

**REGULAR MEETING OF THE COUNCIL OF THE CITY OF NOVI
MONDAY, JANUARY 7, 2013 AT 7:00 P.M.
COUNCIL CHAMBERS – NOVI CIVIC CENTER – 45175 W. TEN MILE ROAD**

Mayor Gatt called the meeting to order at 7:00 P.M.

PLEDGE OF ALLEGIANCE

ROLL CALL: Mayor Gatt, Mayor Pro Tem Staudt, Council Members Casey, Fischer, Margolis, Mutch, Wrobel

ALSO PRESENT: Clay Pearson, City Manager
Victor Cardenas, Assistant City Manager
Thomas Schultz, City Attorney

APPROVAL OF AGENDA:

CM-13-01-001 Moved by Wrobel, seconded by Casey; CARRIED UNANIMOUSLY:

To approve the Agenda as presented.

Roll call vote on CM-13-01-001	Yeas: Staudt, Casey, Fischer, Margolis, Mutch, Wrobel, Gatt
	Nays: None

PUBLIC HEARING – None

PRESENTATIONS – None

REPORTS:

1. MANAGER/STAFF - None
2. ATTORNEY – None

AUDIENCE COMMENT:

Denis Appel, 23675 Novi Road, spoke to Council regarding his concerns about agenda items E and F. He disagreed with the taking of his property for sidewalks and wanted to present his displeasure. He has owned and occupied the property for thirteen years. He is disappointed that the work began on the project prior to any resolution. He felt the price offered was below market value and was less than what he paid for the property. He didn't want to donate a huge part of his front yard for something he does not need or want.

CONSENT AGENDA REMOVALS AND APPROVALS (See items A-H)

CM-13-01-002 Moved by Margolis, seconded by Wrobel; CARRIED UNANIMOUSLY:

To approve the Consent Agenda with the removal of items E and F.

- A. Approve Minutes of:
 - 1. December 17, 2012 – Regular meeting
- B. Enter Executive Session immediately following the regular meeting of January 7, 2013 in the Council Annex for the purpose of discussing pending litigation, labor negotiations, property acquisition and privileged correspondence from legal counsel.
- C. Approval of an agreement with Harbor House Publishers to produce a fourth edition Community Profile and accompanying Economic Development complimentary piece at no cost to the City of Novi.
- D. Adoption of a Resolution to approve Amendment No. 2 to the Water Service Contract with the Detroit Water and Sewerage Department to adjust the contract values related to maximum day water demand and peak hour water demand, and to make language amendments requested by Detroit in all contract amendments with customer communities.
- E. Approval of (1) a Resolution Concerning Acquisition and Approving Declaration of Necessity and Taking and authorization of Offer to Purchase; (2) a Declaration of Taking; and, (3) an Agreement of Sale and Offer to Purchase Easements over Real Property in the amount of \$854 for a permanent pathway easement and a temporary grading permit on the Appel/Nelson property (parcel 50-22-27-200-010) for the purpose of constructing a pedestrian safety path on the west side of Novi Road between Nine Mile and Ten Mile. **REMOVED FOR COUNCIL ACTION**
- F. Approval of (1) a Resolution Concerning Acquisition and Approving Declaration of Necessity and Taking and authorization of Offer to Purchase; (2) a Declaration of Taking; and, (3) an Agreement of Sale and Offer to Purchase Easements over Real Property in the amount of \$1,632 for a permanent pathway easement and a temporary grading permit on the Appel property (parcel 50-22-27-200-012) for the purpose of constructing a pedestrian safety path on the west side of Novi Road between Nine Mile and Ten Mile. **REMOVED FOR COUNCIL ACTION**
- G. Approval of a request from Great Oaks Landscape Associates, Inc. for a variance from Section 11-239(b)(1) of the Design and Construction Standards requiring all parking areas, including parking spaces and maneuvering lanes, to be hard-curbed to allow the installation of an uncurbed commercial driveway. The applicant has demonstrated that enforcement of the standard cross-section would result in a substantial hardship in conducting landscape business operations on this site.
- H. Approval of Claims and Accounts – Warrant No. 883

Roll call vote on CM-13-01-002

**Yeas: Casey, Fischer, Margolis, Mutch,
Wrobel, Gatt, Staudt**
Nays: None

MATTERS FOR COUNCIL ACTION

1. Approval of the request of Panera Bread for Special Land Use Permit, Preliminary Site Plan and Stormwater Management Plan approval. Panera Bread is located in City Center Plaza at 25875 Novi Road, at the northwest corner of Novi Road and Flint Street in the TC-1, Town Center District. The subject property is approximately 5.3 acres. The applicant is proposing to construct a drive-through lane adjacent to the existing Panera Bread Restaurant along with a 468 square foot building addition.

City Manager Pearson wanted to explain some of the background on this item. This project results from the action that Council took to amend the zoning that would allow a drive-through ancillary use. The owners of the property have brought in the site plan change. There was positive recommendation from the Planning Commission and the Staff.

Member Mutch had a concern with the drive-through lane that exists in front of the south entrance. He stated the drive-through lane is in an area where a majority of the parking is. The drive-through lane will add more traffic at peak times. He directed a question to the applicants regarding the required three foot brick wall screening the outside seating area adjacent to drive-through lane. He said it would reduce the visibility of pedestrians entering and existing from the building. He asked if the applicant would look at an alternative treatment in that area to allow more visibility to drivers from the drive-through. The applicant said they can look at that. Member Mutch asked City Attorney Schultz if the requirement could be waived by Council to do some alternative treatment in that location. City Attorney Schultz said that Council could direct staff to work with the applicant on it and ask if it could come back for final approval. Member Mutch said he didn't want to hold up the project but would pass a motion with it contingent upon staff working with the applicant to improve the visibility in that location. City Attorney said that Council has that authority.

CM-13-01-003 Moved by Mutch, seconded by Wrobel; CARRIED UNANIMOUSLY:

Approval of the Special Land Use permit based on the following findings:

Relative to other feasible uses of the site:

- **The proposed use will not cause any detrimental impact on existing thoroughfares (as indicated by the submitted traffic study);**
- **The proposed use will not cause any detrimental impact on the capabilities of public services and facilities (because the plan**

adequately addresses management of the increased stormwater volumes);

- ***The proposed use is compatible with the natural features and characteristics of the land (because the plan does not impact any natural features);***
- ***The proposed use is compatible with adjacent uses of land (because the proposed use is accessory only to an existing retail use and larger retail center);***
- ***The proposed use is consistent with the goals, objectives and recommendations of the City's Master Plan for Land Use;***
- ***The proposed use will promote the use of land in a socially and economically desirable manner;***
- ***The proposed use is (1) listed among the provision of uses requiring special land use review as set forth in the various zoning districts of this Ordinance, and [2) is in harmony with the purposes and conforms to the applicable site design regulations of the zoning district in which it is located.***

This motion is made because the plan is otherwise in compliance with Article 16, Article 24 and Article 25 of the Zoning Ordinance and all other applicable provisions of the Ordinance subject to the Zoning Board of Appeals granting the required variances and City Council approval of the Preliminary Site Plan.

City Manager Pearson wanted better direction about what staff was supposed to approve and didn't know if they would have an issue with it from their perspective.

Member Fischer said there was additional verbiage with the motion and asked whether the clauses should be included in the final motion. He was assured by City Attorney Schultz that it should be.

Member Margolis had a question about the parking. The information showed that the applicant was going to demolish parking spaces and then adding parking spaces. She questioned that she didn't see how many they were adding. Deputy Community Development Director McBeth said they are replacing all but four parking spaces in the south parking lot. Member Margolis asked Ms. McBeth to show her on the site plan map where the demolition was going to be done. Ms. McBeth said the green belt along Novi Road will be reduced in width. The applicant will move the parking spaces within ten feet of the property line. Member Margolis noted that it was within our parking requirements for the center. She had concerns about the tight radius through the drive-through by enlarging that driveway that comes out of there, staff felt comfortable that it is a safe turning radius. Ms. McBeth said there were some comments in the traffic engineering letter. Member Margolis asked about the tight turning radius and where will the pedestrian walkway be that goes to the parking lot. Rod Arroyo, Consultant, said they are looking for minor adjustments to the drive-through lane at the proposed stop. They will widen it slightly to enhance the ability to make the turn. It can be taken

care of at final site plan. It is a minor change. Pedestrians presently go in the side door but it will not be an option now. He thought there are some other things that we can do at final to enhance the pedestrian experience. He will talk to staff and applicant about some minor things. They usually look at adjustments at final site plan. He will continue to improve the plan as it goes through the approval process.

Roll call vote on CM-13-01-003

**Yeas: Fischer, Margolis, Mutch, Wrobel, Gatt,
Staudt, Casey**

Nays: None

CM-13-01-004

Moved by Mutch, seconded by Wrobel; CARRIED UNANIMOUSLY:

Approval of the Preliminary Site Plan, subject to the following:

- a. City Council modification of the southern exterior side yard setback from a maximum of 10 feet to 176 feet because:
 - (1) the modification will not impair the health, safety, or general welfare of the City as related to the use of the premises or adjacent premise;**
 - (2) the modification would result in a more desirable relationship between a proposed building and an existing building; and**
 - (3) the adherence to a minimum or maximum required setback would result in the establishment of nonusable land area that could create maintenance problems.****
- b. Zoning Board of Appeals variance for the deficient front yard parking setback (20 feet required, 10 feet provided);**
- c. Zoning Board of Appeals for the lack of a drive-through bypass lane;**
- d. Same-side driveway spacing waiver (105 feet required, 82 feet provided);**
- e. City Council waiver to allow a reduction in the required greenbelt width from 20 feet to 10 feet; and**
- f. The conditions and items listed in the staff and consultant review letters being addressed on the Final Site Plan submittal.**
- g. City Administration and applicant to work together on possible alternatives for the brick wall adjacent to the drive-through lane and final decision for an alternative will be left to City Administration.**

This motion is made because the plan is otherwise in compliance with Article 16, Article 24 and Article 25 of the Zoning Ordinance and all other applicable provisions of the Ordinance.

Roll call vote on CM-13-01-004

**Yeas: Margolis, Mutch, Wrobel, Gatt, Staudt,
Casey, Fischer**

Nays: None

CM-13-01-005 Moved by Mutch, seconded by Wrobel; CARRIED UNANIMOUSLY:

Approval of the Stormwater Management Plan, subject to the conditions and items listed in the staff and consultant review letters being addressed on the next plan submittal and approval of the final site plan. This motion is made *because the plan is otherwise in compliance with Chapters 11 and 12 of the Code of Ordinances and all other applicable provisions of the Ordinance.*

Roll call vote on CM-13-01-005

**Yeas: Mutch, Wrobel, Gatt, Staudt, Casey,
Fischer, Margolis**

Nays: None

AUDIENCE COMMENT – None

COMMITTEE REPORTS - None

MAYOR AND COUNCIL ISSUES - None

CONSENT AGENDA REMOVALS FOR COUNCIL ACTION:

Member Mutch noted that a couple of questions were raised during the audience participation about these items. He asked if someone could address Mr. Appel's concerns of the surveying on his property. City Manager Pearson said that surveyors by law have rights to go on properties. He would look into it but he was confident that the professional surveyors they retained knew what they were doing and it was within the law.

Member Mutch said Mr. Appel was unhappy with the amount of compensation that the City was offering him for the taking of the property. City Attorney Schultz said the City has followed the usual process of speaking with the City Assessor to find out what the assessed value was of the property. A per square foot value was determined, and then the calculation is based on the amount of square footage of the property being taken or affected by the grading permit. Member Mutch wanted to clarify that the property was an easement and not taking control of his property. City Attorney Schultz said it was not a fee take. Member Mutch was assured that the easement was still part of his property if he sold it in the future. City Attorney Schultz said it will still count as the same square footage, for set-backs, etc. The fee is calculated and then reduced to recognize that we are not taking the property and remains used. Member Mutch said

the letter from the Attorney's stated that the applicant has the opportunity to bring forward an alternative method of valuation. City Attorney Schultz said it will be stated in the good faith letter that will be sent out after Council approves these items. On other occasions items have come back to Council with amendments to the offer. Member Mutch strongly encouraged the property owner to avail himself of the opportunity he has to present a counter offer to the City.

CM-13-01-006 Moved by Mutch, seconded by Margolis; CARRIED UNANIMOUSLY:

To approve Consent Agenda items E and F.

- E. Approval of (1) a Resolution Concerning Acquisition and Approving Declaration of Necessity and Taking and authorization of Offer to Purchase; (2) a Declaration of Taking; and, (3) an Agreement of Sale and Offer to Purchase Easements over Real Property in the amount of \$854 for a permanent pathway easement and a temporary grading permit on the Appel/Nelson property (parcel 50-22-27-200-010) for the purpose of constructing a pedestrian safety path on the west side of Novi Road between Nine Mile and Ten Mile.
- F. Approval of (1) a Resolution Concerning Acquisition and Approving Declaration of Necessity and Taking and authorization of Offer to Purchase; (2) a Declaration of Taking; and, (3) an Agreement of Sale and Offer to Purchase Easements over Real Property in the amount of \$1,632 for a permanent pathway easement and a temporary grading permit on the Appel property (parcel 50-22-27-200-012) for the purpose of constructing a pedestrian safety path on the west side of Novi Road between Nine Mile and Ten Mile.

Roll call vote on CM-13-01-006

**Yeas: Wrobel, Gatt, Staudt, Casey, Fischer,
Margolis, Mutch**
Nays: None

COMMUNICATIONS - None

ADJOURNMENT – There being no further business to come before Council, the meeting was adjourned at 7:30 P.M.

Robert J. Gatt, Mayor

Cortney Hanson, Deputy City Clerk

Transcribed by Jane Keller

Date approved: January 28, 2013