

Resolved that the Rochester Hills City Council hereby agrees to cancel its Regular City Council Work Session scheduled for Wednesday, April 26, 2006 at 7:30 P.M.

Further Resolved that the City Clerk shall provide proper notice of the Meeting Time change pursuant to 15.265, Section 5(3) of the Michigan Open Meetings Act, Public Act No. 267 of 1976 as amended.

Enactment No: RES0133-2006

2005-0846

Extension of time for DPS Facility Subcommittee to provide report back to City Council

Attachments: Agenda Summary.pdf; 120505 Resolution.pdf; 0846 Resolution.pdf

This Matter was Adopted by Resolution on the Consent Agenda.

Whereas, the Rochester Hills City Council at its regular meeting of November 30, 2005 adopted Resolution RES0422-2005 forming a subcommittee charged with the specific reevaluation of the proposed scope of the DPS Facility; and

Whereas, the DPS Facility Subcommittee was to report its findings to City Council at the first scheduled meeting in April of 2006; and

Whereas, the Subcommittee continues to work diligently by meeting on a regular basis to review information and options and has not yet completed its work; and

Whereas, there have been unexpected events in the City that have made it necessary for City Council to postpone some agenda items to future meetings.

Now, Therefore, Be It Resolved that the Rochester Hills City Council extends the time for the Subcommittee to report its findings to City Council until June 30, 2006.

Enactment No: RES0134-2006

Passed The Consent Agenda

A motion was made by Duistermars, seconded by Yalamanchi, including all the preceding items marked as having been adopted on the Consent Agenda. The motion carried by the following vote:

Aye: Ambrozaitis, Duistermars, Holder, Raschke, Rosen and Yalamanchi

PUBLIC HEARING

2006-0294

Consent Judgment pertaining to Adams/Hamlin Development Co., LLC, Hamlin Redevelopment Co, LLC and Hamlin Adams Properties, LLC v. the City of Rochester Hills, a Michigan municipal corporation, Case No. 04-060730-CZ, specifically regarding two parcels of land totaling approximately 28 acres, located at the northeast corner of Hamlin and Adams, (City File No. 03-013); Parcel Nos. 15-29-101-022 and -023; Rochester Hills, Oakland County, Michigan

Attachments: Agenda Summary.pdf; Public Hearing Notice.pdf; 0294 Resolution.pdf

President Rosen explained the process by which the Public Hearing would take place, beginning with presentations by the City Attorney and the City's environmental consultant regarding the agreement, the conceptual plan and the environmental remediation of the

land. He noted that Council members would then ask clarifying questions followed by the Public Hearing. President Rosen stressed that it is a Council policy to hold a Public Hearing under such circumstances, but it is not a requirement under state or local law. He noted that the City had "gone to great lengths to explain the proposed Consent Judgment" including several informational meetings, and to gain input from interested parties.

City Attorney John Staran explained that the lawsuit in question was regarding a rezoning from residential to commercial of approximately 28 acres at the intersection of Adams Road and Hamlin Road. He noted that the lawsuit seeks money damages in addition to invalidating the current zoning, claiming that the property cannot be reasonably used due to the on-site contaminants resulting from illegal dumping. Mr. Staran further noted that Council would have to also consider the fact that the City's liability insurance carrier, the Michigan Municipal Risk Management Authority (MMRMA), would not provide coverage in the event that the City lost the court case and substantial monetary damages were awarded to the developer.

Mr. Staran reviewed the conceptual plan included in the proposed Consent Judgment, noting the following:

- Commercial use is limited to Hamlin Road.
- There will be a gateway/park-like setting at the corner of the development.
- The general retail usage will likely be a drug store, or possibly a bank.
- The development will also include a restaurant as well as a larger retail building with multiple uses.
- There is an alternate plan wherein the multiple-use building could be reconfigured for a single user.
- There are no commercial buildings on Adams Road.
- The western buildings will provide office uses with heights ranging from one story to two and a half stories.
- The height of the buildings corresponds to the topography of the site.
- The sight line for area residents should be similar to what would have been visible were the development residential in nature.
- The architectural features provide a village appearance.
- There will be at least 100 feet of heavily landscaped buffer for the homes on Portage Trail.
- Office space could be increased by reducing retail space, but not the reverse.
- The developer must remediate the site contamination before the site can be developed.

Mr. Jim Anderson, STS Consultants, Ltd., 127 East Commerce Road, Milford, explained the remediation plan as prescribed by the proposed Consent Judgment:

- The first phase is for the developer to perform a massive field evaluation to find contaminants of concern in the central and eastern portions of the property.
- The next step is remediation of the central portion of the property.

- Once contaminants are identified, there will be a "wholesale excavation within reason" of the area.
- Due to the presence of PCBs, contaminated areas will be excavated to as much as three feet below the grade in conjunction with land balancing.
- The western portion of the site is relatively clean of contaminants.
- The eastern parcel is of major concern.
- Additional areas of concern were identified in early 2005 including metallic debris.
- The investigation will characterize a variety of different types of contaminants in the central portion of the property.
- The proposal is to encapsulate the eastern portion of the property with very little soil removal.
- Despite an interim clean-up of the eastern parcel by the Michigan Department of Environmental Quality (MDEQ) in 1999 and 2000, there are very high concentrations of PCBs.
- It is likely the Environmental Protection Agency (EPA) will be involved in some capacity regarding remediation of the eastern parcel due to the presence of PCBs.

President Rosen Opened the Public Hearing at 8:06 p.m.

Mr. Lee Zendel, 1575 Dutton Road, described a recent article in the "Wall Street Journal" that claimed the use of consent judgments was increasing, resulting in the judiciary making decisions as opposed to elected officials. He stressed that consent judgments are not unique to Rochester Hills. He then reminded Council that if they do not reach a settlement with the Adams/Hamlin developer any resulting legal judgment could result in the need for the City to levy a millage to pay the monetary damages.

Mr. Thomas Ryan, 2055 Orchard Lake Road, Sylvan Lake, identified himself as the court-appointed facilitator in this matter. He praised all parties involved over the eleven-month process. He noted that compromises were made on both sides of the issue and described the Consent Judgment as "a reasonable solution to this difficult property."

Ms. Cynthia Kinker, 3274 Quail Ridge Circle, questioned the apparent conflict of interest resulting from Attorney Carol Rosati representing the City in this matter as well as the City's insurance company, MMRMA, which has refused to cover any monetary damages resulting from a lawsuit in this matter.

Mr. Bill Windscheif, 2872 River Trail, described the proposed Consent Judgment as "a slap in the face to residents who oppose it." He stressed that the City should have defended the Master Land Use Plan. He expressed his doubt that the environmental clean-up would be adequate and raised the concern that the City is being "blackmailed" by its own insurance company. He urged Council to reject the Consent Judgment.

Mr. Steve McGarry, 2164 Clinton View, stated that the proposed Consent Judgment "does little for the City and gives everything to the developer." He stressed that the City Council works for the taxpayers of the City and urged them to make the "just and right" decision in this matter.

Mr. Paul Miller, 1021 Harding Avenue, with regard to the proposed environmental remediation stated, "Containment as a policy has always been a policy of failure in

achieving its objectives." He suggested that leaving the contaminants as is may be preferable. He stressed that the proposed development is not what the residents or the City wanted for that area. He indicated that a change in the Planning Department is needed to avoid future situations of this nature.

Mr. Lawrence Schloss, 2851 Current Drive, questioned the reticence of City representatives to bring this case to trial, noting that judges make their determinations based on the facts. He stated that Attorney Rosati's involvement in this case while also representing the City's insurance carrier does represent a conflict of interest. He also refuted a Council member's prior claim that the City does not choose consent judgments, stating that they are agreements made by the City but only approved by a judge.

Council members acknowledged the many phone calls and emails they had received regarding this matter.

There being no further public comment, **President Rosen Closed the Public Hearing at 8:33 p.m.**

Mr. Staran addressed some of the questions posed during the Public Hearing:

- Despite the fact that Attorney Carol Rosati is one of many attorneys with whom the MMRMA contracts, she never took any action on this matter without speaking to City Council, nor without City Council approval.
- The City cannot conduct a separate environmental study on private property without the property owner's permission.
- The proposed Consent Judgment provides for the City's environmental consultant to be present and oversee the environmental remediation.
- The MDEQ and the EPA will be involved in the remediation of the contaminated property.

Mr. Duistermars addressed Mr. Schloss's assertion that the City is responsible for the Consent Judgment, noting that the City does not choose to be sued by landowners, but in such cases must work towards an amicable settlement to minimize damages.

Mr. Ambrozaitis expressed his sympathy for the residents affected by this proposed development and assured them he would not vote for a rezoning of this property.

Ms. Holder indicated that the recent consent judgments into which the City has entered in recent years have resulted because there are very few easily developed parcels left in the City. She noted that residents in other parts of the City have indicated that they do not want to be financially impacted if Council chooses to pursue litigation that could result in a large monetary settlement against the City. She stressed that the City had gone to great lengths to keep the residents informed about this matter throughout the process.

Mr. Duistermars noted that criticism of the Planning Department is unfounded. He stressed that the requested rezoning was denied by the City at every step of the process from the Planning Department, to the Planning Commission and the Zoning Board of Appeals. He suggested that perhaps this parcel was erroneously zoned, as the cost to remediate the land to a level that would allow residential development would make any resulting homes unaffordable. He stressed that a negotiated settlement is preferable to leaving the decision entirely in the hands of a judge.

Ms. Raschke noted that it is unfortunate that people illegally dumped waste in the City, but Council is obligated to deal with the situation for the benefit of all of the citizens.

Mr. Yalamanchi requested that, no matter the outcome of the situation, everyone be treated with respect. He noted that there is a principal of planning that dictates that any development must be conducive to the surrounding properties and must add value. He expressed his concern that the City tends to isolate the issue and forget the surrounding area. He noted that a Consent Judgment will remain in place for years to come. He expressed his frustration with many statements regarding contamination noting that "I can't put my hands around this to say I'm comfortable with this." He indicated that he could find some comfort if the Consent Judgment assured a full environmental clean-up and no drugstore. With regard to fears the City would lose a lawsuit and have to pay a multi-million dollar settlement, Mr. Yalamanchi stated, "We cannot fold ourselves every time someone says, 'I'm gonna beat you up.'"

President Rosen stated that this is the most divisive issue he has ever seen in the City. He blamed the "zeal for the [Adams Road/M-59] interchange" for leading to many bad decisions. He noted his anger and questioned "how constitutional law can be so perverted as to violate the Master Plan." He indicated that he is not convinced that the proposed environmental clean-up will be adequate to protect the Clinton River. President Rosen stated that he was most disturbed by the actions of the MMRMA, stating that he felt the letter sent indicating that they would not cover any financial settlement resulting from litigation in this matter "was an attempt to intimidate me rather than to advise the City of their perceived vulnerability." He expressed his belief that the MMRMA usurped the Council's authority. He explained that under these circumstances he cannot ignore the risk of losing a legal case and, therefore, must reluctantly approve a settlement in this matter. He noted that the Council had no choice. He too expressed sorrow at having come to that conclusion.

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

Resolved that the Rochester Hills City Council hereby approves the Consent Judgment pertaining to Adams/Hamlin Development Co., LLC, Hamlin Redevelopment Co, LLC and Hamlin Adams Properties, LLC v. the City of Rochester Hills, a Michigan municipal corporation, Circuit Court Case No. 04-060730-CZ, as presented, in full and final settlement of the litigation.

Further Resolved that the Mayor, City Clerk and City Attorney are authorized to execute the Consent Judgment and any other documents necessary to implement this settlement on behalf of the City of Rochester Hills

Be It Further Resolved that the City Attorney is authorized to arrange for the Consent Judgment to be entered by the Court and recorded at the Register of Deeds.

The motion carried by the following vote:

Aye: Duistermars, Holder, Raschke and Rosen

Nay: Ambrozaitis and Yalamanchi

Enactment No: RES0135-2006

COUNCIL COMMITTEE REPORTS

Administration & Information Services Committee

Ms. Holder, Chair of the Administration & Information Services Committee, noted that the committee had discussed the liquor license for Taco Loco at its last meeting, as well as directors' salaries.