

8:55 p.m.

Mr. Gaber thanked the Commissioners. Mr. Rosen commented that this matter had taken a long time to get where it was. He hoped the College felt better about it than they did a year ago. The Commission had wanted, for a long time, to try to determine the inconsistencies between where the College wanted to go and where the City could allow them to go so they would not have difficulties doing what they thought they needed to do and what the City believed they needed to do. The College would now have a much easier time with the Commission as they made adjustments on their path. He wished them good luck.

**MOTION** by Kaltsounis, seconded by Schroeder, in the matter of City File No. 94-426 (Rochester College), that the Planning Commission **recommends** that City Council **approve** an Ordinance to amend Chapter 138 of the Code of Ordinances of the City of Rochester Hills, in regards to Rochester College, to Planned Unit Development.

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

**Aye:** Boswell, Brnabic, Hardenburg, Hill, Hooper, Kaltsounis, Reece, Rosen and Schroeder

2005-0139

Conditional Rezoning Request (Public Hearing) - City File No. 05-004 - An amendment to Chapter 138 of the Code of Ordinances of the City of Rochester Hills to conditionally rezone one parcel of land totaling 1.48 acres, located on Auburn, west of Livernois, from R-4, One Family Residential to O-1, Office Business, known as Parcel #15-33-200-013, Leon LeBrecque, Belle River Properties, LLC, applicant.

(Reference: Staff Report prepared by Derek Delacourt, dated April 19, 2005 had been placed on file and by reference became part of the record thereof.)

Present for the applicant were Leon LaBrecque, applicant, and Keith Logsdon, Michael Willoughby and Associates, Architects, 800 S. Old Woodward Ave., Birmingham, MI 48009.

Mr. Delacourt stated that the applicant was present to request a Conditional Rezoning for a historic home and parcel on Auburn Road. The Commission had discussed the new State law, which now allowed this type of request. He advised that Mr. LaBrecque had been before the Historic Districts Commission (HDC). He was very familiar with the home/office at 71 N. Livernois and the process the owner went through for an adaptive reuse of that property. Mr. LaBrecque wanted to follow the same process - which would require a Use Variance to reuse the historic structure as a professional office for his business, but the only way to pursue a Use Variance was after denial of a rezoning, which he

*did not intend to pursue. Since the law had changed, the City was allowed to tie conditions similar to a Use Variance to a rezoning. Staff requested that Mr. LaBrecque propose conditions similar to those he might for a Use Variance.*

*Mr. Delacourt advised that Mr. LaBrecque did not feel the home would have viability as a single-family residence based on its proximity to Auburn, the uses across the street, the nearby church, and traffic on Auburn. Staff would require a restriction to professional office, believing it less intense than medical office.*

*Mr. LaBrecque advised that he was a practicing tax attorney and financial planner who employed 13 people. He indicated affection for historical properties, noted he had renovated properties in Rochester, and that he had been a member of the HDC. He sought a historical, prime location and the Albert Terry House, built in 1839, came on the market. He had a very positive discussion with the HDC and they were delighted the exterior of the project would be continued and preserved. He wanted the property only used in its original state, in the context of an office, and would not want to see the home redeveloped some other way. He showed photographs, showcasing the home and property, and said the home had tremendous potential and architectural features.*

*Mr. LaBrecque continued that they would not modify the exterior of the structure, but they would like to add another building, consistent with the historical nature of the existing structure. They firmly believed the traffic on Auburn was a facilitating feature that made it unusable as a residence, and they saw an opportunity to bring jobs and people in to the building.*

*Mr. Logsdon noted the similarities between the proposal and the home at 71 N. Livernois, but stated that it had deteriorated and they wanted to avert a potential problem at 1081 Auburn. He briefly went over the proposed use and conditions of the request, noting it would reduce the uncertainty related to traditional rezoning, and allay concerns of the neighbors about intense use. They felt it would be a win-win situation for the City.*

*Mr. Hooper asked if there was a process for a Conditional Rezoning. Mr. Staran remarked that they were learning as they went along. The Legislation had produced a very short Act, which he felt was very unusual for something so significant. He pointed out that the City did not have an Ordinance for this type of request, but it would follow the same process as for any other rezoning, along with considering specific provisions and plans being proposed by an applicant. It was basically Contract Zoning, which everyone steered clear of for many years*

because it was illegal in Michigan. They would analyze the request the same as a rezoning - consistent with the Master Land Use Plan and using similar considerations.

Mr. Rosen recalled a discussion about Conditional Rezoning where it was determined that it was not like the negotiation of a Site Plan. It was a situation where the developer offered and the City could say yes or no. Mr. Staran said there were differing views. Some positions were that the City had to take what was offered and vote it up or down; the other extreme was that it was a wide-open negotiation. The middle ground had room for negotiation, but ultimately, the developer would have to agree to any conditions negotiated and the developer had to initiate the process. He felt it was perfectly appropriate to discuss other conditions with the developer that could result in a voluntary condition; however, there could not be a forced condition.

Ms. Brnabic mentioned the issue of Planning & Zoning News the Commission previously received, which dealt with Contract Rezoning, and said the general opinion was that because the law was short and new that further review was warranted and some attorneys saw potential problems. Mr. Staran acknowledged reading the issue, and said Ms. Brnabic referred to a letter from one attorney who had concerns. Mr. Staran had spoken to a number of attorneys about it. The City would be allowed to tie down a development to a property, so it could be enticing to the City and good for the developer. He did not feel there was any reason to halt the process. Ms. Brnabic appreciated Mr. Staran's position regarding the new Law.

Mr. Staran suggested that the Planning Commission consider an Ordinance to more specifically address the procedure, and said he would forward samples from other cities.

Mr. LaBrecque pointed out that with a Use Variance, the same result would be achieved after a long, cumbersome and negative process, but he felt Conditional Rezoning was a forward-thinking, positive event. He stressed that someone had to be the first to request it - or be the guinea pig - but they thought it was a good project to start with.

Mr. Hooper opened the Public Hearing at 9:18 p.m.

**John Lawler, 3077 Courtfield, Rochester Hills, MI 48309** Mr. Lawler stated that he bought his home in a residential area and he did not want businesses coming in and bringing traffic. He indicated that businesses come and go and he did not want something to happen down the road. Mr. LaBrecque's business might grow - and he asked what would happen if there were more people and cars as a result. He did not want

to hear cars in the morning and evening or see headlights in the windows. He asked what would happen if the business failed, and stated he was totally against it.

**Mr. John Jenuwine, 1719 Gilsam St., Rochester Hills, MI 48309** Mr. Jenuwine stated that he purchased his property in 1995 and shared Mr. LaBrecque's admiration of the Terry house. It was one of the things that attracted him to the area. The fact that it was so well maintained showed that it was a viable residence. In the last ten years it had always been owner-occupied. He felt that a rezoning would change the character of the area. The home was used as a residence - there were dogs running around - and when he rode his bike by he knew there would not be heavy traffic coming in and out of the driveway. He noted that the largest bibb oak tree in America was within a very short distance of the home and the trees around the property. Mr. LaBrecque said he would expand and that was a concern. Mr. LaBrecque had said he would like to keep the historic character, and that the kitchen cabinets were original, but with 13 offices, they would not be able to keep the character of the kitchen. Mr. Jenuwine urged the Commission to reject the rezoning request.

**Maureen Rose, 3089 Courtfield, Rochester Hills, MI 48309** Ms. Rose stated that she lived right behind the Terry house and enjoyed getting up in the morning and watching the animals. She indicated that trees would have to come down if there was parking for a business and that would change the character of the area. Mr. LaBrecque mentioned having too many Walgreen's and CVS's in the City, and Ms. Rose noted a new Walgreen's going in at Auburn and Crooks and that there would also be offices there. She stated that if Mr. LaBrecque wanted to be philanthropic, he could put his business in those offices and leave the home as a residence.

**Paul Pawlowski, 3113 Courtfield, Rochester Hills, MI 48309** Mr. Pawlowski noted that his backyard looked out on the proposed site. Mr. Pawlowski agreed with Mr. LaBrecque that the Terry house was delightful and said that was because it had remained a residence and was well taken care of for 166 years. If it were turned into a business they would not know what direction it would go, so they would like to see it remain a residence.

**John Brioc, 1089 W. Auburn, Rochester Hills, MI 48309** Mr. Brioc said he was a new owner next door and the person that would definitely be the most affected. His property was built as a guesthouse in 1947 and added onto in 1976. He admitted to being very naïve when he bought the home, saying he took the realtor at his word when he said nothing could be done to a historical site. He did not look into the

legalities. He was a firm believer in historic preservation and that was one of the reasons he bought his home. He enjoyed living next to the Terry House. He was not concerned about the house; it was the proposed changes to the property and his home was 12 feet from the property line at one point. He would lose his buffer zone to the gas station that operated 24 hours a day. He concluded that he was sure Mr. LaBrecque had good intentions, and he wanted reassurance that the HDC still had power over this site.

Mr. Hooper closed the Public Hearing at 9:31 p.m.

Mr. Hooper asked Mr. Delacourt if the HDC would stay in the process should the rezoning be successful.

Mr. Delacourt replied that the HDC would have approval rights and that the HDC Ordinance would apply regardless of the situation. The only way that would change would be if City Council de-listed the property.

Mr. Hooper asked the current zoning and Master Plan zoning for the property and Mr. Delacourt informed that it was single-family. In answer to Mr. Hooper's request to address issues raised by the residents, including traffic, trees, and wildlife, Mr. Delacourt said that any Site Plan issues for a single-family residence would be handled through the Building Department. If it were developed as Office, the Planning Commission would review it and all the buffers and other Ordinance requirements of O-1 zoning would apply. He added that the HDC would have to approve the plan for buffering and trees as well as site features.

Regarding traffic, Mr. LaBrecque said the parking would be away from the neighbors. He checked the traffic on Auburn Road at 5 p.m., which he found was very heavy already, and noted that 12 cars going in and out of the site would not affect the neighbors. He advised that the vast amount of the buffer trees were outside of the property line - on the church's property. If they built another building, it would be on the back of the property where there were no trees and he stated he was conscious of the trees. He noted that professional office had regular business hours, unlike medical office.

Mr. Schroeder asked where the property was Mr. LaBrecque discussed purchasing. Mr. LaBrecque said he made an offer for the home to the west and it was rejected.

Mr. Kaltsounis expressed concern at how historical buildings had been used recently by developers who said they would fix the resources to be able to "cram" as many houses on a development as possible. He acknowledged that Mr. LaBrecque's proposal was different, and that the

house would be put in front, but said the Commission still had to look at the current zoning and the Master Plan, and that raised issues. He believed the applicant had a noble passion for the property, but he was undecided about how the Commission should move forward. He suggested that the applicant get to know the neighbors. He mentioned some of the proposed conditions and that the development could not be added onto without the approval of the HDC. He asked if Planning Commission approval should be included also. Mr. Staran explained that the property had been and remained regulated as a local Historic District and would remain subject to that regulation. The Condition was intended to make it very clear that would continue to be the case. Mr. Kaltsounis asked if it would require Site Plan approval by the Planning Commission, which Mr. Staran confirmed, but he did not feel it had to be stated. He advised that just because something was not stated, it was not negated. If they approved the rezoning, they would not be granting any waivers or variances. The Conditions the applicant supplied were additional, not deviations.

Mr. Reece asked Mr. LaBrecque if he owned the property or if the closing was contingent upon the approval of the rezoning, and Mr. LaBrecque confirmed that he owned it. Mr. Reece asked how long it was up for sale, and was told an offer was made shortly after it went on the market. Mr. LaBrecque mentioned he had several offers to purchase it since. Mr. Reece confirmed Mr. LaBrecque had 12 employees, that the house was 2,300 square feet, but that only 5 or 6 would be brought to this location until they built the second building.

Mr. Rosen stated that one of the primary criteria for granting a Use Variance was that a property could not be reasonably used or could not yield a reasonable return on a prudent investment. A residential property that could be used as a residential property would not ordinarily be granted a Use Variance. The distinguishing factor about 71 N. Livernois was that all of the circumstances around the building - the road, the setback because of the widening of Livernois, the hill, lack of driveway, and the deterioration - led to the Zoning Board's decision to grant the Use Variance for an adaptive reuse. It had been vacant on and off for almost ten years. A fundamental difference with 1081 W. Auburn was that the Commissioners were also being asked to approve an expanded development of the site.

Ms. Hill indicated her passion for preservation and agreed the proposal was different from 71 N. Livernois, yet she saw similarities with the vision. She thought it was highly unlikely that for the future, the subject property would remain residential. It was becoming more and more difficult, because of the value of property in this community, to retain the historic districts, especially the non-contiguous, at a level they deserved

and as residential property. When someone came forward for an idea for an adaptive reuse, she felt they should be applauded. She had reviewed the HDC Minutes about 1081 W. Auburn and wondered if there was an attached carriage house and pumphouse, which was confirmed. Mr. LaBrecque said there was a shed which was now gone. Ms. Hill asked about a fence, and Mr. LaBrecque said it was not historic because it was just a simple wire fence that was nonconforming since they did not have wire fences back then. Ms. Hill noted that over time some things acquired conformance.

Ms. Hill stated that this would be a difficult decision; however she felt it was one way the City could provide protection for the property. She asked about adding on to the present building versus having another stand-alone building on the property. Mr. LaBrecque said that in his experience with historical buildings, the more the outside was untouched, the better and more real they were. A secondary building that would compliment the architecture of the house would be more consistent than adding on. Ms. Hill said she did not mean to add on and have it look like a part of the existing structure; but look, rather, as a contemporary addition. She felt there were appropriate ways that additional space could become part of the house without looking like they had created an office park. There were also appropriate ways to create parking to look more "green." She referred to the Kresge Foundation's green addition and its paver parking. The site would not have a detention pond - all the water would be retained in a green manner with rain gardens and so forth. She observed that the development did not have to have typical office lighting. She felt people had to have a vision about retaining the building more like a residence and being maintained appropriately.

Ms. Hill addressed proposed Condition four regarding physical improvements to the property, and said she felt the roadwork and entryway did not have to change and questioned adding landscape buffers and screen walls. She felt the exterior should appear as a residence, not an office building with a wall around it. Mr. LaBrecque noted that the HDC would have to approve anything, and he said he envisioned tree or landscaped screens, not walls. Mr. Delacourt suggested that a Buffer Modification could be applied for at Site Plan review, noting that the screening requirements could not otherwise be waived. Ms. Hill referred to Condition six and said she agreed with everything stated but asked for clarification about (c), which addressed redevelopment of the land if the original house ceased to exist. Mr. LaBrecque explained it would address the house burning down. Ms. Hill wished the residents from 71 N. Livernois were at the meeting to comment on that development. She believed they found it did not end up being intrusive.

Mr. Hooper asked Mr. Staran if the project would be moot if the rezoning was successful but the Site Plan was turned down. Mr. Staran said it would depend on what basis the Site Plan was turned down. If the Commission did not think the use was appropriate, he thought that would not be a legitimate basis. The Planning Commission had very closely scrutinized Site Plans that, although the use was consistent with zoning, they turned down because the Plan did not protect the neighbors enough. There was nothing involved in the proposed conditions which would restrict the Commission's discretion when it came to Site Plan approval. Mr. Hooper asked about requesting extensive screening with an approval and what would happen if the applicant came back with a Site Plan that had nowhere near the required screening. Mr. Staran said the Commission would disapprove it. Mr. Hooper clarified that the applicant would have no legal recourse. Mr. Staran said it was like any other Site Plan - anything that would apply to a Site Plan under an O-1 district would apply in this instance also, and any further conditions agreed to would also apply. Mr. Hooper asked where they would add conditions beyond those required in the Ordinance. Mr. Staran replied that the Commission would not put on any conditions. The applicant would propose them and the Commission would either find they were inducements to rezone the property or not. He stated that the process of Conditional Rezoning should not be used to address all the finer points of Site Plan review. They were just considering whether the use was appropriate for the site.

Mr. Staran brought up the issue about an owner wanting to change something in the approval. He explained that if the property was rezoned to O-1 and there was a specific condition on that rezoning - only to be used for professional offices, for example - the applicant would be bound by that unless they or their successors got the zoning changed. In reply to a neighbor's comments about the interior kitchen cabinets, Mr. Staran advised that the HDC only regulated the outside appearance of a historic property.

Mr. Delacourt stated that the rezoning did not allow a second structure automatically on the property. It merely would require, if requested, that a second structure be limited in size. Mr. Staran agreed, and said that if the Commission approved the rezoning, it would not mandate something on the property.

Mr. Anzek suggested that Conditional Rezoning took a parallel path with Conditional Land Use approvals. There might be circumstances above and beyond normal Site Plan approvals that the Commission might want to request Mr. LaBrecque impose upon himself, such as hours of operation, which were not contained in Site Plan requirements for O-1



zoning.

*Ms. Brnabic said she did not have a problem with the concept, but she was troubled because the home was viable, well cared for and valuable. The home was very well maintained, and she did not think that it would deteriorate in ten years. She was still in the middle about the request - she was not totally against the proposal, but she had reservations because of the house.*

*Mr. Kaltsounis asked if they should perhaps add a time frame to the rezoning so that if nothing were done in x amount of years, there would be protection, similar to what was done for PUDs. Mr. Staran advised that under the new Law, it stated "in approving the written conditions proposed by an applicant, the City may establish a time period during which the conditions apply to the land and, except for an extension granted, if the conditions are not satisfied within the time specified under the subsection, the land shall revert to its former zoning classification." He agreed a timeframe could be included in the Agreement.*

*Mr. Kaltsounis asked why they would not see Development Agreement at this stage, indicating that it would be necessary in making a recommendation to City Council. Mr. Staran said the applicant would need to prepare one, but that they probably looked at the first meeting as a workshop. Mr. Kaltsounis stated that the proposal was similar to a PUD and he would like to see the Development Application come back to the Planning Commission for review. He would also like to see in that Agreement the hours of operation and type of lighting. Mr. LaBrecque said he would agree to limiting hours for customers.*

*Mr. Staran indicated that if there were interest on the part of the Planning Commission to go forward with the request, he would anticipate a second meeting to review the Development Agreement.*

*Mr. Schroeder asked if the Conditional Rezoning approval went away if the owner went away. Mr. Staran advised that it ran with the land, much like a PUD. Any subsequent owner would be bound by the same conditions. Mr. Schroeder did not believe the Commission could approve a rezoning without it being subject to an approved Agreement. There were a lot of issues to be worked out. Mr. LaBrecque said he would like to get the arrangement agreed upon and he noted that they proposed a suitable Development Agreement in the first Condition.*

*Mr. Hooper asked if there was a specific Site Plan when the home at 71 N. Livernois was approved for a Use Variance. Mr. Staran did not believe there was a detailed Site Plan. Mr. Rosen said they got the Use Variance for the building and the garage. They came back with a regular*

*Site Plan once the Use Variance was approved. The Zoning Board did not see a Site Plan, but limited the use. Mr. Anzek added that by the time the Site Plan got to the Planning Commission it was sort of a done deal because it had been so well defined by the Zoning Board use limitations and the HDC's review.*

*Ms. Hill stressed that unfortunately, historic districts and resources were disappearing at an alarming rate. It was questionable whether the house would be a viable residence in ten years. There were resources approved for rehab that had not gone forward and were starting to deteriorate. She stated that owners of historic property were obligated to maintain them. She confirmed with Mr. Staran that the applicant had the ability to go to circuit court if the HDC denied an additional building. Mr. Staran added that there would be no difference and the HDC Ordinance would still apply.*

*Mr. Rosen said the proposal posed somewhat of a problem because of the addition. If it were just the existing home being changed into an office use, it would make some sense. He questioned adding another 5,000 square foot structure to a residential property. He had little problem with the home's reuse as office, but a big problem with the addition.*

*Mr. Reece asked Mr. LaBrecque if he fully intended to include an addition at some point in the future, which he confirmed. Mr. Reece asked if he would lose interest in moving forward if the Planning Commission made a motion to approve contingent upon not including an addition. Mr. LaBrecque acknowledged it would significantly diminish his ability to use the site for his business.*

*Mr. Staran reminded that the Planning Commission had a couple of ways they could go. A rezoning remained a legislative decision; the only difference was that for the first time, conditions the applicant proposed could be attached to the decision. If there were enough things that troubled the Commission about the proposal, even with the conditions, they did not have to recommend it for approval. He advised that the matter before them could be postponed, and he suggested it would be appropriate to consider asking the applicant if he had a concept plan to bring back in addition to the Development Agreement, which would include parking arrangements, buffering, etc.*

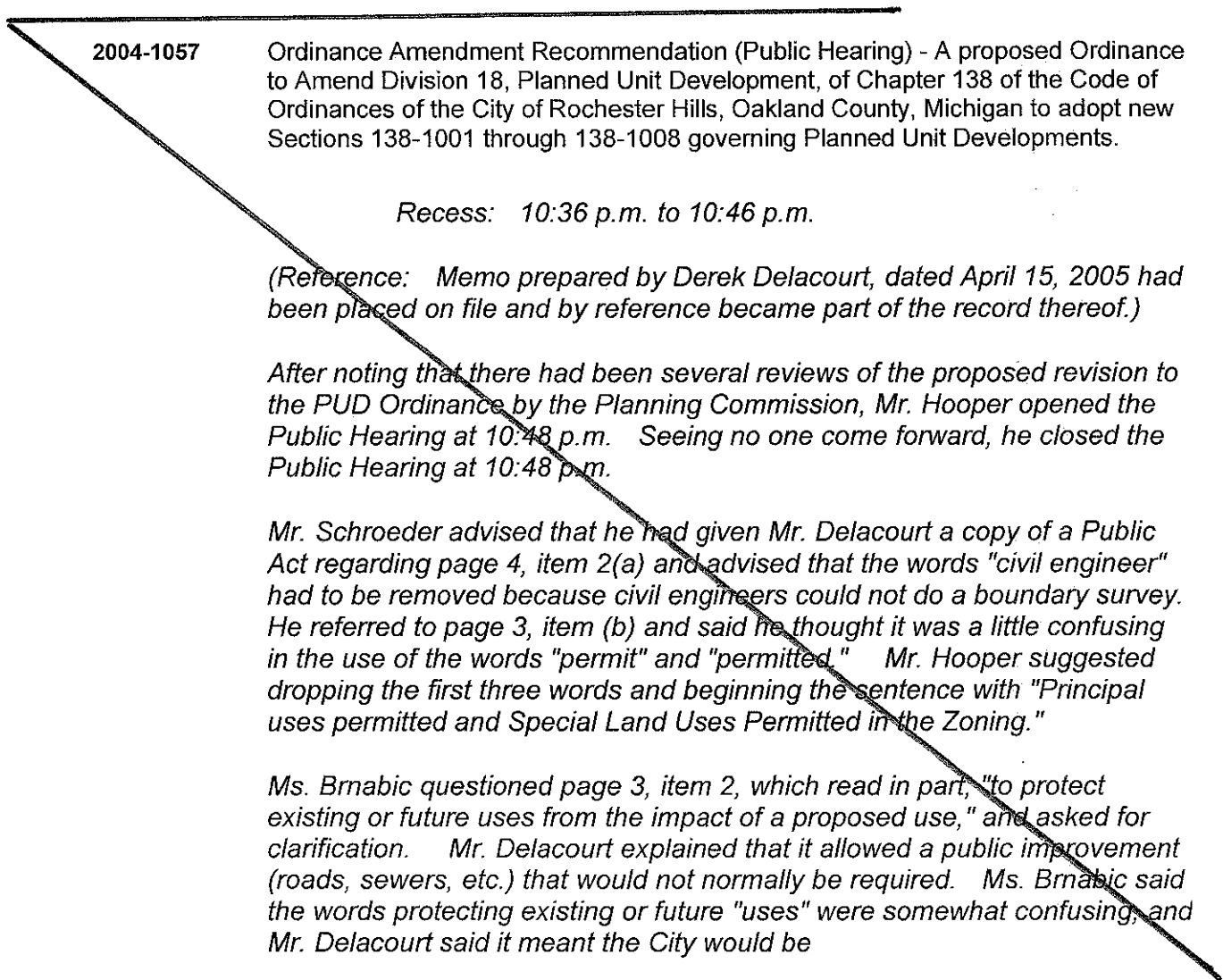
*Mr. Hooper asked Mr. LaBrecque if he would agree to a motion to postpone. Mr. LaBrecque said they would like to move forward in small steps and to be cautious, and they wanted to be very cooperative. They would come back with a Development Agreement and plan to show the neighbors.*

Mr. Rosen asked if the applicant could still go for a Use Variance if the Planning Commission were to recommend denial and City Council denied the rezoning Mr. Staran said that was correct.

**MOTION** by Kaltsounis, seconded by Reece, in the matter of City File No. 05-004 (LaBrecque Rezoning), the Planning Commission agrees to **postpone** the matter until the applicant can bring back a Development Agreement and/or conceptual plan to be discussed at a future date.

A motion was made by Kaltsounis, seconded by Reece, that this matter be Postponed. The motion carried by the following vote:

- Aye: Boswell, Brnabic, Hardenburg, Hill, Hooper, Kaltsounis, Reece and Schroeder
- Nay: Rosen



2004-1057

Ordinance Amendment Recommendation (Public Hearing) - A proposed Ordinance to Amend Division 18, Planned Unit Development, of Chapter 138 of the Code of Ordinances of the City of Rochester Hills, Oakland County, Michigan to adopt new Sections 138-1001 through 138-1008 governing Planned Unit Developments.

Recess: 10:36 p.m. to 10:46 p.m.

(Reference: Memo prepared by Derek Delacourt, dated April 15, 2005 had been placed on file and by reference became part of the record thereof.)

After noting that there had been several reviews of the proposed revision to the PUD Ordinance by the Planning Commission, Mr. Hooper opened the Public Hearing at 10:48 p.m. Seeing no one come forward, he closed the Public Hearing at 10:48 p.m.

Mr. Schroeder advised that he had given Mr. Delacourt a copy of a Public Act regarding page 4, item 2(a) and advised that the words "civil engineer" had to be removed because civil engineers could not do a boundary survey. He referred to page 3, item (b) and said he thought it was a little confusing in the use of the words "permit" and "permitted." Mr. Hooper suggested dropping the first three words and beginning the sentence with "Principal uses permitted and Special Land Uses Permitted in the Zoning."

Ms. Brnabic questioned page 3, item 2, which read in part, "to protect existing or future uses from the impact of a proposed use," and asked for clarification. Mr. Delacourt explained that it allowed a public improvement (roads, sewers, etc.) that would not normally be required. Ms. Brnabic said the words protecting existing or future "uses" were somewhat confusing, and Mr. Delacourt said it meant the City would be