



Rochester Hills Minutes City Council Regular Meeting

1000 Rochester Hills Drive
Rochester Hills, MI 48309
(248) 656-4660
Home Page:
www.rochesterhills.org

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

Wednesday, June 1, 2005

7:30 PM

1000 Rochester Hills Drive

CALL TO ORDER

President Hill called the Regular Rochester Hills City Council Meeting to order at 7:34 p.m. Michigan Time.

ROLL CALL

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

Absent: Gerald Robbins

Others Present:

*Pat Somerville, Mayor
John Staran, City Attorney
Jane Leslie, City Clerk
Dan Casey, Economic Development Manager
Jason Dale, Media Production Technician
Mike Hartner, Director of Parks & Forestry
Julie Jenuwine, Director of Finance
Bob White, Supervisor of Ordinance Services*

PLEDGE OF ALLEGIANCE

APPROVAL OF AGENDA

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

The motion carried by the following vote:

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

Absent: Robbins

PUBLIC COMMENT

None.

LEGISLATIVE & ADMINISTRATIVE COMMENTS

President Hill noted the following:

** Thanked everyone who participated in the Memorial Day parade and the memorial service for Army First Lieutenant Adam Malson at Veterans Memorial Pointe.*

* *The Clinton River Watershed program regarding lawn care and water quality to be held June 7th and 28th at the Rochester Hills Public Library.*

* *National Trails Day to be held on Saturday, June 4th.*

* *City Council did not approve the development of a Wal-Mart at its previous meeting. Rather, it approved the reinstatement of the original Consent Judgment between Rochester Hills and Grand Sakwa as a means of facilitating the realignment of Adams Road for the M-59 interchange. The Consent Judgment always provided for the possibility of big box development.*

Ms. Holder indicated she had attended the kickoff meeting of a newly formed Rochester Regional Chamber of Commerce committee the focus of which is to create more open communication among the tri-communities and area businesses. She then announced that the Auburn Hills Chamber of Commerce extended an invitation to Rochester Hills residents to attend the Taste of Auburn Hills event on June 23rd.

Mr. Barnett also thanked the Memorial Day celebration participants for a job well done. He then announced a fund raising effort to raise boater safety awareness on behalf of Ashleigh Iserman a former City Council Youth Representative who was killed the previous year on an individual watercraft.

Mr. Dalton expressed his appreciation for the Memorial Day celebration participants.

ATTORNEY MATTERS

Mr. Staran noted that he had attended the Planning Commission meeting the previous evening at which the new conditional rezoning law was discussed. He indicated that a joint meeting between City Council and Planning Commission would take place on Tuesday, June 14th, as there are procedural issues that require Council input.

2005-0387

Adoption of a Resolution to convene to Closed Session at the conclusion of tonight's meeting (June 1, 2005) to discuss an Attorney Client Privileged Communication and to consult with the Attorney regarding trial or settlement strategy in connection with specific pending litigation, Adams/Hamlin Development v. the City of Rochester Hills

Attachments: Agenda Summary.pdf; 0387 Resolution.pdf

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

Resolved that the Rochester Hills City Council hereby agrees to meet in Closed Session, as permitted by State Statute MCLA 15.268, at the conclusion of tonight's meeting (June 1, 2005) to discuss an Attorney Client Privileged Communication and to consult with the Attorney regarding trial or settlement strategy in connection with specific pending litigation, Adams/Hamlin Development v. the City of Rochester Hills.

The motion carried by the following vote:

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

Absent: Robbins

Enactment No: RES0170-2005

CONSENT AGENDA

There were not Consent Agenda items for consideration.

ORDINANCE FOR INTRODUCTION

2005-0379

Acceptance for First Reading - An Ordinance to Amend Chapter 102, Utilities, of the Code of Ordinances of the City of Rochester Hills, Oakland County, Michigan, to Revise the Depository Fund and Surplus Fund Structure for Water and Sewage Disposal System Revenues, and to repeal conflicting ordinances

Attachments: Agenda Summary Second Reading.pdf; 060105 Agenda Summary First Reading.pdf; Ordinance - Utilities.pdf; W&S - Funding Picture.pdf; First Reading Resolution.pdf; 0379 Resolution.pdf

Mr. Dalton and Ms. Julie Jenuwine, Director of Finance, explained that the ordinance change under consideration was a means to streamline and simplify the Water and Sewer Fund Structure and would not affect operations. Mr. Dalton described the change as a "housekeeping matter."

A motion was made by Dalton, seconded by Barnett, that this matter be Accepted for First Reading by Resolution.

Resolved that an Ordinance to Amend Chapter 102, Utilities, of the Code of Ordinances of the City of Rochester Hills, Oakland County, Michigan, to Revise the Depository Fund and Surplus Fund Structure for Water and Sewage Disposal System Revenues, and to repeal conflicting ordinances, is hereby accepted for First Reading.

The motion carried by the following vote:

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

Absent: Robbins

Enactment No: RES0182-2005

2005-0185

Acceptance for First Reading - An Ordinance to Amend Sections 54-741 through 54-745 of Article XII, Utilities, of Chapter 54, Fees, of the Code of Ordinances of the City of Rochester Hills, Oakland County, Michigan, to Modify Water and Sewer Rates and Fees, repeal conflicting ordinances, and prescribe a penalty for violations

Attachments: Agenda Summary Second Reading.pdf; 060105 Agenda Summary First Reading.pdf; Ordinance Water & Sewer Rates.pdf; FINAL Water Rates.pdf; FINAL Sewer Rates.pdf; FINAL Sample Billing.pdf; FINAL Customer Charge.pdf; Proposed Sewer Rates.pdf; Proposed Water Rate

Ms. Julie Jenuwine, Director of Finance, described the changes to the Water & Sewer rates and indicated that they had been discussed thoroughly by the Financial Services Committee, which included the participation of the Advisory Water and Sewer Board (AWSB).

Mr. Dalton, Chairman of the Financial Services Committee, noted that the goal of the Committee and the AWSB has been to "get our water rates to where we're not supplementing them with Capital and Lateral charges." He stated that the changes to the Water & Sewer rates were approved unanimously by the Committee and the AWSB.

A motion was made by Dalton, seconded by Holder, that this matter be Accepted for First Reading by Resolution.

Resolved that an Ordinance to Amend Sections 54-741 through 54-745 of Article

XII, Utilities, of Chapter 54, Fees, of the Code of Ordinances of the City of Rochester Hills, Oakland County, Michigan, to Modify Water and Sewer Rates and Fees, repeal conflicting ordinances, and prescribe a penalty for violations, is hereby accepted for First Reading.

The motion carried by the following vote:

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

Absent: Robbins

Enactment No: RES0181-2005

ORDINANCE FOR ADOPTION

2005-0370

Acceptance for Second Reading and Adoption - An Ordinance to amend Section 138-1074 of Chapter 138, Zoning, of the Code of Ordinances of the City of Rochester Hills, Oakland County, Michigan, to update and modify definitions and regulations governing Adult Businesses, to supplement the Statement of Purpose for the regulations, to repeal inconsistent ordinances, and to prescribe a penalty for violations

Attachments: Agenda Summary Second Reading.pdf; 060105 CC Minutes Excerpt.pdf; 060105 Agenda Summary.pdf; 051805 Agenda Summary.pdf; Letter Staran 042905.pdf; Ordinance Amendment.pdf; 051905 First Reading Resolution.pdf; 060105 Second Reading Resolution.pdf; 0370 Reso

Mr. John Staran, City Attorney, assured Council that the ordinance changes under consideration do not "relax or loosen any of our current regulations" relating to adult businesses in the community, but rather strengthen the existing ordinance.

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

Resolved that an Ordinance to amend Section 138-1074 of Chapter 138, Zoning, of the Code of Ordinances of the City of Rochester Hills, Oakland County, Michigan, to update and modify definitions and regulations governing Adult Businesses, to supplement the Statement of Purpose for the regulations, to repeal inconsistent ordinances, and to prescribe a penalty for violations, is hereby accepted for Second Reading and Adoption and shall become effective on June 10, 2005 following its publication on Thursday, June 9, 2005 in the Rochester Eccentric.

The motion carried by the following vote:

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

Absent: Robbins

Enactment No: RES0259-2005

UNFINISHED BUSINESS

2005-0365

Discussion regarding responses from City of Rochester City Council and Oakland Township Board of Trustees regarding Joint Meeting on Older Persons' Commission (OPC) Issues

Attachments: Agenda Summary.pdf

President Hill explained that the Rochester Hills City Council had issued an invitation to the City Council of Rochester and the Board of Trustees of Oakland Township for a joint

meeting to discuss the issue of prohibiting the use of the Older Persons Commission (OPC) health and wellness facilities by residents between the ages of 50 and 59 years. It was suggested by the Mayor of Rochester that the matter be discussed at a Sister Cities Committee meeting rather than all council members and trustees coming together.

Council members came to the consensus that if the other community leaders were unwilling to meet in their entirety as originally suggested then the matter of age restrictions should remain in the hands of the OPC Executive Board.

Discussed

NEW BUSINESS

2005-0386 Discussion Regarding ICCA/CMN Public Access

Attachments: Agenda Summary.pdf; Contract CMN.pdf; Letter Somerville 20050718.pdf; Letter Brennan 20050825.pdf; 060105 Agenda Summary.pdf; 0386 Resolution.pdf

Mr. Tim Currier, attorney for the Intergovernmental Cable Communication Authority (ICCA), explained that Community Media Network (CMN), the company that provides public access television services to Rochester Hills, as well as ten other neighboring communities, has corrected the "methods that CMN was operating under including its expenditure of funds provided by the member communities of the ICCA." Mr. Currier praised and credited Mr. Jason Dale, Rochester Hills' ICCA representative, for bringing this matter to the attention of the Council and the ICCA, and to Mr. Marty Brennan, Rochester Hill's recently-appointed representative to the CMN Board and current President of that Board, for his leadership in that position.

Mr. Currier indicated that his presentation was intended to focus on two documents:

- 1) The contract between CMN and the ICCA for public access services; and
- 2) The CMN bylaws.

Neither of the documents required Council approval, but rather the interested parties requested Council's input and direction for the City's representatives.

Mr. Currier went on to note that there were two major issues within the contract that required Council's attention:

- 1) Which ICCA member communities are eligible to use the CMN facilities and services?
- 2) Should there be a minimum funding level required of all ICCA member communities?

Mr. Currier explained that previously it was not required that ICCA members contribute funds in order to use the facilities. Unfortunately, since the exposure of the previously mentioned questionable business practices of CMN, many ICCA communities have ceased providing funding completely. The proposed contract seeks to address those matters. Through the process of a request for a proposal (RFP), it was determined that CMN is able to provide the necessary level of services to the ICCA member communities at a minimum funding level of \$325,000 annually, or \$125,000 less than CMN had received from member communities during the previous year. It was noted that of considerable concern to Council members was the current fund balance of approximately \$500,000. It was proposed that CMN would spend down that fund balance over the next three years, using some of those funds to update their equipment. It was specifically noted that if the contract under consideration were to "terminate at any time," all new capital equipment acquired during the 1999 and 2005 contracts would be turned over to the member communities.

Mr. Currier went on to discuss the matter of CMN raising funds from independent sources. He noted that this practice would be permitted, however, it would now require prior permission from the ICCA Board. In addition, the "solicitation of member communities to do their government broadcasts" will be restricted and will require ICCA approval as well.

Mr. Currier assured Council that the fiscal operations of CMN are now subject to ICCA oversight, including monthly check expenditure reports. However, Mr. Currier stressed that CMN will need to know the minimum funding levels of the eleven ICCA communities in order to determine what services they can provide.

Mr. Marty Brennan, Rochester Hills Representative and President of the CMN Board, assured Council that he and his fellow board members have brought "great stability" to CMN and there is "tremendous accountability."

COUNCIL DISCUSSION:

Council members noted the following issues and concerns:

* The new contract would restrict ICCA board voting members to only those communities that contribute to CMN.

* It will be necessary to determine the participation level of communities that have contributed in the past but are unable to contribute currently.

* If Rochester Hills paid according to their actual usage of the CMN facilities and equipment, Rochester Hills would likely be one of the lowest contributors.

* Rather than spend down the fund balance on new equipment, the excess fund balance should be used to subsidize those communities that are unable to contribute at this time.

* The use of the term "reasonable" within the contract would seem to be a "non-defining word" with an "unclear level of intent."

Discussed

(Recess 9:05 p.m. - 9:27 p.m.)

2005-0327

Open Space Ballot Proposal

Attachments: Agenda Summary.pdf; Email Funk P 061505.pdf; Agenda Summary 060105.pdf; Agenda Summary 050405.pdf; Memo Galeczka.pdf; Memo Jenuwine and Millage Revenue.pdf; 0327 Resolution.pdf

Mr. Paul Funk, Chairperson of the Open Space Preservation Committee, brought forward a draft of the proposed ballot language for the Green Space Preservation Millage, noting that the request of 0.3 mills over a ten year period would cost a resident with an assessed home value of \$125,000 \$37.50 annually. He further noted that this millage request was 40% lower than the previous year's request. Mr. Funk stressed that the Committee had identified a need, following the successful passage of the millage, for the establishment of an Open Space and Parkland Preservation Authority responsible for addressing the following questions:

* Who will purchase the land?

* Who will manage the inventory of the land, easements, etc.?

* *What assurances are there that purchased land will be used for open space and/or the preservation of nature?*

PUBLIC COMMENT:

Mr. Dan Keifer, 719 South Fieldstone, expressed his support for this ballot initiative stating that, should the issue be placed on a fall ballot, he will work to support it and educate fellow residents regarding this matter.

President Hill read the following two letters from residents into the records:

* **Ms. Deanna Hilbert**, 3234 Quail Ridge Circle, quoted an Oakland Land Conservancy newsletter from 2005 indicating that communities cannot "give up interest" in park lands purchased with tax dollars. She questioned how Rochester Hills could give up interest in River Bend Park to a developer for a detention basin.

* **Ms. Pamela Wallace** and **Mr. Andrew Krupp**, 168 Cloverport Avenue, noting that "Green space is unquestionably a top priority for Rochester Hills residents," expressed their support for the placement of a green space ballot proposal on the September ballot.

COUNCIL DISCUSSION:

Mr. Dalton corrected Ms. Hilbert's assertion that parkland was given away. Rather, he noted that the detention pond she referenced would enhance River Bend Park while providing for approximately \$600,000 in park improvements. He stressed Council's commitment to open space, referencing the recent land swap agreement that increased the size of Nowicki Park.

It was suggested by Council members that City Attorney John Staran work with Committee members to fine tune the ballot language to ensure that it is appropriate.

Mr. Staran, noting some ambiguities in the proposed language, assured Council he would contract Mr. Funk directly to discuss the matter.

Mr. Duistermars expressed the "principals guiding my decision tonight." He noted that Council should only place a "tax question" on a ballot if it involves fundamental city services such as police and fire. He stated that the petition process should be used for a matter such as this.

Mr. Dalton noted that the City Charter provides residents the option of requesting that Council bypass the petition process and place such questions on the ballot. He noted his preference that concerned residents focus their efforts on educating the public on the issue rather than collecting signatures.

Various Council members noted their support of green space preservation and the apparent support from City residents.

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

Resolved that the Rochester Hills City Council hereby directs the City Attorney to review the proposed Open Space Ballot Proposal language and return it to Council for consideration and possible approval at their June 22, 2005 meeting.

The motion carried by the following vote:

Aye: Hill, Barnett, Dalton, Holder and Raschke

Nay: Duistermars

Absent: Robbins

Enactment No: RES0200-2005

2005-0312

Set a Public Hearing Regarding Oil and Gas Lease for property in Sections 24 and 25 - Energy Quest, Inc., applicant

Attachments: Agenda Summary.pdf; Public Hearing Notice.pdf; 070605 Agenda Summary.pdf; 051805 Agenda Summary.pdf; Energy Quest Oil Gas Lease1.pdf; Memo Casey 20050426.pdf; Resolution to Set Public Hearing.pdf; 0312 Resolution.pdf; Final Signed Lease.pdf

Mr. Dan Casey, Economic Development Manager, explained that the City had recently been approached by Energy Quest to discuss the possibility of leasing the mineral rights for oil and gas beneath City-owned property, noting the following:

* There are 65 similar dwelling facilities in Oakland County and 50,000 throughout the State of Michigan.

* The mineral rights would be leased for three years with a two-year extension.

* During the lease period, seismic testing would be conducted to determine if and to what extent marketable oil or gas exists within the suspected structure.

* There will be an initial payment to the City of \$100 per acre of leased area resulting in a "signing bonus" of \$14,177.70.

* If a facility were established to extract marketable oil or gas, the City will receive 1/6th of all profits.

* A similar project exists at the Michigan State University (MSU) Extension Campus in Troy and, to date, has received no complaints from adjoining property owners.

* The drilling facility itself would not be located on City property, but rather private property leased by Energy Quest.

COUNCIL DISCUSSION:

Mr. Casey introduced **Mr. Jeff Schwartz** of Energy Quest, 3016 Cass Road, Traverse City, Michigan; **Mr. Walter Danyluk** from the Geological Survey Office of the Michigan Department of Environmental Quality in Lansing; and **Mr. Trey Brice** of the law firm Beier Howlett, who addressed questions and concerns raised by various Council members:

* This lease does not permit drilling or the construction of a facility on City property, rather it would be located on one of the industrial properties adjacent to the park.

* Energy Quest will be leasing mineral rights from various entities including private homeowners and businesses in addition to the City in order to access the anticipated minerals.

* The combined properties result in a "drilling unit" and all property owners within that drilling unit will "share in the royalties coming off that well proportionate to what your minerals are contributing to the unit."

* A bond must be posted to acquire a drilling permit from the State, and the final lease agreement will include insurance requirements and indemnification of the City.

* Perhaps any profits paid to the City from a marketable product could be used to enhance the City's parks.

* A cost analysis would dictate the process of either trucking or piping any marketable product away from the facility for distribution.

President Hill expressed her concern that, if approved, this lease "allows the complete operation from the get-go." The petitioner is not required to return before Council for approval of any further stages; the State oversees the matter from that point forward. She further noted that she lived near a similar facility and while it was in operation there were problems with natural gas odor.

President Hill asked that the following questions be addressed when this matter returns for further Council discussion and consideration:

- 1) What other facilities are currently operating in Oakland County?
- 2) Are there other Oakland County municipalities that have entered into similar lease agreements?
- 3) More information is needed regarding the location or placement of pipelines to service any marketable product.

Mr. Brice described some of the safeguards his firm is attempting to include in the lease agreement such as:

- * Any violations of State permitting processes would result in a violation of the lease itself.
- * The operation can be halted if environmental problems occur.

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

Resolved that the Rochester Hills City Council shall hold a Public Hearing at a Regular Meeting in July of 2005 regarding Oil and Gas Lease for property in Sections 24 and 25 by Energy Quest, Inc., applicant.

Be It Further Resolved that the Clerk shall cause notice of the Public Hearing pursuant to MCL 125-2663, Section 13.

The motion carried by the following vote:

Aye: Barnett, Dalton, Duistermars, Holder and Raschke

Nay: Hill

Absent: Robbins

Enactment No: RES0239-2005

COUNCIL COMMITTEE REPORTS

Community Development & Viability (CDV) Committee:

Mr. Barnett, Chairperson of the CDV Committee, noted that the Committee's primary focus at their most recent meeting was the open space issue, resulting in the presentation earlier in the meeting.

Financial Services (FS) Committee:

Mr. Dalton, Chairperson of the FS Committee, noted that the Committee had not met since his previous report to Council, however, they were in the process of scheduling a joint meeting with the Residential Street Ad Hoc Committee.

Leisure Activities Committee (LAC):

Mr. Duistermars, Chairperson of the LAC, noted the following issues currently under discussion at the Committee:

* Possible grant money to be used for resurfacing the Clinton River Trail.

* Reconstruction of trail crossings across major roads.

BUDGET DISCUSSIONS**2005-0054** Discussions Regarding 2006 Budget

Attachments: Agenda Summary.pdf; 050705 Agenda summary.pdf; Mayor.pdf; Fiscal.pdf; Planning 1.pdf; Planning 2.pdf; Planning 3.pdf; Planning 4.pdf; Planning 5.pdf; DPS and Engineering.pdf; Building.pdf; Parks.pdf; Forestry.pdf; Fire.pdf; OCSD.pdf; MIS.pdf; Clerks.pdf;

President Hill confirmed that Council had previously reached a consensus that there was no interest in implementing an Administrative Fee or Maximizing the General Fund Millage.

Discussed

ANY OTHER BUSINESS**2005-0370** Rescind Acceptance for Second Reading and Adoption - An Ordinance to amend Section 138-1074 of Chapter 138, Zoning, of the Code of Ordinances of the City of Rochester Hills, Oakland County, Michigan, to update and modify definitions and regulations governing Adult Businesses, to supplement the Statement of Purpose for the regulations, to repeal inconsistent ordinances, and to prescribe a penalty for violations

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City Attorney John Staran informed Council members that this item should have gone to the Planning Commission for a public hearing and recommendation to Council. He advised Council that they should rescind their approval for second reading and adoption of this ordinance and refer the item to the Planning Commission. He confirmed that it was not necessary to rescind their approval for first reading.

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

Resolved that an Ordinance to amend Section 138-1074 of Chapter 138, Zoning, of the Code of Ordinances of the City of Rochester Hills, Oakland County, Michigan, to update and modify definitions and regulations governing Adult Businesses, to supplement the Statement of Purpose for the regulations, to repeal inconsistent ordinances, and to prescribe a penalty for violations, that was accepted for Second Reading and Adoption on June 1, 2005 by resolution number RES0171-2005 be rescinded.

Be It Further Resolved that the ordinance be forwarded to the Planning Commission for review and recommendation.

The motion carried by the following vote:

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

Absent: Robbins

Enactment No: RES0259-2005

NEXT MEETING DATE

Regular Meeting – Wednesday, June 15, 2005 at 7:30 p.m.

ADJOURNMENT

There being no further business before Council, President Hill adjourned the meeting at 11:02 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 October 5, 2005 Regular City Council Meeting.