

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, October 23, 2002 at 7:33 PM.

- 14a. Request for Variance from Tree Conservation Ordinance** - Avon Lakes Village Subdivision No. 4, consisting of 27 lots located South of Mackwood Drive and West of Dequindre, Parcel No. 15-25-276-037 (A0379) (Members received a copy of a City Council Regular Meeting Action Summary Sheet dated October 1, 2002 from Deborah Millhouse, Deputy Director, Planning Department, with attachments)

Joel Garrett, President, Hamlin Associates, Inc., and Dale Garrett, Hamlin Associates, Inc., 5877 Livernois, Suite 103, Troy, Michigan, were present. Mr. Joel Garrett stated the vast majority of the tree species on the property were considered "junk" trees, such as Chinese Elms and Poplars.

Glen Geda, 2127 Mackwood Court, stated he represented the Avon Lakes Village Homeowners Association. He indicated he heard part of the proposal was to designate one (1) of the lots as an additional park for the Subdivision. He stated the Subdivision already has two (2) parks, which the Association developed and maintains. He stated the Association wanted to go on record indicating the existing parks can serve the present and future needs; the Association does not want to take on the additional responsibility and expense of developing and maintaining a third (3rd) park, and strongly urged the Council to take action to allow the developer to complete this phase of the Project.

President Dalton questioned how many members were in the Homeowners Association. Mr. Geda stated all the homeowners are officially included as members of the Homeowners Association, and the Board consists of thirteen (13) members. He indicated there were currently One Hundred Twenty-four (124) homes in the subdivision.

Sue Hesson, 1853 Mackwood, stated she lives directly across from the new plat, and has resided there for twelve (12) years. She indicated she had reviewed the plan, including the location of the trees removed by Detroit Edison. She expressed concern about a wetland being filled in, which she had communicated to the City, and was advised a permit had been properly obtained by the developer. She stated she would like to see the Project completed, and suggested larger replacement trees be planted.

President Dalton explained the request before Council was for a Tree Variance, and if granted, the Project would go back before the Planning Commission. He noted the Planning Commission was the proper authority to address tree size and other issues, and encouraged the residents to attend the Planning Commission meeting to express their concerns.

Member Hill stated it was rare for this type of variance request to come before Council, and noted a variance request would still be necessary even if Detroit Edison had not removed the trees. She indicated she did not agree with the Findings included in the proposed resolution, and did not feel granting the variance would further the objectives and policies of the Tree Conservation Ordinance. She felt there were alternative solutions, such as reducing the size of lots or allowing an area to be available for trees to be planted. She noted the Homeowners Association did not want another park, but indicated the open space did not have to be a high-maintenance area.

Member Golden stated she appreciated the background information provided by the residents at the Work Session and this meeting. She noted a variance would be required despite what happened with Detroit Edison, and the Ordinance was very specific about the conditions for granting a variance. She requested an update on the Michigan Department of Environmental Quality (MDEQ) request, and the issue about dirt being moved around on the property.

President Dalton clarified the developer was short six (6) trees under the Ordinance. Mr. Dale Garrett indicated they were eight (8) trees short, although if the other trees had not been removed, they would be four (4) trees short.

Member Duistermars indicated the eight (8) trees represented only a very small percentage of the total trees in the Community. He stated he felt the developer met the requirements for the variance, and would be deprived of enjoyment of the property.

Member Barnett agreed it was a very small number of trees, and noted the hardships the adjacent residents had endured during the length of the Project. He did not feel Council would be neglecting the City's desire to be a Tree City by offering a variance of such a small number of trees, and stated he would move the motion in the packet to grant the variance. Member Duistermars stated he would second the motion to grant.

Member Hill stated she did not agree with that particular argument because although it was a small number of trees, it was relative against the numbers.

Member Holder stated she did not feel it would be right to hold up this Project any longer for such a minimal amount of trees. She noted the number of adjacent residents who had indicated they would like to see the Subdivision completed. She indicated the Planning Commission could address the concerns of the residents who resided on Mackwood.

Member Hill stated there were alternative solutions, which could be dealt with by the Planning Commission if the variance was not granted by Council. She did not feel the Project would be unduly held up if the variance was not granted.

Member Duistermars noted trees had been removed, and it was not the intent of the Ordinance to prevent something when a situation had occurred after the fact. He suggested the Ordinance should be reviewed to consider smaller projects.

Member Golden questioned the method used for the removal of the trees, which had been described by several residents as "bulldozed". She agreed an alternative could be addressed through the planning process, and stated she did not feel the Project met the variance criteria.

President Dalton stated a good Ordinance allows for exceptions, and the City does have a variance process. He noted the adjacent residents had spoken through their Homeowners Association requesting the Project be completed. He indicated the resident concerns brought up at the Work Session and this meeting would be addressed by the Planning Commission.

Mayor Somerville noted the length of time this Project has been under development, and suggested a time frame be stipulated for the Project to go back to the Planning Commission.

Attorney Staran stated the variance request was being made in connection with the developer's desire to obtain a plat and a Tree Removal Permit. He explained the plat approval process contained deadlines governing the applicant and the City in terms of processing. He stated the developer would be required to provide an appropriate bond in connection with the granting of a Tree Removal Permit to ensure follow through with the work and replacement trees. He indicated it would not be necessary to include any stipulation with the resolution before Council.

Ms. Millhouse clarified the developer needed to know if a variance would be granted before they could proceed to the Planning Commission. She stated if Tentative Preliminary Plat is recommended by the Planning Commission, it would come back before Council for Tentative approval. She explained if Tentative approval is granted, a one (1) year time limit would apply, although an extension could be requested, which City Council would have to grant or the process would have to begin again. She indicated the same would be true for the Final Preliminary Plat, which if recommended

by the Planning Commission and granted by City Council, would be good for two (2) years. She stated because there was no area available for planting of replacement trees in Subdivision Number 4, the developer had agreed to pay into the Tree Fund.

Attorney Staran stated if there was concern about keeping the Project moving, and because the granting of the Tree Variance is necessary for the Project to continue without significant redesign to conform to the Tree Ordinance, it might be possible for Council to attach an expiration date indicating the Variance would be conditioned on the Project obtaining Tentative Preliminary Plat approval within a year.

Ms. Millhouse noted a year should be sufficient, although certain issues remained to be addressed by the Planning Commission.

Attorney Staran indicated adding a deadline would make it clear the Variance would disappear if the Project did not move forward within a certain time frame.

Ms. Millhouse suggested another option would be to indicate the Variance would expire unless the developer appeared again before City Council to explain why there was a delay.

President Dalton indicated it was a legitimate concern of several Council Members, and clarified a time frame could be stipulated or the developer would have to appear before City Council to explain any delay.

Mr. Joel Garrett expressed concern that the Project could get through the City process within a specified time frame. He stated it was his understanding the City had everything necessary for the Project to go before the Planning Commission because it was required before this Variance request could be heard.

Member Hill stated she agreed with adding a condition to the resolution; however, she cautioned against creating a problem for the Planning Commission.

Ms. Millhouse stated the applicant was ready to be scheduled for the next available Planning Commission Meeting. She noted timing might become an issue for either the Planning Commission or the City, and suggested the wording of a condition should be tied to an action of the applicant.

President Dalton noted the City should be held to the same time restrictions as the applicant. Attorney Staran stated a year was reasonable and should avoid unnecessary complications.

Member Golden stated she agreed a year would be reasonable.

President Dalton clarified the maker and seconder of the motion agreed to adding a condition to the resolution stating the applicant shall obtain Tentative Preliminary Plat approval within one (1) year of this date, or the Variance would expire. Member Barnett as maker, and Member Duistermars as seconder, agreed to the addition of that condition.

Resolution A0379-2002-R0423

MOTION by Barnett, seconded by Duistermars,

Resolved that the Rochester Hills City Council hereby grants a variance of Twelve (12%) Percent from the Thirty-seven (37%) Percent requirement of Section 126-327(2) of Chapter 126, Article III, Tree Conservation, of the Code of Ordinances for Avon Lakes Village Subdivision No. 4 (City File No. 80-976.4), identified as a portion of Parcel No. 15-25-276-037.

Findings:

1. The removal of regulated trees by others has affected the property such that strict application of the Tree Conservation Ordinance would deprive the applicant of the reasonable use of his land.
2. The variance is necessary for the preservation and enjoyment of a substantial property right of the petitioner.
3. The variance will further the objectives of the City.

Condition:

1. The applicant shall obtain tentative preliminary plat approval within one (1) year of this date (October 23, 2002), or this variance will expire.

ROLL CALL VOTE:

Ayes: Dalton, Barnett, Duistermars, Holder
Nays: Golden, Hill
Absent: Robbins

MOTION CARRIED

15 REPORTS AND COMMUNICATIONS

15a. Building Authority (A0503) (Members received a copy of a City Council Regular Meeting Action Summary Sheet dated October 7, 2002 from Lisa DeLeary, Administrative Secretary, with attachments)

- (i) Acceptance of letter of resignation of Ms. Priscilla A. Hildum effective after the October 16, 2002 Building Authority Meeting

President Dalton requested the record reflect that Ms. Hildum had served on the Building Authority for over Twenty-five (25) years, but due to the fact she was moving from the Community, had submitted her resignation. He indicated the City had made a presentation to Ms. Hildum signifying her outstanding years of service, and stated her resignation would be accepted with much regret.

Resolution A0503-2002-R0424

MOTION by Barnett, seconded by Golden,

Now Therefore Be It Resolved, the Rochester Hills City Council hereby accepts the resignation of Ms. Priscilla A. Hildum as a Member on the Building Authority, effective after the October 16, 2002 Building Authority Meeting, and authorizes a letter of appreciation be sent to Ms. Hildum thanking her for her service and dedication to the Community.

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

MOTION CARRIED

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- (ii) Nominations to Building Authority

President Dalton **opened** the floor for nominations to the Building Authority.

Member Hill nominated Mr. Abe Amir.

Member Holder nominated Mr. Raymond Stickrad.

Member Barnett nominated Mr. Thomas Stevenson.

President Dalton noted no further nominations were forthcoming and called for a motion to **close** the floor for nominations to the Building Authority.