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Rochester Hills

Minutes - Draft

City Council Regular Meeting

*Erik Ambrozaitis, J. Martin Brennan, Greg Hooper, Vern Pixley, James Rosen,
Michael Webber and Ravi Yalamanchi*

Monday, April 7, 2008

7:30 PM

1000 Rochester Hills Drive

CALL TO ORDER

President Hooper called the Regular Rochester Hills City Council Meeting to order at 7:32 p.m. Michigan Time.

ROLL CALL

Present 6 - Erik Ambrozaitis, J. Martin Brennan, Greg Hooper, Vern Pixley, Michael Webber and Ravi Yalamanchi
Absent 1 - James Rosen

Others Present:

*Ed Anzek, Director of Planning and Development
Bryan Barnett, Mayor
Alan Buckenmeyer, Parks Operation Manager
Derek Delacourt, Deputy Director of Planning
Bob Lawson, Park Ranger II
Jane Leslie, City Clerk
Roger Rousse, Director of DPS/Engineering
John Staran, City Attorney*

Councilman James Rosen gave previous notice that he would be absent and asked to be excused.

PLEDGE OF ALLEGIANCE

DAC Northridge District Cub Scouts Presented the Colors.

APPROVAL OF AGENDA

A motion was made by Webber, seconded by Pixley, that the Agenda be Approved as Presented. The motion CARRIED by the following vote:

Aye 6 - Ambrozaitis, Brennan, Hooper, Pixley, Webber and Yalamanchi

Absent 1 - Rosen

PUBLIC COMMENT

Scott Beaton, 655 Bolinger, requested that City Council consider the current economic conditions in Rochester Hills before considering a tax increase to the community for police and road funding.

Ed Baron, 3310 Greenspring Lane, requested that City Council explore using the City's reserves in the budget prior to considering a tax increase. He stated that the City of Rochester recently reduced property taxes by one mill by using their reserves.

Brenda Savage, 1715 Northumberland Drive, stated that residents are struggling to stay in their homes, and encouraged Council to consider alternative measures before considering a tax increase. She also stated that due to the number of commercial vacancies existing in the City, no new commercial development was warranted at this time.

LEGISLATIVE & ADMINISTRATIVE COMMENTS

Mayor Barnett stated there has been a tremendous response from residents for the Sound the Alarm Campaign. The Campaign will target the second manufactured home community in Rochester Hills on April 26. He stated that 125 smoke detectors were installed two weeks ago, and he is still getting letters of good report and feedback. He stated that any donations to this fund can be made payable to the Rochester Community Foundation, noting Sound the Alarm in the memo line.

Molly Graham, Rochester Hills Government Youth Council (RHGYC) Representative, reported that the Youth Council attended the Michigan Municipal League's (MML) Capital Conference on April 2 in Lansing. The RHGYC representatives participated in the Legislative Day, toured the Capitol Building, and ran a Mock Council meeting. She also announced they are continuing to work on the RHGYC's Youth Summit, scheduled for Saturday April 26.

Mike Webber reported that he attended the MML Conference with Mr. Yalamanchi. He stated that key points addressed by Governor Granholm included a four percent increase in revenue sharing for the first time in six years. He also attended sessions on Brownfield Redevelopment and Revenue Sharing, and had lunch with the Youth Council members at the Conference.

Vern Pixley congratulated the Paint Creek Center for the Arts for a successful fundraiser last Saturday at La Sala. He also announced the upcoming Rochester Area Prayer Breakfast, scheduled for Tuesday, April 29, 2008 at the Shotwell-Gustafson Pavilion on the grounds of Oakland University. Mrs. Ruth Graham will be the speaker.

Erik Ambrozaitis reported on opportunities available through Community Media Network (CMN) TV. He is participating in an eleven-week course, and encouraged residents who may have questions about television production to take an active part in their programs.

Marty Brennan concurred that CMN is a great program paid for by PEG fees (a part of cable fees), not taxes, and it is a great place to be introduced to television and the media. He reported on the following:

- Mayor Barnett, Mike Hartner, Director of Parks and Forestry, and Dan Key from the Clinton River Watershed Council were in attendance at the Third Annual Clinton River Steelhead Outing at Yates Park. He stated that water resources are critical to economic vitality of our community.
- He has had calls regarding the condition of Tienken Road. Even though Tienken Road is a County Road, he encouraged residents to call him with their concerns and he will try to work with the County to get repairs started now that winter is over.

ATTORNEY MATTERS

City Attorney John Staran had nothing to report.

RECOGNITIONS

2008-0165 The Detroit Area Council Northridge District Cub Scouts would like to recognize the City of Rochester Hills for graciously allowing them to hold their Annual Cub Scout Fish-O-Ree at Thelma Spencer Park or Bloomer Park for the past twenty (20) years.

Attachments: [Agenda Summary.pdf](#)

Joseph Kozely, Chairman of Northridge District Boy Scouts of America, attended on behalf of 3,000 youth and 900 volunteers to thank the City of Rochester Hills for allowing the District to use Thelma Spencer and Bloomer Parks for their mid-winter event called the "Fish-O-Ree." This has been an annual event for twenty years. Mr. Kozely stated that the purpose of Scouting is to help boys grow to good men and recent studies indicate that men in Scouting as boys for five years were significantly more likely to graduate from high school, college and have future household incomes in excess of \$50,000. He stated that every footprint on the moon was made by a man who grew up in Scouting. He stated that community support is very important, and Rochester Hills has been a great supporter of Scouting. He presented a plaque and a pocket patch to the Mayor and Council. He also presented a plaque to Ranger Bob Lawson and his staff.

Mayor Barnett thanked the Scouts for coming tonight. He also announced that 27,000 steelhead fish would be dumped into the Clinton River just outside the City Limits off Ryan Road on Tuesday.

This matter was Presented.

CONSENT AGENDA

All matters under Consent Agenda are considered to be routine and will be enacted by one motion, without discussion. If any Council Member or Citizen requests discussion of an item, it will be removed from Consent Agenda for separate discussion.

2008-0164 Approval of Minutes - Special City Council Work Session - August 29, 2007

Attachments: [082907 CC Min Special WS.pdf](#)
[Resolution.pdf](#)

This Matter was Adopted by Resolution on the Consent Agenda.

Enactment No: RES0081-2008

Resolved that the Minutes of a Special Rochester Hills City Council Work Session held on August 29, 2007 be approved as presented.

2007-0447 Request for Purchase Authorization - DPS/FACILITIES: Increase Blanket Purchase Order for Snow Removal Services at four (4) City owned facilities, in the amount of \$25,000.00 for a not-to-exceed amount of \$95,700.00; Advanced Services Landscape, LLD, Sterling Heights, MI.

Attachments: [Agenda Summary.pdf](#)
[Resolution.pdf](#)
022508 Agenda Summary.pdf
022508 Suppl Info Rev. Agenda Summary.pdf
022508 Resolution.pdf
080807 Agenda Summary.pdf
080807 Resolution.pdf

This Matter was Adopted by Resolution on the Consent Agenda.

Enactment No: RES0082-2008

Resolved that the Rochester Hills City Council hereby authorizes the increase to the Blanket Purchase Order to Advanced Services Landscape, LLC of Sterling Heights, Michigan, for 2007-2008 Snow Removal Services at four (4) City owned facilities, in the amount of \$25,000.00 for a not-to-exceed amount of \$95,700.00 through October 15, 2008.

Passed the Consent Agenda

A motion was made by Webber, seconded by Pixley, including all the preceding items marked as having been adopted on the Consent Agenda. The motion carried by the following vote:

Aye 6 - Ambrozaitis, Brennan, Hooper, Pixley, Webber and Yalamanchi

Absent 1 - Rosen

The following Consent Agenda Item was discussed and adopted by separate Motion:

2008-0177 Request for Nonprofit Designation for a Charitable Gaming License from the State of Michigan - Band of Angels, applicant.

Attachments: [Agenda Summary.pdf](#)
[Band of Angels Letter.pdf](#)
[IRS Nonprofit.pdf](#)
[041108 Event.pdf](#)
[Resolution.pdf](#)

Mr. Ambrozaitis stated that Band of Angels is a terrific organization, and he supports this.

A motion was made by Webber, seconded by Pixley, that this matter be Adopted by Resolution. The motion CARRIED by the following vote:

Aye 6 - Ambrozaitis, Brennan, Hooper, Pixley, Webber and Yalamanchi

Absent 1 - Rosen

Enactment No: RES0083-2008

Resolved that the request from Band of Angels located at 3048 Charlwood Drive, Rochester Hills, Michigan 48306, Oakland County, asking that they be recognized as a nonprofit organization operating in the community for the purpose of obtaining a charitable gaming license, be considered for approval.

NEW BUSINESS

2008-0086 Request for Conditional Land Use Approval - Pei Wei Asian Diner Outdoor Seating, located at the Boulevard Shoppes on Walton Blvd., east of Livernois, zoned B-2, General Business, Pei Wei Asian Diner, applicant.

Attachments: [Agenda Summary.pdf](#)
[Plans.pdf](#)
[Map.pdf](#)
[Staff Report.pdf](#)
[Fire Dept Memo.pdf](#)
[Resolution.pdf](#)

Derek Delacourt, Deputy Director of Planning, indicated that this request was for Conditional Land Use for outdoor seating for Pei Wei Asian Diner. The tables will be located in a corridor between the two main parts of the building under an overhang. It has been reviewed and recommended for approval by all applicable City departments and the Planning Commission with recommended conditions including the combustibility of tables and chairs and hours of operation.

Mr. Ambrozaitis commented that he is in support of this.

A motion was made by Yalamanchi, seconded by Ambrozaitis, that this matter be Adopted by Resolution. The motion CARRIED by the following vote:

Aye 6 - Ambrozaitis, Brennan, Hooper, Pixley, Webber and Yalamanchi

Absent 1 - Rosen

Enactment No: RES0079-2008

Resolved, that the Rochester Hills City Council hereby approves the Conditional Land Use for Pei Wei Asian Diner, City File No. 77-505.2, for outdoor sales and service of food and beverages located on Walton Blvd. in the Boulevard Shoppes, based on the site plan dated received by the Planning Department on February 8, 2008 with the following findings and subject to the following conditions:

Findings:

1. The subject site will be internal between two buildings, and does not appear that it will be detrimental, hazardous, or disturbing to existing or future neighboring uses, persons, property or the public welfare.
2. The existing development does promote the intent and purpose of this chapter.
3. The subject site has been designed, constructed, operated, maintained and managed so as to be compatible, harmonious and appropriate in appearance with the existing or planned character of the general vicinity, adjacent uses of land, the natural environment, the capacity of public services and facilities affected by the land use, and the community as a whole.
4. The subject site is served adequately by essential public facilities and services, such as highways, streets, police and fire protection, drainageways, refuse disposal, or that the persons or agencies responsible for the establishment of the land use or activity shall be able to provide adequately any such service.
5. The subject site does not create additional requirements at public cost for public facilities and services that will be detrimental to the economic welfare of the community.

Conditions:

1. All tables and chairs must be of a non-combustible material; no umbrellas are to be used in the area, and signage shall be placed, indicating that combustibles are not to be stored in the outdoor seating area, per Building Department memo of February 20, 2008.
2. Dates of operation for outdoor seating will be from April 15th until October 31st.

2007-0190 Request for Approval of the Final Site Condominium Plan - The Commons South, a twelve-unit site condominium development on 3.98 acres, Zoned R-4, located off of Shortridge, east of Livernois; D & F Development, L.L.C., applicant

Attachments: [Agenda Summary.pdf](#)
[Staff Report 031808.pdf](#)
[Map.pdf](#)
[Plans.pdf](#)
[Assessing Dept Memo.pdf](#)
041107 Agenda Summary.pdf
[Resolution.pdf](#)
041107 Resolution.pdf
Plans.pdf
Staff Report 010506.pdf
Memo Delacourt 031207.pdf
Minutes PC 011006.pdf

Frank Fleury, 1171 Hickory Hill, Rochester Hills resident and Agent for D&F Development, L.L.C., attended as a representative for this proposed development.

Mr. Delacourt indicated that the applicant is requesting final site planning approval. The preliminary plan was approved by the Planning Commission and City Council over a year ago. The applicant has gone through a construction review which has been approved and has also submitted Exhibit B documents; Master Deed and Bylaws for the site which have all been reviewed by the City Attorney and applicable staff. The final site condo plan submitted remains consistent and exact as to what was approved as preliminary and Staff recommends approval.

A motion was made by Pixley, seconded by Brennan, that this matter be Adopted by Resolution. The motion CARRIED by the following vote:

Aye 6 - Ambrozaitis, Brennan, Hooper, Pixley, Webber and Yalamanchi

Absent 1 - Rosen

Enactment No: RES0080-2008

Resolved, that the Rochester Hills City Council hereby approves the Final Site Condominium Plan for The Commons South, City File No. 05-011, a 12-unit site condo development located off of Shortridge, east of Livernois, zoned R-4, One Family Residential, Parcel No. 15-34-301-013, based on plans dated received by the Department of Planning and Development on January 11, 2008, with the following findings and subject to the following conditions.

Findings:

1. All applicable requirements of the One-Family Residential Detached Condominiums Ordinance and Zoning Ordinance can be met.
2. Adequate public utilities are currently available to properly service the proposed development.
3. The Final Plan represents a reasonable and acceptable plan for developing the property.
4. The Final Plan is in conformance with the Preliminary Plan approved by City Council on

February 15, 2006.

Conditions:

1. The applicant shall submit a Performance Bond for proposed trees and landscaping of \$13,590.00, as adjusted if necessary by the City, prior to issuance of a Land Improvement Permit.
2. Tree protective fencing shall be installed, inspected and approved by the City's Landscape Architect, prior to the issuance of the Land Improvement Permit for this development.
3. The applicant must obtain a Land Improvement Permit and any outstanding permits (i.e., Oakland County Drain Commission) prior to grading and construction commencing, per Public Services memo of January 23, 2008.
4. Add two notes to Sheet 3 per Fire Department memo of January 24, 2008, prior to Final Approval by Staff.
5. Address two conditions of Building Department memo dated January 28, 2008, prior to Building Plan Approval by Staff.

2007-0435 Request for Approval of the second 381 Work Plan for the NE Corner Hamlin/Adams Brownfield Project and of the Reimbursement Agreement for the project.

Attachments: [Agenda Summary.pdf](#)
[BRA Staff Report 031308.pdf](#)
[Memo STS Summary 032808.pdf](#)
[Memo STS Summary 021408.pdf](#)
[Hamlin Adams Act 381 Workplan rv4.PDF](#)
[Hamlin Adams Brownfield Plan Final.pdf](#)
[Consent Judgment.pdf](#)
[Reimbursement Agreement.pdf](#)
[Memo Assessing Cumulative Taxes 110906.pdf](#)
[Minutes BRA 031308.pdf](#)
[Minutes BRA 022108.pdf](#)
[Minutes CC 112906.pdf](#)
[Minutes CC 111506.pdf](#)
[Minutes BRA 092806.pdf](#)
[Resolution.pdf](#)
Staff Report Phase II 381 Work Plan.pdf
Hamlin Adams Act 381 WP Feb 12 2008.pdf
Brownfield Plan Final.pdf
02-14-08 STS 381 review (3) finaldoc.pdf
09-28-06 BRA Motion.pdf
09-18-03 BRA Minutes.pdf
Hamlin Adams Act 381 Workplan 02-19-08 revised.pdf
Storm Water Detention Estimates.pdf
03-06-08 STS Review Letter.pdf
Neil Silver Email Correspondence.pdf

A motion was made by Yalamanchi, seconded by Webber, that this matter be Denied by Resolution. The motion FAILED by the following vote:

Aye 3 - Ambrozaitis, Webber and Yalamanchi

Nay 3 - Brennan, Hooper and Pixley

Absent 1 - Rosen

RESOLVED that the Rochester Hills City Council agrees to withhold action on the 381 Work Plan until the Environmental Protection Agency letter confirming their telephone conversation of April 7, 2008 is received.

2007-0435 Request for Approval of the second 381 Work Plan for the NE Corner Hamlin/Adams Brownfield Project and of the Reimbursement Agreement for the project.

Attachments: [Agenda Summary.pdf](#)
[BRA Staff Report 031308.pdf](#)
[Memo STS Summary 032808.pdf](#)
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[Hamlin Adams Act 381 Workplan rv4.PDF](#)
[Hamlin Adams Brownfield Plan Final.pdf](#)
[Consent Judgment.pdf](#)
[Reimbursement Agreement.pdf](#)
[Memo Assessing Cumulative Taxes 110906.pdf](#)
[Minutes BRA 031308.pdf](#)
[Minutes BRA 022108.pdf](#)
[Minutes CC 112906.pdf](#)
[Minutes CC 111506.pdf](#)
[Minutes BRA 092806.pdf](#)
[Resolution.pdf](#)
Staff Report Phase II 381 Work Plan.pdf
Hamlin Adams Act 381 WP Feb 12 2008.pdf
Brownfield Plan Final.pdf
02-14-08 STS 381 review (3) finaldoc.pdf
09-28-06 BRA Motion.pdf
09-18-03 BRA Minutes.pdf
Hamlin Adams Act 381 Workplan 02-19-08 revised.pdf
Storm Water Detention Estimates.pdf
03-06-08 STS Review Letter.pdf
Neil Silver Email Correspondence.pdf

Neil Silver, Attorney with Strobl & Sharp, P.C., stated the following:

- The original cleanup approach submitted to the State previously was protective of the environment and did meet the intent of the 381 Work Plan.
- Working with City staff and the City consultant, extra precautions and costs have been added.
- The developers are only required to clean up the property to the extent approved by the Michigan Department of Environmental Quality (DEQ).

The developers ask the City to accept the plan and allow it to be submitted to the DEQ for approval so the cleanup can be started. He stated the Environmental Protection Agency (EPA) indicated they will not be the lead agency, but rather will follow the State. The EPA has certain requirements and Mr. Silver stated that his group is fully prepared to comply with each requirement. He presented amendments and proposed page inserts that include those items that the EPA

requested. These changes will add \$6,000 to the cost of the eligible activities and are part of the Due Care Plan. The Due Care Plan has been added to the proposed 381 Work Plan.

President Hooper asked for a summary of these last-minute EPA changes.

Mr. Silver stated that it is their understanding that the EPA wants a Risk Assessment after cleanup is done, showing that all sensitive receptors after cleanup are protected. He stated that a Due Care plan in Michigan requires the same thing, asking if the site is safe for its intended use. He stated that they have done everything that they have been asked to do. Baseline air monitoring has been done at a cost of approximately \$20,000. The added protection items requested by the City added \$150,000 to \$200,000. They have tested neighbor's backyards. He stated that these revisions have increased the cost to their client significantly. He requested that interest be included in the 381 Work Plan, in order for the State of Michigan to decide whether interest is an eligible expense.

Tony Anthony, CPG, CHMM, REPA, CP, Principal, AKT Peerless Environmental Services, detailed the results of the 381 investigation, and what they proposed to do for the cleanup. The plan for the investigation was approved by Council last year, and was also reviewed and approved by MDEQ. Mr. Anthony stated that as a result of the investigation, a Proposed Response Due Care Activities Map was developed, detailing the areas to be concerned with:

-Area A.

-Area B, includes the surface area and includes PCBs within the fenced area. There is a risk that PCBs could migrate from the fenced area through surface water runoff and toward the residential property.

-Area C, includes an area of fill material.

-Area D, through test pitting, is an area of environmental contamination and concern

-Area E, is the fenced area that DEQ has responded to in the past with removal action, removing several drums.

He stated that the intent of this investigation was to define the extent of material needing to be removed; and if it could not be removed, what an appropriate solution would be. The investigation also sought whether methane was migrating from a former historical landfill across the street onto their property. After conducting this investigation, an area was defined that needs either removal action or some type of encapsulation.

-After the investigation was completed, Area A became much smaller along with the volume that needs to be removed. This area has metal contamination as well as solid waste material.

-Area B, the area of concern for PCBs, had a dense grid of samples taken and the results indicated that they do not have PCBs migrating to the residential properties.

-Area C, through investigation, was narrowed down to a smaller circle. Metal contamination was found as well as solid waste material that would need to be

removed.

-Area D, through a test pit and additional borings done in a concentric manner, defined the area of removal needed.

-Area E: PCB contamination was outlined by a red line on the Due Care Activities Map. Proposed remediation is a removal action for all of the contaminated areas, with the exception of this PCB-contaminated area, where the proposed remedy is encapsulation. The encapsulation will include a two-foot wide clay wall around all sides of the PCB-contamination, with a flexible membrane liner cover and a clay barrier. In addition to the containment proposed in this area, on-site air monitoring will be done during all excavation activities to give real-time results. Each of these air monitoring alarms are built with a light alarm, so in the event that they detect that dust is above the action level, the alarm will sound, and operation will cease. Dust suppression steps will be implemented and work will not resume until the levels in the dust go below the action level.

The only area where soil gas and methane was identified is a small pocket. The presumptive remedy for the portion remaining within the encapsulated area, includes a vapor barrier and a sub-slab depressurization/ventilation system beneath the floor of the two closest buildings. However the bulk of the mass that has the potential for generating this will be removed, and the rest will be encapsulated.

The stormwater system is designed so that everything is below grade, but it is also designed to have tight seals on the piping and on the storage units so that stormwater is restricted from infiltrating into the ground and coming in contact with the encapsulation area.

Mr. Delacourt stated that the project previously had a Brownfield Redevelopment Plan approved and associated with it. The initial version of the 381 Plan approved previously guided the initial investigation work that took place on the site. The 381 Plan in front of Council tonight has been reviewed by the Brownfield Authority and accepted for submittal to the DEQ subsequent to some conditions, including Council's review. Steps remaining in the process associated with this plan deal with the approval and submittal of this second 381 Plan to the DEQ, which starts the statutory clock running for the DEQ review of the remediation. At end of that process, the DEQ can either approve, disapprove or ask for additional information. Once the DEQ approves the Plan, that enables the applicant to look at the active work of the proposed remediation. There are a few additional details remaining and associated with the constructability of the development and some other engineering issues that the City would be working with the applicant on prior to going on the site. However, this is basically the last plan that the City will see that outlines how the contamination is proposed to be remediated and encapsulated on the site, what soils are going to be removed and the best estimates of the costs associated with those at this point. The Brownfield Redevelopment Plan identifies approximately \$4.5 million in potential eligible activities, and this plan has approximately \$3.2 million in estimated costs. The tables in the original Brownfield Plan approximate a payback of fifteen years: eight years for completion of construction and seven years for enough Tax Increment Financing (TIF) to be generated from the site to pay back for the eligible activities. He introduced

Jim Anderson, STS Consultants, as the City's Environmental Consultant in relation to this project.

Jim Anderson, STS Consultants, stated that neither he, nor the EPA are 100 percent sure of the EPA's role. They have characterized their approval as not the lead organization, but as a parallel track, and the EPA is working somewhat independently and outside of their typical mode of operation. His understanding from them today is that they would like to see the Risk Assessment done prior to the implementation of any remediation. He does not believe this will change anything that could happen tonight.

Mr. Silver replied that the amendments to the cost submitted tonight must be submitted in the Plan to the State, or they will not be reimbursable.

Mr. Anderson agreed.

President Hooper questioned whether this change to the Plan would have to go back to the Brownfield Redevelopment Authority (BRA) before it goes to DEQ.

Mr. Delacourt indicated he did not believe it needed to go back to the BRA to be amended into the Plan, but he will verify this with DEQ. He believes that with the recent changes to Act 381, even if these costs were already incurred they would still be reimbursable.

Mr. Staran indicated that regarding cost amendments, he believes Mr. Delacourt is correct. He stated, however, that if interest were included as a reimbursable expense, an amendment to the Brownfield Plan would be required.

President Hooper asked Mr. Anderson to summarize the EPA's commentary received today.

Mr. Anderson stated that the EPA maintained their jurisdiction in the project, but not as the lead organization. They will be in a parallel track with MDEQ. Everything that the applicant produces that is filed with the MDEQ will also be filed with the EPA. The EPA has pledged that they will attempt to maintain the same statutory review timelines that the DEQ has to facilitate the process. They acknowledged that this is a very visible project, very important in the City, and it needs to continue to be transparent as far as regulation.

Public Comment:

Brenda Savage, 1715 Northumberland Drive, stated that the tax benefit to the City and its taxpayers would not be received for at least fifteen years, and this was of concern. She felt this development could add a burden to the residential community regarding increased need for City services to support it, and expressed concerns for the Clinton River and the groundwater system. She also questioned if any member of Council had any conflicts, and if so should be recused.

Tom Stevenson, 708 River Bend, Chairman of the Brownfield Redevelopment Authority, agreed that it was his opinion that the developer complied with all

requirements. He stated that the process itself caused delays, including problems found with the 381 Work Plan that was approved. He stated the Authority has responded to the developer, the DEQ, and the EPA as requested, and questioned who would be the lead agency. The Brownfield Authority developed the following questions and answers:

- Does the site meet the definition of a "facility"? It was determined that this answer is yes. This is dictated by the amount of contamination that is in the site and how it will be removed.
- The Authority is addressing the concerns of the residential area surrounding this site to ensure the residents' safety.
- There are still questions on the EPA's involvement, and the Authority may have to address this again.
- This 381 Plan is a living document - a work in process.

Scott Beaton, 655 Bolinger, questioned the residential zoning of this property in the Master Plan, and stated he would like to see Council consider keeping this parcel residential after the cleanup.

Ed Baron, 3310 Greenspring, stated that the barrels were originally found when the site was intended for residential development. Work was stopped and the EPA responded, removing 5,000 barrels from the area that is now fenced off. He recalled that the tab for the removal was \$5 million between State and Federal funds. He stated that as a resident, he would like the assurance from Mr. Anderson that the City will be making the right decision. This issue concerns health and safety to the residents much more than economic development.

Deanna Hilbert, 3234 Quail Ridge Circle, addressed the threat to health and property values. She stated this is not an ordinary typical urban Brownfield. She has attended the Environmental Oversight Committee meetings for over a year, and has spoken to the EPA, MDEQ and Oakland County Drain Commission representatives. She stated that PCBs have been tested at up to 6,000 parts per million on this property; the EPA threshold is 50 parts per million. PCBs accumulate in fat tissue and are known to cause cancer, hormone problems, and can irritate the skin and mucous membranes. They do not move easily in the ground, but do move in water. This property runs downhill, and two aquifers are under it, and it abuts a residential neighborhood and City Park property. She questioned what would happen if additional work needed to be done in the future, or if the developer abandons the project if costs became excessive.

Tom Zelinski, 1127 Kingsview, also asked what happens if after investigation more contamination is found and the project becomes unfeasible. He asked if there is a plan, bond, or insurance policy for this instance. He further questioned what happens if a problem is encountered in future years.

Glenn Moore, 2195 Bretton Drive, stated that he feels the land is a potential liability issue for the future. He questioned the danger of contact with the eventual containment field.

President Hooper addressed the resident's specific questions and concerns:

-He commented that he did receive a donation from Mr. Aragona during his campaign, but returned it. He saw no reason to recuse himself and knew of no other reason for any Council members to recuse themselves.

-He indicated that the tax benefit is generally the incentive, and that if this was not a possibility, the property would continue to sit there, as it has for decades, and not be cleaned up. There will be a future tax benefit to the City, but there will not be an immediate one.

-Regarding groundwater contamination issues, he deferred to Mr. Anderson to respond.

Mr. Anderson stated the following:

- There is already minor groundwater contamination on the site from the years of contaminants sitting there. This process will cap the source area within the fenced area and west of the containment area, and has the goal to reduce surface infiltration, actually flushing additional contaminants. It is proposed that close to 30,000 cubic yards, or roughly 900 truckloads, of material will be taken away and will remove a fair amount of the contamination source.

- This Due Care Plan would migrate from owner to owner, and can not be changed unless additional cleanup is done. It is a protective document outlining the parameters. It specifies detailed issues such as lawn maintenance, sewer repairs, and is a relatively living document, revised as needed. There will also be a requirement to control the exposure in perpetuity. If the property is transferred, the following owners will have to maintain same protection level.

- Future monitoring would be required. He also stated that based on today's discussion, the DEQ would most likely ask for longer groundwater monitoring.

Mr. Delacourt pointed out that the potential for an underground stormwater system was identified in discussions to determine whether it is an eligible activity. There was a potential for the stormwater system to be more costly than normal because of potential contamination. At this point, it is not known if the system will be underground, or above-ground. The Consent Judgment indicates that the plans and the reimbursement agreement submitted to this time are for identification of eligible activities only, and do not indicate any site plan or engineering review. Option Number Four, an underground system cited in the plan, is to allow the costs associated with this system to be considered as an eligible activity because this was the most expensive eligible cost. None of these systems have been reviewed by the City Engineer for location, design, or for any other reason. The DEQ will review this for cost and if they feel it is an eligible activity, they will approve it for School Tax capture. The City will review design and location as part of a normal site plan and engineering process.

Mr. Anderson stated that the area of encapsulation will be deed-restricted, and this travels with the title, forbidding additional redevelopment on that portion of the property.

President Hooper requested that the Consultant address commercial versus

residential cleanup standards.

Mr. Anderson stated that this plan actually provides for a hybrid of primarily commercial and industrial standards. It is unlikely that residential standards could be achieved. The applicant will do confirmatory sampling once the excavation gets down to native soil. After testing they will have a good idea for the future what residual contaminants may be left over. Very likely, these would be low based on the volume of the contaminants they are proposing to remove.

Mr. Staran replied that the Consent Judgment does specify the hybrid level of cleanup. The Consent Judgment did not require the cleanup to residential standards because a residential project was not being proposed. It was deemed that a residential development was not feasible on this site given the level of contamination and cost proposed for remediation.

Mr. Anderson stated that the Plan itself is administratively complete and can be sent in as soon as Council decides it is ready to go. From a technical standpoint, it has been proposed in the spirit of the Consent Judgment, and he believes it to be protective of the local environment. There may be some additional monitoring that the City wishes to do outside of this at some point in time of the river itself, and farther downgradient of the site. It is possible that the EPA may mandate some additional installation of monitoring wells downgradient, likely off the property.

Mr. Delacourt added that the City is interested in what the DEQ sees in this Plan. He stated that there is a good chance that the DEQ will ask for more information, but at this point they will not formally review and comment until something is sent to them. He noted that input is needed from DEQ.

President Hooper asked what will happen if additional costs go beyond the \$3.2 million.

Mr. Delacourt stated that if these costs are eligible and based on the 381, even if they are not identified in the Plan, those adjustments can be made. If they are items outside of the approved eligible activities in the Brownfield Redevelopment Plan, they would have to request an amended Brownfield Plan to allow them to be reimbursed, or just absorb them as their own costs. It does not fall back to the City to pay for additional costs.

President Hooper questioned who the authority is that determines this.

Mr. Delacourt indicated that if it is Staff's belief that if these costs fall within the parameters of either this Plan or the Brownfield Plan, those items would be submitted to DEQ for approval. If the items fall outside or exceed the amount approved in the Brownfield Plan, or are not specifically identified in the Plan, then it would have to come back to both the Brownfield Authority and City Council.

President Hooper stated in response to resident concerns, a developer could walk from the project. He asked what guarantee the City has that the developer would not change.

Mr. Anderson responded that no guarantees can be mandated. If it exceeds the cost that the developer can tolerate, it is conceivable that he could walk away.

Mr. Delacourt stated that the developer would still be responsible for Due Care with regard to the condition they leave the site in. They would also be responsible to make sure it is protected and would still be responsible for ongoing Due Care, even if they walk away from the proposed above-ground development. The normal City bonding process for infrastructure, utilities, pavement, apply for the above-ground portion.

President Hooper questioned what recourse the City has if the project is halfway through and the developer pulls out.

Mr. Delacourt stated if it is prior to any above ground construction, it would be Due Care associated with the environmental situation on the site where they are leaving it. According to State law, they would have to close that site and fence it off.

Mr. Staran indicated that the DEQ, and possibly the EPA would be involved in the event of a violation. He asked Council to keep in mind that the source of any reimbursement of the costs is the tax increment revenues generated by the property. If they do not proceed with the remediation, which they are required to do by the Consent Judgment before they can actually start building on the site, they will not generate any tax increment revenues because they will not have increased the value of the property, and therefore, they will get no reimbursement. They will have to finish the project before they will be eligible for the reimbursements.

President Hooper addressed the status of contamination of Riverbend Park.

Mr. Anderson indicated basic research into the historical files was done for the adjacent property which was not a part of the park, and the park itself. He noted that there are 80- to 100-year old trees on that original ridgeline that probably pre-date the deposition of the waste on the property. There could be a little bit of contamination that has migrated that way, but to be specific, they cannot tell at this point. The City has requested that he look into coming up with an investigation plan to move that forward as well.

Mr. Delacourt stated that Council will need to have a discussion in the near future as to how to investigate the testing of City property, independent of this project. The City parcel is not included in the original Brownfield Plan and is not associated with any development on the project, nor is it included as far as a reimbursement.

Mr. Silver stated that the below-ground system proposed was the request of the Brownfield Authority and that the Authority did not want to see an above-ground pond abutting resident's homes. What has been proposed is a fully sealed system that will be connected to a storm sewer, and not a drainage field. It will not be a source of groundwater migrating or forcing water below.

Mr. Delacourt stated that Brownfield members expressed their preference for an underground system. City engineers have not reviewed any placement or design.

Council Comments:

Mr. Webber asked if today's communications with the EPA Chicago Region V office could be considered EPA's official response.

Mr. Delacourt stated that nothing from the EPA is in writing. They indicated dual-track involvement with some additional risk analysis. He would not contact anyone above that because we are working through the EPA's Regional Office.

Mr. Webber asked if Mr. Delacourt's recommendation would also be to add some of the same conditions added during the Brownfield Authority meeting he attended on March 13 before sending it to the DEQ.

Mr. Delacourt indicated it was his opinion these conditions would be added, to satisfy the EPA prior to any work being conducted on the site.

Mr. Silver indicated that the Consent Judgment is clear, and the EPA concurred, if the developer did any work on site, they did it at their own risk.

Mr. Staran stated that they were told a letter would be coming to the City from the EPA within a week.

Mr. Anderson stated that the EPA had the authority and jurisdiction to act regardless of what the DEQ does.

Mr. Delacourt stated that it was his opinion that today's response by the EPA satisfies his concern. It was Staff that recommended the conditions to the Brownfield Authority, and until he sees the EPA response outlining the process either by e-mail or paper communication, he recommends that the conditions stay.

Mr. Hooper reiterated that should this be successful tonight and Council votes to move ahead, it is still at the developer's risk.

Mr. Silver stated he understood this.

Mr. Yalamanchi asked for clarification whether it was seen after testing that PCBs were migrating to the east.

Mr. Anthony stated that because the property is being tested at the boundary, it is difficult to determine migration. A couple of historical borings to the east looked as though the fill material may not extend far onto the City's property, but this is preliminary and was only done in two spots. Considering the two borings and older trees, initial indications reveal that if there is encroachment onto the City property it is not too far.

Mr. Silver stated that they did not test on the City property as this would not have been an eligible expense.

Mr. Yalamanchi noted that methane was indicated in only two areas and asked about a future monitoring system.

Mr. Anthony stated they will be removing the source area for methane. The presumptive remedy is the two buildings closest to that area will have the sealed barrier as well as the ventilation system. A monitoring system is not required unless it is proven that methane is being vented.

Mr. Yalamanchi questioned whether a system would be installed at a later date if methane was observed.

Mr. Anthony indicated a system will already be in place. The Due Care plan requires that no unreasonable exposure should exist for people at the property. In the event that methane is detected in the ventilation system for the building, then they will have a permanent obligation to respond to that and ensure due care and safety for the people at the site.

Mr. Yalamanchi questioned why construction standards cannot be identified now for the 381 Plan and the encapsulation.

Mr. Silver stated that from a cost standpoint, it was not appropriate to do this before the State said it is time to do so. The developers need assurance that the State will accept this remediation system before the developers hire consultants and engineers to design one. Once the State approves the concept, this will be done.

Mr. Yalamanchi asked if the State will dictate how a remediation system should be designed.

Mr. Silver stated that the State looks at whether the costs and tasks are eligible, reasonable and necessary.

Mr. Anderson indicated that he will be afforded the opportunity to review the standards. However, at the same time, this process does not circumvent any City codes or policy with regard to construction.

Mr. Yalamanchi discussed ongoing monitoring, and asked if the City will receive reports from the owner of the property as to the monitoring or the Due Care Plan post-development.

Mr. Anderson responded that it was not likely, however, he stated it would not be unreasonable to request a courtesy notification or a contingency discussion.

Mr. Yalamanchi inquired what notification system would be in place if any public health issues arise.

Mr. Anderson said this is yet to be worked out. Notifications are eligible activities that can be reimbursed, and they are part of the design details and the long-term operation and maintenance of the site.

Mr. Yalamanchi indicated that the possible change of property ownership is something that must be addressed.

President Hooper indicated this could be put into the Due Care Plan.

Mr. Yalamanchi inquired what thresholds in the underground system and air pollution monitoring will trigger City notification and stop work.

Mr. Anthony indicated that the thresholds presented in the 381 Work Plan are set at low levels. Work would be stopped before they would approach any level that would be a threat to the neighbors or human health or safety. In addition to the dust monitoring, monitoring for volatile organic compounds (VOCs) right at the work zone will be done. Levels are governed by OSHA. Steps would be taken to stop the work, and corrective action would ensue long before reaching those thresholds at the property boundaries. All of this would be documented and the document presented both to the State and to the City. He stated that monitoring would be done throughout the work day. At the end of the work day, the site would be left in a manner where dust would not be generated.

Mr. Staran stated that under the Consent Judgment, the City is entitled to have its own environmental consultant on site during remediation activities and the City would be given advance notice of those activities.

Mr. Yalamanchi stated his main concern is that the safety standards are adhered to at all times. He asked Mr. Staran whether the agreement or the Consent Judgment allow for construction to begin before remediation is completed.

Mr. Staran stated the site must be remediated before any construction.

Mr. Webber asked what body determines that the site has been remediated.

Mr. Anderson responded that this decision is made by multiple parties. Someone from his staff will review the accurate records, the DEQ will review those records, construction summary reports, etc. The DEQ representative will probably visit the site once or twice, but not be there on a daily basis. The City's oversight will be primary. When it comes to remediation, Area E has the most complexity. A lot of construction will go into the encapsulation process.

President Hooper indicated that as part of the plan, the City will have the consultant overseeing the work. He asked for verification that this is part of the reimbursable expense of the plan.

Mr. Anderson responded that it is.

President Hooper addressed the proposed amendment to the Brownfield Plan, regarding the inclusion of interest and asked Council to comment. He stated that he moved a couple of years ago not to include interest in the Plan, and he still feels that it is not appropriate to include interest.

Mr. Webber stated that as a member of the Brownfield Authority, he concurred with President Hooper. He stated this should have been presented as part of the entire package on March 13.

Mr. Brennan stated that he felt all safeguards are in place and agreed with President Hooper regarding not allowing the payment of interest. He asked for a revision to the suggested motion in the packet to cover any subsequent or amended 381 Plans. He also wanted to add a reference to the conversation with the EPA, and asked for the following words to be included in the motion: "through confirmation in writing of the April 7, 2008 conversation with the City's consultant".

Mr. Webber stated he still has a lot of concerns, but that this is a living breathing document, and it can be amended and altered. The Consent Judgment demands that the DEQ be given review. He believes there is a necessary level of protection to move this forward.

Mr. Yalamanchi asked for clarification on Condition Number 4. He asked if the documents need to be reviewed and approved by the City prior to remediation activities.

Mr. Staran indicated that the review and approval is needed by the Engineering Department, not Council or the Brownfield Redevelopment Authority.

Mr. Delacourt indicated that when it comes to engineering and construction documents, the DEQ is the approving body. The City is asking to be provided the documents for review and comment.

Mr. Staran indicated that Council's actions would not constitute a formal approval; however, if red flags were presented, the City could comment. The more formal engineering will come as a part of the site plan approval process.

Mr. Delacourt indicated that the City does not have standards for the encapsulation method, and does not include the permeability of clay for enclosure of PCBs. The City will want to ensure that any utilities, workers and inspectors on site have safe working conditions. There is no approval or City ordinance to approve these documents.

President Hooper indicated the City will rely on the environmental consultant.

Mr. Pixley stated he appreciated the residents' comments, and relied on the experts to share their advice. He agreed that the site must be cleaned up and feels this plan addresses appropriate cleanup standards. The City is governed by the Consent Judgment, and there are specific actions the City must take, and specific actions the City cannot take. He stated he appreciated the fact that EPA and MDEQ is involved, and that a Due Care Plan is a part of the process. Air standards, stop work possibilities and methane concerns are being addressed. He does not believe there is a perfect way to address this, but he believes the City has taken some very appropriate steps to ensure the safety of the community and the citizens.

Mr. Webber asked if Council should add language to the proposed motion covering extra reimbursable items that the EPA was asking for in their communications.

Mr. Staran indicated that those extra items would not require an amendment of the 381 Work Plan.

A motion was made by Brennan, seconded by Pixley, that this matter be Adopted by Resolution. The motion CARRIED by the following vote:

Aye 4 - Brennan, Hooper, Pixley and Webber

Nay 2 - Ambrozaitis and Yalamanchi

Absent 1 - Rosen

RESOLVED that the Rochester Hills City Council hereby APPROVES the Second 381 Work Plan for the NE Corner Hamlin/Adams Brownfield Project, City File No. 03-013, based on the Plan dated received by the Planning Department March 24, 2008 subject to the following conditions:

Conditions:

1. That all subsequent or amended 381 Work Plans for the site are required to be reviewed and accepted by the City's Brownfield Redevelopment Authority and approved by City Council prior to submittal to the Department of Environmental Quality (DEQ).
2. That prior to any work associated with this Plan being conducted on the site, the issues related to EPA jurisdiction and any associated approval be resolved to the City's satisfaction, through confirmation in writing of the EPA's April 7, 2008 telephone conversation with the City's consultant.
3. 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 an amended BRA Plan to the Brownfield Redevelopment Authority.
4. That prior to remediation activities being conducted on site, appropriate engineering/construction documents are provided for review by the City.

2007-0435 Request for Approval of the Reimbursement Agreement for the NE Corner Hamlin/Adams Brownfield Project.

Attachments: [Agenda Summary.pdf](#)
[BRA Staff Report 031308.pdf](#)
[Memo STS Summary 032808.pdf](#)
[Memo STS Summary 021408.pdf](#)
[Hamlin Adams Act 381 Workplan rv4.PDF](#)
[Hamlin Adams Brownfield Plan Final.pdf](#)
[Consent Judgment.pdf](#)
[Reimbursement Agreement.pdf](#)
[Memo Assessing Cumulative Taxes 110906.pdf](#)
[Minutes BRA 031308.pdf](#)
[Minutes BRA 022108.pdf](#)
[Minutes CC 112906.pdf](#)
[Minutes CC 111506.pdf](#)
[Minutes BRA 092806.pdf](#)
[Resolution.pdf](#)
Staff Report Phase II 381 Work Plan.pdf
Hamlin Adams Act 381 WP Feb 12 2008.pdf
Brownfield Plan Final.pdf
02-14-08 STS 381 review (3) finaldoc.pdf
09-28-06 BRA Motion.pdf
09-18-03 BRA Minutes.pdf
Hamlin Adams Act 381 Workplan 02-19-08 revised.pdf
Storm Water Detention Estimates.pdf
03-06-08 STS Review Letter.pdf
Neil Silver Email Correspondence.pdf

Mr. Yalamanchi stated that it was his opinion that the reimbursement agreement should not include interest. He further stated that he would like to see language in the Agreement that 1) whatever Tax Increment Financing (TIF) is collected, ten percent will go to the Revolving Loan Fund, and 2) once the Administrative Costs are covered, the remainder of the Fund will be used for the Reimbursement.

President Hooper asked Mr. Staran if the agreement needed to be amended to include 100 percent capture.

Mr. Staran stated that on page three, paragraph two of the Reimbursement Agreement (version received today), it does authorize Council to do that. There was an option to spell out the 100 percent capture more clearly, the ten percent capture for the Revolving Loan Fund, and full payment of the City's Administrative, Brownfield Administrative, and Operating Costs up to the statutory limit. He stated that at the Council's direction, he can work out the language with Mr. Silver.

Mr. Silver indicated that he and Mr. Staran worked on the agreement together. They originally had a blank in there for percentages. By not including a percent in the current draft, on an annual basis the percentage could be re-evaluated and adjusted up to the Consent Judgment maximum of 25 percent. Right now the language cites an amount "up to what the Consent Judgment permits", plus the statutory operating costs.

Mr. Yalamanchi stated that he was not concerned with the broad language, but wanted the DEQ to know that the City would be placing a percentage into the Revolving Loan Fund.

Mr. Staran stated unlike the 381 Plan, this reimbursement agreement is between the City and the Developer. He believes it is submitted to MDEQ for informational purposes, however the MDEQ will not be reviewing and approving it as they will with the other documents.

Mr. Delacourt suggested that the language could be changed to identify the maximums now, but by not doing so, adjustments could be made on a yearly basis.

Mr. Brennan asked about the time constraint for Council to include a Reimbursement Agreement to the submission.

Mr. Staran thought that no time constraint was involved.

Mr. Silver stated that a Reimbursement Agreement was a part of the checklist for submitting the 381 Plan, and in his experience in submitting a similar plan, a draft Agreement was included for DEQ review.

Mr. Delacourt stated that he was not aware of this requirement.

Mr. Webber was open to adding language to the proposed Agreement, and added the following to the proposed resolution: City Council approves the Brownfield Redevelopment Authority Reimbursement Agreement subject to City Attorney and applicant's attorney to include language specifying up to a ten percent revolving fund, up to \$75,000 in Administration fees, and 100 percent tax capture.

A motion was made by Webber, seconded by Brennan, that this matter be Adopted by Resolution. The motion CARRIED by the following vote:

Aye 5 - Brennan, Hooper, Pixley, Webber and Yalamanchi

Nay 1 - Ambrozaitis

Absent 1 - Rosen

Enactment No: RES0086-2008

RESOLVED that the Rochester Hills City Council hereby APPROVES the Brownfield Redevelopment Authority Reimbursement Agreement, subject to the City Attorney's and applicant's attorney's inclusion of language specifying up to a ten percent revolving fund, up to \$75,000.00 in administration fees, and 100 percent tax capture.

(Mr. Ambrozaitis exit at 9:57 p.m. and re-entered at 9:59 p.m.)

Present 6 - Erik Ambrozaitis, J. Martin Brennan, Greg Hooper, Vern Pixley, Michael Webber and Ravi Yalamanchi

Absent 1 - James Rosen

COUNCIL COMMITTEE REPORTS

Rochester Area Youth Assistance (RAYA)

Mr. Ambrozaitis distributed RAYA's annual report to Council.

Advisory Traffic and Safety Committee

Mr. Webber announced a joint meeting of the Advisory Traffic and Safety Committee and the Planning Commission scheduled for April 8 where a final draft report of the Master Traffic Thoroughfare Plan will be presented.

Planning Commission

President Hooper indicated that on April 15, 2008, the Planning Commission is presenting its Capital Improvement Plan draft report. He also reported that the Planning Commission approved a preliminary plat for Clear Creek Number Five Subdivision, the development's last extension on the southeast corner of Sheldon and Mead Roads.

Older Persons Commission (OPC)

Mr. Yalamanchi reported that the governing body of the Older Persons Commission has issued requests for proposals and through the process have identified two consultants who have been interviewed to help develop a strategic plan. A consultant will be selected by the end of April or May.

Southeastern Oakland County Resource Recovery Authority (SOCRRA)

Mayor Barnett reported that Council was forwarded a letter sent to all SOCRRA board members indicating a new and much more aggressive stance on the long-standing issue of a water dispute with their landfill.

ANY OTHER BUSINESS

None

NEXT MEETING DATE

Regular Meeting - Monday, April 14, 2008 - 7:30 PM

ADJOURNMENT

There being no further business before Council, President Hooper adjourned the meeting at 10:09 p.m.

*GREG HOOPER, President
Rochester Hills City Council*

*JANE LESLIE, Clerk
City of Rochester Hills*

*MARY JO WHITBEY
Administrative Secretary
City Clerk's Office*

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