

Absent 1 - Hooper

## COMMUNICATIONS

There were no Communications brought forward.

## UNFINISHED BUSINESS

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

*(Memo prepared by Derek Delacourt, dated July 23, 2010 and revised PUD, prepared by Attorney John Gaber dated July 20, 2010 had been placed on file and became part of the record thereof).*

*Present for the applicant was William Gilbert, G&V Investments, 2565 S. Rochester Rd., Rochester Hills, MI 48307.*

*Chairperson Boswell noted the packet information: A revised PUD for City Place; letter from John Gaber, applicant's Attorney, explaining the changes in the Agreement; letter from City Attorney John Staran, which stated that he had reviewed the Agreement; letters from residents Tony DeShaw and Melinda Hill; and a map from resident Scot Beaton, all of which were placed on file and became part of the record.*

*Ms. Brnabic indicated that it looked as if they had reached a somewhat feasible Agreement. She pointed out that Mr. Gilbert had made appropriate changes, but there were still some unknowns she was not completely crazy about. She felt they had all come together decently, and she believed that the Planning Commission had made every effort to review the request and renegotiate the PUD Agreement without bias. She had pointed out that due to the applicant's lack of ability to market the plan and due to current economic conditions, that they had worked to reach the best possible resolution regarding the PUD. She was, however, disappointed with several things that occurred during the process. She recalled that she sat on the Commission when the original Agreement was approved. Although the renovation of the historical house was not the only consideration of the approval, it was a strong consideration, and it was used to the applicant's advantage. She was more than*

*disappointed, not only as a Planning Commissioner but as a resident of the community, that the house was allowed to deteriorate. During the process, she heard a lot of hypotheticals. For example, if Mr. Gilbert had purchased the property and just let it sit, the City would not have anything to say about whether he chose to develop the property or not. She claimed that might be true, but Mr. Gilbert did not do that. If Mr. Gilbert had a regular Site Plan Approval and chose not to develop it, the City would not have anything to say about it, but he did not do that either. If Mr. Gilbert applied for a Rezoning, he said he could have developed each parcel at will, five to ten years apart if he wished. Maybe he did not consider that a very likely option, so he did not do that. If the bank had not been developed, Mr. Gilbert might not be sitting before them, because he could have chosen to let the PUD expire. Once the construction commenced on the bank, the PUD became an active Agreement. There were also undertones about litigation, even though he would not want anyone to think legal action was being threatened. She felt the City worked in good faith in approving the original PUD and that Mr. Gilbert could not honor it, which she found fairly amazing. At this point, she sincerely hoped that if the Planning Commission recommended approval and City Council approved the new PUD that it all worked out.*

*Mr. Hetrick stated that based on the letter from Mr. Staran, which supported the language and provided adequate protection for Rochester Hills, and the Agreement, which provided things for the residents, in terms of improving the green belt, reducing the density considerably, and supporting traffic signals, although not in the applicant's control, he felt the Agreement would help the residents. In addition, the completion time was reduced, as a way of making sure the project moved forward. From these perspectives, he was very happy with how the PUD turned out, and he felt they should move forward.*

*Mr. Yukon commented that one thing the Planning Commission strived for was a desirable balance between a developer's request and the needs and desires of the community. In looking over the proposed PUD, he felt that there was not a desirable balance for both. The original PUD provided for more complimentary housing types, fewer curb cuts, less traffic congestion and less retail. If Mr. Gilbert was having a problem marketing 35,000 square feet of retail and commercial with the original PUD, Mr. Yukon wondered how he would market 75,000 square feet of retail and office. At this point, he was not comfortable recommending the PUD for approval.*

*Mr. Kaltsounis questioned whether he would be comfortable with just having 50,000 square feet of shopping or whether homes and offices would be better. If they put in retail along Rochester Road and did not build homes there might be a nicer buffer, but he was unsure about the amount of retail and asked Mr. Gilbert his thoughts.*

*Mr. Gilbert responded that the uses and zones they were asking for were all "up to" and they were asking for flexibility. In the front, there could be office, condos or retail. He knew that giving him flexibility gave some people a little heartburn, because in the other plan they knew what was going where. On the other hand, they believed they were offering tradeoffs with density, setbacks, height, etc. The original Agreement said that they had to build a minimum of 250 residential units and up to 300+, in addition to the other uses. He did not know where the idea that commercial was a four letter word came from, because in many communities, it was an advantage to have things within walking distance. People paid a premium in Birmingham and other areas to have that type of lifestyle, where places were convenient and people did not have to go onto busy roads and fight traffic to go to neighborhood conveniences. He did not understand the negative perception. If done properly, with the right mix, he thought it could be a plus. If there was no market for 50,000 of retail, then it would be office and residential or all residential. There was flexibility in the PUD to do any of it. He had heard repeatedly that there was no market for commercial, and he stated that if there was not, there would not be anything built. He emphasized that they were not spec builders of commercial. In answer to Ms. Brnabic, he said they had never threatened any legal action with the City. He did say that if they could not negotiate something that one option would be to Rezone. If that did not work, the only other option would be a legal recourse, but they had never done that in 35 years. They worked with Staff, and there was a major difference between the two Agreements in the amount of right-of-way. The original Agreement called for them to dedicate 75 feet from the center of the road. That was changed to dedicate from the section line, and they agreed to easements if Rochester Road were to ever get a boulevard. He added that it was worth millions.*

*Mr. Dettloff clarified that the Commission was charged with coming up with some sort of reasonable solution to allow a project that would generate tax base down the road. No one knew what the market would bear. He thought that the turnaround would take a lot longer than anyone anticipated. Regarding whether the site would support 50,000 square feet of retail in the near future, he would bet no. However, they were asked to allow the project to go forward, and he believed it created a less dense*

situation, and that it had checks and balances that protected the interests of the City and the developer. He offered that Mr. Gilbert had a track record of 35 years in the business, which said a lot. Mr. Gilbert did not come forward having never done a project in Rochester Hills, and he felt Mr. Gilbert's reputation was very good. He was comfortable with the revisions, and his only disappointment was the house. He would have loved to see it stay. He had asked Mr. Gilbert at the last meeting if there was any reconsideration, given City Council's action, and he had said no, but Mr. Dettloff encouraged that if there was a way to save the house, he would greatly appreciate it.

Mr. Gilbert explained that there were reasons for the delisting, which were based on the facts. He understood the emotion, because the house was a landmark. The historic value was not what it was presented to be. Last night after Council, they talked with a resident who had a strong interest in the house who thought she might be able to raise funds to buy and move the house. He stated that her group would not have to buy it; it would be free. Mr. Gilbert said they had no plans to immediately demolish the house. He gave his contact info, and if they could raise money and find a suitable site, he would donate the house and contribute to the move. They thought they could restore it for a lot less money than what he was quoted, and he could wait until the end of the year.

Chairperson Boswell opened the floor to public comments at 7:29 p.m.

**Anil Patel, 1566 Farnborough Dr., Rochester Hills, MI 48307** Mr. Patel said that he was present at the previous meeting when everyone explained their concerns. With all the flexibility provided the applicant, he felt that the development could potentially be a majority of retail and commercial. Since the Agreement was being revised, he felt some conditions could be added so that if there was a certain amount of retail, the rest should be homes, to maintain the integrity of the original. Regarding the decision, he said he hoped they would consider history and the good of the many.

**Susan Deshaw, 1638 Farnborough, Rochester Hills, Mi 48307** Mr. Deshaw wanted to make sure a letter her husband had sent was part of the record, which was confirmed.

**Hector Urteaga, 1578 Farnborough Dr., Rochester Hills, MI 48307** Mr. Urteaga remarked that he was a victim of Eddington Farms. He said that there had been emotions flying with the project. He was not opposed to projects, but in this case, he was opposed to a project that did not give a

balance to the community and that put their future in jeopardy. His main concerns were safety and density. If a decision had not been made, he would ask the Commission to think again and look for a well balanced project. Many decisions were made based on opinions that it was a good idea for business, but they were forgetting about the people and the future. The historic house had been losing value and interest, and in the same way the community would lose value. He asked how many people were leaving the City because they were not happy with the decisions being made. He thought that maybe he might be one. He reiterated his concerns, and called on them to reconsider this "important decision." He hoped the Commission would represent their interests, and he asked them to please consider the facts.

**Mr. Scot Beaton, 655 Bolinger St., Rochester Hills, MI 48307 Mr.**

Beaton agreed that Mr. Gilbert had built a lot of great stuff in town, and said he had known him for 25 years. Mr. Beaton noted that he studied a lot of architecture and urban planning in college. He wanted the Commission to be comfortable with the fact that if they granted Mr. Gilbert 50,000 square feet of retail, four 12,500 square foot, one-story strip mall buildings could be built. That was the flexibility he would have if the PUD was approved. They could argue whether there was a market or not, but he assured that there was a great market for it. He noted the brand new strip mall on Rochester Rd. just south of South Boulevard, which, he pointed out, was all leased. He believed that to build 50,000 square feet of retail would only cost \$5 million, which he claimed Mr. Gilbert had. Within a year, he could easily put up strip malls all along the frontage of Rochester Road, and he was not comfortable with that. Mr. Gilbert originally asked for 15,000 square feet, and Mr. Beaton felt they should hold him to that. He felt that retail was a dirty word. Directly across the street was single-family residential, not commercial. The signs would light up everyone's second floor window all winter long if the PUD was granted. He asked that the Commissioners continued to revisit the issue. He said he could make the same plea to the City Council members, but that City Council members based decisions a lot on emotion and not the facts. In a court of law, they would not listen to a Council member; they would listen to the Planning Commission's decision. If there was litigation, it would be very easy for Mr. Gilbert to win anything based on the Planning Commission's decision. He thanked the Commission, but added that he really wanted them to address the 50,000, the 25,000 and the 360,000 square-foot numbers.

Chairperson Boswell noted that both Mr. Deshaw and Mr. Urteaga mentioned loss of property values. He had been on the Commission for

many years and many projects had come before them. One person could bring an expert to say that his property values would go down and another person's expert could say they would go up. He stated that certainly, the Commission was concerned about property values, and they would not do something they thought would decrease property values in the City. Regarding the density, overall it was much less than in the original PUD. However, he agreed that there was a possibility for a lot more commercial. He wondered if the Commissioners were comfortable with that or not.

Mr. Reece said that Mr. Dettloff summed up his feelings well. The density was the biggest issue for him, and also whether attempting to do the right thing by revising the PUD was in the best interest of the citizens and Mr. Gilbert. Mr. Gilbert had a long standing track record within the City and had done a great job. What had been glossed over was that it was a much less dense proposal than what potentially could be built under the original PUD. People did not seem to want to talk about that, and he felt that was a little unfair from the standpoint that what was being proposed was significantly less dense than what could be built if they chose not to accept the PUD. He mentioned that he was a licensed architect, and that he studied planning in college, and in his professional opinion, commercial belonged on Rochester Road. It was not a dirty word. It was a viable part of the community to keep it moving forward. Taxes continued to decline, and without tax revenue generated from the commercial and office developments in the City, the City services would be dramatically reduced. Done correctly and with good aesthetics and planning, it was the right place for it. He thought the Commission had done more than an admirable job over the years in terms of keeping the architectural aesthetics of the community at a high level. He felt they could continue to have similar types of development with similar types of oversight for the residents. That being said, he did think 50,000 square feet of commercial was a bit much. He would be a lot more comfortable if there was a swap between the commercial and office - if there was 25,000 square feet of office and 25,000 square feet of commercial it would be better, in his opinion. Otherwise, he felt there had been great compromise on Mr. Gilbert's behalf, and he felt it was a much better PUD Agreement than the original in terms of the residents. It was funny that most people did not come and speak out against development unless it was in their backyards. Unless something directly affected individuals, they did not care what happened down the street. He said he was very disappointed that the house was allowed to get to the state it was in today, but the brutal reality was that there might be less than 1% of the people that would be willing to fund moving the house. In the grand scheme,

*someone might stand up and say it should be kept in its place, but when it affected people's pocketbooks, they were not willing to do something. He would be much more interested in supporting the Revised PUD if they could come to a better consensus on the commercial versus the retail. Two years ago, no one would have thought the market would be where it is. Mr. Beaton had referenced the development in Troy, and Mr. Reece said he could guarantee that it was planned and funded before the market crashed. They were in unprecedented times and to be able to prophesize what would happen in two or five years would be amazing. He remarked that the Commissioners had tried to not sell their soles. If they voted right now, he would not have a clue how the vote would go. The Commissioners did not talk about their votes to each other. A decision had not been made, and there had been no clandestine meetings with the developer. He concluded that he would be much happier with a reduction in the commercial.*

*Mr. Yukon agreed with Commissioner Reece. He asked Mr. Gilbert if he would be inclined to change the amount of commercial.*

*Mr. Gilbert maintained that they had been in the process a long time. They had made compromises, and he was not prepared to just flip the square footages. They put a lot of time, effort and money into the process, and countless hours with Staff and many hours with the Planning Commission to develop and fine tune the Agreement. They would like to move forward with what they proposed.*

*Mr. Yukon said he appreciated the compromises, but he was concerned about the vacancy rates that existed in the area. He did not want to see vacant commercial property on Rochester Rd. Mr. Gilbert responded that he did not think Mr. Yukon would want to see any vacant condos or office buildings, either. He reminded that there was no way he would develop four buildings on Rochester Rd. and let them sit. He thought it would be difficult if they put up one building and it was empty and someone came in with a second site plan for next door. He stated that would not happen. He noted that he had driven by residential projects that were abandoned. He assured that they were responsible developers, and they would not build a bunch of spec buildings and wait until they were full. When residential was strong, it was worth as much or more than commercial. He felt there were plenty of safeguards in the PUD.*

*Mr. Yukon asked Mr. Gilbert what studies he did to help him make decisions about what to build. Mr. Gilbert replied that if they had an approved plan, they would begin contacting builders in the area that were*

*strong. They might contact the hospitals about medical offices and retailers that had a relationship with national tenants that might find appeal in Rochester Hills.*

*Mr. Yukon asked if a site plan could come back with a 25,000 square feet of commercial and 25,000 square feet of office.*

*Mr. Delacourt cautioned that they were discussing it as if there was a 25,000 cap on office. That was not how the Agreement was structured. There was a cap on retail of 50,000 square feet. The other uses were controlled by the FB-1 zoning district, which did not have a 25,000 square foot cap. The balance of the site, or the entire site, could be developed exclusively under the FB-1 which would allow a combination of office and residential. The normal parameters would be in play at that point as far as density - setbacks, parking, landscaping, wetlands, tree conservation - and once those were taken care of, the rest of the site could be developed as approved by the Commission with office and residential. In Section E, the Agreement talked about the three hypothetical maximum scenarios, which the Planning Commission asked to see. That showed the Commissioners that the plan was less dense than the previous. The paragraph below that specifically said the FB-1 zoning district controlled densities. They could end up with 50,000 square feet of retail and additional office. It could be all office and no retail. The only absolute hard cap was the 50,000 square foot of retail, because it was not normally associated with FB-1.*

*Mr. Yukon asked if the Commission could work with the developer at site plan review to determine what the square footages would be.*

*Mr. Delacourt said that would be controlled by the applicable requirements - how much parking was necessary, what the tree conservation ordinance required, if there were regulated wetlands, natural features setback, if applicable, setbacks and landscaping - which would determine the buildable envelope, and then they would work backwards from there on the square footage. They would design a building based on the zoning ordinance. They did not want to put in an artificial cap on office or residential since those seemed to be the desired land uses. He hoped there would be a balanced presence on Rochester Rd. Staff was comfortable that no matter what was built, it would be compatible with other uses on the site.*

*Mr. Yukon wanted clarification whether the Commission could work with the developer to determine together what the square footage could be. If*



*Mr. Gilbert came forward with x amount for office and x amount for commercial, and the Commissioners thought the square footage was too high, he asked if they could work with him.*

*Mr. Reece reminded that there would be multiple opportunities for site plan review, so it would not come before the Commission one time. Each building would have to stand on its own merit and have to meet all applicable ordinances. The Commission would have control over each as it was developed. He said his preference would be to see a more blended approach, and with all the other concessions made by the applicant, that would be the "nirvana."*

*Mr. Gilbert said that one of the things they heard was that no one wanted to see vacant, and he said he did not want that either. He believed that there was a lot less chance of vacant retail when something was developed and approved the way he was proposing. He did not think that 12,500 square feet was a large building. The risk of a lot of vacant spaces would be minimized because they would not do 50,000 square feet in a long strip center. The way it was planned, with smaller pods, it might work out to everyone's benefit. He compared a larger retail building to condos where the two end units sold right away and the middle units were left. They would not build a big retail just because they had a good anchor at either end and not be able to fill in the middle space. He felt that the concept they were proposing would minimize that.*

*Mr. Reece said that relative to the process that Mr. Gilbert described, and coming from both a design and commercial building background, he was spot on. The process was correct. Many of his corporate clients were retail clients and they were not doing any speculative building. They did not have the cash, and the banks were not giving cash if someone did not have a business plan in place that could support it. The retail and commercial market was significantly different. The strongest market in the area for many years until 2008 was the health care market. Beaumont Hospital in Troy and Royal Oak and St. Joe's Hospital in Pontiac lost billions of dollars and left things undeveloped in the strongest market segment in the commercial building industry. It still remained that way - there was barely a heartbeat in the health care market. He pointed out that the markets were several years away from coming back and if they did not, whether commercial was liked or not, there would be a lot bigger problems in the community.*

*Mr. Kaltsounis recalled that seven years ago, when Mr. Gilbert was in front of the Commission, they approved a development that included four*

stories along Rochester Rd. He recalled looking at site lines and how people would see the buildings. There were three to four-story homes in the back that tapered off to trees. The applicant could build that today. Having that background, when he looked through some of the details of the proposed PUD, he felt there were definitely benefits. He had to make a decision as to whether 50,000 square feet of commercial was something he wanted to see every time he passed by the development on Rochester Rd. However, he also looked at the rest of the development and saw things that might benefit the residents and the City, and he felt they were at a point to see how the vote would go. He moved the following motion:

**MOTION** by Kaltsounis, seconded by Hetrick, that in the matter of City File No. 02-027 (City Place PUD), the Planning Commission recommends that City Council approves the Revised PUD for City Place, dated received July 20, 2010.

Mr. Hetrick observed that the interesting thing about the discussions over the last several weeks was that they centered on how the Commissioners should manage risk. He thought it was a great thing they were doing, because they were plowing new ground. What had been done in the past in terms of coming in with a site plan ready to go did not exist today. The idea of speculative building did not exist today. The Commission, and the City, had to determine how to manage the risk associated with providing an opportunity for the builder to build a business case and bring it forward and allow the Commission to move it forward from a site plan review perspective. They still would have opportunity from a risk mitigation standpoint going forward. In his view, what they had done with the PUD to minimize the risk associated with bad development was almost as good as they could possibly do. The 50,000 square feet of retail might be the biggest issue, although clearly, if there was no market, it would not get built. From the standpoint of managing the risk for the residents' issues, he felt they had put provisions in place to do so. They managed the risk for the City to avoid litigation issues. All of those reasons were why he felt it was right to move forward.

Mr. Schroeder concurred with his predecessors. They would have a development they had great control over. It would not be as maximized as it could be without the new Agreement. There would be a development surrounded by residential, but there would be quality buildings. Market studies would bring people that had businesses that would work, and the businesses would service the residents. He lived in a sub that had a nearby shopping center, and he did not have to leave it to go to the

*drugstore or to get some food, and he thought that was great. There would be controls over drive-thrus and bars and hours, and he felt that it was the best of all worlds. The City had to have a balance of commercial, industrial and residential, and Rochester Hills was out of balance. For the tax base, it did not have as much residential to commercial as it should. With his experience in Troy, he found that it was not a problem having a shopping center on the fringe of a sub, and that sub only had a concrete wall. There would be a 50-foot berm and trees with this PUD. They might find residential, in the long run, to be more irritating than commercial. He did not think everyone's fears were warranted. The market would control the development, and there would be commercial services for the subdivision.*

*Chairperson Boswell summed up that Mr. Gilbert came before the Commission several months ago, and everyone realized that what was in place was not going to happen. He was encouraged that what they had was the best they could hope for. He recalled that 35 years ago, he and his fiancée drove up Rochester Road, fell in love with the area and decided it was where they would raise their kids. One of the fond memories they had was of the house. He understood that no one of great note lived there, and he understood that it was not built in an historic fashion, but the house held a lot of memories for a lot of people in the City. He was quite pleased six years ago to hear it was being saved, but he was wrong - it was not being saved. That was a great disappointment, and he held Mr. Gilbert accountable because he was the one given the responsibility by the City to preserve the house, and it did not happen.*

*Chairperson Boswell reread the motion and called for a vote.*

**A motion was made by Kaltsounis, seconded by Hetrick, that this matter be Recommended for Approval to the City Council Regular Meeting. The motion CARRIED by the following vote:**

**Aye** 7 - Boswell, Brnabic, Dettloff, Hetrick, Kaltsounis, Reece and Schroeder

**Nay** 1 - Yukon

**Absent** 1 - Hooper

*Chairperson Boswell stated for the record that the motion passed 7-1, with one absence.*

## **NEW BUSINESS**

**2008-0302** Recommendation of Extension of the Final Site Condominium Plan - Pine