



CITY of NOVI CITY COUNCIL

Agenda Item M
February 7, 2011

SUBJECT: Approval of a Resolution Concerning Acquisition and Approving Declaration of Necessity and Taking and authorization of Offer to Purchase in the amount of \$23 for a temporary grading permit on the ARC, LLC/Stowell property (parcel 50-22-25-400-028) for the purpose of constructing a pedestrian safety path on the north side of Nine Mile Road between Meadowbrook Road and Haggerty Road subject to confirmation of final description and drawings by Director of Public Services and City Attorney's office.

SUBMITTING DEPARTMENT: Department of Public Services, Engineering Division *BTC*

CITY MANAGER APPROVAL: *Clay MP*

| | |
|-----------------------------|------------------------------------------------------------|
| EXPENDITURE REQUIRED | \$23 |
| AMOUNT BUDGETED | \$46,500 (Engineering and Right-of-way acquisition) |
| LINE ITEM NUMBER | 204-204.00-974.421 (Municipal Street Fund) |

BACKGROUND INFORMATION:

As part of the design phase of the proposed shared use pathway along the north side of Nine Mile Road between Meadowbrook Road and Haggerty Road, three permanent pathway easements and 13 temporary grading permits have been identified to facilitate construction. Please see the attached January 31, 2011 memo from Ben Croy for additional background.

As stated in the enclosed documentation, a temporary grading permit is required for the ARC, LLC/Stowell property located at just east of 39640 Nine Mile to facilitate construction of the proposed pathway. As required by federal law, and in conformance with MDOT's Transportation Enhancement grant requirements for this project, the property owner is entitled to compensation in the amount of \$23. While engineering and easement acquisition costs are not covered by the grant, these tasks must be performed in compliance with grant requirements to receive the funding.

A title search identified a minor issue related to the title of a 10-foot wide strip of property along the eastern boundary of this parcel, therefore a separate set of documents were prepared in case the title issue is not resolved before the easements are required. Pending the confirmation of the final description and drawings for the parcel, a final letter will be sent to the property owner requesting donation of the temporary grading permit.

The attached resolution is being requested in the event that the easement is not donated and the City needs to present the offer. The resolution is being requested at this time in order to remain in compliance with the grant's schedule. The property owner will have until March 1, 2011 to grant the easement either by donation or for the amount stated in the letter. Following the March deadline, the city will begin proceedings to acquire the easements through eminent domain. If the easement is donated, the resolution will not be needed.

RECOMMENDED ACTION: Approval of a Resolution Concerning Acquisition and Approving Declaration of Necessity and Taking and authorization of Offer to Purchase in the amount of \$23 for a temporary grading permit on the ARC, LLC/Stowell property (parcel 50-22-25-400-028) for the purpose of constructing a pedestrian safety path on the north side of Nine Mile Road between Meadowbrook Road and Haggerty Road subject to confirmation of final description and drawings by Director of Public Services and City Attorney's office.

| | 1 | 2 | Y | N |
|-------------------------|---|---|---|---|
| Mayor Landry | | | | |
| Mayor Pro Tem Gatt | | | | |
| Council Member Fischer | | | | |
| Council Member Margolis | | | | |

| | 1 | 2 | Y | N |
|-----------------------|---|---|---|---|
| Council Member Mutch | | | | |
| Council Member Staudt | | | | |
| Council Member Wrobel | | | | |

MEMORANDUM



TO: BRIAN COBURN, P.E.; ENGINEERING MANAGER *BIC*
FROM: BEN CROY, P.E.; CIVIL ENGINEER *BC*
SUBJECT: NINE MILE PATHWAY EASEMENT OFFERS
DATE: JANUARY 31, 2011

Constructing a continuous pathway along the north side of Nine Mile Road between Meadowbrook Road and Haggerty Road is the highest priority project listed in the Pathway and Sidewalk Prioritization and Process report, which was updated in November 2010. The project consists of constructing two major segments (shown in blue on the attached location map) to provide connectivity to Meadowbrook Road, Haggerty Road and the I-275 shared use trail to the east. The City of Novi was awarded \$146,220 in federal funding through the Michigan Department of Transportation (MDOT) Transportation Enhancement grant program to construct the non-motorized pathway. This grant covers 60% of the estimated \$243,700 construction cost, with the City of Novi responsible for the remaining \$97,480. Design engineering for this path was awarded to OHM in September 2010 in the amount of \$26,710. As required by the grant, the path is currently being designed with a width of 10 feet.

This project requires three permanent sidewalk easements and thirteen temporary grading easements for the construction as shown in the table below:

Temporary Grading Easements

| Property Address | Property Owner | Parcel ID | Area (sq. ft) |
|----------------------|-----------------------------------|------------------|---------------|
| 40715 Oakwood | Yauck, Robert D and Laura A | 50-22-25-380-003 | 810 |
| 40661 Oakwood | Frankum, Sandra A Trust | 50-22-25-380-004 | 890 |
| 40645 Oakwood | Looney, Michael & Ostrowski, Mary | 50-22-25-380-005 | 890 |
| 40627 Oakwood | Boland, James & Terri Sasse | 50-22-25-380-006 | 810 |
| 40611 Oakwood | Wolstencroft, David & Panagiota | 50-22-25-380-007 | 810 |
| 39650 Nine Mile | Camaj, Vasel & Diane | 50-22-25-400-025 | 1464 |
| 39640 Nine Mile | Stowell, Todd | 50-22-25-400-028 | 1136 |
| 39640 Nine Mile | ACR, LLC (Stowell) | 50-22-25-400-028 | 100 |
| 39630 Nine Mile | Barduca, Angelo S & Laura | 50-22-25-400-029 | 1257 |
| 39630 Nine Mile | ACR, LLC (Barduca) | 50-22-25-400-029 | 100 |
| Pavillion Apartments | El-Ad Pavilion LLC | 50-22-25-400-019 | 35046 |
| 39620 Nine Mile | Koziarz, William W | 50-22-25-400-016 | 3375 |
| Vacant | DB Development LLC | 50-22-25-400-027 | 7678 |

Permanent Easements

| Property Address | Property Owner | Parcel ID | Area (sq. ft) |
|----------------------|--------------------|------------------|---------------|
| Pavillion Apartments | El-Ad Pavilion LLC | 50-22-25-400-019 | 12024 |
| 39620 Nine Mile | Koziarz, William W | 50-22-25-400-016 | 234 |
| Vacant | DB Development LLC | 50-22-25-400-027 | 912 |

As required by the grant, the request and acquisition of each easement is required to follow specific federal guidelines which stipulate the process for requesting the easements and establishes the value of each easement. Permanent and temporary easements are set at 50% and 10% of the assessed property value, respectively. The easement values must be presented to each property owner to notify them of their right to just compensation. However, prior to presenting the offer to each property owner, we are asking that the easements be donated (see attached January 31, 2011 letter). If the property owner chooses not to donate the easement, the City would then be required provide a good faith offer in the amount calculated per the federal grant guidelines as the start to the process to acquire the easement through eminent domain.

Construction is expected to begin in late summer of 2011.

Location Map

39640 Nine Mile



Map Author: David Vander Klipp
Date: 1/28/2011

Map Legend

- Centerline**
- Type of Route**
- Major
- Minor
- Tax Parcel BSA



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



1 inch = 127 feet

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.

**RESOLUTION CONCERNING THE ACQUISITION
OF PROPERTY AND APPROVING DECLARATION OF NECESSITY AND TAKING**

City of Novi
County of Oakland, Michigan

Minutes of a _____ Meeting of the City Council of the City of Novi,
County of Oakland, Michigan, held in the City Hall in said City on February 7, 2011 at 7:00
o'clock P.M. Prevailing Eastern Time.

PRESENT: Councilmembers _____

ABSENT: Councilmembers _____

The following preamble and Resolution were offered by Councilmember _____
_____ and supported by Councilmember _____.

WHEREAS, present conditions in the City of Novi, Oakland County, Michigan,
necessitate the construction of a non-motorized pathway/sidewalk on Nine Mile Road in, over,
upon and through a portion of the following described premises situated in the City of Novi,
Oakland County, State of Michigan, to-wit:

PARCEL DESCRIPTION A part of Parcel (50-22-25-400-028):

The easterly 10 feet of a parcel of land situated in the SE ¼ of Section 25, Town 1 North, Range
8 East, City of Novi, Oakland County, Michigan, described as follows:

Beginning at point distant S 89°35'41" W 579.39 feet from the SE corner of said Section 25;
thence S 89°35'41" W 123.00 feet; thence N 00°08'00" E 213.19 feet; thence N 89°46'05" E
126.26 feet; thence S 01°00'41" W 212.85 feet to the point of Beginning, Subject to all
easements and restrictions of record, if any.

WHEREAS, proposed plans showing said improvements have been prepared and are on
file with the City Clerk's Office; and

WHEREAS, it has been determined that said improvements are necessary for the use and benefit of the public; and

WHEREAS, in order to construct said improvements, it is necessary that the City acquire a temporary grading permit and other interests in that portion of the above-described real estate described as follows:

A Temporary Grading Permit in certain real estate described as follows:

TEMPORARY GRADING EASEMENT DESCRIPTION

A 10 foot wide temporary grading easement being situated in the SE ¼ of Section 25, Town 1 North, Range 8 East, City of Novi, Oakland County, Michigan, described as follows:

The North 10 feet of the South 43 feet of the above described parent parcel.

Contains 100 square feet of land. Subject to all easements and restrictions of record, if any.

hereinafter referred to as the “subject property”;

WHEREAS, the City has caused a valuation of the subject property to be prepared by its City Assessor or the basis of assessment records and related information;

WHEREAS, the City has determined that it is in the best interests of the City to offer to purchase the subject property from the owners of such property, and to take such other actions as are deemed necessary to acquire the subject property for the purposes of constructing the improvements;

NOW, THEREFORE, BE IT RESOLVED, by the authority vested in the City of Novi by law, that it is hereby declared and determined that it is necessary to construct a non-motorized pathway/sidewalk along Nine Mile Road in, over, upon, and through the above-described

property within the City of Novi in accordance with the plans prepared by the City Consulting Engineers, and that said improvements are necessary for the use and benefit of the public; and

BE IT FURTHER RESOLVED, that the Mayor of the City is hereby authorized to execute, on behalf of the City, a good faith Offer to Purchase, a copy of which is attached hereto as Exhibit A, calling for the payment of Twenty-three Dollars (\$23.00) for the Temporary Grading Permit acquisition, The above amounts have been established as just compensation for the acquisition of the property, based upon an appraisal of the property by the City Assessor.

BE IT FURTHER RESOLVED, that after the execution of the good faith Offer to Purchase by the Mayor, the good faith Offer to Purchase shall be submitted to the owners of the property;

BE IT FURTHER RESOLVED, that in the event the Sellers fail to accept the good faith Offer to Purchase within ten (10) days of the date of delivery, the City Manager is hereby authorized to execute the Declaration of Taking, which is attached hereto;

BE IT FURTHER RESOLVED, that in the event the offer is not accepted as set forth above, the Mayor, City Clerk, and City Attorney are authorized to take all actions required to obtain a Temporary Grading Permit in the subject property by eminent domain.

BE IT FURTHER RESOLVED, that in the event the offer is not accepted as set forth above, and the Declaration is executed, the City finance officer is authorized and directed to place an amount equal to the amount contained in the good faith offer that was made to the property owners (\$23.00) into a separate account and to hold such money on deposit as the estimated amount of just compensation to be paid in connection with the eminent domain proceedings.

BE IT FURTHER RESOLVED, that all resolutions and part of resolutions insofar as they conflict with the provisions of this Resolution be and the same hereby are rescinded.

AYES: Councilmembers _____

NAYES: Councilmembers _____

RESOLUTION DECLARED ADOPTED.

MARYANNE CORNELIUS, CITY CLERK

CERTIFICATION

I hereby certify that the foregoing is a true and complete copy of a Resolution adopted by the City Council of the City of Novi at _____ meeting held this _____ day of _____, 2011.

MARYANNE CORNELIUS, CITY CLERK

DECLARATION OF TAKING

A Resolution of Necessity having been adopted by the City of Novi setting forth that present conditions necessitate the construction of a non-motorized pathway/sidewalk on Nine Mile Road (the “Improvements”) in the City of Novi, Oakland County, Michigan, in the interest of the public health, safety, and welfare, and that it is necessary to acquire an easement over certain property within the City of Novi for said Improvements, and that a good faith written offer to purchase said property has heretofore been made.

NOW, THEREFORE, by virtue of the authority vested in the City of Novi, by Act 279 of the Public Acts of 1909, as amended, and/or Act 149 of the Public Acts of 1911, as amended, or other applicable statutes, and in accordance with the provisions of Act 87 of Public Acts of 1980, as amended, it is now declared and determined that the real property hereinafter described shall be taken for the purpose of constructing a non-motorized pathway/sidewalk on Nine Mile Road, in accordance with prepared plans showing said Improvements which plans are on file with the Novi City Clerk’s Office.

A statement of the estate of interest in the property being taken; a description of the property to be acquired, sufficient for its identification; the name of each known owner of said property; the name of each known person, other than the owner, having an interest in said property; a statement of the sum of money estimated by the City of Novi as just compensation

for the property being acquired; and a statement whether the City of Novi reserves or waives its rights to bring federal or state cost recovery actions against the present owner of the property are as follows:

1. Statement of the Estate of Interest Being Taken and Description of the Property.

PARCEL DESCRIPTION A part of Parcel (50-22-25-400-028):

The easterly 10 feet of a parcel of land situated in the SE ¼ of Section 25, Town 1 North, Range 8 East, City of Novi, Oakland County, Michigan, described as follows:

Beginning at point distant S 89°35'41" W 579.39 feet from the SE corner of said Section 25; thence S 89°35'41" W 123.00 feet; thence N 00°08'00" E 213.19 feet; thence N 89°46'05" E 126.26 feet; thence S 01°00'41" W 212.85 feet to the point of Beginning, Subject to all easements and restrictions of record, if any.

Proposed Temporary Grading Permit taking being described as follows:

TEMPORARY GRADING EASEMENT DESCRIPTION

A 10 foot wide temporary grading easement being situated in the SE ¼ of Section 25, Town 1 North, Range 8 East, City of Novi, Oakland County, Michigan, described as follows:

The North 10 feet of the South 43 feet of the above described parent parcel.

Contains 100 square feet of land. Subject to all easements and restrictions of record, if any.

2. Names of Property Owner: ACR, LLC
3. Names of each person, other than the Owners, having a potential interest in the property:
Bank One, NA
4. Estimated Just Compensation: \$ 23.00
5. The City of Novi reserves it rights to bring Federal or State cost recovery actions against the present owner of the property.

CITY OF NOVI

BY: _____
CLAY J. PEARSON
City Manager

Dated: _____, 2011

The foregoing Declaration of Taking was acknowledged before me this ____ day of _____, 2011, by Clay J. Pearson, as the City Manager, on behalf of the City of Novi.

Notary Public
_____ County, Michigan
My Commission Expires: _____

Prepared by and when recorded return to:
Elizabeth M. Kudla (P 42111)
Secret, Wardle, Lynch, Hampton, Truex & Morley
30903 Northwestern Highway
P.O. Box 3040
Farmington Hills, MI 48333-3040
(248) 851-9500

Tax Identification No. 50-22-25-400-029

AGREEMENT OF SALE
OFFER TO PURCHASE EASEMENT OVER REAL PROPERTY

1. The City of Novi, a Michigan municipal corporation (hereinafter "City"), hereby offers and agrees to purchase an easement in, over, upon and through real property within the City of Novi, described as:

PARCEL DESCRIPTION A part of Parcel (50-22-25-400-028):

The easterly 10 feet of a parcel of land situated in the SE ¼ of Section 25, Town 1 North, Range 8 East, City of Novi, Oakland County, Michigan, described as follows:

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The Temporary Grading Permit being more fully described as follows:

TEMPORARY GRADING EASEMENT DESCRIPTION

A 10 foot wide temporary grading easement being situated in the SE ¼ of Section 25, Town 1 North, Range 8 East, City of Novi, Oakland County, Michigan, described as follows:

The North 10 feet of the South 43 feet of the above described parent parcel.

Contains 100 square feet of land. Subject to all easements and restrictions of record, if any.

and to pay therefore the sum of Twenty-three (\$23.00) dollars, subject to the existing building and use restrictions, easements, and zoning ordinances, if any, upon the following conditions:

- (i) Delivery of the Temporary Grading Permit to the City as described above.

2. Upon Seller's acceptance of this Offer to Purchase, as evidence of title, the City at its option may obtain a commitment for the title insurance with policy pursuant thereto to be issued insuring the City. The City will pay the cost of the title insurance policy premium.

3. If this offer is accepted by the Seller and if title can be conveyed in the condition required hereunder, the City agrees to complete the sale within fifteen (15) days after the receipt of the commitment for title insurance.

4. If objection to the title is made, based on a written opinion of the City Attorney that the title is not in the condition required for the performance hereunder, the Sellers shall have thirty (30) days from the date they are notified in writing of the particular defects claimed, to fulfill the requirements in the commitment for title insurance or to remedy the title defects set forth in the City's Attorney's opinion. If the Seller is able to comply with such requirements or remedy such defects within the time specified, as evidenced by written notification, revised commitment or endorsement to commitment, the City agrees to complete the sale within twenty (20) days of receipt thereof. If the Seller is unable to furnish satisfactory title within the time specified, the City will commence condemnation proceedings to acquire the Property.

5. The Seller shall deliver and the City shall accept possession of said Property upon the date of closing.

6. It is understood that the Property is being acquired in connection with the Nine Mile Pathway Program to construct a non-motorized pathway system along Nine Mile Road over, across, upon and through the above-described premises in the City of Novi, Michigan.

7. The City shall pay the cost of recording the easement and the cost of all Michigan Real Estate Transfer Tax, if any.

8. The City reserves its right to bring Federal or State cost recovery actions against the present owners of the Property arising out of a release of hazardous substances at the Property.

9. The covenants herein shall bind and inure to the benefit of the executors, administrators, successors, and assigns of the respective parties.

10. If this Offer to Purchase is not accepted by Seller within ten (10) days from the date of its mailing to Seller, this Offer to Purchase shall be considered withdrawn and of no further force and effect.

11. This Offer to Purchase may be executed in one or more counterparts as one Agreement and shall be binding upon the City and the hereafter named Seller when executed by the City of Novi and all of the hereafter named Seller.

The closing of this sale shall take place at the City of Novi offices located at 45175 West Ten Mile Road, Novi, Michigan.

WITNESSES:

PURCHASER:

CITY OF NOVI, a Michigan
municipal corporation

By: DAVID LANDRY
Its: Mayor

By: MARYANNE CORNELIUS
Its: City Clerk

Dated: _____, 2011

To the Above Named Purchaser:

The foregoing offer is hereby accepted and the Seller agrees to sell the Property upon the terms stated:

By the execution of this instrument, the Seller acknowledges the receipt of a copy of this Agreement.

IN THE PRESENCE OF:

SELLER:

A.C.R, LLC, a Michigan limited liability
company

By: _____

PURCHASER'S RECEIPT OF ACCEPTED OFFER

The Purchaser hereby acknowledges receipt of the Seller's signed acceptance of the foregoing Offer to Purchase.

CITY OF NOVI, a Michigan
municipal corporation, Purchaser

BY: _____

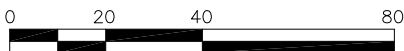
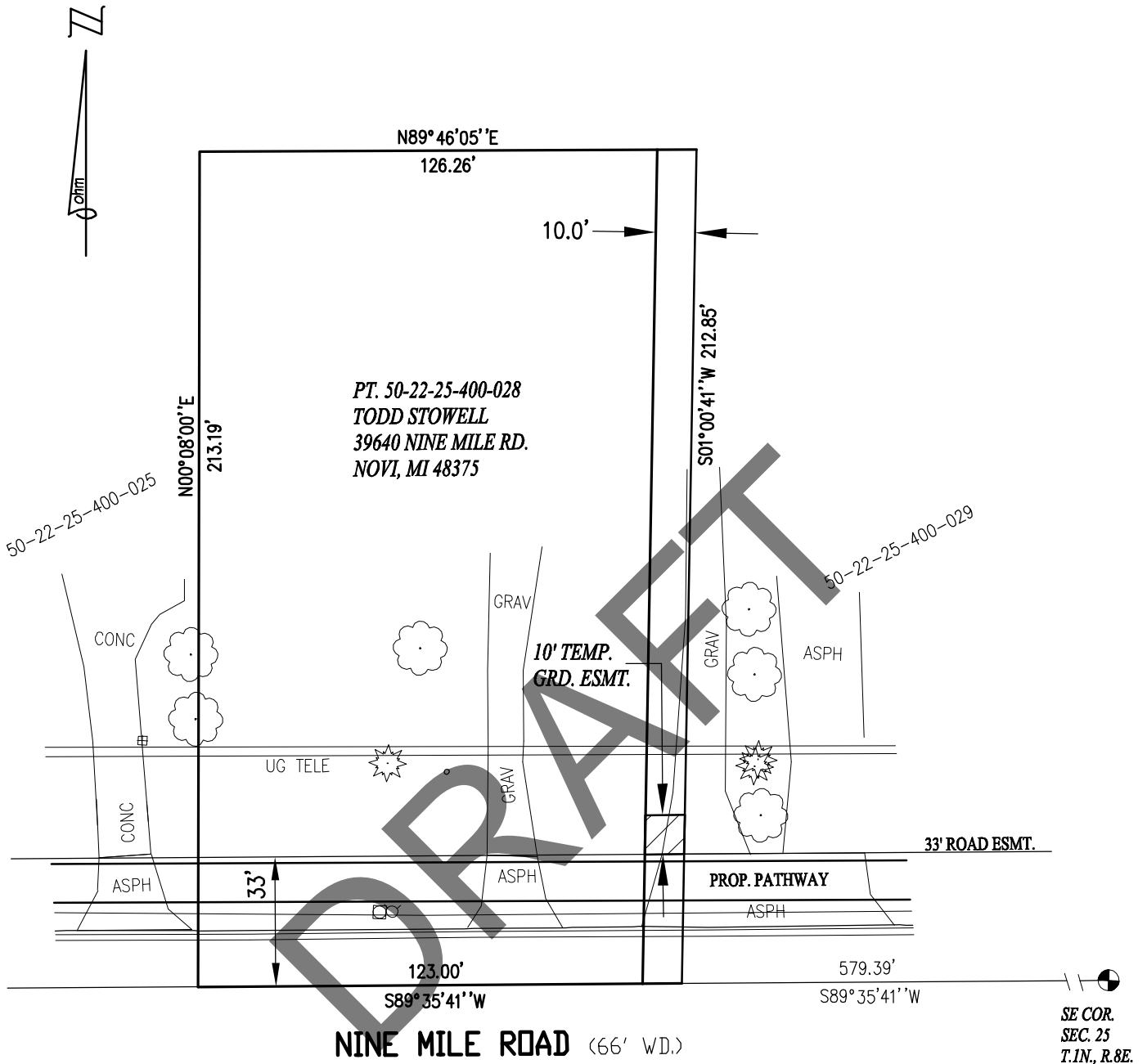
Its: _____

Dated: _____, 2011

1569074_1.doc

TEMPORARY GRADING EASEMENT SKETCH

Exhibit "A"



SCALE: 1" = 40'

REVISED 02-01-11

LEGEND

- ROW RIGHT-OF-WAY
- PUBLIC LAND CORNER
- POB POINT OF BEGINNING
- TEMP. GRADING EASEMENT

TEMPORARY GRADING EASEMENT

PART OF THE SE 1/4 OF SEC. 25
 T. 1 N., R. 8 E., CITY OF NOVI, OAKLAND COUNTY
TAX ID NO.: 50-22-25-400-028

CLIENT: CITY OF NOVI



34000 Plymouth Road | Livonia, MI 48150
 p (734) 522-6711 | f (734) 522-6427

Advancing Communities

DATE: 01-19-11
 DRAWN BY: SH
 DWG: 25-400-028

SHEET
 1 OF 2

JOB NO.
 0163-10-0130

TEMPORARY GRADING EASEMENT DESCRIPTION

Exhibit "A"

PARCEL DESCRIPTION (A part of 50-22-25-400-028):

The Easterly 10 feet of a parcel of land situated in the SE ¼ of Section 25, Town 1 North, Range 8 East, City of Novi, Oakland County, Michigan, described as follows:

Beginning at point distant S 89°35'41" W 579.39 feet from the SE corner of said Section 25; thence S 89°35'41" W 123.00 feet; thence N 00°08'00" E 213.19 feet; thence N 89°46'05" E 126.26 feet; thence S 01°00'41" W 212.85 feet to the point of Beginning. Subject to all easements and restrictions of record, if any.

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The North 10 feet of the South 43 feet of the above described parent parcel.

Contains 100 square feet of land. Subject to all easements and restrictions of record, if any.

DRAFT

REVISED 02-01-11

TEMPORARY GRADING EASEMENT

PART OF THE SE 1/4 OF SEC. 25
T. 1 N., R. 8 E., CITY OF NOVI, OAKLAND COUNTY
TAX ID NO.: 50-22-25-400-028



34000 Plymouth Road | Livonia, MI 48150
p (734) 522-6711 | f (734) 522-6427

Advancing Communities

DATE: 01-19-11
DRAWN BY: SH
DWG: 25-400-028

SHEET
2 OF 2

JOB NO.
0163-10-0130

CLIENT: CITY OF NOVI