



Rochester Hills

Minutes

Planning Commission

1000 Rochester Hills Dr.
Rochester Hills, MI
48309
(248) 656-4600
Home Page:
www.rochesterhills.org

Chairperson William Boswell, Vice Chairperson Deborah Brnabic
Members: Gerard Dettloff, Dale Hetrick, Greg Hooper, Nicholas O. Kaltsounis, David A. Reece, C. Neall Schroeder, Emmet Yukon

Tuesday, July 13, 2010

7:00 PM

1000 Rochester Hills Drive

CALL TO ORDER

Chairperson William Boswell called the Special Planning Commission Meeting to order at 7:05 p.m. in the City Hall Auditorium.

ROLL CALL

Present 8 - William Boswell, Deborah Brnabic, Gerard Dettloff, Dale Hetrick, Greg Hooper, Nicholas Kaltsounis, C. Neall Schroeder and Emmet Yukon

Absent 1 - David Reece

Quorum present.

Also present: Ed Anzek, Director of Planning and Development
Derek Delacourt, Deputy Director
Maureen Gentry, Recording Secretary

APPROVAL OF MINUTES

2010-0287 July 6, 2010 Regular Meeting

A motion was made by Schroeder, seconded by Brnabic, that this matter be Approved as Presented. The motion CARRIED by the following vote:

Aye 8 - Boswell, Brnabic, Dettloff, Hetrick, Hooper, Kaltsounis, Schroeder and Yukon

Absent 1 - Reece

COMMUNICATIONS

- A) Email from Ed Anzek, dated July 8, 2010 in response to Mr. S. Beaton's email of July 6, 2010
- B) Communications from S. Beaton (4) re: City Place PUD

UNFINISHED BUSINESS

2009-0274 Continuation of Public Hearing (tabled at July 6, 2010 meeting): Request for Recommendation of Approval of the Revised PUD for City Place, City File No. 02-027, located on the east side of Rochester Road, north of Hamlin, zoned PUD (B-2, General Business) and approved by City Council in May 2004. G&V, applicant

(Reference: Staff Report prepared by Derek Delacourt, dated July 2, 2010 and Revised PUD handed out by Mr. Gaber prior to the meeting had been placed on file and by reference became part of the record thereof.)

Present for the applicant were William Gilbert, G&V Investments, 2565 S. Rochester Rd., Rochester Hills, MI 48307; John Gaber, Williams, Williams, Rattner & Plunkett, 380 N. Old Woodward, Birmingham, MI 48009 and Mark Abanatha, Alexander V. Bogaerts & Associates, 2445 Franklin, Bloomfield Hills, MI 48302.

Chairperson Boswell summarized that the meeting ended last week with a motion by Mr. Hetrick, seconded by Mr. Schroeder, to table the Public Hearing for City Place PUD, and he asked for a motion to remove it from the table.

MOTION by Schroeder, seconded by Hetrick, that in the matter of Agenda Item No. 2009-0274, City File No. 02-027 (City Place Revised PUD), the Planning Commission hereby approves removing it from the table.

Voice Vote: All Ayes
Absent: Reece

MOTION CARRIED

Chairperson Boswell recalled that when the power went out on July 6, 2010, he had just opened the Public Hearing, and he advised that he would continue it at this point. He called the first speaker, and explained the procedure for a Public Hearing.

Scot Beaton, 655 Bolinger St., Rochester Hills, MI 48307 Mr. Beaton had passed out some handouts prior to the meeting, and he placed one for the overhead showing the commercial and residential areas between Hamlin and Avon along Rochester Rd. He felt contrary to Mr. Gaber's

opening remarks that there was a lot of commercial in the area. He pointed out that prior to a consent judgment changing the zoning to office, the Cavalier Office Building's parcel was residential. He stated that it was a beautiful area and he would like to see it stay that way. He passed out a list of proposed modifications to the PUD and said that if Mr. Gilbert could not find any other use for the property, he could still build single-family residential under the FB-1 overlay. His next concern was the desire to turn 15,000 square-feet of retail into 50,000. He showed a drawing of the site, and said that under FB-1, if Mr. Gilbert was allowed to have 50,000 square-feet of retail, he could build four 12,500 square-foot retail buildings, but he did not feel Mr. Gilbert should be given that type of flexibility and put in strip malls on Rochester Rd. He was also concerned that the applicant could decide to build 360,000 square feet of multi-family, which he said would almost be the entire size of the Eddington neighborhood. Regarding alcohol beverages, he felt Mr. Gilbert was very much entitled if he was given 15,000 square feet of retail to have a restaurant that served white wine. A nice restaurant would compliment any office buildings. He thought that for places serving alcohol, changing the close to 11 p.m. was a good idea, but he questioned who would police it. He claimed that there was a difference between a rental and a for sale condo and there was no definition about whether multi-family included apartments. He stated that if a house backed up to multi-family rentals, the house's property value would be lowered. A house that backed up to an office would have higher property values than a house that backed up to a rental. He suggested working with Mr. Gilbert so he did not build apartments. If he was granted, he could build up to 1,000 apartments. He was concerned about the 50-foot setback. Mr. Gilbert was showing a 50-foot building setback. He asked if there would be parking, streets or driveways in the setback. He recommended there not be, and said that if the PUD was allowed, Mr. Gilbert would only be required to put in a 15-foot setback with an 8-foot masonry wall. Regarding aesthetics, there had been conversation about how great the bank looked, but he put up a picture of another bank he thought looked better. He thought it was more in character with the Royal Park Hotel and with residential areas. He did not think they should continue the architecture of the bank all the way down Rochester Rd, and he felt they could explore a better looking development. He agreed with changing the timeframe for completion from 20 to 10 years. The historic house had been approved for delisting at City Council the previous night. If the Commission wanted to require Mr. Gilbert to restore the house because they granted the PUD, he thought they had the legal right to do so. He put up another exhibit, and said that he hoped the PUD would comply with all zoning requirements, whether it was natural features

setbacks, the right-of-way from Rochester Rd. or something else. He showed an example of a four lane boulevard in an 88-foot right-of-way. He suggested that they work with Mr. Gilbert to move the right-of-way further from the residents with a ten-foot setback from the parking lot and reduce it to 65 feet. He asked the Commission to change the PUD any way they saw fit, and he hoped City Council would listen to their recommendation.

Martha Black, 2408 Jackson Dr., Rochester Hills, MI 48309 Ms. Black noted that she attended the City Council meeting the previous evening and was disappointed in the decision to delist 1585 S. Rochester Rd. She said she was very disturbed at what was happening in the City. People looked to the Commissioners to be their voices. She saw the movie Toy Story 3 earlier in the day, and commented that if they were making a Toy Story movie, Woody and Buzz Light Year would be here to save the day. She said she looked at the Commissioners as her "Woodies" and "Buzz Light Years" to save the day, and that they needed the Commissioners more than they had ever needed them. She referred to the 2004 PUD, and said that she would also like flexibility. She would like go back to her builder and get more flexibility and to renegotiate. She would like to do that with many things. She read the 2004 PUD, which stated that, "the terms of this Agreement are contractual and not a mere recital. The owners and Rochester Hills represent and warrant that they intend to be bound thereby." She thought that said it all, and as a businessman, she was sure Mr. Gilbert had written many contracts, and she would like to see how flexible he was with people. She believed that it was clear that the first PUD was a flexible contract agreed upon by the City, and she felt it should stay that way. The City gave flexibility already, and she was concerned because no matter what the recommendations of the Planning Commission, it did not necessarily mean that was how it would go at City Council. She urged the Commission to step up, remarking that they knew their jobs well, and it was what they did best. She concluded that she trusted they would serve the people well.

Paul Miller, 1021 Harding, Rochester Hills, MI 48307 Mr. Miller had turned in a card at the last meeting, but was not present.

Anil Patel, 1566 Farnborough, Rochester Hills, MI 48307 Mr. Patel stated that in 2004, the City agreed to one PUD to develop the property. Mr. Gilbert was now asking for flexibility, and as owner, he had that right. Mr. Patel's home backed up to the property and when he bought it, his decision was based on the 2004 Agreement. If the City gave Mr. Gilbert flexibility, he could not reverse his decision to buy. Regardless of what

happened, if the applicant was given permission to have more retail, restaurants and bars, it would definitely decrease the value of his property and jeopardize the safety of the kids with more traffic. There would be more noise, lights and signs. His request was that the City should stay with the previous PUD and not approve more retail because there were a lot of vacant spaces in town.

Anthony Deshaw, 1638 Farnborough Dr., Rochester Hills, MI 48307

Mr. Deshaw recalled that he was at the meeting a week ago and had listened to the presentation carefully. His home also backed up to Mr. Gilbert's property. He had concerns, and said that the other presenters brought up good points. He met with Mr. Gilbert at the neighborhood meeting, and he thanked Mr. Gilbert for taking into consideration many of their concerns. He ran into Mr. Gilbert at the airport and had a conversation. He emphasized the economic impact the development would have on the residents if Mr. Gilbert was given flexibility regarding the types of buildings that would go right behind their homes. They purchased in 2005, and at that time, they understood that the property would be developed - he said he was not anti-development - but he was under the understanding that the property would be developed with restrictions and that residential would be behind their homes, not commercial directly behind. It was not clear in the presentation whether Mr. Gilbert had flexibility to put commercial directly behind the homes and up to the property lines. He suggested working with Mr. Gilbert to make that restriction so it did not impact his property value. He remarked that none of the residents could take another "hit." The other concern he had was the access into the site. He saw roads running into Eddington and he was concerned how they would manage the traffic. They had a very hard time getting out of the sub now. Regarding the landscape plan, he was concerned about the water mitigation and the slope. Their yards sloped down, and he would like to see a 50-foot greenbelt established. He thought, through some of the questions raised at the previous meeting, that the Commission did not have all the answers. The applicant wanted 20 years, so he did not think they had to hurry and make a decision at the meeting. They could take time and do things right. He thought that by working together, they could come up with the best solution and a win-win for everyone.

Melinda Hill, 1481 Mill Race, Rochester Hills, MI 48306

Ms. Hill quoted Mr. Gilbert: "It was not my intention to have the home be for sale as a single-family home. The house is a landmark not an identifiable home. There are many other uses this home could be retrofitted for and still keep its integrity." She said that those were statements made by Mr.

Gilbert in July and September of 2002, but that it really was not the case. Over the last six years, the home was allowed to severely deteriorate to demolition by neglect status. Ms. Hill stated that the previous night, City Council, in a pre-planned four/three vote, granted Mr. Gilbert his wish to delist and to be able to demolish the home. Unless the Planning Commission required the home to be rehabbed in some way, it would completely be out of the picture. She recalled that the house was one of the main criterion for using the PUD in the first place. Mr. Boswell, Ms. Brnabic, Mr. Hooper and Mr. Kaltsounis should remember having heard Mr. Galvin, Mr. Gilbert's attorney in 2003, present various criteria to use a PUD. They all voted to recommend a PUD. The three criteria were: To provide complimentary housing types for mixed-use residential and commercial development; to alleviate traffic congestion - in another words, less curb cuts; and to provide appropriate redevelopment or reuse of a designated historic district. She said that one of the primary reasons for using the PUD was easily dismissed. She referred to Section E under Permitted Uses and said that she did not believe the proposed PUD needed Section i or iii if the intent of the PUD was truly mixed-use. If it was strictly for multi-family or some type of housing or for all office, she asked why they did not just dissolve the PUD and look at rezoning for one of the suggested uses. The PUD process had been recommended for the property. The original office/retail/restaurant spaces were limited to 35,000 square feet. The proposal is for 50,000 square feet for retail/restaurant and another 25,000 for office, which was a total of 75,000 square feet, or another 16, 4,300 square-foot bank buildings. She asked them to think about having another 16 bank buildings placed on the property. The original housing was for individual condos and people could rent those, but the majority would own them. With multi-family, apartments would be allowed, and she thought they should eliminate apartments in the PUD. Building setbacks under the FB-1 zoning allowed 15 feet between residential and parking. She thought it should be mandated that the 50-foot buffer stay in a natural, landscaped state between any buildings and residential. Regarding the right-of-way issue, a 180-foot right-of-way was discussed heavily in 2002 and 2003, and Mr. Gilbert was well aware of that. Mr. Schroeder had a very good idea to at least have easements given to the City in case they needed the 180 feet. If the house was gone, Mr. Gilbert would save \$1 million he claimed it would cost to rehab the structure. The original PUD had a ten-year timeframe. She felt they were violating the PUD already because the bank was the only structure completed. In the proposed PUD, developing the property substantially was described as 65%, which was in the original, and it also said that it should be "under way in the first two years." It had been six years, and there was very little developed. She thought 20

years was too long. She was not against saying because of the conditions that existed today that maybe a site plan needed to be presented within five years, but she felt once that happened, that it should take one year to start construction and two years for completion, depending on how large. Also, if after five years plus one year for an extension a site plan did not occur, abandonment would be in play, but the City's hands would be tied because they would have to rezone to FB-1. She thought that should be "to be determined," as it existed in the current PUD. She understood that the economy was worse and wanting flexibility, but she still believed flexibility could be obtained through FB-1 design flexibility, not in an increase by 50% of restaurant, retail and office. She felt that architectural and design standards were pretty loose in the ordinance and FB-1 would allow flexibility. She was not sure if changing the PUD was the right thing. She predicted that the land would be sold off in numerous pieces and developed over a long period of time and not in a very cohesive manner. She did not feel that the revised PUD provided the best solution for development, and she thought it should go back to the drawing board, especially since the applicant was asking for 20 years. She did not think it was the right plan for the future of the community, and felt that something could be accomplished another way. She suggested that they should perhaps think about dissolving it and looking at it differently. Recommending the plan meant only one winner - G&V. She almost felt they were seeing another AIG bailout.

Lorraine McGoldrick, 709 Essex, Rochester Hills, MI 48307 Ms.

McGoldrick had turned in a card at the last meeting, but was not present.

Deanna Hilbert, 3234 Quail Ridge Circle, Rochester Hills, MI 48309

Ms. Hilbert had turned in a card at the last meeting, but was not present.

William Karam, 1710 Farnborough Dr., Rochester Hills, MI 48307 Mr.

Karam said that he had been in the real estate business for 40 years, mainly in new homes. He developed Covington Place in 1995. He commented that everything that had been done since there were 5,000 vacant lots in the City had been done wonderfully. He did not have a problem with the work Mr. Gilbert had done, and thought that whatever he did would be exemplary. He bought his house in April, and it backed up to the subject property, but he was not aware of the PUD. He thought that the market would determine what would go on the property. Commercial might be the thing now, and five years from now multiple-family might be. He would prefer to see a 50-foot greenbelt no matter what was built. He understood that the berm was currently 50 feet behind his home. The ordinance called for an 8-foot greenbelt with an 8-foot brick wall or a

25-foot greenbelt with no berm. Aesthetically, he felt that the berm did the job. Mr. Gilbert would go with whatever the market dictated. He might come back and rezone to allow apartments or condos; they did not know what would happen in 20 years.

Chairperson Boswell closed the Public Hearing at 8:42 p.m.

Chairperson Boswell asked Mr. Gaber about buffering. Mr. Gaber responded that they heard a lot of concerns at the last meeting and made adjustments to the PUD. Just prior to the meeting, he had passed out a red-lined version to the members that reflected changes from last week's meeting. He suggested going through them, and Chairperson Boswell agreed, indicating that some would answer the residents' questions.

Mr. Gaber noted that Mr. Dettloff had raised a question about the correct acreage for the property. Mr. Gaber determined it was 28.74 acres. Per a Condition requested by Staff, they added wording that absent the PUD, the City never intended that B-2 and FB-2 represented future desired land uses of the City. They cleared an ambiguity about restaurants only being allowed in certain designated areas on the site plan. That restricted restaurants to along Rochester Road and made the text clearer. He added that restaurants would be permitted uses, and changed the hours of operation from 7 a.m. to 11 p.m. rather than 12 a.m. Language was added that said the area north of the Edison easement could be developed as office - up to three stories. Mr. Reece had asked why they wanted to be able to build three-story retail buildings on Rochester Rd, and Mr. Gaber agreed that they would not. The materials for the buildings along Rochester Rd. would be consistent with the Fifth Third Bank materials and architecture. The balance of the buildings would match the houses in Eddington. The buffering requirements of the ordinance for B-2 required a 25-foot width. Since they could only do office or residential uses by the eastern berm, they would be required to provide a 20-foot buffer and they agreed to increase that to 30 feet. Outside of 30 feet, they could have improvements such as decks or utilities or pavement such as a fire lane. They added language for a six-foot, opaque green wall between the berm and the landscaping materials.

Regarding concerns about the right-of-way, Mr. Gaber reiterated that the original PUD provided 75 feet from the centerline of Rochester Rd. They propose to go 75 feet from the section line, which was 18 feet east of the center line, plus add a ten-foot easement with landscaping and parking, for a total of 103 feet. If any easements in addition were needed, they agreed to negotiate that in good faith.

A Condition staff required concerned realigning Eddington, which they added. They removed the historic district reference because Council agreed to delist it. Regarding the timeframe, rather than having five years to submit a site plan, with two potential extensions, they shortened that to three years with two, one-year extensions. The time period to complete construction would be governed by normal ordinances and the entire project would be completed ten years from the approval of the first site plan. He added language about a minor modification regarding parking spaces and that the berm would be kept and enhanced.

Chairperson Boswell re-opened the Public Hearing at 8:00 p.m.

Lisa Winarski, 194 Bedlington, Rochester Hills, MI 48307 Ms.

Winarski stated that she was concerned with the amount of retail square-footage allowed, and noted that the original PUD allowed much less than 50,000 square feet. It would impact traffic and safety for the subdivision. There were five arteries to enter and exit the sub and people used them frequently. The busses used Eddington Blvd. for pick up, there were no sidewalks and parents parked on both sides of the road. They were working with the City to try to add sidewalks. When restaurants were first mentioned, Mr. Gaber and Mr. Gilbert talked about small, cozy, quaint cafes. At the last meeting, Mr. Gaber mentioned a Chili's-style restaurant. There was a huge difference in the styles and consumption of alcohol. She envisioned cozy and quaint as something like a Crust Pizza, but Chili's was more of a chain restaurant with a stand-alone building. She hoped they could limit the square-footage or not allow stand-alone buildings. She thought having a Chili's next to residential would reduce property values and it would have bad smells. She was concerned about the timeline for development. Once an initial plan was submitted, she felt it should abide by the ordinances without extensions. The original PUD allowed four stories, which she felt was absurd, and to reduce it to two-stories should be reasonable. The applicants knew how the property was zoned, and she claimed that somehow the Master Plan got changed, and there was not a plan that supported it. The applicant was coming to the City, and the City should not compromise the ordinances and put in exceptions. If it were any other developer, he or she would have to abide. The fact that Mr. Gilbert had been in the City a long time meant he had a certain reputation and rapport, but this was a community of over 300 homes that also paid taxes. Mr. Gilbert had Florida license plates, and she did not think he lived here, but she would have to look at the development every day. She knew he had to make a buck, but she took people into consideration when trying to do the same.

She said she still did not understand the FB-1 overlay and B-2 and the FB-2 overlay. She thought they were just to allow greater use, and she asked if that was correct.

Chairperson Boswell answered that it did allow flexibility. Ms. Winarski said that there was no plan, but they would have flexibility, and she asked if the commercial would be limited to certain areas of the PUD.

Chairperson Boswell agreed it would. Ms. Winarski asked if the Commission was aware there was an existing wetland permit, which Chairperson Boswell acknowledged.

Chairperson Boswell closed the Public Hearing at 8:10 p.m.

Mr. Gaber showed an exhibit to the Revised PUD, which showed two zones - yellow and blue. The blue zone (along Rochester Rd.) was the FB-1 zone that could have commercial uses. No commercial buildings would be closer than 200 feet from the Eddington Farms boundary. The yellow area could have residential single-family, residential multi-family and office uses. There would be a 50-foot setback from any residential building; office could not be closer than 100 feet.

Mr. Gaber discussed building heights at different setbacks, noting that there would no longer be four-story buildings. People had mentioned traffic concerns, and they proposed re-aligning Eddington with Drexelgate if a light is approved. They potentially could align a road with Sandalwood further south. In terms of the types of uses, he stated that it was obvious the development would generate more traffic than what currently was there. They would put in a cross access from Eddington towards the Bordine's site so people did not have to traverse Rochester Rd. Regarding rental units, he did not feel it was fair to paint them in a negative light. There were apartment complexes that were very well maintained and valuable, and there were some condos that were poorly kept. When he mentioned Chili's at the last meeting, he was just naming restaurants that might fall within the 35% alcohol to gross sales. Hamlin Pub would not be allowed, for example.

Mr. Gilbert reiterated that they did not have anyone lined up yet. He felt they addressed the concern of bars, and reminded that City Council controlled liquor licenses. Someone had mentioned that there could be 1,000 apartments, which he said would be impossible under any scenario they proposed. They were mandated to do a minimum of 250 units and a maximum of a little over 300. They were discussing maximums, and he was just trying to give a level of comfort. Regarding traffic, he felt that

mixing the uses would be a good thing, because it would create different traffic patterns. If it were all residential, the majority of people would be going to work and back around the same time. Office and retail had different hours. Traffic was bad on Rochester Rd. no matter what. He hoped that some day the intersection might occur.

Mr. Gilbert reminded that the site was master planned for mixed-use in 1998. Everything had changed, and lots of things had been renegotiated. He had renegotiated every contract with his builders or they had been abandoned. Six years ago, if he said the government would own two of the Big Three auto companies, people would have thought he was crazy. He had no idea of how the uses would mix. Someone asked why they did not just rezone everything, and he stated that was an option, but not one they preferred. The previous PUD did not work, but he could not just define something any more. He understood the concerns; the people most affected were the ones that abutted the property. They felt the best solution was an opaque screening.

Chairperson Boswell noted the question about water runoff, and he asked Mr. Delacourt to address it.

Mr. Delacourt explained that any time a site plan was submitted, the applicant was required by the City's Engineering Standards to not have a negative impact with stormwater runoff. They were required to retain and release it at an agricultural rate. Prior to starting any building, there was a separate construction plan review with the Engineering department with a great amount of detail. He encouraged people to stop in and talk with the City Engineer.

Mr. Delacourt talked about the overlays and zoning districts. As had been mentioned, in 1998, the site was master planned as mixed-use. The City's adopted Master Land Use Plan (MLUP) indicates the desired future land uses for parcels. In 2002, the applicant came to the City to begin negotiating how to implement that land use category. There was no mixed-use zoning in the Zoning Ordinance at that time. The vehicle that was identified as most appropriate was a PUD Agreement. A PUD allows a negotiated development between the applicant and the City regarding a mix of land uses. That resulted in the 2004 PUD Agreement. The PUD Ordinance at that time required the site to have a B-1, B-2 or B-3 underlying zoning district and the property was Rezoned. The updated 2007 MLUP put an overlay zoning in place that was reflective of the uses in the approved PUD, not because the City desired that zoning. The MLUP needed to reflect the approved PUD for the property. Staff felt that

using a PUD was still the better process for the site.

Mr. Kaltsounis recalled when he first saw City Place. He felt it was an amazing proposal, but over time, the development was up for sale and he remembered that one potential buyer proposed a lower quality development. He said he was uncomfortable with the proposed PUD Agreement. There were references to G&V or "owner." He would prefer to see one or the other. The way he read it, Mr. Gilbert was signing up for FB-1, but if he sold the property, the owners could develop it under FB-2. Mr. Gilbert disagreed, and said that the PUD went with the land. If he sold it, the new owner would be bound by the Agreement. Mr. Kaltsounis asked that the document be reviewed by the City Attorney.

Mr. Kaltsounis asked what would happen if the owner went bankrupt and if the contract would be null and void. Mr. Gilbert did not know. Mr. Kaltsounis wanted to make sure the City was protected. Mr. Gaber explained that the terms G&V and owner were used interchangeably, and that the Agreement ran with the land. If there was a bankruptcy, he thought the contract could be voided by the party, and the land would revert to the underlying zoning, but he offered that he was not a bankruptcy attorney. Mr. Kaltsounis said he would like that question answered.

Mr. Kaltsounis stated that they should refer to FB-1 or FB-2 in the document, not both. He noted that the wetland lines delineated in Exhibit C (Site Plan) probably went back to 2002, and the wetland could have gotten bigger or smaller since then. Exhibit C would determine the density of the 50,000 square feet of the commercial area. They might have to change where they wanted to put in a bridge or road, and that might push the commercial onto the rest of the property. He thought that needed to be looked at before anything went forward. He was not too excited about seeing a site plan that just showed "this area," whereby he had to make assumptions about what would go where.

Mr. Kaltsounis stated that he did not believe the intended use for a PUD applied to the property as written. He felt it was more like a Conditional Rezoning than anything. He read, "The PUD option shall not be used for the sole purpose of avoiding applicable requirements of this Ordinance. The proposed activity, building or use not normally permitted shall result in an improvement to public health, safety and welfare in the area affected." He further read, "The PUD option permits flexibility in the regulation of land development by encouraging innovation through an overall development plan to provide variety in design layout." He said

that innovation was what they had before, not FB-1 or FB-2, and that they were only getting Conditional Rezoning. There was an opportunity to mix different properties, but since it was still FB-1 or 2, he asked why they did not just rezone it rather than apply a PUD.

Mr. Kaltsounis referred to Exhibit D that showed pictures of proposed trees, and said that he did not think B-2 buffer requirements would be adequate. Mr. Gaber pointed out what was proposed in the text, and said there would be an opaque screening requirement so that within three years, it would be at least six feet in height with no openings.

Mr. Delacourt said that the applicant was proposing 30 feet plus the green wall, which was greater than the Type D requirements required. There would be no parking or improvements in the 30 feet.

Mr. Kaltsounis acknowledged the landscaping, but said he could not vote yes or no. Mr. Gilbert asked if his preference was to rezone the property. Mr. Kaltsounis did not know if there were enough criteria to use a PUD. With other Conditional Rezonings they had done, there were agreements for improvements to materials and things like that. He did not expect Mr. Gilbert to come forward with what he had before, but he did not see anything more than an FB-2 development and thought they should have offered more.

Ms. Brnabic said she liked the fact that they changed the timeframe to ten years from submittal of the first site plan, rather than 20 years. She questioned the timing of development as "substantially complete" because it seemed too subjective. Mr. Gilbert said there absolutely an incentive to get things done as quickly as possible, and he asked at what percentage she felt it would be substantially complete, noting that if the property were rezoned, there would be no timetable to do anything.

Ms. Brnabic agreed that was true, but she reminded that there was generally a projection with a site plan. Mr. Gaber said that they put 60% in for substantial completion, but would agree to take it out. Ms. Brnabic indicated that 60% was just over half. She understood the economy, but there had to be a clearer guideline because there was not a specific plan in front of them. Mr. Gaber asked if 75% would be better, to which Ms. Brnabic agreed, and Mr. Gilbert said they would make that change.

Mr. Hooper asked if Mr. Staran had looked at the agreement they had received at the meeting. Mr. Gaber advised that Mr. Staran had seen the version dated June 21, 2010. Mr. Hooper clarified that G&V agreed to

increase certain building setbacks because of different uses as consideration for modifying the original PUD. He referred to the architectural standards, and said he agreed with the statement that in the area along Rochester RD. they would match the style, colors, and materials shown on the Fifth Third Bank. He was not quite comfortable with what they proposed for the office and/or residential area behind that, and questioned whether they would use downgraded materials there.

Mr. Hooper read: "Open space and landscape area shall be determined as part of the Site Plan Approval. The landscape buffer on the eastern boundary of the land adjacent to Eddington Farms Subdivision shall be a minimum of 35 feet for adjacent two-story residential or 50 feet for three-story residential, office or retail." The applicants were committing to increase setbacks if there were higher residential and office buildings, so he questioned why the berm/green wall could not be increased as well. He suggested that there could be a 50-foot green berm at a minimum. He wished to see in writing that if there was going to be something other than residential, then the berm would be larger.

Mr. Hooper asked Mr. Delacourt if the Engineering Dept. had no objection to the way the right-of-way issue was written. Mr. Delacourt agreed that the language was actually suggested by the City's Traffic Engineer. Mr. Hooper referred to Article 18B, Development Sequence and Timing, and asked if the two one-year extensions were something City Council would automatically grant or if that should be put in the Agreement.

Mr. Anzek said that it was not automatic. The current Ordinance allowed Staff to administratively grant the first extension, but the second would have to go before City Council as written. Mr. Hooper suggested that they add that the property owner shall have three years from the date of the Agreement to submit a site plan for all or any portion of the project and the owner may obtain up to two one-year extensions for good cause shown from the City Council. He asked about the timeframe, and said the applicants could have ten years from approval of the first site plan to finish the project, which could conceivably be the worst case scenario. It could be pushed to 15 years. He would prefer that it said, "ten years from the date of this Agreement," rather than from the first site plan submittal.

Ms. Brnabic wondered why an extension would automatically go to City Council, rather than Planning Commission as it normally did. Mr. Gaber said it could be changed. Mr. Anzek said that if the PUD were approved and there were various site plans, the Planning Commission would review

the site plans, not City Council, so he agreed that after one, any extensions should go before the Planning Commission. Contract matters were for City Council to decide.

Mr. Dettloff supported Mr. Hooper's suggestions about the timeframe and that it should be ten years from the date of the Agreement. He asked about the house, and whether it was Mr. Gilbert's intent to try to redevelop it.

Mr. Gilbert said that even without the requirements of the Historic District Commission, it would be prohibitive. There was mold on the interior, and doing the exterior would be very costly. He did try to give the house away and assist with moving it, but it still did not make economic sense, and it was not viable for re-adaptive use.

Mr. Kaltsounis remarked that there was light at the end of the tunnel, but he did not think they were there yet. He recommended postponing the matter. The applicant could revise the document based on their conversation and come back before the Commission.

MOTION by Kaltsounis, seconded by Brnabic, that in the matter of City File No. 02-027 (City Place PUD), the Rochester Hills Planning Commission hereby postpones the recommendation to the next available meeting.

Chairperson Boswell noted that several recommendations had been made, and he asked, with regard to them, if Mr. Gilbert knew where he stood. Mr. Gilbert said that he did not know what Mr. Kaltsounis was asking with regard to the wetlands. He did not know what needed to be defined.

Mr. Kaltsounis stated that the wetlands took up square footage. They might have to put in roads and bridges where they planned to put businesses. It would affect the site plan and he asked if Mr. Gilbert was willing to go forward with the possibility that he might not get 50,000 square feet. Mr. Gilbert said he was, and that nothing would be known until they determined a layout. He asked if Mr. Kaltsounis wanted him to do another wetland survey. Mr. Kaltsounis said he was just asking for due diligence to make sure he was protected.

Mr. Gaber said that the project would still be subject to all wetland requirements. If Mr. Gilbert could not fit 50,000 square feet of commercial in the proposed area because of the wetlands, it was a risk he would take.

Mr. Kaltsounis felt it would be a large chunk. Mr. Gilbert agreed it might be. He wondered if there was something else they needed to work on.

Mr. Brnabic said that they just wanted to see everything completed, because there had been a lot of comment. They were pushed to get it done in a week, and now the Commissioners brought up other issues. They could just add conditions, but she felt it would be better to come back with a completed document so they were comfortable and there was clarity.

Mr. Gilbert said there were a lot of comments, but there were some from the citizens that they could not address. He wanted specifics, so they did not come back and hear more issues the next time.

Mr. Anzek stated that wetlands were dynamic, and they changed. Several years ago, he told Mr. Gilbert that the City's wetland consultant had discussed mitigating the portion of wetlands along Rochester Rd. back to the southern part of the L-shaped parcel, thereby enhancing the overall wetland. The wetland portion along Rochester Rd. was not of the highest quality based on previous surveys. Mr. Delacourt said that the applicant would have to comply with the City's Ordinance and the MDNRE (State) and any filling would require permits. Mr. Gilbert knew that if the wetlands prevented him from reaching the allowable square footages in the PUD that it was his risk.

Mr. Dettloff asked if Mr. Staran could be present when the PUD came back, or if he could send a letter indicating that everything had been reviewed. Mr. Delacourt said it would definitely be reviewed by Mr. Staran and all applicable City departments, and he could get something in writing.

Ms. Brnabic had a concern about limiting the restaurant hours to 11:00 p.m. on Fridays and Saturdays. Mr. Gaber said they wanted to please everyone, and have a successful development, and they would like to be able to extend the hour on the weekend. It was discussed briefly and determined that it would remain at 11:00 p.m.

Mr. Hetrick agreed that they should bring the matter back as soon as possible. The applicants had made quite a few concessions, and he appreciated the greenbelt and the change in timing and other things they were doing to help protect everyone.

Chairperson Boswell asked Mr. Gilbert if he was agreeable to changing

the timeframe to ten years from the date of the Agreement, and Mr. Gilbert did not think that was unreasonable. Chairperson Boswell noted that a second extension would come before the Planning Commission rather than City Council. He asked about the 50-foot buffer adjacent to residential.

Mr. Gilbert said that if they built anything other than residential, the setback would be greater. Mr. Hooper wanted to make sure there was no parking or anything in the green space because the setbacks were different from the buffer. Mr. Gilbert agreed.

Chairperson Boswell stated that Mr. Kaltsounis had asked for consistency in using either G&V or owners but not both. Mr. Kaltsounis asked for a clearer understanding of the quality of materials related to the residential. The Agreement said that materials would be similar to Eddington Farms, but he reminded that it was about 25 years old. Mr. Gilbert said there would be different opinions of what was attractive architecture. The architecture would be updated, but he did not really know how to define it until they got into the design process. Mr. Kaltsounis suggested that they add things like "brick up to the first story in the back; front face all brick," for example. Mr. Gilbert said they could define it more clearly. Mr. Delacourt pointed out that it was fairly detailed in the ordinance, so they did not want to add language that conflicted.

Chairperson Boswell called Ms. Winarski who had raised her hand to speak. She stated that she was surprised none of the Commissioners addressed the amount of commercial. She thought that 50,000 square feet was excessive, and if they filled in wetlands and put buildings in the back she wondered where they would be put. She asked Mr. Gilbert if the wetlands that abutted the subdivision were regulated or not (they are). Mr. Gilbert said that if they got a permit to fill, the area that was not wetlands would be made into a wetland, and there would never be anything built there.

Ms. Winarski asked Mr. Gilbert if he would be willing to put in the buffer first - before site plan construction. Mr. Gilbert thought that might be unreasonable. Mr. Delacourt suggested that language could be added to the PUD so that landscaping would be installed prior to the start of construction if approved by the City's Forestry and Planning departments, and it would be seasonally permitted.

Ms. Winarski asked what would be done for the subdivision roads. She asked if Mr. Gilbert would have to do something, and Chairperson

Boswell said no. Mr. Anzek said that the City evaluated the streets each year during the CIP process. Without revenues, street reconstructions were all being put on hold. Mr. Schroeder mentioned the Arrowhead Decision lawsuit, where it was decided that a City could not impose costs on a developer. The developer only had to pay for that which directly affected his development - driveways, excel, decal lanes, passing lanes - but no other offsite costs. Mr. Gaber added that there were no impact fees in Michigan.

Ms. Winarski brought up bankruptcy, and said it reminded her of the Petoskey hole. There was a PUD scheduled for the downtown area, and the developer dug a huge hole and then went bankrupt. Petosky was stuck with a big hole and the City had no money to do anything. Chairperson Boswell said that some things happened, and he could come up with a dozen scenarios of things that could go wrong.

Mr. DeShaw said it appeared that the City was going to move forward with the PUD and he said that if Mr. Gilbert was going to win, he had not heard his questions answered with respect to the yellow zone. They were looking for it to be more restricted. He was opposed to office anywhere in the yellow zone. He did not want his property value impacted. Mr. Gilbert was winning, but he could win if it were revised. He thought there should be some concessions for the residents. Chairperson Boswell asked if office was allowed in the present PUD. Mr. Gilbert said there was office in the plan, but not in the yellow zone.

Chairperson Boswell said that there seemed to be a lot of concern that there could be up to 50,000 square feet of commercial along Rochester Rd. He asked the Commissioners if they had any thoughts.

Mr. Yukon said he voiced his concern last week, and he said he was still concerned about it. Mr. Kaltsounis said he was concerned, but he thought that when they went through the site planning that they would not get that much.

Chairperson Boswell reread the motion and asked for a voice vote:

*Ayes: All
Nays: None
Absent: Reece*

MOTION CARRIED

ANY OTHER BUSINESS

Upon questioning by Mr. Schroeder and Ms. Brnabic, the

Commissioners and Staff talked briefly about the Crooks Rd/M-59 interchange and the Auburn Rd. overlay scheduled for construction.

NEXT MEETING DATE

The Chair reminded the Commissioners that the next Special Meeting was scheduled for July 20, 2010.

ADJOURNMENT

Hearing no further business to come before the Commission, and upon motion by Kaltounis, the Chair adjourned the Special Meeting at 10:04 p.m., Michigan time.

William F. Boswell, Chairperson
Rochester Hills Planning Commission

Maureen Gentry, Recording Secretary