



CITY OF NOVI CITY COUNCIL
JUNE 1, 2020

SUBJECT: Approval of the Third Addendum to the Emerson Park Planned Rezoning Overlay (PRO) Agreement, to adjust the date by which the required sidewalk and boardwalk improvements are to be completed along Ten Mile Road, west of Novi Road.

SUBMITTING DEPARTMENT: Community Development, Planning

BACKGROUND INFORMATION: The PRO Agreement between Pulte Homes and the City was signed on February 5, 2018, authorizing a multiple-family development located on Novi Road north of Ten Mile Road. Among other things, the PRO Agreement established dates by which required pathway and boardwalk improvements are to be completed along Ten Mile Road. At the time of the original agreement, the property on Ten Mile Road was not owned by either the City or Pulte. As a result, the City and Applicant agreed to extend the date for constructing the pathway to allow the City additional time to acquire the rights to construct the pathway. Since that time, the City has acquired the property fronting on Ten Mile Road. Emerson Park construction is underway, and some of the units are occupied.

Prior to the initiation of construction, a utility line impacted the applicant's ability to construct the pathway as originally planned. The original date for completion was again extended as a result. A revised plan was submitted and approved. All necessary permits from the Michigan Department of Environment, Great Lakes & Energy (EGLE) have now been issued and construction has commenced; however, the COVID-19 pandemic has delayed construction.

The attached Third Addendum to the PRO Agreement would adjust the date for Pulte to complete construction of the required pathway to no later than July 30, 2020. Any further delays caused by acts of God, including the pandemic, would require additional consideration for an extension. If the applicant fails to complete the pathway by the July 30, 2020 completion date and no further extensions are granted, the applicant is required to submit the remaining cost for completion to the City.

RECOMMENDED ACTION: Approval of the Third Addendum to the Emerson Park Planned Rezoning Overlay (PRO) Agreement, to adjust the date by which the required sidewalk and boardwalk improvements are to be constructed along Ten Mile Road, west of Novi Road.

**THIRD ADDENDUM TO
PLANNED REZONING OVERLAY (PRO) AGREEMENT
EMERSON PARK**

This Addendum to Planned Rezoning Overlay (PRO) Agreement ("Agreement") is by and between Pulte Homes of Michigan, LLC, a Michigan limited liability company, whose address is 100 Bloomfield Hills Parkway, Bloomfield Hills, MI 48304, referred to as "Applicant"; and the City of Novi, whose address is 45175 Ten Mile Road, Novi, MI 48375-3024 ("City").

RECITATIONS

I. The Applicant and the City entered into a PRO Agreement effective February 5, 2018, which is recorded at Liber 51897, Page 508, Oakland County Records ("PRO Agreement"). The Applicant and the City approved and executed a first Addendum to Planned Rezoning Overlay Agreement ("First Addendum"), on June 17, 2019, which is not recorded, and a Second Addendum to Planned Rezoning Overlay Agreement dated December 16, 2019, and recorded of February 12, 2020, at Liber 53825, Page 618, Oakland County Records.

II. The PRO Agreement requires the Applicant to construct a sidewalk and boardwalk (the "Pathway") across a separate parcel of property located on Ten Mile Road.

III. The PRO Agreement further contemplates that the City will acquire the necessary easement or other authority to construct the Pathway, sets forth a timeframe by which the Applicant will construct the Pathway once the easement is acquired, and provides that, if the City is not able to acquire the easement by a certain time the Applicant shall deposit \$250,000 with the City, which shall then be responsible for the construction.

IV. The City and the Applicant subsequently agreed to the First Addendum to the PRO Agreement that extended the date by which the Applicant was to construct the Pathway, because the City had not yet fully acquired the necessary property rights to allow construction. The First Addendum extended the date by which the Applicant was to construct the Pathway to December 31, 2019.

V. The City subsequently acquired ownership of the entire parcel across which the Applicant is required to complete construction of the Pathway. Following the City's

acquisition, the Applicant discovered utility line located in the proposed route for the Pathway, which required an additional submission of a permit application to the Michigan Department of Environment, Great Lakes & Energy (EGLE), and delayed the start of construction. The parties agreed in the Second Addendum to the second extension of time to complete construction of the pathway for approval of the revised plan.

VI. The Applicant has now received all necessary permits and has commenced construction of the Pathway; however, construction has been delayed as a result of the Covid-19 pandemic. The Applicant has requested, and the City has agreed to extend the completion date for the Pathway until July 30, 2020, as a result of the Covid-19 pandemic.

NOW, THEREFORE, based upon the foregoing, the parties agree as follows:

1. Paragraph D.2 is hereby amended to read in full as follows:

The construction of an off-site approximately 410-foot long pedestrian path connection in the area between the entrance of Churchill Crossing Subdivision at Churchill Boulevard and the existing retail complex at the northwest corner of Novi Road and Ten Mile Road, on the north side of Ten Mile Road west of Novi Road at Applicant's own expense (except for the cost of acquiring the necessary easement or right-of-way, which acquisition shall be pursued by the City). As part of final site plan approval applicant submitted a preliminary design/layout containing a depiction of a feasible location of the pedestrian pathway and a Design Engineer's estimate of the cost to construct the pathway. The pathway required a portion to be designed as a boardwalk. The pathway design was required to meet applicable City Design and Construction Standards for similar improvements. The boardwalk is required to be constructed using helical piers, foundation walls at each end of the approach viaducts, and composite railing along each side. Pathway construction commenced as soon as reasonably practical after Applicant, with the City's assistance, as required, obtained, as applicable, any permits required from Michigan Department of Environment, Great Lakes & Energy (EGLE), Oakland County Road Commission, and any other agencies with jurisdiction over such improvements.

Subject to matters outside of the control of Applicant, such as weather conditions, acts of God or so called force majeure events, including but not limited to additional delays resulting from the pandemic, which may require further review and extension of the completion date, the Pathway shall be completed no later than July 30, 2020. In the event that the Applicant fails to complete the Pathway on or before July 30, 2020, and no further extension is granted, the Applicant shall be required to submit the remaining cost of completion, as estimated by the City's Design Engineer, not to exceed the \$250,000 initial estimate, which such payment will be in lieu of Applicant's obligation to complete the pedestrian path as set forth in the Agreement. Failure to submit the payment as and when required will constitute a breach of this Agreement entitling the City to any and all remedies hereunder, which shall include the right to withhold building and occupancy permits until compliance, subject to Applicant's notice and cure rights described in Section 3 of the Agreement.

2. Except as otherwise provided in paragraph 1, the terms and provisions of the PRO Agreement are complete and unchanged and shall remain in full force and effect as initially approved.

[SIGNATURES ON NEXT PAGE]

DEVELOPER

Pulte Homes of Michigan, LLC

By: Joe Skore
Its: Vice-President of Land Acquisition

STATE OF MICHIGAN)
) ss
COUNTY OF OAKLAND)

On this _____ day of _____, 2020, before me appeared Joe Skore, who states that he has signed this document of his own free will duly authorized on behalf of the Developer.

Notary Public
_____ County, Michigan
Acting in _____ County, Michigan
My Commission Expires: _____

[SIGNATURES CONTINUED ON NEXT PAGE]

