



Rochester Hills Minutes City Council Regular Meeting

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*Melinda Hill, Bryan K. Barnett, John L. Dalton, Jim Duistermars,
Barbara L. Holder, Linda Raschke, Gerald Robbins*

Wednesday, May 25, 2005

7:30 PM

1000 Rochester Hills Drive

Meeting Changed from Regular Work Session to Regular Meeting

CALL TO ORDER

President Hill called the Regular Rochester Hills City Council Meeting to order at 7:33 p.m. Michigan Time.

ROLL CALL

Present: Melinda Hill, Bryan Barnett, John Dalton, Jim Duistermars, Barbara Holder, Linda Raschke and Gerald Robbins

Others Present:

*Pat Somerville, Mayor
John Staran, City Attorney
Jane Leslie, City Clerk
Ed Anzek, Director of Planning/Development
Dan Casey, Economic Development Manager
Paul Davis, City Engineer*

PLEDGE OF ALLEGIANCE

APPROVAL OF AGENDA

A motion was made by Barnett, seconded by Raschke, to Approve the Agenda as Presented.

The motion carried by the following vote:

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

PUBLIC COMMENT

None.

LEGISLATIVE & ADMINISTRATIVE COMMENTS

Ms. Holder made the following announcements and comments:

** Relay for Life to benefit the American Cancer Society would be taking place at Hart Middle School on June 10th and 11th.*

** The Department of Public Service (DPS) is requesting that citizens phone 248-656-4685 to report potholes in the City in need of repair.*

* *Noted that her bill for garbage services increased recently due to the increase in gas prices. She stated that if the City were under a single waste hauler contract, there would have been no increase.*

* *Noted that while making a Freedom of Information Act (FOIA) request to the City is every citizen's right, fulfilling these requests is very time consuming and takes City workers away from their normal duties serving the citizens of Rochester Hills.*

* *Reminded drivers on Crestline that it is a residential road and the speed limit is 25 MPH.*

Mr. Barnett made the following announcements:

* *The Heritage Festival to be held May 21st and 22nd*

* *Rubber ducky race at the Heritage Festival to benefit the Rochester-Avon Recreation Authority (RARA)*

* *Memorial Day Parade to be held on Monday, May 30th*

Mr. Duistermars encouraged residents to attend the Memorial Day ceremonies at Veterans Memorial Point following the parade.

Ms. Raschke asked that everyone remember and honor those who serve in the Country's armed forces.

Mr. Robbins requested that the contents of President Hill's "May 2nd memo" be placed on a future Council agenda for discussion.

ATTORNEY MATTERS

City Attorney John Staran briefly discussed the pending zoning litigation regarding the northeast corner of Adams and Hamlin Roads and indicated that Mr. Thomas Ryan, a "well known attorney from Oakland County" had been chosen to serve as facilitator between the two parties. Mr. Staran assured Council that Mr. Ryan was an excellent choice for this position.

PUBLIC HEARINGS

2005-0377

Reinstatement of and Amendment to the Consent Judgment in the case, Grand/Sakwa Properties Acquisitions, LLC v City of Rochester Hills, Oakland County Circuit Court Case No. 02-046199-AW, concerning the development use of the property consisting of approximately 112 acres located south of M-59, east of Adams, adjacent to the new M-59/Adams interchange in the City of Rochester Hills, MI

Attachments: Agenda Summary.pdf; Original Consent Judgment 040303.pdf; Original Consent Judgment-Exhibits.pdf; Public Hearing Notice.pdf; Agenda Summary 051805.pdf; Resolution 051805.pdf; 0377 Resolution.pdf

Mr. Dan Casey, Economic Development Manager, introduced retired Judge Barry Howard, who acted as mediator between the City and Grand Sakwa in this matter.

Mr. Barry Howard, 3910 Telegraph Road, Bloomfield Hills, noting that he served as a Judge for over twelve years, stated that he was asked by Oakland County Executive L. Brooks Patterson to intervene in the dispute between the City of Rochester Hills and Grand Sakwa to attempt to reach a resolution to the impasse the parties had reached regarding the development of property at M-59 and Adams Road and the M-59 interchange at that

location. Judge Howard explained that he took on the task knowing that "the stakes were enormous and the consequences were profound," stressing that, if the development were delayed, funding from the State for the interchange would be in jeopardy, which could "potentially cause financial ruin to this community." Judge Howard briefly described a process of negotiation that resulted in the agreement before Council for approval. He stated that, "unequivocally, it is the best deal possible." Judge Howard then read letters in support of the agreement from Gloria Jeff, Director of the State of Michigan Department of Transportation (MDOT) and United States Congressman Joe Knollenberg.

Ms. Judith Cunningham, Corporate Council for Oakland County, read a letter in support of the agreement from County Executive L. Brooks Patterson.

City Attorney John Staran provided a history of the situation and events that led to the resulting agreement before Council for consideration. He then noted the terms of the Consent Judgment and the amendment:

* The Consent Judgment provides for flexible land uses.

* Four different development scenarios were approved within the agreement:

1) Mixed use development to include research and development, offices, commercial/retail and a hotel.

2) Mixed use to include research and development/light industrial, commercial/retail and a hotel.

3) Entirely commercial/retail.

4) Commercial/retail and restaurants.

* The Amendment specifies the following:

1) Where a large-format retail user that has been identified as a Wal-Mart store will be located on the site.

2) That Grand Sakwa must deed over the right-of-way necessary for the Adams Road realignment immediately upon entry of the Consent Judgment and the First Amendment.

3) If the Consent Judgment is set aside by a court for any reason, the City would be required to pay for the right-of-way as though the City were acquiring the right-of-way by eminent domain.

4) Grand Sakwa would be entitled to up to \$2.5 million in credits that will come in the form of the City's payment for construction of the proposed ring road, which is intended to be a public road.

5) Any disputes that would arise under the Consent Judgment over site plan issues or any other issues would be decided by binding arbitration.

Mr. Staran stressed that, although a great deal of attention has been focused on the fact that this agreement provides for the possible development of a Wal-Mart unit, the original Consent Judgment provided for that same possibility. He noted that the large format retail use aspect of the agreement had not changed.

Mr. Casey assured Council and residents that, despite the proposed inclusion of a Wal-Mart at this location, the City is still committed to attracting high-tech and research and development users. He noted that he has been working with Oakland County to promote this site.

(Recess 9:05 p.m. - 9:18 p.m.)

President Hill Opened the Public Hearing at 9:18 p.m.

Ms. Debbie Geen, 3128 Walton Boulevard, Chairperson of the Residential Vision Committee, accused the City government of failing to "listen to the voice of the people." She noted that a Wal-Mart would not provide the "high-end" jobs envisioned for this development.

Mr. James Dow, 572 McGunn, complained that the area in question is becoming "a dust bowl" with all the construction and that he feels businesses are "trying to come into our community and tell us how to zone our land."

Ms. Brenda Savage, 1765 North Umlerland, a member of "No New Taxes" stated that residents want Rochester Hills to remain a residential community. She stressed that the proposed development will unreasonably burden the taxpayers who have to pay for roads and water and sewer infrastructure and maintenance.

Mr. Ed Baron, 3310 Greenspring Lane, encouraged Council to vote no on this item, thus forcing the County and State to pay for the interchange. He then compared this development to the proposed REI development across from the Grand Sakwa site, noting that nothing has happened with that development due to the environmental problems on that property and suggested that Grand Sakwa will have similar difficulties building on the poor soil on their property.

Ms. Cindy Kinker, 3274 Quail Ridge Court, encouraged Council to listen to the residents of Rochester Hills who may not want this development and stressed that there is no rush to make a decision.

Ms. Charlene McGunn, 3073 Greenspring, stressed that a recent survey of City residents indicated that "we do not want further commercial retail development in the City."

Ms. Deanna Hilbert, 3234 Quail Ridge Circle, Chairperson of Citizens Voice/Rochester Hills, read a letter into the record from Mr. Dan Keifer, 719 Fieldstone Drive, stating his opposition to reinstatement of the Consent Judgment and approval of the amendment, stressing that a Wal-Mart is "fundamentally out of character" for this area. Mr. Keifer also questioned the short notice regarding the Public Hearing and questioned from where the \$2.5 million in concessions would be coming.

Mr. Bill Windscheif, 2872 River Trail, recommended that Council delay the evening's vote as a "matter of public trust." He noted that residents have made it clear that they do not want more commercial development in the City.

Ms. Barbara Rosalik, 1677 Riverside Drive, expressed her belief that this arrangement is due to the enormous amounts of money at the disposal of Wal-Mart and Mr. Sakwa.

Ms. Theresa Mungioli, 3435 Palm Aire Drive, asked the following questions: 1) How much money will the City make as a result of the development of this property? 2) How soon will the City see a return on the investment of \$2.5 million in credits? 3) Does City Hall have the resources to handle the expedited review process? 4) What is the time line for development of this property? 5) When will we see this property start to be developed? 6) What process is the City Council going to put in place to ensure that future negotiations are "handled in a professional manner?" Ms. Mungioli requested that Council delay their vote on the matter to allow more citizens time to respond, noting "this room would be much more full if people knew what was going on."

Mr. Larry Schloss, 2851 Current Drive, requested that Council only delay their decision "if you think it's gonna be a good result." He then cautioned Council not to allow "this methodology" to "creep northward toward the residential homes through that REI property."

Ms. Liliana Kleine, 3074 Quail Ridge Circle, stated that the City Attorney said the M-59/Adams Road interchange was being built by the State without the City's knowledge. She questioned how that is possible.

Mr. Tim Gauthier, 2593 South Christian Hills Drive, indicated that the Master Land Us Plan is "completely different from what this proposal presents." He noted that he opposes the development and asked that Council either delay the vote or vote it down.

Mr. John Fougousse, 1956 Hutchins, questioned whether the ring road costing the City \$2.5 million would be named Wal-Mart Boulevard. He then donated his remaining time to the next speaker.

President Hill read a letter into the record from **Mr. Richard Borowicz**, 962 Peach Blossom Lane, stating his opposition to the development and noting that "the community is over-saturated with retail as it is." He asked that Council consider "the long-term effect of your vote on the quality of life in this City."

There being no further public comment, President Hill Closed the Public Hearing at 9:50 p.m.

Mr. Staran and **Mr. Casey** responded as follows to resident questions:

* Height restrictions for buildings at the development are forty feet for commercial uses, three stories for multi-family buildings, six stories for office or hotel, and four stories for parking structures.

* A construction timeline is unknown, but will be dictated to a certain degree by the economy. It is most likely the site will be developed in several stages.

* There is a provision in the amendment that if for any reason a court were to set aside this agreement, both parties are required to work together for sixty days in good faith to resolve the problem. If that were not possible, the City would seek to obtain the right-of-way in the manner required by law for condemnation of property.

* The amount of money the City will earn as a result of the project is dependent on the type of development.

* The \$2.5 million will be in the form of credits applied to the construction of the ring road as well as waivers of fees, etc.

* It is City Council's prerogative to determine from where the \$2.5 million in credits is coming, and that decision has not yet been made.

* While 21 days is an aggressive schedule for technical review, the process has been used in the past in the case of the Village of Rochester Hills and, to some degree, Crittenton Hospital. Furthermore, the City committed to that timeline in the original Consent Judgment.

* A tax base analysis could be provided estimating the possible revenue to the City as a result of this development; however, there are many factors that must be considered, such as millage rates and the nature of the development. At best, it would only be an estimate.

COUNCIL DISCUSSION:

City Council discussed the following items:

- * The \$2.5 million is well under the \$4.0 million the City felt the right-of-way was worth.
- * There is no tax abatement.
- * There is no rush to make the decision. The Consent Judgment and amendment were ready for consideration at this time.
- * Without this agreement the right-of-way would cost considerably more.
- * This issue would not end by Council voting no. It would result in legal action.
- * LDFA and SmartZone funds cannot be used to fund additional fire and police services as a result of development in this area.
- * This agreement has changed very little since the vote on the original Consent Judgment in 2003.
- * Council has to represent all 70,000 residents of the City, not just those located near this development.
- * Council cannot prevent a property owner from developing his property.

Mr. Barnett stated that he is not in favor of this agreement, noting that he has yet to see Wal-Mart locate in a high-tech neighborhood. Additionally, he felt he did not have enough time to review the information before Council. He stressed that this type of development is not what he wants for this community.

Mr. Robbins submitted in writing a list of questions for which **Mr. Staran, Mr. Casey, Judge Howard** and **City Engineer Paul Davis** provided the following answers:

- * It was anticipated that the paperwork regarding this matter would be available to Council earlier; however, issues arose that delayed the process. Unfortunately, the Public Hearing had already been set and noticed for this meeting. Therefore, it was necessary for Council to move forward at this time.
- * Due to the last-minute nature of the final changes, there was no time to provide Council with a "black line" copy of the agreement noting each change.
- * The type of development will dictate how the \$2.5 million in credits will be used beyond the construction of the ring road.
- * The prior Consent Judgment obligated the City to extend water and sewer utilities along the realigned right-of-way at an anticipated cost of \$2.5 million.
- * It is difficult to estimate the cost to the City were the Consent Judgment and amendment not approved by Council. Many factors would come into play, such as legal fees and mandatory interest payments in addition to the actual land value, resulting in an estimated cost of between \$4.0 million and \$12.0 million.
- * The longer the Council delays its decision on this matter the more likely it is for the cost to increase in taking the property through eminent domain.
- * It is possible but unclear whether bonding to purchase the right-of-way through condemnation could be recouped through a tax capture process.
- * The cost to the City of maintaining the ring road cannot be estimated as the development plan is not yet known.

- * *It is impossible to estimate the additional cost to the City in police and fire services without knowing what will be developed; however, there are special arrangements such as mini-contracts and special assessment districts to address special demands by a particular development.*
- * *There are no provisions in the Consent Judgment for compensation to the City to offset additional infrastructure strain, although the site will certainly generate more taxes once developed.*
- * *The Consent Judgment does allow for 100% commercial/retail development and more than one big box retailer.*
- * *Section 13 of the Consent Judgment refers to the acquisition of all parcels needed for the right-of-way, not just the Grand Sakwa parcels.*
- * *Following approval of the Consent Judgment, Grand Sakwa will still be subject to all standard requirements and approvals of their development such as site plan review and approval.*
- * *The Consent Judgment indicates that any future disputes between the two parties will be resolved through arbitration rather than the more expensive and time consuming court system.*
- * *The Consent Judgment offers no guarantee that high-tech uses will be developed.*
- * *There is concern that including a Wal-Mart in the development will "contaminate" the site against office, research and/or technology uses locating there.*
- * *There are some examples of retail and office development within close proximity:*
 - *The I-275 corridor between 7 Mile and 8 Mile Roads in Livonia*
 - *Northland Mall in Southfield*
 - *Tel-Twelve Mall across from Comerica Tower in Southfield*
- * *Not approving the Consent Judgment could result in one or more of the following circumstances:*
 - *Further negotiations between the two parties.*
 - *Condemnation of the property through eminent domain and all that that entails.*
 - *An inverse condemnation claim brought against the City by Grand Sakwa.*
 - *A rezoning lawsuit.*
 - *The right-of-way could be purchased out right.*
 - *MDOT is anticipating the removal of the existing bridge on Adams Road and that they will no longer need to maintain it once the interchange is complete.*
- * *While the City is under no legally binding obligation to realign Adams Road for the interchange, there is an implied contract with the State and County based on "promises, representations and commitments."*

Mr. Robbins stressed that Council members cannot prevent a property owner from developing his property. He suggested that round table discussions with residents would be preferable to the more formal Public Hearing format for gaining citizen input.

He noted that Council is working to "bring in economic development and taxes so that we don't have to raise taxes." He asked residents to share their ideas as to how to address the long-term financial well being of the City. Mr. Robbins expressed his disappointment that Council did not have more time to review this matter and stated he would support a motion to postpone the decision for one week.

Mr. Duistermars stressed that the Consent Judgment had not changed in any "dramatic or drastic" way from when it was approved previously. He noted that it had received minor tweaks resulting in "more clarification."

Judge Howard stated that it was likely the agreement before Council "will not be here in a week" if Council were to postpone their decision.

Mr. Dalton, noting that the agreement before Council is nearly identical to the prior Consent Judgment, indicated that during the June 4, 2003 Council meeting at which the prior Consent Judgment was unanimously approved, not one resident spoke for or against the approval. He stressed that while he does not want a Wal-Mart in this development, it is not within his power to prevent it. With regard to a postponement of the vote, he questioned, "Is there one person who's against this that next week will be for it? I don't think so." He expressed his concern that if the Consent Judgment were not approved the liability to the City "will be very severe."

Ms. Raschke noted that, as a Council member, she is obligated to make decisions for the good of the whole community, not only those residents directly affected by a certain development.

(Recess 11:23 p.m. - 11:30 p.m.)

Mr. Robbins noted that, although the vote for the prior Consent Judgment had been unanimous in June of 2003, "Certain representations were made for the first Consent Judgment" for such things as a major corporate headquarters and high-tech businesses that have now been replaced with primarily retail development.

President Hill stated that the M-59/Adams Road interchange "is extremely important to this community." She stressed that the decision before Council is not to approve a Wal-Mart, but rather a method to provide the Adams Road realignment and acquire the necessary right-of-way. She indicated that there are many other entities, such as the Road Commission for Oakland County, MDOT, the County and the State, that "will not look favorably on this community if we don't look for a solution that moves this forward."

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

Resolved that the Rochester Hills City Council approves the Reinstatement of the original Consent Judgment and First Amendment to Consent Judgment in the case, Grand/Sakwa Properties Acquisitions, LLC v City of Rochester Hills, Oakland County Circuit Court Case No. 02-046199-AW.

Further Resolved that the City Attorney is authorized to execute the First Amendment to Consent Judgment and any other documents necessary to implement this settlement on behalf of the City of Rochester Hills.

The motion carried by the following vote:

Aye: Hill, Dalton, Duistermars, Holder and Raschke

Nay: Barnett and Robbins

Enactment No: RES0169-2005

COUNCIL COMMITTEE REPORTS

None.

ANY OTHER BUSINESS

President Hill announced that the Planning Commission would be holding a special meeting on Tuesday, May 31, 2005 to discuss the Conditional Rezoning bill recently passed by the State House of Representatives.

NEXT MEETING DATE

Regular Meeting - Wednesday, June 1, 2005 at 7:30 p.m.

ADJOURNMENT

There being no further business before Council, President Hill adjourned the meeting at 11:40 p.m.

*MELINDA HILL, President
Rochester Hills City Council*

*JANE LESLIE, Clerk
City of Rochester Hills*

*MARGARET A. STRATE
Administrative Secretary
City Clerk's Office*

Approved as presented at the September 7, 2005 Regular City Council Meeting.