



**City of Rochester Hills
AGENDA SUMMARY
NON-FINANCIAL ITEMS**

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Legislative File No: 2008-0371

TO: Mayor and City Council Members
FROM: Ed Anzek, Director, Planning and Development
DATE: July 15, 2008
SUBJECT: Use of Tree Preservation Easement, 1731 Piccadilly Ct. Butler Ridge

REQUEST:

Dr Anthony and Ms. Bielkie, 1731 Piccadilly Ct, Butler Ridge, have requested, through their attorney, that the City Council meet to discuss the possible authorization for the Bielkie's to remove trees and use an area within a Tree Preservation Easement for the construction of an in ground swimming pool. (See attached letter from Mark Kadian, Esq. Of Kalas Kadian, P.L.C.

BACKGROUND:

In mid-May of 2007 the Building Department received an application for an in ground pool at the Bielkie's address. The plan included as part of the submittal showed a pool diagram placed over partially covered words showing, "Tree...ement". The Building Department, as normal in their course, verified that the pool was proposed on top of a Tree Preservation Easement. The Building Department staff member next checked with the Planning Department to determine if a Tree Removal Permit was issued. It was not. The City's Landscape Architect was directed to visit the site and photograph the situation. She returned and advised that numerous trees had been removed since she last visited the site in September of 2006. The purpose of the site visit in 2006 was to confirm the trees that were to be protected had indeed been protected and preserved. Her sign-off was one of the "checks and balances" required by the Building Department before they issue a final Certificate of Occupancy.

Since this discovery of 30 Trees removed from a Tree Preservation Easement (16 trees) and a Conservation Easement (14 trees) numerous meetings and discussions have been held to determine a course of action.

As a point of clarification there are three distinct areas affected by the actions. The first is the "Pvt. Tree Preservation Esmt. to the City of Rochester Hills" recorded in Liber 34014, pages 117-121. This easement was provided by the developer to ensure that Butler Ridge met the tree count required by the Tree Conservation Ordinance. The second is a "Private Easement for Surface Drainage and a Private City Conservation Easement to the City of Rochester Hills and a Pvt. Conservation Esmt. to the Butler Ridge Homeowner's Association" recorded in Liber 34388, beginning on page 750. The third area is the Wetland. The Conservation Easement includes the Natural Feature Setback and the Wetlands. (Note: the descriptions of the easements shown in quotes above are exactly how they appear on the Plat.) Besides the removal of trees it was apparent that the trees were ground up and the chips were placed in the wetland to create a path through the wetland to the river. When our wetland consultant observed this he advised that he was obligated as an agent of the City to notify MDEQ of this infraction. MDEQ issued a Notice of Violation.

The best means to succinctly explain the situation is contained in the following attachments.

Attachment 1: Letter from Mark Kadian requesting to discuss this matter with the City Council.

Attachment 2: Letter from Anzek to Staran dated May 6, 2008, providing a statement of acceptance of the restoration plan but not the use of the Tree Preservation Easement

Attachment 3: Letter from Anzek to Dr. and Ms. Bielkie, Dated June 27, 2007, ordering the Bielkie's to commence with a restoration.

Attachment 4: MDEQ Notice of Violation, dated October 23, 2007.

Attachment 5: Page from Butler Ridge No. 2 Plat. Lot 121 is the Bielkie's parcel showing the easements.

Attachment 6: Tree Preservation Easement without legal description or maps.

Attachment 7: Conservation Easement without legal description or maps.

Attachment 8: An aerial taken during construction (2006?) showing the home, the Tree Preservation area, the Conservation Easement, and lands dedicated to the Oakland Land Conservancy.

RECOMMENDATION:

Staff will make no recommendation. The ability to alter the Tree Preservation Easement rests with the City Council as the "Grantee" as noted in the Tree Preservation Easement, paragraph number 1.

APPROVALS:	SIGNATURE	DATE
Department Review		
Department Director		
Mayor		
City Council Liaison		