



Rochester Hills Minutes City Council Work Session

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*Erik Ambrozaitis, Jim Duistermars, Barbara Holder, Greg Hooper,
Linda Raschke, James Rosen, Ravi Yalamanchi*

Wednesday, July 26, 2006

7:30 PM

1000 Rochester Hills Drive

DRAFT

CALL TO ORDER

President Rosen called the Rochester Hills City Council Work Session Meeting to order at 7:31 p.m. Michigan Time.

ROLL CALL

Present: Jim Duistermars, Barbara Holder, Greg Hooper, Linda Raschke, James Rosen and Ravi Yalamanchi

Absent: Erik Ambrozaitis

Others Present:

*Ed Anzek, Director of Planning/Development
Bryan Barnett, Mayor
Derek Delacourt, Deputy Director of Planning
Jane Leslie, City Clerk
John Staran, City Attorney*

PLEDGE OF ALLEGIANCE

PUBLIC COMMENTS

Mr. Lee Zendel, 1575 Dutton Road, discussed the proposed changes to the City Charter that would seek to combine all dedicated millages and the difficulty this would entail. He further indicated that, even if all millages were combined into one General Fund, it still would not represent an increase in dollars, only more flexibility in its spending. He then noted that an increase in the millage amount would be necessary, thus likely mobilizing the anti-tax organizations in the community to campaign against such a proposal. Finally, he questioned whether these same anti-tax organizations opposed the three bond initiatives the local schools passed which raised \$271 million for school improvements.

ADMINISTRATION

2006-0560

Discussion of Madison Park Remediation Funding Options

Attachments: 0560 Agenda Summary.pdf; 072106 Agenda Summary.pdf; Memo Rosen 072106.pdf; 061606 Letter Mayor Barnett.pdf; 062806 Letter OCDC.pdf; REI Brownstown LLC Consent Judement 021204.pdf; 021104 Spec Meeting MINUTES.pdf; 040704 WorkSession MINUTES.pdf; 051904 Reg

Mr. John McCulloch, Oakland County Drain Commissioner, One Public Works Drive, Waterford, provided a brief history of the project under discussion:

- The inception of the project dated back several years beginning with the previous property owners who proposed a "retention swap" in an effort to address Gabler Drain, which runs through the site.
- The County subsequently sold REI the retention basin on the property for \$300,000 with the requirement that a new retention basin be built.
- The environmental impact on the Clinton River Watershed became an issue with regard to the remediation of the site and the funding mechanism available to the City and/or the developer.
- Discussions began with City representatives regarding the possibility of pursuing a traditional Chapter 20 Drainage District arrangement creating a legal district under the Drain Code to accomplish the cleanup of the site.
- Traditionally when a Chapter 20 Drainage District is created the community in which it is located is obligated to meet the bond liability.
- As Rochester Hills was unwilling to accept or assume any financial risk, Mr. McCulloch began pursuing State funds designated for environmental cleanup in the form of low interest loans.
- As the funds in question will come from the State Revolving Fund (SRF), the interest on the loans will be below 2%.
- With such a low interest rate the 20-year bonds will be repaid more quickly.
- Mr. McCulloch received approval from the Michigan Department of Environmental Quality (MDEQ) to provide \$15 million dollars worth of funding for this project.
- The MDEQ is also willing to provide \$2 million dollars in additional loans and \$2 million dollars in grants from the Clean Michigan Initiative (CMI) Program.

Mr. McCulloch stressed that the OCDC office is a service provider and, therefore, requires the consent of the affected community--that being Rochester Hills--before these dollars can be pursued further. He explained that Council will also need to determine, should this funding plan move forward, whether the City's or the County's Brownfield Redevelopment Authority (BRA) will be involved in the process. Again, he noted that the County's BRA would not be involved without the City's consent. Mr. McCulloch stressed that the primary concern of the OCDC is the funding aspect of the plan and the ultimate cleanup of the site as it relates to any impact on the Clinton River Watershed.

Joining **Mr. McCulloch** for the discussion with Council were **Mr. Joseph Colaianne**, OCDC Attorney; **Mr. Kevin Larsen**, OCDC Deputy Drain Commissioner; **Mr. Jon Weaver**, REI, 40900 Woodward Avenue, Bloomfield Hills, developer; and **Mr. Robert Carson**, Carson Fischer, PLC, 4111 Andover Road, Bloomfield Hills, attorney for the developer.

President Rosen listed the many processes involved in this funding plan that affect one another:

- The Brownfield Redevelopment Plan (BRP), which controls the Tax Increment Financing (TIF).
- The 381 Work Plan, which is reviewed by the BRA and submitted to the MDEQ for approval.
- The Due Care Plan between the developer and the MDEQ.

- *The Development Reimbursement Agreement (DRA) required by the BRP.*
- *The Site Plan, which is controlled by the Consent Judgment signed between the City and the developer.*
- *The Finance Plan based on the TIF and the source of funding.*

President Rosen noted that the primary discussion would focus on the redevelopment and financing of the project, but indicated that all of the above issues will have to be addressed eventually.

PUBLIC COMMENT:

Mr. Ed Baron, 3310 Greenspring Lane, stressed that the issue being discussed is the health and safety of City residents and asked for the credentials of Mr. McCulloch and his staff for dealing with this type of project.

Mr. Steve McGarry, 2164 Clinton View, questioned whether the scope of the original cleanup plan was being reduced by the developer, and whether such a reduction could be linked to a projected reduction in potential revenue to be generated by the project. He further questioned the financial stability of REI and asked Council not to "rush this decision."

Ms. Deanna Hilbert, 3234 Quail Ridge Circle, posed the following questions:

- 1) *Who will assume liability for the loans if the County is to sell bonds and take over control of the project?*
- 2) *Who will residents call when noxious fumes escape into the air?*
- 3) *Who will monitor the project to ensure that toxins do not run off the site?*
- 4) *Who will be responsible for the loans if REI walks away from the project as is allowed in the Consent Judgment?*
- 5) *Will the Consent Judgment apply to the County if it takes control of the project?*
- 6) *How does this funding plan relate to Phase 2 of the project?*
- 7) *Will REI request more money for Phase 2?*
- 8) *Why does this project qualify for State funding when anchor tenancy is in question, and high-tech uses are unlikely for Phase 2?*
- 9) *Will the City's or the County's BRA approve the 381 Work Plan if this funding proposal is approved?*
- 10) *Will the OCDC be responsible for project oversight if they sell the bonds to fund the project?*
- 11) *Could the City be responsible at any time for repayment of the bonds?*
- 12) *Will the OCDC be part of the MDEQ and developer's covenant not to sue?*
- 13) *What assurance is there that the project will be completed if REI walks away prior to completion?*
- 14) *Does the City lose control of the project if the OCDC takes over?*

15) *How will costs be covered if costs escalate?*

16) *As there is over 500 acres of landfill in Rochester Hills, can residents expect the County to bond for cleanup of other locations, or is it only when retail is proposed in those locations?*

Mr. Mark Jacobs, 400 Renaissance Center, Detroit, attorney representing Grand Sakwa, provided the following observations:

- *Two years earlier REI assured Council that no public funding would be required for this project.*
- *The original BRP noted that if the extent of the due care activities are altered or revised due to a change in the proposed development plans then an amended BRP should be submitted for approval.*
- *Grand Sakwa's environmental expert has concluded that there is no indication of ground water contamination outside the boundary of the landfill that appears to threaten surface water in the area.*

COUNCIL DISCUSSION:

Mr. McCulloch, Mr. Joseph Colaianne, Mr. Jon Weaver, Mr. Robert Carson and Mr. Derek Delacourt, Deputy Director of Planning, discussed the proposed funding plan in detail and addressed questions and concerns raised by Council members, as well as residents:

- *The involvement of the County's BRA would likely complicate the process.*
- *Rochester Hills City Council would have to determine whether involving the County's BRA would be beneficial.*
- *The County's BRA is under the authority of the County Executive.*
- *The OCDC would be involved strictly from the perspective of the creation of the Chapter 20 Drainage District.*
- *The OCDC's main charge would be to issue the bonds and accept the grants with the ultimate goal of cleaning up the site and protecting the Watershed.*
- *The OCDC staff would oversee the project from the perspective of protecting the Watershed.*
- *The OCDC has cleaned up sites previously but not under the County's BRA.*
- *The Drainage Board would need to look to the collateral or reserves from the developer in conjunction with the income generated by the BRA to ensure repayment of any bonds issued.*
- *The involvement of the County's BRA could provide additional oversight from a water quality standpoint.*
- *The MDEQ would be involved in oversight and monitoring to ensure compliance with the 381 Work Plan.*
- *The MDEQ would do on-site inspections, but not necessarily on a regular basis.*
- *Typically once the OCDC and County determine that a Chapter 20 Drainage District*

is to be created and bonds are to be sold to fund it, the County puts up its full faith and credit in addition to the community in which the district will be located.

- It has been made clear that Rochester Hills will not undertake any liability or obligation for bonding or grants for this project.

- Any drainage district must look for a designated funding source to ensure that bonds are repaid and the County is not subjected to any undo exposure.

- The Drain Commissioner, the Drainage Board, the County Executive and the County Commissioner would not be supportive of this funding proposal unless they are assured of adequate resources or collateral to repay the bonds.

- The obligation of a community to pay back the bonds is not required by statute, but rather by agreement.

- A key component of the DRA will be to assure that the TIF revenue will come directly from the BRA to pay back the bonds.

- The Consent Judgment between REI and the City will not include the County, should this funding proposal move forward.

- REI does not plan to propose a similar plan for funding of Phase 2 of the project.

- The remaining \$11 million dollars to complete Phase 2 would be funded through traditional bond issuance at a higher interest rate of approximately 4% to 5% with the same level of financial risk to the City, as with the \$19 million dollars previously discussed.

- The City needs to provide formal direction to the OCDC as to whether it wants the OCDC to move forward with this funding proposal.

- It is likely the bond dollars will be available, however, the grant dollars may be time sensitive.

- Initiating the petition process will send a message to the MDEQ that the process is underway but would not accelerate the process more quickly than the City would like.

- There will need to be a great deal of discussion among the various entities regarding repayment of the bonds, the anticipated tax revenue stream, etc.

- The 381 Work Plan was reviewed by the City's BRA and then sent to the MDEQ in draft form for that entity's review.

- Changes and modifications to the 381 Work Plan following MDEQ review will be brought back and presented to the City.

- The 381 Work Plan will then be resubmitted to the MDEQ by the City's BRA in its final format for formal approval.

- The trigger for the SRF monies is the State-approved 381 Work Plan.

- There are two separate MDEQ entities involved in this funding proposal: one entity that deals with water quality and SRF and a second entity that deals with the 381 Work Plan.

- The draft 381 Work Plan was used by the OCDC as a basis for pursuing the proposed funding.

- *As dictated by the Consent Judgment, the City is obligated to assist REI in securing public funding but has no obligation to risk its full faith and credit.*
- *This is a priority project according to the State because of the potential impact on the Clinton River Watershed.*
- *The CMI grants and loans are not dependent on the 381 Work Plan.*
- *REI would initially look to the City to apply for the CMI grants and loans assuming an irrevocable letter of credit or other sureties.*
- *There are insurance products that are available if necessary to cover project cost overruns.*
- *While there is no specific deadline for this funding proposal, there is a risk of losing some of the funding, such as grants, if the process is delayed for too long.*
- *Any insurance agency issuing a policy for project cost overruns would base the policy on the approved 381 Work Plan.*
- *The changes to the proposed 381 Work Plan address the environmental conditions of the property more thoroughly, while also addressing community concerns through a reduction in truck traffic, and the removal and hauling of waste on the road.*
- *The State of Michigan will determine the length of time that environmental monitoring will need to take place.*
- *Following the expiration of the BRP, common area maintenance charges will be paid by the office, retail and condominium uses on the site.*
- *It is anticipated that levels of methane and leachate will decline over the time span of the bonds and beyond.*
- *The City would be an appropriate agency to request the CMI grants and loans as REI is guaranteeing repayment and it sends a positive message to the State and County.*
- *If the City were the applicant for the CMI grants and loans, the City would disperse the funds.*

ADDITIONAL PUBLIC COMMENT:

Mr. Lee Zendel, 1575 Dutton Road, questioned whether, in the case of a worst-case scenario, "is there any risk whatsoever that the residents of Rochester Hills . . . will have to pay off those bonds?"

Ms. Brenda Savage, 1715 Northumberland, voiced her opposition to this funding proposal, noting that it places the residents of Rochester Hills in jeopardy of possibly having to fund this project. She further indicated that she had been informed by "two excellent sources" that one of the development's anchor tenants had withdrawn from the project.

Ms. Lorraine McGoldrick, 709 Essex, questioned what entity is responsible for paying the premiums for the insurance for potential cost overruns.

COUNCIL DISCUSSION RESUMED:

Mr. McCulloch, Mr. Joseph Colaianne, Mr. Jon Weaver, Mr. Robert Carson and Mr. Derek Delacourt, continued discussing the proposed funding plan in detail and addressing questions and concerns raised by Council members, as well as residents:

- The developer will pay the premiums for any insurance to cover potential project cost overruns.
- There has been no withdrawal of proposed development tenants.
- The bonds have been proposed in such a way so as to fully accommodate the provisions of the Consent Judgment.
- A remediation plan must go forward and has to be approved according to all legal procedures.
- Public financing will be solicited so long as the City is not issuing the bonds or providing financing.
- No funds can be expended until the City's BRA approves the final plan.
- The County must be assured through its underwriting criteria that its risk is being managed.
- Before the City would disburse any of the CMI funds it would have a binding contract fully secured to the satisfaction of City Council and approved by the City Attorney.
- The project can go forward but only as approved by the City through its BRA and the City Council.
- Bonds will never be issued unless all of the agreements and approvals are met.
- All of the various steps will move forward simultaneously with the understanding that no work will begin at the site until everything is approved.

Discussed

(Recess 9:27 p.m. - 9:43 p.m.)

2006-0560

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COUNCIL DISCUSSION RESUMED:

Mr. McCulloch, Mr. Joseph Colaianne, Mr. Jon Weaver, Mr. Robert Carson and Mr. Derek Delacourt, continued discussing the proposed funding plan in detail and addressing questions and concerns raised by Council members, as well as residents:

- Once the Drainage Board accepts the City's petition for a Chapter 20 Drainage District, the OCDC would schedule a hearing of necessity.
- The Drainage Board would then begin discussions with the developer and the City's BRA regarding the funding mechanism and reimbursement.
- The process to gain the County's full faith and credit will take some time.
- Once the City petitions the OCDC for the Chapter 20 Drainage District, the City and the OCDC "will be crossing paths" numerous times before any bonds are issued.

- *The petition would definitely specify that there would be no financial risk or liability to the City for this project.*
- *The OCDC Bond Counsel would prepare the petition to be reviewed by the City Attorney and the City's Bond Counsel to insure that it meets the City Council's requirements.*
- *It can also be reaffirmed in the DRA that the City is under no financial obligation for this project.*
- *The Drainage District has no other source of revenue to undertake this project and the County would not pursue this type of project or issuance of bonds unless there is a funding mechanism in place.*
- *There is no requirement that once the process begins the City must take it to completion.*

President Rosen noted that the next step for the City Council would be further discussions with City staff and the City Attorney and Bond Counsel. Following that, more extensive discussions among all interested entities will be needed to determine how or if to go forward with the various agreements. President Rosen acknowledged the City's obligation to work in good faith to secure public funding and how, through this process, the City is meeting that obligation.

Discussed

COMMENTS & ANNOUNCEMENTS

Ms. Holder expressed her disappointment that the No New Tax organization was campaigning against the Rochester Avon Recreation Authority (RARA) millage proposal. She stressed what a benefit RARA is to the youth of the community and reminded voters that the millage seeks only a small increase that would result in a tax amount of approximately \$30 to \$40 annually.

ANY OTHER BUSINESS

None.

NEXT MEETING DATE

Regular Meeting - Wednesday, August 2, 2006 at 7:30 p.m.

ADJOURNMENT

There being no further business before Council, President Rosen adjourned the meeting at 10:09 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 December 13, 2006 Regular City Council Meeting.