

REGULAR MEETING OF THE COUNCIL OF THE CITY OF NOVI
DRAFT - TUESDAY, FEBRUARY 21, 2012 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 (absent excused), Margolis, Mutch, Wrobel

ALSO PRESENT: Clay Pearson, City Manager
Victor Cardenas, Assistant City Manager
Tom Schultz, City Attorney
Rob Hayes, Public Services Director

APPROVAL OF AGENDA

CM-12-02-16 Moved by Wrobel, seconded by Casey; CARRIED UNANIMOUSLY:

To approve the Agenda as presented

Roll call vote on CM-12-02-16	Yeas: Staudt, Casey, Margolis, Mutch, Wrobel, Gatt
	Nays: None
	Absent: Fischer

PUBLIC HEARING

1. Special Assessment District No. 176 Woodham Road Watermain - No public comment was received.

PRESENTATIONS

1. Proclamation declaring March as National Nutrition Month - Aarti Batavia, Registered Dietitian

Mayor Gatt presented the proclamation to Aarti Batavia, Registered Dietitian. He proclaimed, whereas, food is the substance by which life is sustained and whereas, the type, quality and amount of food that individuals consume each day plays a vital role in their overall health and physical fitness and whereas, there is a need for continuing nutrition education and a wide scale effort to enhance good eating practices, therefore, declared March, 2012 as National Nutrition Month. The City of Novi calls upon the citizens to join the campaign and become concerned about their nutrition and of others in hope in achieving optimum health for today and tomorrow.

REPORTS:

1. MANAGER/STAFF - None

2. ATTORNEY - None

AUDIENCE COMMENT – None

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

CM-12-02-17 Moved by Margolis, seconded by Mutch; CARRIED UNANIMOUSLY:

To approve the Consent Agenda as presented

Roll call vote on CM-12-02-17 **Yeas: Casey, Margolis, Mutch, Wrobel,
Gatt, Staudt**
Nays: None
Absent: Fischer

- A. Approve Minutes of:
 - 1. February 6, 2012 – Regular meeting
- B. Enter Executive Session immediately following the regular meeting of February 21, 2012 in the Council Annex for the purpose of discussing pending litigation, labor negotiations, property acquisition and privileged correspondence from legal counsel.
- C. Approval of Change Order No. 1 to Italia Construction Company for the Nine Mile Pathway (Meadowbrook to Haggerty) project in the amount of \$17,512.
- D. Approval to award the second one-year renewal option for the office supplies contract to Global Office Solutions, through the Wayne County Schools Purchasing Council (WCSPC) cooperative purchasing program, for the estimated annual amount of \$61,000.
- E. Approval of a Storm Drainage Facility Maintenance Easement Agreement, acceptance of a Warranty Deed for additional right-of-way along Garfield Road and acceptance of a Sidewalk Easement along Eight Mile Road from Novi Investment Company, LLC, for the Tuscany Reserve development located at the northeast corner of Eight Mile and Garfield Roads in Section 32.
- F. Approval of a Storm Drainage Facility Maintenance Easement Agreement from HCP Land, LLC, and MacKenzie South Technology Centre, LLC for the Tognum America Headquarters development located at 39525 MacKenzie Drive, at the southwest corner of Haggerty Road and MacKenzie Drive (parcel 22-01-400-027).
- G. Approval of Amendment to Easement from Alan Hudson and Judith Whittum-Hudson for an existing Ingress/Egress easement granted to the City and recorded in L. 13010, P. 720 through 722, Oakland County Records, to revise the location of the easement description to reflect the revised location of the storm water

detention basin access on the property located at 44550 Thornton Lane (parcel 22-15-376-026).

- H. Approval of Resolution No. 3 for Special Assessment District No. 176 (Woodham Road Water Main Extension) approving the preliminary plans and cost estimate, designating the special assessment district and directing the City Assessor to prepare a proposed special assessment roll.
- I. Approval to amend Professional Services contract to Hamilton Anderson Associates to include design and engineering services for Phase 2 development of the Landings park property in the amount of \$19,060.
- J. Approval of Claims and Accounts – Warrant No. 862

MATTERS FOR COUNCIL ACTION

- 1. Approval of the following recommendations pertaining to the City's General Counsel Legal Services:
 - A. Approval of termination, effective immediately, of the 12/31/10 Contract for General Legal Counsel Services between the City of Novi and Secrest Wardle and authorization for the City Clerk to issue to Secrest Wardle a Notice of Termination For cause of said contract;
 - B. Approve resolution to authorize the City Manager to provide the law firm of Secrest Wardle with a written authorization and direction to deliver all files and data regarding legal matters involving the City of Novi to the law firm of Johnson, Rosati, Schultz and Joppich PC in order that further legal representation to the City of Novi and legal services to be provided to the City of Novi be handled by the law firm Johnson, Rosati, Schultz and Joppich PC.

City Manager Pearson explained both actions are related. The first action severs the formal contractual relationship with Secrest, Wardle. Tom Schultz, City Attorney, has partnered with the law firm of Johnson, Rosati, Schultz and Joppich, PC. They have done representation for the City of Novi. The second action authorizes moving forward with this new firm.

CM-12-02-18 Moved by Staudt, seconded by Wrobel; CARRIED UNANIMOUSLY:

- A. To approve termination, effective immediately, of the 12/31/10 Contract for General Legal Counsel Services between the City of Novi and Secrest Wardle and authorization for the City Clerk to issue to Secrest Wardle a Notice of Termination for cause of said contract;**

- B. To approve resolution to authorize the City Manager to provide the law firm of Secrest Wardle with a written authorization and direction to deliver all files and data regarding legal matters involving the City of Novi to the law firm of Johnson, Rosati, Schultz and Joppich PC in order that further legal representation to the City of Novi and legal services to be provided to the City of Novi be handled by the law firm Johnson, Rosati, Schultz and Joppich PC.

Roll call vote on CM-12-02-18

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

- 2. Approval to proceed with the following recommendations pertaining to the City's General Counsel Legal Services:
 - A. Authorize the immediate retention by the City of Novi of the law firm of Johnson, Rosati, Schultz and Joppich PC to perform general legal counsel services on behalf of the City of Novi, at the same legal fee schedule as the former legal services contract between the City and Secrest Wardle, for a time period not to exceed thirty (30) days until a formal legal services contract can be approved by City Council;
 - B. Authorize the City Manager and Attorney David B. Landry to negotiate a Contract for General Legal Counsel Services between the City of Novi and the law firm Johnson, Rosati, Schultz and Joppich PC, for presentation to the Consultant Review Committee for recommendation to the City Council for approval, to cover time period through December 31, 2012 with an option on the part of the City to renew for an additional year to December 31, 2013 said contract to include the same legal fee schedule as the former legal services contract with Secrest Wardle.

City Manager Pearson stated it lets the City move forward with Tom Shultz, City Attorney, and his colleagues who have served us so well. He mentioned he appreciated the services of Secrest Wardle. He said it would be in the City's best interest to continue with Tom Schultz, City Attorney.

CM-12-02-19

Moved by Margolis, seconded by Mutch; CARRIED UNANIMOUSLY:

- A. To authorize the immediate retention by the City of Novi of the law firm of Johnson, Rosati, Schultz and Joppich PC to perform general legal counsel services on behalf of the City of Novi, at

the same legal fee schedule as the former legal services contract between the City and Secrest Wardle, for a time period not to exceed thirty (30) days until a formal legal services contract can be approved by City Council;

- B. To authorize the City Manager and Attorney David B. Landry to negotiate a Contract for General Legal Counsel Services between the City of Novi and the law firm Johnson, Rosati, Schultz and Joppich PC, for presentation to the Consultant Review Committee for recommendation to the City Council for approval, to cover time period through December 31, 2012 with an option on the part of the City to renew for an additional year to December 31, 2013 said contract to include the same legal fee schedule as the former legal services contract with Secrest Wardle**

Roll call vote on CM-12-02-19

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

3. Consideration of request of Pinnacle Homes for Zoning Map Amendment 18.702 to rezone land located south of Twelve Mile Road and east of Napier Road in Section 18, from RA, Residential Acreage District and R-1, One-Family Residential District to R-4, One-Family Residential District. The subject property totals 64 acres.

City Manager Pearson explained that the property owner has requested a rezoning. Howard Fingerroot, Managing Partner of Pinnacle Homes, wanted to introduce himself, the Company and to answer any questions. He proposed the rezoning and said it is consistent with the Master Plan adopted in 2010. It was the basis for their submission. His business partner is Steven Friedman. Mr. Friedman has been doing residential real estate in SE Michigan for about 30 years. Mr. Fingerroot has been in SE Michigan for about 18 years. Pinnacle currently has two communities in Novi, Bella Terra at Nine and Napier and they have acquired a project called Normandy Oaks on Eight Mile Road and Meadowbrook. They would like to develop and build this new community they bring forward tonight. He noted two points about Pinnacle Homes. They were awarded Builder of the Year by their peers in 2011 and last year were the largest builder in Oakland County.

Member Mutch asked Mr. Hayes, Public Services Director, to answer his questions on this matter. Member Mutch was concerned with this proposal at this location because of the potential traffic impact. The traffic report from Birchler-Arroyo indicated there were about 420 vehicles that utilize Twelve Mile Road in this area. He confirmed that this stretch of Twelve Mile Road in front of this property going to East then to the North is a dirt road. Mr. Arroyo indicated that, depending on how many homes were built on this property, the traffic volume would increase significantly. Member Mutch asked Mr. Hayes if at more than 500 trips a day is when a dirt road should be paved according to

the City's standards. Mr. Hayes said it was a standard rule of thumb. Member Mutch noted that if we are at 420 trips a day the traffic volume would hit 500 trips very quickly. He asked what would be the distance to be paved and what is the cost to the City. Mr. Hayes said the unpaved distance was 2,600 feet and it could cost approx. \$500,000. Member Mutch mentioned we had an agreement with Wixom a couple of years ago where the City took jurisdiction over the entire stretch of road. He mentioned that the City was responsible for the right-of-way of that stretch of road. Mr. Hayes added with the exception of the North-South leg of the road which is in the City of Wixom. The City would be responsible to see that it gets paved eventually. Member Mutch asked Mr. Schultz if the City could hold the property owner responsible for the improvement and what would be the City's responsibility. Mr. Schultz answered that because this was a straight rezoning and not a PRO, not a PUD, or not a conditional rezoning and this would be an offsite improvement, even though it is adjacent to the parcel, it is not on the site. For example, if the City gave the rezoning conditional on the owner agreeing to pave the road in front of their property, the City could face an argument in court from the property owner under case law that it is an offsite improvement and the property owner would not be obligated to do that. When it is an optional form of development, like a PRO, those kinds of things are negotiated. We have not had a lot of real life success in actual cases. He answered the question by saying they would not recommend making the developer, as part of this rezoning, pave this road. Member Mutch continued, in terms of questioning the rezoning, can the City take a position that it is not appropriate at this time to rezone without the infrastructure in place to support the development. Mr. Schultz answered that in the Master Plan process communities plan areas of the community for intense development then wait for the infrastructure to be built. The problem with making that argument on this piece of property is that the development is already generally in the area and the Master Plan is relatively current and development is not expected to be necessarily in the future. While in some cases you can make that argument, where the property is developed and there is development around it, it is more of a question of at what point does the City do the road as opposed to, do we wait until a developer comes along and happens to do it for us. Member Mutch discussed looking at the surrounding properties, the property to the West, when it developed, it was agreed upon to pave that portion of road in front of the property and going to the East there are a couple of small parcels. Catholic Central fields will not be a traffic generator. This development will be the sole source of traffic on this road. This road is not a through road like elsewhere in the community. This is a local road that will service primarily this parcel. Mr. Schultz was concerned, for this particular area and what's around it, that if you start with the premise that a court would say that you can't make them pave the road in return for the rezoning and to deny the rezoning until they pave the road in this set of circumstances, a court may say where is the difference. The argument has been made that it is not ready for rezoning but you have to ask whether under all the circumstances the City is getting what they are not permitted to do in a different way. Member Mutch understood that but the development that exists today has infrastructure in place to support it, where this development would not. It is a substandard road. He understood the position Mr. Schultz was taking. He asked whether the City could look at a special assessment district or another vehicle for capturing the funds necessary. The applicants talked about putting in 130 -150 homes, which would be about \$5,000 per home. It should be a

cost the developer should bear and not the City in this case. Mr. Schultz answered that it was a possibility and would bring something back on the SAD concept for Council to consider. Member Mutch said he would like to know that and he could not vote if he knew he was making the City and taxpayers responsible for cost to pave this road. Once the development starts, the people that live there are going to come to us and ask to pave the road. He wanted to table the action and hear back from Mr. Schultz on what the options are. Member Wrobel asked if we have the capacity for sewer/water to support the additional 200 plus homes. Mr. Hayes answered yes, based on the density proposed. Mayor Pro Tem Staudt addressed the issue of having an athletic field adjoining to the development. A few years later we may have residents complaining about the noise. Mr. Fingerroot found that the issue is when the houses are built first and then an adjoining use is developed, in this case the athletic fields will already be there before the houses are built and the people buying the homes have full knowledge that the athletic fields are there. In fact, some of them will back up directly to the football field. Mayor Pro Tem Staudt brought up the fact that the second buyers may not remember that the field was there prior to the development. Mr. Fingerroot said he would prefer to market a community on a paved road than a dirt road. The City has certain rules for development and has a two phase approach. The first phase we had a traffic study as a part of the rezone. They showed that it was consistent with the Master Plan. Then when we go for site plan approval we have a more comprehensive traffic study done. It looks at all roads and intersections in the area. Traffic discussions are more appropriate for site plan approval than a rezoning and consistent with other developments that he has done. There are a lot of questions to answer. For example, his frontage is about 600 feet, would he have to pave the 2,400 feet or the 600 feet and should this go forward with the site plan process; he would be in front of Council again. Mayor Pro Tem Staudt asked about sidewalks on Twelve Mile. Mr. Hayes said a sidewalk has been built from the corner of Napier, across about 620 feet, to Albert Street in Knightsbridge Gate. This development would extend it further. Member Margolis agreed that this is in accordance with the Master Plan. She supported it because it was consistent with the Master Plan. She thought that it was the City's responsibility to make sure that the infrastructure was there and that it was appropriate for development. City Manager Pearson wanted to say that the Planning Commission had a positive recommendation from the Public Hearing in review of this and with the Staff. We have not had a straight rezoning in a while. The property owner elected to do a rezoning rather than a PRO or another device to develop the property. Knightsbridge Gate was a long running consent judgment. At Site Plan Review the City will require what they are entitled to. Traffic count will increase. It is a public road and the City will appropriately find monies to get the road paved when the time is right. Mayor Gatt said he would support the motion. Member Mutch wanted to clarify the site plan review would not necessarily come back to Council unless it is a true subdivision. It doesn't give us leverage at that point to have the developer pave the road. Mr. Schultz said that at site plan review they can get the traffic experts opinion on the actual plan and there is more opportunity to talk with the developer and determine what he can do to make that property and development safe, even though the City does not have the ability to just say no site plan approval unless the developer has paved the road. Those might be some improvements that can be required. But again, this is the rezoning process and there is no conditional rezoning request. Twelve Mile

Road is a public road and we will have to act accordingly. Member Mutch looked up the Master Plan language and one of the implementation strategies states to encourage future development within this study area to pave and improve Twelve Mile Road if access to it is provided. He thought the Planning Commission at that time understood this road would be paved by the private developments. It is documented in Novi that when new development comes into Novi, they bear the cost of improving the roads that are necessary. The developer has made choice to build on a dirt road. From a financial view point, we are giving the developer a significant benefit to rezone this property, as far as, what they can currently build under the present zoning. It creates a significant financial advantage to the developer. Instead of working with the City, the property owner is getting all the financial benefit, and the City would have to bear the cost until this property is built out and based on that he would not support the motion.

CM-12-02-20 Moved by Margolis, seconded by Casey; MOTION CARRIED:

To approve the request of Pinnacle Homes for Zoning Map Amendment 18.702 to rezone land located south of Twelve Mile Road and east of Napier Road in Section 18, from RA, Residential Acreage District and R-1, One-Family Residential District to R-4, One-Family Residential District. The subject property totals 64 acres.

This motion is made for the following reasons:

- **The requested zoning is consistent with the Future Land Use map and the Residential Density map within the 2010 Master Plan for Land Use;**
- **The subject property was evaluated in detail as part of the "Twelve Mile, Napier, and Wixom Roads Study Area" in the 2008 Master Plan for Land Use Review, which recommended a Future Land Use designation and residential density for the subject parcel consistent with the requested zoning;**
- **The requested zoning is consistent with the zoning tentatively approved for the subject parcel by City Council in January 2008 when the subject parcel and four others were collectively considered for rezoning;**
- **Twelve Mile Road is largely residential in character in this area and residential zoning is appropriate for this location;**
- **The requested zoning is consistent with adjacent residential zoning districts and land uses.**

Roll call vote on CM-12-02-20

Yeas: Wrobel, Gatt, Staudt, Casey, Margolis

Nays: Mutch

Absent: Fischer

4. **Approval of Resolution for Adoption of the 2012 City of Novi Economic Development Goals & Strategies; and Review of 2011 Economic Development Goals & Strategies.**

City Manager Pearson asked Council to adopt Economic Development Goals & Strategies each calendar year. They had some feedback of suggestions that came in that morning and he asked Council to adopt the version they received that afternoon.

CM-12-02-21 Moved by Mutch, seconded by Staudt; CARRIED UNANIMOUSLY:

To approve the adoption of the 2012 City of Novi Economic Development Goals & Strategies; and Review of 2011 Economic Development Goals & Strategies.

Roll call vote on CM-12-02-21

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

5. Approval of resolution to authorize Budget Amendment #2012-3.

City Manager Pearson said this is a mid-year budget amendment that incorporates one rollover item, line item in Drain Funds and line items in office materials.

CM-12-02-22 Moved by Margolis, seconded by Casey; CARRIED UNANIMOUSLY:

To approve resolution to authorize Budget Amendment #2012-3.

Roll call vote on CM-12-02-22

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

6. Appointments to Boards and Commissions

Mayor Gatt requested approval to appoint Robert Churella to the Economic Development Corporation for a term expiring 3/1/2017.

CM-12-02-23 Moved by Margolis, seconded by Staudt; CARRIED UNANIMOUSLY:

To approve appointment of Robert Churella for the Economic Development Corporation for a term expiring 3/1/2017.

Roll call vote on CM-12-02-23

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

Sturing was reappointed to the Building Authority. Mr. Lee Mamola was reappointed to the Construction Board of Appeals. Mr. William J. Lawler and Mr. Brandon Stewart were appointed to the Housing and Community Development Advisory Committee.

AUDIENCE COMMENT - None

COMMITTEE REPORTS - None

MAYOR AND COUNCIL ISSUES - None

ADJOURNMENT

There being no further business to come before Council, the meeting was adjourned at 7:41 P.M.

Robert J. Gatt, Mayor

Maryanne Cornelius, City Clerk

Transcribed by Jane Keller

Date approved: March 12, 2012