

**Tuesday, May 4, 2004**

**REGULAR PLANNING COMMISSION MEETING** held at the City of Rochester Hills Municipal Building, 1000 Rochester Hills Drive, Rochester Hills 48309, Oakland County, Michigan.

Chairperson Eric Kaiser called the meeting to order at 7:30 p.m. in the auditorium.

**ROLL CALL:**

Present: Chairperson Eric Kaiser; Vice Chairperson James Rosen, Members William Boswell, Deborah Brnabic, Kathleen Hardenburg, Melinda Hill, Greg Hooper, Nicholas Kaltsounis, Audrey Ruggiero  
Quorum Present.

Absent: None

Also Present: Ed Anzek, Planning Director  
Derek Delacourt, City Planner  
Maureen Gentry, Recording Secretary

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**MINUTES FOR APPROVAL:**

Regular Meeting of April 20, 2004

**MOTION** by Brnabic, seconded by Ruggiero, that the Minutes dated April 20, 2004 be accepted as printed.

**Voice Vote:**

Ayes: All  
Nays: None  
Absent: None

**MOTION CARRIED**

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**COMMUNICATIONS:**

A) Planning & Zoning News dated April 2004

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**NEW BUSINESS:**

**2. Rezoning Request - City File No. 03-013 (Public Hearing)**

Project: Hamlin/Adams Rezoning  
Request: An amendment to Chapter 138 of the Code of Ordinances to rezone two parcels of land totaling approximately 28 acres from R-2, One Family Residential to B-2, General Business District  
Location: Northeast corner of Hamlin and Adams Roads  
Parcels: 15-29-101-022 and -023  
Applicant: Hamlin Adams Properties, L.L.C  
24400 Jefferson Avenue  
St. Clair Shores, MI 48080

(Reference: Staff Report prepared by Derek Delacourt, dated May 4, 2004 has been placed on file and by reference becomes part of the record hereof.)

Mr. Kaiser advised that he spoke with the applicant and members of the City Staff, and it was determined that the applicant wished to voluntarily postpone the request for

rezoning, primarily because they wanted to make an effort with City Staff to pursue this application jointly as a Planned Unit Development (PUD). He felt that warranted some discussion by the Commissioners.

Present for the applicant were Paul Aragona and Paul Henderson, applicants; John Gaber, Williams, Williams, Ruby & Plunkett, PC, 380 N. Old Woodward, Suite 300, Birmingham, MI 48009, Attorney, Tony Anthony from AKT Peerless, 105 E. Michigan Ave., Jackson, MI 49209, Environmental Consultant.

Mr. Kaiser asked Mr. Gaber if he agreed with postponing the request to rezone. Mr. Gaber replied that they expected to go forward with the Public Hearing and procedure for the B-2 rezoning request. He indicated that if the Planning Commission determined it made sense to proceed with a PUD process that would still require a rezoning from residential to business. For that reason, he said they anticipated moving forward with the rezoning request, but they would be willing to discuss the PUD process and how it might make sense for this site.

Mr. Kaiser advised that they would only discuss the B-2 rezoning request. Mr. Gaber stated that if the Planning Commission would rather discuss a PUD process, that could be done, but he felt they would still need an approval for the rezoning request. He thought both issues could be discussed this evening. Mr. Kaiser said the Commission could only hear the rezoning request at this meeting because if the applicant chose to come forward with a rezoning request in conjunction with a PUD, Staff would not be prepared to make a recommendation regarding that.

Mr. Gaber suggested proceeding with the Public Hearing but tabling the vote for the rezoning, and then discussing whether the applicants should come back with a PUD proposal. Mr. Kaiser explained that if they discussed the rezoning, it would be so the Commissioners could decide what to recommend to City Council. That would entail deciding whether this site was appropriate for B-2 uses and no Site Plan would be discussed. The uses would be discussed in a generic manner. If the project came forward as a PUD, it would be contractually tied to the site, and he did not feel it would be worth the time, and would perhaps be disingenuous to the public, to not have both come forward at the same Public Hearing. He would have to limit the public to discussing the B-2 request, without discussing this site as a PUD, so he did not feel it would give the public fair ability to comment.

Mr. Delacourt referred to the Staff Report and said that Staff recommended against a straight B-2 rezoning for a couple of reasons: One, this request was not supported by the Master Plan and; two, Staff was opposed to a list of permitted B-2 uses and straight zoning dimensional requirements because of the potential for unknown contamination on the site. He indicated that after the presentation, if the Planning Commission agreed with Staff, there might be a need to look at the site under a more controlled situation, perhaps through the use of a PUD. Regarding a straight rezoning versus a PUD rezoning, if using the PUD process was recommended, Staff would be hesitant to discuss a B-2 underlying zoning now because there had no been discussion about acceptable uses for this site. Staff was more interested in what the Planning Commission felt would be the most appropriate uses if it was determined that single-family was not credible or even possible.

Mr. Kaiser proposed that the applicant voluntarily postpone the request for B-2 rezoning until they were ready to bring it back in some form. He would like a Commissioner to make a resolution that City Staff and the applicant should pursue consideration of the PUD process, and that Preliminary PUD recommendation be brought back in a joint Planning Commission and City Council meeting. He felt that would be a better way to educate both bodies, as well as the public. If such a resolution were passed, he clarified that they could still have discussion, and he would hear from the public about some of the issues, although not a Site Plan. Mr. Gaber asked for a moment to confer with his clients, and it was determined that the applicants concurred with Mr. Kaiser's recommendation to postpone the B-2 rezoning request, and they requested there be additional discussion on the issues.

Mr. Kaiser explained that there would not be a Public Hearing or recommendation by the Planning Commission regarding the rezoning request. If the applicant chose to come back with a request for a PUD, there would be several steps to that process. He noted that there were some brownfield issues with the site that would also need to be ironed out.

Mr. Delacourt advised that the City's environmental consultants had reviewed the DEQ information and had been involved with the review of the Brownfield Plan for this site. He believed that this was the first time the Planning Commission had reviewed a matter that included a Brownfield Plan component. The Brownfield Redevelopment Authority (BRA) had also reviewed the Brownfield Plan for this site. The applicant wished to use that vehicle to assist with the cleanup of the property. Mr. Kaiser asked him to explain.

Mr. Delacourt advised that a brownfield site was any site that had contamination or perceived contamination. He noted that there were standards that would qualify a site as a "facility," which would entitle the owner to use brownfield program. A Brownfield Plan outlined the process, and based on a proposed development, it would allow increased taxes from that development to be captured and paid back to the developer for defined activities.

Mr. Kaiser asked if the developer must pay to clean up the site and if, when the development were complete, the developer would be paid back from the taxes it generated. Mr. Delacourt clarified that the developer would be paid back only out of the increased tax value. The existing taxes would be locked in, but there would be an incentive to clean up contaminated sites. Mr. Kaiser asked if it was correct that the contamination would not just stay on the property but would migrate to other properties. Mr. Delacourt answered that depending on the contamination that would be correct. Mr. Kaiser said that hopefully, the Brownfield Plan cleanup would prevent future migration.

Mr. Delacourt stated that it had already been established that this site was a facility. That allowed the applicant to submit a Brownfield Plan, which would require approval from the BRA and City Council. The Plan had to include some type of conceptual proposal that the applicant would base estimates of increased value for the site. The conceptual proposal in this Brownfield Plan would not be supported by the zoning district or the Master Plan. It was not the BRA's job to discuss zoning, but they reviewed the Plan and approved it as applicable to them. There was a condition that prior to review of the Plan by City Council, the applicant had to resolve the zoning issues. The applicant maintained that the ability to increase the value of the site and generate enough of an increase in taxes to clean up the site could not be done with a single-family residential development.

Mr. Gaber stated that his clients had gone through the PUD process with the City previously and that they were in the process of successfully producing a top-notch development at the corner of Tienken and Rochester Road. The applicants were looking at doing the same thing here, an office and retail development, but on a different scale. He advised that the applicants would be willing to use the PUD process and that they would be willing to work with the neighbors. The Brownfield Plan was approved almost a year ago and the rezoning application was submitted in November, and he noted that there had been three meetings recently with the neighbors. They met with approximately 16 homeowners who abut the site, and discussed the environmental situation. There was also a follow-up meeting on April 29, and he felt this showed they were willing to work with the neighbors to make this a win-win situation. He asked Mr. Anthony to discuss why this property merited a commercial rather than a residential development, which they did not believe could feasibly be done. Mr. Kaiser reiterated that no plans showing what could go on the site would be reviewed.

Mr. Anthony noted that his firm had handled brownfield redevelopment projects throughout the State. He stated that this site had an abandoned landfill, and that those sites were the most difficult. He explained that the brownfield program was based on what type of tax revenue could be generated to offset the cleanup costs, and that abandoned landfills had the highest costs. A commercial development would generate

a much higher amount of tax dollars. The cleanup level would be based on site use – residential site use means a much more extensive cleanup than commercial site use. He explained that the State conducted earlier investigations that showed contamination and they applied money toward some cleanup. They did excavating and removal, and found crushed drums, and much of the material hauled away was defined as hazardous. A full clean up of this site would include that consideration. In addition, they found hot spots of PCBs within the fenced area, above 50 parts per million. He defined the nature of a landfill as heterogeneous and said there were hot spots throughout. He referred to the cost for removal of the soil and said he would have to analyze the cost of a cleanup and whether the taxes generated from that could offset the cost. He advised that the State had removed some of the soil. There would be an imminent threat to the health and safety to humans to allow someone to build homes on that property without a full cleanup. They would have to look at how much would be hazardous. The State analyzed the soil and if they assumed that 20% was hazardous, because of the heterogeneous nature, it could make the numbers even higher. The numbers included to clean up the soil were conservative, because they did not know how far the contamination had spread, but the cost for residential would far outweigh that for commercial. With a commercial cleanup, they could do containment, but with residential, they would have to do a removal, which would be a big difference. With containment they could add a cover of one to two feet, which would allow people to cross the area, rather than having to excavate it.

Mr. Kaiser asked what the cover would do for groundwater contamination. Mr. Anthony replied that a proper cover, and one with vegetation, would reduce the amount of infiltration, and as that is reduced, so is leeching. The cover they would propose would completely eliminate infiltration and would have a clay layer or a geo-membrane. The costs when clay is involved go up, but they could see if that made sense or if the Brownfield Plan budget could be amended. He advised that when it rained, everything on the site infiltrated into the landfill. When developed, the site would have a building, pavement and new landscaping, and that would greatly reduce the infiltration. The parking lot would create run-off and the best way to handle the stormwater, rather than having detention on site, would be to put in below grade stormwater vaults. That would be an option that would help circumvent the landfill. He stated that development would definitely decrease the amount of infiltration now going through the landfill.

Mr. Kaiser asked what the cover would do in a commercial development for what was migrating into the adjacent residential properties. Mr. Anthony referred to run-off and said that there could be erosion and migration of particles through dust and surface water run-off. The cover would prevent dust migration, and prevent ingestion exposure at the residences.

Mr. Kaltsounis indicated that part of Mr. Anthony's presentation concerned him, and he referred to the unknown contamination and "anomaly." He said he would have a problem if this project came back as a PUD if he did not know the rest of the story. The State said one spot was contaminated and if the environmentalists found another spot contaminated he would be concerned there would be other areas. He would be hesitant about entering into a contract for something he did not know enough about, and what he saw in this Plan was not enough to convince him.

Mr. Anthony said asking about the true extent of the contamination was a good question. The reason they included costs for additional investigation was because they wanted to be sure of the full extent. He referred to the survey, and said the data they reviewed showed that the contamination was concentrated in one area. They took samples and found out where they did *not* see drum areas. He agreed that additional work was needed to define the extent, and he said it was common to find unknowns. Mr. Kaltsounis said it was up to the developer to make sure that all the i's were dotted and all the t's were crossed. He did not think the money allocated would be enough.

Ms. Hill asked Mr. Anthony if they had done tests for the applicant's property or if they analyzed materials from some other point in time.

Mr. Anthony replied that it was a combination of both. The majority of information came from analyzing materials from an earlier time, performed by other contractors. When the State did grid borings at this site for another developer, his firm sent a field person to observe the site and to see the sample taken. They also reviewed and interpreted the results.

Ms. Hill asked if that was just partial testing or if it was conclusive. She said she was not sure how complete the tests were, and she questioned if the data was recent or if it was after the MDEQ came in. She noted that Mr. Anthony seemed to have come to the conclusion that contamination existed, but she was not sure she was satisfied with that information without knowing if recent testing had been done.

Mr. Anthony advised that there was a previous developer who decided not to do anything with the site after seeing the results of the testing. He indicated that brownfield redevelopment was too risky and time consuming for that developer.

Ms. Hill clarified that the data Mr. Anthony examined was from a complete testing. Mr. Anthony explained that he relied on a few pieces of information – a geophysical survey, which he did not perform, done prior to the MDEQ's testing; an initial investigation by another environmental firm that looked at groundwater and soil contamination; and then the State's information. The State hired contractors for the removal action. The documents were reviewed and he could determine that excavation was done within the fenced area, but he did not know, because the data was not collected well, the pattern excavated and how deep they excavated. Usually, samples were collected from the sidewalls and floor of the excavated area, but that was not done. At a later date, because this information was not collected at the time of excavation, they did a grid pattern of soil borings. Looking at those logs, it was still not clear where it was clean and where it was not. They did know that the majority of the problem was within the fenced area.

Ms. Hill asked if it would be fair to say that the majority of the information presented this evening was pre-MDEQ excavation, and that some was post analysis, which seemed to be relatively sketchy. Mr. Anthony said the post investigation showed that there were about 9-12 samples taken within the fenced area to see what was left there, and he felt that confirmed that there was a problem within the fenced area. Ms. Hill indicated there was not much information for the rest of the area. Mr. Anthony agreed that for the outside the fence that was right, and that was why they proposed further investigation.

Mr. Hooper said the Brownfield Plan, page 6, referenced that complete removal of the soil and cleaning to residential standards would cost approximately \$5.5 million dollars, but Mr. Anthony talked about \$15 million. Mr. Anthony said complete removal meant the western parcel, and the eastern parcel was not addressed. Mr. Hooper said the Plan did not say anything about restricting the parcels. He asked about the levels of contamination and about the 50 parts per million. Mr. Anthony explained that was related to PCBs and that was a number for what type of landfill it would go to, not a reflection of human toxicity. Mr. Hooper asked if that was the standard level for a clean commercial site. Mr. Anthony explained that it was the level it was rated to have to go to an unsanitary landfill.

Mr. Rosen said they showed \$3.5 million as the estimated cost of excavation to be repaid to the developer. He asked if that was the same dollar amount for cleanup to commercial. Mr. Anthony agreed it was. Mr. Rosen asked what \$5.5 million represented. Mr. Anthony said it was for the western parcel to be cleaned up to residential standards and for capping the eastern portion. Mr. Rosen mentioned that Mr. Kaiser asked about the cover on the eastern parcel and said it would have drawbacks to groundwater and the Clinton River. Mr. Anthony said that it would, unless there was a clay layer followed by a soil layer. Mr. Rosen asked if a commercial developer would use that parcel. Mr. Anthony said there was a risk-based criteria used for commercial cleanup that would not be as rigorous. Mr. Rosen clarified that the residential cleanup would not use all of the area, but the \$15 million cost would assume the whole area would be used for residential, and the \$3.5 million for commercial would assume the whole area would be used for commercial.

Mr. Kaiser felt that if the project moved forward, Staff should get a report that reflected Mr. Anthony's clarifications. He indicated that page 8, paragraph 3.7 of the Brownfield Plan discussed the whole property, figure 2 showed the boundary, and yet the \$5.5 million allotted was only applicable to the western parcel. He felt that needed to be very clear. Mr. Anthony said he would submit an addendum. Mr. Kaiser asked Mr. Aragona if he wished to make a comment, and he said he would defer to the Chair and to the residents that wanted to comment. Mr. Kaiser opened the Public Hearing.

**Debbie Geen, 3128 Walton, Rochester Hills, MI** Ms. Geen indicated she had expected Mr. Staran, the City Attorney, to be in attendance. She read, "The Residential Vision Committee (RVC) of Rochester Hills, of which she is Chair and Spokesperson, having reviewed this rezoning request, all data available at City Hall and data from the Livonia DEQ believes that this rezoning request should be denied. Quite simply, the Master Land Use Plan would be broken. Going from residential to high density B-2 zoning, heavy commercial, is too intense a development for this parcel of land. The plan presented has no buffer or transitional zone from residential to commercial. Further reasons for denial are intense traffic at an intersection of Adams and Hamlin that will be too close to the new Adams Road interchange. The curb cuts for commercial development would create traffic and safety concerns at this gateway intersection, the Oakland Technology Park in Auburn Hills. If someone reviews the Master Plan, the City is built-out on commercial zoning. The road system has not been upgraded over the years to handle intense commercial traffic versus low-density residential traffic. It might sound good that commercial development generates tax revenue, but the road system is not in place to handle the traffic. In this particular case, the taxes generated from this land would not be going to the Rochester Schools, Oakland Community College, Rochester Area Recreational Authority, Older Persons Commission, Police and Fire Departments, Local Road Program, or water and sewer maintenance and upgrades." She asked what the final cleanup costs would be for this property – \$4 million, \$8 million or \$12 million dollars and said that no one knew for sure. She stated that it would be paid for by capturing taxes on this property for an unknown number of years, until all remedial costs by the developer were paid in full. She further stated that contract zoning was illegal in the State of Michigan. Based on the meeting Mr. Aragona had with the residents and Council President Dalton on April 5, 2004, she requested that the City Attorney review the contract zoning issue. The Commission's decision tonight should be based on the best and highest use of the land, not what the developer wanted to do with it. She commented that obviously, the developer had not changed his mind to put commercial development on a residential site and that "the RVC had not changed its mind – residential zoning was good yesterday and it was still good today."

**Ed Baron, 3310 Greenspring, Rochester Hills, MI** Mr. Baron noted that the residents patiently listened to the developer's presentation, but now that the residents were speaking, the developer and his partner had walked out. He stated that the purpose of the meeting tonight was zoning, not a lesson on brownfields. For over an hour, they discussed something that legally would not be part of a decision this evening. He stressed that this was a rezoning issue and that was what the criteria must be. It was his opinion that the Commission let the developer determine what the issue would be. He asked that the City Council and Planning Commission not meet together because the Planning Commission did not have its act together. He stated that they should get their act together, answer questions, get answers, let people give input, and then send this to the City Council. He was sure that the majority of the people present were wasting their time because zoning was not being discussed - the meeting was about the developer giving a brownfield lesson. He said they expected more from the Commissioners than this. The City had problems with the adjacent development, and lawsuits, and they would have the same mess here. They were heading in the same direction. The difference between commercial and residential is only \$2 million. That is not a vast amount of money to Rochester Hills. He asked why the residential neighborhoods in that area would be destroyed for \$2 million. If this developer could not handle it, he stated that they should get Mocerri Development or someone who could. He said it should be opened up to offers and made competitive. He concluded that this developer was not giving anything but a Trojan horse.

**Stephanie Mociba, 2881 Portage Trail, Rochester Hills, MI** Ms. Mociba stated that she had just purchased her home yesterday and was now finding all this out. They just found out about the zoning request yesterday. She stated that this was very disturbing to her. She said she did not have to lecture about spot zoning and proper buffers, because she felt they knew what those were. She said there was a contaminated piece of property and a developer concerned more about dollars and cents. There were allegations about tax increases, but this would not be the best for the neighbors. It would destroy their property values. If the land was contaminated, it should be cleaned up appropriately, but that this was not the way to go. She would hope the Commission would take all this into consideration. She stated that this proposal was not right for the City, for the Master Plan or for the neighbors.

**Brenda Savage, 1650 Northumberland, Rochester Hills, MI**, Ms. Savage noted that she was the Chair of the Rochester No New Taxes group. She reminded that the BRA would steal tax dollars away from this community and from Oakland County; specifically, it would steal money from the schools - \$1,691,946.00 for an eight-year cleanup. If it took longer because of increased costs, there would be an increased tax loss for the schools. The actual dollars lost to the community would be \$682,524.00. That money could certainly be put toward the roads. Every time she turned around Council members were asking how they could get money for and maintain the roads. She stated that this would be a good start. She stated that the rezoning should not be approved and that approval of this rezoning would sabotage the investments the residents made in good faith. The people who abut that property should not be punished or hung out to dry because they could not move or sell, and they would be left in a situation where a developer got back tax dollars this community needed. For some reason, they need to give to this developer rather than find the \$2 million to clean this parcel. As Mr. Baron said, they should find a developer who could afford to do that. This developer said they would do something such as capping, but did not actually say they would cap the land. The residents want to know the land would be made safe and the remediation would be complete and that the area would become healthy and safe. She remarked that a lousy \$2 million dollars in the developer's pocket was ridiculous.

**Bill Stolakis, 2978 Pheasant Ring Ct., Rochester Hills, MI**. Mr. Stolakis said that next month he would have lived in Pheasant Ring for three years. Before he bought his house, he came to the City and asked about the subject property. The Staff told him that no way would anything but residential be there. Now he is finding out about a rezoning and he did not want to see that. He came to Rochester Hills because it was beautiful and so his daughter could go to the University. He said he got kicked out of a country with a dictator and he did not want to be kicked out of his house. He stated that he lived in a beautiful City and he wanted it to stay that way, and that he would appreciate it if this did not go through.

**Bea Stachiw, 1685 Riverside Drive, Rochester Hills, MI** Ms. Stachiw stated that the proposed office and retail on the site would set a precedent for commercial on the north side of Hamlin Road and now there was no retail any place all the way down Hamlin until Rochester Road. She said this precedent should not be started and felt there had to be other options. There had to be some way to increase the tax base without retail or business. She noted that there were many empty storefronts in Rochester Hills and she asked why they would want to add to that. She asked that the City look at either leaving it undeveloped or making it residential, but making it safe for those who lived there. She noted that she lived two blocks away and was very concerned.

**Michael Wayne, 2817 Eagle Drive, Rochester Hills, MI** Mr. Wayne said that the company across the street from this site quoted a cleanup cost of \$24 million to clean up five times the amount of fill. He said that assuming \$12 million in cleanup costs, it would amount to \$400,000 a year in tax revenue or \$14,000 an acre, so he felt single-family would work at two houses an acre. Prior to agreeing to rezoning this as business, he asked the Commission to run the numbers for single-family residential. He talked to residents who abut the property, who would like this cleaned up and they understand the issue. Commercial property does not seem like the right rezone and the other possibility would be high density residential. He felt the numbers should be public as to why the developer could not do high-density residential.

**Mike Regan, 2863 Portage Trail, Rochester Hills, MI** Mr. Regan said he had lived in the area for almost 20 years and when he first bought his home, he was concerned and found out what the zoning was for the subject site, which abuts his property. He said he was assured by the City Staff that it was Master Planned for residential and that it would remain that. He made several trips to City Hall to assure that was the case. He said they liked the area and that they had heavily invested in it. He would really feel betrayed, as would the entire subdivision, if this were rezoned commercial. He stated that if it were cleaned up, it should be done to residential standards.

**Bill Windscheif, 2877 River Trail, Rochester Hills, MI** Mr. Windschief said that he, too, checked with the City to see what the zoning was on the subject site and he was told it was zoned residential. He would like it to stay residential. He said that he was confused by some of the discussion because he felt there was conflicting reports and complex information. It seemed to him that the State and MDEQ should have a lot of responsibility for this area because if this were not being considered as a brownfield cleanup, there would not be a commercial zoning consideration. He felt that the two things went hand in hand. They were happy to see the State begin a cleanup process some time ago because they thought the land would be put to better use. He wondered how the State could start something and walk away without being accountable. He wondered what action the City had taken to try to get the State to come back and fix the problem. He hoped the Council would want to keep the property as single-family residential. He said he posed these questions to the Mayor on two separate occasions and she referred them to Mr. Anzek, and he was waiting for an official answer from him.

**Cindy Kinker, 3274 Quail Ridge Circle, Rochester Hills, MI** Ms. Kinker thanked the Commission for allowing the residents to give input into this process. She said it meant the world that they were able to vocalize what they thought and felt. She said her heart went out to the residents that lived next to the property. If the property were rezoned to commercial without a traffic study or environmental study she would want a follow-up about the contaminants found and if they were leaking further. If there were a retail complex put in there would be noise 24 hours a day. She said that, for example, if there were an Arby's or a Target, there would be trucks coming at all hours. She stated that would be a horrible situation. She did not know how this could be done to the residents if they were told the subject property would be residential zoning. She stated that this was bad.

Mr. Kaiser noted that all of the concerns were well stated and shared by the Commissioners. He advised that all of the Commissioners were residents of Rochester Hills and had been in settings where something happening in their neighborhoods concerned them. He noted that sometimes Planning Commissioners had to make decisions that impacted their own neighborhoods and have had to make decisions they did not like, but that they were guided by Policy, philosophical considerations and also by the law. He brought up the comment about the State's responsibility and MDEQ's role in this. He did not feel they had the answer, but stated it was something they needed answered. A compelling issue for the Commissioners and the adjacent residents and other property owners was the fact that this property would only get cleaned up by a developer. It could sit here for another hundred years, polluting the adjacent properties and being a danger to those that might enter onto the property. The dilemma posed is that people do not want development next to them. If someone wanted to put in a 100-home development, the residents would ask why it could not be 80 homes. If it were to be a commercial development, people would want residential, so the concerns were expected and normal. He indicated that this site posed a unique situation the Commissioners were not normally confronted with. There was an opportunity to get a contaminated site cleaned up by a private developer. He said he suspected that no one who lived around there would open their bank account and offer to pay for it or offer taxpayer money to do it. The question would become an economic one for the developer. He noted that Mr. Wayne thought the developer should provide numbers to justify cleaning it up to a residential standard for a residential development, but he stated that Commissioners could not make a developer do that, and that they could only listen to the proposal to try and determine if it made sense. He advised that the questions about traffic, noise and lights were too pre-mature at this point to be considered. Those issues would be considered when reviewing the Site Plan. He



commented that there were a lot of residential settings more annoying than a lot of commercial settings.

Mr. Kaiser asked if anyone wished to resolve that the City Staff and applicant pursue consideration of the PUD process, with the application to be brought before a joint Planning Commission and City Council meeting.

Mr. Rosen replied no, and that he did not believe this area should be commercial. He thought that would be an inappropriate land use. He stated that the bigger problem was the contamination, but he was not convinced that residential would not work. He did not want to look at a PUD because he felt the City would lose control with a PUD, and noted that developers and builders were not held to the same standards under the Ordinance they would be using straight zoning. The Master Land Use Plan and good zoning practices would not be followed, which he felt would be a grave error.

Mr. Delacourt stated that by no means was Staff recommending that the developers should come with a commercial or office PUD. Even if were developed as single-family, Staff would recommend a PUD so the City could require additional environmental controls and it could have flexibility with lot widths and dimensions to avoid the contaminated areas.

Mr. Hooper said that he lived in California where a residential development was put over a landfill and it turned out to be a disaster. He did not know if it would even be possible, with a complete removal and replacement of material, to bring this property to a residential standard, or whether legally, someone could put homes there.

Mr. Kaiser said that his opinion was probably shared by a lot of folks in Shelby Township, where a disaster like that also occurred. Mr. Hooper agreed he would like to see additional figures, but even with those, he felt the property would remain as is, with no cleanup, or it would be developed as something other than residential for it to be cleaned up. He stressed that the City did not have funds to do it.

Ms. Ruggiero said that she could not answer Mr. Kaiser's question because she was left believing that they did not have a complete analysis for that site for any circumstances. She did not feel the presentation warranted discussion for anything. The information they had was from the State, who left, from pre-State, and from a less than a complete analysis by this developer.

Mr. Kaiser said he felt there was no way to compel the developer to do any further analysis or spend any more money. If someone did not move on it, the site would stay as it is. He indicated that if the PUD process were explored, part of that contract could require that the cleanup be done to a certain level. With or without a resolution, the applicant could come back in a week with a proposal or not do anything. The applicant should have some sense of what they could be allowed to do.

Mr. Anzek said that one of the dilemmas the State puts the City and the prospective applicant in is that to do further site analysis and recover money, it had to be done within a window of an approved Brownfield Plan. The BRA reviewed the Plan and recommended the approval, but it would be City Council that had the final say. For the applicant to expend additional money for more sampling, it would be a significant investment without a return unless it was done within the Plan.

Mr. Delacourt added that the Brownfield Plan was based on zoning that did not exist and he did not think the developers would spend the extra money unless they knew there would be recoverable money.

Mr. Kaltsounis agreed with Mr. Kaiser and with Ms. Ruggiero. If this went any further, by law, the Commission had to give a recommendation to City Council. He stated that the applicant had the right to come before the Commission with a PUD application, and suggested that for the future, if everyone were educated about what was out there, the applicant might get a different sentiment.

Ms. Hill pointed out that this was truly a tough one and said she agreed with what had been said. She commented that it was the chicken/egg situation, and she had not heard the developer necessarily say they would even clean it all the way to commercial standards. She questioned what level of contamination was there. If this project moved forward and they found much greater contamination, she would wonder about leeching onto the adjacent properties. She said she did not hear anything to address that issue and did not see anything in the Plan presented to the BRA. She wondered if there would be potential for residential on that site and she indicated that she was not opposed to the applicant coming back with another type of plan; however, she would be hesitant about how to move forward because the expectation was cleanup. Everyone would all like that, but she was not sure how they would get there. She agreed with Mr. Kaiser that it would probably be the property owner, unfortunately, versus the State stepping in, who would do the cleanup. There was really not a good answer, and she did not think they were presented with a solution that made sense yet.

Mr. Rosen indicated that what was really bothering him was that he did not want to see a half-done job. If the applicant bought the property and spent money, cleaning it halfway would not solve the problem and there would still be a level of danger for the people who lived near it, for the river and for the park. It bothered him that they might try to go the cheap way. Since the recapture of taxes was a way to pay for the job, the citizens would be paying for it because it would come out of taxes the City would get if it were otherwise developed. The right solution would be to pay for the whole cleanup and if the developer wanted to pay for residential cleanup that would make more sense. He would not want something done without a study, a Master Land Use Plan revisit, and good numbers, and he believed Mr. Aragona also deserved that.

Mr. Kaiser said that the PUD could include a condition that required a posting of a bond so that if the cleanup did not work, it would be used for further mitigation of any problems.

Ms. Hill said that as the investigation moved forward, if it was found that there was leeching but the Plan did not call for enough remediation, she would wonder if the City would have responsibility. She did not feel that what had been suggested would solve all the problems, and from reviewing the Plan, she did not know what would or would not be found. They have been asked to look at a Plan that was somewhat hypothetical with many "maybes" and "ifs." She indicated that she would like to see better information, and that she would not want to only get to a point where there could be a problem found later.

Mr. Kaiser asked Ms. Hill who should provide that information and if the City should foot the bill for it. Ms. Hill replied that she was not sure all the MDEQ information had been looked at and she was not sure to what extent they were involved. She wondered how much discussion took place with them.

Mr. Anzek responded that when the rezoning process first started, the Mayor and Staff asked for information about the site. In late November, Staff asked ASTI to review all the in-house records provided by the MDEQ. All that was learned was that more research was needed. They authorized ASTI to review the MDEQ's records. ASTI evaluated the data and reported back in March that they had concerns with the site. The question remained whether the data was current and he noted that the borings were done in 2002. To go to the next step would take a significant monetary outlay. Whether the applicant paid it or the City paid it, collecting data would take time. He suggested that perhaps the additional monies could be added to the Brownfield Plan.

Ms. Hill stated that she understood the process. She questioned whether they had any other data. Mr. Anzek said that Staff had exhausted what public records they had. He did not know of another agency that would have such data, and if it were privately held information, the City would not have access.

Mr. Rosen thought that worrying about exactly how much contamination was there, and where it was, missed the point. Mr. Anthony's analysis of cleaning it to residential standards would do the whole job. There would be a surprise if they assumed it could

be done for \$3 and it turned out to be \$6 million. His point was that they should assume the worst, do it right, and if the numbers worked, everyone would be ahead and if not, they would have to look at something else.

Mr. Kasier said that in response to Ms. Hill's concerns about whether there was enough data, he received information at a meeting recently that indicated children should not even dig holes on this property.

Ms. Hill referenced the statement about not letting children on the property, and she questioned if that was truly the level the property was at, because she did not conclusively have proof. If that really was the level of contamination, she did not want that diminished, but she was not sure it was, and she did not believe she could confidently say it was. She agreed that the residents were looking for something to be cleaned. She wondered if they should agree to put a development on the property to only "hopefully" get it cleaned, and she advised that would have to be weighed. She realized the residents wanted the property cleaned; she was just not sure who would do it for them.

Mr. Delacourt said that Staff had received all the information Mr. Anthony reviewed from the MDEQ, and advised that what was represented in relation to PCBs was accurate based on that data. Additional site assessment needed to be done, but he assured Staff could verify that what had been presented this evening was accurate.

Ms. Hill asked if it were true that no one should touch the property outside the fence. Mr. Delacourt replied that was not what he meant; he meant the levels discussed were accurate, but he did not want to quantify a danger level.

Mr. Boswell said it was puzzling to him that they would consider a partial cleanup and capping of part of the property. He stated that they still would have unknown contaminants in the ground, heading toward the river. He felt that the alternative, however, leaving it as it was, was even worse. He agreed that if they were going to do something, it had to be done completely. It might cost more, but if they were going to clean it, it should be the whole thing.

Ms. Brnabic said she shared all of the concerns from the Commissioners and members of the audience. It bothered her that they would be disturbing something and covering it. She did not have the solution now, but she would not have recommended a straight rezoning this evening, knowing all the issues and concerns.

Ms. Hardenburg said she mostly agreed with everyone else. She believed there was a Master Plan for a reason, so she was not fully in favor of a rezoning. On the other hand, there was some contaminated ground that needed to be cleaned up. She noted that it would be difficult, but if the applicant came back, a decision would have to be made.

Recess: 9:35 to 9:45 p.m.

## **DISCUSSION:**

### **Smartzone Overlay Zoning Districts**

(Reference: Memo and map prepared by Dan Casey, dated May 4, 2004 has been placed on file and by reference becomes part of the record hereof.)

Mr. Casey was not in attendance. Mr. Anzek stated that this item concerned possible overlay or creative zoning techniques. Having an overlay zoning would support the SmartZone designation, an agreement entered into in December 2002 with the Michigan Economic Development Corporation. That agreement called for flexibility provisions for the attraction of high tech research and development (R&D) activities. The ORT- Office, Research and Technology designation might work, but Staff wanted to look at other options which might be more attractive or conducive. He advised that he had been on vacation for the last week and a half, and after reading Mr. Casey's memo,