

**CITY of NOVI CITY COUNCIL**

**Agenda Item F  
March 23, 2009**

**SUBJECT:** Acceptance of a Conservation Easement from Eden Gardens, LLC for the Evergreen Estates residential site condominium, located on the north side of Nine Mile Road between Garfield and Napier Roads, in Section 30. The easement covers a total of 3.66 acres of the 13.2 acre site.

**SUBMITTING DEPARTMENT:** Community Development Department - Planning *Burke*

**CITY MANAGER APPROVAL:** *[Signature]*

**BACKGROUND INFORMATION:**

Evergreen Estates is a seven unit residential site condominium on the north side of Nine Mile Road, between Garfield and Napier Roads in Section 20. The Planning Commission approved the Preliminary Site Plan, SP04-42 on July 13, 2005 with the proposed conservation easement for wetland and woodland conservation. Final Site Plan approval was granted administratively by the Planning Department on September 18, 2006.

The attached Exhibit B depicts the two areas being preserved. The easement covers 3.66 acres, which amounts to approximately 27.7 percent of the 13.2 acre site. There are a substantial amount of woodlands and wetlands that will fall within the easement.

The easement has been reviewed by the City's professional staff and consultants and is currently in a form acceptable to the City Attorney's office for approval by the City Council.

**RECOMMENDED ACTION:** Acceptance of a Conservation Easement from Eden Gardens, LLC for the Evergreen Estates residential site condominium, located on the north side of Nine Mile Road between Garfield and Napier Roads, in Section 30. The easement covers a total of 3.66 acres of the 13.2 acre site.

	1	2	Y	N
Mayor Landry				
Mayor Pro Tem Gatt				
Council Member Burke				
Council Member Crawford				

	1	2	Y	N
Council Member Margolis				
Council Member Mutch				
Council Member Staudt				

**City Attorney Review Letter**

September 26, 2007

30903 Northwestern Highway  
P.O. Box 3040  
Farmington Hills, MI 48333-3040  
Tel: 248-851-9500  
Fax: 248-851-2158  
www.secretwardle.com

Elizabeth M. Kudla  
Direct: 248-539-2846  
bkudla@secretwardle.com

Barbara McBeth, Planning Director  
CITY OF NOVI  
45175 West Ten Mile Road  
Novi, Michigan 48375

**Re: Evergreen Estates of Novi  
Conservation Easement  
Our File No. 660089 NOVI**

Dear Ms. McBeth:

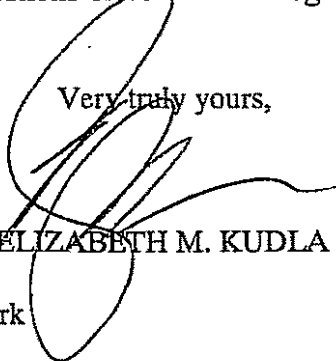
We have received and reviewed the revised Conservation Easement for the Evergreen Estates of Novi Condominium Development. All comments set forth in our July 7, 2006 review letter have been addressed.

Mark Spencer has suggested removing the reference to the Parcel ID number on Exhibit A since it was eliminated once the condominium was recorded with the County. We have no objections to this modification to Exhibit A.

Subject to the above comment, and any additional comments that may be made by the City's woodland and wetland consultants, we approve the form and content of the Conservation Easement. Once the Exhibit A is revised, and any additional comments addressed, the Conservation Easement may be executed and placed on an upcoming City Council Agenda for acceptance.

Should you have any questions or concerns in regard to the above issues, please feel free to contact us:

Very truly yours,

  
ELIZABETH M. KUDLA

EMK

C: Maryanne Cornelius, Clerk  
Mark Spencer, Planner  
John Freeland, ECT Environmental  
David Beschke, Landscape Architect  
Partha Chakravarti  
Thomas R. Schultz, Esquire

C:\Nrp\Portb\manage\BKUDLA\840348\_2.DOC

## Conservation Easement and Exhibits

## CONSERVATION EASEMENT

THIS CONSERVATION EASEMENT is made this \_\_\_\_\_ day of \_\_\_\_\_, 2007, by and between Eden Garden, LLC whose address is 24777 Naples Drive, Novi, MI 48374 (hereinafter the "Grantor"), and the City of Novi, and its successors or assigns, whose address is 45175 W. Ten Mile Road, Novi, MI 48375, (hereinafter the "Grantee").

### RECITATIONS:

- A. Grantor owns a certain parcel of land situated in Section 30 of the City of Novi, Oakland County, Michigan, described in Exhibit A, attached hereto and made a part hereof (the "Property"). Grantor has received final site plan approval for construction of a condominium development on the Property, subject to provision of an appropriate easement to permanently protect the woodlands as well as wetlands thereon from destruction or disturbance. Grantor desires to grant such an easement in order to protect the area.
- B. The Conservation Easement Areas (the "Easement Areas") situated on the Property are more particularly described on Exhibit B, attached hereto and made a part hereof, the second page of which contains a drawing depicting the protected area.

NOW, THEREFORE, in consideration of the sum of One Dollar (\$1.00), in hand paid, the receipt and adequacy of which are hereby acknowledged, Grantor hereby reserves, conveys and grants the following Conservation Easement, which shall be binding upon the Grantor, the City, and their respective heirs, successors, assigns and/or transferees. This Conservation Easement is dedicated pursuant to Subpart 11 of Part 21 of the Natural Resources and Environmental Protection Act being MCL 324.2140, et. seq., upon the terms and conditions set forth herein as follows:

1. The purpose of this Conservation Easement is to protect the woodlands and wetlands, as shown on the attached and incorporated Exhibit B. The subject areas shall be perpetually preserved and maintained, in their natural and undeveloped condition, unless authorized by permit from the City, and, if applicable, the Michigan Department of Environmental Quality and the appropriate federal agency.
2. Except for and subject to the activities which have been expressly authorized by permit, there shall be no disturbance of the woodlands, wetlands and/or vegetation, including, but not limited to, replacement trees within the Easement Areas, including altering the topography of; placing fill material in; dredging, removing or excavating soil, minerals, or trees, and from constructing or placing any structures on; draining surface water from; or plowing, tilling, cultivating, or otherwise altering or developing, and/or constructing, operating, or maintaining any use or development in the Easement Area.
3. No grass or other vegetation shall be planted in the Easement Areas with the exception of plantings approved, in advance, by the City in accordance with all applicable laws and ordinances.
4. This Conservation Easement does not grant or convey to Grantee, or any member of the general public, any right of ownership, possession or use of the Easement Area, except that, upon reasonable written notice to Grantor, Grantee and its authorized employees and agents (collectively, "Grantee's Representatives") may enter upon and inspect the Easement Area to determine whether the Easement Area is being maintained in compliance with the terms of the Conservation Easement.
5. In the event that the Grantor shall at any time fail to carry out the responsibilities specified within this Document, and/or in the event of a failure to preserve and/or maintain the wetland areas and/or protected woodlands in reasonable order and condition, the City may serve written notice upon the Grantor, setting forth the deficiencies in maintenance and/or preservation. Notice shall also set forth a demand that the deficiencies be cured within a stated reasonable time period, and the date, time and place of the hearing before the City Council, or such other Council, body or official delegated by the City Council for the purpose of allowing the Grantor to be heard as to why the City should not proceed with the maintenance and/or preservation which has not been undertaken. At the hearing, the time for curing the deficiencies and the hearing itself may be extended and/or continued to a date certain. If, following the hearing, the City Council, or other body or official designated to conduct the hearing, shall determine that maintenance and/or preservation have not been undertaken within the time specified in the notice, the City shall

thereupon have the power and authority, but not the obligation, to enter upon the property, or cause its agents or contractors to enter upon the property and perform such maintenance and/or preservation as reasonably found by the City to be appropriate. The cost and expense of making and financing such maintenance and/or preservation, including the cost of notices by the City and reasonable legal fees incurred by the City, plus an administrative fee in the amount of 25% of the total of all costs and expenses incurred, shall be paid by the Grantor, and such amount shall constitute a lien on an equal pro rata basis as to all of the lots on the property. The City may require the payment of such monies prior to the commencement of work. If such costs and expenses have not been paid within 30 days of a billing to the Grantor, all unpaid amounts may be placed on the delinquent tax roll of the City, pro rata, as to each lot, and shall accrue interest and penalties, and be collected as and deemed delinquent real property taxes, according to the laws made and provided for the collection of delinquent real property taxes. In the discretion of the City, such costs and expenses may be collected by suit initiated against the grantor and, in such event, the Grantor shall pay all court costs and reasonable attorney fees incurred by the City in connection with such suit.

6. Within 90 days after the Conservation Easement shall have been recorded, Grantor, at its sole expense, shall place such signs defining the boundaries of the Easement Area and describing its protected purpose, as indicated herein.

7. This Conservation Easement has been made and given for a consideration of a value less than One Hundred (\$100.00) Dollars and, accordingly, is (i) exempt from the State Transfer Tax, pursuant to MSA 7.456(26)(2) and (ii) exempt from the County Transfer Tax; pursuant to MSA 7.456(5)(a).

8. Grantor shall state, acknowledge and/or disclose the existence of this Conservation Easement on legal instruments used to convey an interest in the property.

IN WITNESS WHEREOF, Grantor and Grantee have executed the Conservation Easement as of the day and year first above set forth.

(Grantor)  
Eden Garden, LLC  
A Michigan Limited Liability Company  
By: [Signature]  
Its: PARTNER  
PARTHA CHAKRAVARTTI

STATE OF MICHIGAN }  
COUNTY OF OAKLAND } SS

The foregoing instrument was acknowledged before me this 11 day of March 2007, by, Partha Chakravarti, on behalf of the City of Novi, a Municipal Corporation.

Juanita E. Freeman  
Notary Public  
Oakland County, Michigan  
My Commission Expires: 11/25/2012

JUANITA E. FREEMAN  
NOTARY PUBLIC, STATE OF MI  
COUNTY OF LIVINGSTON  
MY COMMISSION EXPIRES Nov 25, 2012  
ACTING IN COUNTY OF Oakland

(Grantee)  
CITY OF NOVI  
A Municipal Corporation

By: \_\_\_\_\_  
Its: \_\_\_\_\_

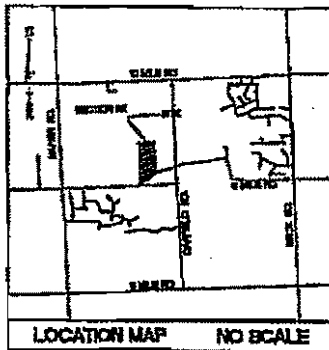
STATE OF MICHIGAN        )  
                                  ) ss  
COUNTY OF OAKLAND     )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_ 2007, by,  
\_\_\_\_\_, on behalf of the City of Novi, a Municipal Corporation.

\_\_\_\_\_  
Notary Public  
Oakland County, Michigan  
My Commission Expires: \_\_\_\_\_

Drafted by:  
Elizabeth M. Kudla  
30903 Northwestern Highway  
PO Box 3040  
Farmington Hills, MI 48333-3040

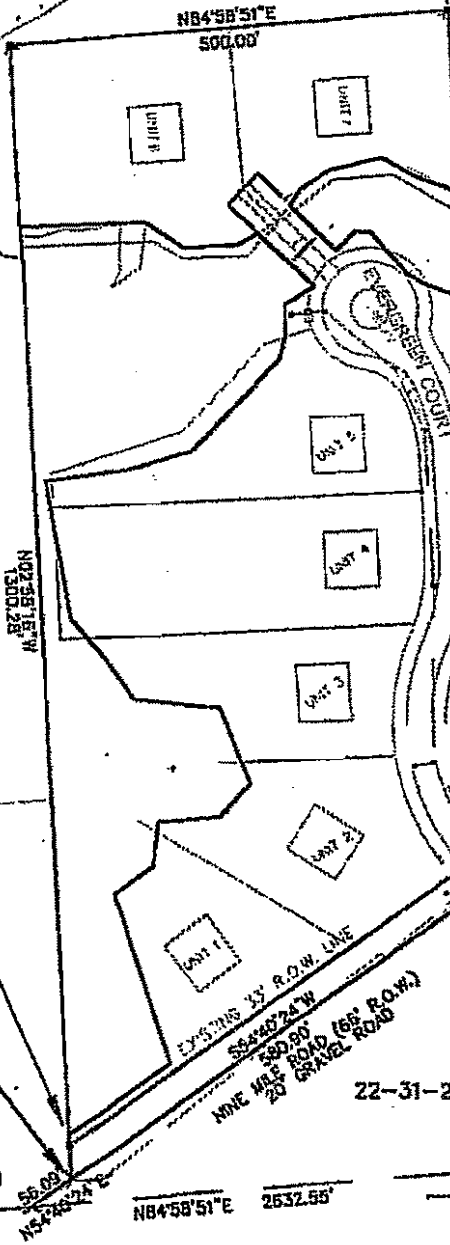
When recorded return to:  
Maryanne Cornelius, Clerk  
City of Novi  
45175 W. Ten Mile Road  
Novi, MI 48375



# EXHIBIT "A" EVERGREEN ESTATES

RESIDENTIAL SITE CONDOMINIUMS  
SECTION 30, T1N, R1E, MI, MICHIGAN

22-30-401-014



22-30-401-023

22-30-401-014

22-30-401-017

POINT OF BEGINNING  
CONSERVATION EASEMENT #1  
22-30-401-021

POINT OF BEGINNING  
CONDOMINIUM BOUNDARY

SOUTHEAST CORNER  
OF SECTION 30, T.1N., R.1E.,  
CITY OF NOVI, OAKLAND CO., MI.  
L.C.R.C. LIBER 18874, PAGE 168  
OAKLAND COUNTY RECORDS.

SOUTHEAST CORNER  
OF SECTION 30, T.1N., R.1E.,  
CITY OF NOVI, OAKLAND CO., MI.  
L.C.R.C. LIBER 18874, PAGE 185  
OAKLAND COUNTY RECORDS.

NINE MILE ROAD (66' R.O.W.)  
NB4°58'51"E 788.86'

NB4°58'51"E 2632.55'

A PART OF THE W 1/2 OF THE SE 1/4 OF SECTION 30, T.1N., R.1E.,  
CITY OF NOVI, OAKLAND COUNTY, MICHIGAN, BEING MORE PARTICULARLY  
DESCRIBED AS FOLLOWS:

BEGINNING AT THE S 1/4 CORNER OF SECTION 30; THENCE NB4°58'51"E  
788.86 FEET ALONG THE SOUTH LINE OF SECTION 30 AND THE  
CENTERLINE OF NINE MILE ROAD; THENCE N54°40'24"E ALONG THE  
CENTERLINE OF NINE MILE ROAD 58.09 FEET TO THE POINT OF  
BEGINNING; THENCE N02°58'18"W 1300.28 FEET; THENCE NB4°58'51"E  
500.00 FEET; THENCE S02°58'18"E 1000.00 FEET TO THE CENTERLINE OF  
NINE MILE ROAD; THENCE S48°01'20"W ALONG CENTERLINE 11.52 FEET;  
THENCE S64°40'24"W ALONG CENTERLINE OF NINE MILE ROAD 580.90 FEET  
TO POINT OF BEGINNING. CONTAINING 13.20 ACRES AND BEING SUBJECT  
TO THE RIGHTS OF THE PUBLIC IN EXISTING NINE MILE ROAD.

**LEGEND**

- FOUND IRON
- FOUND CONC. MONUMENT
- SET CAPPED IRON #24598

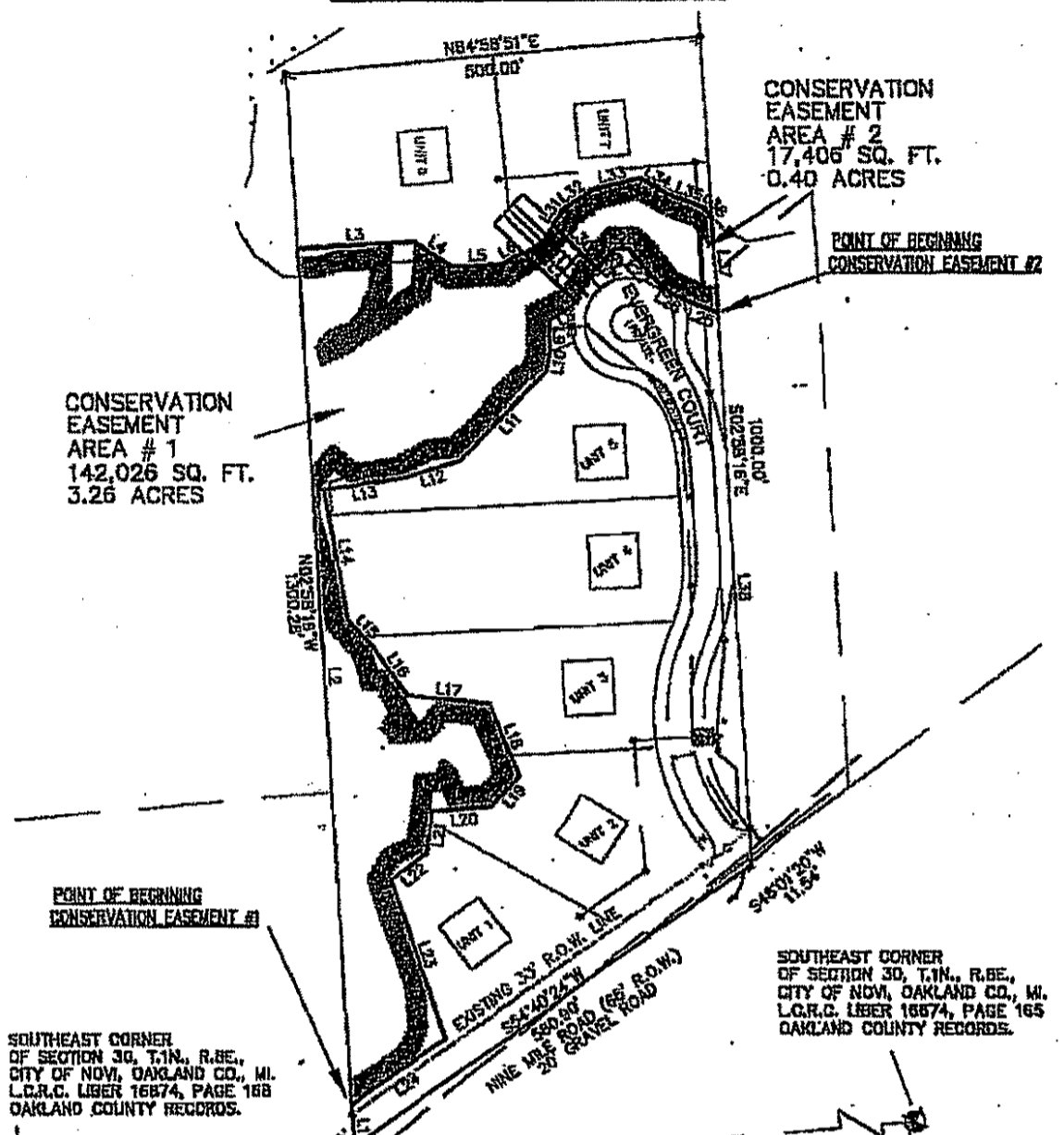
BEARINGS BASED ON:  
GRID BEARING - NAD 83  
(1986 SPC. MI. SOUTH ZONE)

OWNER:  
EDEN GARDEN L.L.C.,  
A MICHIGAN LIMITED LIABILITY COMPANY  
24777 NAPLES DRIVE  
NOVI, MI. 48874

<b>J&amp;K</b> <small>INCORPORATED IN MICHIGAN</small>		<b>J&amp;K &amp; ASSOCIATES, INC.</b> CONSULTING ENGINEERS NOVI, MICH. PH. NO. (248) 348-2680	
<b>EVERGREEN ESTATES</b> EXHIBIT "A"			
EDEN GARDEN L.L.C., A MICHIGAN LIMITED LIABILITY COMPANY 22-30-401-022			
Drawn <u>YGR</u>	Date <u>6-28-06</u>	Scale <u>1"= 200'</u>	Job No. <u>09074</u>
Designed <u>TM</u>			Sheet No. <u>1</u>
Checked <u>J&amp;K</u>			



**EXHIBIT "B"**  
**EVERGREEN ESTATES**  
 RESIDENTIAL SITE CONDOMINIUMS  
 SECTION 30, NOV, MICHIGAN  
**CONSERVATION EASEMENT**



CONSERVATION EASEMENT AREA # 1  
 142,026 SQ. FT.  
 3.26 ACRES

CONSERVATION EASEMENT AREA # 2  
 17,406 SQ. FT.  
 0.40 ACRES

POINT OF BEGINNING CONSERVATION EASEMENT #2

POINT OF BEGINNING CONSERVATION EASEMENT #1

SOUTHEAST CORNER OF SECTION 30, T.1N., R.8E., CITY OF NOV, OAKLAND CO., MI. L.C.R.C. LIBER 16874, PAGE 168 OAKLAND COUNTY RECORDS.

SOUTHEAST CORNER OF SECTION 30, T.1N., R.8E., CITY OF NOV, OAKLAND CO., MI. L.C.R.C. LIBER 16874, PAGE 165 OAKLAND COUNTY RECORDS.

NINE MILE ROAD (68' R.O.W.) NB4°58'51"E 788.88'

LINE	LENGTH	BEARING
	788.88	N84°58'51"W
	56.09	N54°40'24"E
L1	58.50	N02°58'18"W
POINT OF BEGINNING CONSERVATION EASEMENT #1		
L2	1038.78	N02°58'18"W
L3	740.84	N88°02'37"E
L4	84.48	S57°03'19"E
L5	81.47	N87°30'12"E
L6	28.88	N87°00'41"E
L7	88.22	S48°13'81"E
L8	38.44	S55°41'00"W
L9	38.58	S81°18'18"E
L10	74.84	S11°28'58"W
L11	147.31	S43°57'02"W
L12	78.30	S77°44'30"W
L13	84.08	S81°22'04"W
L14	188.78	S10°10'02"E
L15	44.42	S40°22'48"E
L16	72.12	S59°10'01"E
L17	88.82	S84°10'08"E
L18	84.18	S72°35'41"E
L19	51.11	S43°19'58"W
L20	70.49	S65°24'13"W
L21	81.92	S87°26'18"W
L22	44.83	S57°44'10"W
L23	201.35	S18°39'47"E
L24	140.88	S54°40'24"E

LINE	LENGTH	BEARING
	788.88	N84°58'51"W
	88.09	N54°40'24"E
	88.09	N54°40'24"E
L25	687.20	N02°58'18"W
POINT OF BEGINNING CONSERVATION EASEMENT #2		
L26	48.75	N70°54'40"W
L27	20.44	N88°22'28"W
L28	84.33	N40°58'28"W
L29	18.08	N88°43'41"W
L30	32.34	S43°33'17"W
L31	74.33	N80°58'10"W
L32	21.78	N55°27'38"E
L33	40.32	N85°12'48"E
L34	80.82	N75°41'08"E
L35	38.77	S80°30'15"E
L36	48.34	S88°02'20"E
L37	13.34	S41°44'58"E
L38	114.851	S02°58'18"E

**JCK & ASSOCIATES, INC.**  
 CONSULTING ENGINEERS  
 NOV, MICH. PE. NO. (248) 348 - 2680

**EVERGREEN ESTATES**  
 EXHIBIT "B"

EDEN GARDEN L.L.C., A MICHIGAN LIMITED LIABILITY COMPANY  
 22-30-401-822

Drawn <u>VGR</u>	Date <u>3-28-08</u>	Scale <u>1=200'</u>	Job No. <u>09074</u>	Sheet No. <u>1</u>
Designed <u>JM</u>				
Checked <u>JCK</u>				

OWNER:  
 EDEN GARDEN L.L.C.,  
 A MICHIGAN LIMITED LIABILITY COMPANY  
 24777 NAPLES DRIVE  
 NOV, MI. 48374

**EXHIBIT "B"**  
**EVERGREEN ESTATES**  
 RESIDENTIAL SITE CONDOMINIUMS  
 SECTION 30, NOV, MICHIGAN  
**CONSERVATION EASEMENTS**

**CONSERVATION EASEMENT #1:**

A PART OF THE WEST 1/2 OF THE SOUTHEAST 1/4 OF SECTION 30, T.1N., R.8E., CITY OF NOVI, OAKLAND COUNTY, MICHIGAN, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: BEGINNING AT A POINT LOCATED N84°58'51"E 768.86 FEET ALONG THE SOUTH LINE OF SECTION 30 AND THE CENTERLINE OF NINE MILE ROAD, N54°40'24"E 56.09 FEET, N02°58'16"E 50.90 FEET, FROM THE SOUTH 1/4 CORNER OF SECTION 30 AND THE POINT OF BEGINNING OF CONSERVATION EASEMENT;

THENCE N02°58'16"E 1038.76 FEET; THENCE N86°52'17"E 140.94 FEET;  
 THENCE S57°03'10"E 54.45 FEET; THENCE N87°30'13"E 61.47 FEET;  
 THENCE N57°00'41"E 26.98 FEET; THENCE S46°13'51"E 89.22 FEET;  
 THENCE S58°41'00"W 39.44 FEET; THENCE S00°19'05"E 38.58 FEET;  
 THENCE S11°29'59"W 24.94 FEET; THENCE S43°57'02"W 147.31 FEET;  
 THENCE S72°44'50"E 76.30 FEET; THENCE S81°28'04"W 94.08 FEET;  
 THENCE S10°09'52"E 158.79 FEET; THENCE S40°29'49"E 44.42 FEET;  
 THENCE S35°20'50"E 72.12 FEET; THENCE S84°31'09"E 98.62 FEET;  
 THENCE S22°03'41"E 94.19 FEET; THENCE S43°09'06"W 51.11 FEET;  
 THENCE S85°24'13"W 70.49 FEET; THENCE S02°58'18"W 51.92 FEET;  
 THENCE S53°24'10"W 54.93 FEET; THENCE S18°35'57"E 54.93 FEET;  
 THENCE S54°40'24"W 140.66 FEET TO THE POINT OF BEGINNING, CONTAINING 142,026 SQUARE FEET OR 3.26 ACRES.

BEARINGS BASED ON:  
 GRID BEARING - NAD 83  
 (1988 SPC. M.L. SOUTH ZONE)


**CONSERVATION EASEMENT #2:**

A PART OF THE WEST 1/2 OF THE SOUTHEAST 1/4 OF SECTION 30, T.1N., R.8E., CITY OF NOVI, OAKLAND COUNTY, MICHIGAN, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: BEGINNING AT A POINT LOCATED N84°58'51"E 768.86 FEET ALONG THE SOUTH LINE OF SECTION 30 AND THE CENTERLINE OF NINE MILE ROAD, N54°40'24"E 56.09 FEET, N54°40'24"E 580.90 FEET, AND N02°58'16"W 667.60 FEET FROM THE SOUTH 1/4 CORNER OF SECTION 30 AND THE POINT OF BEGINNING OF CONSERVATION EASEMENT NUMBER TWO;

THENCE N70°13'40"W 49.73 FEET; THENCE N58°20'26"W 20.44 FEET;  
 THENCE N40°59'29"W 64.33 FEET; THENCE N88°43'41"W 15.06 FEET;  
 THENCE S43°33'17"W 32.34 FEET; THENCE N45°39'10"W 74.33 FEET;  
 THENCE N35°27'35"E 21.79 FEET; THENCE N55°12'45"E 40.32 FEET;  
 THENCE N75°41'09"E 60.52 FEET; THENCE S60°30'15"E 39.47 FEET;  
 THENCE S69°02'26"E 46.34 FEET; THENCE S41°44'55"E 13.34 FEET;  
 THENCE S02°58'16"E 114.86 FEET; TO THE POINT OF BEGINNING, CONTAINING 17,406 SQUARE FEET OR 0.40 ACRES.

BEARINGS BASED ON:  
 GRID BEARING - NAD 83  
 (1988 SPC. M.L. SOUTH ZONE)

OWNER:  
 EDEN GARDEN L.L.C.,  
 A MICHIGAN LIMITED LIABILITY COMPANY  
 24777 NAPLES DRIVE  
 NOVI, MI. 48374

		JCK & ASSOCIATES, INC. CONSULTING ENGINEERS NOVI, MICH. PH. NO. (248) 348 - 2680			
<b>EVERGREEN ESTATES</b> EXHIBIT "B"					
EDEN GARDEN L.L.C., A MICHIGAN LIMITED LIABILITY COMPANY 22-80-401-022					
Drawn	VGR	Date	Scale	Job No.	Sheet No.
Designed	TM	3-25-08	1=200'	09074	2
Checked	JCK				

**Planning Commission Minutes**

**Excerpts**

**July 13, 2005**

**PLANNING COMMISSION**  
**REGULAR MEETING**  
**EXCERPTS**  
**WEDNESDAY, JULY 13, 2005 7:30 P.M.**  
**COUNCIL CHAMBERS - NOVI CIVIC CENTER**  
**45175 W. TEN MILE, NOVI, MI 48375**

**ROLL CALL**

**Present:** Members John Avdoulos, Victor Cassis, Andrew Gutman, David Lipski (7:43 p.m.), Lynn Kocan, Lowell Sprague, Wayne Wrobel

**Absent:** Members Andrew Gutman, Mark Pehrson

**Also Present:** Barbara McBeth, Director of Planning; Tim Schmitt, Planner; Lance Shipman, Landscape Architect; Ben Croy, Civil Engineer; David Gillam, City Attorney; Kelly Karll, Wetland Consultant

**1. EVERGREEN ESTATES, SITE PLAN NUMBER 04-42A**

The Public Hearing was opened on the request of Partha Chakravarti of Eden Garden, LLC for Preliminary Site Plan, Site Condominium, Wetland Permit, Woodland Permit and Storm Water Management Plan approval. The subject property is located in Section 30, north of Nine Mile, east of Napier Road in the R-A, Residential Acreage District. The subject property is 13.2 acres and the Applicant is proposing a 7-unit single-family site condominium.

Planner Tim Schmitt located the property on a map. It is located in the bend of the road. It is south of Legacy Parc and the Singh Trail. It is east of Provincial Glades. The ITC corridor is also to the east. The properties are all zoned R-A, and master planned for residential, and public park in the Singh Trail area.

There are substantial wetlands on the property. There are regulated woodlands; this property is very near to the core habitat area.

The Applicant is proposing seven single family homes. The design is a cul-de-sac, and the first home will front Nine Mile. The next four lots will access through the road, and the remaining two lots are proposed with a shared driveway through the wetlands.

The Planning Review indicated that two items will have to go before City Council. A sidewalk is proposed for only one side of the street; the Planning Department approves of this request. This would reduce the disturbance of the natural features. The second request is for a gated access, though historically the City has frowned upon these entries.

A ZBA Variance will be required for lots 6 and 7 due to the fact that they don't have frontage onto a public road (Subdivision Ordinance Section 4.02.a.6). The Applicant is proposing a shared driveway, which is not considered a road.

The Wetland Review recommended approval of the plan. The road crossing the wetland is considered minor. The MDEQ Permit has been issued.

The Woodland Review did not recommend approval. The Applicant is proposing an 81% woodland mortality rate. Woodland Consultant Doris Hill thought the number was substantially lower.

The Landscape Review indicated that a waiver is necessary for the Nine Mile ROW berm, near lots 1 and 2.

The Traffic Reviews noted only minor comments.

The Engineering Review indicated that the road width for lots 7 and 8 will require a variance from City Council. The Applicant is proposing twelve feet and the standard is 28 feet. The gated access will require a City Council variance.

Mr. Partha Chakkarvarti was the Applicant. He explained that this project is the result of four friends looking to build near one another. They hope to preserve the natural features. He thanked the City Staff for all of their help.

Chair Kocan opened the floor for comment:

- ◆ Joe Lund: Lives directly east of the seven lots. He expressed concern for the wetlands and the drainage, and questioned how high the buildings would be.
- ◆ Liz Coleman: Lives across the street. She expressed concern for the traffic, especially because of the property's location on the bend. She did not think the area could accommodate the density. The traffic is very dangerous.
- ◆ Tim Mitz, Garfield Road: Concerned about the traffic and wondered what the City was doing for the infrastructure in the area. There is dewatering in the area. He was concerned about the construction traffic. He asked the City to consider all of these little projects.

Chair Kocan asked Mr. Chakkarvarti the square footage of the homes. He responded that they would be 3,500 to 4,000 square feet minimum. Chair Kocan asked him if he was going to clear the building footprint. He responded that only the roadway will be cleared, and each individual will be responsible for their own lot. He felt that only one or two trees would be removed per footprint.

Member Wrobel thought this project was an interesting concept. He asked if any other options for the shared parking were explored. He did not have a problem with a gated community. He asked what the time frame was for this project. Mr. Chakkarvarti said that he was hoping for a two year period for this project. Options were explored for the driveway, and the City suggested that the Applicant apply for the MDEQ permit. The width is only twelve feet. Lot 1 is facing Nine Mile so as to preserve more natural features.

Member Sprague did not think that gated communities should be promoted. The City does not want to become a bunch of isolated subdivisions. He did not think that it was beneficial to stray from the Ordinance. He did not see a hardship in the request. The Fire Marshal has commented on the safety issues. Member Sprague approved of the sidewalk waiver because it was a smart decision.

Member Sprague asked if all of the lots were spoken for. Mr. Chakkarvarti responded that four lots were specifically selected, and the other three would be sold to their three friends. Member Sprague said that it made it easier for him to consider.

Member Sprague was concerned about the safety issues associated with the narrow shared driveway. Mr. Schmitt said that it would be widened to 18 feet. This is a typical width for an emergency lane. It is still not a road. He was actually surprised that the MDEQ issued the permit so quickly. The roads have not been determined to be public or private yet, although the plan ~~does do~~ allude to their being private. The stretch of drive across the wetland would have to be maintained by the homeowner's association.

Member Sprague asked what the quality of the land was for lots 6 and 7. What are the impacts to the wetland? Would a full drive exacerbate the situation? Mr. Schmitt said the greater the width, the greater the impact. The quality of the site is similar to the entire area. It is densely wooded.

Wetland Consultant Kelly Karll said that there is a forested wetland in the north end. In terms of the crossing, a wider road will yield greater impacts. From twelve to 18 feet, the impact is not that much greater. They have already been permitted ninety yards of cubic fill, and that would probably increase to 120-150 cubic yards. The Applicant is crossing the wetland at the narrow point to minimize the impact. The impacts should be minimal. The culverts will maintain the hydrological connection.

Member Sprague asked about the entirety of the parcel. Mr. Schmitt responded that the lots do cover all of the land. The parcel used to have a westerly swinging leg along Nine Mile. The land owner split off a total of three parcels.

Member Sprague confirmed that the Singh Trail was just north of this property. Mr. Schmitt said it was in the near vicinity.

Member Sprague asked about the Nine Mile vegetation. Landscape Architect Lance Shipman said that the City would support the waiver for the Nine Mile berm, since it is a natural beauty road. Mr. Shipman was concerned that the Landscape Plan indicated a lot of new plantings along Nine Mile, and he wanted to ensure that the natural setting was not overly disturbed. The Applicant has discussed this with the City, though he has not seen this change on the Plan. Mr. Chakkarvarti said that he would add the berm or address the existing vegetation – it was not a problem. Mr. Sprague supported the waiver and thought the natural landscaping was a better alternative.

Member Sprague asked about the woodland count. Mr. Schmitt said that the City disagrees with the count of dead and dying trees indicated by the Applicant's Landscape Architect. In this case, small trees should be expected in a forested area; not all trees are large. The next submittal should indicate the appropriate mortality rate and show the location of the replacement trees. Member Sprague confirmed that this could be resolved at the time of Final Site Plan submittal.

Member Sprague agreed with the comment from the resident. The density cannot dip below R-A standards. The City must continue to preserve and protect the natural features. He thought that the City should not chip away at the density.

Member Avdoulos agreed. He lived in the area and he got involved with the Planning Commission in an effort to keep his eye on the southwest quadrant of the City. He noted that lots 6 and 7 are each just shy of an acre and a half, less dense than the zoned one acre requirement. He did not support the gated community concept. He noted five small subdivisions in the immediate area and said that if each requested a gated community the area would transform into something the City did not want. He noted that Lot 1 would still have a driveway on Nine Mile. Mr. Schmitt said that Lot 1 will show the location of their drive on its own plot plan. There are requirements for spacing from the property line.

Member Avdoulos approved of the shared driveway being widened. He cautioned the Applicant about building basements. He said that they should check their water tables when it is at its peak. Several homes in the area have had water problems.

Member Avdoulos approved of the sidewalk waiver. Mr. Schmitt said that it was probably a condition of the MDEQ Permit that there would have to be a Conservation Easement.

Member Avdoulos said he would leave it to the City and the Woodland Consultant to sort out the mortality rate. Mr. Schmitt said that this will be resolved at Final Site Plan. Member Avdoulos would prefer the natural vegetation to the berm. He noted that a sign has been erected stating that Nine Mile is a natural beauty road.

Member Avdoulos asked about the detention basin. Civil Engineer Ben Croy said that as long as the wetlands are deemed acceptable for use, the detention basin is not necessary.

Member Avdoulos asked about the curve and the entryway. Mr. Schmitt said that the taper is in the ROW in that area, and it encroaches on the neighbor's property. They will need permission or they will have to modify the taper. Mr. Croy said that the Traffic Consultant may make a recommendation on the final design of this issue. Mr. Croy said that the maximum water service length is being exceeded, and the City will look at this design at Final Site Plan to determine if it's allowable. Mr. Croy said that the Nine Mile water main was scheduled for 2005.

Member Avdoulos agreed that there is reason to be cautious about the traffic. He said that the City must look at this area's infrastructure. Last winter the roads were terrible. If more development comes along, the roads must accommodate the traffic and the water must drain. He wanted to ensure that the Applicant was cautious with overgrowth near the roads. He did not want construction vehicles lining up Nine Mile.

Overall, Member Avdoulos wanted to keep the density at .8 units per acre. He appreciated the residents coming forward on this project.

Member Cassis asked how the tree problem would be resolved. Mr. Schmitt responded that the Applicant is only proposing to remove the trees for the roads and utilities. This design must meet Ordinance requirements. The final outcome will be based on the City Forester's determination. The Planning Commission should include language in an approving motion that addresses the tree count and the mortality rate. There will be additional review on each of the seven lots. Mr. Chakkarvarti said he would abide by the decision of the Woodland Consultant.

Member Cassis said that the homes must remain marketable to others. He did not support the gated community. He was concerned about the shared driveway. Mr. Schmitt said that the Fire Department did not have a problem with an 18-foot width.

Member Cassis said that the project looked good.

Mr. Chakkarvarti said he did not understand the woodland issue. Were they supposed to leave dead and dying trees untouched if they aren't in the footprint? Mr. Schmitt said that the City will review the trees proposed for removal. The City will look at the lots individually, so they might as well address this issue now. For immediate purposes, the permit will be for the trees affected by the roads and utilities. The Applicant said their intent is to design around the trees. Mr. Schmitt said that is what the City expects.

Landscape Architect Lance Shipman said that the immediate concern is what is developed now – the road. The tree survey covers the whole site. Within that chart, there is a rating on the trees, and that is what is under contention. There is a numbering system in the industry, and Mr. Shipman was not sure that their landscape architect used that system. Some trees just don't grow big, but that doesn't **mean meet** that they should rate "poor." The Applicant said that his landscape architect would work this out with the City.

Member Avdoulos recapitulated the timing of the process of this subdivision. Mr. Avdoulos wanted to ensure that the Applicant understood that once the survey was reviewed, it would give him a better understanding of the quality of the trees so that maximum placements of the building footprints could be made.

Chair Kocan said that some of these lots do not look like they are in the regulated woodlands. Mr. Shipman said that the Woodland map is general, and the Woodland Consultant makes the final determination. Chair Kocan wanted the Applicant to understand that each homeowner would be responsible for tree replacements.

Chair Kocan said that she understood that the final design along the road would be determined by the consultant. This decision would be based on maintaining vegetation and the noise attenuation.

Chair Kocan asked whether it would behoove the area if the transformers were not placed in the rear of the lots, if it meant disturbing more of the regulated woodlands. Mr. Shipman said that there is some latitude, and DTE would be a part of these discussions. They are preferred to be placed in the back, but there are situations where they are moved if this would mean more regulated woodland or wetland disturbance. Sometimes DTE comes forward and makes the recommendation on its own. Ultimately, it is DTE's decision, and Mr. Shipman agreed with Chair Kocan that the Planning Commission did not have to weigh in on this.

Chair Kocan asked if the water main was installed by the end of the year, what would be the responsibility for these individual homeowners. Civil Engineer Ben Croy responded that he did not know how this particular subdivision would be handled. The Applicant said it was his intention to have the water main service all of the lots.

Chair Kocan said that she did not know the full extent of the dewatering in the area. She asked if dewatering would occur in this area. Mr. Croy said that there is a possibility of it, though it would be minor. The problem that Chair Kocan alluded to was the large subdivision that was dewatering in order to install sewer lines at thirty feet deep. That dewatering has caused a problem, and now that developer is seeking an alternative plan.

Chair Kocan said that she was not aware of any other subdivision where each individual homeowner was responsible for his or her own tree removal program. This is a difficult problem. Mr. Shipman said it was more common than what Chair Kocan might think. This practice is also common where the developer builds the roads and sells off the lots to builders. By doing it in this manner, more trees may be saved. This allows for the building footprint, not the building envelope, to be the area that is cleared. From a residential standpoint, this is the new way, because the lots left in the City to build are the lots covered in trees, wetlands, slopes, etc. The homeowner will submit a plot plan, and if the area is protected, they will have to account for the removed trees. Those trees within the building footprint can be approved for removal by the Woodland Consultant. If there are removals that are outside of the footprint or within an area already deemed protected, then the request would go before the Woodland Review Board.

Chair Kocan said this property is zoned R-A. This property is 13.2 acres, and therefore could essentially have as many as thirteen homes. This plan has been scaled down to seven homes. It may affect traffic, but it is not something not anticipated by the City. She hoped that the Traffic Consultant has approved the entrance as safe. She would not support the gate request, both in light of the Fire Department and the exclusionary feel.

Chair Kocan wondered if the motion should state that the Planning Commission does not support this request. City Attorney David Gillam told her that the motion could grant approval with the removal of the gate. However, it is worded, the Applicant can still go to City Council, but at least it makes the Planning Commission's position clear.

Chair Kocan said that the Woodland motion must state that the Applicant must abide by the City Forester's and/or the Woodland Consultant's acceptance of the tree survey. She wondered if it was appropriate to state that within the deeds and restrictions, it must state that each individual homeowner must adhere to the City's Ordinance.

Chair Kocan said that the shared driveway was creative. It may not be the best application, but it is unique and she did not see that it would present a problem. She did approve of the expansion of the width to eighteen feet. She confirmed that the MDEQ would have to re-approve that design, and she said that the motion should also reflect this information.

Member Avdoulos confirmed with Mr. Croy that all of the stormwater ran away from Nine Mile into the wetlands. He approved of this, because water onto Nine Mile creates more problems, like ice slicks in the winter. He complimented the Applicant on his work on this plan. He said this area is very sensitive, and this is only seven homes spread over thirteen acres. He hoped the quality of the homes were appropriate for the area.

The Applicant stated for the record that he did not have an issue with the transformer situation.

Member Sprague asked if the drive created a legal exposure for the City. Mr. Gillam said that there would be no exposure. The Applicant is the one seeking the waiver, and there would be no liability issue.

Moved by Member Sprague, seconded by Member Avdoulos:

**In the matter of Eden Garden, LLC for Evergreen Estates, SP04-42A, motion to approve the Preliminary Site Plan, subject to: 1) A City Council variance for the sidewalk to be placed only on the west side of the internal road; 2) A City Council variance for the deficient width of the shared access drive for lots 6 and 7 (28 feet required vs. 18 feet proposed); 3) A revision of the plan to remove the gated access; 4) A ZBA variance for the lack of frontage for lots 6 and 7; 5)**



**A Planning Commission Waiver for the ROW berm along Nine Mile, provided sufficient landscaping and buffer area is provided; and 6) The comments in the Staff and Consultant reviews being addressed at the time of Final Site Plan submittal; for the reason that the plan is otherwise in compliance with the Ordinance.**

**DISCUSSION**

**Mr. Shipman said that it might be appropriate to mention that Nine Mile is designated as a natural beauty road and that the Applicant continues to work with City Staff, which is the guiding factor for that waiver. This better guides the Applicant into understanding what the intent of the waiver is. Member Sprague and Avdoulos agreed with the language.**

**ROLL CALL VOTE ON EVERGREEN ESTATES, SP04-42A, PRELIMINARY SITE PLAN MOTION MADE BY MEMBER SPRAGUE AND SECONDED BY MEMBER AVDOULOS:**

**In the matter of Eden Garden, LLC for Evergreen Estates, SP04-42A, motion to approve the Preliminary Site Plan, subject to: 1) A City Council variance for the sidewalk to be placed only on the west side of the internal road; 2) A City Council variance for the deficient width of the shared access drive for lots 6 and 7 (28 feet required vs. 18 feet proposed); 3) A revision of the plan to remove the gated access; 4) A ZBA variance for the lack of frontage for lots 6 and 7; 5) A Planning Commission Waiver for the ROW berm along Nine Mile, provided sufficient landscaping and buffer area is provided, due to Nine Mile's designation as a natural beauty road and the Applicant will continue to work with City Staff; and 6) The comments in the Staff and Consultant reviews being addressed at the time of Final Site Plan submittal; for the reason that the plan is otherwise in compliance with the Ordinance.**

*Motion carried 6-0.*

Moved by Member Sprague, seconded by Member Avdoulos:

**ROLL CALL VOTE ON EVERGREEN ESTATES, SP04-42A, STORMWATER MANAGEMENT PLAN MOTION MADE BY MEMBER SPRAGUE AND SECONDED BY MEMBER AVDOULOS:**

**In the matter of Eden Garden, LLC for Evergreen Estates, SP04-42A, motion to approve the Stormwater Management Plan, subject to the comments in the Staff and Consultant reviews being addressed at the time of Final Site Plan submittal; for the reason that the plan is otherwise in compliance with the Ordinance.**

*Motion carried 6-0.*

Moved by Member Sprague, seconded by Member Avdoulos:

**ROLL CALL VOTE ON EVERGREEN ESTATES, SP04-42A, WOODLAND PERMIT MOTION MADE BY MEMBER SPRAGUE AND SECONDED BY MEMBER AVDOULOS:**

**In the matter of Eden Garden, LLC for Evergreen Estates, SP04-42A, motion to approve the Woodland Permit, subject to: 1) The comments in the Staff and Consultant reviews being addressed at the time of Final Site Plan submittal; 2) Resolution of the tree survey issue to satisfy the City Staff requirements; and 3) Acknowledgement that the individual homeowners will be required to comply with the Woodland Ordinance regarding home placement and tree replacement; for the reason that the plan is otherwise in compliance with the Ordinance.**

*Motion carried 6-0.*

Moved by Member Sprague, seconded by Member Avdoulos:

**ROLL CALL VOTE ON EVERGREEN ESTATES, SP04-42A, WETLAND PERMIT MOTION MADE BY**

**MEMBER SPRAGUE AND SECONDED BY MEMBER AVDOULOS:**

**In the matter of Eden Garden, LLC for Evergreen Estates, SP04-42A, motion to approve the Wetland Permit, subject to: 1) The comments in the Staff and Consultant reviews being addressed at the time of Final Site Plan submittal; and 2) A revision to the MDEQ permit for the expanded width of the shared drive between lots six and seven; for the reason that the plan is otherwise in compliance with the Ordinance.**

***Motion carried 6-0.***

**Reduced Site Plan**

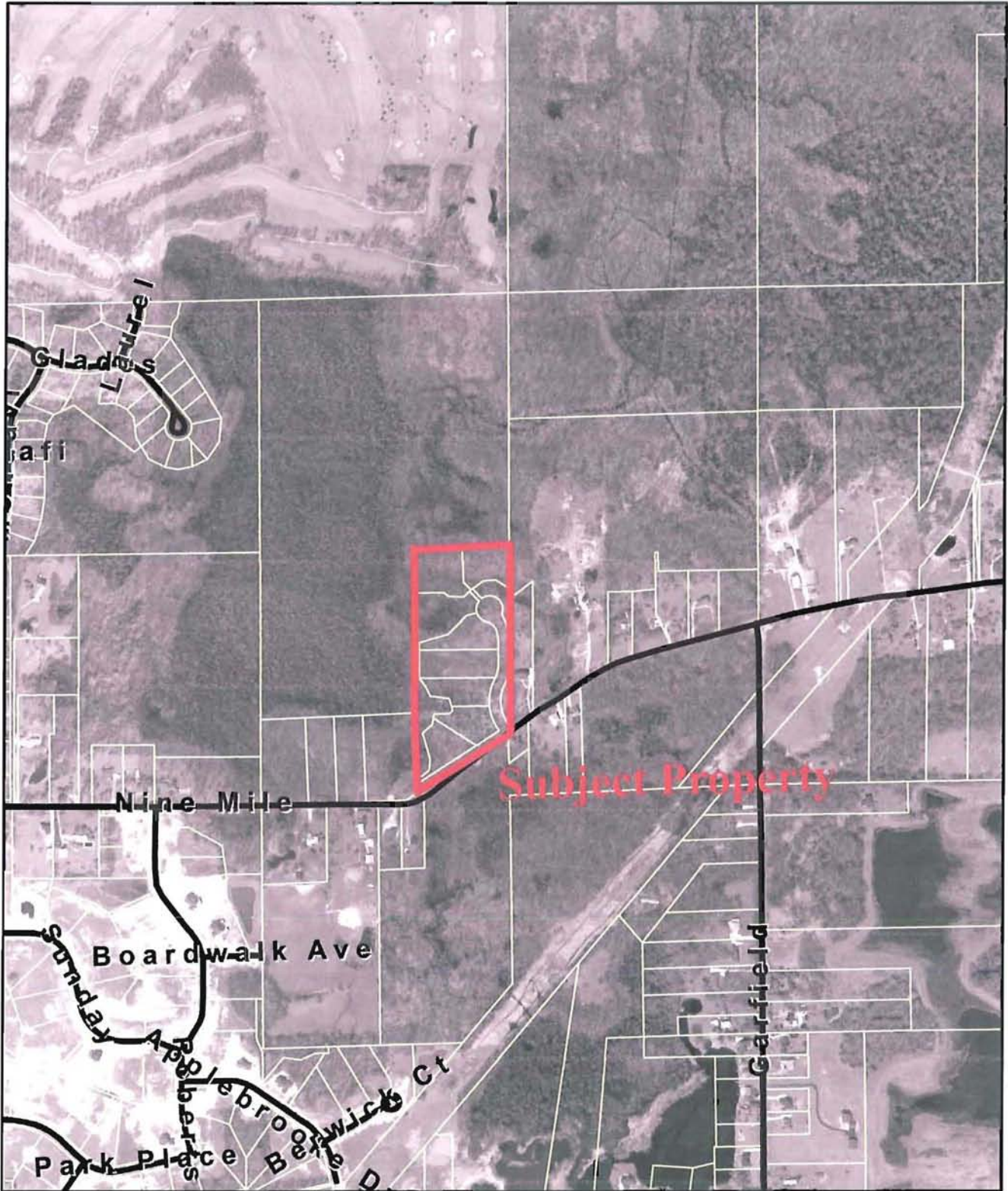


**Location Map**



# SP 04-42 Evergreen Estates Location Map

City of Novi, Michigan



Created using the (GIS) Geographic Information System of  
 The City of Novi  
 45715 West Ten Mile Road  
 Novi, Michigan 48375  
 (248) 347-0154

Coordinate System Description -  
 Projection Michigan State Plane  
 Zone South Zone (6401)  
 Horizontal Datum NAD 1983  
 Map Units International Feet  
 Albers Projection  
 Central Meridian: 84  
 Standard Parallel: 37  
 False Easting: 500,000  
 False Northing: 0  
 Units: Meter  
 Datum: NAD 1983

Date Created:  
 June 2, 2005



0 100 200 400 600 800 Feet

Created by:  
 Mark Spencer, AICP  
 Planner, Plan Review Center

