



FINAL

SPECIAL MEETING MINUTES

A Special meeting of the Farmington City Council was held on January 27, 2015, in City Council Chambers, 23600 Liberty Street, Farmington, MI. Notice of the meeting was posted in compliance with Public Act 267-1976.

The meeting was called to order at 7:00 PM by Mayor William Galvin.

1. ROLL CALL

Attendee Name	Title	Status	Arrived
Greg Cowley	Councilmember	Present	
William Galvin	Mayor	Present	
JoAnne McShane	Councilmember	Present	
Steve Schneemann	Mayor Pro Tem	Present	
Jeff Scott	Councilmember	Present	

City Administration Present

Director Christiansen
City Clerk Halberstadt
City Manager Pastue
Attorney Schultz

2. APPROVAL OF AGENDA

Motion to approve the agenda as amended, adding a Closed Session as Item No. 3.

RESULT:	APPROVED AS AMENDED [UNANIMOUS]
MOVER:	JoAnne McShane, Councilmember
SECONDER:	Jeff Scott, Councilmember
AYES:	Cowley, Galvin, McShane, Schneemann, Scott

3. CLOSED SESSION

1. Motion to enter closed session to discuss City Attorney Confidential Correspondence

RESULT: **APPROVED [UNANIMOUS]**
MOVER: Greg Cowley, Councilmember
SECONDER: Jeff Scott, Councilmember
AYES: Cowley, Galvin, McShane, Schneemann, Scott

The votes were taken in the following order: Galvin, McShane, Schneemann, Scott, Cowley.

Council entered closed session at 7:05 PM.

2. Motion to exit closed session.

RESULT: **APPROVED [UNANIMOUS]**
MOVER: Jeff Scott, Councilmember
SECONDER: Greg Cowley, Councilmember
AYES: Cowley, Galvin, McShane, Schneemann, Scott

Council exited closed session at 7:25 PM

Council recessed the meeting at 7:26 PM

Council resumed the meeting at 7:38 PM

4. CONSIDERATION TO APPROVE KIMCO PLANNED UNIT DEVELOPMENT AGREEMENT

Present: Rob Nadler and Scott Tucker, Kimco Realty

Pastue expressed appreciation to the public for allowing Council to review an easement agreement in closed session that was discovered by the City Attorney late that afternoon. He advised the agreement has changed the position of City Administration regarding dialogue and disagreement with Kimco Realty regarding three properties on Orchard Street. He requested the City Attorney explain the easement agreement and the impact on discussions going forward.

Schultz stated one of the issues was a request from Kimco through Fresh Thyme to add restrictions on the Orchard Street parcels owned by the City. He advised the request was to include a restriction in both the Planned Unit Development (PUD) and Easement agreements, stating that the parcels would be maintained as parking lots by the City indefinitely or at least as long as there is a particular kind of use in the proposed site. He advised City Administration was reluctant to support or recommend this type of restriction.

Schultz stated as a result of conducting further research through the Register of Deeds it turns out the parcels are already encumbered through a 1988 Easement Agreement with Kimco's predecessor. This agreement requires the City to maintain

the lots as parking. He pointed out the agreement removes a significant issue in reaching an agreement with Kimco.

Pastue advised the City would like language removed from the proposed Easement Agreement referencing the Orchard parking since it is already encumbered.

Robert Nadler, Kimco Realty, stated the discovery of the 1988 Easement Agreement is good news to Kimco and Fresh Thyme because the lots on Orchard Street have been a significant point of contention. He would like to keep the language regarding the Orchard Street parking in the proposed Easement Agreement allowing employees, customers, etc. to cross over into those lots.

Nadler stated the only other open item is on Page 4, Section C, of the proposed Easement Agreement is where Kimco would like to keep the reference to the PUD restrictions in the agreement. He believes it is prudent for both the Developer and the City to state within the agreement that the City's right to alter the design of the parking lot is subject to the restrictions of the PUD. He believes it is important for the documents to marry up to each other.

Schultz stated a reference to the 1988 Easement Agreement can be included in the proposed Easement Agreement. He continued to recommend against including a reference to the PUD in the Easement Agreement. He pointed out the PUD has a termination provision. He stated someday the PUD Agreement may be terminated at which time the City would have to remember it is also included in the Easement Agreement. He does not believe it adds any protection for Kimco.

Nadler pointed out Fresh Thyme is requesting the PUD language in the Easement Agreement.

Schultz pointed out that if the restrictions Nadler has proposed in the PUD are terminated even by Kimco, those restrictions that are now terminated would remain in the Easement Agreement.

Nadler responded that is not accurate, if the PUD no longer exists, the City would no longer be subject to those restrictions.

Schultz stated at a minimum, language should be included that if the PUD terminates so do the restrictions.

Nadler agreed to the additional language suggested by Schultz.

Scott stated his understanding that a PUD agreement is an active document whereas an easement is a permanent document in which sections are more difficult

to modify or remove. He expressed concern that if the PUD is terminated those rights become mandated under the Easement Agreement. He is not comfortable marrying the two documents.

Schultz advised the City can accommodate Kimco's request by including additional language in the Easement Agreement that clarifies the PUD reference.

Responding to a question from McShane, Nadler stated Fresh Thyme is signing a 15-year lease with several options.

Responding to an additional question from McShane, Schultz confirmed that according to Kimco's proposal, if Fresh Thyme leaves prior to the term of the lease, the PUD restrictions would remain.

Nadler advised the PUD agreement is not meant to expire at any point in time. He noted there are restrictions in the PUD that would terminate if certain events occur.

Galvin asked what would happen to the Easement Agreement if the PUD was renegotiated at a future date. Schultz responded the Easement Agreement would need to be changed as well.

Nadler stated these are two separate documents. Kimco is simply requesting that a reference to the PUD be included in the Easement Agreement for the purposes of cross-reference only.

Schultz discussed the difficulty of placing a reference in the Easement Agreement because restrictions may change.

Responding to a question from McShane, Nadler stated Fresh Thyme wants the PUD reference in the Easement Agreement so that there is a clear understanding that the rights afforded in the Agreement are subject to the PUD restrictions. He has no problem if the City wants to add clarification language to the agreement.

Responding to an additional question from McShane, Schultz confirmed that based on the 1988 Easement Agreement the Orchard Street lots can never be developed unless the city finds comparable parking.

Christiansen provided a power point presentation on the proposed Planned Unit Development. He stated information is not representative of a final site plan.

Nadler pointed out that Kimco has volunteered to replace the unsightly storefronts with new ones by September 2016 even before tenants come on line.

Schneemann stated the proposed landscaping plan is handsome and functionally

adequate for the purposes of the proposed store. He pointed out over the years the city has worked hard to introduce some level of consistency in the aesthetic of the downtown paving and landscaping. He would like the proposed paving to be consistent with the design of what is already in place in other areas of the City.

Christiansen displayed exhibits that are part of the PUD agreement. He also discussed the truck circulation plan.

Galvin questioned the extent and treatment of the easement required to accommodate the truck well.

Schultz responded there is a reference yet-to-be created that will contain a metes and bounds description for the area where the truck well is in the right-of-way. There will also be a licensed agreement similar to the one for Grove Street as an attachment to the PUD. He stated the license will run with the building.

Pastue reviewed the "no build" area designated in the PUD Agreement and the opportunity for a parking structure in a specified area should redevelopment occur on Grand River.

Responding to a question from Scott, Schultz stated there is nothing in the agreement as to what constitutes redevelopment. He advised language should be added to the agreement specifying what represents redevelopment.

Christiansen reviewed designated parking for Fresh Thyme during the Farmers Market.

Pastue advised the Farmers Market will continue to occupy the same area, however, vendors will not be allowed to park on City property.

Cowley pointed out the improvements made to Riley Park were done in part to allow more vendors on the hardscape, moving them closer to Grand River.

Nadler stated his understanding that the hours of operation for the market will be 9:00-2:00PM, but recognizes that in addition there will be setup and take down time also needed.

Christiansen reviewed Founders Festival, Art on the Grand and Harvest Moon Festival footprints.

Pastue stated it is important to point out that within the PUD agreement the city is still able to have events in the park, but the activities will be limited within the footprint of the park area. He noted the agreement contains language that other

events expanding outside of the park area can be held with special approval from Kimco.

Discussion followed regarding the upgrades to the remainder of the Center.

Christiansen discussed the proposed construction staging areas.

Pastue advised language will be included in the agreement stating Kimco will be responsible for contracting the work. The City will include its own set of protections.

Pastue advised City Administration is comfortable with the terms of the PUD agreement.

McShane expressed disappointment that there will be no cut-thru in the Center to access the south parking lots. She is uncomfortable giving unfavorable rights to City parking that have never been given to any other business in the downtown. She is concerned about losing control of future projects and downtown events. She is seeking to find a way to get to "yes" on the project. She expressed concern regarding what will come after Fresh Thyme should they leave the City. She does not want to see a dark building for years to come with no opportunity for redevelopment.

Cowley stated he is seeking to simplify the conversation, but understands this decision will stand for 30+ years. He discussed the parking that was lost when the pavilion was built. He further discussed the parking issue throughout downtown and Council's responsibility to own it. He does not believe the City is giving up any significant rights in this agreement. He read a letter from Fresh Thyme expressing their concern regarding parking in the Center. He stated the fact that Fresh Thyme chose Farmington is a key element in this conversation. He further stated for Council to pass on this opportunity would be a travesty.

Scott read a statement expressing his opposition to the proposed development based on a number of reasons: it does not meet the City's Vision Plan; requested restrictions on city property; lack of cooperation from Kimco in refusing to put in a cut-thru in the Center to access the south parking lot; foregoing other opportunities for the Center; and hamstringing future events in the city. He does not believe the positives of the project outweigh the negatives.

McShane noted that at a recent meeting the Market Master indicated 75,000 people visited the market this past year, with 4,000 visiting on any given Saturday. She advised the Public Safety Director indicated there has never been a parking problem related to this event. She agreed that a strategic plan regarding

downtown parking needs to be developed. However there is disagreement on whether or not there is sufficient parking in the downtown.

McShane read a statement expressing her opposition to the proposed PUD Agreement as presented. She believes Kimco, owner of the building, wants to enact harsh and stringent regulations for our City and take away our ability to build our vision and our dreams. She believes their demands are unreasonable and subversive. She further believes placing permanent and encumbered restrictions on public owned property is taking away the sovereign rights of the City and ties the hands of future City Councils and DDA boards. She would like the City to keep to its standards and not let any big business create their own master plan while throwing the City's to the curb. She believes the city has given this project the time, energy, and willingness to negotiate.

Responding to a question from Schneemann, Nadler stated the south lots are designated public parking and can be used by anyone, not just Fresh Thyme employees and patrons.

Responding to an additional question from Schneemann, Schultz stated the PUD agreement runs with the property as long as it is occupied by qualified a user.

Nadler expressed his belief the City is not giving up rights under the agreement that are not already in place. He pointed out Kimco has agreed to every event the city has requested. He stated if the City wants the Center and downtown to be reinvigorated with a Class A specialty grocery store then there needs to be some flexibility on the part of the City in terms of the restrictions.

Schultz pointed out Nadler would not be asking for all of the restrictions in the agreement if he thought they were already in the underlying easement. He advised what the underlying easement actually states is the City has the right to alter the design on City property and has the right to appropriate portions of it to different use as long as it does not materially diminish ingress, egress and parking. He advised this is a lot broader and susceptible to a lot more discussion with Kimco than what is being proposed.

Schultz reviewed a number of concerns with the proposed PUD Agreement.

Section C. Schultz confirmed a reference to the 1988 Agreement would replace the last sentence of this section concerning easement for the Orchard Street parcels. Nadler advised a reference to the 1988 Agreement is acceptable with an affirmative statement Kimco has an easement over those areas.

Section VI. Schultz advised this contemplates that the city will do the work using

Kimco's contractors. He advised it will be decided administratively if it makes more sense to have the language state the City will give Kimco a license.

Nadler and Pastue concurred that this approach makes more sense.

Schultz suggested the city consider removing the language regarding parcels south of Orchard Street. He proposed instead to add language regarding the 1988 Easement Agreement.

Schultz stated the question before Council is whether the City will continue to maintain the front City lots. He pointed out the city has also maintained the Orchard Street lots. He recommended placing language in the agreement regarding who will maintain the lots going forward.

Pastue clarified maintenance refers to surface maintenance of the lots, not the dumpsters, grease pits, etc.

Nadler pointed out anything over \$20K is considered a capital expense and can be amortized and charged back to Kimco.

Schultz pointed out the 1988 Agreement states the owner of the Center will maintain the Orchard Street lots.

Section VIII. Schultz stated the issue is "leased" vs. "Fully occupied." He pointed out that according to the agreement a store that "qualifies" can go "dark" but still be under lease.

Nadler stated the rationale between "leased" and "occupied" is that in the majority of anchor leases signed today there is a commitment they will open for business, but there is no obligation that they will continue to operate their business. The retailer wants the protection that if it is less costly for them to shut down than to operate they have the right to go dark. However, they are still contractually obligated to pay the rent.

Nadler stated Kimco would be in default of its lease if Fresh Thyme comes in, closes 3 years later and then decides to reopen in year 6, but the restrictions are no longer in place.

Galvin noted the City has had 5-7 years of vacancies because of the Kimco business model.

Scott suggested a scenario where sometime down the road Fresh Thyme finds another nearby location more suitable for its business, moves to that site, but

keeps the Center location dark in order to protect its trade area.

Nadler stated Kimco is unable to agree to replace "occupy" with "leased."

Schultz pointed out Kimco has requested the term "occupy" be applied to not only the Fresh Thyme lease, but also to successor users, but more importantly a potential business totally unrelated to a grocery use. He stated it appears this is a request Kimco is making on its own behalf and not that of Fresh Thyme.

Nadler advised this issue was resolved in earlier negotiations with the City, meaning this agreement is not only tied to Fresh Thyme but its successors. He stated if this agreement is tied solely to Fresh Thyme then Kimco will withdraw its proposal. He stated Kimco is not going to invest millions of dollars unless it has the ability to re-lease the space with similar type restrictions that will allow the retailer to do business.

Schultz raised the question of what constitutes "redevelopment" that would trigger the right to build a parking structure. He recommended adding language that clarifies this issue.

Nadler stated any portion of the "redevelopment area" on Grand River would trigger the right to build a parking structure.

Schultz confirmed with Nadler that in the final paragraph of Section VIII, the phrase "the City shall have the right to develop City Parcels A, B and C" be removed.

Responding to a question from McShane, Nadler stated Kimco would agree to a parking structure in the south parking lot.

Nadler stated Kimco would allow the three parcels on Orchard Street to be developed provided the same number of comparable parking spaces is found. He stated their concern is the number of parking spaces available for patrons.

Section IX. Schultz recommended removing or revising with broader language concerning the provision of a written schedule of events to Kimco.

Discussion followed regarding the number of ways Fresh Thyme can be informed of the events.

Schultz recommended removing the second to the last sentence, "No other events may take place in the parking lot without the prior written consent of Developer and any tenants that may have approval rights in their leases". He stated this sentence does nothing for Kimco, but rather it muddies the clear language of previous two paragraphs regarding use of the City park, pavilion area and parking lot.

Nadler stated Fresh Thyme agreed to the 5 events during the year, but does not want the city to have carte blanche in holding events in front of their store.

Schultz stated the 5 events are outlined in the agreement, but the city wants to make clear that doesn't affect using the park and pavilion for other events. He suggested this can be clarified at a later time.

Schneemann stated he does not believe the restrictions included in the PUD are overly onerous or above and beyond by which the city is already encumbered. He noted the agreement provides for the five major events in the city. He further noted the agreement allows for a parking structure in the north lot should redevelopment occur on Grand River. He recognized the desire of the proponent to have adequate parking.

A. Consideration to Deny the Kimco Planned Unit Development Agreement

RESULT:	DEFEATED [2 TO 3]
MOVER:	Jeff Scott, Councilmember
SECONDER:	JoAnne McShane, Councilmember
AYES:	JoAnne McShane, Jeff Scott
NAYS:	Greg Cowley, William Galvin, Steve Schneemann

Motion to deny Planned Unit Development Concept Plan and PUD Agreement with Kimco Farmington 146, Inc., for demolition and reconstruction of a retail building area and realignment of City-owned parking area adjacent thereto because the project does not meet the eligibility requirements of a PUD development under Section 35-132, as the proposed improvements do not rise to the level of a "recognizable benefit," because (1) the redevelopment is only to a portion of the building; (2) the beneficial impact of the parking lot improvements on the existing parking area is minimal; and (3) the other potential qualifying elements for recognizable benefit are inapplicable. In addition, the proposed PUD Concept Plan and PUD Agreement as required by the applicant require the City to agree to substantial new limitations on the City's use of City-owned property that do not now exist and are not in the interest of the City, including, but not limited to, new restrictions on the improvement, redevelopment, or realignment of the existing City parking lot in front of the Kimco building; new restrictions on the City's use of the City-owned parking lot in front of the Kimco building that do not currently exist; and new restrictions on the use, redevelopment, or sale of City properties south of Orchard Street. As a result of this denial, there is no need to amend the existing Easement Agreement relating to the City parking lot. Motion Failed. (2 Ayes, 3 Nays).

B. Consideration to Approve the Kimco Planned Unit Development Agreement

RESULT: **APPROVED [3 TO 2]**
MOVER: Greg Cowley, Councilmember
SECONDER: Steve Schneemann, Mayor Pro Tem
AYES: Greg Cowley, William Galvin, Steve Schneemann
NAYS: JoAnne McShane, Jeff Scott

Schultz advised the draft motion before Council is to approve the Kimco version of the PUD Agreement with some suggested changes including those based on discussion during the meeting.

Schultz reviewed suggested changes to both the PUD and Easement agreements.

Nadler stated in addition to inserting the language regarding the 1988 Agreement, Kimco would also like an affirmative statement that it will include easement rights, not just a deed restriction that it must be public parking, but that they have an easement right over it.

Schultz stated the language will refer to the 1988 Agreement that will confirm that all your people have a right to park there.

Galvin expressed his opposition to placing a reference to the PUD in the Easement Agreement.

Nadler advised the tenant is requesting language included in the Easement Agreement that it is subject to the PUD restrictions.

Schultz concurred adding the PUD reference to the Easement Agreement would not be putting the City at any risk.

Galvin advised the issue of when the new restrictions lapse/terminate, i.e. occupancy vs. Lease, is still an open item.

Cowley advised allowing the restrictions to run with the term of the lease rather than occupancy is the price to pay to secure a destination business for Farmington. He stated it is an industry standard that is difficult to change.

Schneemann stated he looks at that building today and it is currently dark. He pointed out both the north and south parking lots are already encumbered. He stated the PUD adds relatively minor clarifications and tweaks to encumbrances we already have.

Scott asked whether Fresh Thyme would have the option to renew their lease if they vacated their space early. He again expressed his concern that Fresh Thyme would allow that site to stay dark in order to protect the trade area.

Nadler expressed his belief this is a very low risk because the tenant is unlikely able to afford the cost involved in maintaining an empty site. He stated if they left the most likely scenario is they would buy out their lease or another tenant would be found.

Schultz confirmed that the proposed agreement states anytime it is subject to lease the restrictions would be in place.

Responding to a question from Galvin, Nadler confirmed the PUD Agreement, as proposed, will make the property more marketable in the future. He stated all that the restrictions are saying is the City is not going to charge for parking and it will not put a structure in the one little area.

Motion to conditionally approve Planned Unit Development Concept Plan and PUD Agreement with Kimco Farmington 146, Inc., for demolition and reconstruction of a retail building area and realignment of City-owned parking area adjacent thereto, because the project meets the eligibility requirements of a Planned Unit Development as a result of its redevelopment of a portion of an older building that, when redeveloped, will better contribute to the vibrancy of downtown Farmington; its improvement of the City parking lot adjacent to the new building area; and its mitigation of existing issues relating to truck circulation, parking, and future traffic circulation within the downtown. Approval is subject to the following conditions:

- a. **Approval of the following amendments to the PUD Agreement, to be incorporated and completed administratively by the City Manager and City Attorney following notice to the City Council, with the PUD Agreement to be signed only if the City Manager and City Attorney determine that the revised PUD Agreement complies with the statements of the City Council at this meeting:**
 - i. **Add a reference to the 1988 Easement Agreement in place of requirement of the requested easement over Orchard Street parcels.**
 - ii. **Finalize language regarding construction of parking lot improvements.**
 - iii. **Add insurance and maintenance responsibilities for the Orchard Street parcels.**
 - iv. **Remove the requirement for a yearly "schedule of events."**
 - v. **Remove the statement that "no other events may take place in the parking lot..." as redundant.**
 - vi. **Final review and approval of all legal descriptions.**
 - vii. **Final review and approval of all exhibits.**
 - viii. **Make all changes agreed to by Kimco as reflected in the minutes of the January 27, 2015 Council meeting**
 - ix. **Add a statement that the City may build a parking facility in the Permissible Building Area if redevelopment occurs in "any portion" of the Redevelopment Area shown in Exhibit G.**
- b. **Final site plan by the Farmington Planning Commission that incorporates all requirements of the PUD Agreement, as revised.**

Nadler requested clarification on striking the phrase in the agreement "no other

events may take place in the parking lot.”

Schultz responded other events would be allowed as long as ingress and egress access and parking spaces are not closed.

The votes were taken in the following order: Schneemann, Scott, Cowley, Galvin, McShane.

C. Consideration to Approve the Easement Agreement

RESULT:	APPROVED [3 TO 2]
MOVER:	Greg Cowley, Councilmember
SECONDER:	Steve Schneemann, Mayor Pro Tem
AYES:	Greg Cowley, William Galvin, Steve Schneemann
NAYS:	JoAnne McShane, Jeff Scott

Motion to conditionally approve the Easement Agreement, subject to the following:

- a. **Include reference to the 1988 Easement Agreement in place of any references to an easement over the Orchard Street parcels.**
- b. **Revise reference to the PUD Agreement in the Easement Agreement in Paragraph 1(c) to clarify the fact that the easement is subject to the PUD Agreement only as long as the PUD remains in effect.**
- c. **Addition of the phrase "parking spaces" in Paragraph 1(c) of the Easement Agreement.**
- d. **Approval of final site plan, exhibits, and language by City Administration.**
- e. **The Easement Agreement will be signed, effective, and recorded only upon signing the PUD Agreement and final site plan approval and satisfaction of any conditions thereto.**

The votes were taken in the following order: Scott, Cowley, Galvin, McShane, Schneemann.

5. PUBLIC COMMENT

Annette Knowles, Assistant to the City Manager, stated the approval of Fresh Thyme provides the opportunity for the City to re-engage Kimco as a partner and not an adversary.

Dan Irvin, Executive Director of the Chamber of Commerce Director, thanked Kimco for working with the Chamber regarding the Founders Festival.

Melissa Andrade, 22469 Maple, commended the Mayor for an excellent job mediating the meeting.

6. COUNCIL COMMENT

McShane wished Kimco success with this project. She hopes all goes well and is looking forward to the success of Fresh Thyme. She will work with Kimco towards that end.

Schneemann stated he would like to dovetail on the comments made earlier by Ms. Knowles with regard to Kimco. He stated as a longtime resident he has always had dreams of what Farmington could become. He would love to see multi-story, mixed-use, but that is not who we are right now. He stated what we do have is a property owner who is willing to invest significant dollars in the downtown and to bring in a use for which residents have expressed strong support. He too sees this as a “reset” in the City’s relationship with downtown property owners. He looks forward to what we might do together in the future.

Cowley stated this is a big win for the City. He stated a specialty grocer was near or at the top of the list of the type of business the residents want to see in the downtown. He hopes this moves the conversation forward regarding parking.

Scott wished Kimco good luck with this project. He is looking forward to Fresh Thyme being in the downtown. He knows some of what he was asking for was a bit much, but he was fighting for the vision of the citizens. He will work to make this business a success.

Galvin congratulated Farmington on this achievement. He thanked fellow councilmembers for their input and discussion. He is not concerned about the issue of events in the downtown. He thinks there is an opportunity to grow events and grow the downtown as well. He was pleased to see that Fresh Thyme wants an active role in the community. He pointed out citizens wanted a destination grocery store in the downtown. He thanked all parties involved in moving this project forward.

7. ADJOURNMENT

1. Motion to adjourn the meeting.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Steve Schneemann, Mayor Pro Tem
SECONDER:	Greg Cowley, Councilmember
AYES:	Cowley, Galvin, McShane, Schneemann, Scott

The meeting adjourned at 10:44 PM.

William E. Galvin, Mayor

Susan K. Halberstadt, City Clerk

Approval Date: _____