



## CITY of NOVI CITY COUNCIL

**Agenda Item G**  
**February 8, 2010**

**SUBJECT:** Approval of a variance from Section 26.5-10, requiring a maintenance and guarantee bond from Toll Michigan II, Ltd. for the water and sanitary sewer improvements for Island Lake of Novi Phases 4B-1 and 5B, located north of Ten Mile Road and east of Napier Road in Section 19.

**SUBMITTING DEPARTMENT:** Department of Public Services, Engineering Division *B/C*

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

### **BACKGROUND INFORMATION:**

Toll Michigan II, Ltd has requested the acceptance of the water and sanitary sewer infrastructure constructed for Island Lake of Novi Phases 4B-1 and 5B. The acceptance of water main and sanitary sewer is an administrative process and does not require specific approval by City Council. However, Toll is also seeking a variance from Section 26.5-10 of the Novi Code of Ordinances regarding maintenance and defect guarantees (ordinance language enclosed).

As discussed in the enclosed November 4, 2009 letter from Beth Kudla, Section 1-12 of the Ordinance permits City Council to grant a variance from provisions of the ordinance, including Section 26.5-10 regarding maintenance and defect guarantees for site improvements as well as the previous maintenance and guarantee bond requirements in effect prior to the adoption of Chapter 26.5, when the property owner shows all of the following:

- 1) A literal application of the substantive requirement would result in exceptional, practical difficulty to the applicant;
- 2) The alternative proposed by the applicant will be adequate for the intended use and shall not substantially deviate from the performance that would be obtained by strict enforcement of the standards, and;
- 3) The granting of the variance will not be detrimental to the public health, safety or welfare, nor injurious to adjoining or neighboring property, nor contrary to the overall purpose and goals of the chapter or article containing the regulation in question.

The water main and sanitary sewer was constructed, tested and placed in service more than six years ago, while the intended warranty period under the ordinance is two years. For this reason, the developer is requesting a variance of the ordinance to waive the required Maintenance and Guarantee Bond in this case.

Staff recommends approval of the variance because the amount of time since the infrastructure was placed in service exceeds the required warranty period and the City has not experienced any problems associated with the water main and sanitary sewer systems during the past six years. The City Attorney has reviewed the variance request and finds no legal impediment to granting the variance.

**RECOMMENDED ACTION:** Acceptance of temporary water system and permanent sanitary sewer easements and consideration to approve a waiver to the Maintenance and Guarantee Bond from Toll Michigan II, Ltd. for the Island Lake of Novi development Phases 4B-1 and 5B, located north of Ten Mile Road and east of Napier Road, in Section 19.

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

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

November 4, 2009

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. Kudln  
Direct: 248-539-2846  
bkudln@secretwardle.com

Rob Hayes, Public Services Director  
CITY OF NOVI  
45175 West Ten Mile Road  
Novi, Michigan 48375-3024

Re: **Island Lake of Novi – Phases 4B-1 and 5B (SP02-43)**  
**Utilities Review for Acceptance**  
***Island Lake Orchards***  
**Our File No. 660124.NOV1**

Dear Mr. Hayes:

We have received and reviewed, and enclosed please find, the following documents regarding the Phases 4B-1 and 5B of the Island Lake of Novi Residential Unit Development:

**Phase 4B-1**

1. Temporary Water System Easement
2. Bill of Sale – Water System
3. Sanitary Sewer System Easement
4. Bill of Sale – Sanitary Sewer
5. Commitment for Title Insurance

**Phase 5B**

1. Temporary Water System Easement
2. Bill of Sale – Water System
3. Sanitary Sewer System Easement
4. Bill of Sale
5. Commitment for Title Insurance

We have the following comments relating to the above-named documents:

Toll MI II Limited Partnership seeks to convey the water and sanitary sewer system facilities, as well as corresponding easements for operation, maintenance and repair of the water main and sanitary systems located within the Island Lake Orchards Condominium (Phases 4B-1 and 5B of the RUD). It should be noted that the Water System Easements are “temporary” because the water

main is within the road right-of-way. Once the roads are dedicated to and accepted by the City, the easements will no longer be required and will automatically terminate. Our office has reviewed and approves the format and language of the Temporary Water System Easements and the permanent Sanitary Sewer System Easements. Engineering has reviewed and approved the legal descriptions. As such, we recommend acceptance of the Easements and corresponding Bills of Sale.

The Developer is requesting a waiver of the Maintenance and Guarantee Bond requirement for the water and sanitary sewer system facilities since the facilities have been functioning properly since approximately 2003.

Generally, the terms of a maintenance and guarantee bond require the developer to repair or replace defective water mains and/or sanitary sewer lines for two years from the time of formal acceptance of the facilities by the City.

Section 1-12 of the Ordinance Code permits the City Council to grant a variance from provisions of the City of Novi Code, including Section 26.5-10 regarding maintenance and defect guarantees for site improvements, as well as the previous maintenance and guarantee bond requirements in effect prior to the adoption of Chapter 26.5, when the property owner shows all of the following:

- (1) A literal application of the substantive requirement would result in exceptional, practical difficulty to the applicant;
- (2) The alternative proposed by the applicant will be adequate for the intended use and shall not substantially deviate from the performance that would be obtained by strict enforcement of the standards; and
- (3) The granting of the variance will not be detrimental to the public health, safety or welfare, nor injurious to adjoining or neighboring property, nor contrary to the overall purpose and goals of the chapter or article containing the regulation in question.

The developer seeks this variance on the basis that the water and sanitary sewer facilities have been in place and operating properly for approximately six years while the intended warranty period under the ordinance is two years.

In the event that City Council finds that the standards for a variance or waiver have been met, our office sees no legal impediment to granting the variance.

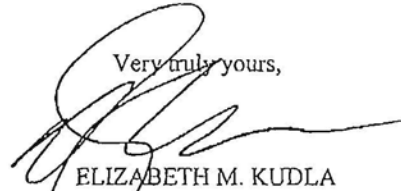
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Rob Hayes, Public Services Director  
November 4, 2009  
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Subject to the above variance, the Temporary Water System Easements and permanent Sanitary Sewer System Easements may be accepted by *Affidavit of the City Engineer*. Once accepted by the City, the Water and Sanitary Sewer System Easements should be recorded with Oakland County Register of Deeds. The Bill of Sale and title work should be maintained in the City Clerk's File.

Please feel free to contact me with any questions or concerns in regard to this matter.

Very truly yours,



ELIZABETH M. KUDLA

EMK  
Enclosures

C: Maryanne Cornelius, Clerk (w/ Original Enclosures)  
Marina Neumaier, Assistant Finance Director (w/Enclosures)  
Charles Boulard, Community Development Director (w/Enclosures)  
Barb McBeth, Deputy Community Development Director (w/Enclosures)  
Aaron Staup, Construction Engineering Coordinator (w/Enclosures)  
Taylor Reynolds and Byron Hanson, Spalding DeDecker (w/Enclosures)  
Sarah Marchioni, Building Permit Coordinator (w/Enclosures)  
Sue Troutman, City Clerk's Office (w/Enclosures)  
Scott I. Mirkes, Esquire (w/Enclosures)  
Thomas R. Schultz, Esquire (w/Enclosures)

**Sec. 26.5-10. Maintenance and defect guarantees authorized.**

(a) The department shall require all applicants to post a maintenance guarantee and/or defect guarantee warranting the successful operation and maintenance of improvements, and guaranteeing the workmanship, materials, and design used in construction of site improvements required by the conditions of any permits or approvals issued pursuant to this Code, as defined above.

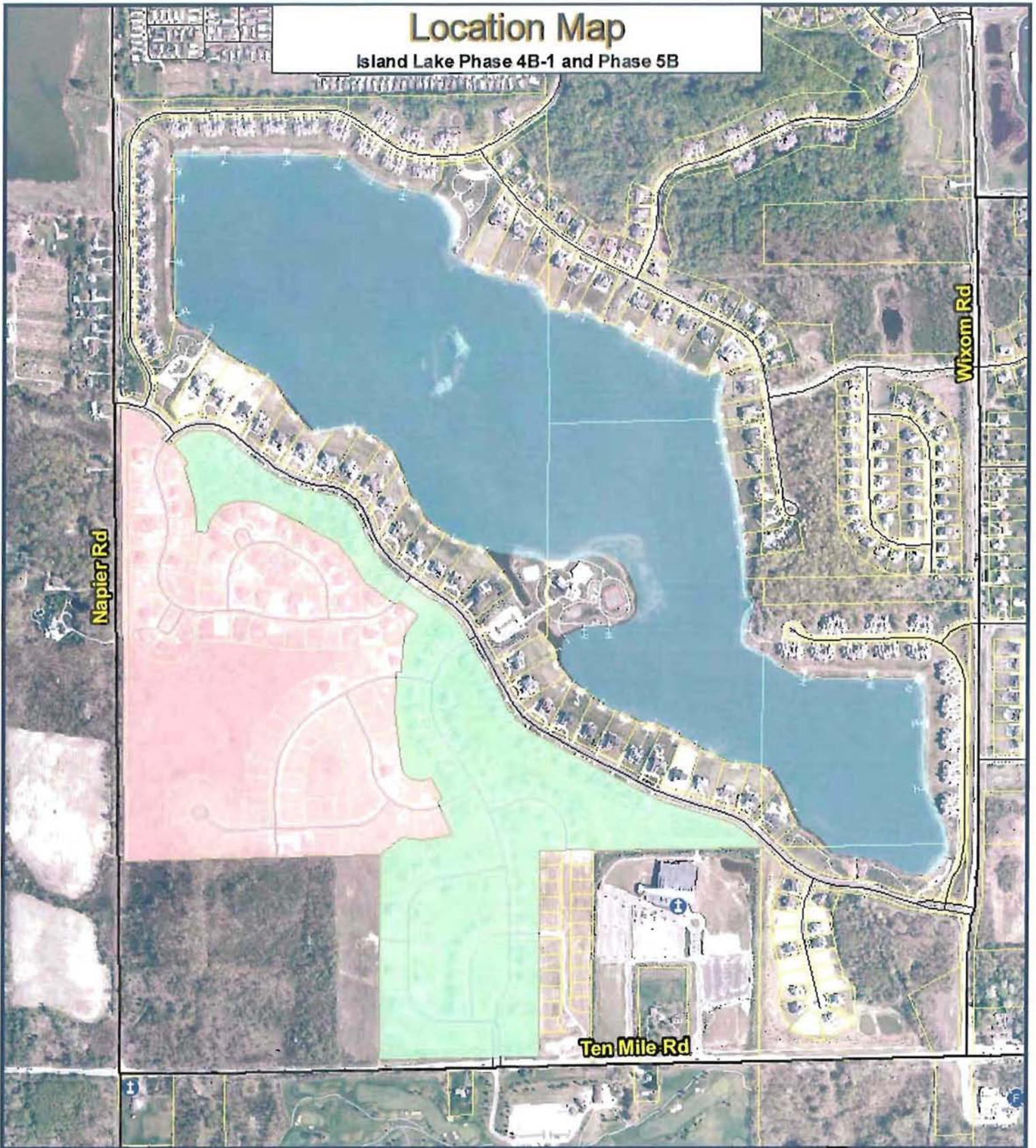
(b) Unless otherwise specifically indicated in this Code, all maintenance guarantees and defect guarantees shall guarantee successful operation, workmanship, materials, and design of required facilities for a period of two (2) years following final inspection and final acceptance by the city in accordance with the procedures set forth in article II of this chapter. With regard to plantings required under chapter 37 of this Code or appendix A (zoning ordinance), the maintenance and guarantee period of two (2) full growing seasons is required. If any defect or deficiency occurs or becomes evident during the two-year period, then the owner shall after ten (10) days' written notice from the city, correct it or cause it to be corrected. In the event any improvement is repaired or replaced pursuant to the demand of the city, the building official may require the guarantee with respect to such repair or replacement, as defined and determined by the department, to be extended for two (2) full years from the date of the repair or replacement.

(c) The applicant shall notify the city and schedule inspections of facilities required pursuant to this Code, as defined above, at least sixty (60) days before the end of the two-year maintenance and/or defect period, and the city shall conduct such inspection as soon thereafter as is practicable and should generally occur within thirty (30) days.

(Ord. No. 08-173.03, Pt. I, 3-17-08)

# Location Map

## Island Lake Phase 4B-1 and Phase 5B



Map Author: Brian Coburn  
Date: 2/1/10

Version #: 1.0

### Map Legend

### Island Lake Phases

- Island Lake Phase 5B
- Island Lake Phase 4B-1

**MAP INTERPRETATION NOTICE**  
Map information depicted is not intended to replace or substitute for any official or primary source. This map was intended to meet National Map Accuracy Standards and use the most recent, accurate sources available to the people of the City of Novi. Boundary measurements and area calculations are approximate and should not be construed as survey measurements performed by a licensed Michigan Surveyor as defined in Michigan Public Act 132 of 1970 as amended. Please contact the City GIS Manager to confirm source and accuracy information related to this map.



**City of Novi**  
Engineering Division  
Department of Public Services  
45175 W Ten Mile Rd  
Novi, MI 48375  
cityofnovi.org

