

Tuesday, June 15, 2004

REGULAR PLANNING COMMISSION MEETING held at the City of Rochester Hills Municipal Building, 1000 Rochester Hills Drive, Rochester Hills 48309, Oakland County, Michigan.

Chairperson Eric Kaiser called the meeting to order at 7:30 p.m. in the auditorium.

ROLL CALL:

Present: Chairperson Eric Kaiser; Vice Chairperson James Rosen, Members William Boswell, Deborah Brnabic, Kathleen Hardenburg, Melinda Hill, Greg Hooper, Nicholas Kaltsounis, Audrey Ruggiero
Quorum Present.

Absent: None

Also Present: Ed Anzek, Planning Director
Derek Delacourt, City Planner
Maureen Gentry, Recording Secretary

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MINUTES FOR APPROVAL:

1. Regular Meeting of June 1, 2004

MOTION by Hardenburg, seconded by Kaltsounis, that the Minutes dated June 1, 2004 be accepted as printed.

Voice Vote:

Ayes: All
Nays: None
Absent: None

MOTION CARRIED

COMMUNICATIONS:

- A) Planning & Zoning News dated June 2004
 - B) Notice of Cancellation – August 3, 2004 Planning Commission Meeting
 - C) E-mail from Doug Shafer dated June 2, 2004 re: Rezoning (Item 2)
 - D) Memo from Ed Anzek dated June 15, 2004 re: Rezoning (Item 2)
 - E) Letter from Stephanie Morita dated June 15, 2004 re: Rezoning (Item 2)
 - F) Letter from William Windschief dated June 15, 2004 re: Rezoning (Item 2)
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NEW BUSINESS:

2. **Rezoning Request - City File No. 03-013 (Public Hearing)**

Project: Hamlin/Adams Rezoning
Request: An amendment to Chapter 138 of the Code of Ordinances to rezone two parcels of land totaling approximately 28 acres, from R-2, One-Family Residential to B-2, General Business
Location: Northeast corner of Hamlin and Adams
Parcels: 15-29-101-022 & -023, zoned R-2, One Family Residential
Applicant: Hamlin Adams Properties, L.L.C.
24400 Jefferson Ave.
St. Clair Shores, MI 48080

(Reference: Staff Report prepared by Derek Delacourt, revised June 15, 2004 had been placed on file and by reference became part of the record thereof.)

Present for the applicant were Paul Aragona and Paul Henderson, Partners in Hamlin Adams Properties, L.L.C; Tony Anthony, AKT Peerless Environmental Services, and John Gaber, Williams, Williams, Ruby and Plunkett, Attorney.

Mr. Kaiser noted that this request was visited at the May 4, 2004 Planning Commission meeting and subsequently postponed. At that meeting, public comments were taken, but Mr. Kaiser advised that because this item was already discussed, and because it would be visited by City Council, there was no point in being redundant. The applicant was also asked not to repeat anything said before. Mr. Kaiser further advised that comments made at the May 4 meeting would be incorporated into the record by reference and that the record would go forward to City Council. The applicants' comments would be restricted to ten minutes. He stated that when the Public Hearing was opened, he planned to ask for a motion so they could focus on the public's comments with the motion in mind and those of the Planning Commissioners after the Public Hearing was closed.

Mr. Delacourt stated that the applicant's request was to rezone 28 acres (two parcels of land) from Single-Family Residential to Commercial, and that the property was currently zoned and master planned single-family. The applicant had advised that existing contamination was the reason for the rezoning request. Staff did not believe this reason justified a straight B-2, or commercial, rezoning, although they acknowledged the potential contamination issues. He noted that the potential motion in the Staff Report included three findings, but the City Attorney recommended that no findings should be included in a motion to rezone.

Mr. Aragona read, "They were at the meeting to respond to questions and comments posed at the May 4 meeting, at which they indicated a willingness to discuss using a Planned Unit Development (PUD) process in conjunction with the rezoning of the site, but found no support from the Commission. At that meeting they voluntarily postponed the rezoning request, but would like the Commission to now act on that request. They reviewed the data and reconfirmed that the 28 acres could not be successfully and safely developed for residential use. The property was too contaminated for residential use from these important aspects: marketable, economic, allowable and a safety aspect. There could be no exhaustive tests, sampling and cleanup performed that would allow and forever allay the concerns of the residents. With each new diagnosis, questions would be raised by attorneys as to the completeness, or lack thereof, of the clean-up of the site. With so many choices for homebuyers, why would they take a chance on this site? Please understand that if Rochester Hills granted \$14 million for the cleanup of this site and evened up the economics of the site, the health concerns, real and imagined, would forever remain. The estimated \$14 million in cleanup costs, divided by the approximately 51 homes that could be built would amount to over \$274,000.00 per home before land development and home building costs. It was for these reasons that this parcel had not been developed during the area's biggest housing boom and lowest interest rate environment in 40 years. Cleaning up only part of this site to reduce costs poses a larger perception issue because of the proximity of the fenced portion of the property. In addition, the fenced area would have to be cleaned up to a residential standard, incurring higher costs. At the last meeting, certain members expressed concerns regarding whether there was enough data about the existing condition of the site and whether it posed a health threat to adjacent homeowners. They have definitively concluded that the data is solid, appropriate and usable to fashion a Brownfield Plan for commercial use of the site and residential use is unfeasible. They have also concluded that pathway exposure risks do exist. The fencing of just a portion of the site stands as physical proof to the community that it does. The site is one of six listed as a Brownfield Site by the MDEQ in the City and only interim response activity has been conducted. They are not demanding or asking that the Commissioners believe the environmental experts. The City has had its own review and the same data was generated. The City must question whether the current zoning of the site might be misleading to those who investigate the area. The impression left on many is that because it is zoned for residential use it therefore can and will be used

as such. Some members questioned the level of the applicant's commitment to the cleanup of the site for commercial use. It was very definitive as to what they had proposed and what is an allowable standard under the State's Brownfield Act. They are undertaking legally required due care activities, including an environmental cleanup to a standard appropriate for this development. They cannot clean the parcel to a residential standard. Those costs, estimated to be \$14 million, are not allowable for reimbursement by the MDEQ. Cleaning costs for just a portion of the site to a residential standard are also non-reimbursable and not necessary for safe commercial use. The parcel will be made safe for the contemplated use and will greatly reduce the infiltration and run-off of storm water through and from the site, like residential development could never do. They would be obligated to perform these tasks by law and by the Brownfield Plan. Commercial development on the parcel safely drives the economics for reimbursement of contemplated response activities, but not for the cushion needed for unforeseen costs. That is why they would test and clean up, if necessary, the adjoining residential yards. Without a proven economic engine, these activities cannot and will not be undertaken by our or anyone else's private initiative. There is no government solution to be had on this site. They appealed to the residents who abut the property to deal with the real and severe problem that exists today and not to fear the development of this property for commercial use. There are those who wish to scare you about successful commercial and residential co-existence. One example that comes to mind is the residential development called Somerset North on Coolidge north of and abutting Somerset Mall, that was built after the mall was there. It had very expensive homes and sold quickly. The applicant's contemplated development is not close to the size and impact of a Somerset Mall and would provide for daily shopping services and employment for the local population. There are people among you who have continuously and recklessly distorted the facts and have offered no solutions and no funding options. They would gladly sacrifice your health, safety and welfare for the furtherance of their visions, single-issue agendas and political aspirations. The Master Thoroughfare in the City's Master Plan labels Adams and Hamlin Roads as major arterials at this intersection. This is evidenced by the full improvements already made to Hamlin, and soon to be made to Adams Road south of this property with the future M-59 interchange. A residential sub would be undesirable, with a good portion of the lots backing up to two major arterials. Because this property is a corner site onto major arterial roads it is ideal for commercial/office development and serves as a transitional zoning to the residential to the north. This, combined with the demand and market for a neighborhood commercial center servicing the existing residential and the surrounding area, makes this proposed use very reasonable. The net effect is that it provides a local service center and economic activity for those most affected by its existence. The major share they are experiencing away from a manufacturing economy to a service economy is creating a growing need for developments such as we are proposing. Please understand that architectural design and planning has evolved dramatically away from the suburban style of the 1970's and 1980's when the bulk of Rochester Hills' development occurred. What they wish to do is create the physical elements that will pull and bind this community together like no park, library or public building can. As much as the vocal minority complains of the need and demand for new retail development, the silent majority happily shops and gathers en force at places like the Village of Rochester Hills. In summation, what they are proposing for the use and development will create a win-win-win situation. The residents, especially those abutting the development, would have a real problem today in the financing and disposition of their homes because of real or imagined health risks in living next to this site. They win because of the usability of the proposed use to them on an everyday basis. They win because the property is cleaned up quickly with private sector dollars and efficiency. The City of Rochester Hills wins, and governmental interests in the health, safety and welfare of its residents are promoted, preserved and enhanced. No new problems in risk are created in forcing a residential development on a brownfield site. No current funding sources are diverted for the cleanup of the site. New additional real and personal property taxes are created and the Tax Increment Financing (TIF) financing will be short-lived. The commercial use of the property places no additional demands for resident services and on schools. The use of the property promotes the economic and social interaction of residents and provides new and permanent job and business opportunities. The use provides that a transition from more intense uses to a residential intersection of major arterial roads. The developers win because the

economic engine necessary to generate the reimbursement dollars comes with certainty because of the area's huge demand for goods and services."

Mr. Anthony advised that since the last meeting, they had been informed by DEQ that their policy was to not approve Due Care Plans, Closures, or BRA 381 Work Plans for residential development on or near landfills. He stated that it was a new policy and had affected many of the projects he was working on. For this site, they had enough of an investigation to know that going full cleanup to residential would require total removal of the landfill, which would be \$14 million or so. Anything less than that would be subject to the new DEQ policy, which would prohibit State approval for residential development. The investigation costs they proposed in the Due Care plan would not lower the costs for doing a cleanup to residential standards, but were there simply so that they could best assess what the appropriate engineering controls would be to use the site safely and to protect the nearby sites.

Mr. Kaltsounis referred to the engineering data supplied at the last meeting and clarified that he was critical of how much data was there, not the actual data, and because the Commissioners did not get to see the whole story.

Mr. Kaiser asked Mr. Aragona if he used Somerset North as an example because it was built on a brownfield site. Mr. Aragona replied no. Mr. Kaiser remarked that he thought Mr. Aragona was more familiar with Rochester Hills than to suggest that there were not a lot of expensive homes built on major arterials, because that was not the case.

Mr. Kaiser asked if the new DEQ policy was in a written memo. Mr. Anthony said his office was informed a few weeks ago of the policy. This week they saw the policy manifest itself in a project they were working on in Mt. Clemens. At that site, they were removing the material of a landfill, but that now had to be reworked because they could not do a residential development there. Mr. Kaiser asked if that was the site on the Clinton River and Mr. Anthony confirmed it was on North River Road. Mr. Kaiser asked if that was in litigation and Mr. Anthony replied that it was. Mr. Anthony said that the important thing about that site was that the DEQ was applying the policy regardless of the content of the landfill. He advised that the landfill had construction debris, which was considered the least hazardous, but the policy was still being applied.

Mr. Kaiser asked for motion on the floor in the negative and said the reason he asked for that was because the Master Plan now called for this property to be residential. He explained that there was a Master Plan update underway that should be completed in the next twelve to sixteen months. If there were to be a change in this site, it would seem to be more appropriate to study it that form, rather than to have City Council change the zoning at this time. He stated that the earth in the site was contaminated and that was known. They have heard conclusions and opinions tonight, but what was known, aside from the fact that the earth was contaminated, was that a residential level cleanup would be more thorough and would be better. If this property were going to be developed without having more knowledge about the extent of the toxicity, then they would know a residential level cleanup would be the most appropriate way to be sure all City residents – not just the people who might use that property – would be better protected. In the absence of a current, whole site, comprehensive evaluation, no changes should occur. Studies could be done during the Master Plan update. He indicated that all of the statements made tonight and May 4 would be incorporated into the record and asked for a motion that recommended City Council deny the rezoning as stated.

MOTION by Kaltsounis, seconded by Ruggiero, in the matter of City File No. 03-013, the Planning Commission **recommends** to City Council **denial** of the request to rezone 28± acres, identified as Parcel Nos. 15-29-101-022 and 15-29-101-023 from R-2, One Family Residential to B-2, General Business.

Mr. Kaiser stated that whatever was decided would resolve no issues, but would tell City Council what the Planning Commission recommended. He advised that City Council would make the ultimate decision regarding rezoning this site. He opened the Public Hearing at 7:55 p.m.

Donald Hayman, 1535 Charter Oak Drive, Rochester Hills, MI Mr. Hayman stated that there were many pros and cons to the project, but he was greatly concerned that the City of Rochester Hills had already signed a blank check for a huge brownfield remediation for a separate project on the south side of Hamlin Road, called Madison Park. He realized that was not the concern of this meeting; however, the City was now considering paving the way for another very expensive brownfield remediation project that would really come out of future Rochester Hills tax monies, since the developers would get a tax abatement to cover their costs, estimated in this case to be \$7 to \$10 million. He did not know if the conditions of the remediation plans would limit what the developers could recover, but indicated that remediating a landfill was a nasty business and that all kinds of “nasties” could be found they did not even know were there. He felt they would be on the verge of signing another blank check because if the \$7-\$10 million went to \$15, the City would end up paying it. Once they opened up the landfill and it was stinking up the neighborhood, they would do what they had to and get it covered. He stressed that what they had to do might be a lot bigger than they first thought, and said the same might be true on the south side of Hamlin.

Dan Keifer, 719 Fieldstone, Rochester Hills, MI Mr. Keifer said he was at the meeting to state his opposition to the rezoning and therefore support the motion before the Commissioners. It seemed to him that it was inconsistent, in a basic format from the Master Plan, to try to put commercial on that side of Hamlin Road and up against an existing residential development and parkland. The argument to remediate to a commercial use seemed to be the worst of both worlds. He noted that he did not live in that area, but said it seemed that would be a partial fix to a very serious problem for the nearby residents.

Ms. Liliana Klein, 3074 Quail Ridge, Rochester Hills, MI Ms. Klein asked, on behalf of the Rochester Hills residents, that the Commissioners vote “no” for this proposal.

Debbie Geen, 3128 Walton Blvd., #187, Rochester Hills, MI Ms. Geen stated that she was at the meeting as the Residential Vision Committee (RVC) Chairperson. She said that her activist committee wanted to present the following points and she read: “1) Commercial development is not in keeping with the character of the residential neighborhoods; 2) The rezoning would be against the Master Land Use Plan, which called for residential zoning. Rezoning this property would make this Plan irrelevant; 3) Traffic – the road system had not been developed to support heavy commercial development, which would produce more traffic problems. With creation of such intense traffic, she wondered if this would be another building block to widening Adams Road and Hamlin east of Crooks Road; 4) Need for Traffic Studies – the developer did not do a traffic study and she asked why the City did not request a traffic study for the strip mall. Everyone knows that for eastbound Hamlin Road and northbound Adams Road traffic stops at 5:00 p.m. on a normal weekday. She checked out M-59 eastbound at that time and found it was a bottleneck; 5) The Brownfield Plan is simply a tax abatement for the developer for cleaning up the land. The school system would lose tax revenue; 6) The proposed Adams Road interchange is too close to the property and would create traffic safety hazards, such as unsafe curb cuts, increased subdivision cut-through traffic, difficulty exiting and entering subdivision entrances and more vehicles speeding on subdivision streets; 7) The three proposed projects for the Hamlin Adams area total 3.7 million square feet of office, strip-mall space, which would create many traffic problems in the neighborhoods. The issue before the Planning Commission this evening is a rezoning issue and not a brownfield landfill cleanup issue, as the developer previously presented.”

Gerald Evans, 1645 Park Creek, Rochester Hills, MI Mr. Evans stated that he had been a resident of Quail Ridge for 24 years. Before he came to this meeting, he did not realize this was another brownfield item, and if that was right, he did not realize it came before the Planning Commission first. He thought it went right to City Council for a 7-0 vote. He said he would send a message to City Council, perhaps through Ms Hill, to have them look at this from the resident’s side, rather than as something proposed for the south side of Hamlin Road.

Cindy Kinker, 3274 Quail Ridge, Rochester Hills, MI Ms. Kinker said she had a lot more questions than answers at this point. She asked what the protocol for rezonings and planning were and if the City had a protocol for doing zoning changes. She said that, for instance, the protocol for a high temperature and positive blood cultures would be antibiotics. She wondered how a rezoning was planned. She did not feel that the citizens wanted this throughout Rochester Hills. If the Commissioners really talked with people, they would hear that Rochester Hills was very crowded and horrible to drive through. She did not feel any residents were for this and she could not believe this would be a prudent thing to do. The City already was trying to get a direct link for Adams Road to M-59. That was a huge project and there was the huge project south of Hamlin. There were still so many questions about that and she did not understand how a Master Plan could be planned to be unplanned. She mentioned the area north of Bordine's and said the people who lived around there were told the area would remain residential and it might become something other than that. She stated that this was not fair to the citizens to plan things like that and it was certainly not fair to put a major road and two major subdivisions through that area.

Lawrence Schloss, 2851 Current Drive, Rochester Hills, MI Mr. Schloss read a portion of a letter from Mr. William Windschief, 2872 River Trail (on file in the Planning Department): "As I understand the situation, the developer, Mr. Aragona, is making the request so he can develop a mixed commercial-retail theme restaurant and office development on the site – another words, a strip mall. I reside in the neighborhood adjacent to the proposed rezoning. When my family and I moved to Rochester Hills eight years ago, I inquired with the City on the future use of the land. I was told at that time that the City vision was for single-family residential and this was spelled out in the Master Land Use Plan. It was then and is now my belief that the Master Land Use Plan is the driving force for the City's vision. It is my opinion that it is a covenant between the local residents and the City's elected officials and Staff. The Master Land Use Plan is something the residents rely upon when making decisions, where to invest money in real estate, and where to raise and live with their family. The proposed rezoning is directly next to River Valley, a residential subdivision. This property also adjoins River Bend Park. This is hardly an area that needs to be changed from the Master Plan intent to commercial use. May I remind the Commission it was only five years ago that the City proposed to change River Bend Park from its passive status to commercial use by giving parkland to Lifetime Fitness. At that time there was a huge outpouring of outrage by the community. Finally, after much input by the residents, this matter was resolved and the original intent of the park was safe. Rochester Hills does not need to change every undeveloped land to commercial use. If Mr. Aragona wants to develop the property, let him develop it as residential in accordance with the Master Plan. I know the argument against leaving zoning as it is and that it is not cost effective. I implore you to deny the request." Mr. Schloss added that he supported him.

Lynn Loeb, 2845 Portage Trail, Rochester Hills, MI Ms. Loeb stated that she was the President of the Clinton River Valley Homeowners Association and that her subdivision, including 13 homeowners who abut this area, was directly affected by this project. She wondered about the probabilities for residential for this area. She noted that Mr. Aragona and Mr. Henderson made an extra effort, and went above and beyond the requirements and met with the homeowners on three separate occasions. They appreciated that, but were concerned that a straight rezoning would not leave them with any room for discussions and that concerns would not be documented. They would not have any recourse if the agreements discussed did not end up in the actual plan. The environmental concerns of the site would directly affect the residents because there was run-off downhill and towards their homes. Bringing the site to commercial standards might be what was authorized, but the fact that it was a residential community should be considered. She stated that the neighbors of Quail Ridge were affected also, and the three highly populated subdivisions needed to have their voices heard and have some sort of direct input into what happened to this site.

Mr. Kaiser closed the Public Hearing and turned the discussion over to the Commissioners. He commented that the property north of Bordine's referenced by Ms. Kinker was master planned as it was being developed. He clarified that Ms. Loeb

referenced a PUD process, as discussed at the May 4 meeting, would be more appropriate for this site so the outcome would have more guarantees.

Ms. Hill noted that several people indicated there would be a tax abatement for the developer if this project went through. She stated that this was absolutely false and incorrect information and that a brownfield reimbursement was not a tax abatement. She asked Mr. Delacourt to clarify.

Mr. Kaiser pointed out that Ms. Hill's comments were well made, and he indicated that in projects like this, misinformation seemed to run rampant because people who lobbied for a certain result liked to spread wrong information, perhaps hoping no one would try to find out the real information. He stated that a tax abatement was a very specific term of art and had to do with developers asking to not pay any taxes, in exchange for bringing in a project. In that case, the schools might lose out, but this City was not known for granting tax abatements. The applicant was requesting a Brownfield Plan, and would have to pay all taxes. The difference was that the monies would be paid up front by the brownfield cleanup and redevelopment. The applicant would pay taxes to clean up a contaminated piece of earth, which would affect everyone in the City, not just the adjacent residents, and he added that the Planning Commission and City Council would make decisions which were good for the whole City.

Mr. Delacourt agreed, and said all the taxes would be collected, and were captured above what the base year was and reimbursed to clean up the property, as opposed to using the taxes for infrastructure or other areas. All the taxes would be collected and the developer would use that money upfront to clean up the property to bring it equal in standing to what was considered a "greenfield" and therefore developable.

Ms. Brnabic asked Mr. Delacourt if there was a limit to the amount of funds that could be recaptured. Mr. Delacourt replied that any Brownfield Plan had a cap. In the Brownfield legislation there was a difference between a core community, and this City was not listed as one, so they would require reimbursement agreements, which would go into great detail about the number of years, the dollar amount and what would happen if there were overages. This project had not gotten that far because the Brownfield Plan was based on zoning that did not exist, which was why the applicant was making the rezoning request. He added that the whole process was very lengthy.

Mr. Rosen asked Mr. Delacourt if he was aware of the State policy not to develop residentially by landfills. Mr. Delacourt answered that Staff had had discussions with the DEQ about the policy and they also discussed the potential to develop on landfills after remediation. The DEQ would not support the redevelopment of landfills as residential. There was no policy for how far from a remediated landfill someone could put a residential development. Staff acknowledged a lot of what the developer said, but had not seen evidence that the B-2 requested zoning was the correct zoning for this site. Staff agreed with the Chair that if single-family was not the correct zoning, that should be dealt with through the use of a PUD process or revisited when the Master Plan was reviewed. Mr. Rosen asked if what he referred to was a law or if it was just a policy, and Mr. Delacourt replied that he believed it was a policy. Mr. Kaiser said that a policy that was not written was not a policy, and a policy that was written could be changed next week, so this was all too speculative. He underscored that this was a rezoning request and the only reason being given to rezone the property was because it would be economically feasible for the applicant to do it under commercial standards rather than residential. He stated that was not a reason to rezone in any community.

Roll call vote:

Ayes: Boswell, Brnabic, Hardenburg, Hill, Hooper, Kaiser, Kaltsounis, Rosen, Ruggiero
Nays: None
Absent: None

MOTION CARRIED

Mr. Kaiser advised that this matter would be forwarded to City Council.