



Rochester Hills Minutes Planning Commission

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*William Boswell, Deborah Brnabic, Gerard Dettloff, Kathleen Hardenburg,
Greg Hooper, Nicholas Kaltsounis, David Reece, C. Neall Schroeder, Emmet Yukon*

Tuesday, November 21, 2006

7:30 PM

1000 Rochester Hills Drive

2006-0722

Request for a recommendation on a proposed amendment to Chapter 138, Zoning, to establish a Temporary Moratorium on the review and processing of proposed development of properties that may be affected by the proposed Steep Slope Ordinance (Public Hearing).

Attachments: Agenda Summary.pdf; 112106 Memo Anzek.pdf; Ordinance Amendment.pdf; 100406 Agenda Summary.pdf; 092706 Letter Staran.pdf; Mayor 09-27-06 Memorandum.pdf; 100406 Resolution.pdf

(Reference: Memo prepared by Ed Anzek, dated November 21, 2006, had been placed on file and by reference became part of the record thereof.)

Chairperson Boswell announced that the notification in the paper for this item might have led people to believe that the Steep Slope Ordinance would be discussed, but he explained that the Ordinance was still under review by several entities, and would not be ready for the Commission's review until early 2007. He explained that the Commission would not be discussing the proposed Steep Slope Ordinance, but would consider a recommendation to City Council for establishing a temporary moratorium on the review and processing of applications that might be affected by the proposed Steep Slope Ordinance.

Mr. Anzek advised that the matter came about subsequent to the Commission's August workshop at which the Steep Slope Ordinance was reviewed. The Mayor's office questioned what would happen to projects that had been submitted for processing and how those might be affected by the adoption of the Ordinance. The City's Attorney, John Staran, suggested that the City could consider the moratorium to put a hold on the projects until the Ordinance was in place. Until the standards for the Ordinance were worked out, the City could not provide guidance or direction to anyone regarding dealing with steep slope issues. They had hoped the Ordinance would be completed sooner, but there was still discussion about how to define the top of slope and the toe of slope (bottom). More research was needed, and it was still being reviewed. City Council directed the Commission to consider a temporary moratorium at a Public Hearing, which would be an amendment to the Zoning Ordinance.

Chairperson Boswell recalled that one problem they encountered when they first looked at the Steep Slope Ordinance was how they would define where the steep slope started and where it ended. The

moratorium stated that, "having the topographical gradient of 15% or greater between the toe of slope and top of slope," and he wondered how it would be defined if they did not have a Steep Slope Ordinance to define it.

Mr. Anzek suggested that if it were even close, Staff would put the matter on hold. If the applicant wished to challenge, they would have an appeal right. The City had a reasonable way to define top of slope, and if something were close, they would put it on hold.

Chairperson Boswell opened the Public Hearing at 7:41 p.m.

Dan Keifer, 719 Fieldstone Dr., Rochester Hills, MI 48309. *Mr. Keifer stated that he was present representing the Clinton River Watershed Council, and that they wholeheartedly supported the idea of a temporary moratorium on applicable properties. He noted how important the properties were, and had handed out photos of affected properties, which were placed on file. There were a number of properties in the City where the issue was still relevant, because they were difficult or development had taken so long. He stated that the moratorium was very important because the City was doing the right thing by taking its time. They started to discuss it with Planning Commission and City Council in 2002, so it was not a rush to judgment, nor was it a delay. He recalled all the work that had gone into the Natural Features Inventory, the Master Land Use Plan update and the first attempts at the Steep Slope Ordinance.*

Gigi Colombini, 201 Cloverport, Rochester Hills, MI 48307. *Ms. Colombini noted that she had spoken with George Ellworth from the Attorney General's Office, who informed her that Opinion No. 4743, which had stood since April 1972, allowed local municipalities to impose a general moratorium, prohibiting the building of residential homes when it came to protecting the health and safety of the residents. She thought that placing a moratorium would allow the Planning Commission the time to insure that the Ordinance did protect the health and safety of the residents, and would also protect the rights of property owners.*

Andy Krupp, 168 Cloverport, Rochester Hills, MI 48307. *Mr. Krupp handed out some information, including a letter from the MDEQ, and stated that the moratorium would be extremely important to the safety of property owners and people who would buy homes. It was important for property owners so they did not get a situation like Hidden Ridge, where the developer had spent so much time, energy and money and did not see that there were perhaps insurmountable difficulties. If they had appropriate regulations the developer could follow, he would be able to follow through with his plans. He said that Mr. Smitha, the owner of Hidden Ridge, was required to have a geotechnical survey done. He read from the report, "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 that was considered involved supporting condominium units four and five on deep foundations, extending below the river level and allowing the slope toe to naturally stabilize over time." Mr. Krupp said it meant that those units would have to be 45-55 feet deep in the ground to be stable. He continued to read, "Letting the slope naturally degrade would likely involve significant loss in trees on the slope. This would not only be counterproductive to the goals of the deed restrictions, but could cause the owners of condominium units four and five to have concerns about the stability of their foundations. This perception of possible foundation concerns could make it difficult for owners to sell their units or could result in the units being sold at below market value." Mr. Krupp noted that the survey was done by the developer; not the neighbors. Stabilizing the toe of slope would also involve accessing the river at some point or possibly going on other people's properties. He felt that one of the most important things to remember was that the moratorium would help several areas: It would protect the developers from getting too involved in plans and spending time and money on plans that were cost prohibitive or dangerous to others; it would help protect the homeowners who would purchase the homes and make sure they were structurally sound and retain property values; the moratorium would help the City from lawsuits against unsafe building plans approved with awareness that the issue needed more exploration; and it would protect the life of the river. The number one pollutant to the river was sedimentation, largely due to construction in close proximity to the river. Building on the bluffs would only exacerbate the sedimentation. He said that Hidden Ridge was a prime example of the need for the moratorium. He referred to Mr. Anzek's presentation in August, where Hidden Ridge was used as an example of how the Ordinance could change a plan. That showed the important and necessary steps needed to make Hidden Ridge safe and suitable under the Ordinance. He thought that too much time and effort had been given to exploring and identifying the importance of the Ordinance to allow development of properties before a decision had been determined to adopt or not adopt the Ordinance. He believed that the moratorium would give the City enough time to fully analyze and make a decision about the Ordinance before the opportunities were lost. He asked the Commission to remember that a moratorium was just a temporary action and would not stop development; it would only hold off development until a wise and educated decision could be made that would best serve the community.

Pamela Wallace, 168 Cloverport, Rochester Hills, MI 48307. Ms. Wallace said she wanted to present why the moratorium was needed and why it was a safety and health issue for the community. She brought up the Hidden Ridge development, stating that it clearly illustrated the need for the moratorium. It also illustrated that the City had not had the necessary protective mechanisms to be making the

proper decisions about building close to steep slopes. Hidden Ridge was narrowly approved by City Council in 2003 for six units. Two of the units would be very close to the steep slope and on the bluff's edge overlooking the Clinton River. When the development was approved, there was no Ordinance and there still was no Ordinance governing development on slopes. They did the best they could at the time, even though the Planning Commission and City Council had concerns about the development, their hands were tied and they could not limit a property owner's rights. There was nothing in place to legally be able to defend a position. They approved the development with conditions, although with serious concerns. The Clinton River Watershed Council, the Oakland Land Conservancy, the residents and the City were concerned. She referred to a letter from John Zeleski, a geologist from Cranbrook, who did a primary analysis of the slopes. He found that the slopes were highly erodable and were prone to episodic collapse. There were very fragile sands through the basin of the Clinton River and the proposed properties were within that framework. When there had been a rain event, they witnessed five to fifteen foot chunks of property tumbling off the side of the bluffs. The slopes were not suitable for building and that had been demonstrated in the community. She referred to a picture of the property at 285 Cloverport. The original property owner had lost one and a half acres due to erosion over 30 years. In the history of steep slope development in the community, they had been unsuccessful with the guiding standards in place. She referred to the Rookery Woods subdivision, where she said the homes were literally sliding down the slopes. The City had to go forward even though there was nothing that was defensible. One condition placed on the Hidden Ridge development was that a steep slope analysis be completed. The DEQ stated that the slopes were found to be unstable and the safety of the homes built on the slopes could not be assured. The moratorium was not a choice of preference for the community and was not designed to stop anyone from doing something they wanted on their property; it simply spoke to the safety of the homes and the homeowners. She stated that it had been clearly demonstrated in the community that there were serious issues regarding the slopes. When Hidden Ridge was approved they did not have all the information and they approved a plan that later turned out to be as problematic as they were concerned about. Knowing what they know now and continuing to build, with future property owners expecting the City to guide them without a moratorium and Ordinance would be irresponsible. She said she hoped the Commission would have careful consideration because it was in the best interest of the property owners, future homeowners, residents and the natural features of the community.

Tom Stevenson, 708 River Bend Dr., Rochester Hills, MI 48307. *Mr. Stevenson said he lived in the Ravines II subdivision by the river. He thanked Mayor Barnett for having the foresight to suggest to City Council that there should be a moratorium on steep slopes. He said there were problems out there, referring to Rookery Woods as a tragedy. He stood*

on a patio overlooking the bluff and there was nothing under the patio; it had slipped off into the river. There was another project proposed on a steep slope adjacent to his home, called The Villas. He said that Hidden Ridge and Rochester College wanted to build on a steep slope. He referred to Bloomer Park, and said there were places 300 feet above the river. They wanted to do things in the Park but they could not because the land was not stable. The land for The Villas was heavily wooded. When the trees got cut down and the condos built, they would have a problem and the slope would end up at the bottom. His subdivision would be downhill from that development and water would run downhill to them unless it was diverted. There was a three-foot pond they wanted to run the water to, which would make it 12 feet deep. It would be dangerous to kids and it would have to be fenced. If they did not have a Steep Slope Ordinance, he thought the builders would only do what they had to do. The property for The Villas would be very costly to build on and the homes would be expensive. The people who bought there needed some assurance the homes would stay where they were when they were bought.

John DeMoss, 285 Cloverport, Rochester Hills, MI 48307. Mr. DeMoss stated that he was part of Group 2 Associates, LLC, which owned property at the end of Cloverport. He wanted to give a slightly different perspective, stating that not all developers were members of the evil empire, simply out for profits and to do things the easy way. They were developers that were very conscientious of the environment. He was a member of the Watershed Council. He wanted to suggest an amendment to the moratorium. He did not think it was a bad thing, but he thought that stopping development completely for six months was a harsh penalty. He thought that if a developer was willing to work with the City under the current version of the Steep Slope Ordinance, that there could be an amendment to allow them to submit plans and start working under the Ordinance. It would be with the understanding that no approvals could be given until the final version of the Ordinance was in place. New development would take longer than six months so it would be a no harm situation. They could start working with the City to try and get it right, rather than doing nothing for six months and eating the cost.

Paul Miller, 1021 Harding Ave., Rochester Hills, MI 48307. Mr. Miller thanked the Commission for holding the Public Hearing, but said that if they truly wanted to increase public awareness of what went on at the Planning Commission meetings, that they should televise them. He stated that he was present to speak on behalf of the moratorium. He urged the Commission to move forward and recommend to City Council that the moratorium be adopted. They had heard a lot of information about upcoming projects; he said the fact of the matter was that most of the steep slopes were steep for a good reason. It was because of the type of soil and the area along the riverbeds. There was a very important principle of property rights at issue. Usually it was restricted to the property owner of the affected property; however, for the good of the

common welfare, there were property rights that were restricted. For example, no developers would be allowed to put in a pig farm or open a casino or bordello or other unsavory type of development. The Planning Commission was charged with the wise and considered approach and represented all of the residents of Rochester Hills. There were property owners that had a profit motive and there was nothing wrong with making a profit, but it was one of the things that had caused many of the greatest problems. For instance, the effect on air and water had generally not been built into the economic equation. They knew that sedimentation was one of the greatest threats to the waterways, and that the planet was experiencing a rise in temperatures. There was an increase in unstable storms and flooding. The steep slopes that would be affected by the Ordinance were mostly sand. He had experience as a builder and a home inspector, and when houses and structures were built on sand on a slope, there would almost always be problems down the line. If they allowed developers to build on slopes and have walkout basements, they could build and move on, but the City would have homeowners who were stuck with those units. He hoped that they would look more than 15 or 20 years down the line. The Moratorium would not prevent anyone from doing anything in the long term. It would provide a short respite for the City to look at the problem and to see the best approach to take. He knew the Ordinance was a leading edge issue, but said that the problems were as old as mankind. He noted a book that said, "Don't build your house on sand, especially at the edge of a hill of sand." The moratorium would allow them to take a look at the safety and welfare of the residents in a longer view and with a wiser attitude. He was a contractor, and he knew it was not easy to work on a slope. There would very much be a safety issue for the heavy equipment operators and an issue for the carpenters. If it was a commercial development 10-15 stories high, there would be many requirements enforced by the union, but residential development was usually not a union site and there were not some of the protections that a union job offered. He urged the Commission, for the safety, health and welfare of all of the present and future residents to recommend adoption of the moratorium and to forward it to City Council.

Chairperson Boswell closed the Public Hearing at 8:11 p.m.

Chairperson Boswell said that the wording of the moratorium stated that it would "suspend the further processing or acceptance for processing of any and all applications." He asked why applications were cut off at that point, and why the City could not work with developers but allow no activities to take place on any land that might have a steep slope.

Mr. Anzek responded that it was his experience that a moratorium was a notification that there was a pending change that might affect a development. A City did it because of possible claims by a developer that a City was changing the rules in the middle of the game, costing them a lot of money. A City should go through the process and give fair

notice. He maintained that the City would still provide concept meetings, at no charge, to a developer. He did not know if they could agree to accept drawings, incurring costs for the City, and charge those costs back to the developer knowing there was a pending change. He thought that would invite problems and that having a moratorium with no processing would be fairest. He noted that the moratorium was for six months, but reminded that if it went to Council for first and second reading, that it would probably be adopted by the end of January, but also noted that the Steep Slope Ordinance could be ready for consideration in January.

Mr. Brice said that regarding Mr. DeMoss' comments, he was asking to apply an Ordinance that did not exist, and until it was adopted by City Council, it was not a legal mechanism. The moratorium spoke only to the steep slope portion of a property; it did not stop development on the rest of the parcel. Without the Steep Slope Ordinance, the City would not have an "arm" to use, and there would also be the question about fairness and due processes. If they did something one week with one developer and if something changed, the next week it could be different. That would open too many cans of worms and it would become too ambiguous. They would not know what they were really trying to enforce.

Mr. Kaltsounis agreed. He reminded that the Commission saw developments that were phased, and he suggested that they could review an area that was affected by the moratorium. They had done it with Site Plans, where a portion of the site would come back to the Commission in the future. That would give the developer the opportunity to work on a project and it would also protect the environment until all the i's were dotted and t's crossed.

Mr. Hooper asked if a property had a steep slope, whether it would stop review of the entire property. Mr. Anzek thought that was the intent, but if directed, he said that could be changed. Mr. Hooper thought that was how they would want it, because something could come out of the Steep Slope Ordinance that would affect how a property was developed. Mr. Anzek agreed, noting that it would be hard to design a phased development without designing the entire development. Until they knew how the Steep Slope Ordinance would affect setbacks, they would not be able to work on landscaping plans, driveways and much else. He clarified that the intent was to stop everything until the Ordinance was in place.

Mr. Hooper said that Mr. Anzek indicated that the Steep Slope Ordinance should be ready by January. Mr. Anzek thought that would be the worst-case scenario, because he was still expecting comments from people who wanted to review it, and if there were conflicting viewpoints, he would have to resolve them with the consultants. Mr. Hooper presumed that if everything was considered, adoption of the

Steep Slope could be the end of March as the worst-case scenario. He thought it was wise to adopt the moratorium for the next four months or so and not get into a "trick bag" about partial development.

Mr. Kaltsounis asked if Hidden Ridge had kept up to date with permits or if the approval had lapsed.

Mr. Anzek said they had gotten Preliminary Approval with conditions. It was his opinion, based on input from Mr. Staran, that they had not received Final PUD Approval, had not been issued a Land Improvement Permit and were not vested. Mr. Kaltsounis asked if they would have to come back before the Commission. Mr. Anzek was not sure, because they had been going through due process and had been slowly working on the conditions of approval, but he thought they would have to come back because of the time delay.

Mr. Kaltsounis said they talked about the top of slope, but they were really doing this because of the Clinton River and the sandy banks of the River. The moratorium did not say anything about how developments might affect the River and sandy slopes. The City might have to evaluate properties along the River with those issues. He thought there might be other situations they needed to look at, not just grading on a 15% slope, primarily along the Clinton River.

Mr. Anzek suggested that Mr. Kaltsounis' comments dealing with soil conditions should be more an element of the Steep Slope Ordinance than an issue of the moratorium. The moratorium was for all the waterways, and it could be for natural terrain also, such as an ecosystem into a wetland. They would not want to be limiting in the moratorium, but issues of soil and slope could be addressed in the Steep Slope Ordinance. They were trying to work through those types of complications.

Mr. Kaltsounis asked if the 15% would cover the areas he was concerned about. Mr. Anzek said that Dr. Niswander, who crafted the initial Steep Slope draft, recommended that for the starting point for the slope. Mr. Anzek agreed a 15% sandy slope would be more inclined to erode than a 40% rock slope.

Chairperson Boswell indicated that the Ordinance would impose a moratorium on any property that had a 15% gradient slope, but he wondered about a property that was ten feet away from another property that also had a slope, and asked what would happen if they had similar soil conditions.

Mr. Anzek said that the Engineering and Building departments had dealt more with foundations and footings. If there was not a 15% slope, an applicant would be entitled to continue the process. If there was the potential for something happening adjacent to a property, they would

have to deal with it when the other property was proposed for development.

Ms. Brnabic noted the timeframe allotted, and asked how long the moratorium would be in place. Mr. Anzek said it would have a maximum six-month time frame from the date of adoption. Ms. Brnabic agreed that the Steep Slope Ordinance was still in draft form and that since it had not been finalized, it could not be used as a guide.

Motion by Brnabic, seconded by Kaltsounis, that the Rochester Hills Planning Commission hereby recommends to City Council adoption of a proposed Ordinance to repeal the existing Section 138-47 and to add a replacement Section 138-47 to Chapter 138 of the Code of Ordinances for the City of Rochester Hills in order to establish a Temporary Moratorium suspending the City's processing and acceptance of applications and plans for development or alteration of lands with steep slopes, and to prescribe a penalty for violations.

Mr. Hooper noted that the Ordinance did not state the timeframe, and he asked about adding a finding or condition to the recommendation. Chairperson Boswell pointed out Section 138-47 (b) of the Moratorium, which Ms. Brnabic had questioned because the length of time was left blank, and the following condition was added.

Condition:

- 1. This Moratorium shall remain in effect until the sooner of 180 days after publication following the second reading, or repeal, by City Council.*

A motion was made by Brnabic, seconded by Kaltsounis, that this matter be Recommended for Approval to the City Council Regular Meeting. The motion carried by the following vote:

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

Absent: Schroeder