



Rochester Hills Minutes

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Historic Districts Commission

Chairperson Brian R. Dunphy, Vice Chairperson Maria-Teresa L. Cozzolino
Members: John Dziurman, Nicole Franey, Micheal Kilpatrick, Melissa Luginski,
Paul Miller, Dr. Richard Stamps, Jason Thompson

Thursday, August 13, 2009

7:00 PM

1005 Van Hoosen Road

MINUTES of the **REGULAR ROCHESTER HILLS HISTORIC DISTRICTS COMMISSION MEETING** held at the Dairy Barn at the Van Hoosen Museum, 1005 Van Hoosen Road, Rochester Hills, Oakland County, Michigan.

1. CALL TO ORDER

Chairperson Dunphy called the meeting to order at 7:10 PM.

2. ROLL CALL

Present 7 - Maria-Teresa Cozzolino, Paul Miller, Richard Stamps, Micheal Kilpatrick, Brian Dunphy, Jason Thompson and Melissa Luginski

Absent 2 - John Dziurman (*arrive 7:18 PM*) and Nicole Franey (*arrive 7:15 PM*)

Also Present: Derek Delacourt, Deputy Director, Planning Department
Judy A. Biak, Recording Secretary

Chairperson Dunphy stated for the record that Mr. Dziurman and Ms. Franey indicated they would be a few minutes late arriving for this meeting.

3. DETERMINATION OF A QUORUM

Chairperson Dunphy announced a quorum was present.

4. APPROVAL OF MINUTES

4A. 2009-0317 Minutes of the July 16, 2009 Rescheduled Regular Meeting

Chairperson Dunphy asked for any comments or corrections to the July 16, 2009 Regular Meeting Minutes. Upon hearing none, he called for a motion to approve.

A motion was made by Miller, seconded by Stamps, that the Minutes be Approved as Presented. The motion CARRIED by the following vote:

Aye 7 - Cozzolino, Miller, Stamps, Kilpatrick, Dunphy, Thompson and Luginski

Absent 2 - Dziurman and Franey

RESOLVED that the Minutes of the July 16, 2009 Regular Historic Districts Commission Meeting be approved as presented.

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5. ANNOUNCEMENTS/COMMUNICATIONS

Chairperson Dunphy called for any announcements or communications. He noted the Commissioners had received some correspondence from the National Trust for Historic Preservation, and a notice of Oakland County's 12th Annual Heritage Conference scheduled for September 10, 2009. He noted the Commissioners also received a copy of a letter from the United States Department of the Interior indicating that the City had received its Certified Local Government status. He commented it was very good news and was announced at the City Council Meeting on August 10, 2009.

6. PUBLIC COMMENTS (Non-Agenda Items)

Chairperson Dunphy asked if there were any public comments. He reminded the audience members in attendance that if they wished to speak on any non-Agenda items, they should complete a speaker's card and turn it in to the recording secretary. There were no public comments.

Chairperson Dunphy stated that if any member of the audience wished to speak on an Agenda item, they should also complete a speaker's card and provide it to the recording secretary.

8. UNFINISHED BUSINESS

8A. 2008-0678 Stoney Creek Village (Tienken Road Bridge) - HDC Site Visit

Chairperson Dunphy stated the Commission intended to conduct a tour of the area, and asked if the Commissioners wanted to adjourn the meeting, take the tour, and reconvene to complete the rest of the Agenda, or complete the meeting and take the tour after the adjournment of this meeting. The Commissioners agreed they would adjourn the meeting after completion of the Agenda, and then take the tour of the bridge site.

This matter was Discussed

9. ANY OTHER BUSINESS

Chairperson Dunphy reminded the Commissioners there would be a special meeting on Thursday, August 20, 2009 at the City Hall Municipal Offices. It was expected that the Road Commission for Oakland County would attend that meeting to discuss their next set of plans and recommendations. He also understood there would be a historic district property owner before the Commission with a request.

Chairperson Dunphy stated that the next regular meeting was scheduled for September 10, 2009, which he may have a conflict with. He advised the Commissioners if there was a need to reschedule that meeting, they would be advised of that fact.

Chairperson Dunphy stated he wanted to report on the August 10, 2009 City Council meeting. He attended that meeting because there was discussion about whether an amendment to the Historical Preservation Ordinance was necessary, specifically an amendment that would take the Historic Districts Commission out of the final decision making role on any public infrastructure projects. He noted the Commission did not have to ponder what might have triggered that discussion, but there was a proposal put forward; however, no action was taken. He reported there was interesting discussion about the role of the Historic Districts Commission, and the role of City Council. The Commission was asked to provide their feedback about any proposed Amendment, and he asked for the Commissioner's specific comments about that.

Chairperson Dunphy stated that Councilperson Rosen made a very cogent response to the roles of the Commission versus the role of Council. In Mr. Rosen's view, cities create commissions to take politics out of certain processes. Chairperson Dunphy thought that cities also created commissions so there were groups of citizens who could provide a greater focus and a depth of expertise than council members might have in certain specialized areas, which is why there was difference in the roles of Commissions and Councils.

Chairperson Dunphy stated that some of the Council Members felt very passionately that Council's role was in control of the budget. He agreed, as did the other Commissioners, that anything that had a financial impact was Council's role to allocate the necessary funds.

Chairperson Dunphy stated that with respect to the Tienken Bridge Project, Council was comfortable that it was being handled appropriately through the Historic Districts Commission, which is why they did not take any action on the proposed Amendment. He noted that several Commissioners pointed out that if the Tienken Bridge Project deliberations took a direction that Council was not happy about, they would be happy to re-introduce an Ordinance Amendment.

(Arrive Commissioner Franey: 7:15 PM)

Present 8 - Maria-Teresa Cozzolino, Paul Miller, Richard Stamps, Micheal Kilpatrick, Brian Dunphy, Jason Thompson, Nicole Franey and Melissa Luginski

Absent 1 - John Dziurman

Chairperson Dunphy suggested the Commissioners view the August 10, 2009 Council Meeting on the local cable channel or through the City's website, if they had not already seen the meeting. He asked for comments from the Commission.

Mr. Miller stated he had not seen the meeting, but asked if Council had amended the Historical Preservation Ordinance, whether that would have jeopardized the City's new Certified Local Government (CLG) status. Mr. Delacourt stated he did not know, but noted the proposed Amendment was not reviewed by the State Historic Preservation Office (SHPO). He believed once granted CLG status, the SHPO re-evaluated every CLG about every two years, and he guessed the proposed Amendment would affect the City's status. He noted the proposed Amendment was very similar to one of the recent Ordinance Amendments regarding dangerous building section and the Study Committee process that kept the City from obtaining the CLG status. It was a matter of the Ordinance not being in conformance with State Law. Since the proposed Amendment did not go forward, he would not ask SHPO to review the matter.

Mr. Miller noted that the Commissioners had not been notified about the proposed Ordinance Amendment, and clarified there was a process that was followed for all Ordinance Amendments. Mr. Delacourt stated the matter was identified on the Council Agenda as a discussion item. It would have to have been noticed for a First Reading before Council could have taken action, and would have required a Second Reading to be passed.

Ms. Luginski stated she had reviewed the Council meeting, and had the opportunity to discuss the matter with Councilperson Yalamanchi who brought up the suggested amendment. She wanted to provide some clarity in Mr. Yalamanchi's reason for bringing up the matter. She stated that Mr. Yalamanchi thought Council could be helpful on a monetary or budgetary basis in backing up the Commission. She thought Mr. Yalamanchi felt if the Commission had an issue with the bridge or there were issues or concerns, that Council should be the last stop at City Hall in decision making. She thought it was Mr. Yalamanchi's perception at that time that it would be an opportunity for Council to assist the Commission. She stated she could not speak for any other Council person's perception of the matter, but she did know that was Mr. Yalamanchi's perception. She thought he did not understand the issue with the CLG and once he was made aware of it, he was as concerned as the Commission.

Chairperson Dunphy stated he also spoke with Mr. Yalamanchi after the meeting and had the same perception.

Mr. Kilpatrick asked if Council was aware of the appellate process available to applicants that felt aggrieved by any decision made by the Commission.

(Arrive Commissioner Dziurman: 7:18 PM)

Present 9 - Maria-Teresa Cozzolino, John Dziurman, Paul Miller, Richard Stamps, Micheal Kilpatrick, Brian Dunphy, Jason Thompson, Nicole Franey and Melissa Luginski

Chairperson Dunphy stated that was not specifically a part of the conversation, although he was not sure how much that was an issue for Council. The one thing he heard from several Council members was a fear of losing control of the process. Mr. Rosen had pointed out that perhaps Council was not supposed to have control of this process for good reason. The appellate part of the process was not part of the discussion Council held.

Mr. Kilpatrick stated taking power away from the Commission started a slippery slope situation. He trusted Mr. Yalamanchi's intentions, but thought there was a reason why the process was set up the way it was. He was concerned about diluting that process, noting that same discussion did not occur with the Planning Commission or the Zoning Board of Appeals. He thought those Boards had more power than the Historic Districts Commission.

Chairperson Dunphy thought many people were watching what the Commission did very carefully. He noted the bridge project had taken the Commission into unexplored territory as he did not think anything like that had come before the Commission in decades. The project was getting a lot of attention and people were very interested in how the Commission handled it. He felt the Commission was moving in the right direction. If the Commission could let the process play out and arrive at the conclusion they will, it will be the right thing for the City and the District. He stated he was nervous at the start of the Council meeting, but after the meeting and discussions with the Mayor and some Council Members, he thought they were willing to let the matter unfold and see how it progressed.

Melinda Hill, 1481 Mill Race, stated she agreed that even though Council was in charge of the purse strings for the City, the Historic Districts Commission was established via State Act. Everything in the Historical Preservation Ordinance is appropriate and mirrored the State Act. If Council were to start tweaking the Ordinance, it could lead to unintended consequences, such as problems for the CLG status. She thought the Commission was a quasi-judicial board, much as the Zoning Board of Appeals is. She agreed if the Commission performed its duties appropriately, the right results will be provided. She thought it was unfortunate the Commission was not informed this discussion was going to take place. The State Act allows the Commission to make the recommendations for Ordinance amendments. If Council was interested in an Ordinance change, she thought Council should have had a discussion with the Commission for their comments. She thought if there would be further conversations about an Amendment that the Commission should be included in those discussions prior to taking any action.

Chairperson Dunphy thought it would be a moot point as the process was playing out appropriately, and there was not much likelihood the situation would come up again. He pointed out that how the Commission handled the process would go a long way in assuring Council that the Commissioners were doing things in the best way they could.

Mr. Dziurman pointed out it was interesting that the letter about the Certified Local Government (CLG) arrived at the same time the proposed Amendment went before Council.

Chairperson Dunphy stated that when Council discussed the implications of the proposed Ordinance Amendment on the CLG status, he could tell Mayor Barnett was uncertain of whether he should or should not announce that the City had just received CLG status. Mr. Delacourt stated the letter arrived just minutes before he was asked to meet with the Mayor about the Ordinance Amendment.

Mr. Dziurman thought the CLG status was good news for the City.

Chairperson Dunphy stated one Council member was quite vocal about the fact that he was not in favor of the Ordinance changes that enabled the CLG Application in the first place, and did not see that the CLG would provide any significant amount of funding for the City. He did not see that an Ordinance Amendment that affected the CLG status was of great concern.

Chairperson Dunphy encouraged the Commissioners to review the meeting either on cable or through the City's website because it was a very interesting exchange.

2008-0678 Stoney Creek Village (Tienken Road Bridge)

- HDC Site Visit

Dr. Stamps asked if the Road Commission was bringing more than one set of alternative plans to the August 20th Historic Districts Commission meeting. Mr. Delacourt stated that one plan would be provided for discussion.

Mr. Dziurman clarified that the Road Commission was bringing the plan, not the City. Mr. Delacourt stated it was the Road Commission. Mr. Dziurman asked if that had anything to do with a pedestrian bridge. Mr. Delacourt stated the Road Commission would bring plans for the bridge they were proposing to build as a discussion item.

Dr. Stamps asked if it was the same bridge proposal the Commission had seen previously. Mr. Delacourt stated it was about 8-foot less in width and had different guard railings. He noted the proposal would be included in the packets distributed to the Commission for the August 20th meeting. He commented the submission included the items the Commission had asked for at the last meeting.

Dr. Stamps stated that the Road Commission would have presented two plans for the Commission to choose from. The plan presented at the last meeting and the plan being presented at the August 20th meeting.

Chairperson Dunphy clarified the Commission was not choosing from anything. He explained that presently the Commission was looking at proposed plans and providing their feedback. The only thing the Commission would have to choose from was when the Road Commission brought a formal application for review and approval.

Ms. Franey asked if the proposed plan would be based on what the Commission had requested, or based on the meeting where City Council indicated they preferred three lanes only. She asked if that was being taken into consideration by the Road Commission as well, or just what the Historic Districts Commission had discussed.

Mr. Delacourt did not think the bridge and the road were connected. The Road Commission's bridge proposal has been based on their standards in compromise with discussions with both the Commission and Staff. Throughout the process, the Road Commission had continually tried to do things that represented the requests of the Historic Districts Commission and staff, while working with the Michigan Department of Transportation (MDOT) to determine what flexibility MDOT would allow. It was a pretty standard process in that the Road Commission started at one point and then worked with the Community, Staff, and any Boards and Commissions in an effort to produce a project that met the Road Commission's standards and that could be approved by MDOT for the funding, and also compromises with other requests as far as what the Community wanted to see. He noted the Road Commission felt they had reached that point and would present that proposal at the August 20th meeting. It was his understanding that the Road Commission would then present their proposal at the September 10, 2009 Commission meeting with a request for review and approval.

Dr. Stamps asked if there had been any update about whether it was a Federal project or a State project. Mr. Delacourt stated nothing had changed about the funding as far as he had been told. The Road Commission was not submitting the project for a Section 106 review if that was the question. The Road Commission stated the project was paid for with State funds. He stated he had not heard anything different from anyone showing or demonstrating that was not the case. No one had demonstrated that any Federal funding was included. He noted that the State Historic Preservation Office (SHPO) seemed to be satisfied as he did not believe they would pass on a Section 106 Review if they felt Federal funding was being used.

Ms. Luginski pointed out that SHPO had not been submitted a Section 106 review request. Mr. Delacourt noted that the Road Commission had met with SHPO regarding this project and did not indicate a Section 106 review was necessary. Ms. Luginski stated that was because the project was State funded. Mr. Delacourt stated that SHPO did not request a Section 106 review be done, which lead him to believe no Federal funding was being used.

Dr. Stamps commented that the meeting with SHPO was very early on in the project and asked if it would be appropriate for the Chairperson to call SHPO and ask if there was Federal funding involved.

Mr. Dziurman pointed out that another bridge was being done at the same time, with one bridge using Federal funds and one not. He thought that was strange.

Mr. Miller understood there was a process whereby they looked at not just the individual project, but if the project was part of an overall program, such as not just the bridge in isolation, but the Tienken Road area being improved. If Federal dollars were involved in any of those improvement projects, in order to avoid circumvention of specific projects, there was a process to take a look at the overall projects, not just individual components. He thought SHPO, the City and the Road Commission were aware of that.

Mr. Delacourt stated he was not sure what the process was that Mr. Miller referred to. Mr. Miller understood it was part of the enabling legislation for the Section 106. Mr. Delacourt stated that by law, if Federal funding was used, a Section 106 review was required. He doubted the Road Commission was violating the law. If they were, whatever appropriate authority policed that, which is not the City or the City Attorney, could look into that matter. He noted that was a State process and was not enforced by the City. If someone was in violation of the Section 106 process, he assumed the appropriate authorities would pursue that. He stated he had not seen anything to demonstrate that Federal funds were being used for this bridge project, and he was not sure where that idea was coming from.

Ms. Luginski stated "they" had been told as late as April that it was Federally funded. Mr. Delacourt asked if that was by the Road Commission. Ms. Luginski indicated it was. She wanted to acknowledge it was her understanding that SHPO was more of a passive agency in terms of funding, and the Road Commission had to submit a request for a Section 106 review, or MDOT would have to submit that request. She was not positive SHPO would have an opportunity to dig into where funding came from as she did not believe that was their role. She stated the issue still stood and she thought as a body the Commission had some responsibility to understand the funding because of the Section 106 review. She stated it would be big job and would take a lot of resources to try to find out where the funding was coming from, but she thought the Commission should decide whether they thought it was important or not. At this point, it is State funding and there would not be a Section 106 review. She wanted to state that from some of the discussions she had had, they were going to get a better looking bridge than they had before. She believed there was an intention to resolve this without the Section 106 review. Having said that, she thought that question was still out there, although she did not know if it was a show stopper or not. She thought time would tell.

Mr. Delacourt asked if the Commission was insinuating that the Road Commission was not being honest about where the funding was coming from. Ms. Luginski stated she never related to that comment. Mr. Delacourt stated if the Road Commission said it was State funding, he was inclined to believe that, unless it could be demonstrated otherwise. He did not think it was appropriate to keep asking the same question in the hope of getting a different answer. The Road Commission stated it was State funded, and that a Section 106 review was not involved. He was not sure why that answer was not acceptable.

Mr. Dziurman stated that to him it seemed suspicious because they admitted they were doing two bridges at the same time, bidding them at the same time, starting them at the same time, and one had Federal funding and the other did not. The one that had the Federal funding did not have a potential problem. To him that was strange and there might be something there. That was why he was suspicious.

Chairperson Dunphy stated it was certainly possible the Road Commission could choose not to use Federal funds on the project.

Ms. Luginski stated that was being challenged legally. Mr. Delacourt stated there had not been any legal challenge filed. He noted there was a letter written to the Road Commission, but no legal challenge to the bridge or the process. Ms. Luginski stated there was case law. Mr. Delacourt stated no legal challenge had been filed in relation to this project. He stated that the City Attorney had reviewed the letter and it had nothing to do with the Commission or the Commission's process. He believed a legal challenge would have to be filed in court. Mr. Kilpatrick indicated that was correct.

Mr. Miller did not think the Commissioners were suspicious or making accusations. However, it was the Commission's job to ensure the protection of the historic properties they were charged with overseeing, and that the appropriate actions are taken ahead of time, including a Section 106 Review if need be. It was not for the Commission to tell the Road Commission where the funding was coming from, it was for the Road Commission to tell the Commission. They have told the Commission different things, such as 1) yes, there is Federal funding; 2) no, there is not Federal funding, and 3) a we're not sure type of answer. He agreed if the Road Commission said there was no Federal funding, the Commission had to take that at face value as it was not the Commission's job to suppose otherwise. He stated there were legal challenges available for anyone who chooses to go that route, but that was not the Commission's role. The Commission's role was the protection and oversight of historic properties, and the Commission was just trying to make sure they had the proper information.

Mr. Kilpatrick stated that at the last meeting, the Road Commission had been very straightforward saying where the funding was coming from. He did not have any

reason to believe any different, noting Mr. O'Brien seemed to be very sincere and seemed to want to get the information to the Commission and was working with the Commission. He took Mr. O'Brien at his word. He did not think the Commission could step outside its charge by Ordinance. He agreed it was the Commission's duty to protect historic resources, but it was also the Commission's duty to follow the process.

Dr. Stamps thought asking the Chairperson to call SHPO was not so much to say the Road Commission was lying or that the Commission did not believe them, just to alert Lansing to the fact that the Commission understood it was State funded. When the Road Commission met with SHPO, he thought at that point in time it was being Federal funded. Mr. Delacourt noted that was not correct.

Dr. Stamps thought a telephone call would be appropriate just to ask SHPO and alert them and see what they had to say. He thought SHPO would want to know. He noted the City had a working relationship with SHPO.

Mr. Delacourt stated SHPO had been contacted, noting he thought several Commissioners had also contacted SHPO. He stated SHPO was very aware of the situation and did not have any reason to believe the project was anything other than the way it was being presented.

Mr. Dziurman stated that unless SHPO received a formal application, they would not do anything.

Mr. Dziurman stated the Commission had made a motion at their last meeting about a pedestrian bridge and asked if anything had been received from the Engineering Department. Mr. Delacourt thought the Engineering Department would have cost estimates available at either the August 20th or the September 10th meeting.

Mr. Dziurman thought it would be helpful to have that information for the next meeting because it tied in together.

Chairperson Dunphy pointed out the motion did not contain a deadline for that information to be submitted.

Ms. Luginski wanted to go on the record stating she was very anxious to see the process play out.

Chairperson Dunphy believed that if the process was allowed to play out, there would be a good outcome for the City and the District.

Melinda Hill, 1481 Mill Race, stated that as a resident and a member of the Friends of the Tienken Road Corridor, she attended a meeting with the Road Commission back in April, and in that meeting the Director of the Road Commission stated that the bridge would be Federally funded, 80% Road Commission and 20% local funding. Also, the City's Capital Improvement Plan (CIP) stated the process and showed that the City would be funding the bridge with a small amount. She stated that MDOT had the project listed on their site as 80 Federal/20 Local funding. It was only in mid-June that it was indicated in a letter that the project would be State funded. She thought the Commission should ask MDOT or the Road Commission for a formal explanation of the funding of the bridge, such as a flow chart. She stated in early July the Friends of the Tienken Road Corridor met with the Road Commission, and the Road Commission said they would work hand-in-hand with SHPO even though it was a State funded project. She asked if any of the funds were coming from the Michigan Local Bridge Fund, which is the State's method of funding bridges. That Fund receives Federal dollars. She stated that in doing the research via the internet, even through SEMCOG, the plan shows the whole process and that Federal funds were part of the project. She stated there was some different terminology, but if the Commission was interested, the question was to ask for a complete explanation of the funding process for the bridge so everyone would be comfortable with what they have chosen to do.

Mr. Dziurman stated that someone could make a motion to do that. Dr. Stamps asked if there was a need for motion, or if it could just be suggestion. Mr. Dziurman stated a motion was more enforceable. Dr. Stamps stated that the Chairperson could make two telephone calls, one to MDOT and one to SHPO.

Chairperson Dunphy stated he could discuss the matter with Staff before the next meeting. Mr. Delacourt stated he could ask those questions again, or ask the Road Commission to put what they had explained in writing.

Dr. Stamps asked for an explanation of when the funding changed from Federal to State, and what the rationale was. Mr. Dziurman thought it was important to find out which fund from the State was being used.

Mr. Delacourt thought it was important to point out the funding did not change the review standards the Commission operated under, or when the Road Commission could request a review and approval from the Commission.

Mr. Dziurman stated he would like to find out what it was and have a legal opinion about it.

Mr. Miller thought it would be more appropriate to discuss this with the Road Commission at the August 20th meeting. He thought it was fair to request a formal explanation.

Chairperson Dunphy asked if the Commissioners wanted to make a formal motion for that information. Dr. Stamps suggested the Chairperson could just make a telephone call, as he did not think this had to be a formal request.

Mr. Thompson asked if that information would ultimately change whatever approval the Road Commission would request. He noted the Road Commission would ask the Commission for a Certificate of Appropriateness, and the Commission would either approve or deny that request. He pointed out that was the issue that would ultimately be decided by the Commission.

Mr. Dziurman stated it offered something in addition, and was another set of eyes that had some credibility.

Chairperson Dunphy stated he would discuss the matter with Staff and provide any available information at the next meeting. He asked if there was any other business.

This matter was Discussed

Any Other Business (Continued):

Mr. Miller expressed his appreciation to the Museum for allowing the Commission to use their facilities for this meeting. He noted the gardens were looking very beautiful and he was much impressed with the children's garden.

Ms. Luginski stated this was one of the large contiguous Districts and asked the Commissioners as they walked through the area to pay attention to the environment, the traffic flow, the speeds and all those issues. She thought it would be helpful as the Commission had future discussions about the Village with respect to additional improvements. She noted the bridge was important, but there were other aspects of the District.

10. ADJOURNMENT

Upon motion duly made and seconded, Chairperson Dunphy adjourned the meeting at 7:50 PM. He noted the Commissioners would proceed with a walking tour through the District, which had been properly noticed with respect to attendance by a quorum of the Commissioners. As this meeting was properly adjourned, no Minutes were recorded of the walking tour, and no official business of the Commission was conducted during the tour.

Brian Dunphy, Chairperson
City of Rochester Hills
Historic Districts Commission

Judy A. Bialk, Recording Secretary

(Approved as _____ at the _____, 2009 Regular Historic Districts Commission Meeting)

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