

## CITY OF FARMINGTON CLOSED SESSION

A closed session of the Farmington City Council was held on July 19, 2006 in Council Chambers, 23600 Liberty Street, Farmington, Michigan. Notice of the meeting was posted in compliance with Public Act 267-1976.

The session was called to order at 8:09 a.m. by Mayor McShane.

**COUNCIL MEMBERS PRESENT:** Buck, Knol, McShane, Sutherland, Wiggins.

**COUNCIL MEMBERS ABSENT:** None.

**CITY REPRESENTATIVES PRESENT:** Clerk Halberstadt, City Manager Pastue, Attorney Schultz.

Council met to review City Attorney Schultz's opinion regarding a pending Michigan Tax Tribunal case related to a special assessment on property owned by Kimco in the Downtown Center and issues related to an easement on the property.

City Manager Pastue advised that Kimco had agreed to withdraw from the "Memorandum of Understanding Regarding Downtown Farmington Center Park Lot" restrictions regarding parking south of the Pavilion. He stated his support for both the "Memorandum of Understanding" as amended and the Amendment to Easement Agreement.

Attorney Schultz stated that Council's agreement with the aforementioned documents provides a resolution to the MTT case, however, the City would assume assessment and maintenance for the park and pavilion, responsibility for future conversion of the park, would incur the 25-year no-build restriction and no further reduction of parking spaces.

Councilmember Knol stated that agreeing to a permanent "no further reduction of parking spaces" essentially means a *permanent* rather than *25-year* no-build clause because there is no way anything could be built without reducing parking spaces and Kimco does not recognize underground parking as equivalent to surface parking.

Pastue argued that the language in 1982 Easement Agreement stated that the city could not materially diminish parking spaces.

Schultz pointed out that at sometime in the future the City could condemn parking spaces in order to build a structure. He further pointed out that the agreement does not say no parking structure outside of the no-build zone.

Responding to a question, Schultz stated the easement agreement runs with the land and is not contingent on the owner.

Buck pointed out that if more stores move in Kimco will eventually want a parking structure. He stated there needs to be more walk-thrus to make the south side parking more accessible.

Responding to a question, Pastue stated that the Master Plan would be affected in terms of the actual site of a planned parking structure but a structure somewhere in the immediate surrounding area would be in keeping with the spirit of the plan.

Schultz stated that the Master Plan would not have to be immediately amended given that it is a 20-year plan.

Councilmember Sutherland stated that with regard to the no further reduction in parking spaces clause in the agreement Kimco does not state that underground parking or a parking structure would not be recognized as replacement spaces.

Schultz stated that the Memorandum of Understanding provides the same rights as the 1982 easement agreement. He further stated that one could argue that the agreement to not build a parking structure on one area is a concession that it could be done elsewhere.

Knol expressed concern that with these agreements, Kimco could still lease to a dollar store.

Discussion followed regarding Farmington's retail and parking situation compared to other cities.

Mayor McShane expressed her concern that Kimco is restricting the City's ability to take the City's shopping Center from a suburban center to an urban center with the new master plan.

Discussion followed regarding the provisions of anchor leases in other communities. Pastue noted that higher end retailers have more sophisticated demands and the City must make some accommodations to attract them.

Knol questioned why the City needs Office Depot to move into that space. She asked regarding subdividing the space and bring in other retailers such as Caribou Coffee and Hallmark. She noted other successful strip malls have only smaller retailers without a large anchor.

Wiggins noted the importance of bringing in a first rate national retailer. He stated this is the first step in building up the downtown.

McShane stated this is a very important time for downtown Farmington and its future direction.

Buck stated he was pleased Kimco conceded the pavilion parking restrictions. He stated that major retailers attempt to control their environment through their leases. He stated his belief that a parking structure will be built eventually somewhere in the downtown. He stated that because of Kimco's concessions he would support the agreements as amended.

Sutherland stated that probably most national retailers probably have the same sublease agreement. She further stated that the City needs to take a risk and start securing national stores. She advised that a national retailer would promote higher-end stores moving into the city. She stated her support for the agreements as amended.

Wiggins stated that the City has to have confidence in the direction it has taken with the pavilion, etc. He further stated that the momentum can be maintained with the addition of a national retailer.

Schultz advised that Office Depot would have an incentive to sublease to a business of equal quality to eliminate their obligation to pay the rent.

Knol stated that as a matter of policy she does not support the present agreement due to the sublease provision. She stated that the momentum could continue without Office Depot. She stated that she does not want to tie the hands of future Council members with this document. She

stated she could not give up 25 years of rights when there is no guarantee that a dollar store would not move into that location.

Buck noted that it is a fallacy that we have any control over downtown parking based on the 1982 easement agreement.

Pastue recognized Council's "toughness" in not agreeing to Kimco's earlier proposals and as a result the City was able to obtain a much better agreement.

Schultz noted that Council would be making two major concessions: inability to build a parking structure in the area designated and no reduction of parking spaces and in return obtaining the waiver and release of the MTT case. He expressed his belief that the no-build clause is necessary to secure Office Depot.

Buck expressed his belief that based on the Main Street Plan the parking structure would not have gone in front of Office Depot anyway. Pastue stated it was a mixed use area.

Responding to a question, Schultz stated that there are no comparable situations in other communities that would offer an answer.

McShane stated that the major point of contention is the sublease clause.

Knol expressed her wish that if the City agreed to the sublease assignment, there would be more room to negotiate the "no reduction in parking spaces" clause to provide more leeway in building a parking structure elsewhere. She stated philosophically she could not vote to give up city rights.

Sutherland stated this is a first step in making Farmington a first class city.

Discussion followed regarding the provisions of the 1982 Easement Agreement.

McShane stated she has been on the fence all the way through. She stated she has less problem with the sublease provision as a result of the reasoned comments made by Council and administration. She discussed the economic concerns of the surrounding area and the need to stay sharp to keep the City going. She stated she has less concern with the sublease because Kimco can ultimately lease to anyone.

McShane stated she would compromise and agree to the proposals as amended.

Closed session concluded at 9:10 a.m. with Council returning to open session.