

* The requested rezoning would provide a transitional buffer between the existing residential and industrial zoning.

* This development is appropriate with the characteristics of the area and would be "harmonious."

President Dalton requested that normal Council procedures be suspended allowing Mr. Barnett to speak prior to Public Comment, as he was the Council member absent from the previous meeting wherein this issue resulted in a tie vote.

Mr. Barnett noted that he had reviewed the tape of the previous meeting, as well as comments from a number of concerned residents. He stated that he could not base his decision on such issues as traffic safety and curb cuts when considering a rezoning request. He stressed that, while he did not question the applicants' ability to follow through with their proposed development plans, he did not believe the argument had been successfully made that this area could not be developed as presently zoned.

President Dalton asked if any of the twenty-eight (28) residents who wished to speak would like to come forward.

PUBLIC COMMENT :

Mr. Mike Beavon, 2068 Hickory Lane Drive, indicated that he owns the lowest home in the area and expressed his concern that the proposed development would drain into his property causing flooding.

A motion was made by Robbins, seconded by Hill, that this matter be Adopted by Resolution.

Resolved, that the Rochester Hills City Council hereby denies the rezoning request for Salvatore Palazzolo, City File No. 03-020, to rezone three parcels of land totaling approximately 5.5 acres, identified as Parcel Nos. 15-28-220-023, -024, & -025 from R-3 One Family Residential to RM-1, Multiple Family Residential District.

The motion carried by the following vote:

Aye: Dalton, Barnett, Duistermars, Hill and Robbins

Nay: Holder and Raschke

Enactment No: RES0060-2004

(Recess 9:57 p.m. - 9:21 p.m.)

ORDINANCE FOR ADOPTION

2004-0070

Rezoning Request (City File No. 98-047.2, City Walk) - a request to amend Chapter 138 of the Code of Ordinances of the City of Rochester Hills, Oakland County, Michigan to rezone three parcels of land totaling approximately 12.4 acres from ORT (Office, Research, Technology) to B-2 (General Business), located east of Rochester Road and south of Tienken, known as Parcel Nos. 15-11-101-027, 15-11-101-029 and 15-11-101-030, Tienken Partners, L.L.C., applicant

Attachments: Agenda Summary 20040303.pdf; AgendaSummary 20040218.pdf; Map, Aerial.pdf; Staff Report.pdf; Minutes, PC 20040113.pdf; 2004-0070 Master Report 2.pdf; Ord 1 City Walk.pdf

Ms. Deborah Millhouse, Deputy Director of Planning/Development, indicated that City Council had approved the proposed ordinance for first reading and must now consider the matter for second reading and approval.

Mr. John Gaber of Williams, Williams, Ruby & Plunkett, 380 North Old Woodward Avenue, Birmingham, attorney for Tienken Partners, introduced Mr. Paul Aragona, Aragona Properties, 37020 Garfield, Clinton Township, and stated that they were there to answer City Council's questions in detail.

Mr. Robbins moved the motion; there was no Council discussion.

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

Resolved that an Ordinance to amend Chapter 138 of the Code of Ordinances of the City of Rochester Hills, Oakland County, Michigan to rezone three parcels of land totaling 12.4± acres from ORT (Office, Research, Technology) to B-2 (General Business), identified as Parcel Nos. 15-11-101-027, 15-11-101-029, and 15-11-101-030, located east of Rochester Road and south of Tienken, is hereby accepted for Second Reading and adopted and shall become effective on Monday, March 15, 2004 the day following its publication on Sunday, March 14, 2004 in the Rochester Eccentric newspaper.

The motion carried by the following vote:

Aye: Dalton, Barnett, Duistermars, Holder, Raschke and Robbins

Nay: Hill

Enactment No: RES0061-2004

2004-0071

Rezoning Request (City File No. 98-047.2, City Walk) - a request to amend Chapter 138 of the Code of Ordinances of the City of Rochester Hills, Oakland County, Michigan to rezone three parcels of land totaling approximately 12.4 acres to PUD (Planned Unit Development), located east of Rochester Road and south of Tienken, known as Parcel Nos. 15-11-101-027, 15-11-101-029 and 15-11-101-030, Tienken Partners, L.L.C., applicant

Attachments: Agenda Summary.pdf; 2004-0071 Master Report.pdf; Ord. 2 Papa Joes.pdf

Ms. Millhouse again indicated that City Council had approved the proposed ordinance for first reading and must now consider the matter for second reading and approval.

Mr. Robbins moved the motion; there was no Council discussion.

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

Resolved that an Ordinance to amend Chapter 138 of the Code of Ordinances of the City of Rochester Hills, Oakland County, Michigan to rezone three parcels of land totaling 12.4± acres to PUD (Planned Unit Development, identified as Parcel Nos. 15-11-101-027, 15-11-101-029, and 15-11-101-030, located east of Rochester Road and south of Tienken, is hereby accepted for Second Reading and adoption and shall become effective on Monday, March 15, 2004 the day following its publication on Sunday, March 14, 2004 in the Rochester Eccentric newspaper.

The motion carried by the following vote:

Aye: Dalton, Barnett, Duisternars, Holder, Raschke and Robbins

Nay: Hill

Enactment No: RES0062-2004

2004-0053

Approval of Final Planned Unit Development (PUD) - City Walk

Attachments: Agenda Summary.pdf; PUD Agreement (00174317[1].pdf; 2004-0053 Master Report.pdf

Ms. Millhouse explained that the Planning Commission had recommended approval of this agreement provided certain conditions were met. She indicated that a list of those conditions had been provided to Council along with a description of the applicant's response.

Mr. Gaber acknowledged that there remain two (2) conditions--no restaurant drive-throughs and final site plan approval by Planning Commission and City Council rather than Staff approval-- imposed by the Planning Commission that the applicant still opposes. Noting that the Council packet contained two (2) separate motions, Mr. Gaber requested that Council adopt the second motion containing four (4) conditions to which the applicant would agree.

Ms. Hill expressed her opposition to this agreement stressing the following points:

** Having Planning Commission and City Council make the final site plan approval would not delay the process significantly.*

** One purpose of the PUD process is for the City Council to have greater control than in the case of standard development.*

** Far too much development in too small an area with not enough anticipated benefit to the City.*

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

Whereas, in the matter of City File No. 98-047.2 (City Walk PUD), the Planning Commission recommended that City Council approve the Planned Unit Development, subject to conditions.

Now Therefore Be It Resolved that, on behalf of the City of Rochester Hills, the Rochester Hills City Council hereby approved the Planned Unit Development Agreement and Exhibits dated received February 2, 2004 between Tienken Partners, LLC, a Michigan Limited Liability Company, Clinton Township, Michigan, and the City of Rochester Hills, a Michigan Municipal Corporation, Rochester Hills, Michigan with the following findings and subject to the following conditions.

Be It Further Resolved that approval of this Planned Unit Development Agreement is subject to finalization of the Agreement, including the incorporated Road Improvement Agreement, to the satisfaction of the City administration.

Be It Further Resolved that the Mayor and the City Clerk are authorized to execute and deliver the Agreement on behalf of the City.

Findings:

- 1. The proposed PUD has met the qualifications of Section 138-1002 of the Zoning Ordinance in that the proposed improvements to the intersection will minimize, alleviate or improve the traffic situation. Further, it provides for the appropriate redevelopment of parcels occupied by obsolete buildings.**

2. Dedication of additional road right-of-way, intersection improvements at no cost to the City, increased design and aesthetic controls, and the ability to restrict undesirable uses are substantial public benefits of the proposed PUD that could not be achieved under the B-2 district alone.
3. The PUD will not create an unacceptable impact on public utility and circulation systems, surrounding properties, or the environment. Moreover, the proposed PUD will improve public utility and circulation systems. Further, preservation of a vast majority of the existing vegetation along the south and east property lines and additional proposed plantings should mitigate any negative impacts on adjacent properties.
4. A judicious effort has been used to preserve as many existing trees as possible on-site.
5. The proposed PUD has been designed to promote convenient vehicular and pedestrian circulation within the site. Proposed improvements to the intersection will minimize, alleviate or improve the traffic situation to the site.

Conditions:

1. Approval of the Final PUD Plan relative to roadway improvements by the City Engineer.
2. Preliminary acceptance of the Final PUD Plan by the Michigan Department of Transportation.
3. Preliminary acceptance of the Final PUD Plan by the Road Commission for Oakland County.
4. All Final PUD Plan sheets be consistent.

The motion carried by the following vote:

Aye: Dalton, Barnett, Duistermars, Holder, Raschke and Robbins

Nay: Hill

Enactment No: RES0063-2004

2004-0068

Rezoning Request (City File No. 02-004) - Papa Joe's Gourmet Marketplace - a request to amend Chapter 138 of the Code of Ordinances of the City of Rochester Hills, Oakland County, Michigan to rezone four parcels of land totaling approximately 11 acres of land from O-1 (Office Business) and I-1 (Light Industrial) to B-2 (General Business) district, located west of Rochester Road and north of Tienken, and known as Parcel Nos. 15-03-477-018, 15-03-477-019, 15-03-477-020 and 15-03-477-021, Curtis Properties Group, L.L.C., applicant

Attachments: Agenda Summary second reading.pdf; Map aerial.pdf; Staff Report.pdf; Minutes PC 20040113.pdf; 2004-0068 Master Report 2.pdf; Ord. 1 Papa Joes.pdf

Mr. Derek Delacourt, Planner, indicated that, like the previously discussed project, the rezoning request had already been approved for first reading and now required final approval.

Ms. Raschke confirmed that Buildings 1 and 2 would be "fully sprinkled."

Accepted for Second Reading and Adoption by Resolution.

Resolved that an Ordinance to amend Chapter 138 of the Code of Ordinances of the City of Rochester Hills, Oakland County, Michigan to rezone four parcels of land totaling 11+ acres from O-1 (Office Business), and I-1 (Light Industrial) to B-2 (General Business), identified as Parcel Nos. 15-03-477-018, 15-03-477-019, 15-03-477-020, and 15-03-477-021, located west of Rochester Road and north of Tienken, Curtis Properties Group, L.L.C., applicant is hereby accepted for Second Reading and adopted and shall become effective on Monday, March 15, 2004 the day following its publication on Sunday, March 14, 2004 in the Rochester Eccentric newspaper.

The motion carried by the following vote:

Aye: Dalton, Barnett, Duistermars, Holder, Raschke and Robbins

Nay: Hill

Enactment No: RES0064-2004

2004-0069

Rezoning Request (City File No. 02-004) - Papa Joe's Gourmet Marketplace - a request to amend Chapter 138 of the Code of Ordinances of the City of Rochester Hills, Oakland County, Michigan to rezone seven parcels of land totaling approximately 15 acres to PUD (Planned Unit Development), located west of Rochester Road and north of Tienken, and known as Parcel Nos. 15-03-477-018, 15-03-477-019, 15-03-477-020, 15-03-477-021, 15-03-477-030, 15-03-477-031 and 15-03-477-033, Curtis Properties Group, L.L.C., applicant

Attachments: Agenda Summary second reading.pdf; 2004-0069 Master Report 2.pdf; Ord. 2 Papa Joes.pdf

Mr. Delacourt again indicated that this rezoning request had already been approved for first reading and now required final approval.

Mr. Joseph Galvin of Miller, Canfield, Paddock and Stone, PLC, 150 West Jefferson, Detroit, attorney for Curtis Properties, stated that many of the changes discussed at the previous meeting had been made.

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

Resolved that an Ordinance to amend Chapter 138 of the Code of Ordinances of the City of Rochester Hills, Oakland County, Michigan to rezone seven parcels of land totaling approximately 15 acres to PUD (Planned Unit Development), located west of Rochester Road and north of Tienken, and known as Parcel Nos. 15-03-477-018, 15-03-477-019, 15-03-477-020 15-03-477-021, 15-03-477-030, 15-03-477-031 and 15-03-477-033, Curtis Properties Group, L.L.C., applicant, is hereby is hereby accepted for Second Reading and adopted and shall become effective on Monday, March 15, 2004 the day following its publication on Sunday, March 14, 2004 in the Rochester Eccentric newspaper.

The motion carried by the following vote:

Aye: Dalton, Barnett, Duistermars, Holder, Raschke and Robbins

Nay: Hill

Enactment No: RES0065-2004

2004-0052

Approval of the Final Planned Unit Development (PUD) for Papa Joe's Gourmet Market, Specialty Retail and Office Development

Attachments: Agenda Summary.pdf; Papa Joe's PUD.pdf; 2004-0052 Master Report.pdf

Ms. Hill indicated that none of the changes requested by City Council at the previous meeting had been made to the agreement contained in the Council's meeting packet. She stressed that Council should not approve a legally binding document none of them had read.

Mr. Delacourt acknowledged that Staff had just received the final PUD agreement and was still in the process of reviewing it.

Mr. Galvin apologized for the inconvenience and assured Council that all requested changes to the agreement had been made with the exception of the number of drive-through lanes at the TCF Bank and the issue of lighting poll height. Mr. Galvin requested that the second motion contained in Council's meeting packet be approved.

Mr. Robbins and Ms. Holder expressed their trust in the recommendations of City Staff.

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

Whereas, in the matter of City File No. 02-004 (Papa Joes), the Planning Commission recommended that City Council conditionally approve the Planned Unit Development. Such approval shall include the Planned Unit Development Agreement and Exhibits dated received by January 29, 2004.

Now Therefore Be It Resolved, that on behalf of the City of Rochester Hills, the Rochester Hills City Council hereby approved the Planned Unit Development Agreement between Curtis Properties, L.L.C., Speedway Super America L.L.C., TCF Bank, Lino's Resturant and the City of Rochester Hills, a Michigan Municipal Corporation, Rochester Hills, Michigan, subject to the following findings and conditions.

Be It Further Resolved, that the Mayor and the City Clerk are authorized to execute and deliver the Agreement on behalf of the City.

Be It Further Resolved, that approval of this Planned Unit Development Agreement is subject to finalization of the Agreement, including the incorporated Road Improvement Agreement to the satisfaction the City.

Findings:

- 1. The proposed PUD has met the qualifications of Section 138-1002 of the Zoning Ordinance in that the proposed improvements to the intersection will minimize, alleviate or improve the traffic situation. Further, it provides for the appropriate redevelopment of parcels occupied by obsolete buildings.**
- 2. Dedication of additional road right-of-way, intersection improvements at no cost to the City, increased design and aesthetic controls, and the ability to restrict undesirable uses are substantial public benefits of the proposed PUD that could not be achieved under the B-2 district alone.**
- 3. The PUD will not create an unacceptable impact on public utility and circulation systems, surrounding properties, or the environment. Moreover, the proposed PUD will improve public utility and circulation systems.**
- 4. The proposed PUD has been designed to promote convenient vehicular and pedestrian circulation within the site. Proposed improvements to the intersection**

will minimize, alleviate or improve the traffic situation to the site.

Conditions:

1. That prior to Final Site Plan approval the applicant shall provide the minimum number of parking spaces required by ordinance on site or provide a Parking Study for the review and approval of Staff and the Planning Commission that identifies the reason for the discrepancy.
2. That approval of a Wetland Use Permit from both the City and DEQ shall be required prior to issuance of a Land Improvement Permit.
3. That vacation of Old Orion Court is approved by City Council and documentation provided by the applicant that indicates the ability to develop the entire vacated area.
4. That the City's PUD Ordinance be amended to allow B-5 zoning uses within an approved PUD prior to Site Plan Approval by City Council.
5. That the Final Site Plans and Elevations are consistent with those approved as part of the Final PUD agreement.
6. That appropriate traffic calming devices are incorporated throughout the site, to reduce potential "cut through traffic", to be reviewed and approved by Staff prior to Final Site Plan approval by City Council.
7. That both Building #1 and Building #2 shall be fully sprinkled, to be reviewed and approved by the City's Fire Department prior to Final Site Plan approval by City Council.
8. That the PUD Agreement will expressly list in words all variances or modifications that are anticipated, as agreed upon by the parties.
9. All signage is to be within the Rochester Hills Ordinance and shall require permits from the City's Building Department prior to Installation.
10. That the PUD and any related plans show canopies for the Speedway Gas Station that are within Ordinance compliance.
11. That the proposed gas station be compatible with the other structures on the site and will be approved during Final Site Plan.
12. That the drugstore has only one drive-thru lane.
13. That the PUD and the related Site Plans specifically recite and express the total maximum building area that will be included in the PUD.
14. That the other textual changes discussed on the record be corrected.
15. That no Certificate of Occupancy be issued to any new business entities until road improvements are made.
16. That the final cul-de-sac dimension be reviewed and approved by the City Engineer prior to Final Site Plan approval (Section 8 of the PUD text).
17. That language shall be changed to indicate that all signage shall conform to the City of Rochester Hills Sign Ordinance and is to be approved by the Building

Department any additional language should be removed (Section 9 PUD text).

18. That the indicated number of years be changed from 5 to 3, in conformance with the Holiday Village proposed PUD Agreement (Section 10 of the PUD text).
19. That language is revised to be consistent with the proposed condition of approval regarding parking. Any reference to exception to the ordinance needs to be removed. The change shall be made prior final approval of the PUD by City Staff (Section 11 of the PUD text).
20. That language should be changed to state that road abandonment/vacation should be done in accordance with established Rochester Hills Process.
21. Preliminary acceptance of the Final PUD Plan by the Michigan Department of Transportation.
22. Preliminary acceptance of the Final PUD Plan by the Road Commission for Oakland County.
23. Remove Exhibit D (Roadway Improvements) from the Final PUD Agreement.

The motion carried by the following vote:

Aye: Barnett, Duistermars, Holder, Raschke and Robbins

Nay: Dalton and Hill

Enactment No: RES0066-2004

UNFINISHED BUSINESS

2004-0124

Approval of Road Improvement Agreement made by and among Curtis Properties (Curtis Properties) Group, L.L.C., Tienken Partners, LLC, (Tienken Partners) and the City of Rochester Hills as a condition of approval of the Papa Joe's Planned Unit Development and the City Walk Planned Unit Development

Attachments: Agenda Summary.pdf; TIENKEN-REZONING - Road Agreement (00196148[2].pdf; 2004-0124 Master Report.pdf

Mr. Paul Davis, City Engineer, explained that the preliminary approval of the road improvement agreement was needed to move the matter on to the Oakland County Road Commission and MDOT. He stressed that he would maintain final oversight of the project following agreement by those two (2) agencies.

Mr. Gaber outlined specific changes made to the road improvement agreement since Council had seen the document at the previous meeting, specifically relating to the following:

- 1) Added language regarding "payment and performance bonds."
- 2) The City has no responsibility to pay any project costs.
- 3) Clarification of the language regarding potential liens on the properties.

Mr. Staran stated that the final agreement would not be signed by the Mayor until the document was complete and Mr. Staran had "signed off on it."

Ms. Hill expressed her concern that Council would be approving a legal document that was not complete at this time.

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

Whereas, Curtis Properties seeks to develop a planned unit development to be known as the Papa Joe's Gourmet Market on approximately 15.3 acres of land located at the northwest corner of the Rochester/Tienken Road intersection and,

Whereas, Tienken Partners seeks to develop a planned unit development to be known as the City Walk Retail Plaza on approximately 12.4 acres located at the southwest corner of the Rochester/Tienken Road intersection and

Whereas, the City believes that the intersection of Rochester Road and Tienken Road in the City is currently providing an inadequate level of service and

Whereas, a traffic impact study at the intersection of Rochester and Tienken Roads for Curtis Properties and Tienken Partners indicated that levels of service would be improved with the road improvements as set forth in the Agreement and

Whereas, construction of the road improvements described in the Agreement is a condition to the approval by the City of the Papa Joe's PUD and the City Walk PUD and Curtis Properties and Tienken Partners desire to construct the road improvements described in the Agreement in accordance with the terms and conditions of the Agreement.

Resolved, that the Rochester Hills City Council hereby accepts the Draft Road Improvement Agreement dated February 13, 2004, between Curtis Properties Group L.L.C., 2025 Rochester Road, Rochester Hills, MI 48307, Tienken Partners LLC, 37020 Garfield, Suite T-1, Clinton Township, MI 48036 and the City of Rochester Hills, 1000 Rochester Hills Drive, Rochester Hills, MI 48309.

Be It Further Resolved that approval of this Road Agreement is subject to finalization of the Agreement to the satisfaction of the City administration.

Be It Further Resolved that the Mayor and the City Clerk are authorized to execute and deliver the Agreement on behalf of the City.

The motion carried by the following vote:

Aye: Dalton, Barnett, Duisternars, Holder, Raschke and Robbins

Nay: Hill

Enactment No: RES0067-2004

(Recess 10:05 p.m. - 10:27 p.m.)

2004-0174

Request to Withdraw Review Rights - Historic Districts Study Committee with news request for review rights to be granted to the Historic Districts Commission for 3533 W. Tienken Road, Rochester Hills, MI

Attachments: Agenda Summary 20040303.pdf; Agenda Summary 20031210.pdf; Minutes CC 20031210.pdf; Minutes HDC 20030213.pdf; SHPO Surveys.pdf; 2004-0174 Master Report.pdf

Mr. Derek Delacourt, Planner II, stated that the Historic Districts Study Committee, following their ninety (90) day study, had determined that there was no evidence to support a recommendation for historic designation of this property. He asked that their review rights be withdrawn.

Ms. Hill thanked Mr. Delacourt and the Study Committee for their efforts and requested that Council be provided a copy of the final report "so we have an end in the paperwork trail."