

Aye: Dalton, Barnett, Hill, Holder, Raschke and Robbins

Abstain: Duistermars

Enactment No: RES0100-2004

2004-0313

Request for Purchase Authorization: PARKS/FORESTRY: Festival of the Hills Fireworks Display for 2004, 2005, 2006, 2007 and 2008, blanket purchase order not-to-exceed \$130,000.00 (\$26,000.00 annually); Melrose Pyrotechnics, Inc., Kingsbury, IN

Attachments: Agenda Summary.pdf; 041504 E-mail Staran J.pdf; 2004-0313 Resolution.pdf

Mr. Zendel, 1575 Dutton Road, stated that he was under the impression that City contracts could be no longer than three (3) years, indicating that this contract was for five (5) years.

Mr. Barnett explained that this contract is fulfilled by donations, thus no City funds are expended for this event.

A motion was made by Barnett, seconded by Duistermars, that this matter be Adopted by Resolution.

Resolved that the Rochester Hills City Council hereby authorizes a Blanket Purchase Order to Melrose Pyrotechnics, Inc., Kingsbury, IN, for the Festival of the Hills Fireworks Display for 2004, 2005, 2006, 2007 and 2008, in the amount not-to-exceed \$130,000.00.

Further Resolved that the Mayor is authorized to execute the contract on behalf of the City.

The motion carried by the following vote:

Aye: Dalton, Barnett, Duistermars, Hill, Holder, Raschke and Robbins

Enactment No: RES0131-2004

Attachments: Agenda Summary.pdf; 041504 E-mail Staran J.pdf; 2004-0313 Resolution.pdf

City Attorney John Staran requested time to review the purchasing ordinance with regard to Mr. Zendel's assertion that contracts should not exceed three (3) years.

A motion was made by Duistermars, seconded by Barnett, that this matter be Adopted by Resolution.

Resolved that the Rochester Hills City Council hereby RESCINDS authorization of a Blanket Purchase Order to Melrose Pyrotechnics, Inc., Kingsbury, IN, for the Festival of the Hills Fireworks Display for 2004, 2005, 2006, 2007 and 2008, in the amount not-to-exceed \$130,000.00.

The motion carried by the following vote:

Aye: Dalton, Barnett, Duistermars, Hill, Holder, Raschke and Robbins

Enactment No: RES0131-2004

Attachments: Agenda Summary.pdf; 041504 E-mail Staran J.pdf; 2004-0313 Resolution.pdf

Council voted to postpone a final decision on this matter until it has been examined by City Attorney John Staran.

~~Postponed by Resolution.~~

~~Resolved that the Rochester Hills City Council hereby POSTPONES authorization of a Blanket Purchase Order to Melrose Pyrotechnics, Inc., Kingsbury, IN, for the Festival of the Hills Fireworks Display for 2004, 2005, 2006, 2007 and 2008, in the amount not-to-exceed \$130,000.00.~~

~~Be It Further Resolved that the matter of the length of the Blanket Purchase Order contract be reviewed by City Attorney John Staran to determine if a five (5) year contract is permissible under the City's purchasing ordinance.~~

~~The motion carried by the following vote:~~

~~Aye: Dalton, Barnett, Duistermars, Hill, Holder, Raschke and Robbins~~

~~Enactment No: RES0131-2004~~

PUBLIC HEARINGS

2004-0204

Approval of Brownfield Plan - Madison Park (City File No. 03-023) a proposed mixed-use development located on the south side of Hamlin Road, east of the proposed Adams Road realignment, identified as Parcel Nos. 15-29-151-015, 15-29-151-008, 15-29-151-017, 15-29-151-012, 15-29-151-011, 15-29-176-004, 15-29-176-008 and 15-29-176-006.

Attachments: Agenda Summary.pdf; Map aerial.pdf; Report Staff 20040329.pdf; Assessment Proposal - Ben Matthews.pdf; Flow Chart.pdf; Tax Table Final Mad Park.pdf; minutes bra 20040304.pdf; Notice Public Hearing 051204.pdf; Resolution.pdf; Brownfield Plan Final.pdf

STAFF PRESENTATION:

Mr. Derek Delacourt, Planner, briefly explained that the item before City Council was a request to approve the Brownfield Redevelopment Plan for the subject site. He then addressed specific questions related to the project:

- 1) The project does qualify for Brownfield Redevelopment under the State Brownfield Legislation and for Tax Increment Financing (TIF).*
- 2) Based on multiple meetings with the Michigan Department of Environmental Quality (MDEQ), City Staff has determined that all proposed activities have been deemed eligible for this process.*
- 3) As part of the Consent Judgement and the Brownfield Plan, the City is not responsible for any of the financing associated with the remediation of this property.*
- 4) All environmental information and studies generated by the City's consultant is or will be made available upon finalization to the public and can be obtained either through the Planning Department or the Clerk's Department.*
- 5) The Brownfield Plan is the first step in the cleanup process. The Work Plan, which will establish the eligible activities, must still be submitted to the City's Brownfield Redevelopment Authority (BRA) and is scheduled for discussion by that body at two (2) upcoming BRA meetings to be held April 15th and May 6th. This Work Plan must be approved by the MDEQ.*

Mr. Delacourt stressed that the Work Plan review and submission cannot move forward until the Brownfield Plan is approved by City Council. He further noted that the intent of City Staff is to ensure that the cleanup proposed solves the contamination issue and provides a safe set of circumstances for the development that the City ultimately deems appropriate.

Ms. Jill Ferrari, Director of Brownfield Development for Applied Science & Technology, Inc. (ASTI) of Brighton, offered a presentation that explained the Michigan Brownfield Redevelopment Financing Act and disputed erroneous claims made in a flyer recently circulated to area residents:

WHAT IS A BROWNFIELD PLAN?

** Michigan Brownfield Redevelopment Financing Act, Public Act 381*

- Specifically designed to address contaminated sites.

- Allows Brownfield Redevelopment Authority to pass Brownfield Plans that must be approved by City Council.

** The Brownfield Plan may include Tax Increment Financing (TIF)*

** TIF is a process where additional property taxes, including taxes levied for school operating purposes, that come from the increased value of an eligible property over a base year (the year the property was added to the Brownfield Plan) can be captured to reimburse a developer for certain eligible activities.*

** Eligible activities in Rochester Hills are defined as:*

- Site assessment and Baseline Environmental Assessment (BEA) activities.

- Additional response activities necessary for public health and safety.

- Due care responsibilities on the part of the Developer.

** The "Eligible Activities" for the Suburban Softball project include:*

- Site Assessment

- Additional Response Activities

** Removal of landfill material.*

** Leachate/methane collection systems*

** Re-engineering cap*

- Due Care

** Long-term monitoring*

HOW DOES IT AFFECT THE TAXES I PAY?

** There is no effect to any properties outside of the eligible properties included within the Brownfield Plan.*

** There will be no increase in taxes as a result of this Brownfield Plan.*

** All current taxes paid on the property will remain in effect, and will be collected from the new owner.*

WHAT IS THE CITY'S OVERSIGHT CAPACITY?

- * *City Council must approve the Brownfield Plan.*
- * *Reimbursement agreement will form binding contract between Developer and City.*
- * *Quarterly (or more frequent) reports must be made to the BRA.*
- * *No activity is reimbursed unless it has been determined to be "eligible."*
- * *Local taxes may be used to reimburse the Developer for activities that MDEQ decides not to fund through school taxes. Reimbursement agreement will address this.*
- * *\$30 million dollar cap. The City has the authority to require that any increase in eligible activities be approved through City Council.*

Mr. Trevor Woollatt, Project Manager for ASTI of Brighton, provided a brief overview of the activities that have been completed, the resultant findings, and explained why the property qualifies as a Brownfield Site:

- * *Conduct a Baseline Environmental Assessment (BEA) to provide information regarding the current conditions of the property.*
- * *Exceedances of exposure pathways were detected, such as:*
 - *Direct contact*
 - *Indoor air inhalation*
 - *Ground water/surface water*
 - *Drinking water*
- * *Concentrations from every chemical group were found including:*
 - *PCBs*
 - *Metals*
 - *Semi-Volatiles*
 - *Volatiles*

Mr. Woollatt noted that these exceedances qualify this property for Brownfield Redevelopment. He further indicated that a BEA is not intended to provide a mechanism to address exposure or cleanup activities.

Mr. Richard Zanotti of Real Estate Interests Group, IC. (REI), 40900 Woodward Avenue in Bloomfield Hills, provided a brief history of the landfill property. He then noted "significant" aspects of the property:

- * *In some areas the clay liner has run out.*
- * *There is sand and gravel moving toward the Clinton River.*
- * *In some areas waste material is directly over sand and gravel with no clay liner.*
- * *Many wells beyond the boundaries of the landfill show high concentrations of methane.*

Mr. Zanotti indicated specific remediation methods REI plans to employ to address these concerns:

- * *Will need to excavate to the bottom to tie the new landfill cover into the clay.*

- * *The leachate collection system will be routed to a pumping station.*
- * *Permeable clay ten (10) to fifteen (15) feet wide will be placed next to the slope.*
- * *An eighteen (18) inch soluble, flexible double-sided composite membrane liner will be placed down the slope*
- * *Gas will be pulled off, vented or flared.*
- * *A vegetative growth layer will be established.*
- * *No future buildings will be built within the boundary of the landfill.*
- * *There will be a gas collection system at the top of the gravel trench.*
- * *A slurry wall will be placed at the boundary of the landfill.*

Mr. Zanotti reassured Council that REI plans to move quickly to place the cover system and move forward with back filling as they excavate material to minimize the amount of open area exposed to the atmosphere. He stressed that REI intended to conduct this process in two (2) phases and anticipates completing the process within nine (9) to twelve (12) months.

Mr. Jon Weaver of REI, 40900 Woodward Avenue in Bloomfield Hills, stressed the developer's commitment to communicate fully with the neighboring communities, indicating that an informational meeting was held in City Hall the previous week. He noted the current hazards of this contaminated area, explaining that until now, interested government authorities were not permitted access to the area for testing purposes. He stated that the City "should be applauded for their proactive stance" on this matter.

(RECESS 9:13 p.m. - 9:39 p.m.)

President Dalton OPENED the Public Hearing at 9:41 p.m.

PUBLIC COMMENT:

Mr. James Reid, 14496 Sheldon Road, Plymouth, of Conestoga-Rovers & Associates representing Grand/Sakwa, recommended that the Brownfield Plan be rejected based on the following:

- * *There has never been a landfill removal of this magnitude to accommodate a commercial development.*
- * *Landfill removal is not cost effective.*
- * *The risks associated with the landfill do not justify the extraordinary cost of remediation.*
- * *There are less expensive ways to address the site.*
- * *There is a ten percent (10%) chance of an accidental death during the remediation procedure.*

Mr. Mark Jacobs, 400 Renaissance Center, Detroit, of Dykema Gossett representing Grand/Sakwa, listed a number of reasons the Brownfield Plan should not be approved:

- 1) *Tax increment revenues can only be used to finance eligible activities, which excludes site preparation activities.*

2) *The Plan fails to contain an adequate explanation of how the costs of the Plan will be financed.*

3) *Eligible activities proposed must be reasonable and necessary.*

4) *The method of financing the costs of eligible activities must be feasible.*

Mr. Jacobs contended none of the above conditions had been met and, thus, the Brownfield Plan should be denied. (A printed copy of his comments was provided to Council members.)

Mr. Alan Greene, 35977 Woodward Avenue, Bloomfield Hills, of Silverman Companies, noted that he represents Lake Village apartments located next to the property in question. He expressed concern that the remediation of the site would result in thousands of trucks moving past the complex resulting in excessive noise, odors and dust particles.

Ms. Debbie Geen, 3128 Walton, Chairperson of the Residential Vision Committee, contended that the development would result in further road deterioration and the possible exposure to toxins during their removal.

Mr. Brad Kinker, 3274 Quail Ridge Circle, noted that Grand/Sakwa's environmental consultants refute the ASTI findings. He questioned the traffic congestion created not just by the REI development, but the other two developments planned for the area.

Ms. Cindy Kinker, 3274 Quail Ridge Circle, stated that not enough environmental study has been done for Council to make a decision. She asked that they postpone the vote on the Brownfield Plan until more information is available.

Mr. Tom Stevenson, 78 River Bend Drive, noting that he serves on the Brownfield Redevelopment Authority, stated he was speaking as a resident. He disputed rumors that tax dollars would pay for the remediation. He expressed his belief that development was the best way to increase the tax base for the City.

Ms. Lynn Loebs, 2845 Portage Trail, expressed her opposition to the planned redevelopment using City park land for a detention basin.

Ms. Deanna Hilbert, 3234 Quail Ridge Circle, noting she is a thirteen (13) year resident, questioned why children were allowed to play in this area if it presents such a health hazard. She also questioned why schools and roads have not been improved, or why taxes have not been reduced as a result of "all the retail that's gone on" in the City.

Mr. James Sutton, 2927 Portage Trail, expressed his opposition to the development.

Mr. Brenton Kinker, 3274 Quail Ridge Circle, questioned whether the current zoning allows big box development in the area and whether the land "will really be cleaned up."

Ms. Melody Joy Hart, 3583 Sleepy Fox Drive, stated that it is "irresponsible to get more tax revenue by exposing people to toxins that does not need to be disrupted." She noted that Brownfield Redevelopment funds are intended to mitigate the cost of the clean up of "legitimate dangerous brownfields." She requested that the issue be tabled while further studies are conducted.

Ms. Charlene McGunn, 3073 Greenspring, expressed her concern that these decisions are being made without citizen input and asked that the Council consider the recent mayoral election in Troy wherein the incumbent candidate was defeated "primarily on the issue of land use."

Mr. Gordon Hotchkiss, 320 Lehigh, asked "what type of expertise does Council have in

evaluating the potential cost over-runs associated with environmental issues." He questioned why all available plans and information are not available for review.

Mr. Michael Wayne, 2817 Eagle Drive, stated that the residents do not want this development and questioned "why do you keep ramming this thing through?"

Mr. John Geen, 3090 Kenwood, contended that the Public Comment portion of the meeting was "a mere pretext" and that Council members had already made up their minds regarding approval of the Plan. He then asked several questions:

** Where can he find the accounting projection for the \$30 million remediation?*

** Was the environmental study conducted by Grand/Sakwa shared with the insurance underwriter?*

** Is the MDEQ representative aware of the negative public sentiment associated with this project?*

** Who will take ultimate responsibility for what happens as this development moves forward?*

Mr. Kyle Hauberg, 39577 Woodward, Bloomfield Hills, representing Lake Village Associates, indicated that there is not enough information to make a decision. He stressed that, as ASTI works for the City and for the Developer, there is no opportunity to hear "competing ideas." While he contended that the developer would likely take all appropriate precautions, he questioned who would be responsible for protecting the health and welfare of the residents of Lake Village apartments.

Mr. Larry Schloss, 2851 Current Drive, expressed his opposition to the development and encouraged a "hearty discussion."

Ms. Lois Golden, 645 Apple Hill Lane, questioned whether the City would be responsible if it were determined that preparation activities were not eligible for reimbursement. She then asked for clarification on the building height ordinance for ORT zoning, indicating that she was under the impression it was either three (3) stories or six (6) stories.

(RECESS 10:31 p.m. - 11:02 p.m.)

President Dalton CLOSED the Public Hearing at 11:02 p.m.

STAFF RESPONSE:

Mr. Delacourt responded to the following concerns:

** The Site Plan must be approved by City Council per the Consent Judgement.*

** The detention pond proposed for park property will provide additional filtering of contaminated run off that already moves through the park. This system will likely result in an enhancement of the park.*

Ms. Ferrari explained that the Brownfield Act allows for further environmental study, acknowledging that "anyone who funds assessment will be reimbursed." She noted that there is no public financing of this remediation in the Brownfield Plan and ASTI has determined that the costs described in the Plan are reasonable. She reiterated that the current property owner has made no effort to either cleanup or monitor the waste.

Mr. Woollatt explained that the MDEQ will not allow building over waste material. Thus, a portion of the waste will be removed to accommodate building construction, while

another portion will be encapsulated to provide parking, etc. He noted that the next step in the process is the submission of the Work Plan from the City's Brownfield Redevelopment Authority which is more detailed and will address specific issues of oversight.

Mr. Delacourt noted that the only taxes that can be paid to the developer are those that would be generated by the increased value of the property. Therefore, no school taxes will be reduced as a result of this plan. Also, while ASTI is the City's environmental consultant, they were hired and paid by REI for this research.

Mr. Staran addressed the following issues:

- * The City will not be responsible for funding the project under any circumstances.
- * River Bend Park will not be sold.
- * The zoning is lawful and, although the area was zoned residential, it is master planned for research and technology.

COUNCIL DISCUSSION:

Addressing specific questions posed by Council Members, Mr. Delacourt, Ms. Ferrari and Mr. Woollatt responded as follows:

- * Pre-construction, construction and post-construction operations and maintenance of the landfill will be approved by the MDEQ and will be overseen by a landfill engineer who will supervise the cap installation. This compliance with due care is the obligation of the property owner.
- * Only newly-generated taxes as a result of this development will be used. No existing taxes will be affected.
- * The Brownfield Work Plan, which sets the parameters for the tax table and the proposed TIF and outlines all the details for which the TIF will be used, is submitted by the City's BRA, not the developer.
- * The TIF plan is designed to notify taxing jurisdictions of the maximum amount of capture. Therefore, a lower amount of taxes can be taken without requiring an amendment to that plan.
- * The MDEQ will note any unreimbursable activities after review of the Brownfield Work Plan. Payment for any activities deemed ineligible by the MDEQ will be the responsibility of the developer.
- * City Staff's decisions were based upon the MDEQ's determination that the project outlined in the Consent Judgement is appropriate for this type of development.
- * The current landfill cap is inadequate in many ways, for example having been punctured by light poles.
- * No buildings will be erected in the area of the new landfill cap, thus there is no risk of re-penetration.
- * There are still multiple steps left in this process that will require approval. The Brownfield Plan only sets the parameters for the process moving forward.

A motion was made by Raschke, seconded by Holder, that this matter be Adopted by Resolution.

Whereas the Brownfield Redevelopment Authority of the City of Rochester Hills held a meeting on March 4, 2004 and approved the Brownfield Redevelopment Plan for Madison Park, City File No. 03-023;

Resolved that the Rochester Hills City Council hereby approves the Brownfield Redevelopment Plan for Madison Park, City File No. 03-023, a proposed Planned Unit Development located on the southeast corner of Hamlin and Adam Roads, based on the plan dated received by the Planning Department on February 27, 2004 with the following findings and subject to the following conditions.

FINDINGS

1. That the submitted plan meets the requirements for a Brownfield Plan under State Act 381 and the City of Rochester Hills.
2. The subject parcels are the site of a former landfill and a source of known contamination within the City.
3. If implemented, the Plan provides a reasonable course of action for the remediation of a known contaminated site.
4. If implemented, the amount, payback period, and use of tax increment financing is reasonable for the eligible activities proposed.

CONDITIONS

1. That the City requires a reimbursement agreement be negotiated between the City and the applicant prior to any Tax Increment Financing being paid out for approved eligible activities.
2. That if the extent of Due Care activities related to the subject site is altered or revised due to a change to the proposed development plans or proposed use of the site, the applicant shall submit for an amended Brownfield Plan for approval to the Brownfield Redevelopment Authority.
3. Strike the second sentence of Section 4 of the Brownfield Plan prior to final approval.

The motion carried by the following vote:

Aye: Dalton, Barnett, Duistermars, Hill, Holder, Raschke and Robbins

~~UNFINISHED BUSINESS~~

~~2004-0340~~

~~Adoption of Resolution supporting use of a Planned Unit Development process as a solution for Rochester College and its future development. Located east of Livernois and north of Avon, known as Parcel No. 15-15-451-002, Rochester College, applicant.~~

~~**Attachments:** Agenda Summary.pdf; Map aerial.pdf; Minutes CC 20031210.pdf; Resolution.pdf~~

~~Mr. Derek Delacourt, Planner, briefly explained that, due to development constraints, Rochester College had requested that a portion of their campus designated as historic be delisted. The City's Historic Districts Study Committee (HDSC) investigated the designation and requested that the property not be delisted. The issue was placed on hold and through meetings with some Council members, City Staff, the HDSC, the Mayor and representatives from Rochester College, it was determined that the PUD process be used as a remedy for~~