. What we call today steep slope, was then called greenbelt. She read agreement...

Counter 1522.

I am here tonight to ask CC not to Grandfather Mr Randazzo and this steep slopo

Mr. 1348 New life Ln, concurs with Ms Rizzo and Mr. Comstock, COUNTER 1560

Dan Keiffer, 719 Fieldstone Dr., Clinton Rver Watershed Council, support of Steep slope ordinance. Well crafted. Thanks Mayor, CC for 6mos moratorium to put together this ordinance. Look at what Mr. Anzek and McKenna states...permissive ordinance...how this is to be done properly. Passed unanimously by the planning commission.

Pamela B-Wallace, full support of ordinance. Asking for consideration not to permit a grandfather clause. Really in progress for 5 years. These properties are the most sensitive in the area. Hidden Ridge - example - clear and present safety issues. Not just to preserve steep slopes, more important issue is the safety of developing on these slopes. Very highly erodable sand, not clay. Lost land due to erosion. COUNTER 1670. In our community lost land - bluffs. Consider why this came about. It will impact people. New property owners made aware these ordinances will be coming up. Thank you for putting public safety first.

Andrew Krupp, 168 cloverport, concur with wife Pam. This is a safety issue. Not only safety, also see it as 3 parts. Natural environment part is that - talk to Dan Keiffer - one of biggest pollutant to river is sedimentation. Grading too close to the river. Another reason 3 - is for the developers. We have a developer that has gone thru planning and thru steps needed - now coming into problems with the DEQ due to those plans that were approved. Ordinance gives proper guidelines to have proper plans. No difficulty with DEQ. Sympathizes with landowners and developers that have properties. Hopes City takes these people into account if this ordinance is passed. Do not support grandfathering these properties. Go back into PC minutes...did not support grandfathering these properties. Plans do not work even with current ordinance.

Mr Tom Stevenson, 708 Riverbend Dr., property adjacent to very deep slope. It's owned by Mr. LaChirco, sympathizes with him, but it is a problem piece of property. Probloms that haven't even been mentioned with it. Very deep slope. Very wooded. If any bulldozing will disturb, its sandy, will start collapsing. Similar to Rookery Woods. Same problem in CA, walking down beach near Malibu, quite a bluff there, structure

sticking out from land, it was a swimming pool that had eroded and was undercut. The land had eroded. Doesn't blame blder if he's allowed to do they do it. Agrees ordin is permissisve, not restrictive.

GIGI colum, 201 cloverport, thanks for taking the time with this issue. Experts have come together to protect land. Doesn't make sense to give any exceptions when they know there will be problems with these issues. Against Grandfatehr, follow experts recommendations.

Paul Miller, 1021 Harding ave, elaborate with safety issue, not just a passing fad. Spiritual books re building house on shifting sands. Not only safety of homeowners, but workers, larger community, river flows into lake, etc. Costs built into the COOUNTER 1988

Building in areas not good for community as a whole. Urge to adopt. speaks out against grandfathering.

Lee Zendel, 1575 Dutton, this city is not an island. As Paul said things that happen here go into other communities. His opinion ordinance should pass. Administration make offer to other communities up and downstream from us that we will provide them with copies of ordinancie so they may do the same.

Duistermaras - Counter 2049 - Ordinance applicablitty of slopes coming under regulations. Near 200 ft of water course.

McKenna - Depends - any defined slope near, not near water course, near bluff

Duist, Part B 1 and Part B 2 - Counter 2098

McKenna, waive requirements for man-made slopes. Regraded property.

Duister within 200ft of watercourse

McKenna - any part of the slope

Duis - grandfathering - please review in depth. Who would be grandfathered.

Anzek - we use rule of thumb - land use permit given they would be considered for grandfathering.

Question of moratorium - GIS - Anzek review map, identified 13 properties with projects in works. May have missed a few. Not just the slope, 10ft elevation also.

Duist - modern slope

Anzek 10ft vertical - minimum

Counter 2223

Duist - who is grandfathered

Staran - way ordinance is currently drafted, no one is grandfathered. This ordinance does not have a grandfather provision. PC specifically stayed away from proposing grandfathering, felt that was up to city council as a policy decision.

Duist - noticed there is no grandfather provision. What is our risk in being taken to court if not grandfathering

Staran - Land use - there is always the risk of challenge. You have heard some conversation tonight. He suggests adoption of ordinance is first part. How ordinance is applied is determining factor. Is liability risk, absolutely as with any land use regulation. They are also protectable too, when comes to safety, etc.

Duist. where should line be drawn.

Anzek, site plans, plots, when approved good for one year. Should ordinance change, comes before council for any approval. Have to pick a point in time to adopt ordinances.

Start working with sites of concern to see where this ordinance might apply.

Duist - do you think some of these projects in place - if we adopt ordinance do you think the appeals process would be a possible solution.

Anzek - maybe, several issues in ordinance that may help, not hurt.

Ambroz. - you can see why we had to ask question about grandfathering with city attorney here. Move package without grandfather clause.

Motion Amb

Secon Holder

Accepted for 1st reading

Yalamanchi - we don't have PC minutes in packet. Agrees saftey issue. Reminded, take into consideration other factors. Mr. Ambro made a motion. Mr. Yalamanchi take time to understand challenges, visit sites to learn more. Would like to give more time.

Yalamanchi - motion to postpone

Holder - not to be too negative. This ordinance has been coming up for some time, have had enough time to review. This is just the 1st reading, coming back for 2nd reading.

Yalamanchi - piece of legislation we should adopt, wants to make sure we doing it right, not opposed. Good comments have come from property owners.

Rosen - after 15 yrs on PC - zoning regulation of City do not have a lot of flexibility.

Setbacks, parking...this is first time that he has seen an ordinance..this is a tough situation, nothing prohibited, nothing required, other than vegetation...Counter 2576.

Suprised in a good way. Miniumum threshold. 10ft for minum, 15ft for bluff. How do you do it and not make it difficult for people with property with steep slopes. Will make work for city to guide, preferable to oh no, you can't do that. He is pleasantly please, tough situations where no one will be happy. This is good it will work. That's my 2 cents. Encourage site visits over the next two weeks.

Raschke - unique situation, inventory 25% grade, dan keifer's home., dutton road, natural beauty road, runs into paint creek. Neighbor has modest waterfall. Tonight it was being discharged, took half of dutton road with it. Does dutton road fall under deep slope? approached by Plannign commissioner from oakland twp., workers in a panic. It is red, would that qualify as being washed away. Do we need to regulate.

Anzek, ordinance for develop of private property. Public right of ways, can we put check with Paul Davis.

Rashcke, Road commission has colorado rock to prevent erosion.

Anzek to look into

Anzek to take Yalamanchi out to properties and any other cc members interested.

Holder thank professional staff and McKenna for quickness in getting ordinance together.

Anzek - thank you we are taking it seriously. Treading new ground here, no other ordinance to follow. When you do new ordinances, some things get missed, if thats the case, they will bring it back to Council.

Mayor - Thank Council for considering his request for steep slope moratorium. More information being requested, we will gather that.

Aye: Ambrozaitis, Duistermars, Holder, Hooper, Raschke, Rosen and Yalamanchi

Text of Legislative File 2006-0052

..Title

Acceptance for Second Reading and Adoption - An Ordinance to amend Chapter 138 of the Code of Ordinances and create Section 138-1082 for the purpose of regulating alteration, construction activity, or any other activity that would alter the natural contour of steep slopes within the City limits, to prescribe a penalty for violations, and to repeal inconsistent or conflicting ordinances.

..Body

Resolved, that an Ordinance to amend Chapter 138, Zoning, of the Code of Ordinances of the City of Rochester Hills, and add a new Section 138-1082 for the purpose of regulating alteration, construction activity, or any other activity that would alter the natural contour of steep slopes within the City limits, and to prescribe penalties for the violation thereof, is hereby accepted for second reading and adoption and shall become effective on Friday, July 6, 2007 following its publication on Thursday, July 5, 2007 in the Rochester Eccentric Newspaper.