



Rochester Hills

Minutes

Planning Commission

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Rochester Hills, MI
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Home Page:
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Chairperson William Boswell, Vice Chairperson Deborah Brnabic
Members: Gerard Dettloff, Dale Hetrick, Greg Hooper, Nicholas O. Kaltsounis,
David A. Reece, C. Neall Schroeder, Emmet Yukon

Tuesday, June 17, 2014

7:00 PM

1000 Rochester Hills Drive

CALL TO ORDER

Chairperson William Boswell called the Regular Meeting to order at 7:00 p.m. in the Auditorium.

ROLL CALL

Present 9 - William Boswell, Deborah Brnabic, Gerard Dettloff, Dale Hetrick, Greg Hooper, Nicholas Kaltsounis, David Reece, C. Neall Schroeder and Emmet Yukon

Quorum present.

Also present: Ed Anzek, Director of Planning and Economic Dev.
John Staran, City Attorney
Maureen Gentry, Recording Secretary

APPROVAL OF MINUTES

2014-0232 May 20, 2014 Regular Meeting

A motion was made by Brnabic, seconded by Schroeder, that this matter be Approved as Amended. The motion carried by the following vote:

Aye 9 - Boswell, Brnabic, Dettloff, Hetrick, Hooper, Kaltsounis, Reece, Schroeder and Yukon

COMMUNICATIONS

- A) Planning & Zoning News dated April 2014
- B) Letter from M. Bylen, dated June 12, 2014 re: Villas at Shadow Pines
- C) Letter from S. Forrest, dated June 11, 2014 re: Villas at Shadow Pines
- D) PC Agenda, page two, dated June 17, 2014 re: Next Meeting Date
- E) Flyer from the Trailways Commission re: September 2014 Event

OLD BUSINESS

2008-0302 Request for Approval of an Extension of the Final Site Condominium Plan until July 14, 2015 - Pine Woods Site Condominiums, a proposed 29-unit development on 9.6 acres, located south of Auburn, east of Livernois, zoned R-4, One-Family Residential, L&R Homes, Inc., Applicant
(Reference: Memo prepared by Ed Anzek, dated June 13, 2014 and Final Plans had been placed on file and by reference became part of the record thereof.)

Present for the applicant was Vito Randazzo, L & R Homes, Inc., 2490 Walton Blvd., Suite 103, Rochester Hills, MI 48309.

Mr. Randazzo stated his request, and said that they were working with Engineering through construction plan details so they could move forward. He pointed out that the economy was growing, and he believed that they would break ground soon.

Seeing no further discussion, and taking under advisement Chairperson Boswell's comment that the matter had been before them many times previously, Mr. Schroeder moved the following motion, seconded by Mr. Hetrick.

Before the vote, Mr. Kaltsounis asked if Raffle Drive had been approved as the internal road name. Mr. Randazzo said that to his knowledge, it was approved, and he did not believe they could change it.

A motion was made by Schroeder, seconded by Hetrick, that this matter be Recommended for Approval to the City Council Regular Meeting. The motion carried by the following vote:

Aye 9 - Boswell, Brnabic, Dettloff, Hetrick, Hooper, Kaltsounis, Reece, Schroeder and Yukon

UNFINISHED BUSINESS

2013-0264 Request for Recommendation of a Final Planned Unit Development Agreement - City File No. 13-009 - Villas at Shadow Pines, a proposed 28-unit residential development on 9.8 acres located on the north side of South Boulevard, between Adams and Crooks, zoned R-4, One-Family Residential, Parcel No. 15-31-400-018, Shadow Pines, LLC, Applicant
(Reference: Memo prepared by Ed Anzek, dated June 13, 2014 and associated documents from the previous meeting at which this item was postponed were placed on file and by reference became part of the record

thereof.)

Present for the applicant were Jim Polyzois and Mark Gesuale, Shadow Pines, LLC, 14955 Technology Dr., Shelby Twp., MI 48315; Bill Mosher, Apex Engineering, P.O. Box 1182, Birmingham, MI 48312; and Ralph Nunez, Design Team Plus., 975 E. Maple Rd., Suite 210, Birmingham, MI 48009.

Chairperson Boswell announced that the next item was from the meeting from a month ago when it was postponed. He read the requests and asked the applicants to come forward.

Chairperson Boswell stated that ordinarily, he would ask Staff or the applicant to give an overview of the plans, but he felt that they had reviewed it fairly extensively previously. He suggested that they take no more than 45 minutes on these items. They held a Public Hearing and discussed it comprehensively, and he recommended that it was time to make some decisions.

Chairperson Boswell noted that he had asked Mr. Staran to the meeting because he had a few questions. He brought up a hypothetical situation, although it did involve a real one. If there was an applicant (Person A) and there was a neighbor next door (Person B) who infringed on Person A's property continuously, he wondered who, by law, would be responsible to put an end to that infringement. Mr. Staran said that generally, no one had the right to encroach, infringe or trespass onto a neighbor's property under ordinary circumstances. Chairperson Boswell clarified that under ordinary circumstances, property owner B would be required to put a halt to the infringements. Mr. Staran agreed, unless there was some type of agreement to do differently. Chairperson Boswell asked if the fact that it had gone on for 25 years had any mitigating effect. Mr. Staran answered that it could, but not necessarily. People were required to contain their activities onto their own property. If they were causing something to go onto adjoining property, it could be problematic if they did not have permission to do so. In this particular case, talking about golf balls, it had been uneventful for 20-25 years due to the fact that there had been no development on the subject property. Now that the subject property was proposed for development, the concern had come into focus. Mr. Staran added that the passage of time, in and of itself, should not change the legalities.

Chairperson Boswell indicated that the Planning Commission had always tried to promote amity between a developer and his neighbors. That was

why, a month ago, the Commission postponed the decisions. He asked the applicants if anything had changed and what possible solutions they had come up with.

Mr. Polyzois responded that he had the opportunity to meet with Mr. Mike Bylen, proprietor of the golf course, to discuss many different scenarios that would allow them to co-exist, to try to erase Mr. Bylen's concerns and to address his issues. Mr. Polyzois felt that they had made considerable progress. They had productive discussions in the direction of planting some large trees along the property line, creating some berms that would elevate the trees and to position them in a way that would deter golfers from driving onto the subject site and lead them instead toward the green for hole 11. As it stood, the hole was currently wide open, and a golfer would tend to think that it was an open area that was in play. The trees should help eliminate that, and he believed that Mr. Bylen was in support of that.

Chairperson Boswell asked how many trees were proposed. Mr. Polyzois advised that there would be approximately 20. Mr. Nunez added that they would be machine-moved trees, deciduous trees that would probably be 6-8" calipers and 25 feet high. There would be a mix of evergreen trees - some Norway Spruces, which go up to 35 feet high and some White Spruces at almost 25 feet high. They would be working with Mr. Bylen's golf course architect and theirs to look at a grading plan that would elevate the berms and allow the trees to be planted on top of the berms. Mr. Nunez said that they were proposing a six-foot high decorative fence at the entrance way. That would replace the chain link fence there currently that went two feet onto the subject property. Mr. Bylen would like to consider having a balance by having a fence that ran the length of the property line, so golfers would know that they were on private property. Mr. Nunez felt that they could work with Mr. Bylen about the length of the fence.

Chairperson Boswell asked if the trees and fence would cost \$40,000.00, a cost estimate discussed at the last meeting, or if there would be something more included. Mr. Nunez thought that the trees alone would cost \$40,000. They were about \$2,000 each to move. Mr. Polyzois advised that Mr. Bylen had indicated that there was a possibility of removing some trees from the golf course and repositioning them to their property line, which would help defray the cost.

Mr. Hetrick asked about the tee boxes, and if they would be maintained as they were or adjusted to point people more toward the fairway.

Mr. Nunez believed that Mr. Bylen could speak to that a little more, depending on his golf course architect. Mr. Bylen really wanted to start to direct the attention of the golfer towards the west direction by mounting the vegetation as proposed, so the golfer would know where to set a ball versus where the box was now. Mr. Nunez was not sure whether or not Mr. Bylen was looking at modifying the tee boxes. Mr. Polyzois said that the changes they were proposing would certainly reduce the fairway width and further transition the golfer to be more focused on the area they were looking at.

Mr. Schroeder asked if the berm and fence would be on the applicant's property or jointly be on both properties. Mr. Nunez explained that the fence would be on the property line; the berms would be on the golf course side. They did not want to have to relocate the cart path, so some of the berming would be on the east side of the cart path, and some on the west. The cart path would continue as it was, and they would be working on the placement of the trees. He remarked that they would be doing surgery to make sure the trees were placed to do the best job. Mr. Schroeder clarified that the cart path was all on the golf course property. Mr. Nunez said that currently, there was one infringement where the golf course was over the property line, but it was about two feet, so they did not feel a need to change the path. They would fence around it.

Mr. Schroeder commented that he certainly appreciated the applicant's efforts in working with a problem that was not theirs - that was created by someone else. Mr. Nunez said that he appreciated that, and he said that both parties had come to the table and worked things out. Mr. Schroeder claimed that that, in itself, was an accomplishment. He asked if the applicants had talked with any of the other neighbors. Mr. Nunez said that after last month's meeting, they again looked at the possibility of moving the lots, but shifting units and the road would cause an impact to the neighbor to the south. They had a good working relationship with that neighbor, and there was a land swap, and they got a piece of that neighbor's property, so they did not want to muddle that. There was an issue about indemnification forever on golf balls hitting homes, and he thought that Mr. Polyzois might talk with Mr. Staran about it, but unless everyone around the golf course was required to provide that, he thought it was a little much. They were doing their best to minimize concerns, and he believed they could with the modifications proposed.

Mr. Schroeder thought it was a great development, and that the applicants were going above and beyond the call of duty to get things taken care of.

Mr. Kaltsounis commended the applicants. He said that the Planning Commission went through these types of situations a lot, and when there were problems between neighbors, they always asked everyone to get together to see how they could come up with solutions. He said that he applauded the applicants for the work that they had done. He asked if the modifications would be included as a condition in the motion for Site Plan recommendation.

Mr. Anzek believed that the commitments the applicants were making offsite would be part of the PUD Agreement. Mr. Staran agreed. Mr. Hooper pointed out paragraph 6 h., which would have to be re-written. Mr. Kaltsounis suggested that an added condition should state that paragraph 6 h. shall be re-written to document the proposal put forth at the Planning Commission meeting on June 17, 2014.

Mr. Yukon asked the applicants if they had had any discussions with Mr. Bylen about a warranty for the trees. He assumed that there would be a one-year warranty. Mr. Nunez replied that machine-moved trees normally did not come with a warranty; that was why they needed to use a qualified contractor that would not move trees in the wrong time frame. He had been told that after July 15th, evergreen trees could be moved without any problems. Deciduous trees would have to be moved after Labor Day. They would put an additive in the soil, and the trees would be treated beforehand for stress. Mr. Yukon asked what steps would be taken to make sure that the trees were treated or replaced if there was a problem in the first year or two, remarking that he hoped there would not be a problem. He reminded that sometimes, transplanted trees could go into shock. He was curious as to whether there were any discussions regarding that type of event.

Mr. Polyzois said that they had really not touched upon that, but he said that he was receptive to incorporating some language regarding a period of time after planting. If a tree died or needed to be replaced, he could render some type of warranty for a year. In the spirit of compromise, he assured that he was willing to do what he needed to make everything work without the need for fencing and to cooperate with Mr. Bylen. Mr. Yukon thought that would be fair.

Mr. Staran said that along those lines, the City had a lot of experience through its Tree Conservation Ordinance and tree replacement requirements. Typically, the City required performance and maintenance bonds for two growing seasons. He thought that Mr. Yukon's concerns

could be addressed by building that into paragraph 6 h. Mr. Nunez mentioned that they would be planting oversized trees versus the normal requirements for replacement trees - three-inch caliper and two credits - and they would like to get some credits banked. They had other projects in the City for which they would like to take advantage of the credits. Chairperson Boswell did not think that should be a problem. Mr. Staran thought it made sense, and he indicated that the City could work with the applicant regarding that. Mr. Anzek pointed out that the Ordinance allowed trees to be planted on public property if they could not be planted on site, and the golf course was City-owned. Mr. Staran agreed.

Mr. Schroeder recalled that when the golf course was developed, there was a great effort made to preserve trees. He doubted whether any of those trees would be picked for replanting. He suggested that it might be worth it to have the City's Forester look at the trees. The Forester could also advise on the health of the trees and the potential for replanting. Mr. Nunez said that normally, if trees were located on the same property, they did not have to be inspected by the Health Department. If they were coming from a site that was not a qualified nursery, they would have to be inspected so they were not bringing in a diseased tree. Mr. Schroeder said that he understood that, but he said that there might be something noticeable with the trees. Mr. Nunez thought that Mr. Bylen was keeping his grounds meticulous, but if the Forester approved it, they could move them onsite. He commented that it would be a lot cheaper. Mr. Schroeder wanted them to understand that it was purely advisory.

Ms. Brnabic knew that the applicants had discussed about \$40,000.00 for the modifications, but she wondered if the applicants had an estimate confirmed. Mr. Nunez talked with a tree remover who told him that the range was \$1,500 to \$2,000, depending on how far he had to transport those trees to the site. They were looking at the high end, and that was how they came up with \$40,000. Ms. Brnabic asked how much the fencing would cost. Mr. Nunez said that he did not have an estimate. It would be a three to five-foot high decorative fence, but he did not have a number. Ms. Brnabic wondered if they would hear from Mr. Bylen, and Chairperson Boswell informed that he had turned in a card to speak.

Mr. Hetrick said that they were talking about what was being done to the golf course, including adding the trees, a fence and perhaps including a warranty, but he did not see where it had been added to the PUD Agreement. He felt that it was important to have the comments documented in the PUD Agreement including the changes Mr. Staran had suggested.

Mr. Polyzois said that as he indicated at the last meeting, all of Mr. Staran's comments had been incorporated into the new PUD Agreement, except for the timeline for completion. His attorney was going to reach out to Mr. Staran to work on that language. He knew that there would be changes to paragraph 6 h. regarding the scope of the work, so he wanted to get a clear understanding of those factors and then incorporate them into a final agreement. Mr. Hetrick concluded that if the final version had the changes, he would be fine with it.

Chairperson Boswell opened the public comments at 7:30 p.m.

Michael Bylen, 3600 Pine Trace Blvd., Rochester Hills, MI 48309 *Mr. Bylen stated that he represented Pine Trace Golf Club. He felt that he and the applicants had some substantive and very sincere conversations. He commented that Mr. Polyzois had been very good to work with and had been accommodating. He wished to reiterate a few things that he thought had come up in error. Mr. Bylen advised that when they built Pine Trace Golf Club, they followed the current design recommendations that were then in effect by the Golf Course Architects Association of America and the Urban Land Institute. Those had changed today. Pine Trace was not involved in any way in designing the ball or the club and in no way affected the changes in those recommendations. The applicant's golf course architect said that the environment was safe. Mr. Bylen claimed that contrary to someone else creating an issue for a neighbor, the issue, if it did exist, existed because of the change in technology in golf. They went through a very thorough review from the City of Rochester Hills when they built the course. The Engineering Department, in particular, looked at it very thoroughly. If there was any thought that they built or designed it in an inappropriate way, he felt that they had to recognize that the Engineering Department looked at it closely. If there was anything inappropriate at that time, it should have been flagged. He stated that it was not, in fact, inappropriate for the standards that existed at that time. He said that he was well aware that the Commission could approve whatever it wanted. When he came last month, he was not trying to stop the project. He said that when they got Pine Trace, there were eight homes around the site. When the proposed development and the one to the east were done, there would be over 300 homes adjacent to Pine Trace Golf Club. Some of that development was due to the golf course. In none of those earlier developments had he ever stood before the City in any way raising any issues. He had embraced those developments, as he would the proposed. He has had a very good working relationship with the other developers, and he was developing*

that type of relationship with the applicants. He advised that he was present to raise a safety concern that existed. Every time he thought they were getting somewhere to mitigate it, and he had a great working relationship with Mr. Staran, he was thinking that the only way to mitigate was to put netting up, which was not anything anyone wanted. They had tried to create a situation that could mitigate, to the greatest degree possible without a net, the occurrence of golf balls going onto the subject site and injuring someone. His main concern was the safety of those individuals. With the questions about liability, the use and the timeframe, he would not deny that 25 years ago a ball flew onto the site, but the occurrence had been much greater in the last 10-15 years with the changes in clubs and balls. When he listened to Mr. Staran's response, he really felt that he (Mr. Bylen) had a liability that he might not be able to remedy with trees. He maintained that there was the dilemma. He had asked for some type of indemnity for the units. He had asked if the units could be moved or eliminated, but that was not an option. They even embraced somehow trying to find out if there could be more units, which was Mr. Staran's idea, and eliminating the first three units. Unfortunately, with the wetlands and the location of the retention, that did not seem to be possible. He said that he appreciated the fact that Mr. Kaltsounis, on a regular occurrence, dealt with disputes between developments and existing neighbors. He felt that some people could assume that this was the first time that such a thing had occurred.

Chairperson Boswell said that he was impressed. He thought that Mr. Bylen and the applicants had worked hard, and he thought that the trees would make a difference. If they did not and a net had to be put up, he would be very disappointed. The other alternative would be to make it a par 3 and cut the course by one stroke, although he realized that Mr. Bylen did not want to do that.

Mr. Bylen said that it was also mentioned that fill dirt would be brought in. There would be grading costs and some relocation of irrigation and adding irrigation for the new plantings. As far as the trees on site, he had probably planted 500 trees since he came there. There were many trees that could be moved to a good effect. The goal was to try to change the focus as much as possible. He knew that they could not take a driver out of people's hands. If they shortened the tees, it would put it in their hands more because some people would try to hit to the 11th green from a tee shot. He thought that to change someone's focus, it would require more than 20 trees. He knew there was a limit and if they were \$2,000 a piece, he could not, in good conscience, expect the applicants to put in 40 trees in addition to the grading, etc. He indicated that he really had a decision

to make. He remarked that he would, unfortunately, be calling Mr. Staran again.

Ms. Brnabic asked if Mr. Bylen would be willing to put in additional trees at his expense if he did not feel that 20 would be adequate. Mr. Bylen said that was why he brought up moving trees. If he was going to start to put money out of pocket, he had to have certainty. If he needed certainty, it would be netting. Ms. Brnabic asked Mr. Bylen if he considered netting more desirable than trees. He said that he did not, but he felt that would eliminate the conversation that started everything - the whole liability side of it. It sounded as if it were firmly in his court. Ms. Brnabic asked Mr. Bylen if he considered netting more desirable than modifying hole 11, to which Mr. Bylen disagreed. If he could take care of it short of making it a par 3, he hoped they were finding the means to do that.

Mr. Nunez said that if Mr. Bylen had quality trees on site, it would reduce the cost down from \$2,000. They had to be able to be accessed without destroying the golf course. If they were able to get additional trees within the \$40,000 budget, they would work with Mr. Bylen and try to achieve a better plan. Ms. Brnabic considered it, to some extent, a mutual responsibility. The applicants were making an effort to try to alleviate the safety concerns, but there might be other things that could be done. Mr. Bylen said that he could assure them that if the applicants were going to spend \$40,000, he would be making an effort. There would be a great deal of grading and irrigation movement, and he was confident that the cart path would have to be moved. There was also restoration involved. He would make the commitment to keep the property in excellent shape. Even with what the applicants were proposing, it would not be costless to the golf course. They had talked about \$60,000 and a four-foot fence, not a three-foot fence.

Mr. Kaltsounis mentioned that he was looking at a map on line of Pheasant Ridge, and he remarked that his golf balls had hit plenty of houses there. When he looked at the houses he hit, he saw dimples and marks, so he was not the first person that did that. He would probably not walk over there to get his ball - he commented that it would be embarrassing. Mr. Bylen had noted that there were organizations that proposed designs for courses, and Pine Trace could not be the only golf course that faced this problem. Mr. Kaltsounis was sure that there were agreements and proposals in the same types of situations, so Mr. Bylen was not alone. Mr. Bylen agreed he would not make the assertion that he was. Mr. Kaltsounis suggested that Mr. Bylen could reach out to those other groups and golf course architects to see how they handled it. Mr.

Bylen said that he made a point in his most recent letter that there were many golf courses that had netting along their borders between the courses and residential. In fact, on the third hole at Pine Trace, there was netting and six telephone poles between that hole and the homes, because reality ended up being different than the design. Mr. Kaltsounis observed that living next to a golf course was like living next to a highway. People know what they would be dealing with, and he was sure that people that purchased in the subject development would know that, too.

Mr. Bylen thought that they might want to look beyond just the occurrence of the golf ball hitting a house or a person. They had to look at what would happen after that. Some people forgot very quickly that they bought a house on a golf course. His concern was the potential for confrontation. That was why he felt that it was critical that there was a barrier. He dealt with the public every day, and they were ever demanding. They oftentimes were very difficult and probably did not want to hear an attorney's response - they wanted a different type of response. That was the only reason he was concerned. He reiterated that he could not care less that the development was going in. Mr. Kaltsounis said that he applauded the two parties getting together and discussing it and coming up with a proposal he felt would definitely help. Mr. Bylen asserted that Mr. Polyzois was a very good man and very good to work with. They had competing interests, of course, but he felt that they were both sincere and did the best they could. Mr. Polyzois added that they would continue to work with each other throughout the whole process.

Mr. Staran said that in further answer to Mr. Kaltsounis' question and supplementing what Mr. Bylen said, it was not unusual to have golf courses adjacent to or aligned with homes along fairways. There were many people who considered that a very desirable situation. However, it was not something done randomly; it had to be done in a harmonious and safe way. He thought that it involved a number of components. It involved golf course design, design of the adjacent property, and it involved some thought to the building materials to prevent broken glass and dimples on a home. From a legal liability standpoint, it was certainly not unusual to have other provisions built in, such as easements to allow golfers to safely retrieve their golf balls. Sometimes hold harmless types of provisions were built into deeds and restrictions to make it crystal clear that people knew what they were in for. Actually, though, he considered that people always knew what they were in for until someone got bonked on the head with a golf ball and then all was forgotten, and the plaintiff's attorney would take a much different approach to the situation. There were a number of things on the front end with draftsmanship of

documents, for example, that could help mitigate and protect everyone involved in the end. He thought that further discussion was needed, but it sounded as if there was a great deal of progress made so far toward the most important thing, i.e., working toward making it a safer situation. He stated that the safer the situation, the better the protection there would be against liability.

Mr. Bylen asked when the provisions would take place. He asked how that was done in the approval process, and if it was done prior to approval by Council. Mr. Staran noted that the PUD Agreement was still a work in progress, and he expected that they would be addressing the modifications in that. If they were addressed before the City Council meeting, Council would still have the final say.

Mr. Polyzois stated that he wanted to be clear that the provisions regarding assumption of risk, deed restrictions and indemnification were not things he was looking to incorporate into the PUD Agreement. He would be open to talking with his attorney about it, however. Mr. Staran said that he had never met the applicants before or had any discussions with them or their attorney; it was just a concept discussion. Obviously, the applicants needed to talk with their attorney. Mr. Polyzois said that he would talk with Mr. Bylen about whether there was some kind of language that could work for everyone. Mr. Staran said that it was not something that was novel or unique; he knew that there were a number of projects all over the country where those types of things had been done. Ultimately, it had to work for the developer, and they had to market a product that could be sold. Hopefully, they could try to craft many good ideas and work towards a solution together.

Chairperson Boswell said that he wondered about offering a condition for the PUD Agreement motion: "Re-write paragraph 6.h. to reflect this evening's discussion, as approved by Staff." He asked if that was appropriate. Mr. Staran thought that was fine. Staff (which included Mr. Staran) recognized that City Council would make the final decisions.

Ms. Brnabic said that due to the discussion, it sounded as if a four-foot fence would discourage people a little more. Mr. Nunez said that would be fine. Mr. Polyzois said that they would be landscaping the back property line with shrubs and trees also.

David Ashland, 5378 Hertford Dr., Troy, MI 48085 Mr. Ashland advised that he was a resident of Troy. He stated that he had no interest in the construction of the project and no interest in managing the golf

course. However, he was interested in becoming a resident of the development. When he heard the discussion, it left him with several concerns. The major one was that putting up trees 35 feet in height might, but might not, necessarily prevent the raining of golf balls on the condos. He commented that he had played the course many times, and he was a hacker. He had hit beautiful shots on the fairway, and he had also hit high shots which tended to slice and go to the right. He had hit balls that would well clear a 35-foot high tree, even if it was on a berm. He had heard no discussion about what the trees would do, in terms of prevention of the problem and the risk that Mr. Bylen referred to. He had also seen, on hole number three, balls bounce off the netting, which safely protected the property owners. On hole number three, an errant shot to the left could very easily go into a neighbor's property on the other side of the netting. He wondered if the golf course architects had taken a look, considering modern technology, at ball trajectories from a variety of golfers. He wondered if they were really addressing the problem with the proposed solutions. He would not be surprised if netting was required. He hoped that it was not, but he would like to see an analysis on a variety of golfers - how far into the development the netting would have to go and how might balls be at risk of clearing a 25-foot high tree. He noted that he was an engineer, and he would like to see an engineering architectural analysis of the problem. He stated that he really did not think that the problem had been addressed. He thought that Mr. Bylen's point was very well taken. The question of risk was still there, and he did not think that the question of risk had been addressed, except superficially. He said that he hoped he was wrong. If someone could present data that solved the problem, he maintained that he would be very happy. Someone had mentioned that there could be easements for golfers to retrieve their balls. He contended that no property owner would want an easement so a golfer could come onto his back yard. He reiterated that he did not think the questions had been addressed, except by a lot of words that might make some people feel better, but he did not feel better about it. If the questions could not be addressed at the meeting, he felt that they needed to be addressed before any final commitment was made on the project.

Chairperson Boswell explained to Mr. Ashland that at the last meeting, the Planning Commission had a review from a golf course architect, who said that by making certain modifications, the hole would be safe. They also had another golf course architect say that it would not really. The question about whether what was proposed would actually make things safe could perhaps not be answered. He thought that the closer the trees were to the tee, the more it would be forcing the driver to go to the left. One golf course architect showed a cone where the balls were supposed

to land, and it did not involve the applicant's property. Mr. Bylen's architect said that was not exactly true. The Commissioners listened to experts, but they did not know the outcome exactly, and that was why Mr. Bylen was concerned. His architect said one thing, and the applicants' architect said something a little different. Chairperson Boswell did not think there would be an easement allowing someone to get a golf ball from someone else's property.

Mr. Staran said that he mentioned it as something that could be discussed, but he was not implying it would address any of the safety concerns that had been discussed.

Mr. Ashland said that a cone measuring where balls were supposed to land was a wonderful way to analyze something, but many golfers might not hit a ball within a cone. That was the crux of the problem. Sometimes people popped balls up, even 100 feet high, and those balls could come down very inappropriately. He knew that the architect said it was fine, and he acknowledged that he was not a golf course architect. He was a golfer who had played at the course for 15 years, and he knew hole 11 very well. He knew that there would very likely be a risk for people. He would hate to see the hole redesigned, but if it meant losing a stroke, he would not want that discarded when it could solve a lot of the risk issues. He mentioned again that he did not think the problem had been thoroughly addressed, and he said that he wanted to express that as a potential homeowner. He did not think that people moved on a golf course willingly taking on a certain amount of risk. He thought they moved there not realizing there might be a certain amount of risk. He felt that it was the responsibility of the builder, golf course owner and the City to come up with a good solution.

Hearing no further discussion, Mr. Kaltsounis moved the following motion, seconded by Mr. Dettloff.

A motion was made by Kaltsounis, seconded by Dettloff, that this matter be Recommended for Approval to the City Council Regular Meeting,. The motion carried by the following vote:

Aye 9 - Boswell, Brnabic, Dettloff, Hetrick, Hooper, Kaltsounis, Reece, Schroeder and Yukon

MOTION by Kaltsounis, seconded by Dettloff, in the matter of City File No. 13-009 (Villas at Shadow Pines PUD), the Planning Commission **recommends** that City Council **approves** the PUD Agreement with the following five (5) findings and four (4) conditions.

Findings:

1. *The proposed final PUD is consistent with the proposed intent and criteria of the PUD option.*
2. *The proposed final PUD is consistent with the approved PUD concept plan.*
3. *The PUD will not create an unacceptable impact on public utility and circulation systems, surrounding properties, or the environment.*
4. *The proposed PUD promotes the goals and objectives of the Master Plan as they relate to providing varied housing for the residents of the City.*
5. *The proposed plan provides appropriate transition between the existing land uses surrounding the property.*

Conditions:

1. *The revisions noted in item 1 under Review Considerations, above, be incorporated into the PUD Agreement prior to signing and executing the PUD Agreement.*
2. *The appropriate sheets from the approved final plan set shall be attached to the PUD agreement as exhibits, including the building elevations.*
3. *All other conditions specifically listed in the Agreement shall be met prior to final approval by Staff.*
4. *Revise paragraph 6H to reflect the discussion at tonight's (June 17, 2014) meeting, including the issue of trees, as approved by Staff and the City Attorney, prior to the City Council meeting. (Discussion can be read in the Minutes from this meeting).*

Mr. Reece observed that if they were looking for 100% certainty in all of this, short of putting a fence up or short of making the hole a par 3, which he assumed had been discussed and found not to be a viable alternative, the netting seemed to be the only sure thing. Even with that, he was sure there would be the occasional golfers who could pop something over netting. He mentioned that he played with a guy the day before who, on occasion, could easily have done that. If making the hole a par 3 was out of the question, they had to take reasonable precautions to make sure

that what they did gave them a good opportunity. It would not prevent the most obscure, errant shot. It would be a challenging par 3 over the water, but it did not sound like it was an option, anyway.

Mr. Hetrick added that both the golf course operator and the developer seemed to agree that putting up trees, a fence and a berm would provide a level of mitigation, at least reasonable enough so that the safety of the people buying the condos along the course line would be safer in their purchase. The other piece was that Mr. Bylen said that there were trees on his property he could add to the 20. While they might not be 40 feet tall, they would certainly allow for additional mitigation of errant shots. He agreed with Mr. Reece that they could not stop someone from hitting the ball way up in the air and dropping it down by someone's condo. However, the things that had been discussed would, at least to the best of their ability, put something in place that the developer and the operator of the golf course agree would mitigate the risk of having golf balls land on people's decks.

Chairperson Boswell called for a Voice Vote, and stated for the record that the motion had passed unanimously.

2014-0180 Request for a Tree Removal Permit - City File No. 13-009 - Villas at Shadow Pines, to remove and replace as many as 138 regulated trees associated with the construction of a 28-unit residential development on 9.8 acres located on the north side of South Boulevard between Adams and Crooks, zoned R-4, One Family Residential, Parcel No. 15-31-400-018, Shadow Pines, LLC, Applicant

Mr. Kaltsounis noted that 147 trees would be removed, and he suggested that perhaps they could find some homes for some of them. It was agreed to add conditions two and three to the pre-printed motion in the packet.

MOTION by Kaltsounis, seconded by Yukon, in the matter of City File No. 13-009 (Villas at Shadow Pines PUD), the Planning Commission **grants a Tree Removal Permit**, based on plans dated received by the Planning Department on April 8, 2014, with the following three (3) findings and subject to the following three (3) conditions.

Findings:

- 1. The proposed removal and replacement of regulated trees on-site is in conformance with the Tree Conservation Ordinance.*
- 2. The applicant is removing up to 147 regulated trees from the site.*

3. *The applicant is proposing to provide 160 replacement credits.*

Conditions:

1. *All tree protective fencing must be installed, inspected and approved by City Staff, prior to issuance of a Land Improvement Permit.*
2. *That the applicant makes every effort to move viable trees to the golf course.*
3. *That the applicant is entitled to future credits for trees planted on the golf course.*

A motion was made by Kaltsounis, seconded by Yukon, that this matter be Granted. The motion carried by the following vote:

Aye 9 - Boswell, Brnabic, Dettloff, Hetrick, Hooper, Kaltsounis, Reece, Schroeder and Yukon

Chairperson Boswell stated for the record that the motion had passed.

2014-0179

Request for Recommendation of a Wetland Use Permit - City File No. 13-009 - Villas at Shadow Pines, for impacts to approximately .47 acres for a proposed 28-unit residential development on 9.8 acres located on the north side of South Boulevard between Adams and Crooks, zoned R-4, One Family Residential, Parcel No. 15-31-400-018, Shadow Pines, LLC, Applicant

MOTION by Kaltsounis, seconded by Yukon, in the matter of City File No. 13-009 (Villas at Shadow Pines PUD), the Planning Commission **recommends** City Council **approve a Wetland Use Permit** to impact approximately .476 acre for the construction of several units, the detention pond and a portion of the roadway and its utilities, based on plans dated received by the Planning Department on April 8, 2014, with the following three (3) findings and subject to the following four (4) conditions.

Findings:

1. *Of the approximately 2.4 acres of City-regulated wetlands on site, the applicant is proposing to impact approximately .476 acres.*
2. *The impacted areas consist of two narrow fingers which extend off the main body of the wetland, and areas at the perimeter of the wetland. Wetland Fill Area 2 is proposed to accommodate a forebay, which is part of the stormwater management system.*

3. *The applicant has minimized potential wetland impact by incorporating a retaining wall to the north of units 9-11A and along the east side of Trace View Drive.*

Conditions:

1. *That the applicant receives all applicable DEQ permits prior to issuance of a Land Improvement Permit.*
2. *That the applicant provides a detailed soil erosion plan with measures sufficient to ensure ample protection of wetlands areas, prior to issuance of a Land Improvement Permit.*
3. *Investigate the possibility with Staff regarding further reduction of wetland impact by means of constructing a permanent barrier at the limits of the impacts, such as a fieldstone/boulder wall or other decorative and highly visible barrier, prior to Final Approval by Staff.*
4. *Verification by ASTI that conditions from the April 21, 2014 letter are addressed on revised site plans prior to final approval by Staff.*

A motion was made by Kaltsounis, seconded by Yukon, that this matter be Recommended for Approval to the City Council Regular Meeting,. The motion carried by the following vote:

Aye 9 - Boswell, Brnabic, Dettloff, Hetrick, Hooper, Kaltsounis, Reece, Schroeder and Yukon

2014-0210 Request for Final Site Plan Approval Recommendation - City File No. 13-009 - Villas at Shadow Pines

MOTION by Kaltsounis, seconded by Schroeder, in the matter of City File No. 13-009 (Villas at Shadow Pines PUD), the Planning Commission **recommends** that City Council **approve the Site Plans**, dated received April 8, 2014 by the Planning and Development Department, with the following five (5) findings and subject to the following four (4) conditions.

Findings:

1. *The site plan and supporting documents demonstrate that all applicable requirements of the Zoning Ordinance, as well as other City ordinances, standards and requirements can be met subject to the conditions noted below.*

2. *The location and design of driveways providing vehicular ingress to and egress from the site will promote safety and convenience of both vehicular and pedestrian traffic both within the site and on adjoining streets.*
3. *There will be a satisfactory and harmonious relationship between the development on the site and the existing and prospective development of contiguous land and adjacent neighborhoods.*
4. *The proposed development does not have an unreasonably detrimental, nor an injurious, effect upon the natural characteristics and features of the parcels being developed and the larger area of which the parcels are a part.*
5. *The proposed Final Site Plans promote the goals and objectives of the Master Plan that the City provides a variety of housing.*

Conditions:

1. *All remaining engineering issues identified in the memo dated April 28, 2014 be addressed prior to issuance of a Land Improvement Permit.*
2. *All comments from Fire Department memo dated April 23, 2014 to be addressed prior to final Staff approval of the plans.*
3. *Addressing all remaining site plan items in comments 1 and 3 under Review Considerations, above, in this letter prior to final site plan approval being granted.*
4. *Provision of a performance guarantee in the amount to be determined based on the landscaping cost estimate to be submitted, as adjusted if necessary by the City, to ensure the proper installation of trees and landscaping. Such guarantee to be provided by the applicant prior to issuance of a Land Improvement Permit.*

A motion was made by Kaltsounis, seconded by Schroeder, that this matter be Recommended for Approval to the City Council Regular Meeting,. The motion carried by the following vote:

Aye 9 - Boswell, Brnabic, Dettloff, Hetrick, Hooper, Kaltsounis, Reece, Schroeder and Yukon

Chairperson Boswell stated for the record that both motions had passed unanimously, and he wished the applicants good luck.

NEW BUSINESS

2014-0083 Public Hearing and request for Preliminary Planned Unit Development (PUD) and Conceptual Site Plan Recommendation - City File No. 14-008 - Sanctuary at Rivers Edge, a proposed 20-unit residential development on 6.1 acres, located north of Avon, east of Livernois and south of Harding, zoned RCD, One-Family Cluster, Parcel No. 15-15-403-010, MJ Ridgepoint, LLC, Applicant *(Reference: Staff Report prepared by Ed Anzek, dated June 17, 2014 and associated documents had been placed on file and by reference became part of the record thereof.)*

Present for the applicant were Jim Polyzois, MJ Ridgpointe, LLC, 49587 Compass Pte., Chesterfield Township, MI 48047; and Ralph Nunez, Design Team Ltd., 975 E. Maple Rd., Suite 210, Birmingham, MI 48009.

Mr. Anzek outlined that as the Commissioners knew from the past, the City's Planned Unit Development (PUD) process involved a two-step review and approval. At the first step, the applicants would develop a concept that was reasonably workable, then present it to the Planning Commission for support to then be able to move forward with the more detailed, expensive drawings. It also went to City Council to determine (approve) that the PUD was an appropriate tool to use for properties that were encumbered. The proposal had been reviewed by two departments and the City's wetland consultant, ASTI. There was nothing really glaring or problematic found. Mr. Anzek advised that the applicants would walk the Commissioners through the project, and that a motion for recommending approval was provided in the packet.

Mr. Nunez discussed the areas surrounding the proposed site. Adjacent, to the west, was the City-owned property of 19 acres and one home; to the south was the Clinton River Trail; to the north on Helmand were homes and north of that was the City of Rochester with homes, and to the east was one home on a 2.6 acre parcel. He noted that there had been quite a bit of interest in the property since they had begun.

Mr. Nunez advised that the proposed plan was for 20 single-family, detached units. The current zoning was RCD, One-Family Cluster, which allowed attached housing. At the first introduction of the project in February 2014, Mr. Reece had asked why it could not be developed under RCD zoning. Mr. Nunez had indicated that they wanted to do something more unique. They did a test plan using RCD, and they found that they could put in 30 attached units, so what they were proposing was less dense. Mr. Nunez said that their property had a connection to a

25-foot easement on the west property line. The easement historically went down to a structure that used to be located on the City's property.

Mr. Nunez talked about the landscaping. He put up a photo of the site from 1963, which showed some vegetation and the easement he had mentioned, noting that there was not a lot of vegetation then. On the next photo, from the 1990s, the area was filled substantially along the northern portion of the site. There was a subsequent grade change from the top to the bottom. Over the course of time, because it was not a disturbed site, there was a lot of pioneer growth (fast growing trees), which were not allowed under the Ordinance. He showed a current photo, which showed the area completely covered with vegetation. When they did the tree survey, it showed about 530 trees. Those were considered low quality trees, such as ash and elm. If they separated those from the quality trees, such as black walnut and burr oak and maples, it totaled about 44, and some were offsite. Under RCD zoning, he did not believe that they had to meet the 37% tree preservation.

Mr. Nunez pointed out some small wetlands on the site, and said that they were less than 1/3 of an acre. He said that because of the poor quality of the wetlands, they wondered if they could do something different on the site. They would like to create vegetated bio-swales that would run the length of the property on the east, west and south sides. The bio-swales would have fill material for approximately two feet. That would allow the water from the rear of the yards to congregate and infiltrate into the ground. They would use a good seed mix, and make sure that it did not look weedy. They would also plant larger, ornamental trees that would work within a wet system. He added that there would also be a bio-swale in the center of the cul-de-sac.

Mr. Nunez advised that they would raise the grade so that it sloped from the north to the south. That would allow for a two-story look at the street level. There would be a 50-foot private drive - 28-foot pavement to meet the Fire Code - and a carriage sidewalk on one side of the road. It would allow them to go to the natural grade so there was the capability for walkouts. Evergreens would have to be on the high part of the property, because they did not like "wet feet." On the east side, there were slightly larger rear yards and some additional open space, where they could plant the buffer requirements.

Mr. Nunez said that at the entranceway, they would like to create a pavement design. The pavement would go from the City of Rochester property on Peach and down through Helmand into their development

versus being gravel, as it was. There would be a low profile gate with evergreens along the western property line, and a low decorative fence to the property line to the west. He talked a little more about the plantings and landscaping for the yards. They were looking at homes with porches and recessed garages, and they would be 2,600 to 4,000 square feet. They had a couple of potential lots for ranches.

Mr. Nunez mentioned that there was an email from someone from the Clinton River Trailways with some concerns. He pointed out the location of the Trail. The River was on the right (south) of it. The Trailways concern was that the water from the development would flood the pathway. The elevation at the edge of the pavement was 736, so whatever rain water was coming in would run along the swale and not flood the Trail unless there was an extremely high flood above the 739 elevation. There would be a storm water detention basin on the southern portion of the site. There would be evergreens at 10 feet and deciduous trees of three-inch caliper plus shrubs around the pond. The overflow coming onto the property at the grade would flow to the swale and then to the River.

Mr. Nunez reiterated that they were proposing to improve Peach St. and down Helmand to their property. There were discussions with Staff and the neighbors about the traffic. The neighbors did not want traffic to go toward Castell to the west. They would like some type of barrier to have traffic flow to Peach. He said that they had no problems doing that, but it would be dictated by the Fire Department. They would agree to whatever the Fire Department wanted. They had not really had more discussions with the neighbors because it was out of their hands, but he assured that they would talk to them after talking to the Fire Department.

Mr. Nunez commented that the property was really unique, and that there were some unique homes in the area. He showed a view from Castell looking south. He showed a view from Peach and Helmand. He mentioned that his client owned a parcel on Helmand also. He claimed that there were a number of people interested in moving into the development.

Mr. Polyzois agreed that it was a unique piece of property. He did not feel they would find any other property of its size that was vacant in that location. They spent considerable time and energy to identify a layout that would appeal to consumers. He has had discussions with over 50 people on a list who want to move into the development. The architecture he was proposing would be diverse with different styles and exterior color schemes. There would potentially be as many as ten different elevations.

Everyone wanted to tweak and modify the proposed elevations. They hoped to develop the property, and he would prefer not to do cluster housing. He concluded that they would appreciate the Commission's approval (recommendation).

Ms. Brnabic asked what the average lot frontage was in the development, noting that they varied. Mr. Nunez replied that it was 60 feet from lot to lot. The unique one would be for the corner lot at the front of the property. Ms. Brnabic clarified that the lots were mainly 60 x 120 feet. Mr. Nunez agreed that the majority were. Along the curve, the lot was wider than 60 feet. Ms. Brnabic asked about the units at the south end of the court. Mr. Nunez said that the square footages of the lots would be bigger, because they were on a cul-de-sac. Ms. Brnabic asked the average front yard setback in that area, and Mr. Nunez advised that it was 20 feet. He added that there would be 15 feet between the units, and the rear yard setbacks were 35 feet. Ms. Brnabic said that she assumed the applicants figured that the primary qualification to use a PUD was less density. Mr. Nunez explained that doing an RCD development could yield 30 units, and they were proposing 20. They were not really looking at density as an issue; they were looking at the quality of the homes. In Rochester to the north, there were a lot of smaller lots. Some individuals were buying double-wide lots and putting in big homes. There was one currently being built at the corner of Quarter and Peach. They were trying to keep the same character as the homes in and around the area. He realized that those were in a different community, but it was within walking distance. They were not looking at building really big homes on really big lots. They were trying to make it look more like other projects throughout the region with smaller footprints. Mr. Polyzois added that the prospective buyers were looking for a more intimate setting. They did not want to be in a cookie-cutter subdivision where every house looked the same. They wanted diversity, and no two homes that looked alike would be next to each other or even across the street from each other. There would be diversity in the exterior building materials as well.

Ms. Brnabic noted a concern expressed by ASTI about maximizing open space as an objective for using a PUD. She asked the applicants what their response to that was. Mr. Nunez said that the property was unique, and they were not using anyone else's property, but the adjacency of the City's open space was a good safeguard that it would always stay open space. The Trail allowed for public access and open space. Ms. Brnabic said that she was not disagreeing with what was being proposed. She felt that the development looked fine, and she felt that from what could have been proposed under RCD, it was much better. When they said that it

was close to Rochester, so smaller frontages might be allowed, she reminded that they were Rochester Hills, and they were surrounded by many communities. She would not consider that a main reason to do something. She had no objection to what they were proposing; she was just trying to figure out, besides the open space in the development, what objectives they were using to justify meeting the PUD criteria.

Mr. Nunez responded that one of the things they were doing, which was not required under the guidelines, regarded infiltration of water other than storm water detention. He commented that the design of the systems that ran on three sides of the property was not an inexpensive alternative. They wanted to keep the water in the ground. About two weeks ago, his office spent three days at Rochester College working with them on a Design Charrette with Lawrence Tech. to see how they could open the campus. They had been in contact with Rochester Hills and Rochester regarding the utility easement to provide an access point to the Clinton River Trail. Because of the poor quality of the vegetation on site, they would be replacing everything removed with quality trees and diverse materials. They were looking at it from an environmental benefit.

Mr. Yukon said that in concept, he did like the design much better than an RCD design. He felt that it had a lot more character, and it was not a typical cookie-cutter development. He asked the applicants if they had much experience with developments and bio-swales.

Mr. Nunez said that he was doing bio-swales before it became the catch term. He had several projects in West Bloomfield that had been in the ground for a number of years where they had done wetland mitigations. At the corner of 14 Mile and Orchard Lake, there was a development called Gateway Center and Gateway Plaza. Gateway Center was the residential on a three-acre site. He noted that he was one of the first green roof professionals from five years ago, when they first had that accreditation in the State. About three weeks ago, he was at the first conference for green infrastructure. Based on his education and based on the teaching he did, he had to be in tune with what was going on with the trends and with what worked and what did not. That was why they spent quite a bit of time looking at the seed mix and the plants. Part of the problem with bio-swales and rain gardens was that even with the right plant material, it eventually looked like weeds, and it was not really culturally acceptable. They were looking at a hybrid, to make sure the people would respect it. They wanted to make sure that the bio-swales functioned well, and they were not bothered. They wanted to get the water into the ground, and it would be cleaner, because it would go to the plant

drain and to the detention, and the overflow would be released at the same rate that the property was already discharging to the Clinton River.

Mr. Yukon explained that he had asked because he worked for an organization (Walsh College) that installed a bio-swale and rain garden system. He stated that to be honest, in the last several years, it had become a big challenge for them to maintain. They had to put a lot of work into it, perhaps more than they were told they would need, for maintenance. He asked what type of maintenance was being done in Mr. Nunez's other developments to maintain a bio-swale. Mr. Yukon knew that the interpretation of a bio-swale system was that it would be put in with plantings, and it would take off and grow by itself, and no one should have to worry about it. He maintained that people did have to worry about it, and he stressed that it did have to be maintained. He noted that every year or two, they had to do a vegetative burn in their bio-swale.

Mr. Nunez said that one of the problems with bio-swales was that they had to have plants that would take in the water, and then that soil allowed the water to infiltrate into the ground, but it was not always wet. It went from very wet to very dry to very wet to very dry. The selection of the plant materials was very crucial. Regarding burns, whether it was on a green roof or a prairie, bio-swales only thrived when they went through a burn. He cited a place that planted a natural prairie area, and everything died down. The people had planted 30 species and after new vegetation came back after two weeks, they found that there were twice as many plants because the seeds were imbedded in the soil and not released until there was a burn. He agreed that maintenance was a part of it, but they did not want the area mowed and made into a lawn.

Mr. Yukon asked what would preclude a resident from cutting it. Mr. Nunez advised that it would be in the deeds and restrictions; that was why they created check dams. There would be a no mow area in the yards for the last ten feet. Mr. Yukon clarified that the water would run into the detention basin and into the bio-swale. Mr. Nunez explained that it would come off of the yard, and it would check dam, because they did not want water to be held for more than 24 hours because of mosquitoes. A heavy storm would go into the detention basin, and the street water would go into the bio-swales and eventually into the River.

Mr. Yukon asked if the company they were using to install the bio-swales would be under contract for a year or two afterwards to monitor and maintain. He cautioned that the first couple of years for a bio-swale system were a very important time.

Mr. Nunez said that they would have to look at a maintenance program, so there was something in the PUD Agreement about what someone could or could not do with the vegetation in the backyards. They would develop a maintenance program listing out what had to be done each year.

Mr. Kaltsounis felt that everyone on the Commission knew that they were at a crossroads due to the City being built out and there not being a lot of properties left to develop. They would probably see a lot more developments such as the proposed that were pushing the limits and proposing to use PUDs. They had discussed why the applicants were requesting to use a PUD, and Mr. Nunez explained about the sidewalk on one side and other restrictions. The Commissioners had seen a lot of PUDs at the Preliminary stage, and he had been disappointed with a lot of them, including the layout and the buildings proposed. They had to consider what type of precedent they would be setting for the future. If they moved forward with the proposal, there would be someone else coming in requesting something similar for another property, and they could have PUDs all over. Looking at what the applicants had presented, he was somewhat impressed with the styles of the buildings. He thought that going from RCD to R-4 was an improvement. He was back and forth about a sidewalk on one side. One thing he would recommend was that regarding the lot sizes, the front setback for R-4 was 25 feet, and the proposed lots were at 20, and he would like 20 feet to be the exception, not the rule. If there was space to make them 25 feet according to the Ordinance, with some exceptions, he would like to see that. Mr. Nunez replied that they would not have a problem with that. Mr. Kaltsounis indicated that it would help the Commissioners for the future. Another recommendation he always made about PUDs was that applicants used brick all the way around for at least the first floors. He noted that it appeared that they were already going in that direction. Mr. Nunez advised that the price range of the homes would be very high, so the demand would be for a higher quality construction. Mr. Kaltsounis saw that with the entryway and other things they were proposing for the development. He did not feel they were looking to cut corners initially, and that they were looking to do a high-end development. He wished that more PUDs came in starting out that way. Mr. Kaltsounis indicated that if it went forward, the development would be very nice.

Mr. Nunez said that they had looked at a number of different developments in other cities. He mentioned Cherry Hill Village, where they were trying to put porches closer to the street to create walkability.

He added that they could move the homes back, as Mr. Kaltsounis had suggested.

Mr. Schroeder agreed that a major part of bio-swales was maintenance, noting that they had talked about having some dedicated maintenance. He warned that when the swales were planted, they really had to be watched for invasive species in the first couple of years. It was an on-going project until the growth was established. He asked if the street would be private. Mr. Nunez agreed that it would. It would be 50 feet and match the existing right-of-way on Helmand and Peach St. They left a wider cross section of the road for the Fire Department, and they had extended the cul-de-sac bulb for the fire trucks. It would also be wider at the front entrance with more plantings. Mr. Schroeder said that they had showed a brick type pavement, and he asked if they would use actual brick or colored concrete. Mr. Nunez said that they were not sure at this point. They were talking with their engineers, who brought up using a porous paver. They were trying to make the development as green as possible, and they also had to balance costs. Mr. Schroeder advised that brick pavers would increase maintenance, and it was not something that he would recommend.

Mr. Schroeder noted that they were really almost into Rochester, where right around the corner there was a new development, and he felt that the applicant's development would be very compatible. Mr. Nunez brought up that someone had mentioned that their development would be in Rochester Hills, but he felt that they had to look the City as a whole. There was a diversity of houses and lot sizes. Some of their neighbors had very big homes. There were typical subdivisions, but theirs was a unique piece. From day one, they felt that they could offer a unique product. The market currently was ripe for apartments and rental units, and he had other clients who would love to have those 26 acres (both City owned properties to the west). Even though it was Rochester Hills, they looked at the walkability. That was why they wanted to add a pathway, and they were working with the Clinton River Trail system and Rochester College. The applicants were committed to the community, and they wanted to do things right. Mr. Polyzois added that they only had one chance at developing the piece, and he would not want to have to reflect back at a residential cluster development.

Mr. Schroeder believed that they would be seeing residential development of the older homes around the subject property. He thought that they would eventually be torn down and redeveloped.

Mr. Nunez said that the problem with redevelopment, even in other communities, was that people felt they needed big lots for their McMansions. Mr. Nunez stated that they did not. They could go with a small lot with a competent architect and create a unit that had all the compliances and bells and whistles without a huge lot. Mr. Schroeder referenced Oakland Township and its huge homes on small lots and Grosse Pointe, and he commented that people liked that. Mr. Nunez noted that they had a project going on in Oakland Township that was on an acre and a quarter. He said that in Rochester Hills, the advantage was that there were choices. They were looking for people who wanted something unique and exclusive with access to the Trail and to both municipalities. Mr. Schroeder asked if they would establish architectural controls. Mr. Nunez maintained that each house would be custom designed. They did not want to restrict architects, but they did want to have a say so that the homes were compatible with each other.

Mr. Schroeder asked if they were considering green or LEED development. Mr. Nunez said that his own bias on LEED was that it was a checklist. They would rather do it right and just be green versus going for checkpoints. They were looking at material costs, and he did not think they would take it for LEED certification, because he thought that the money went into the LEED pockets, but he indicated that it was just his own bias. Mr. Schroeder stated that he liked the development, and he thought it was a very nice concept.

Mr. Hetrick echoed what several of his fellow Commissioners had said. At the first look, he thought it was a very good development. They had mentioned that they would be replacing all of the trees on a one-for-one basis. He asked if any of the quality trees would remain, or if they would be replaced as well.

Mr. Nunez said that unfortunately, there were only 30 of those on site. Because of the grade and leveling the area, unless they fell within the fringe area, he did not think so. They were going to replace all the trees with higher quality trees - three-inch caliper and ten-foot evergreens. They were also looking at the possibility of bringing in some plant materials for some of the buffers or see if there were areas the Clinton River people wanted to restore. Mr. Hetrick clarified that the trees would primarily be along the buffer zones. Mr. Nunez agreed, and said that the plans did not show any of the landscaping around the homes, but there would be landscaping there.

Mr. Dettloff asked about the price range for the homes. Mr. Polyzois

anticipated the price to be in the high \$500's or low to mid-\$600's. Mr. Dettloff concurred that it was an outstanding development, and he thought that they had done a great job.

Mr. Schroeder considered that the proposed swales would probably qualify for pre-treatment for the detention system. Mr. Nunez agreed that was what they were looking at. They were interested in water infiltration into the ground, and that was the benefit they were looking for. If they were able to use the swales as part of the storm water detention, however, it would still be up to the engineers.

Mr. Polyzois mentioned that he met with the Clinton River Watershed Council over a year ago. They indicated that they would like to see some of the elements they had discussed, so he had asked Mr. Nunez to incorporate the bio-swales and rain gardens to comply and make it nice.

Chairperson announced that a PUD Concept Recommendation required a Public Hearing, and he opened the Public Hearing at 9:17 p.m.

Jeffrey Miller, 501 S. Castell Ave., Rochester Hills, MI 48307 *Mr. Miller advised that he was the homeowner at the northwest next to the site. Mr. Nunez had mentioned that in 1963, there was an easement. Mr. Miller advised that the land was his grandparents' until 1963 when they sold it. The road never went right where the Castell right-of-way was currently. It was on the other side, because the people that used to own the property to the west had the roadway on their property. The other piece of Castell, for the last 40 years, had been maintained by him and before that, by his grandparents. He reiterated that the road never went right in front of his home. When his home was built, it was only 1 ½ feet away from the road line. It was also a non-conforming road, according to Mr. Breuckman, former Manager of Planning. Mr. Breuckman told him that the road could not be used for full traffic. That was Mr. Miller's main concern. If they put the homes in, he would be concerned if they wanted to use Castell, which was a one-lane road. Mr. Nunez said that they were not proposing that. Mr. Miller wanted it known that Castell was never used as a roadway, and that it had always been maintained by him.*

George Snow, 505 Harding, Rochester Hills, MI 48307 *Mr. Snow stated that he lived next door to Mr. Miller. He believed that the residents in the neighborhood were strongly opposed to the development. He had mentioned at the meeting in February that the Green Space Mileage was adopted to preserve space, and he thought that the public opinion in the neighborhood was that they were strongly opposed to the development.*

He also had concerns with the traffic load on Harding. There was a really bad problem with speeding, which he realized was not Mr. Polyzois' issue, but it was something that was there and would dramatically increase if they added 20 homes. It was probably not the place to bring it up, but he wanted to propose a radar speed sign for Harding. Mr. Snow said that there was reference to wetlands. He read through the Ordinance, and it was very clear that wetlands were an indispensable natural resource, which served numerous beneficial functions, etc. He read that the purpose of the article was "protection, preservation, proper maintenance of wetlands to avoid disturbance and to prevent damage." He referenced a site plan he had of the property from 2000. It was for City File No. 00-016, and he put it on the overhead. He pointed out the flagged wetland boundary, which looked to be about 60-70% of the property. The map was provided by Joe Thompson, who owned the property two owners previously. The map was used to split off the 2.3 acres where the large home on Helmand was built. It was the approved wetlands map by the City, allowing the split of the property. Part of that was to determine the buildable envelope on the 2.3 acres. He also had a map of the 26 acre City-owned property, which was proposed for development by Sam LoChirco. It was also zoned RCD, and proposed for 65 units. Mr. Snow had the fifth revision, and if the wetlands on the west side were lined up with the LoChiro map, they matched. There were two different maps accepted by the City as wetlands delineation. Both maps also showed a 25-foot natural features setback. He believed that the map on the Green Space website showed a similar area of wetlands. He wanted to comment on the bio-swales, noting that it was a very wet area, and said that he had the same concerns as far as maintenance. One bio-swale would be basically on his property line. If it was not maintained properly, there would be water that typically flowed into the Clinton River sitting in his yard. He would be concerned about mosquitoes and that kind of thing. He would like to understand how there were two maps that had been reviewed by the City that showed wetlands as a significant portion of the property. He noted the Steep Slope Ordinance, which was written to prevent disturbance to steep slopes. He commented that it was a fairly complicated Ordinance, and there were different classifications of steep slopes. He noted that there was a 25-foot drop-off on the subject property, and he hoped that would be addressed on the builder's plans. In addition, Section 138-9.201 required a 25-foot natural features setback from a wetland boundary. He did not know if that was being addressed, but he did not see it on the plans. In speaking with the previous owner, Mr. Thompson, Mr. Thompson was under the impression from his discussions with the City that two entrances would be required based on the density. Mr. Snow could not find that in the Ordinance, but if there was a requirement for two entrances for emergency

vehicles, he would like to make sure it was addressed. When Mr. Thompson owned the property, he had a discussion with Mr. Dearing of Engineering, and he was told by Mr. Dearing that the City would never bring emergency vehicles to the site via another city. One of his strongest oppositions was that the south section of Castell was not conforming. It was 25 feet wide, and he did not see how any type of a subdivision could be planned with access through a non-conforming road. His understanding was that a Class C road required a minimum of 50 foot of width, but Castell had 25. He believed that the current requirement for local streets was 60 feet. He did not see how the old easement, as mentioned by Mr. Miller, would come into play. It was entirely on Mr. Snow's property. There had been somewhat of a history of the lot being proposed for development. Mr. Terry Wallace owned the property in the early 1990's. He was not allowed to develop the property, and that was when he sold it to Mr. Thompson. It was 8.4 acres when Mr. Thompson bought it before he split off the 2.3 acres. As far as the 26 acres that was now green space, originally owned by Sam LoChirco, it had the same topography and same proximity to the Clinton River Trail and the same RCD zoning. His plan had two legitimate access points, but his plans were never approved to build, and that was when he decided to sell to the Green Space Committee. Based on the history, there seemed to be a fair amount of resistance from the City to allow the six-acre site and the LoChirco site to be built. In closing, he said that he did appreciate the developer's proposal to do single-family homes as opposed to an RCD development. He did not think that would be a good use of the land. He would like to see, based on the history of the area not being able to be built on, and he did not think it would be an unnecessary burden to the current owner if it were not allowed to be built, a single home built or for the property to be purchased by the Green Space Committee.

Cleat Lindsey, 368 Helmand, Rochester Hills, MI 48307 Mr. Lindsey put a map on the overhead. He said that he was new to the game, and he did not know anything about building, but everything that he had seen on the Green Space website showed the property to be mainly wetlands. He went to the State's website, and it also showed the area as wetlands. If it were wetlands, he wondered if it was still o.k. to build. He pointed out the steep slope, which would be impacted. There was a comment that they were not Rochester. His backyard was in the City of Rochester, and his property could be split into three or four lots in Rochester. Rochester had a Commission to approve plans, and Rochester Hills had its own rules. He maintained that the Planning Commission's obligation was to adhere to the City's Ordinances as to how they built.

The proposed subdivision would bring in more homes than existed on Harding from Livernois to the end of Helmand. He did not quite see how that was consistent with the existing community that was Rochester Hills. It was totally consistent with downtown Rochester, but they were not downtown Rochester. He said that he appreciated the Commission's time and thanked them.

Chairperson Boswell closed the Public Hearing at 9:33 p.m. He asked Mr. Nunez about the wetlands.

Mr. Nunez responded that the maps the speakers referenced were done at a much larger scale. The Ordinance required a developer to do an on site inspection with a qualified consultant. They used King and McGregor, which had been in the business for a number of years. They partnered with the DEQ, and they did due diligence on the property. He noted another project they were working on, Enclaves of Rochester Hills, that seven years ago showed 10 ½ acres of wetlands. When it was re-evaluated, it showed 6 ½. It was not until the site was walked and investigated further, that they could really determine the wetlands. Based on the analysis from their consultant and the City's wetland consultant, the wetlands they showed were not the entire area. He was not sure about the maps the speakers referred to and how things were determined. Regarding the steep slopes, they did not want to disturb them because of soil erosion. It would come down to how they constructed things. He agreed there was an area of steep slopes, but they were not natural slopes - they were man-made.

Mr. Nunez brought up the road, and said that the survey they had showed a 25-foot easement that touched their piece. He agreed it was a non-conforming road, and they had no intentions of coming off of Castell. They would come in off of Peach and pave Helmand. He assured that they did not want traffic coming in from Castell.

Chairperson Boswell noted that the applicants did a wetland survey, and he asked if it was confirmed by ASTI. He asked how many acres of wetland were found on the property. Mr. Nunez pointed out the larger wetland, which was .13 acres and one in the south, which was .07. It was about .2 of an acre. Normally, they would be allowed to fill up to a third of an acre without having to go through the DEQ. They still had to get a permit, but the process would not be as rigid. Chairperson Boswell clarified that it would be their intention to fill in the .2 acre. Mr. Nunez agreed, and said that the intention was to fill it because of the grade, and the water infiltration sites would be replacements, although they would not

be required to replace. Chairperson Boswell observed that it would eliminate any natural features setbacks, if there were no natural features. Mr. Nunez agreed, and he did not believe the wetlands were of high quality. There were also phragmites, and Chairperson Boswell remarked "and lots of mosquitoes." He asked Mr. Anzek to speak a little more about the steep slopes.

Mr. Anzek said that there was an exemption in the Steep Slope Ordinance regarding man-made steep slopes. It was at the regulatory authority's approval to exempt. In this case, it would be the Planning Commission. Mr. Anzek advised that man-made slopes were never considered to be a protected element. Regarding the wetlands, the City only allowed wetland surveys to be three years old. After that, a survey would have to be redone, because wetlands were dynamic and they moved. The maps from 2000 were now almost 15 years old. The King and McGregor survey was verified by ASTI in the field, so the City stood by it.

Chairperson Boswell mentioned the concern with traffic. The applicants said they wanted to direct traffic down Peach, but he wondered how they planned to do that.

Mr. Nunez said that the proposal was to improve Peach (pave) and pave Helmand to the project, terminating at the curb at Castell. In working with Planning, and in talking with the adjacent property owners, they wanted to restrict access to Castell. They talked about putting a berm in to restrict traffic and signage saying that it was a dead end. They would try to make it appear that Castell was a private drive, as it was currently used. They would have to talk to the Fire Department to see if they would allow a permanent berm. They might allow a gate so only they had access in case of emergencies. That might be another alternative requested. He had stated that it was up to the Fire Department to dictate their safety standards and how they would need to access the property. He did not feel that 20 homes would have a huge impact, although he acknowledged it would have some.

Mr. Anzek knew that the Fire Department would clearly like to have two ways to access. Even though one was only 25 feet, it was available for use. The Fire Department had supported gates with Knox boxes in the past. It could possibly be a gate that would mirror the one into the development coupled with a dead end sign.

Mr. Anzek referred to condition four in the motion, and said that Staff had

recommended that the applicants secured a wetland use permit from the State (MDEQ) prior to the final plan. If they could not secure that to fill the wetlands, it would alter the plans drastically. In contrast to the Villas, where the wetlands were well defined and not encroaching, these wetlands were more regulated because of the proximity to the Clinton River. Staff wanted to ensure that the applicants secured a DEQ permit because then the concept, going forward, could stay intact.

Mr. Kaltsounis said that he was impressed by the residents bringing in maps and plans for the discussion. They were the first neighbors he could recall that actually brought maps. He said that he wanted to remind everyone that in the past, a lot of PUD developments had come before the Commissioners, and a lot of money had been put into those developments. The Commissioners might not have liked them because of the aesthetics or the layout, or the property did not allow it. They might have been regular subdivisions, not just PUDs. He recalled that years back, someone tried to build a back yard on a slope of 16 feet, and he stated that would never happen. In the PUD Concept Plan review, the Commission was asked to look at what was proposed to see if it was something that they would want to see move forward. There was a lot of give and take involved, and it was a challenging property. One of the conditions was that the site plans, including, but not limited to, landscaping, engineering, tree removal, wetland use and buffer modification plans, would need to be applicable to City Ordinances and requirements, while remaining consistent with the Concept PUD layout. In addition, as Mr. Anzek mentioned about condition four, there was a lot of work that had to be done. All the comments would be looked at. He could not say where it would go, and he commented that there were a lot of people who were smarter than him who gave the recommendations. He concluded that he was ready to make the motion in the packet and moved the following, seconded by Mr. Yukon.

MOTION by Kaltsounis, seconded by Yukon, in the matter of 14-008 (Sanctuary at Rivers Edge PUD), the Planning Commission **recommends that City Council approve the PUD Concept plans dated received May 16, 2014, with the following four (4) findings and subject to the following nine (9) conditions.**

Findings:

1. *The proposed PUD Concept plan meets the criteria for use of the Planned Unit Development option.*

2. *The proposed PUD Concept plan meets the submittal requirements for a PUD concept plan.*
3. *The proposed development should have a satisfactory and harmonious relationship with the development on-site as well as existing development in the adjacent vicinity.*
4. *The proposed development is not expected to have an unreasonably detrimental or injurious effect upon the natural characteristics and features of the site or those of the surrounding area.*

Conditions

1. *Approval shall only confer the right of the applicant to submit detailed site plans consistent with the layout and at a density not exceeding that shown on the PUD Concept plan.*
2. *The site plans, including but not limited to landscaping, engineering, tree removal and wetland use/buffer modification plans will meet all applicable City ordinances and requirements while remaining consistent with the PUD Concept layout plan.*
3. *The architectural quality of building plans submitted with the site plans and PUD Agreement in step 2 of the PUD process will be equal to or better than that approved with the PUD Concept plan.*
4. *Recommendation by the Planning Commission and approval by City Council of a Wetland Use Permit and submittal of an MDEQ Wetland Permit at Final PUD review, with the plans to address comments from ASTI's letter dated June 2, 2014.*
5. *Approval of a Tree Removal Permit by Planning Commission at Final PUD review.*
6. *Recommendation by the Planning Commission and approval by City Council of a PUD Agreement, as approved by the City Attorney, at Final PUD review.*
7. *Obtain a Sidewalk Waiver from City Council for the south side of Helmand at Final PUD Review.*

8. *Address comments from the Engineering memo dated June 10, 2014 applicable to Final PUD submittal, including obtaining a Steep Slope and Flood Plain determination and from the Fire Department memo dated June 12, 2014 .*
9. *Submittal of an Environmental Impact Statement with Final PUD review.*

Chairperson Boswell asked if there was any further discussion. Mr. Hetrick asked for clarification about the road. He asked if Helmand was a local road, despite the fact that it was non-conforming. Mr. Anzek responded that if it were dedicated as public right-of-way and it had not been vacated or eliminated, it would still be public right-of-way. If it was not desirable to be used by fire trucks because it was gravel or too narrow, they would not use it. There was a comment from a previous City Engineer that fire trucks would not drive between multiple cities to get to a site. Mr. Anzek stated that a fire truck would drive the fastest way available to get to a site - that was the objective. It would be determined when the Fire Department started to work out the details and decided what they would work with. It was more ideal to have a back door into a development for any emergency responder. Mr. Hetrick noted that there was a comment about an exemption for steep slopes being approved by the Planning Commission and City Council. He wanted to make sure that condition number two would cover an exemption for steep slopes. Mr. Anzek thought that because of the fact that it was a man-made fill, it would be better to clear it out to make sure it could be built upon. Mr. Hetrick said that he understood that the steep slope needed to be treated in some way; he just wanted to be sure that the condition covered any exemption, which was confirmed, and Mr. Anzek added that condition number eight also covered that.

2014-0083

Public Hearing and request for Preliminary Planned Unit Development (PUD) and Conceptual Site Plan Recommendation - City File No. 14-008 - Sanctuary at Rivers Edge, a proposed 20-unit residential development on 6.1 acres, located north of Avon, east of Livernois and south of Harding, zoned RCD, One-Family Cluster, Parcel No. 15-15-403-010, MJ Ridgepoint, LLC, Applicant

A motion was made by Kaltsounis, seconded by Yukon, that this matter be Recommended for Approval to the City Council Regular Meeting,. The motion carried by the following vote:

Aye 9 - Boswell, Brnabic, Dettloff, Hetrick, Hooper, Kaltsounis, Reece, Schroeder and Yukon

Chairperson Boswell stated for the record that the motion had passed unanimously.

ANY OTHER BUSINESS

Mr. Anzek thanked the Commissioners for allowing the meeting in July to be moved back one week.

NEXT MEETING DATE

Chairperson Boswell reminded the Commissioners that the next Special Meeting was scheduled for July 22, 2014 (in place of the July 15, 2014 Regular Meeting).

ADJOURNMENT

Hearing no further business to come before the Planning Commission, and upon motion by Mr. Kaltsounis, Chairperson Boswell adjourned the Regular Meeting at 9:52 p.m.

William F. Boswell, Chairperson
Rochester Hills Planning Commission

Nicholas O. Kaltsounis, Secretary