



The City of Auburn Hills

City Council Meeting

Minutes

December 2, 2013

CALL TO ORDER: by Mayor McDaniel at 7:00 p.m.

LOCATION: City Council Chamber, 1827 N. Squirrel Road, Auburn Hills, MI 48326

Present: Mayor McDaniel, Mayor Pro Tem Kittle, Council Members Burmeister, Hammond, Knight, Mitchell, Verbeke

Absent: None

Also Present: City Manager Auger, Assistant City Manager Tanghe, Director Olko, Deputy Director/Police Hardesty, Community Development Director Cohen, City Assessor Lohmeier, Community Relations Director Carroll, City Clerk Kowal, City Attorney Beckerleg, and City Engineer Juidici.

42 Guests

4. APPROVAL OF MINUTES

4a. Regular Council Meeting – November 18, 2013

Moved by Verbeke; Seconded by Mitchell.

RESOLVED: To approve the November 18, 2013 meeting minutes.

VOTE: Yes: Burmeister, Hammond, Kittle, Knight, McDaniel, Mitchell, Verbeke

No: None

Motion Carried (7-0)

Resolution No. 13.12.220

5. APPOINTMENTS AND PRESENTATIONS

5a. Motion – Confirm City Council Board and Commission Appointments

Moved by Knight; Seconded by Verbeke.

RESOLVED: To confirm the appointment of City Council Members John Burmeister to the Tax Incentive Review Committee and the Sister City Committee; Maureen Hammond to the Public Safety Advisory Committee; Bob Kittle to the Retiree Health Care & Pension Board and the Economic Development Authority; Henry Knight to the Zoning Board of Appeals and Brownfield Redevelopment Authority; VeRonica Mitchell to the Planning Commission and Sister City Committee; Cheryl Verbeke to the Beautification Advisory Commission and Sister City Committee; Kevin McDaniel to the Retiree Health Care & Pension Board.

VOTE: Yes: Burmeister, Hammond, Kittle, Knight, McDaniel, Mitchell, Verbeke

No: None

Motion Carried (7-0)

Resolution No. 13.12.221

6. PUBLIC COMMENT

Cheryl Gregory, 3220 Pine Crest Way, has been a resident since 2010 and is encouraging Council to be more involved in the oil and gas drilling in the City. Both she and her neighbors are concerned with the environmental and safety issues; and she concerned with her property values deteriorating. Currently the drill pad staked out at the North Apostolic Church is approximately 300 feet from her front porch. She asks the City to hold a public workshop sooner than later as the oil and gas companies continue to move forward with their activities. She also asked that the City talk with neighboring communities as well as those across the State to consider adopting an ordinance that will prohibit drilling in zoned residential areas or at the very least to restrict some types of activities in a residential community.

Judith Runk, 3516 Riverside Drive, a health care worker, believes oil and gas drilling will have a negative impact on the health and safety of individuals, particularly the young and elderly. She is concerned there will be an impact on emergency services with an increase in the cost of services. Oil and gas drilling has proven to increase noise and air pollution, traffic, the potential for catastrophic accidents – on site, in pipelines and in transit, to impact the surface and sub-surface water. Much of Auburn Hills has wetlands and low water table areas, making water an issue of particular concern. The actions associated with the oil and gas drilling process will impact the City's first responders and the increase in traffic will burden the already over-crowded roads. She requests the City hold a public forum to hear all sides of the issue and to ban drilling on all public land. She would also like to have regulations in place for drilling on private property that will protect the health and safety of all residents.

Sandra Daum, 2555 Hempstead, living in Auburn Hills for over 20 years, agrees the old bowling alley is an eyesore; however, she and many of her neighbors don't believe another dollar store in the area is necessary. She noted there are two dollar stores in neighboring communities not far from this location. She appreciates the work that has been happening downtown and is not against new development, but would like to see a more upscale store than a dollar store.

Italia Millan has lived in the City for 12 years and she and her husband own two properties in the City. The city attorney for Rochester spoke at Rochester's last meeting about the oil and gas drilling. The city attorney's report contained information on a municipality's right to regulate oil and gas activities as well as regulations approved by other communities. He contends the Michigan Zoning Enabling Act allows cities to regulate the activities, and stated it is the MDEQ's position and rightfully so, that cities can and do regulate oil and gas operations. This does not apply to townships or counties.

Mayor McDaniel explained the Auburn Hills City Attorney will be presenting a report at the end of the meeting on much of what she is referring to. He also noted that the City Council has not been presented with any type of contract.

She appreciated Mayor McDaniel comment, and noted based on the report from Rochester's attorney, she urges the City of Auburn Hills to do everything possible to restrict or regulate oil and gas drilling activities. Ms. Millan gave a copy of the Rochester attorney's report and referenced ordinances to City Clerk Kowal.

Mayor McDaniel stated Council has heard the concern of residents regarding the oil drilling and has been investigating further into the operations, and has made this topic a top priority for Council workshops. There will be a report and summary from City Attorney Beckerleg further into the meeting. He asked speakers to keep their comments to a minimum so all can be heard.

Don Hughes, As a Bald Mountain Road resident, he was disappointed the Council agenda didn't appear on the website until this morning, which didn't give all residents the opportunity to plan on attending this evenings meeting.

Shortly after the last Council meeting he took a walk to the back of his neighbor's property, who shares the property line with the planned site drilling site on Squirrel Road. He was surprised to see the heavily wooded area already staked off for a drill pad and an access road; the minimum size for a drill pad is one acre. This area contains not only woodlands, but wetlands and Galloway Creek. In order to access the drill pad, there will need to be a culvert or bridge over the top of Galloway Creek. It will also be necessary to clear a number of trees that are currently a buffer between residents and the church. This well pad is only 100 feet from its nearest neighbor who will have to endure noise, truck traffic, construction and looking at the well site infrastructure. Many of the neighbors on this street were not aware of the activities until he told them. He hopes the City will not approve this location and enforce the existing tree ordinance and deny the approval of trees.

He had requested and received a copy of the lease agreement with the drilling company and the Church, which now the City has received and hopes the City will review carefully.

Lori Rapp, a resident of Auburn Hills for over 12 years, has a number of concerns regarding the horizontal drilling; including the leakage of oil and natural gas from the tanks that will store the minerals gathered during the drilling. Leakage of the wells during and after the drilling can contaminate the groundwater. Nearly 20% of all the gas wells in the world currently leak, with a 60% failure rate for Conoco Phillips wells leaking over a 30 year span. The Ohio DNR uncovered 1,625 violations in 2011. Another concern is the chemicals involved in the fracking process which can cause health issues. Regardless of how careful, many of these chemicals remain underground forever. She is also concerned with geographical issues that could cause structural damage to the homes, perhaps cause sinkholes and earthquakes. There is no way to know what this drilling will do years down the road. When the companies are gone, and problems arise, it will be the citizens of the City that will have to deal with the costly task of repairing what is possible. The profits received from the drilling may not be enough to fix the destruction of the drilling process. She asked the City keep her and her family safe from horizontal drilling and possible fracking.

Nancy Brennan, Leyland Court resident, has many concerns with the drilling and asked if a City permit is needed to drill; she needs permission from the City to put up a deck. Over 40,000 gallons of chemicals are used for fracking, which includes between 59 and 100 different types of chemicals being used per drilling. There hasn't been much updating done since the late 1990's when chemical compositions were composed for the cracking of shale. As noted earlier, the long term in an unknown. She doesn't approve of the companies approaching residents and not the local government. Ms. Brennan asked if the Apostolic Church will lose its tax free status having a business on their property.

Jim Przybylo, 3778 Tienken Road, asked the Council to stop the fracking insanity. The oil companies refuse to disclose the chemicals used, and go to great lengths to get their way as portrayed in the movie the Promised Land. For each fracking well, there is from 1 to 8 million gallons of water lost. Properties located near the wells decreases in value, which in turn, reduces tax revenues. City road expenses will increase due to the damage caused by the many trucks needed for each well. The wells will emit methane gases in the air across the country.

Greg Morin, 3046 Pine Crest Way, built his home 18 years ago with the hope of having a quiet future, which is eroding away with the prospect of oil drilling taking place. He too, feels as his neighbors do, he isn't in favor of the drilling. The pad that is staked out is at the end of his street, 100 feet from the last house and in close proximity to the church playground. He doesn't understand why something so volatile is allowed near the children and it is totally unacceptable.

David Lonier, 1842 Commonwealth, explained he clarified the title of the resolution regarding smart meters. He is concerned DTE may be violating the health, safety and privacy rights of the citizens and a true and complete opt-out must be offered. In response to Mr. Kittle asking if the opt-out is truly an opt-out, Mr. Lonier explained a letter from DTE explains the digital meter itself is not changed; only the transmitting system of the meter is disabled. Even though the

transmitting has been deactivated, the meter continues to track the usage and a meter reader can transmit that information back to DTE; still a privacy issue. Many of the homeowners aren't aware they have the smart meters, and not everyone was notified by DTE of the meter change. There are six companies that manufacture the digital meters which resemble the analog meter, the distinction is very difficult to recognize. The MPSC who ordered DTE to offer the opt-out are not concerned with the consumer; they protect the power companies. Seven years ago, in 2005, DTE's assets were \$15 billion. In 2012, the assets rose to \$24 billion. The state legislature can override DTE so the consumer can protect themselves. The resolution would give legislatures more ammunition to offer a true opt-out for the citizens.

Regarding the oil and gas drilling, when the water is blasted into the ground to crack the elements to extract the gas and oil, carcinogens are released into the air. The film, *Take Back Your Power*, shows there are over 5,000 patent applications for 'free energy', such as hydrogen. A car was driven coast to coast on 24 gallons water. Everything could run on water and hydrogen energy alone, so there is no need for the drilling of oil and gas.

Mr. Kittle asked who the active legislators in Lansing that were involved with the smart meter.

Mr. Lonier stated there are seven co-sponsors of Bill 4315; Tom McMillin is one of the sponsors, and the Bill is stalled in the Energy and Technology Committee. The MSMP opt-out was not driven by legislation; Mr. McMillin's legislation is asking to get the analog meters back. DTE is not giving the consumer a choice of keeping the analog meter or giving it back.

Pauline Holeton, Shelby Township resident, distributed packets to Council. The 2005 and 2007 Energy Act stipulates there is to be education about the benefit of smart meters; none of the utility companies around the country have provided education or sent notices to consumers of what to expect. There are many people that are EMF sensitive; the radio frequency emitted by the meters can have adverse affects on them. The radio frequency can play havoc with medical devices such as insulin pumps.

The privacy issue is a 4th Amendment violation; a safety issue exists by causing homes to catch fire. A resolution is needed so Auburn Hills can be added to the other 31 communities and send a message to government officials.

John Holeton, 2392 Barclay Avenue, Shelby Township, is pleased to see the Auburn Hills residents speaking out against the oil and gas drilling. There are many videos available showing gas coming into people's homes through water faucets, and when exposed to a flame, the gas flares up.

With all the wireless apparatus people have today in their homes, they are unaware of the health hazards presented. The people are being exposed to radio frequency radiation, without even knowing it.

The gas fracking being pushed by oil companies allows for one neighbor, who allows the activity to infringe on another neighbor's rights, because it is being done underground. One neighbor is making a profit at another's expense. A smart meter on one neighbor's house could affect the health of their neighbor.

Smart meters are infringing on a citizen's right to privacy, and corporations gathering the personal information can sell it to other companies. Michigan Compiled Law, 75539D, Eavesdropping, prohibits eavesdropping in a private place; what is more private than a person's home?

He asked that Council adopt a resolution and forward it to other governmental agencies.

A Rochester Hills resident is very disturbed to hear about the fracking in Auburn Hills. Continuing, she stated she is one of a very few that still have the analog meter on her house, and it was at a fee. Now DTE and Consumers Power (2016) want to put a smart meter on her house, as does the water department. She is concerned for her health and wants the choice to opt-out. She asked Council to take action to allow residents the choice of opting-out of smart meters.

Pam Wallace, a Rochester Hills resident, thanked Council for listening to the surrounding communities residents. She asked Council to be a leader and take action on the smart meter resolution. The radio frequency radiation has been elaborately studied for the past 30 or 40 years, with studies beginning with the U.S. government. The studies are well documented with well over 70% studies, showing a link between biological affects and radio frequency radiation. The problem is cumulative; the smart meters, baby monitors, microwave ovens, all in the house. The radio frequency radiation is able to break the double-strand DNA, which causes neurological diseases and cancers, according to studies.

She is able to make the choices of not using a cell phone or microwave oven and eating organic food, but she isn't afforded the choice of not having smart meters attached to her house which is not safe.

She asked that Council educate themselves on the issue, so the residents can be taken care of the best way possible and adopt the resolution.

Remi Hilmiz, part owner of Exhale Hookah Lounge, 2723 University Drive, stated he and his partner were not notified about the proposed ordinance that was approved by Council two weeks ago. Currently his lounge closes at 2:00 a.m.; the average hookah session lasts two to three hours, with the bulk of his business arriving between 10:00 and 10:30 p.m. Most of the business is Oakland University and OCC students. He doesn't feel his business is any worse than the local bars and is requesting that the closing time be changed back to 2:00 a.m. He and his partner have spent over \$200,000 on the business and are willing to cooperate with the City in any manner that is needed. This business is how he supports his family. He requested Council reconsider the hours of closing.

Mike Ishaia, 3039 E. Walton Blvd., hookah lounge owner, stated he too was not notified of an ordinance changing the closing time for hookah lounges. He knows there is the perception in other communities such as Troy that hookah lounges are evil places with gambling, drinking and fighting; that is an untrue perception. He has been running hookah lounges for over three years prior to opening his own hookah lounge. The majority of his clients are O.U. students, but he does have others that are in their 30's and 40's. The people come to the hookah lounges for relaxation, an alternative to going to a bar. When police officers have visited his establishment, he is very welcoming and allows the officers to check out anything in the building they wish; he runs a very clean, legal business. There has never been an altercation, nor has there been any drinking or parking lot issues. He supports his family through this business and has his life's savings invested in it. The average hookah costs \$18 and lasts two to three hours; so many will not want to come to his hookah at 10:00 at night to be rushed out.

The night the ordinance became effective, he had to tell his customers they had to leave; the customers weren't happy. He also had to turn customers away, noting most of the business comes later in the evening; the later hours are the money makers.

He too is willing to work with the City any way possible and humbly asking Council to consider changing the closing hours.

7. CONSENT AGENDA

All items listed are considered to be routine by the City Council and will be enacted by one motion. There will be no separate discussion of these items unless a Council member so requests, in which event the item will be removed from the Consent Agenda and considered in its normal sequence on the agenda.

ITEM D WAS REMOVED FROM CONSENT AGENDA BY COUNCIL MEMBER KITTLE.

7a. Board and Commission Minutes

7a.1. Beautification Advisory Commission – October 16, 2013

7b. Motion – Approve the proposed City-Wide upgrade from Microsoft Office Professional Plus 2007 to Microsoft Office Standard 2013

RESOLVED: To approve the purchase the Microsoft Office Standard 2013 upgraded software from CDW-G in the amount of \$50,318.70.

7c. Motion – Approve the proposed upgrade from Microsoft Exchange Server 2007 to Microsoft Exchange Server 2013

RESOLVED: To approve the purchase the Microsoft Exchange Server 2013 upgraded software and licenses from CDW-G in the amount of \$11,676.53.

Moved by Verbeke; Seconded by Burmeister.

RESOLVED: To approve the Consent Agenda items 7a., 7b., and 7c.

VOTE: Yes: Burmeister, Hammond, Kittle, Knight, McDaniel, Mitchell, Verbeke

No: None

Motion Carried (7-0)

Resolution No. 13.12.222

7d. Motion – Approve Site Plan for Dollar General

Mr. Kittle suggested since a resident is present questioning the Dollar General location, that the item could be reviewed.

Mr. Cohen explained the Fiero Lanes building was built 50 years ago and in 2010 became vacant. In 2010 or 2011, there was a water main break and the building was determined to be a complete loss. The building went up for sale, and Dollar General purchased the site. The site is located next to the Bloomfield Orchards subdivision and part of the site plan process is to make sure there is a proper buffer between residential areas and other zonings. Currently the buffer consists of a wall and 30 feet of green space with no trees on the site.

The proposed plan is a basic retail store with parking around the building. The City worked with the designers to meet the City's architectural design policy. After the old building is demolished, the new building will be constructed further from the neighborhood, 100 feet away. There will be a buffer area to the north, containing a large portion of the 40 plus trees that will be added to the site. One of the curb cuts has been removed from Opdyke Road, which is very important for traffic flow and safety. The current sign will be removed and a monument sign will be installed.

Mr. Cohen explained the City doesn't have the right to determine what type of retail store can come into the community, as long as the ordinance requirements are met. In the B-2 district, a retail store is a permitted use by right. If the Planning Commission finds all ordinances have been met and Council finds all ordinance requirements have been met, then they are entitled to be approved.

Mr. Knight asked the petitioner why another dollar store is needed when other are so close by, including the same company; how will this store be successful with others so close by.

Mike Pizzola, Designhaus Architecture, representing the Dollar General, explained it is competition with other dollar stores as well as someone wanting to go to a small neighborhood type store as opposed to a much larger store for everyday household items. It is the general improvement they are hoping to attain for the neighborhood. It is a matter of convenience and free enterprise. The corporate offices do their homework to determine if the store will fit in with the neighborhood.

Mr. Cohen confirmed for Ms. Hammond there is significant space between the loading dock area and the residential neighborhood.

Mr. Pizzola stated there are a number of trees in the buffer zone as well as the wall remaining, and delivery hours would be that of the normal business hours. The normal business hours will be from 8:00 a.m. until 9:00 p.m., and deliveries are made by local business drivers. The trucks are semi-trucks and are unloaded by one person using a hand truck, no forklifts, and are sensitive regarding noise to the neighbors.

Mr. Cohen explained the loading dock is 101 feet away from the neighborhood.

Ms. Verbeke noted dumpster pickup cannot be prior to 7:00 a.m. Mr. Pizzola stated he will pass the information on to the developer.

Mr. Burmeister asked with the one curb cut being removed will there be any direct impact on the doctor's office to the south.

Mr. Cohen stated the doctor's office had been contacted about the project and there is a shared easement allowing both businesses to go back and forth through the drive.

Ms. Mitchell asked if the employees for this store will be employees transferring from other stores or will they be new hires.

Mr. Pizzola stated the store will be hiring new employees; however, employees looking to transfer from other locations must go through the same hiring process as those who are new.

Mr. Cohen assured Mr. Kittle that this plan meets all ordinance requirements with no variances.

Mr. Kittle fully agrees this is an improvement to the area, from safety issues of one less curb cut, greater green space, a new building, an eyesore demolished and a newly paved driveway.

Moved by Kittle; Seconded by Knight.

RESOLVED: To accept the Planning Commission's recommendation and approve the Site Plan for Dollar General subject to staff and consultants conditions.

VOTE: Yes: Burmeister, Hammond, Kittle, Knight, McDaniel, Mitchell, Verbeke

No: None

Motion Carried (7-0)

Resolution No. 13.12.223

8. OLD BUSINESS (an addition to the agenda)

8a. Motion – Approve the Amendment of the Unwired Facilities Tax Exemption Resolution

Mr. Lohmeier explained he received an e-mail from the State requesting a specific statement be included in all resolutions. The impending deadline is Wednesday, December 4th, when this item will be taken to the last State Commission hearing for approval. The paragraph reads as follows:

WHEREAS the aggregate SEV of real and personal property exempt from ad valorem taxes within the City of Auburn Hills, after granting this certificate, will exceed 5% of an amount equal to the sum of the SEV of the unit, plus the SEV of personal and real property thus exempted, and

The State wants to know if the percentage exceeds the 5%; the City's percent is generally between 6% and 7%, so the statement is being amended to be included in the resolution. That is the only change, everything else remains the same.

Ms. Verbeke noted there were quite a few IFEC's approved at the same time as this one and asked if this was the only one needing the amending.

Mr. Lohmeier stated this is the only transfer; the language is already included in the new and renewals.

Moved by Hammond; Seconded by Mitchell.

RESOLVED: To accept the City Assessor's recommendation and approve the State of Michigan's request for additional language to the resolution on the Tax Facilities Exemption Certificate Transfer for Unwired Technology LLC.

VOTE: Yes: Burmeister, Hammond, Kittle, Knight, McDaniel, Mitchell, Verbeke

No: None

Motion Carried (7-0)

Resolution No. 13.12.224

9. NEW BUSINESS

9a. Public Hearing/Motion- Approval of a Brownfield Plan for the 2150 Opdyke Road (Former Showcase Site) Redevelopment Project

Ms. Carroll explained the Auburn Hills Brownfield Redevelopment Authority considered and approved a Brownfield Redevelopment Plan for 2150 Opdyke Road, which is the former Showcase site. A public hearing to be held by Council is necessary, so she requested the Mayor open the public hearing.

Mayor McDaniel opened the public hearing at 8:17 p.m. and hearing no comment closed the public hearing at 8:17 p.m.

Moved by Knight; Seconded by Hammond.

RESOLVED: To approve the attached resolution (Attachment A) approving the Brownfield Plan for 2150 Opdyke Road Redevelopment Project, in accordance with Public Act 381.

VOTE: Yes: Burmeister, Hammond, Kittle, Knight, McDaniel, Mitchell, Verbeke

No: None

Motion Carried (7-0)

Resolution No. 13.12.225

9b. Motion – Approve Brownfield Reimbursement Agreement with NDA Auburn, LLC

Ms. Carroll explained this document outlines the City's agreement with the developer on how the payback on the development will occur. The agreement has been reviewed by the City Attorney and has been found satisfactory.

Moved by Knight; Seconded by Burmeister.

RESOLVED: To approve the Reimbursement Agreement with NDA Auburn, LLC.

VOTE: Yes: Burmeister, Hammond, Kittle, Knight, McDaniel, Mitchell, Verbeke

No: None

Motion Carried (7-0)

Resolution No. 13.12.226

10. COMMENTS AND MOTIONS FROM COUNCIL

Ms. Hammond:

- Hopes Council will reconsider the closing time for hookah lounges and reduce the impact on the businesses.
- The timing on the traffic signals on Squirrel Road are off, she had to stop for every light as they turned red, from Auburn Road, north.
Director Olko stated she would take a look at the timing.
- Reminded everyone the Tree Lighting takes place Friday, December 6th at 6:00 p.m.

Mr. Knight:

- He too, noticed the light timing on Squirrel Road.
- The street markings downtown are barely visible, very difficult to see at night. There are still issues with turning left onto Cherry Land, with the parking lanes being there. Many drivers aren't aware there are parking spots, unless there is a parked car. Suggesting signs hanging above, noting parking lane and driving lane be posted.

Mr. Kittle:

- Was pleased with the conversations Council had this evening in the workshop, regarding workshops.
- Was concerned with the agenda not being posted on the website, as noted by a resident and asked for the matter to be investigated.
Ms. Kowal stated the agenda and packet were posted on the website last Thursday, prior to sending it out to City Council. She attempted to post it again this morning on two separate occasions, but it wouldn't retain; the web site was not functioning and failed. IT is working on a solution.

Ms. Verbeke:

- Thanked all the residents for coming to this evenings meeting to speak about the oil and gas drilling. It was a topic of conversation at the Council workshop earlier this evening. As a whole, the Council will be compiling a list of workshop topics that are important for extensive discussion. She feels this is a very important topic and hopes to address it sooner than later, and noted Council is taking the residents' concerns seriously.

Ms. Mitchell:

- Expressed her gratitude to the residents that took the time to come to tonight's meeting and speak with Council.
- Thanked the Police Department for all the social media communications that took place regarding the kick-off of the holiday shopping with parking status and safety tips; all of it being very timely and appreciated.

Mayor McDaniel:

- He too, is appreciative of all the residents participating in this evening's meeting, noting the Council has been actively working on the issues presented this evening.

11. CITY ATTORNEY'S REPORT

Mr. Beckerleg reported the following facts: the Apostolic Church sits on a 55-acre site and has an executed oil and gas lease with West Bay Exploration for five years, plus renewal periods. There was an extensive two-hour phone conversation with representatives of West Bay Exploration resulting in the following: West Bay has not yet applied to the DEQ for any permit for this site; West Bay is not proposing to frack on the site; a site has been selected on the property where West Bay would like to drill, but West Bay is willing to look at other locations on the church property. There is concern with the number of trees that would be removed if drilling proceeds; however, West Bay must comply with the City's Tree Ordinance. Mr. Cohen received an e-mail from West Bay this morning, indicating they are in no hurry to begin

the drilling process on the church site. There is still preliminary work that must be completed. The earliest drilling would begin, providing all permits are issued, would be in the spring of 2014.

From a legal standpoint, it appears that it is possible for a City to regulate gas and oil drilling through a zoning ordinance. In Michigan there is The Michigan Zoning Enabling Act, which provides that counties and townships do not have any ability or authority to regulate oil and gas drilling; it does not mention the words cities or villages. Because cities and villages are not mentioned in the Zoning Enabling Act, it is assumed cities and villages have some ability to regulate oil drilling on property. Another statute called the Natural Resources and Environmental Protection Act refers to the position of a Supervisor of Wells. The Supervisor of Wells is a position under the DEQ, who has jurisdiction and authority over the administration and enforcement with respect to the prevention of waste, and the conservation of oil and gas in the State. The Act also provides that no person or entity shall drill for oil or gas unless they've obtained a permit from the Supervisor of Wells. The DEQ has a number of requirements that they employ; one of the more interesting requirements is that the Supervisor of Wells or the DEQ shall not issue a permit for the drilling of oil or gas, if the well is located within 450 feet of a residential building and the residential building is located in a city or township with a population of 70,000 or more. In Auburn Hills, the population is less than 70,000 people, so the DEQ would have the ability to issue a permit for oil and gas drilling within 450 feet of a residence.

In Mr. Beckerleg's reading of the two acts, the question still becomes, who has the jurisdiction over drilling; does the DEQ have exclusive jurisdiction or do cities and villages have the power to regulate gas and oil drilling through their zoning ordinances.

It is Mr. Beckerleg's opinion, based on articles he has read, and based on the Zoning Enabling Act and the Natural Resources and Environmental Protection Act, that cities and villages do have some limited ability to pass provisions in a zoning ordinance to have some regulations for oil and gas drilling. He believes the City of Auburn Hills could draft a Zoning Ordinance amendment to provide for some limited regulation of oil and gas drilling. If that is done there would be some items that need to be complied with; the ordinance could not be in direct conflict with State law, it could not be in direct conflict of federal requirements and it could not be exclusionary. What he means by exclusionary is that the Zoning Ordinance could not simply provide that oil and gas drilling is not allowed anywhere in the City of Auburn Hills.

In the nature of full disclosure, the City of Ann Arbor does have an ordinance provision, Section 5.116 of the Ann Arbor City Code, specifically prohibiting all gas and oil drilling in the City of Ann Arbor. He has put in several calls to the Ann Arbor City Attorney, but has not gotten a return phone call. It appears that the Ann Arbor ordinance was adopted in the late 1980's or the early 1990's. It is Mr. Beckerleg's opinion that He doesn't believe Auburn Hills has the option to exclude all gas and oil drilling in the City, as Ann Arbor did.

It isn't clear if the Natural Resources and Environmental Protection Act pre-empted the Zoning Enabling Act. There is a case called Addison Township vs. Gout, which is from 1990, that case dealt with slightly different versions of both of the described statutes, but they aren't radically different, so the case has some applicability. That case specifically provides that it is the Michigan Supreme Court's opinion that cities have some ability to regulate gas and oil drilling through a zoning ordinance.

Concluding, Mr. Beckerleg opined that the City does have some limited ability to pass a Zoning Ordinance amendment regulating gas and oil drilling provided it is not in conflict with State or Federal law. Federal law is primarily geared towards preventing accidents and addressing issues pertaining to fracking, governed by the EPA.

There was some discussion with West Bay of other locations that are not near a residential area.

The City knows West Bay is working with the church site, but it is unknown what other companies are out there looking to lease other properties. If Council chooses, they do have the ability to pass a moratorium for a short period of time to allow the City to craft an ordinance amendment that will be legally enforceable.. He has drafted a moratorium resolution if it is something Council wants to consider.

Mayor McDaniel asked if the moratorium would give the City 180 days or what is the limited time referenced.

Mr. Beckerleg stated 180 day period and if effective tonight, it would extend through June 3, 2014. He also confirmed for Mayor McDaniel no ground could be broken until a permit to remove trees was issued by the City. There doesn't seem to be anything that would allow the tree ordinance to be avoided.

Mayor McDaniel suggested it sounds as if the oil company wouldn't be applying for a permit from the DEQ for at least 30 days, and DEQ approval could take between 60 and 90 days, which would give the City quite a bit of time to review a moratorium resolution and at that time, possibly adopt the 180 day moratorium resolution; this would be giving the City additional time to continue to research the issue.

Mr. Beckerleg stated that is possible and he is only providing the moratorium resolution for Council's consideration and review; not suggesting Council take action.

Ms. Hammond asked for clarification, noting Mr. Beckerleg had mentioned both 150 feet and 450 feet.

Mr. Beckerleg explained that in the Natural Resources and Environmental Protection Act, Act 51 of 1994, it states the Supervisor of Wells, the DEQ, can't issue a permit for the drilling of oil or gas if the well is located within 450 feet of a residential building. This only applies in cities with a population of more than 70,000 people.

Ms. Hammond asked, as mentioned by a resident, what happens with the church's tax exempt status.

Mr. Beckerleg stated he didn't look into that; however, generally a piece of tax exempt property that is leased to a for-profit company, that portion of the land is no longer tax exempt. Most likely the church would owe the tax amount, but it would be something contractually worked out between the Church and the drilling company. The church will not lose tax exemption for all the property, just that portion being leased.

Ms. Hammond would like for the City to wait before adopting a moratorium, allowing the City extra time for investigating.

Ms. Mitchell asked if the City adopts an ordinance would it be applicable to both public and private property.

Mr. Beckerleg stated yes, the ordinance would be drafted to include both.

Mr. Kittle stated he is in favor of approving a moratorium now. He noted the lease with the Apostolic Church doesn't specifically include fracking being done, but the contract doesn't exclude it either. He would like to make sure there is no fracking. He understands the 450 foot setback, but in some City ordinances there are greater setbacks for different locations and questioned if it might be possible to extend the setbacks in a City ordinance.

Continuing he asked if drafting an ordinance now would be problematic and possibly considered spot zoning, Ann Arbor's ordinance has been on the books for nearly 30 years.

Mr. Beckerleg didn't believe an ordinance drafted now is problematic; if the legislative scheme in the Michigan was to prevent a city and/or village from adopting an ordinance regulating oil and gas drilling, it would have been put into the Zoning Enabling Act. Because counties and townships were specifically named, it leads him to believe they intended not to not exclude it from cities and villages which appears to be confirmed by Supreme Court in the Addison Township vs. Gout case. Regarding the validity of the Ann Arbor ordinance, he can't speak to it; other than there is the possibility that nobody has challenged the ordinance.

Mr. Kittle asked with a City ordinance, and as mentioned there can't be a total ban, what are the limitations the City could include in an ordinance.

Mr. Beckerleg explained, he would not recommend adopting an ordinance that has a total exclusion. If something is to be regulated through the Zoning Ordinance, regardless of the use such as a mobile home park, adult uses, massage parlor or oil and gas drilling, the general rule is you can't exclude a use from the City. If the City uses the Zoning Ordinance as a mechanism to regulate oil and gas drilling, he believes the same rules that apply as to the other uses mentioned or any uses.

Mr. Kittle asked if an ordinance could include disaster recovery plans, wear and tear on roads and infrastructure, reimbursement of any public safety expenses and those types of things.

Mr. Beckerleg agreed those things that could be included; the issue of remedial items, such as fixing something after something goes wrong, is where the EPA steps in. Looking at the statutory structure of the law that addresses oil and gas drilling, the Clean Water Act and many other similar Federal Acts address what happens when something goes wrong. The City ordinance can include regulating dust, and odor, he isn't sure of hours of operations, but more of site issues and how it is operated. The truck transporting issue would be treated similar to other truck regulations within the City, such as weight limits.

Mr. Kittle suggested doing a pre and post analysis of the road to determine how much damage may have occurred. From an emergency services standpoint, could there be a cost recovery notation included.

Mr. Beckerleg stated a cost recovery could probably be included; it has been done in a number of other situations not related to oil and gas drilling.

Mr. Kittle stated he isn't against drilling providing it is done with safety measures and restrictions in place.

Mr. Beckerleg noted many people are upset particularly with fracking and the DEQ has not prohibited fracking in the State of Michigan. Many municipalities have passed resolutions supporting a State wide and nationwide investigation into fracking. Anyone could ask for a fracking permit from the DEQ and upon meeting all the DEQ requirements, they would likely be issued a permit for fracking. He wants to make clear fracking and oil and well drilling are not the same thing. The City can regulate the oil and gas drilling.

Mr. Kittle stated during the moratorium he would like to have a definitive answer on the fracking.

Mayor McDaniel asked if drilling cannot be eliminated altogether and the Zoning Ordinance dictates drilling can only take place in a specific zoning and the gas company after all their studies determine there is no gas or oil to drill for in that specific zoning locations, does the City have to offer a location that is advantageous to the company.

Mr. Beckerleg explained the City does not have to provide a space that is advantageous to the company. He understands that oil and gas companies use seismic testing - hitting the ground and the quality of the vibrations gives them a sense if there may be oil and gas in the ground. If Light Industrial is chosen as the zoning district, as long as there is a decent portion of property in the Light Industrial zoning available that would be legal.

Mr. Knight asked if a zoning district could be established, such as an oil exploration district and it could be made a special land use, which has requirements, but fracking cannot be one of the requirements. However, there could be included safeguards for fracking.

Mr. Beckerleg explained restrictions can be made, provided those restrictions don't conflict with the Federal laws that deal with those kind of issues and how the fracking waste is disposed of. One of the big issues with fracking is the large amount of water that is used with certain chemicals, which is left in the ground and if it isn't left in the ground then it must be disposed of properly. The regulations must be consistent with Federal regulations. The problem with a special land use, is that approval is a requirement.

Ms. Verbeke noted a special land use is not exclusionary, it will be allowed somewhere.

Mr. Beckerleg explained the City doesn't want to be in a situation where the oil and gas drilling regulation is subject to approval as a special land use as opposed to a principal permitted use in a zoning district because if several people show up at a City Council meeting there will be a lot of pressure put on the legislative body and the discretionary decision may be based on the number of people in the audience have objected to it. His opinion is that it should be made a principal permitted use in a zoning district; there shouldn't be a special land use that has a large number of conditions to be met before approval. It could still be made a principal permitted use in a zoning district and still have requirements in the ordinance that must be met.

Ms. Verbeke noted West Bay stated they are in no hurry to get started; however, business plans can change and they may change their mind and want to get started sooner. She would be in support of a moratorium right now, because you never know what might happen tomorrow.

Mr. Beckerleg stated once an application has been submitted to DEQ it takes 60 to 90 days for a permit to be issued.

Mr. Burmeister asked if no work could begin until the permit has been issued.

Mr. Beckerleg stated no work can begin until a permit has been received from the Supervisor of Wells, of the DEQ and a City permit to remove trees. Based on the conversation with West Bay, they have not submitted an application to DEQ; however, it has not been verified. He felt West Bay appears to be a reputable group and West Bay gave a PowerPoint presentation that led City staff through their process.

Mr. Cohen explained this will be an approximately \$2 million investment to drill, with no guarantee of oil. The company is not going to rush into drilling and not have the proper permits; too much money is involved. West Bay has been working with Livonia, drilling under Schoolcraft College and gathering oil from under a neighborhood.

Mayor McDaniel stated he is confident with Staff's opinion that West Bay will not be moving on this anytime sooner than what they have expressed and he'd like to hold off on the moratorium to buy the City the extra time on the other end, an additional 180 days.

Resident stated Ann Arbor is adding Injection Wells to their ordinance.

Mr. Beckerleg, during his research, found Ann Arbor has an Environmental Committee and the only resolutions that are pending before this committee are in support of a more comprehensive State wide and Federal regulation of fracking. He found no evidence referencing injection wells in the minutes from Council meetings or the Environmental Committee.

A resident asked if there can be clarification for public land.

Mr. Beckerleg explained in the case of public land the City could simply decide not to approve a lease to allow an oil company to come in, but it could also be added to the Zoning Ordinance regulations.

A Leyland Court resident asked if a regulation on water could be implemented, these operations use an enormous amount of water and where will the water come from.

Mr. Beckerleg stated the Natural Resources and Environmental Protection Act, states it is the DEQ who regulates the prevention of waste and conservation.

Mr. Hughes stated as of November 25, 2013 there has not been a permit filed with the DEQ.

Mr. Lonier suggested people view the movie Gas Land, to get another perspective.

A resident asked what proximity is allowed for drilling near a school, since the church is also a k-12 school.

Ms. Verbeke stated 450 feet from a residential home, but only in communities with a population of 70,000 residents; this doesn't apply to Auburn Hills.

Mr. Beckerleg explained for a resident that fracking is a technique in which large quantities of water, mixed with chemicals are injected into the ground at a high amount of pressure to fracture the rocks off to release the oil and gas below.

Mr. Cohen explained drilling is similar to drilling a water well.

Mayor McDaniel stated everyone will have other chances to speak and ask questions at various public forums and thanked all for coming.

Mike Runk, Riverside Drive resident, asked if Mr. Beckerleg had read the pamphlet distributed by the oil companies. The difference between fracking and horizontal drilling is the chemicals being used.

12. CITY MANAGER'S REPORT

- Reminded all about the Tree Lighting downtown on Friday, December 6, at 6:00 p.m.
- He will be traveling to Washington D.C. on Thursday and be back on Friday.

13. ADJOURNMENT

The meeting adjourned at 9:18 pm.

Kevin R. McDaniel, Mayor

Terri Kowal, City Clerk

CITY OF AUBURN HILLS
RESOLUTION 13.12.225
APPROVING BROWNFIELD PLAN FOR
2150 Opdyke Road

At a regular meeting of the City Council of the City of Auburn Hills, Oakland County, Michigan, held in the Council Chambers at 1827 N. Squirrel Road, Auburn Hills, MI 48326 at 7:00 pm. On the 2nd day of December 2013;

The following resolution was offered by Council Member Knight and supported by Council Member Hammond:

WHEREAS, the City of Auburn Hills (the City) has created a Brownfield Redevelopment Authority (the Authority) pursuant to PA 381 of 1996, as amended (the Act); and

WHEREAS, the Authority met and considered the Brownfield plan submitted by NDA Auburn, LLC for the property consisting of parcel with Sidwell Number 14-14-176-007; and

WHEREAS, starting in January 2014, the tax identification numbers for the two parcels will be 02-14-14-176-011 and 02-14-14-176-012; and

WHEREAS, the Authority has reviewed the Brownfield plan in accordance with the Act; and

WHEREAS, the Authority, following review of the plan, unanimously approved the same and recommended approval to the City Council; and

WHEREAS, the notices required by the Act have been given; and

WHEREAS, The City Council, in accordance with the Act, met and conducted a public hearing on December 2, 2013 in order to review the plan; and

WHEREAS, during the public hearing conducted by the City Council on December 2, 2013, all persons, including the affected taxing jurisdictions, were allowed an opportunity to comment on the amended plan and present their view and recommendations.

NOW, THEREFORE, IT IS HEREBY RESOLVED by the Auburn Hills City Council that:

1. The City Council of the City of Auburn Hills hereby approves the Plan and determines that the Plan, in accordance with the Act constitutes a public purpose.
2. Furthermore, the Plan meets the requirements of Section 13 of the Act.
3. Furthermore, that the costs of eligible activities proposed are reasonable and necessary to carry out the purposes of the Act.

AYES: Mayor McDaniel, Mayor Pro Tem Kittle, Council Members Burmeister, Hammond, Knight, Mitchell, Verbeke

NAYS: None

ABSENT: None

ABSTENTIONS: None

Resolution 13.12.225 Approved (7-0)

STATE OF MICHIGAN)

)SS

COUNTY OF OAKLAND)

I, the undersigned, the duly appointed City Clerk for the City of Auburn Hills, Oakland County, Michigan do hereby certify that the foregoing is a true and complete copy of a resolution adopted at a regular meeting of the Auburn Hills City Council held on the 2nd day of December, 2013.

IN WITNESS WHEREOF, I have hereunto affixed my official signature on this 3rd day of December, 2013.

Terri Kowal, City Clerk