



Rochester Hills Minutes City Council Regular Meeting

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*Erik Ambrozaitis, Bryan K. Barnett, Jim Duistermars, Barbara Holder,
Linda Raschke, James Rosen, Ravi Yalamanchi*

Wednesday, April 5, 2006

7:30 PM

1000 Rochester Hills Drive

CALL TO ORDER

President Rosen called the Regular Rochester Hills City Council Meeting to order at 7:37 p.m. Michigan Time.

ROLL CALL

Present: Erik Ambrozaitis, Bryan Barnett, Jim Duistermars, Barbara Holder, Linda Raschke, James Rosen and Ravi Yalamanchi

Others Present:

*Dan Casey, Manager of Economic Development
Scott Cope, Director of Building/Ordinance Enforcement
Paul Davis, City Engineer
Derek Delacourt, Deputy Director of Planning
Bob Grace, Director of MIS
Kevin Krajewski, Deputy Director of MIS/Network Administrator
Jane Leslie, City Clerk
Roger Rousse, Director of DPS/Engineering
John Staran, City Attorney
Steve Swann, Light Equipment Operator*

PLEDGE OF ALLEGIANCE

APPROVAL OF AGENDA

Resolved that the Rochester Hills City Council hereby approves the Agenda for the Regular Meeting of Wednesday, April 5, 2006 with the following addition:

Add under NEW BUSINESS item 2006-0275 - Request for Purchase Authorization - DPS/ENGINEERING: Detroit Edison Utility Relocation for Adams Road Relocation Project.

A motion was made by Raschke, seconded by Yalamanchi, to Approve Agenda as Amended.

The motion carried by the following vote:

Aye: Ambrozaitis, Barnett, Duistermars, Holder, Raschke, Rosen and Yalamanchi

PUBLIC COMMENT

Ms. Barbara Zimmermann, 1321 East Horseshoe Bend, described an ongoing problem she has been experiencing with her neighbor's sump pump draining onto her property. She noted that she has worked with different City staff members and the problem has yet to be resolved. She asked Council for assistance.

President Rosen stated he would meet with the City's Engineering staff to attempt to resolve the issue.

Mr. Lee Zendel, 1575 Dutton Road, described a situation wherein the City of Hamtramck received a multi-million dollar judgment against it and was forced to increase taxes to pay the settlement. He noted that that is a risk for Rochester Hills if the City Council chooses to fight the rezoning case for the Hamlin/Adams property.

Mr. Steve McGarry, 2164 Clinton View Circle, noted that an independent study of the data regarding the environmental contamination of the Hamlin/Adams property indicated that there is not enough data on the contamination to know what toxins are present. He also noted that adequate notice has not been given by the City for an upcoming meeting regarding the Hamlin/Adams matter.

Ms. Deanna Hilbert, 3234 Quail Ridge Circle, also made note of the upcoming meeting regarding the Hamlin/Adams issue and urged all concerned residents to attend.

Ms. Marsha Weston, 1108 Liberty Belle Court, explained that she is a unit clerk at Crittenton Hospital and the unit clerks are being eliminated due to cost cutting measures. She wanted residents to know that this could result in a "dangerous situation."

Mr. Eric Lindemier, 5104 Cohoctah, Waterford, a union representative for employees at Crittenton Hospital notified the Council and residents that Crittenton Hospital is in the process of implementing cost saving measures that "will cost patient care."

Mr. Tom Zelinski, 1127 Kingsview Avenue, urged Council to ensure that the toxins present on the Hamlin/Adams property will be cleaned to a "Level 1" standard.

LEGISLATIVE & ADMINISTRATIVE COMMENTS

Mr. Yalamanchi listed the qualifications he felt the individual appointed to complete Mayor Somerville's term in office should possess, including management and administration skills, organizational strengths, knowledge of finance and budgeting, the ability to communicate and be a working partner with the City Council. He suggested that any requests for policy changes brought before Council include a Power Point presentation and that more discussion ensure at the Council level before a decision is made. He requested that the matter of amending the tax structure outlined in the City Charter be discussed at an upcoming regular Council meeting to include input from the City Attorney. Finally, Mr. Yalamanchi suggested that all outstanding Council issues, such as local roads, appear on every Council agenda under Unfinished Business until each issue is resolved. He noted that this would assist Council in better focusing on these issues.

Ms. Raschke suggested that perhaps Council members could meet with the Medical Board at Crittenton to discuss the changes noted during Public Comment. She also announced that two State police officers would soon be patrolling M-59.

Ms. Holder announced an upcoming fund raising event to benefit the American Cancer Society's Relay for Life.

Mr. Ambrozaitis described a portion of Tienken Road near the Kings Cove subdivision that is in need of a traffic signal.

President Rosen explained that there is a project underway to widen that portion of Tienken Road that will likely include the addition of a traffic signal in that area.

ATTORNEY MATTERS

City Attorney John Staran had nothing to report.

CONSENT AGENDA

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

- 2006-0224** Approval of Minutes - Regular City Council Meeting - October 19, 2005
Attachments: Min CC 101905.pdf; 0224 Resolution.pdf
This Matter was Adopted by Resolution on the Consent Agenda.
Resolved that the Minutes of a Regular Rochester Hills City Council Meeting held on October 19, 2005 be approved as presented.
Enactment No: RES0105-2006
- 2006-0255** Approval of Minutes - Regular City Council Meeting - November 2, 2005
Attachments: CC Min 110205.pdf; 0255 Resolution.pdf
This Matter was Adopted by Resolution on the Consent Agenda.
Resolved that the Minutes of a Regular Rochester Hills City Council Meeting held on November 2, 2005 be approved as presented.
Enactment No: RES0106-2006
- 2006-0240** Request to accept the Dance Entertainment Permit Agreement, as required by Chapter 6, Alcoholic Liquor, of the Rochester Hills Code of Ordinances from Baez Enterprises, Inc.
Attachments: Agenda Summary.pdf; Dance Entertainment Permit.pdf; 0240 Resolution.pdf
This Matter was Adopted by Resolution on the Consent Agenda.
Whereas, the Rochester Hills City Council accepts the Dance Entertainment Permit Agreement between the City of Rochester Hills and Baez Enterprises, Inc. to be located at 2086 and 2210 Crooks Road, Rochester Hills, MI 48309.
Now Therefore Be It Resolved, that the Mayor and the City Clerk are hereby authorized to execute and deliver the agreement on behalf of the City.
Enactment No: RES0107-2006
- 2006-0233** Acceptance of an off-site sanitary sewer easement granted by Cavaliere Rochester Road, LLC, a Michigan limited liability company, for Parcel No. 15-23-152-014.
Attachments: Agenda Summary.pdf; Easement.pdf; Exhibit.pdf; 0233 Resolution.pdf
This Matter was Adopted by Resolution on the Consent Agenda.
Resolved that the Rochester Hills City Council, on behalf of the City of Rochester Hills, hereby accepts an off-site sanitary sewer easement granted by Cavaliere Rochester Road, LLC, a Michigan limited liability company, 30078 Schoenherr,

Suite 300, Warren, Michigan 48088 for the construction, operation, maintenance, repair and/or replacement of a sanitary sewer easement over, on, under, through and across land more particularly described as Parcel No. 15-23-152-014.

Further Resolved that the City Clerk is directed to record the easement with the Oakland County Register of Deeds.

Enactment No: RES0108-2006

2006-0225

Request for Purchase Authorization - DPS: Uniform Rental, blanket purchase order in the amount not-to-exceed \$60,000.00; Unifirst Corporation, Pontiac, MI

Attachments: Agenda Summary.pdf; Tabulation.pdf; 0225 Resolution.pdf

This Matter was Adopted by Resolution on the Consent Agenda.

Resolved that the Rochester Hills City Council hereby authorizes a Blanket Purchase Order to Unifirst Corporation, of Pontiac, MI, as the most responsive, responsible bidder that provided the best value for the City for the purchase of Uniform Rental Services, in the amount not-to-exceed \$60,000.00 through May 1, 2009.

Enactment No: RES0109-2006

2006-0237

Request for Purchase Authorization - DPS/Engineering, Facilities Division: HVAC Preventive Maintenance and HVAC on-call services at four (4) City facilities blanket purchase order in the amount not-to-exceed \$85,500.00; Johnson Controls, Inc., Auburn Hills, MI

Attachments: Agenda Summary.pdf; Spreadsheet submittals.pdf; 0237 Resolution.pdf

This Matter was Adopted by Resolution on the Consent Agenda.

Resolved that the Rochester Hills City Council hereby authorizes a Blanket Purchase Order to Johnson Controls, Inc., of Auburn Hills, Michigan, as the lowest, responsive, responsible bidder for the purchase of HVAC Preventive Maintenance Agreement and HVAC on-call services, in the amount not-to-exceed \$85,500.00 through April 1, 2008.

Further Resolved that the Mayor is authorized to execute the contract on behalf of the City.

Enactment No: RES0110-2006

2006-0239

Request for Purchase Authorization - DPS/Engineering, Facilities Division: Citywide janitorial products blanket purchase order not-to-exceed \$34,900.00; Industrial Cleaning Supply Inc. (ICS), Waterford, MI

Attachments: Agenda Summary.pdf; 0239 Resolution.pdf

This Matter was Adopted by Resolution on the Consent Agenda.

Resolved that the Rochester Hills City Council hereby authorizes a Blanket Purchase Order to Industrial Cleaning Supply Inc. (ICS), of Waterford, Michigan, utilizing the County of Oakland Extended Purchasing Program for the purchase of citywide janitorial products (chemical and cleaning equipment and supplies) in the amount not-to-exceed Thirty Four Thousand Nine Hundred (\$34,900.00) Dollars through June 30, 2007.

Further Resolved that the Mayor is authorized to execute the contract on behalf of the City.

Enactment No: RES0111-2006

2005-0853

Request for Purchase Authorization - MIS: Increase in existing Project Budget in the amount not-to-exceed \$22,000.00 for a new not-to-exceed total of \$197,000.00 to make required hardware and software upgrades necessary for upgrading to the current version of financial software on an SQL server platform. The purchase of equipment and software upgrades will utilize existing cooperative contracts

Attachments: Agenda Summary.pdf; Network Backup Cost dtd 3-15-06.pdf; Grace memo to AIS dtd 3-2-06.pdf; Agenda Summary dtd 12-02-05.pdf; JDEServerDiagram.pdf; CC Resolution dtd 12-6-05.pdf; AIS Resolution dtd 3-07-06.pdf; 0853 Resolution.pdf

This Matter was Adopted by Resolution on the Consent Agenda.

Resolved that the Rochester Hills City Council hereby concurs with the AIS Committee recommendation to approve the increase to the Project Budget in the amount of \$22,000.00 for a new not-to-exceed total of \$197,000.00 to make required hardware and software upgrades necessary on an SQL server platform.

Enactment No: RES0112-2006

2006-0253

Adoption of Resolution - Authorizing permit application from the Road Commission for Oakland County (RCOC) for the Greater Rochester Memorial Day Parade to be held on Monday, May 29, 2006.

Attachments: Agenda Summary.pdf; 0253 Resolution.pdf

This Matter was Adopted by Resolution on the Consent Agenda.

Whereas, the Cities of Rochester Hills and Rochester jointly host the Greater Rochester Memorial Day Parade, conducted under the sponsorship of various associated veteran organizations; and

Whereas, the parade route begins at 10:00 a.m., at Mt. Avon Cemetery within the City of Rochester and runs along First Street, then southerly along Castell Street, then westerly along Harding Road to Livernois Road, and finally Livernois Road southerly to Veterans Pointe Park; and

Whereas, staging this event requires closing certain County routes and using others for posted detour routes; and

Whereas, the two cities coordinate parade planning by dividing responsibility for obtaining necessary permits, with the City of Rochester Hills applying to the Road Commission for Oakland County for the detour and the closure of Livernois Road and Avon Road.

Now, Therefore, Be It Resolved that the Rochester Hills City Council authorizes the Mayor or his/her agents to make application to the Road Commission for Oakland County for the necessary permits for posting road closures and detours; and

Further Resolved that the parade routes be scheduled for Monday, May 29, 2006, starting at 10:00 a.m., on Harding and Livernois Roads; and

Further Resolved that the City of Rochester Hills will faithfully fulfill all permit requirements, and shall save harmless, indemnify, defend, and represent the

Board of County Road Commissioners against any and all claims for bodily injury or property damage, or any other claim arising out of or related to operations authorized by such permit(s) as issued; and

Further Resolved that a certified copy of this Resolution be filed with the City Clerk of Rochester Hills, Oakland County, Michigan.

Enactment No: RES0113-2006

2006-0265

Request to set Special Budget Work Session - April 12, 2006

Attachments: Agenda Summary.pdf; Budget Schedule.pdf; 0265 Resolution.pdf

This Matter was Adopted by Resolution on the Consent Agenda.

Resolved that the Rochester Hills City Council hereby sets a Special Work Session on Wednesday, April 12, 2006 at 7:30 PM Michigan Time for the purpose of discussing City Council Goals and Objectives.

Further Resolved that the City Clerk shall provide proper notice of the Special Work Session pursuant to 15.265, Section 5(3) of the Michigan Open Meetings Act, Public Act No. 267 of 1976 as amended.

Enactment No: RES0114-2006

Passed The Consent Agenda

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

Aye: Ambrozaitis, Barnett, Duistermars, Holder, Raschke, Rosen and Yalamanchi

The following Consent Agenda Items were discussed and adopted by separate Motions:

2004-0394

Request for Purchase Authorization - DPS/FACILITIES: Janitorial Services, blanket purchase order not-to-exceed \$62,910.00; Thundermop Maintenance Company, Waterford, MI

Attachments: Agenda Summary.pdf; 050505 Agenda Summary.pdf; 050404 Agenda Summary.pdf; 2004-0394 RFP Tab1 Janitorial Services.pdf; 2004-0394 RFP Tab2 Janitorial Services.pdf; 2004-0394 RFP Tab3 Janitorial Services.pdf; 050404 Resolution.pdf; 050505 Resolution.pdf; 039

Mr. Yalamanchi questioned whether this change to supplemental janitorial services had achieved the objectives sought by the City.

Mr. Rousse explained that this is a multi-year transition and that full-time facilities employees have been shifting from custodial to maintenance duties, with custodial duties handled by contract workers. He noted that the new DPS Facility will require a reevaluation of staffing due to an increase in square footage to be maintained and cleaned.

A motion was made by Yalamanchi, seconded by Barnett, that this matter be Adopted by Resolution.

Resolved that the Rochester Hills City Council hereby authorizes a Blanket Purchase Order to Thundermop Maintenance Company of Waterford, Michigan, for the purchase of janitorial services, in the amount not-to-exceed \$62,910.00 through June 1, 2006.

The motion carried by the following vote:

Aye: Ambrozaitis, Barnett, Duistermars, Holder, Raschke, Rosen and Yalamanchi

Enactment No: RES0115-2006

2006-0257

Referral to the Financial Services Committee of a Resolution Expressing Support of Local Control of Cable Franchising and Opposition to Michigan House Bill 5895 and Senate Bill 1157

Attachments: Referral Notice Cable.pdf; Agenda Summary.pdf; HB-5895.pdf; 0257 Resolution.pdf; National Franchise Issue.pdf

Mr. Yalamanchi requested that this matter be forwarded to the Financial Services Committee for further investigation. He noted that he had been in contact with State Representative John Garfield who indicated that the bill would not be brought forward until the State's Telecommunications Committee had received an opinion from the Federal Communications Committee (FCC). It was anticipated that the FCC's opinion would not likely be issued until June or July of 2006. Mr. Yalamanchi suggested that Representative Garfield be invited to address Council on this matter and provide more detailed information.

A motion was made by Yalamanchi, seconded by Ambrozaitis, that this matter be Referred by Resolution to the Financial Services Committee.

Whereas, the Rochester Hills City Council desires further research and discussion of the matter of legislation introduced in the Michigan Legislature, House Bill 5895 and Senate Bill 1157 which could potentially:

- * **Eliminate local cable franchising and requires the Secretary of State to grant a statewide franchise.**
- * **Allow any cable or video provider to stop serving any area in a city, village, or township based on out-of-state corporate economic decisions. Current law guarantees service to all local residents. Cable and phone companies could turn off service to neighborhoods because they are not profitable, basically "cherry-picking" and "redlining" neighborhoods; and**

Be It Resolved that the Rochester Hills City Council hereby refers this matter for further discussion and research by the Financial Services Committee and directs the Committee to provide a recommendation to City Council.

The motion carried by the following vote:

Aye: Ambrozaitis, Barnett, Duistermars, Holder, Raschke, Rosen and Yalamanchi

ORDINANCE FOR ADOPTION

2006-0168

Acceptance for Second Reading and Adoption - An Ordinance to Amend Chapter 102, Utilities, of the Code of Articles of the City of Rochester Hills, Oakland County, Michigan, to add a new Article VI. Illicit Discharge and Connection Stormwater Control

Attachments: Agenda Summary.pdf; 031506 Agenda Summary.pdf; Ordinance.pdf; First Reading Resolution.pdf; 0168 Resolution.pdf

A motion was made by Yalamanchi, seconded by Raschke, that this matter be

Accepted for Second Reading and Adoption by Resolution.

Resolved that an Ordinance to amend Chapter 102, Utilities, of the Code of Articles of the City of Rochester Hills, Oakland County, Michigan, to add a new Article VI. Illicit Discharge and Connection Stormwater Control, of the Code of Ordinances of the City of Rochester Hills, Oakland County, Michigan, to prescribe penalties for violations, and to repeal conflicting Ordinances, is hereby accepted for Second Reading and Adoption and shall become effective Friday, April 14, 2006 following its publication on Thursday, April 13, 2006 in the Rochester Eccentric Newspaper.

The motion carried by the following vote:

Aye: Ambrozaitis, Barnett, Duistermars, Holder, Raschke, Rosen and Yalamanchi

Enactment No: RES0117-2006

2006-0209

Acceptance for Second Reading and Adoption - An Ordinance to Amend various sections of Chapter 54, Fees, of the Code of Ordinances of the City of Rochester Hills, Oakland County, Michigan, to modify fees charged for various City services, and to repeal conflicting Ordinances

Attachments: Agenda Summary.pdf; 031506 Agenda Summary.pdf; Ordinance.pdf; First Reading Resolution.pdf; 0209 Resolution.pdf

A motion was made by Yalamanchi, seconded by Barnett, that this matter be Accepted for Second Reading and Adoption by Resolution.

Resolved that an Ordinance to amend Chapter 54, Fees, of the Code of Ordinances of the City of Rochester Hills, Oakland County, Michigan, to modify fees charged for various City services, prescribe penalties for violations, and to repeal conflicting Ordinances, is hereby accepted for Second Reading and Adoption and shall become effective Friday, April 14, 2006 following its publication on Thursday, April 13, 2006 in the Rochester Eccentric Newspaper.

The motion carried by the following vote:

Aye: Ambrozaitis, Barnett, Duistermars, Holder, Raschke, Rosen and Yalamanchi

Enactment No: RES0118-2006

NOMINATIONS/APPOINTMENTS

2006-0250

Request to increase the number of Members to the Historic Districts Study Committee

Attachments: Agenda Summary.pdf; 0250 Resolution.pdf

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

Whereas, by the adoption of Ordinance No. 449 on October 20, 1999, City Council established the Historic Districts Study Committee; and

Whereas, at the time the Historic Districts Study Committee was created, the membership was established at three (3) resident members and two (2) representatives from the City's Historic Districts Commission; and

Whereas, Section 118-128 (Historic districts study committee), Paragraph (1) (Composition of study committee) states: "The study committee shall be comprised of not less than five members. The city council shall appoint at least two historic districts commission members to the study committee."

Whereas, it has been determined that the work of the Study Committee has increased substantially, and it would benefit the Study Committee to increase their membership; and

Resolved that the Rochester Hills City Council hereby authorizes increasing the membership of the City's Historic Districts Study Committee to seven (7) members;

The motion carried by the following vote:

Aye: Ambrozaitis, Barnett, Duistermars, Holder, Raschke, Rosen and Yalamanchi

Enactment No: RES0119-2006

2006-0251

Nomination/Appointment of two (2) additional members to Historic Districts Study Committee

Attachments: Agenda Summary.pdf; 0251 Resolution.pdf

Mr. Duistermars nominated *Dr. Richard B. Stamps* and *Mr. Jason Thompson* to the Historic Districts Study Committee.

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

Resolved that the Rochester Hills City Council hereby appoints Dr. Richard B. Stamps to fill one (1) additional resident position on the Historic Districts Study Committee, for an initial term to expire December 31, 2007, and

Further Resolved that the Rochester Hills City Council hereby appoints Mr. Jason Thompson to fill a third (3rd) HDC Representative position on the Historic Districts Study Committee, for an initial term to expire December 31, 2006.

The motion carried by the following vote:

Aye: Ambrozaitis, Barnett, Duistermars, Holder, Raschke, Rosen and Yalamanchi

Enactment No: RES0120-2006

NEW BUSINESS

2006-0177

Request for a "New from Quota" Class C Liquor License from 6870 Tienken, LLC to be located at 6870 North Rochester Road, Rochester Hills, Michigan 48306

Attachments: Agenda Summary.pdf; AIS Agenda Summary.pdf; Application & Articles of Organization.pdf; Lease Commitment letter.pdf; Dept Reports.pdf; Paid Fees Receipt.pdf; LCC Local Approval Notice.pdf; AIS Resolution.pdf; 0177 Resolution.pdf

Mr. Anthony Curtis, *Curtis Properties Group, 34244 Woodward Avenue*, noted that while his company had originally requested three liquor licenses from the City for the Papa Joe's development, they had since purchased one license and were in the process of purchasing a second. He noted the significant investment his development represents for the City

as well as the more than one million dollars in road improvements at the Tienken/Rochester Road intersection.

Mr. Thomas Brandel, 18 Mapleton Road, Grosse Pointe, owner of Tom's Oyster Bar was present to answer questions.

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

Resolved that the request from 6870 Tienken, LLC for a New Class C License to be located at 6870 North Rochester Road, Rochester Hills, Michigan, 48306, Oakland County, Michigan be considered for approval "Above All Others" by the Michigan Liquor Control Commission.

The motion carried by the following vote:

Aye: Ambrozaitis, Barnett, Duistermars, Holder, Raschke, Rosen and Yalamanchi

Enactment No: RES0121-2006

(Recess 8:27 p.m. - 8:39 p.m.)

2006-0256

Adoption of Resolution granting consent to the transfer control of the Cable Television System from WideOpen West Holdings, LLC to Racecar Acquisition, LLC

Attachments: Agenda Summary.pdf; Attorney letter w application materials.pdf; 0256 Resolution.pdf

Mr. Duistermars noted that this request was reviewed and approved by the Intergovernmental Cable Communications Authority (ICCA) board unanimously.

Mr. Mark Dineen of WideOpenWest (WOW), 259 East Michigan Avenue, Kalamazoo, explained that nothing is changing except that two stockholders sold their shares to a third party resulting in a "change of control." Due to this technical change the FCC requires that all communities grant their consent. He noted that WOW had received 37 consents thus far.

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

Whereas, WideOpen West Michigan, LLC (WOW!) is a current cable franchisee for the Local Franchise Authorities within the Intergovernmental Cable Communications Authority (ICCA); and

Whereas, WideOpen West Holdings, LLC and Racecar Acquisition, LLC submitted an application on December 27, 2005 for Franchise Authority Consent to the transfer of control of the cable television franchise; and,

Whereas, the Local Franchising Authority is relying upon such information as contained in the FCC Form 394 application, documents and additional information provided by WideOpen West Holdings, LLC and acted upon the application and such information for franchising authority consent. The Local Franchising Authority intends to consent to the transfer of control subject to the acceptance of the terms and conditions set forth herein with the hope that such consent is in the best interest of the local franchising authority.

Now Therefore, Be It Resolved as follows:

1. The Local Franchising Authority does hereby consent to the transfer of control of the franchisee from WideOpen West Holdings, LLC to Racecar Acquisition, LLC in the manner described in the Agreement and Plan of Merger dated December 13, 2005, subject to the following conditions precedent and conditions subsequent:

Conditions Precedent

- a) The written representation by WideOpen West Michigan, LLC that it will promptly notify the Local Franchising Authority, in writing of any change in service or operation in the Local Franchising Authority's cable system and/or change in the personnel directly responsible for the operation of the Local Franchising Authority's system in contemplation of, or as a result of consummation of the Agreement and Plan of Merger; and
- b) The prompt and proper remediation of all existing defaults under the current Cable Franchise Agreement with local franchising authority, if any, as may be specified in writing by the Local Franchise Authority; and, the representation in writing by Wide Open West Holdings, LLC that it has no knowledge of any defaults except those that are identified by it; and,
- c) WideOpen West and all of the parties to the Agreement and Plan of Merger dated December 13, 2005 will provide a statement that the Transferee and Transferor will provide full and immediate cooperation with respect to the franchise fee review or audit being conducted by the Local Franchising Authority and/or the ICCA including, but not limited to the transmission of all necessary information to the auditors and/or attorneys that have requested said information within ten (10) days from said request.
- d) The Transferee agrees in writing to accept and be bound by the Franchise Agreement and the cable regulatory ordinances as presently constituted by the Local Franchising Authority. In all instances, the Transferee will assume all obligations known or unknown of the existing franchise.
- e) All existing defaults are to be remedied as a condition precedent to approval with the exception that the LFA's have asserted that the Franchisee failed to pay Franchisor the correct amount of franchise and PEG fees, which the Franchisee has heretofore agreed to cooperate in a review of said payments pursuant to paragraph C hereof and without admitting liability.
- f) All prior agreements and undertakings by the Franchisee between the Franchisee and the Authority and any of the Authority's member communities, apart from the Franchise Agreement, shall remain in full force and effect and the Transferee shall cause the same to be honored by the Franchisee.

Conditions Subsequent

- a) The automatic revocation of the Local Franchising Authority's approval if the Agreement and Plan of Merger is not consummated by July 31, 2006, or such Agreement is terminated prior to that time without the same having been consummated; and,
- b) Reimbursement within thirty (30) days to the Local Franchising Authority by any of the parties to the Agreement and Plan of Merger of December 13, 2005 for the reasonable out-of-pocket expenses incurred by the ICCA or the Local Franchising Authority attributed to the ICCA or the Local Franchising Authority's consideration of the transfer application.

Grant of Consent

The Local Franchising Authority's grant of consent to the transfer of WideOpen West Holdings, LLC to Racecar Acquisition, LLC pursuant to the Agreement and Plan of Merger dated December 13, 2005 shall be effective immediately subject to the above conditions, and further requires WideOpen West Michigan, LLC to notify the Local Franchising Authority promptly upon the closing of the transaction described in the aforementioned Agreement and Plan of Merger. The Local Franchising Authority is hereby authorized to enter into, execute and deliver in the name of the Local Franchising Authority a certificate along with such other documents as may be necessary evidencing this Resolution without further act or Resolution of the governing body.

The motion carried by the following vote:

Aye: Ambrozaitis, Barnett, Duistermars, Holder, Raschke, Rosen and Yalamanchi

Enactment No: RES0122-2006

2006-0275

Request for Purchase Authorization - DPS/ENGINEERING: Detroit Edison Utility Relocation for Adams Road Relocation Project

Attachments: 0275 Agenda Summary.pdf; Relocation-Adams Rd Cost_Updated_2-1-06.pdf; 0275 Resolution.pdf

Mr. Paul Davis, City Engineer, explained that the City had originally anticipated that these monies would be reimbursed by the State. That was not the case and, therefore, he noted that the administration had determined that it was prudent to move forward immediately with the project as Detroit Edison prefers not to move utilities during the summer months.

Mr. Davis also noted some corrections to the budget information included in the Council packet, specifically that the budgeted amount was \$150,000 rather than \$156,000. He assured Council that he would be returning in the near future with a similar request for the relocation of gas mains, but that the cost for that project had yet to be determined.

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

Whereas, the Adams Road Relocation project requires that Detroit Edison relocate some of their existing utility along Adams and Leach Roads and by their electrical substation; and

Whereas, Detroit Edison is located within private easement with their utility and has submitted a cost proposal for performing the requested utility relocation work; and

Whereas, it is recommended that Detroit Edison be permitted to commence relocation of their utility prior to the bid awarding for the Adams Road relocation project.

Resolved that the City of Rochester Hills agrees to pay half of the costs associated with the Detroit Edison utility relocation for the Adams Road relocation project with the Rochester Hills cost share currently estimated at \$51,089.50. Any amount over the utility relocation estimate of \$102,179.00 will be shared equally between Road Commission for Oakland County and the City.

The motion carried by the following vote:

Aye: Ambrozaitis, Barnett, Duisternars, Holder, Raschke, Rosen and Yalamanchi

Enactment No: RES0123-2006

2006-0254

Request for Site Plan Approval Pursuant to the May 26, 2005 Amended Consent Judgment - City File No. 05-030.2 - Wal-Mart, a proposed 203,819 square-foot building on approximately 22 acres, located at the southwest corner of Adams and M-59, zoned ORT - Office Research Technology, Parcel No. 15-30-276-003, Wal-Mart Stores, Inc., applicant

Attachments: Agenda Summary.pdf; Report Staff (3).pdf; TC Approvals.pdf; Letter AH 03-28-06.pdf; Letter Anzek 03-21-06.pdf; Wal Mart Site Plan.pdf; Suppl info - Citizen letters-emails.pdf; 0254 Resolution.pdf

President Rosen explained the process by which Council would receive Public Comment, indicating that the length of time for each speaker would be dependent on the number of requests to speak, with a maximum of three minutes possible. He asked that speakers not repeat the comments of previous speakers, but rather contribute new information or opinions. He stressed that the only matter under consideration is the site plan itself, not whether or not a Wal-Mart will be permitted. He reminded all attendees that, while "there are larger controversies around Wal-Mart stores, this Council is unable to address any of those larger issues."

Mr. Nicholas Miller and Ms. Suzanne Lindsay of Atwell-Hicks, 500 Avis Drive, Ann Arbor, Civil Engineers; and **Ms. Amy Garret** of PB2, 710 West Roselawn, Rogers, Arizona, Architect, reviewed the site plan, noting the following:

- * The site is northeast of the proposed new Adams Road, south of M-59 and the off ramp.
- * The proposed Wal-Mart will be an approximately 200,000 square foot commercial retail building.
- * Access to the site will be from a curb cut on Adams Road and a proposed new ring road that will be expanded in the future.
- * There will be a drive-through pharmacy component on the grocery side of the building.
- * The southern two-thirds of the building will contain commercial retail sales.
- * The northern third of the building will be dedicated to grocery items.
- * There will be truck docks at the rear of the building: one for grocery and the other for general merchandise.
- * There will be a seven-bay tire, lube express for tire, battery and oil exchange.
- * A garden center will be housed in the southeast corner of the building.
- * There will be two entry vestibules at the front of the building.

Mr. Miller indicated that the applicant is requesting a buffer modification for the retaining wall to accommodate vertical grade changes inherent with the site. He explained that the buffer modification is necessary as the City considers retaining walls to be structures. He further indicated that Council will need to determine the height of the light poles, noting that the applicant would prefer thirty (30) foot light poles, however, they have included an alternate site plan for twenty-seven (27) foot light poles.

PUBLIC COMMENT:

Ms. Kim Bailiff, 2101 Bretton South, accused the City of violating the Master Land Use Plan. She noted that the balance of trees, open space, retail stores and nice subdivisions was what drew people to this community.

Ms. Deanna Hilbert, 3234 Quail Ridge Circle, provided a brief history of this project, noting how the original concept would have resulted in high quality jobs, diversification of the City's economy and a solid tax base. She expressed her concerns about hours of operation, increased crime and the added strain on City services such as the police force. She questioned why the site plan under consideration had not been reviewed by the Planning Commission.

Ms. Peggy Currier, 1864 Rapids Way, suggested that the likely increase in crime as a result of this new development will offset any tax revenue it will generate. She then quoted various newspaper articles indicating an increase in crime rates when a Wal-Mart enters a community.

Mr. Michael Kolkjen, 2849 Eagle Drive, expressed his contention that a new Wal-Mart may be attractive at first but will deteriorate quickly. He stated that Wal-Mart does not maintain their properties and he asked the Council members to visit the Wal-Mart on Opdyke Road as an example of this neglect.

Mr. Jack Holth, 1923 Chalmers Drive West, questioned why a project can receive repeated "no" votes, but when a project receives a "yes" vote it moves forward without further consideration.

Ms. Brenda Savage, 1715 Northumberland, Chairperson of No New Taxes, questioned the following:

- * Where will the proposed gas station be located on the site?
- * Will any Michigan Department of Environmental Quality (MDEQ) permits be required?
- * What impact will this development have on the wetlands and flood plains?
- * Will the architecture of the building be similar to the store in Troy or the store on Opdyke Road?
- * Is the applicant asking for higher light poles because they anticipate more crime?
- * How will traffic concerns be addressed and by whom?
- * Has the pole lighting glare issue been addressed for traffic on the freeway?

Mr. Michael Wayne, 2817 Eagle Drive, asked that the buffer zone completely block any view of this building and its lighting. He stressed that the operation should be shut down if this arrangement is ever violated.

Ms. Charlene McGunn, 3073 Greenspring, acknowledged that Council cannot prevent the Wal-Mart but asked that they do all they can to mitigate it, specifically noting that "a twenty-four (24) hour operation would be unconscionable."

President Rosen indicated that he had received several letters from residents whose comments echoed those of the previous speakers. He then listed the names of the correspondents:

- * **Ms. Pamela Bratton Wallace & Mr. Andrew Krupp**, 168 Cloverport Avenue
- * **Mr. Fred & Ms. Sheila Osann**, 3145 Kenwood Drive

- * *Mr. Mahesh & Ms. Rupali Lunani, 2081 Rookery Drive*
- * *Mr. Douglas Schafer, 2008 Mapleridge Road*
- * *Ms. Annette Gilson, 559 McGill Drive*
- * *Mr. Stefan Poag, 559 McGill Drive*

COUNCIL DISCUSSION:

Mr. Derek Delacourt, Deputy Director of Planning/Development and **City Attorney John Staran**, in conjunction with **Mr. Miller, Ms. Lindsay, Ms. Garret, and Mr. Nicholas Infante**, Senior Manager of Public Affairs for Wal-Mart, addressed the concerns of residents and Council members:

- * *The site plan approval is a contract to maintain the site. The developer is required to replace dead material, such as trees, as long as the site plan is in good standing with the City. Ordinance enforcement officers patrol the City regularly,*
- * *For the first couple of years following site plan approval there are bonds in place to secure the site plan agreement.*
- * *The City is in the process of creating a property maintenance ordinance.*
- * *The plans indicate that were a gas station added to the site, which would require Council approval, it would be located to the left of the Adams Road entrance.*
- * *An MDEQ permit for a gas station is currently under review.*
- * *The Consent Judgment provides Council with the authority to approve light poles as high as thirty (30) feet.*
- * *All lighting in the City is required to be shielded and directed downward.*
- * *The buffer along M-59 requires plantings to block the building.*
- * *If the requested buffer modification were not granted by Council some of the screening would be lost.*
- * *The issue of a twenty-four (24) hour operation is not addressed specifically in the Consent Judgment nor is it prohibited by City ordinance.*
- * *The final piece of right-of-way property for the Adams Road relocation has been acquired, thus allowing that project to get underway.*
- * *The best-case scenario for the start of construction on the Adams Road relocation is some time in July of 2006.*
- * *This is the first time a site plan has been submitted for approval for this development.*
- * *This development has come about due to a court settlement and has the weight and authority of a court judgment; thus, the City Council has no authority to unilaterally change or rescind it.*
- * *Although there are some Wal-Mart Supercenters that are not twenty-four (24) hour operations, it is a company position that all of them operate at twenty-four (24) hours a day.*
- * *Although historically Wal-Mart has permitted overnight parking of recreational vehicles (RVs), Wal-Mart would not oppose prohibiting it at the Rochester Hills unit.*
- * *Wal-Mart will not consider operating at eighteen (18) hours for this unit, as it is an expectation of their customers that their stores are open twenty-four (24) hours.*

- * *Wal-Mart will likely have no objection to increasing the number of trees in the buffer area, assuming it meets with City approval.*
- * *City Council does have some discretion to attach conditions to the site plan "to achieve and insure a harmonious relationship with the surrounding area."*
- * *The City currently has a similar operation, Meijer, that operates twenty-four (24) hours.*
- * *While there is room on the site plan for a gas station, one is not being proposed at this time.*
- * *The gas station is identified on the site layout attached to the Consent Judgment, thus Council cannot make it a condition of the site plan approval that it be eliminated; however, it will require Council approval should Wal-Mart choose to build a gas station at a future date.*
- * *The court ordered Consent Judgment granted Wal-Mart's conceptual site plan and City Council cannot change it. Any dispute could result in arbitration.*
- * *Light poles need to be twenty-seven (27) feet with the illumination reduced to an average of 1.5 lumens and no higher than 12 lumens.*
- * *The sprinkler system can be programmed to accommodate any water restrictions imposed by the City due to water conservation concerns.*
- * *The City has never imposed an impact fee on a developer to compensate for increased police services, nor has the City imposed a police service mini-contract.*
- * *Police services mini-contracts are typically entered into only after a problem has been identified.*
- * *L DFA monies cannot be used for police or fire services.*
- * *A special assessment district (SAD) to pay for increased police and fire services would have to be self-imposed by Wal-Mart. SADs cannot be imposed as part of the site plan approval. The SAD process is dictated by City ordinance.*
- * *Wal-Mart's security measures involve several surveillance cameras and plain clothes security personnel in all their stores.*
- * *Wal-Mart would object to anything less than a twenty-four (24) hour operation at this location.*
- * *The Consent Judgment is silent on the issue of hours of operation.*
- * *The elevations of the development were dictated by the Consent Judgment, thus influencing the design of the store.*
- * *The building design is modeled after Wal-Mart's Grand Blanc store, which is considered to be one of their "top flight" units.*
- * *According to the Auburn Hills Police Chief, the majority of crimes at Wal-Mart are committed by the employees.*
- * *Site plan approval should include a condition that requires Wal-Mart representatives to meet with representatives of the City and the Oakland County Sheriff's Department*

(OCSD) six months and one year after the store opens to evaluate the impact of the new store on the Sheriff's substation.

** Trash generated by the Wal-Mart will be disposed of via internal mechanical compactors and specialized haulers. The entire process is enclosed, thus no trash will "fly out."*

** Merchandise delivery trucks come at designated times dependent on the location and schedule of the distribution centers.*

Mr. Tyler D. Tennent, Attorney for Wal-Mart, indicated that as the Consent Judgment is silent on the matter of hours of operation, and the City ordinance does not prohibit twenty-four (24) hour operations. The Technical Review Committee has stated that the Wal-Mart application, which included a request for a twenty-four (24) hour operation, met substantial technical compliance, and the City Council does not have the authority to reduce the hours of operation from twenty-four (24) to eighteen (18).

Mr. Ambrozaitis advised those citizens who are unhappy with the Wal-Mart development, as well as other pending developments in the community, to exercise their right to vote in the next City election in 2007 and choose different leadership for the community.

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

Whereas, in accordance with Section 9 of the First Amendment to Consent Judgment entered May 26, 2005, in Grand/Sakwa Acquisitions, LLC v City of Rochester Hills, Oakland County Circuit Court Case No. 02-046199-AW, the City has processed and reviewed the site plan for a proposed Wal-Mart store to be located on the eastern portion of the Grand/Sakwa site located south of M-59 and east of the new M-59/Adams interchange; and

Whereas, through the First Amendment to Consent Judgment, a Wal-Mart store with building elevations and materials in substantial conformity with Exhibit 2 attached to the First Amendment was granted Conceptual Site Plan approval; and

Whereas, a Technical Review Committee comprised of representatives from the Building, Engineering, Fire, Planning and Development, Parks and Forestry and Assessing Departments, along with the City's Landscape Architect and the City's Engineering Consultant has reviewed the site plan for technical compliance with the provisions of the Consent Judgment, as amended, and applicable City Codes and Ordinances; and

Whereas, the Technical Review Committee has advised the Rochester Hills City Council that the Site Plan for Wal-Mart is in substantial technical compliance.

Resolved that the Rochester Hills City Council hereby approves the Site Plan, dated received March 28, 2005, and grants a Buffer Modification to permit a retaining wall with guardrail to be built within the 25-foot buffer along the southeastern property line for Wal-Mart, a proposed 203,819 square-foot store located at Adams Road and M-59, in accordance with the provisions set forth in the First Amendment to Consent Judgment.

Further Be It Resolved that the applicant shall pay into the City Tree Fund an amount of \$31,110.00 for those trees that are removed and not being replaced on site, and that a Landscape Performance and Maintenance Bond or Letter of Credit in the amount of \$191,436.00 be placed on file with the City. Both payments shall be made prior to the issuance of a Building Permit.

Further Be It Resolved that the light poles shall be approved at a height of twenty-four feet (24') as measured from the top of a base measuring no greater than three feet in height for a maximum total height of twenty-seven feet (27') when measured from the grade to top of fixture, and to limit the wattage of lights to reduce the maximum light to 12 lumens or less and the average to 1.5 lumens or less.

Further Be It Resolved that the hours of operation be limited to eighteen (18) hours, from 6:00 a.m. to midnight, as is done at the Wal-Mart store in Livonia, Michigan.

Further Be It Resolved that the parking lot be signed to prohibit overnight parking by RVs or large trucks.

Further Be It Resolved to add more trees along the northwestern boundary if they can be accommodated in the landscaping as approved by the Landscape Architect and the tree fund amount adjusted accordingly.

Further Be It Resolved that landscape irrigation not be performed at peak times of 5:00 a.m. to 9:00 a.m. and 5:00 p.m. to 9:00 p.m.

Be It Finally Resolved at approximately six months and one year after opening there be a meeting with representatives of Wal-Mart, the representatives of the Oakland County Sheriff's Department (OCSD), and the Rochester Hills City Council to evaluate the impact on OCSD operations.

The motion carried by the following vote:

Aye: Ambrozaitis, Barnett, Duistermars, Holder, Raschke and Rosen

Nay: Yalamanchi

Enactment No: RES0124-2006

COUNCIL COMMITTEE REPORTS

Community Development & Viability Committee

Mr. Barnett, Chair of the Community Development & Viability Committee, described a presentation the Committee received regarding a new road paving process.

Leisure Activities Committee

Mr. Ambrozaitis, Chair of the Leisure Activities Committee, noted that the Committee would be meeting next on April 24th.

Financial Services Committee

Ms. Holder, Chair of the Financial Services Committee, indicated that the Committee was continuing its detailed discussions regarding the water and sewer rates.

Mr. Yalamanchi expressed his concern that vendors who make presentations to Council committees may feel they have an advantage over their competitors. He suggested that three or four vendors make such presentations at committee meetings to avoid that misperception.

DPS Facility Reevaluation Committee

Mr. Barnett noted the DPS Facility Reevaluation Committee was making process and planned to report to City Council within thirty days. He praised the DPS staff for their efforts.

President Rosen noted that, although Council had originally requested that the DPS Committee report back to Council in April, it is "better to do the job well rather than quickly."

Ms. Holder indicated that the \$7.5 million in appropriations funding requested for the DPS Facility was no longer available.

ANY OTHER BUSINESS

Council members discussed the process for appointing a mayor to complete the term of former Mayor Pat Somerville.

President Rosen noted that he intended to discuss the issue with City Attorney John Staran over the upcoming weekend and would be in contact with Council members with more information prior to the next Council meeting on April 12th.

NEXT MEETING DATE

- Special Budget Work Session - Wednesday, April 12, 2006 at 7:30 p.m.
- Regular Meeting - Wednesday, April 19, 2006 at 7:30 p.m.

ADJOURNMENT

There being no further business before Council, President Rosen adjourned the meeting at 10:55 p.m.

JAMES ROSEN, President
Rochester Hills City Council

JANE LESLIE, Clerk
City of Rochester Hills

MARGARET A. MANZ
Administrative Secretary
City Clerk's Office

Approved as presented at the August 16, 2006 Regular City Council Meeting.