

Minutes of the Regular Rochester Hills City Council Meeting held at the Rochester Hills Municipal Building, 1000 Rochester Hills Drive, Rochester Hills, Michigan on Wednesday, November 17, 1999, at 7:30 p.m.

1. CALL TO ORDER

Vice President Robbins called the Regular Rochester Hills City Council Meeting to order at 7:30 p.m. Michigan Time.

2. ROLL CALL

Present: Vice President Gerald Robbins, Members Bryan Barnett, John Dalton, Jim Duistermars, Lois Golden, Melinda Hill, Barbara Holder  
Absent: None

QUORUM PRESENT

Others Present Pat Somerville, Mayor  
Marc Ott, City Administrator  
John Staran, City Attorney (Enter 8:00 p.m.)  
Beverly A. Jasinski, City Clerk

10a. Discussion Regarding Road Side Vendor Restrictions (Members received copy of memo dated November 12, 1999 from Susan Koliba-Galeczka, City Council Liaison, with attachment)

Mr. Robbins stated this item was previously discussed under Any Other Business and at Council's request was placed as an Agenda item for further discussion.

Attorney Staran stated the prosecution was completed and an injunction was ordered by the District Judge which is currently on appeal in the Court of Appeals. Prior to this particular case the City has, short of prosecution, shut down other roadside stand operations on at least three (3) other occasions that were in violation of the ordinance that requires the produce or products being sold at a roadside stand to be grown in the City.

Attorney Staran indicated it is Council's prerogative to change the Ordinance, noting that this particular prosecution was not unique but consistent with past practices.

Attorney Staran provided historical background on the Ordinance. When adopted it was to preserve roadside stands, while recognizing changes in the community. There was an effort to reach a balance when adopted, unfortunately the City has become almost impossible for owners of roadside stands to exist while meeting these requirements, due to the lack of agricultural industry in the city.

Mayor Somerville inquired if there is a State Law that gives a veteran the right under the Peddlers Act to have a road side stand such as Mr. Williams has?

Attorney Staran responded the State Law is not specific as to roadside stands; there was an issue raised in District Court litigation if by virtue of being a veteran the particular person involved would be able to operate his stand and basically be immune from application of the Zoning Laws.

Mr. Staran stated that legal position was rejected by both the District Court and the Circuit Court. It is presently being appealed to the Court of Appeals.

Attorney Staran stated that is the argument that has been made, but the law does not specifically state that and two courts have rejected that argument.

Attorney Staran stated a roadside stand is allowed, but the conditions required to have the stand is the problem. There are two issues (1) the veterans permit and (2) produce being grown outside of the city.

Mr. Ed Baran, (address previously given) requested City Council "work something out" for Mr. Williams.

Mayor Somerville noted that variances have been given in the past and inquired why there cannot be a variance given for this particular road side stand.

Attorney Staran responded there is no reason why a variance cannot be granted; however, none has been applied for.

Ms. Josephine Geraci, (address previously given) noted this stand has been in existence for over twenty (20) years and inquired if a "grandfather" clause is possible.

Attorney Staran responded he would look into it and report back to the Mayor.

Mr. Barnett inquired (1) how the proposed resolution differs from the original resolution and (2) is the stand currently operating.

Mr. Staran stated the case is currently on appeal and the stand is not allowed to sell produce grown outside the City.

Mr. Duistermars inquired if a variance would lift the injunction.

Attorney Staran responded Zoning Variances are only issued by the Zoning Board of Appeals who would hold a Public Hearing. If a variance was granted the Court case would halt. He indicated that application must be made by the property owner.

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Resolution 1999-0486

MOTION by Golden, seconded by Hill,

Resolved, that the Rochester Hills City Council requests the City Attorney to investigate and provide additional information to the Planning Commission for the purpose of investigating City restrictions which require road side vendors to sell products and/or produce grown or produced only in the City of Rochester Hills, for possible modifications to the Ordinance.

Ayes: Robbins, Barnett, Dalton, Duistermars, Golden, Hill, Holder  
Nays: None  
Absent: None

MOTION CARRIED