



Rochester Hills Minutes City Council Special Meeting

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*Erik Ambrozaitis, Jim Duistermars, Barbara Holder, Greg Hooper,
Linda Raschke, James Rosen, Ravi Yalamanchi*

Wednesday, August 30, 2006

7:30 PM

1000 Rochester Hills Drive

DRAFT

In accordance with the provisions of Act 267 of the Public Acts of 1976, as amended, the Open Meetings Act, notice was given that a Special Rochester Hills City Council Meeting would be held on Wednesday, August 30, 2006, at 7:30 p.m. for the purpose of considering 1) a request for Site Plan Approval for Madison Park, 2) the Madison Park Public Financing proposals, 3) a pledge of the City's full faith and credit for the amount of the proposed Clean Michigan Initiative (CMI) grants and loans, 4) a resolution verifying that the Madison Park project is to be undertaken if the project funding is awarded and 5) a petition to the Oakland County Drain Commission (OCDC) to establish a Chapter 20 Drain District to finance remediation at Madison Park.

CALL TO ORDER

President Rosen called the Special Rochester Hills City Council Meeting to order at 7:38 p.m. Michigan Time.

ROLL CALL

Present: Erik Ambrozaitis, Jim Duistermars, Greg Hooper, Linda Raschke, James Rosen and Ravi Yalamanchi

Absent: Barbara Holder

Others Present:

*Bryan Barnett, Mayor
Dan Casey, Manager of Economic Development
Derek Delacourt, Deputy Director of Planning
Kurt Dawson, Director of Assessing/Treasurer
Susan Galeczka, Deputy Clerk
Mike Hartner, Director of Parks & Forestry
Roger Moore, Professional Surveyor
John Staran, City Attorney*

Council Member Holder provided previous notice she would be unable to attend and asked to be excused.

PLEDGE OF ALLEGIANCE

PUBLIC COMMENT

Ms. Deanna Hilbert, 3234 Quail Ridge Circle, cited an article in the Detroit Free Press that described a proposed development at Hamlin and Rochester Roads that would have "50 to 100 high-rise condos." She questioned whether the City had more detailed information about this proposed development.

Mr. Derek Delacourt, Deputy Director of Planning, stated there had been discussions

regarding this proposed development, but no specific plans had been submitted to the Planning Department and invited any interested residents to contact the Planning Department for more information.

NEW BUSINESS

President Rosen made an opening statement consisting of the following comments:

- This is the first substantial Brownfield Redevelopment site that the City has encountered.
- There are a series of processes that depend on each other, such as:
 - * Brownfield Redevelopment Plan (BRP) which controls the Tax Increment Financing (TIF) and is approved by the Brownfield Redevelopment Authority (BRA).
 - * The 381 Work Plan reviewed by the BRA and submitted to the Michigan Department of Environmental Quality (MDEQ).
 - * Due Care Plan between the developer and the MDEQ that governs how the site will be made safe until it is remediated.
 - * The Site Plan approval process is controlled by the Consent Judgment involving both the Planning Commission and the City Council.
- A financial plan for the MDEQ to make four million dollars in Clean Michigan Initiative (CMI) monies available in grants and loans.
 - * The State considers the City responsible for the cleanup if these funds are granted.
 - * If the City petitions for these dollars, Oakland County will form a Chapter 20 Drainage District and issue \$11 million dollars in bonds as well as apply for approximately \$15 million dollars in State Revolving Funds (SRF) from the MDEQ.
 - * Oakland County would contract for the site remediation to be paid for with the bonds and SRF funds.
- The bonds, CMI loans and SRF loans would all be repaid with the additional taxes generated by the new development.

President Rosen explained that Council was being asked to approve the Site Plan prior to the approved 381 Work Plan, which he described as "inextricably tied together." He noted that the discussion would be unusual "because of the complexity of the considerations and because we are asked to act with incomplete information." He stressed that while the review of the Site Plan will be dictated by the Consent Judgment, the other items to be considered are at the request of the applicants. He noted that the issues would be discussed in the following order:

- 1) Site Plan approval
- 2) Creation of a Chapter 20 Drainage District
- 3) Providing the City's full faith and credit for the grants and loans
- 4) The verification resolution

2005-0609

Site Plan Approval Request - Madison Park - City File No. 03-023 - A proposed mixed-use development to be located at the former Suburban Softball site on

the south side of Hamlin Road, east of Adams, zoned by Consent Judgment, Parcel Nos. 15-29-151-008, 15-29-151-011, 15-29-151-012, 15-29-151-015, 15-29-151-017, 15-29-176-004, and -006; REI Brownstown, LLC, applicant.

Attachments: Agenda Summary Site Plan.pdf; Amended Consent 02-06-04.pdf; Report Staff 07-18-06.pdf; Map aerial.pdf; 07-18-06 PC Minutes.pdf; Site Plans 1-17.pdf; Site Plans 18-42.pdf; Arch, Landscape, Civil Plans.pdf; 0609 Resolution.pdf

Mr. Robert Carson, Carson Fischer, PLC, 4111 Andover Road, Bloomfield Hills, attorney for the developer, provided an overview of the requests before Council including the following:

- The conditions at the Madison Park site should be remediated as they pose a threat to the community, the watershed and the residents of the community.
- According to the Consent Judgment entered into by the City and the developer, a mixed-use development on the site is needed to facilitate the remediation.
- The proposed 381 Work Plan was met favorably by the BRA.
- It was noted in the Consent Judgment that public financing of the project would be necessary and sought with the assistance of the City.
- The City is not being asked to issue bonds.
- The proposed Site Plan complies with the Consent Judgment.
- The grants and loans are available to the City, but must be reserved in a timely manner so as not to lose the 2006 \$2 million dollar allocation.
- The grants will not have to be repaid and the loans will be at a very low-cost interest rate.
- Technically the grants and loans process would require the full faith and credit of the City; however, this component has been designed so that there is no possibility that the City will bear that financial obligation.
- Contrary to recent rumors, the developer has a letter of intent from Target, thus resulting in Target being designated as a tenant of the proposed development.

Mr. Jon Weaver, REI Brownstown, LLC, 40900 Woodward Avenue, Bloomfield Hills, developer, assured Council that this process is not being rushed, and reminded Council how many times he and his colleagues had appeared before Council regarding this development and how long they had worked with the City administration. He did acknowledge that there was a time element in terms of the grants and loans. He further noted that following approval of the Site Plan, he and his colleagues would likely be returning to Council many times throughout the entire process. He assured Council that they would have many opportunities to halt the process were they to become uncomfortable.

Mr. Richard Zanotti, REI Brownstown, LLC, 40900 Woodward Avenue, Bloomfield Hills, engineer, noted the following information regarding the proposed Site Plan:

- Seventy acres of the 100-acre site is landfill.
- The Site Plan shows approximately 270,000 square feet of commercial and retail space.
- The Site Plan connects to Riverbend Park for the detention basin that has its ultimate outlet at the Clinton River.

- *The site incorporates connectivity such as the rails-to-trails and walkways, as well as parking for trail users.*
- *The Site Plan substantially exceeds the tree ordinance requirements.*
- *There is an extensive landscaping plan.*
- *The grading plan will build up the east side considerably to level the site.*
- *Some proposed uses are small, fast-casual restaurants, a bank and retail at the east end.*
- *Large-format retail could be moved to the east end of the site.*
- *The trail may be relocated to avoid walkers having to cross a roadway.*
- *There will be three entrances to the development from Hamlin Road, with one serving exclusively as a "loading road" for deliveries to the users.*
- *One entrance was changed at the suggestion of the Planning Commission making it a right in and right out driveway.*
- *The innovative design of the detention basin in Riverbend Park will provide a greater ecological benefit to the area as it will address runoff from Hamlin Road in addition to that of the development.*
- *The idea of Phase 1 of the development is to create an atmosphere where people can come and enjoy the restaurants and park/trail atmosphere away from the tall buildings.*

Mr. Jim Valenta, *Midwestern Consulting, 7478 Gateway Park Drive, Clarkston, traffic consultant, provided the following information:*

- *The first and foremost concern was traffic safety.*
- *The Site Plan will integrate non-motorized and motorized modes of transportation.*
- *All turnarounds, crossovers and traffic signals are in compliance with the best recommended practices.*
- *The second design priority was to enhance and preserve capacity on Hamlin Road, and allow the City some options for future road enhancements.*
- *The third priority was to provide convenient and flexible access to the development.*
- *The traffic simulation took into account rush hour traffic and traffic generated by other proposed development in the area.*
- *Pedestrians will have a signalized crossing with a push button signal.*
- *The traffic study was reviewed by City staff and the City's traffic consultant, Hubbell Roth & Clark.*

Mr. Carson *returned to the issue of financing the remediation of the project, noting the following:*

- *None of the parties involved in the matter are responsible for the environmental*

conditions resulting from the landfill; however, it is in the best interest of the public that it be remediated.

- The BRA was created as a means to assist in the cleanup of such toxic sites by assisting developers via the use of tax revenues.

- The City's BRA, the MDEQ, Oakland County and the Drain Commissioner are all "gatekeepers" overseeing the entire process from various perspectives.

- The Site Plan is essential because it must be determined whether the development will generate the needed dollars to compensate for the remediation.

- The final result will be a new development eventually generating revenue for all taxing jurisdictions and a remediated toxic site.

- The \$2 million dollars in grants and low interest loans from the State will serve to save tax dollars.

- The State grants and loans must be in place prior to the start of the project and, thus, the decision cannot be deferred for very long.

- No entity will be obligated to anything until all of the components are in place and letters of credit that exceed the amounts being borrowed will be in place for the benefit of Rochester Hills.

PUBLIC COMMENT:

Mr. Dan Keifer, representative of the Clinton River Watershed Council (CRWC), and a 21-year resident of Rochester Hills, expressed his and the CRWC's support for the project, specifically due to the resulting benefits to the Clinton River. He noted that this process has not been rushed and will ultimately represent a model of stormwater management.

Ms. Deanna Hilbert, 3128 Walton Boulevard, Co-Chair of Citizens Voice Rochester Hills, noted that the approval of residents to create a three-acre detention basin in Riverbend Park was never sought and the basin will make a large portion of the park unusable. She also noted that despite original claims that the cleanup of the toxins at the site was an "emergency," the remediation plan has now been reduced. She expressed her doubt that Phase 2 of the development will include office, research and technology uses, but rather more retail uses. Finally, she asked, "Who is watching out for residents?"

Mr. Mark Jacobs with Dykema Gossett, 400 Renaissance Center, Detroit, attorney representing Grand Sakwa, expressed concern for the rapid pace at which this process is moving and the limited information being provided to Council to make a decision. He stressed that the applicant is asking for approval when all of the components are not known. He noted that the MDEQ has expressed doubt that the project will generate adequate tax revenue to repay all of the debt.

Ms. Brenda Savage, 1715 Northumberland Drive, Chair of No New Taxes, requested on behalf of Rochester Hills taxpayers "absolute documentation of the existence and location of real dollars assuring repayment of loans and bonds requested by Rochester Hills on behalf of REI and absolute documentation assuring no abandonment of care to the residents of Rochester Hills should health issues result from the toxic exposure associated with the cleanup."

Mr. Bill Windscheif, 2872 River Trail, questioned the current status of the 381 Work Plan and Due Care Plan, noting that there has been no opportunity for citizen input. He also indicated his understanding that the Consent Judgment requires those two documents be approved before Council can proceed with Site Plan approval.

Mr. Steve McGarry, 2164 Clinton View Circle, President of Heritage Oaks Homeowners Association, noting his neighborhood's close proximity to the development, questioned why the Due Care Plan is taking so long to be approved. He further questioned why the City should be expected to make a "firm commitment" to this process without all of the details in place.

COUNCIL DISCUSSION:

City Attorney John Staran, Mr. Fink and Mr. Weaver responded as follows to questions and concerns posed by residents and Council members:

- *Conditions attached to an approved Site Plan will prevent the process from moving forward until those conditions have been met.*
- *There is an approved Due Care Plan for the current status of the land, as the developer would not have been permitted to purchase the property without one.*
- *Another Due Care Plan will be needed in conjunction with the remediation of the property but which would follow approval of the 381 Work Plan.*
- *The 381 Work Plan has been submitted to the MDEQ by the City's BRA.*
- *There will be an Operations & Maintenance (O&M) Plan that covers the continuing maintenance of the site following remediation and development.*
- *A modified 381 Work Plan incorporating input from the MDEQ and the City's BRA would be coming forward to the City in the near future.*
- *The detention basin will not interfere with the eventual development of Riverbend Park.*
- *The detention basin will be designed with a pathway circling it to accommodate walkers, joggers, etc.*

Discussed

(Recess 9:27 p.m. - 9:44 p.m.)

2005-0609

Site Plan Approval Request - Madison Park - City File No. 03-023 - A proposed mixed-use development to be located at the former Suburban Softball site on the south side of Hamlin Road, east of Adams, zoned by Consent Judgment, Parcel Nos. 15-29-151-008, 15-29-151-011, 15-29-151-012, 15-29-151-015, 15-29-151-017, 15-29-176-004, and -006; REI Brownstown, LLC, applicant.

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Mr. Mike Hartner, Director of Parks & Forestry, clarified that there are no plans at this time to develop Riverbend Park, but rather, he worked with the developer to insure that the detention basin would not prevent recreational development at some point in the future.

President Rosen noted that the discussion would now shift more specifically to the Site Plan.

Mr. Staran acknowledged that the process before Council was very confusing, with various components to consider and no linear pattern of events and approvals to follow. He indicated that Council must determine their "comfort level" in moving forward with Site Plan approval.

Mr. Hooper, as Council's representative to the Planning Commission, offered some insight into the Planning Commission's decision to attach so many conditions to their Site Plan recommendation, acknowledging the various components involved and the Planning Commission's struggle to work within the confines of the Consent Judgment. He specifically suggested that trail relocation not be included, as that issue was not discussed by the Planning Commission and would have an impact on the Tree Removal Permit.

Mr. Derek Delacourt, Deputy Director of Planning, noted that trail relocation would not need to be considered until Phase 2 of the project. He further noted that, as dictated by the Consent Judgment, City Council has Site Plan approval rather than the Planning Commission and, thus, Council will eventually be voting on various components.

President Rosen discussed changes to the wording of some conditions that he suggested any maker of a motion would include, noting a specific sequence of approvals for certain items and a finding be added that would state, "This Site Plan is not considered a complete site plan package, and unless and until all other components listed as conditions are complete, in hand and approved as appropriate, this Site Plan approval is not considered completely final."

Mr. Yalamanchi requested that the proposed elevations be improved as "they are really not appealing." He further asked for clarification regarding the apparent reduction in remediation from 900,000 cubic yards of waste to be removed to 350,000 cubic yards.

Mr. Weaver assured Council that the revised remediation plan actually exceeds the previously proposed level of cleanup while addressing concerns raised by neighboring residents regarding the risks of trucking those materials away from the site. He further stated his belief that the MDEQ supports this plan, while not having yet given final approval.

Mr. Yalamanchi questioned whether the Site Plan needed to be approved at this meeting and, if so, why.

President Rosen explained that the time frame was dictated by the Consent Judgment and there was a specific amount of time for approval following City staff's determination that the Site Plan was "technically compliant."

Mr. Carson also noted all of the various components, agreements and plans involved in the process providing opportunities to stop the process in the future if Council deems it necessary.

PUBLIC COMMENT:

Mr. Steve McGarry, 2164 Clinton View Circle, noted that since all of the other plans mentioned seemingly go hand-in-hand with the Site Plan, then Council and the community should have the opportunity to review them before contemplating the Site Plan.

Ms. Deanna Hilbert, 3234 Quail Ridge Circle, questioned whether an approved Site Plan remains with the property should the developer pull out of the project.

Mr. Staran explained that while the Consent Judgment rights and obligations "run with the land," the Site Plan does not and any new developer would need to go through site plan approval.

Mr. Bill Windscheif, 2872 River Trail, expressed his concern that there is no approved 381 Work Plan or updated Due Care Plan for the public to review. He questioned what agency he should contact once this development moves forward if he has a concern or problem.

Mr. Mark Jacobs with Dykema Gossett, 400 Renaissance Center, Detroit, attorney representing Grand Sakwa, suggested that Council make it a requirement that the City have an approved 381 Work Plan prior to approving the Site Plan. He expressed his disbelief that Council would approve a Site Plan with more than 30 conditions attached.

COUNCIL DISCUSSION:

Mr. Carson noted that all processes are being followed appropriately and all concerned agencies will be providing approvals as dictated by law and the Consent Judgment.

Mr. Hooper noted that any changes to the 381 Work Plan or Due Care Plan will not impact the starting elevations of the Site Plan. He further indicated that the Consent Judgment has laid out a path that has to be followed. He indicated that the development will ultimately be an important component in the eventual remediation of the "inordinate amount of landfills" in Rochester Hills. He further noted that the Development & Remediation Agreement "will provide a revolving fund of seed money to promote further cleanup." Mr. Hooper then moved the motion incorporating President Rosen's previous suggestions.

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

Resolved, the Rochester Hills City Council hereby approves the Site Plan for Madison Park, City File No. 03-023, a mixed-used development located east of Adams, south of Hamlin (former Suburban Softball site), zoned by Consent Judgment and identified as Parcel Nos. 15-29-151-008, 15-29-151-011, 15-29-151-012, 15-29-151-015, 15-29-151-017, 15-29-176-004, and -006, based on plans dated received by the Planning Department on May 4, 2006 with the following findings and subject to the following conditions, REI Brownstown, LLC, applicant.

Findings:

- 1. A Consent Judgment entered in February of 2004 governs the mix of uses and conceptual design for the project.**
- 2. The Consent allows for a mix of retail and office uses based on defined Development Zones attached to the Judgment.**
- 3. The Site Plan is not considered a complete site plan package, and unless and until all components listed as conditions are complete, in hand and approved as appropriate, this site plan approval is not considered completely final.**

Conditions:

- 1. That the applicants provide a revised 381 Work Plan, the proposed plan must be reviewed and submitted to the DEQ and the Plan approved by the DEQ prior to Final Site Plan approval by Staff.**
- 2. That the applicant and City Council enter into a Reimbursement Agreement, as required by the approved BRA plan, regarding the proposed project prior to Final Site Plan Approval by Staff.**

3. That the applicants demonstrate how Section 8 (f) of the Consent Judgment shall be addressed and provided to City Council for approval prior to any above ground construction.
4. That the applicant provide to the Planning Commission a detailed phasing and engineering plan, (381 Work Plan) for the redevelopment of the landfill areas as required in Section 8 (e) of the Consent Judgment prior to issuance of Final Site Plan Approval by Staff.
5. Per the approved Consent Judgment the applicant shall demonstrate, on submitted construction plans, the method for correcting the existing collapsed storm structure located on the site. The City Engineer shall approve these plans prior to issuance of a Land Improvement Permit.
6. That the applicant revise all applicable tree survey information and replacement counts to address all remaining issues identified in the Forestry Department memo dated May 23, 2006 and Landscape Architect memo dated May 22, 2006.
7. That the Planning Commission approves a Tree Removal Permit prior to Final Site Plan Approval by Staff.
8. That the applicant appears for a Public Hearing regarding Planning Commission and City Council recommendations and approval of the Wetland Use Permit for Riverbend Park improvements prior to Final Approval by Staff.

Site Plan

1. Revise photometric to indicate a maximum average of two-foot candles for the entire site, to be reviewed and approved by Staff prior to Final Site Plan Approval.
2. That the applicant shall address all issues of the Building Department Memo dated May 10, 2006 on revised site plans to be approved by Staff prior to Final Site Plan Approval.
3. That the applicant provide information to the City Attorney demonstrating the ability to, and also restricting of, the uses allowed in Zone D to those described in the Consent Judgment prior to Final Site Plan Approval by Staff.
4. That the applicant incorporates on revised plans appropriate bike and pedestrian amenities, such as bike lockers and racks, throughout the site to be reviewed and approved by Staff prior to Final Site Plan Approval.
5. Install decorative lights along the crescent formation of development and other retail and office uses along Hamlin Road.
6. Provide note on Plans stating that all landscaped islands will be irrigated.

Traffic Improvements

1. Madison Park will include a third eastbound lane between Adams Road and the Access B location. This third lane will provide additional eastbound roadway capacity for traffic entering the Madison Park site via Access A and Access B. At Access B this third lane will end and Hamlin Road will continue to the east in the existing two-lane configuration.

2. Access A will be configured as a right-turn ingress, right-turn egress commercial driveway with no median crossover.
3. Access B will include a traffic signal and median crossover to be located in coordination with the driveway locations to the parcel on the north side of Hamlin Road. Traffic using the crossover will not have direct access to Access B, but will first need to use the crossover under signal control to gain access to eastbound Hamlin Road. The crossover will have two lanes with sufficient storage lengths. Access B will have one ingress lane and two egress lanes. These lanes will be right-turn only lanes.
4. Access C will include a traffic signal and median crossover providing for direct traffic movements into Access C. The crossover will have two lanes with sufficient storage lengths. Access C will have two ingress lanes and two egress lanes. There will be a right-turn deceleration lane provided for right-turn ingress movements from Hamlin Road.
5. A minimum separation distance of 200 feet will be provided between adjacent median crossovers.
6. The proposed Crossover 4 location will be signalized to provide positive controls for pedestrians crossing from the Madison Park site to the Parkland located on the north side of Hamlin Road. Pedestrian control of the signal will be designed to include push button activation.
7. The applicant shall submit revised plans to the Planning Commission, indicating all of the proposed traffic improvements on revised plans for review and approval by Staff prior to Final Site Plan Approval by Staff.
8. The applicant shall add a note to the plans that the proposed traffic improvements are designed for phase one only and that any additional future proposed phases may require additional review and improvements to be made.

Elevations

1. That revised elevations for the east and west elevations of Retail A, the east elevations of Major B and C, and the south elevations of Retail/Restaurant B, C, and D be submitted to the Planning Commission. Architectural features, details and relief should be added, similar to the other facades, which break up long runs of flat masonry facades, prior to Final Site Plan Approval.
2. That masonry material labeled on the current elevations for all proposed buildings be a brick material, no CMU or split faced block, and that revised plans, submitted to the Planning Commission, label the material color to be consistent with the submitted renderings, prior to Final Site Plan Approval.
3. That revised plans be submitted to the Planning Commission, replacing EIFS material on all buildings with a natural stone material, prior to Final Site Plan Approval.
4. That a full revised elevation package be submitted for the four outlot structures, including dimensioned, detailed elevations and floor plans for all proposed buildings, for review by Staff, recommendation from the Planning Commission, and approval by City Council prior to final site plan approval by staff and prior to issuance of a Land Improvement Permit.

River Bend Park Improvements

1. That the existing Park curb cut be relocated to a location consistent with the proposed modifications to Hamlin Road, to be reviewed and approved by the City's Engineering and Parks Department, prior to issuance of a Land Improvement Permit.
2. That the proposed Trail to be located around the improvement be of stabilized crushed limestone material and that any sloped areas greater than 4% be surfaced with asphalt, all materials and final design to be approved by the City's Engineering and Parks Department, prior to issuance of a Land Improvement Permit.
3. That the developers provide and install weather resistant interruptive signage, similar to those presented on the plan documents, explaining the storm water management plan and its effect on the river. Proposed signage type and location to be approved by the City's Parks Department, prior to issuance of a Land Improvement Permit.
4. That the developers provide a maintenance bond in an amount sufficient, as determined by Staff, to insure successful establishment of the proposed native vegetation and for a length of not less than five years, prior to issuance of a Land Improvement Permit.
5. That the applicants, the City, and any other applicable agencies enter into an agreement, to be approved by City Council, prior to final site plan approval by staff and for the long term maintenance and operation of the proposed improvements regarding the storm water/retention area proposed for the Park prior to issuance of a Land Improvement Permit.
6. That the applicants agree to participate in a public workshop identifying the proposed Park improvements and related material. The proposed workshop shall be held prior to issuance of Construction Plan Approval and coordinated with City Staff and the Clinton River Watershed Council.
7. That applicant must receive and provide the City with all applicable DEQ permits, if required, related to the proposed work prior to issuance of a Land Improvement Permit.

The motion carried by the following vote:

Aye: Duistermars, Hooper, Raschke, Rosen and Yalamanchi

Nay: Ambrozaitis

Absent: Holder

Enactment No: RES0283-2006

2006-0645 Consider Madison Park Public Financing Proposals
Removed from Agenda

2006-0560 Consider a Petition to the Oakland County Drain Commission (OCDC) to Establish a Chapter 20 Drain District to Finance Remediation at Madison Park

Attachments: 0560 Agenda Summary.pdf; 072106 Agenda Summary.pdf; Memo Rosen 072106.pdf; 061606 Letter Mayor Barnett.pdf; 062806 Letter OCDC.pdf; REI Brownstown LLC Consent Judement 021204.pdf; 021104 Spec Meeting MINUTES.pdf; 040704 WorkSession MINUTES.pdf; 051904 Reg

Mr. Todd Fink, REI Brownstown, LLC, 40900 Woodward Avenue, Bloomfield Hills, described the benefits of establishing a Chapter 20 Drainage District as an element of this proposed development, noting the following:

- There is the potential for \$30 million dollars to be made available in the form of grants, low-interest loans and bonds issued by the Oakland County Drainage Commission.
- As much as \$15 million in bonds would be bought by the State through the State Revolving Fund (SRF) Loan Program at a low interest rate of approximately 2.8% on a 20-year amortization.
- The remaining balance of bonds will be financed by conventional Chapter 20 Drainage Bonds, which would also be sold at a very favorable interest rate.
- The combination of the two funding sources provides a very low interest, stable way to fund this project.
- All of the funding will be assured prior to the start of the project, thus alleviating any fears that the project will stall due to a lack of funding midway through the process.
- This innovative funding plan will serve as "the poster child" for cleaning up sites of this nature.
- The Drain Commissioner's office will provide important checks and balances as they will bid the project, award the contract and supervise the project on a day-to-day basis.
- The Drain Commissioner's office has agreed to perform the operations and maintenance into the future of the project.

Mr. Fink noted that the requested petition from the City to the Drain Commissioner was essential to move the project forward. He briefly described the process as follows:

- The Drainage Board would meet shortly after the petition is filed.
- A public hearing would be held at which time the petition would be accepted.
- The County's financing staff would begin to evaluate the tax increment revenues in the negotiations of the Development and Reimbursement Agreement (DRA).
- The DRA would be a three-party agreement among the City, the County and the developer.
- The DRA would allow the tax revenues to pay the debt on the bonds and the developer would indemnify the County for any shortfalls.

Mr. Fink acknowledged that it is understood that Phase 1 of the project will not generate the necessary tax revenue to cover the debt service on the bonds, and explained that the developer will be responsible for any shortfall, not the City of Rochester Hills. He noted that filing of the petition does not obligate the City to complete any type of bonding process with the County, but rather enables the County's finance staff and the Drain Commissioner's office to move the process forward.

Mayor Barnett, Mr. Delacourt and Mr. Terry Donnelly, the City's Bond Counsel, discussed changes made to the requested petition as follows:

- Added a legal description that included changes for the proposed stormwater infiltration pond on Riverbend Park.
- The restructured wetlands ponds were removed.
- No TIF would be used for the reconstruction of the existing pond on the southeast corner of the site.
- There is clear language that any assessment or obligation for the City in connection with this drain project will be satisfied fully with TIF.
- There is a specific statement indicating that under no circumstances shall the assessment be payable from or secured by the general funds or taxing power of the City.
- It further notes that bonds will not be issued by the Drainage District until such time as the DRA is in place.

Mr. Donnelly clarified that the DRA will actually be a four-party agreement to also include the City's BRA.

Mr. John McCulloch, Oakland County Drain Commissioner, One Public Works Drive, Waterford, explained that there are several Chapter 20 Drainage Districts in Rochester Hills as well as throughout Oakland County. He explained that this cleanup approach, once established, will determine the portion of the bonding that qualifies under the SRF program. With regard to potential complaints and concerns raised by neighboring residents during the mitigation process, he assured Council he would address those matters. Mr. McCulloch also discussed the various forms of financial reassurances they are considering from the developer including letters of credit, liquid or cash reserves, etc.

PUBLIC COMMENT:

Ms. Deanna Hilbert, 3234 Quail Ridge Circle, noted that the developer claimed in 2004 that the development would be generating millions of dollars within ten years.

COUNCIL DISCUSSION:

President Rosen expressed his concern that, after reading the Drainage Code, it appeared that it would not permit an arrangement such as what was being proposed and ultimately the City would be responsible should the developer not meet their financial obligations.

Mr. McCulloch assured Council that the County was pledging its full faith and credit and the financial burden would fall upon the County in such a circumstance.

President Rosen requested the following sentence be added to the petition where applicable: "The City does not pledge its full faith and credit to pay any assessment."

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

Be It Resolved by the City Council of the City of Rochester Hills, as follows:

1. **The City of Rochester Hills (the "City") shall make and cause to be filed a petition in the form substantially as follows:**

**P E T I T I O N
TO THE DRAINAGE BOARD FOR THE
HEREINAFTER MENTIONED OAKLAND
COUNTY, MICHIGAN DRAIN PROJECT**

The undersigned public corporation hereby petitions for an intra-county drain project consisting of the relocation, widening, deepening, straightening, extension and improvement of the Gabler Drain to be located approximately as follows:

Gabler Drain Route Description

Main Branch

Beginning at the lower terminus of the existing Nancy Dingelday Drain, also being the upper terminus of the Gabler Drain, being located distant 360 ft.± South along the West line of Section 29 and 690 ft.± East of the West ¼ corner of Section 29, Avon Township (NKA City of Rochester Hills), T.3N., R.11E., Oakland County, Michigan. Thence proceeding Easterly 850 ft.±, thence Northerly 390 ft.± to the Southerly right-of-way line of M-59 Highway, thence Easterly 1,295 ft.± adjacent to the south side of M-59 Highway to reference Point "A" being located approximately 50 ft.± North and 60 ft.± West of the center of said section, thence Northerly 410 ft.± across said M-59 highway, thence Westerly 335 ft.±, thence Northwesterly 115 ft.± to an outlet into Detention Basin "A" (as relocated and hereinafter described), thence from said outlet to an inlet on the East side of said Detention Basin "A" located approximately 340 ft. North of the North right-of-way line of M-59 Highway thence proceeding from said inlet Easterly 65 ft.±, thence Southerly 275 ft.±, Thence Easterly 862 ft.±, thence Northerly 214 ft.±, thence Northeasterly 229 ft.± to a point on the Northwesterly right-of-way of Avon Industrial Drive, thence Northeasterly 110 ft.±, thence along the existing Gabler Drain the following 5 courses: Northeasterly 1,550 ft.± adjacent to the Northwesterly side of Avon Industrial Drive, thence Northerly 75 ft.± to a point located North 1453 ft.± and West 913 ft.± from the East ¼ corner of said section, said point also being an outlet to an existing Detention Basin for the Gabler Drain, thence from said outlet Northerly 340 ft.± to an inlet located at the Northeasterly corner of said Basin, thence proceeding from said inlet Northeasterly 150 ft.± to a point within the abandoned G.T.W.R.R., thence Northerly 223 ft.± across the abandoned G.T.W.R.R. to a point on the South right-of-way line of Hamlin Road, thence Northwesterly 220 ft.± across Hamlin Road to the point of ending at the Clinton River, said point being located West 1,010 ft.± along the North line of said Section and South 400 ft.± from the Northeast Corner of said Section.

Branch "A"

Beginning at reference Point "A" in the main branch of the Gabler Drain, thence S22°08'47"E 100.13 ft., thence S00°38'10"E 155.39 ft., thence S03°13'08"W 678 ft. to a point of ending of said Branch "A", said point being N02°57'46"E 2237.27 ft. from the Southeast ¼ corner of Section 29, Avon Township (NKA City of Rochester Hills), T.3N., R.11E., Oakland County, Michigan

Detention Basin "A" (as relocated)

A parcel of land located in the NW ¼ of Section 29, Avon Township (NKA City of Rochester Hills), T.3N., R.11E., Oakland County, Michigan. Beginning at a point on the Northerly right-of-way line of M-59 Highway located distant N06°54'57"E, 316.26 ft. and S88°14'39"W, 607.52 ft. from the center of said Section, thence continuing S88°14'39"W, 136.75 ft., thence N06°54'57"E, 558.81 ft. to a point on the

Southerly Line of the abandoned G.T.W.R.R., thence N69°16'00"E, 336.45 ft., along the South line of the abandoned G.T.W.R.R., thence S05°44'19"W, 619.13 ft., thence S87°53'35"W, 177.53 ft., thence S07°20'42"W, 47.23 ft. to the point of beginning.

Branch "B"

Beginning at a point located distant West 820 ft.± and South 460 ft.± from the North ¼ corner of Section 29, Avon Township (NKA City of Rochester Hills), T.3N., R.11E., Oakland County, Michigan, said point of beginning being located on the North line of existing Hamlin Road, thence Northerly 30 ft. ±, thence Northeasterly 90 ft.± to an outlet in Detention Basin "B" (hereinafter described), thence from said outlet located distant Northerly 260 ft.± and Westerly 195 ft.± to an inlet on the Northeasterly side of said Basin, thence proceeding from said inlet Northeasterly 830 ft.± to the point of ending at the Clinton River, said point being located North 425 ft.± and West 315 ft.± from the North ¼ Corner of said Section.

Branch "C"

Beginning at a point located distant East 160 ft.± and South 415 ft.± from the North ¼ corner of Section 29, Avon Township (NKA City of Rochester Hills), T.3N., R.11E., Oakland County, Michigan, said point of beginning being located on the North line of existing Hamlin Road right-of-way, thence Northeasterly 155 ft.± to an outlet in Detention Basin "C" (hereinafter described), thence from said outlet Northeasterly 490 ft.± to an inlet on the Northeasterly side of said Basin, thence proceeding from said inlet Northeasterly 20 ft.±, thence Easterly 65 ft.± to the point of ending at the Clinton River, said point being located East 870 ft.± and South 260 ft.± from the North ¼ Corner of said Section.

Branch "D" (Leachate Sanitary Sewer Line)

Beginning at a point located distant South 1,610 ft.± and Southwesterly 600 ft.± along the North line of the abandoned G.T.W.R.R. and Northerly 90 ft.± from the North ¼ corner of Section 29, Avon Township (NKA City of Rochester Hills), T.3N., R.11E., Oakland County, Michigan, thence Northerly 585 ft.±, thence Northwesterly 90 ft.±, thence Northerly 210 ft.±, thence Northwesterly 270 ft.± to the point of ending at a sanitary sewer line located south of Hamlin Road.

which drain project is necessary for the public health and will serve only an area located entirely within the limits of the City of Rochester Hills, County of Oakland, State of Michigan.

This petition is filed pursuant to the provisions of Chapter 20 of Act No. 40 of the Public Acts of Michigan of 1956, as amended.

It is understood and agreed that except as hereinafter provided, the entire cost of said drain project is to be assessed against the City of Rochester Hills except for assessments against the County of Oakland and the State of Michigan for benefits related to the drainage of County and State highways, if any, with the following further understanding:

- (a) Except as may be otherwise provided for in the agreement referred to in (c) hereof, the City shall only be obligated to pay its assessment for the drain project from the tax increment revenues (hereinafter referred to as the "Tax Increment Revenues"), as defined and provided for in Act 381 of the Public Acts of Michigan of 1996, as amended ("Act 381"), captured by the City of Rochester Hills Brownfield Redevelopment Authority (the "Authority") pursuant to the Brownfield

Plan - Former Cardinal/Veteran's Landfill Site (as amended from time to time pursuant to Act 381, the "Brownfield Plan") approved by the Authority on March 4, 2004 and the City Council of the City on May 19, 2004. Under no circumstances shall the assessment be payable from or secured by the general funds or taxing power of the City, and the City does not pledge its full faith and credit to the payment of any assessment.

- (b) The final Brownfield Plan shall be approved by the Oakland County Drain Commissioner prior to its approval by the Authority and the City Council.
- (c) The City, the Authority, the drainage district to be formed and REI Brownstown, LLC, the developer identified in the Brownfield Plan (the "Developer") shall enter into an agreement pursuant to Section 471 of the Drain Code of 1956, as amended, before the drainage district issues any bonds to finance the drain project, which agreement shall provide for, but not be limited to, matters governing the construction, operation and maintenance of the drain project, the payment of the City's assessment for its share of the cost of the drain project solely from the Tax Increment Revenues and the collection and use of the Tax Increment Revenues for such purpose.
- (d) The agreement referred to in (c) hereof shall also provide that all costs of constructing the relocated Detention Basin "A," as described above, shall be paid solely from the funds made available by the Developer. Under no circumstances shall the City be assessed for or responsible for paying any of the costs of constructing the relocated Detention Basin "A," and no City funds (including without limitation Tax Increment Revenues) shall be used to pay any such costs.

A certified copy of the resolution of the governing body of the public corporation executing this petition authorizing its execution is attached hereto.

CITY OF ROCHESTER HILLS

By: _____
Mayor

By: _____
Clerk

- 2. The Mayor and City Clerk are authorized and directed to execute the petition for and on behalf of the City and to file the same with the Drain Commissioner of the County of Oakland.
- 3. The City consents to the assessment of part of the cost of the drain project, so located, against this City, with the following understanding:
 - (a) Except as may be otherwise provided for in the agreement referred to in (c) hereof, the City shall only be obligated to pay its assessment for the drain project from the tax increment revenues (hereinafter referred to as the "Tax Increment Revenues"), as defined and provided for in Act 381 of the Public Acts of Michigan of 1996, as amended ("Act 381"), captured by the City of Rochester Hills Brownfield Redevelopment Authority (the "Authority") pursuant to the Brownfield Plan - Former Cardinal/Veteran's Landfill Site (as

- pursuant to Act 381, the "Brownfield Plan") approved by the Authority on March 4, 2004 and the City Council of the City on May 19, 2004. Under no circumstances shall the assessment be payable from or secured by the general funds or taxing power of the City, and the City does not pledge its full faith and credit to the payment of any assessment.
- (b) The final Brownfield Plan shall be approved by the Oakland County Drain Commissioner prior to its approval by the Authority and the City Council.
 - (c) The City, the Authority, the drainage district to be formed and REI Brownstown, LLC, the developer identified in the Brownfield Plan (the "Developer") shall enter into an agreement pursuant to Section 471 of the Drain Code of 1956, as amended, before the drainage district issues any bonds to finance the drain project, which agreement shall provide for, but not be limited to, matters governing the construction, operation and maintenance of the drain project, the payment of the City's assessment for its share of the cost of the drain project solely from the Tax Increment Revenues and the collection and use of the Tax Increment Revenues for such purpose.
 - (d) The agreement referred to in (c) hereof shall also provide that all costs of constructing the relocated Detention Basin "A," as described above, shall be paid solely from the funds made available by the Developer. Under no circumstances shall the City be assessed for or responsible for paying any of the costs of constructing the relocated Detention Basin "A," and no City funds (including without limitation Tax Increment Revenues) shall be used to pay any such costs.
4. The City agrees that it will pay its share of the costs incurred by the Oakland County Drain Commissioner or by the drainage district in the event the drain project or any portion thereof, for any reason, is not constructed, but only from the Tax Increment Revenues as provided in the Brownfield Plan.
 5. The Mayor, City Treasurer, City Finance Director or City Clerk are authorized to approve the circulation of a preliminary and final official statement for the bonds to be issued by the drainage district, to cause the preparation of those portions of the preliminary and final official statement that pertain to the City, and to do all other things necessary for compliance with Rule 15c2-12 issued under the Securities Exchange Act of 1934, as amended (the "Rule"). The Mayor, City Treasurer, City Finance Director or City Clerk are authorized to execute and deliver such certificates and to do all other things that are necessary to effectuate the sale and delivery of the bonds.
 6. The Mayor, City Treasurer, City Finance Director or City Clerk are authorized to execute a certificate of the City, constituting an undertaking to provide ongoing disclosure about the City for the benefit of the holders of the bonds to be issued by the drainage district as required under paragraph (b) (5) of the Rule, and amendments to such certificate from time to time in accordance with the terms of the certificate (the certificate and any amendments thereto are collectively referred to herein as the "Continuing Disclosure Certificate"). The City covenants and agrees that it will comply with and carry out all of the provisions of the Continuing Disclosure Certificate.

The motion carried by the following vote:

Aye: Duistermars, Hooper, Raschke and Yalamanchi

Nay: Ambrozaitis and Rosen

Absent: Holder

Enactment No: RES0284-2006

(Recess 11:26 p.m. - 11:41 p.m.)

2006-0612

Consider a Pledge of the City's Full Faith and Credit for the Amount of the Proposed Clean Michigan Initiative (CMI) Grants and Loans

Attachments: Agenda Summary CMI.pdf; Final CMI grant and loan app.pdf; 081606 DEQ Review Comments on Madison Park CMI Brownfield Revelopment Grant Loan Funding Request.pdf; 081706 Email S. Erickson.pdf; 081706 Memo R. Wackerman, ASTI.pdf; BRA Motion re Madison Park Pr

President Rosen explained that it was his understanding that the loans and grants under consideration were intended by the State to be used by local municipalities to assist with the cleanup of properties the municipality has acquired through tax liens. He noted that in such cases the local municipality is held responsible for the cleanup.

Mr. Carson stressed that the acquisition of these monies will alleviate some of the financial burden by reducing the levels of bonds required to fund the project.

Mr. Fink acknowledged that while the process to obtain these loans and grants does require that the City apply for them, he stressed that the City would, in essence, act as a pass-through agent and would control the disbursement of the funds while assuming no financial risk as the developer would fully indemnify the City for the full amount. He stressed the tight time frame, noting that a resolution pledging the City's full faith and credit in this matter was needed immediately.

Mr. Hooper noted that the difficulty with this request is that it requires the City to pledge its full faith and credit for these grants and loans, while the Consent Judgment specifically states the City is not required to provide financing for this project.

PUBLIC COMMENT:

Ms. Susan Erickson, Chief of Environmental Stewardship Grants and Loans Unit of the Michigan Department of Environmental Quality (MDEQ), stated she had attended a meeting with all parties the previous week in Lansing and noted the following:

- The loan interest rates would be 2%.
- The State is very excited about this project.
- The State would not consider the City as merely a pass-through agent for these funds, but rather a partner in the project.
- The cost of an environmental consultant to determine the appropriate use of these funds can be financed with the funds from the grants and loans.

COUNCIL DISCUSSION:

President Rosen again noted that these grants and loans are intended for the cleanup of property owned by the City. He stressed that the City has no ownership interest in this project and, thus, he was not comfortable committing to these funds.

Mr. Duistermars stated he did not feel this program represented an undue financial risk to the City.

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

Whereas, pursuant to the Brownfield Redevelopment Financing Act, Act 381, Public Acts of Michigan, 1996, as amended ("Act 381"), the City of Rochester Hills Brownfield Redevelopment Authority (the "Authority"), by resolution adopted on March 4, 2004, and the City Council of the City of Rochester Hills (the "City"), by resolution adopted on May 19, 2004, approved a Brownfield Plan (the "Brownfield Plan") for the site of the former Cardinal Landfill and Veteran's Landfill and adjoining properties located near the southeast corner of Hamlin Road and Adams Road in the City (collectively, the "Property"), which Property is owned by REI Brownstown, LLC (the "Developer"); and

Whereas, the Brownfield Plan provides for the tax increment revenues (as defined in Act 381) derived from the Property (the "Tax Increment Revenues") to be used to reimburse the Developer and the Authority for the cost of eligible activities permitted under Act 381, consisting generally of the removal and offsite disposal of waste and the relocation of waste on the Property, the installation of methane and leachate collection systems, the re-engineering and installation of a cap and the installation of special footings and foundations to support the foregoing (collectively, the "Eligible Activities"); and

Whereas, at the request of the Developer, the Authority, at its meeting on August 17, 2006, approved the submission of an application to the Michigan Department of Environmental Quality ("MDEQ") for a grant in the amount of \$1,000,000 and a loan in the amount of \$1,000,000 from funds available through the Clean Michigan Initiative (CMI) program administered by the MDEQ for the purpose of paying part of the cost of the Eligible Activities, subject to certain conditions, one of which is the adoption of a resolution by the City Council that pledges the full faith and credit of the City to the repayment of the CMI loan; and

Whereas, the balance of the cost of the Eligible Activities is expected to be funded by the proceeds of bonds (the "Drain Bonds") to be issued by a drainage district (the "Drainage District") to be formed by the Oakland County Drain Commissioner pursuant to a petition to be filed by the City with the Drain Commissioner pursuant to Chapter 20 of the Michigan Drain Code (Act 40, Public Acts of Michigan, 1956, as amended).

Now, Therefore, Be It Resolved, by the City Council of the City of Rochester Hills, Oakland County, Michigan, as follows:

1. The submission of the application for the CMI loan and grant to the MDEQ is approved.
2. The City Council hereby pledges the full faith and credit of the City to the payment of principal of and interest on the CMI loan, and agrees that in the event that there are insufficient tax increment revenues or other revenues provided by the Developer available to pay such principal and interest when due, then the amount thereof shall be advanced from City funds, and City Treasurer is directed to immediately make such advancement to the extent necessary.
3. In the event that, pursuant to the foregoing pledge of full faith and credit, the City advances out of City funds, all or any part of the principal of and interest on the CMI loan when due, it shall be the duty of the City Treasurer, for and on behalf of the City, to take all actions and proceedings and pursue all remedies permitted or authorized by law for the reimbursement of such sums so paid.
4. No requests for reimbursement shall be submitted under the CMI loan and the foregoing pledge of full faith of credit shall not become effective until all of the following shall have occurred:

- (a) The Developer shall have executed a guarantee, in form and substance satisfactory to the City, that guarantees the prompt payment of the principal of and interest on the CMI loan and the repayment of the CMI grant, if required by the MDEQ, and that is secured by one or more letters of credit in form and substance satisfactory to the City.
- (b) The Brownfield Plan shall have been amended to specifically authorize the use of the Tax Increment Revenues for the payment of the principal of and interest on the CMI loan and the Drain Bonds and, if required by the MDEQ, the repayment of the CMI grant.
- (c) The MDEQ shall have approved a work plan for the Eligible Activities in accordance with Act 381.
- (d) The City, the Authority, the Developer and the Drainage District shall have entered into a Development and Reimbursement Agreement, which agreement shall, among other things, obligate the Drainage District to undertake and supervise the Eligible Activities and provide for the use of Tax Increment Revenues in accordance with the amended Brownfield Plan.
- (e) The Developer shall obtain site plan approval and satisfy and fulfill any and all conditions attached thereto.

All prior resolutions and parts of resolutions insofar as they may be in conflict with this resolution are hereby rescinded.

The motion failed by the following vote:

Aye: Duistermars, Hooper and Raschke

Nay: Ambrozaitis, Rosen and Yalamanchi

Absent: Holder

Enactment No: RES0285-2006

2006-0646

Consider a resolution verifying that the Madison Park Project is to be undertaken if the project funding is awarded

Attachments: Agenda Summary.pdf; 0646 Resolution.pdf

It was determined that, as the previous resolution did not pass, this resolution was rendered moot and, thus, did not require further consideration or action by City Council.

Discussed

ANY OTHER BUSINESS

None.

NEXT MEETING DATE

Special Budget Work Session - Thursday, August 31, 2006 at 7:30 p.m.

ADJOURNMENT

There being no further business before Council, President Rosen adjourned the meeting at 12:14 a.m.

*JAMES ROSEN, President
Rochester Hills City Council*

*JANE LESLIE, Clerk
City of Rochester Hills*

*MARGARET A. MANZ
Administrative Secretary
City Clerk's Office*

Approved as presented at the (insert date, or dates) Regular City Council Meeting.