

cityofnovi.org

CITY of NOVI CITY COUNCIL

Agenda Item 4
May 21, 2012

SUBJECT: Consideration of adoption of a resolution to vacate the remaining public right of way of Paul Bunyan Drive, also known as Orchard Avenue or Sixth Gate, east of Novi Road and south of Grand River Avenue.

SUBMITTING DEPARTMENT: Community Development - Planning *Bau*

CITY MANAGER APPROVAL: 

BACKGROUND INFORMATION:

Paul Bunyan Drive is a 60 foot wide public right of way that extends east from Novi Road, south of Grand River. A previous request to vacate a section of Paul Bunyan was approved in 2004, so that the only remaining public portion is the section that extends about 550 feet east from Novi Road. The previously-vacated section was approved subject to the granting of easements for ingress, egress and public utilities to allow continued public access. At this time, the public and vacated sections of Paul Bunyan are partially paved: there is a paved section immediately adjacent to the Flower Alley at Novi Road, a gravel portion about 600 feet long in front of the former municipal building, and further to the east the pavement starts again providing access to the City-owned and private parking lots extending over to the north/south section of Main Street.

The proponent for the Paul Bunyan street vacation, Victor Cassis, has indicated that the street vacation request is proposed to provide greater flexibility for potential future development on the adjacent properties, a majority of which is (or is expected to be) owned by Mr. Cassis. At this time, no development plan has been submitted for this area, although Mr. Cassis has included correspondence with some conceptual plans for potential development. Please note, none of the plans are currently active or under review.

In late 2011 and early 2012, staff coordinated a number of meetings with property owners and stakeholders in the Main Street area to facilitate discussions, identify issues and provide a coordinated response to the question of dissolution of the two condominiums that cover the vacant and developed land in the Main Street area. On April 25, 2012, the Planning Commission held a public hearing for Preliminary Site Plan SP12-16, which proposed an amendment to the existing site plan and a termination of the existing condominiums.

The Planning Commission's recommendation to the City Council was for approval of the submitted site plan subject to a collection of draft legal agreements, and contingent on a number of issues. Staff expects that the City Council will consider Preliminary Site Plan SP12-16 at the May 21 meeting, along with the street vacation request. If the Preliminary Site Plan is approved by the City Council, and Final Site Plan approval is obtained, the new site plan would supersede all previously-approved site plans, including site plans approved for Evergreen/Chen in 1997 and Triangle/Nona in 2006.

Planning staff reviewed the requested street vacation in conjunction with the submitted site plan SP12-16, and the draft legal documents that will address reciprocal parking, access and public/private utilities. One purpose of maintaining a street at this location is to insure that there will be adequate public access to Sixth Gate Road, connecting to Grand River Avenue and the City-owned parking lot with further access to Main Street to the east. If a full-width public access easement is provided with the vacation of the street, then this issue will be addressed. Both the Flower Alley business, and the vacant parcel to the east are owned by the Victor Cassis Trust. With the full access public easement across the length of the Paul Bunyan right of way, and agreement to the terms recommended with the submitted site plan, SP12-16, access will effectively be maintained to these parcels.

Procedure for Street Vacation

Section 7.6 of the City Code provides the procedure for vacating public streets:

- (a) Action to Vacate Public Places. Action to vacate, discontinue or abolish any highway, street, lane, alley or other public place, or part thereof, shall be by resolution. After the introduction of such resolution and before its final adoption, the Council shall hold a public hearing thereon and shall publish notice of such hearing at least one week prior thereto.

Following the public hearing and when the vote on the resolution to vacate the public street is taken, an affirmative vote of five or more members of Council is needed to effectuate the action, per section (b) of that part of the City Code.

RECOMMENDED ACTION:

Postponement of the attached resolution to vacate the remaining public right of way of Paul Bunyan Drive until such time as SP12-16, Main Street Final Site Plan is presented to the City Council for consideration, and subject to the following:

1. The Main Street Preliminary Site Plan SP 12-16 be approved by the City Council, and the following legal agreements be signed by all relevant parties prior to Final Site Plan approval:
 - a. Main Street Area Reciprocal Parking, Access, and Public/Private Utilities Agreement
 - b. First Amendment to Exchange Agreement (Main Street Area)
 - c. Termination of Condominium Project and Master Deed - Main Market Condominium
 - d. Termination of Condominium Project and Master Deed – Main Street Condominium;
2. The public ingress and egress easement provided in the resolution shall maintain alignment with the existing commercial driveway on the west side of Novi Road, unless and until any future site plan amendments are approved by the City;
3. The public ingress and egress easement provided in the resolution shall be maintained in good repair and kept unrestricted, including the easterly portion of the former Paul Bunyan right-of-way previously vacated;
4. Ownership of the existing 0.17-acre "devil's strip" on the south side of the Paul Bunyan right-of-way shall be transferred to the owner of Unit 2/Proposed Parcel 2 consistent with note included on Main Street Preliminary Site Plan SP 12-16; and
5. An access easement shall be granted to the owner(s) of Parcel 50-22-23-102-027 to avoid creating a landlocked parcel, unless the owner agrees to combine that parcel with an adjacent parcel.

	1	2	Y	N
Mayor Gatt				
Mayor Pro Tem Staudt				
Council Member Casey				
Council Member Fischer				

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

SUGGESTED RESOLUTION

CITY OF NOVI

OAKLAND COUNTY, MICHIGAN

RESOLUTION VACATING A PLATTED STREET
KNOWN AS PAUL BUNYAN DRIVE
IN THE NOVI MANOR SUBDIVISION
IN THE CITY OF NOVI
(With Legal Description)

At a meeting of the City Council of the City of Novi, Oakland County, Michigan, held on May 21, 2012, at the City Hall, 45175 Ten Mile Road, Novi, Michigan 48375.

WHEREAS, the Novi City Council held a public hearing on May 21, 2012, to consider and hear objections to the proposed vacation of a platted road known as Paul Bunyan Drive (and also sometimes referred to as Sixth Gate Road and/or Orchard Avenue), east of Novi Road and south of Grand River Avenue, a part of the Novi Manor Subdivision, within the City of Novi, County of Oakland, State of Michigan, and legally described as:

PART OF THE NORTHWEST $\frac{1}{4}$ OF SECTION 23, TOWN 1 NORTH, RANGE 8 EAST, CITY OF NOVI, OAKLAND COUNTY, MICHIGAN, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF SAID SECTION THENCE DUE SOUTH ALONG THE WEST SECTION LINE ALSO BEING THE CENTERLINE OF NOVI ROAD 459.16'; THENCE SOUTH 70 DEGREES 43 MINUTES 20 SECONDS EAST 63.56' TO THE EAST LINE OF NOVI ROAD ALSO BEING THE POINT OF BEGINNING; THENCE SOUTH 70 DEGREES 43 MINUTES 20 SECONDS EAST 554.37'; THENCE SOUTH 19 DEGREES 20 MINUTES 00 SECONDS WEST 60.00'; THENCE NORTH 70 DEGREES 43 MINUTES 20 SECONDS WEST 533.32'; THENCE DUE NORTH 63.56' TO THE POINT OF BEGINNING.

PARCEL CONTAINING 0.7491 ACRES.

WHEREAS, the City Council has jurisdiction to vacate the portion of the road in question, no part of which is within 25 meters of a lake or in the general course of a stream; and

WHEREAS, the Novi City Council is satisfied that the described portion of such platted road may be vacated without any adverse effects on the public health, safety, and/or welfare, but that an easement for public utilities and for ingress to and egress from adjacent parcels should be reserved over the entire parcel as described herein.

WHEREAS, on May 21, 2012, the Novi City Council approved a Preliminary Site Plan SP 12-16, Main Street, subject to satisfactory completion of the following items:

1. The following legal agreements be signed by all relevant parties prior to consideration by the City Council of the Final Site Plan for Main Street, SP 12-16:
 - a. Main Street Area Reciprocal Parking, Access, and Public/Private Utilities Agreement
 - b. First Amendment to Exchange Agreement (Main Street Area)
 - c. Termination of Condominium Project and Master Deed - Main Market Condominium
 - d. Termination of Condominium Project and Master Deed – Main Street Condominium;
2. Ownership of the existing 0.17-acre “devil’s strip” on the south side of the Paul Bunyan right-of-way shall be transferred to the owner of Unit 2/Proposed Parcel 2 consistent with note included on Main Street Preliminary Site Plan SP 12-16; and
3. An access easement shall be granted to the owner(s) of Parcel 50-22-23-102-027 to avoid creating a landlocked parcel, unless the owner agrees to combine that parcel with an adjacent parcel.

NOW, THEREFORE, IT IS HEREBY RESOLVED by the Novi City Council that:

1. The portion of that platted road located in the City of Novi, County of Oakland, State of Michigan, and legally described as follows:

PART OF THE NORTHWEST ¼ OF SECTION 23, TOWN 1 NORTH, RANGE 8 EAST, CITY OF NOVI, OAKLAND COUNTY, MICHIGAN, MORE PARTICULARLY DESCRIBED AS COMMENCING AT THE NORTHWEST CORNER OF SAID SECTION THENCE DUE SOUTH ALONG THE WEST SECTION LINE ALSO BEING THE CENTERLINE OF NOVI ROAD 459.16’; THENCE SOUTH 70 DEGREES 43 MINUTES 20 SECONDS EAST 63.56’ TO THE EAST LINE OF NOVI ROAD ALSO BEING THE POINT OF BEGINNING; THENCE SOUTH 70 DEGREES 43 MINUTES 20 SECONDS EAST 554.37’; THENCE SOUTH 19 DEGREES 20 MINUTES 00 SECONDS WEST 60.00’; THENCE NORTH 70 DEGREES 43 MINUTES 20 SECONDS WEST 533.32’;

THENCE DUE NORTH 63.56' TO THE POINT OF BEGINNING;
PARCEL CONTAINING 0.7491 ACRES;

shall be and hereby is vacated. An easement for public utilities and for public vehicular ingress and egress between the public right-of-way of Novi Road to the west and the existing easement across the previously-vacated portion to the east (recorded at Liber 35195 Page 235, Oakland County Register of Deeds) shall be and is hereby reserved over the entire parcel as described herein. The public ingress and egress easement shall maintain alignment with the existing commercial driveway on the west side of Novi Road, unless and until any future site plan amendments are approved by the City, and shall be kept in good repair. This action is taken pursuant to Sections 2526 and 2527 of Act 288 of the Public Acts of 1967, as amended, being MCL 560.256 and MCL 560.257, respectively.

2. Within 30 days after the effective date of City Council's approval of this Resolution, the City Clerk shall record a certified copy of this Resolution with the Oakland County Register of Deeds, and shall file a copy of this Resolution with the office of the Michigan State Treasurer.

3. The vacation of the portion of such portion of the platted road shall be effective on the date this Resolution is recorded with the Oakland County Register of Deeds, and upon the vacation of the portion of such platted road becoming effective, the portion of such platted road shall be removed from the street plan map and any other official maps or street plans for the City of Novi.

STATE OF MICHIGAN)
)ss.
COUNTY OF OAKLAND)

I, MARYANNE CORNELIUS, the duly-qualified Clerk of the City of Novi, Oakland County, Michigan, do hereby certify that the foregoing is an amended copy of the Resolution adopted by the City Council of the City of Novi with at least five (5) affirmative votes, at a duly-called meeting held on May 21, 2012, a copy of which is on file in my office.

MARYANNE CORNELIUS
Clerk, City of Novi

This Resolution was signed and acknowledged before me on _____, 201_, by MARYANNE CORNELIUS, the duly-authorized Clerk for the City of Novi, a Michigan municipal corporation.

Notary Public, Oakland County, Michigan
My Commission Expires:_____

Recording Fee: \$____.00

Not Subject to Transfer Taxes: MCL 207.502 and MCL 207.523

PREPARED BY
THOMAS R. SCHULTZ (P42111)
JOHNSON, ROSATI, SCHULTZ, JOPPICH
34405 W. TWELVE MILE ROAD STE. 200
FARMINGTON HILLS, MI 48331

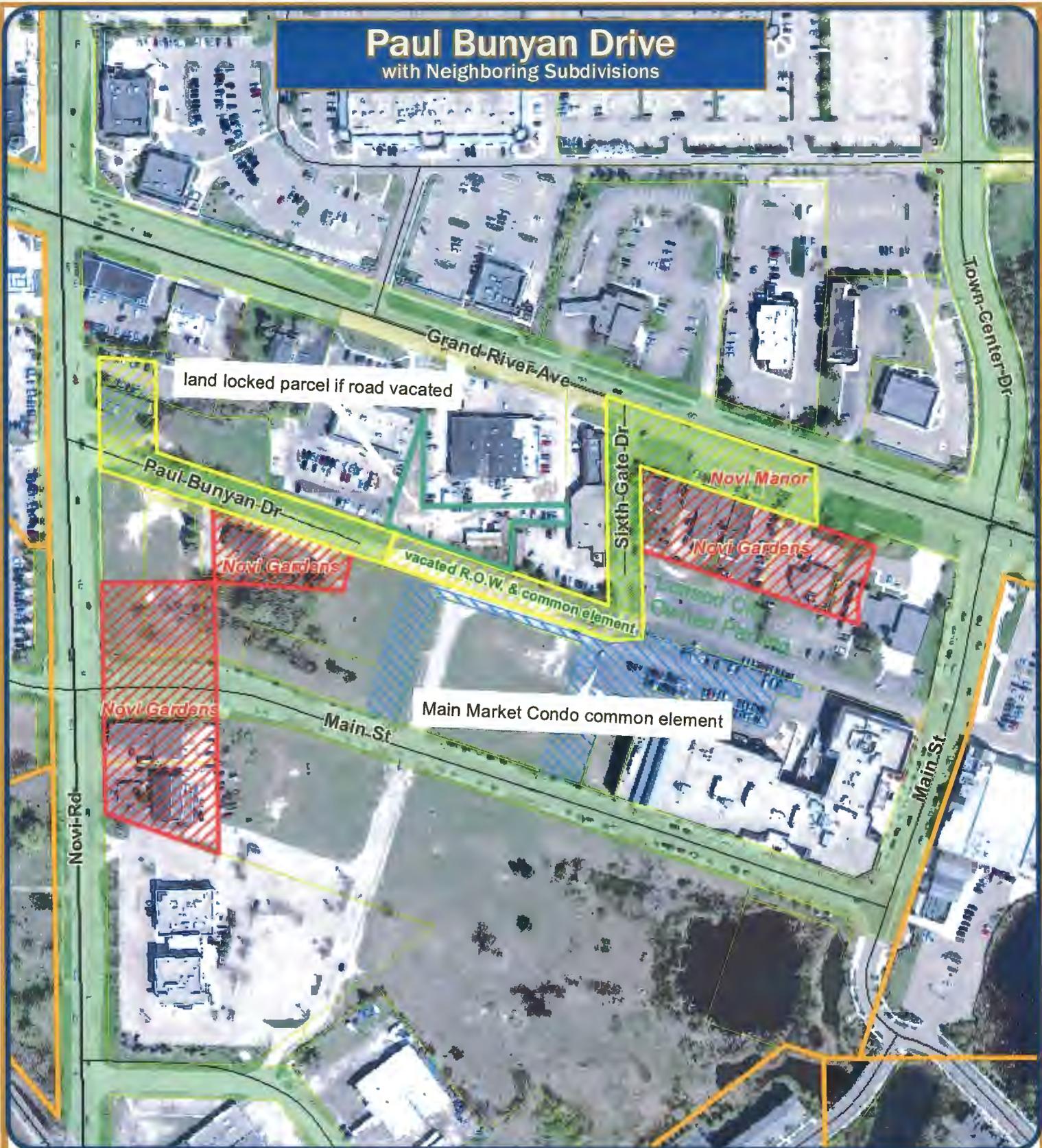
UPON RECORDING RETURN TO:
MARYANNE CORNELIUS, CITY CLERK
45175 W. 10 MILE ROAD
NOVI, MI 48375

ZCM 12-01

MAPS

Location and Subdivisions
Developments and Parking

Paul Bunyan Drive with Neighboring Subdivisions



Map Author: Mark Spencer
Date: 12/14/11
Project: Paul Bunyan
Version # 1.0

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.

Legend

Subdivisions

-  other subs
-  remaining Novi Manor Sub
-  remaining Novi Gardens Sub
-  Tax Parcels

Right of Way

-  Dedicated
-  Prescriptive
-  Private



City of Novi

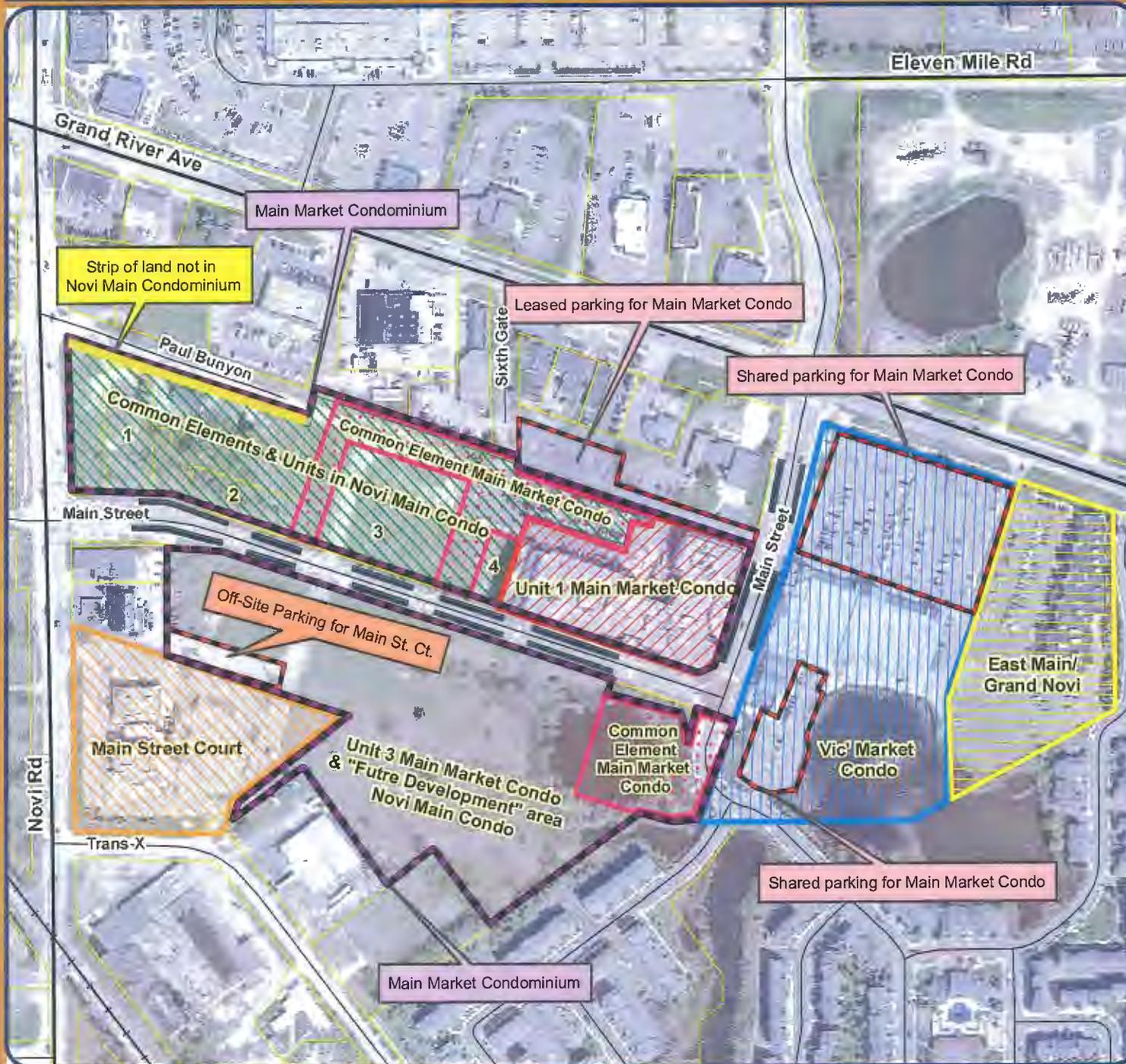
Planning Division
Community Development
45175 W Ten Mile Rd
Novi, MI 48375
cityofnovi.org



1 inch = 232 feet

Main Street Area Developments and Parking

Existing Condominiums and Parking Agreement Areas



Map Legend

Streets

- Major
- Minor
- + Railroad

Tax Parcels



City of Novi
 Dept. of Community Development
 City Hall / Civic Center
 45175 W Ten Mile Rd
 Novi, MI 48375
cityofnovi.org

Map Author: Mark Spencer
 Date: 1/18/12
 Project: Main St Parking
 Version #: 1.2

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APPLICANT'S REQUEST

22186 Daleview Drive
Novi
Michigan 48374

Mr. Clay Pearson, City Manager
Mayor Bob Gatt ad Members of Council
City of Novi
45175 West Ten Mile Road
Novi
Michigan 49375

May 1, 2012

Dear Mr. Pearson, Mayor Gatt, and Council members,

I am formally requesting the City proceed with the vacation of that part of Paul Bunyan Drive that the City of Novi still owns. My previous submission in this matter is dated December 5, 2011. The matter was tabled to a date certain which was later postponed by the Council.

Enclosed please find architectural concepts of future development of the Main Street properties.

Respectfully yours,



Victor Cassis

22186 Daleview Drive
Novi
Michigan
48374

Mr. Clay Pearson, City Manager
City of Novi
45175 West Ten Mile Road
Novi
Michigan 49375
December 5, 2011

Dear Mr. Pearson:

I am formally requesting that the city initiate the vacation of that part of Paul Bunyan Drive that Novi still owns. This comes pursuant to your recent recommendation. Enclosed are copies of previous actions by the city regarding this matter.

I look forward to working with you and the Council on this issue.

Respectfully yours,



Victor Cassis

CITY OF NOVI
OAKLAND COUNTY, MICHIGAN

**RESOLUTION VACATING A PORTION OF A PLATTED STREET
KNOWN AS PAUL BUNYAN DRIVE
IN THE NOVI MANOR SUBDIVISION
IN THE CITY OF NOVI**

At a meeting of the City Council of the City of Novi, Oakland County, Michigan, held on April 5, 2004, at the City Hall, 45175 Ten Mile Road, Novi, Michigan 48375.

WHEREAS, the Novi City Council held a public hearing on March 15, 2004, to consider and hear objections to the proposed vacation of that portion of a platted road known as Paul Bunyan Drive (and also sometimes referred to as Sixth Gate Road and/or Orchard Avenue), east of Novi Road and south of Grand River Avenue, a part of the Novi Manor Subdivision and adjacent to the Novi Gardens Subdivision, within the City of Novi, County of Oakland, State of Michigan, and legally described as:

PART OF "NOVI MANOR", A SUBDIVISION LOCATED IN THE NW 1/4 OF SECTION 23, TOWN 1 NORTH, RANGE 8 EAST, CITY OF NOVI, OAKLAND COUNTY, MICHIGAN AS RECORDED ON LIBER 60, PAGE 18 OF PLATS, OAKLAND COUNTY RECORDS, DESCRIBED AS LYING EAST OF A LINE BEGINNING AT THE NORTHWEST CORNER OF LOT 35 THENCE NORTH 19 DEGREES 20 MINUTES EAST, 60.00 FEET; THENCE SOUTH 70 DEGREES 40 MINUTES EAST, 462.96 FEET; THENCE SOUTH 00 DEGREES 05 MINUTES EAST, 42.60 FEET; THENCE NORTH 89 DEGREES 55 MINUTES WEST, 60.00 FEET; THENCE NORTH 70 DEGREES 40 MINUTES WEST, 420.00 FEET TO THE POINT OF BEGINNING. CONTAINING 0.638

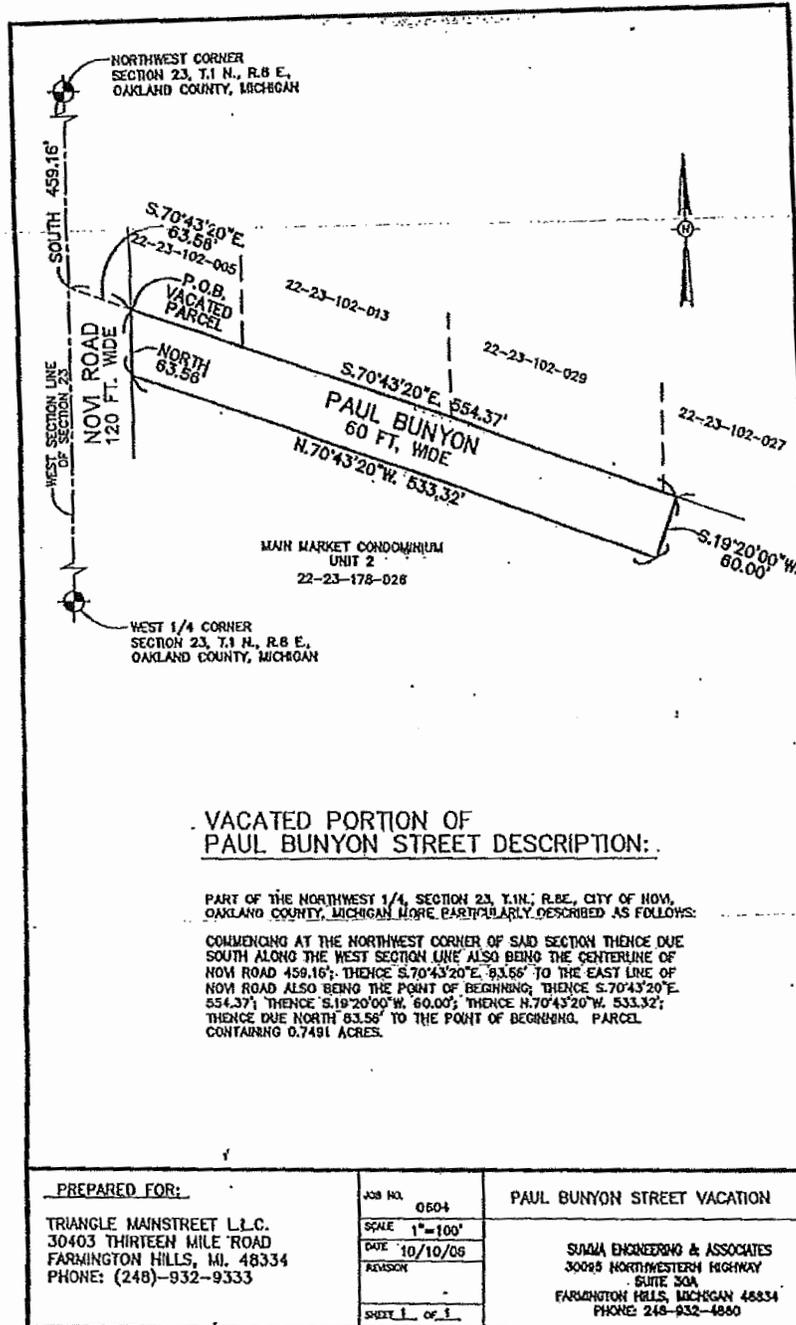
WHEREAS, the City Council has jurisdiction to vacate the portion of the road in question, no part of which is within 25 meters of a lake or in the general course of a stream; and

WHEREAS, the Novi City Council is satisfied that the described portion of such platted road may be vacated without any adverse effects on the public health, safety,

CITY OF NOVI
NOTICE OF PUBLIC HEARING
PROPOSED VACATION OF A PART OF ORCHARD AVENUE/PAUL BUNYON DRIVE, ALSO
KNOWN AS SIXTH GATE, ADJACENT TO THE MAIN STREET NOVI DEVELOPMENT EAST OF
NOVI ROAD

NOTICE IS HEREBY GIVEN that the City of Novi City Council will hold a public hearing on Monday, February 12, 2007 at 7:00 p.m., or as soon thereafter as the same may be reached, on the proposed vacation of a part of Orchard Avenue/Paul Bunyon Drive, also known as Sixth Gate, adjacent to the Main Street Novi development east of Novi Road.

NOTICE IS FURTHER GIVEN that this hearing will be held in the Council Chambers of the Novi Civic Center, 45175 W. Ten Mile, Novi, Michigan 48375. All interested persons will be heard at this Hearing.



Questions regarding this matter may be directed to the City Clerk at 248-347-0456.
MARYANNE CORNELIUS
CITY CLERK
PUBLISHED:02/01/07

May 1, 2012

Dear Barbara:

As requested, I am enclosing the request for Paul Bunyan vacation. Also, several schemes of possible development.

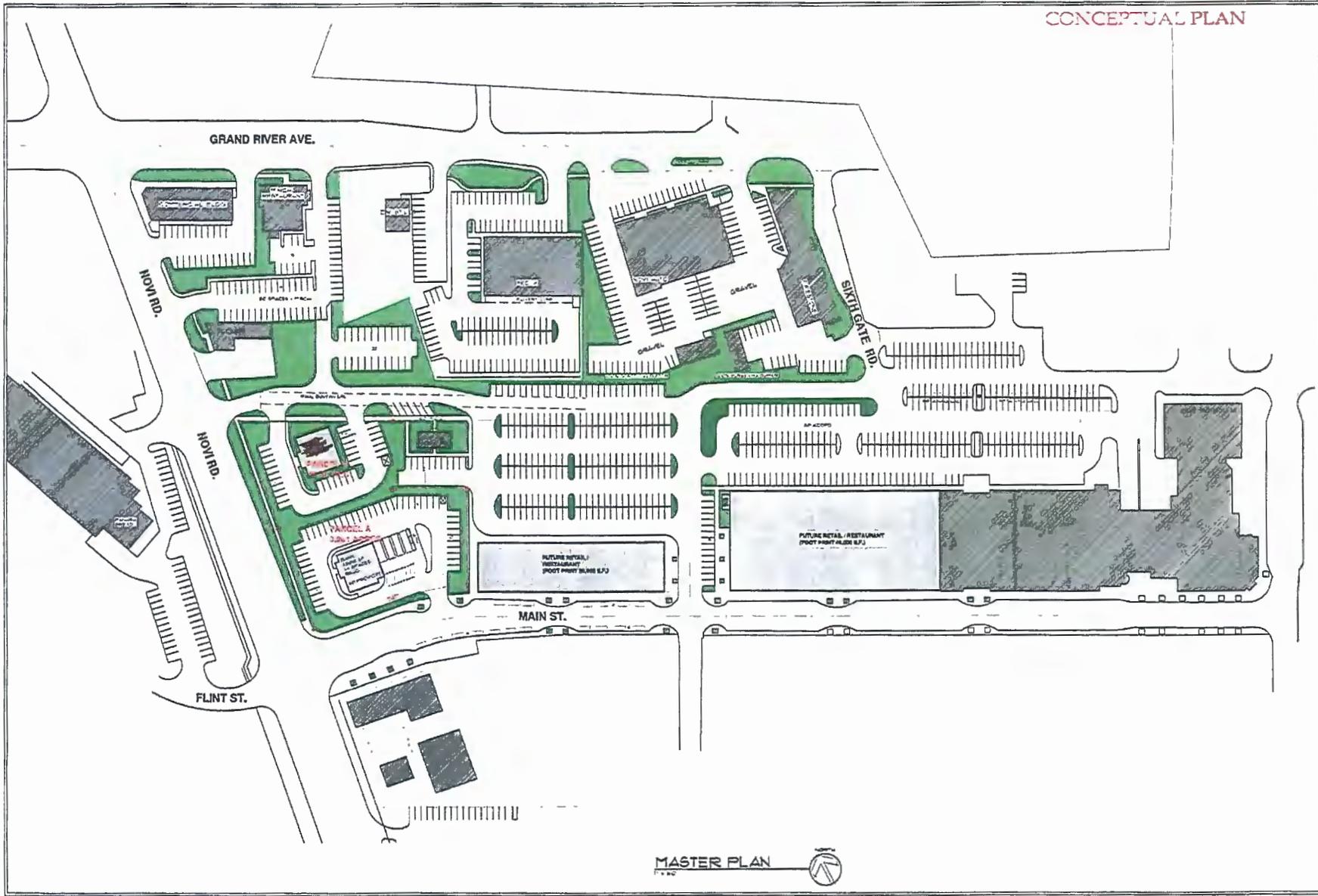
Two copies, c.o. schemes are the layout for the credit union submittal.

I was going to suggest a study session with your team for some feedbacks and suggestions! Just an idea!!

Thanks.

Victor Cassip

CONCEPTUAL PLAN



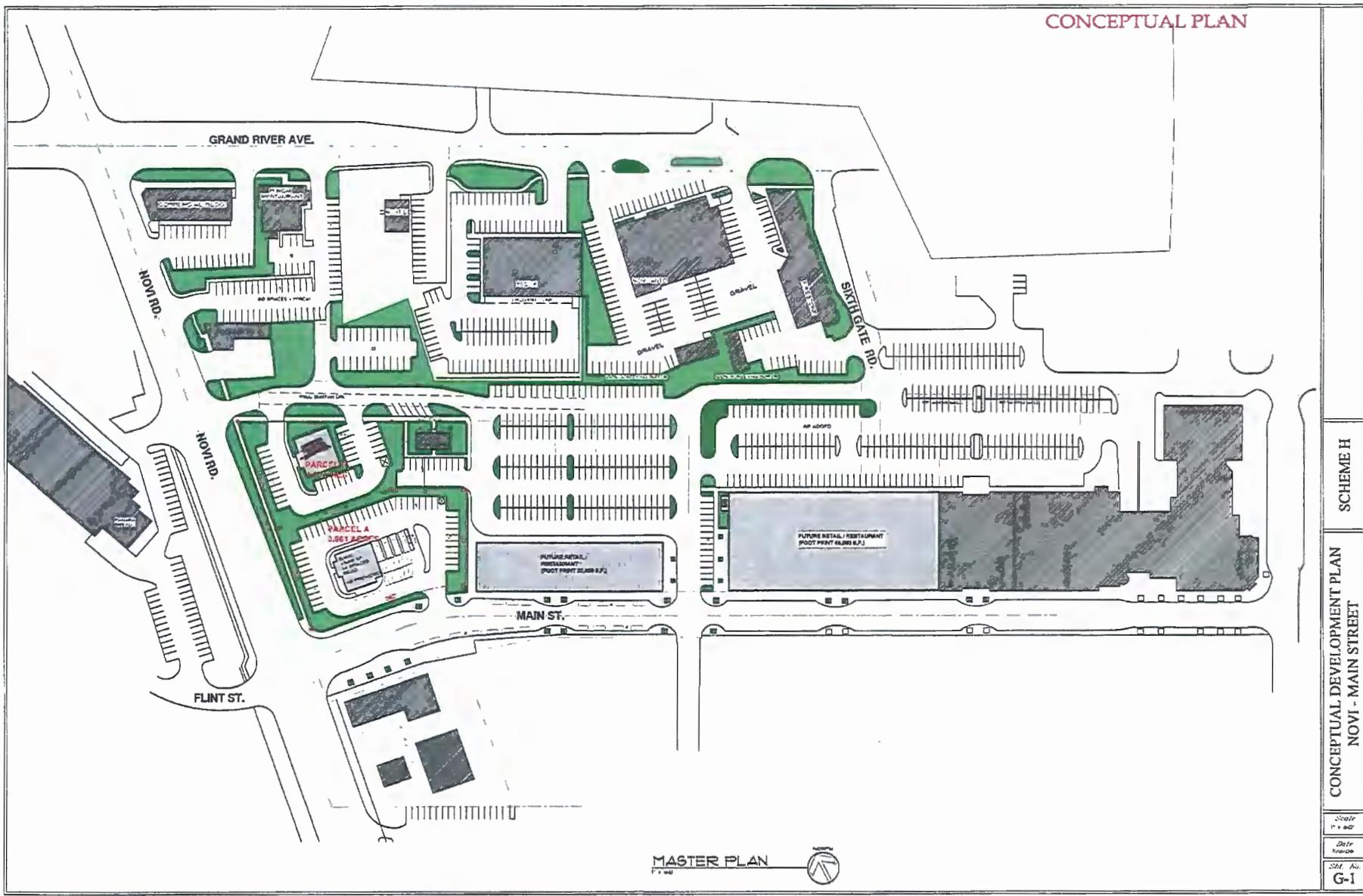
SCHEME H

CONCEPTUAL DEVELOPMENT PLAN
NOVI - MAIN STREET

Scale	1" = 40'
Date	6/20/08
Sheet No.	G-1

C.U.
Scheme

CONCEPTUAL PLAN



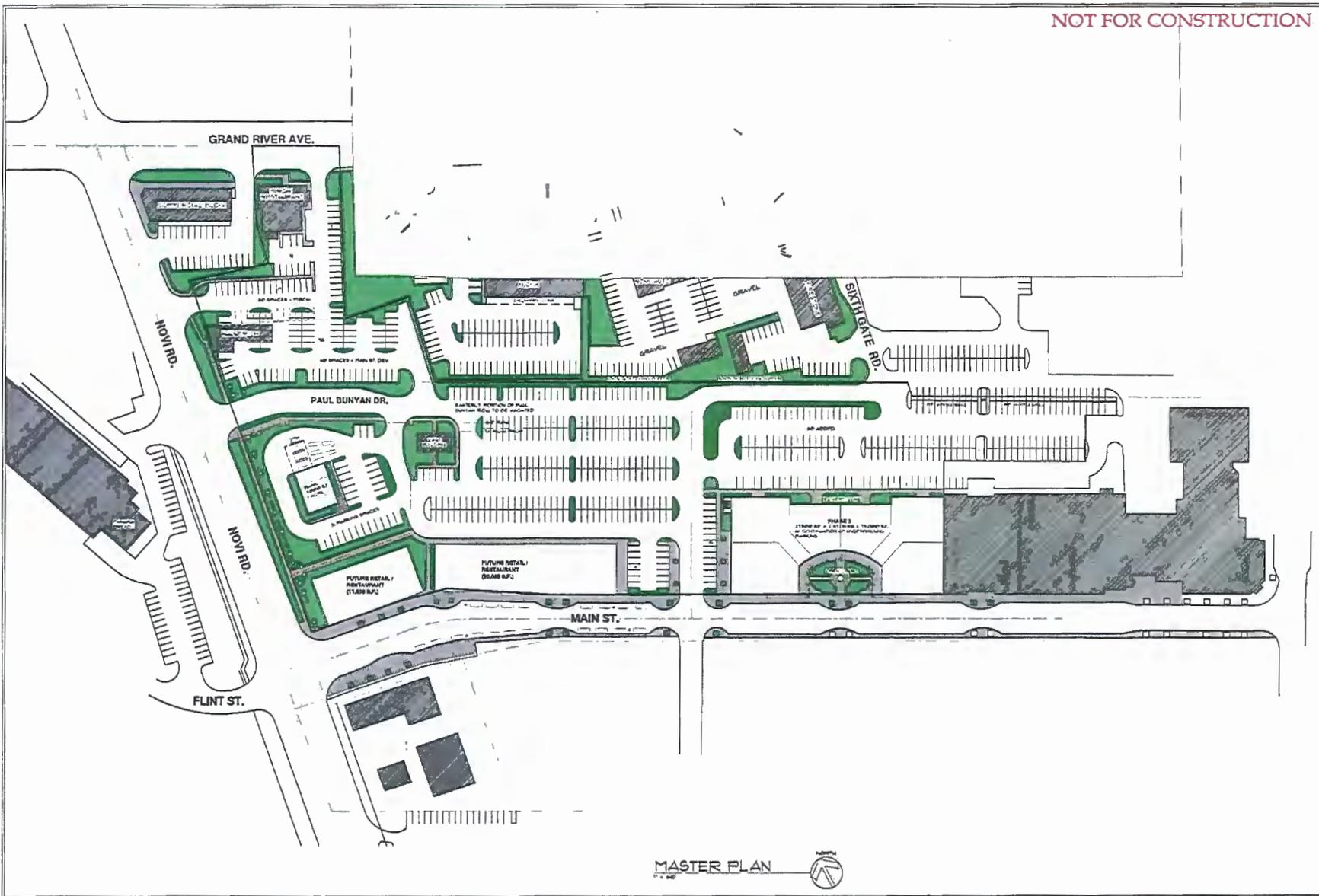
SCHEME H

CONCEPTUAL DEVELOPMENT PLAN
NOVI - MAIN STREET

Scale
1" = 50'
Date
1/20/08
Sht. No.
G-1

C.U.
Scheme

NOT FOR CONSTRUCTION



MASTER PLAN

2/11/13

SCHEME H

CONCEPTUAL DEVELOPMENT PLAN
NOVI - MAIN STREET

Scale
1" = 60'

Date
1/14/13

SAL Ao
G-1

NOT FOR CONSTRUCTION

GRAND RIVER AVE.

NOVI RD.

SIXTH GATE RD.

PAUL BUNYON

MAIN ST.

NOVI MICHIGAN

OVERALL SITE PLAN
SCHEME D

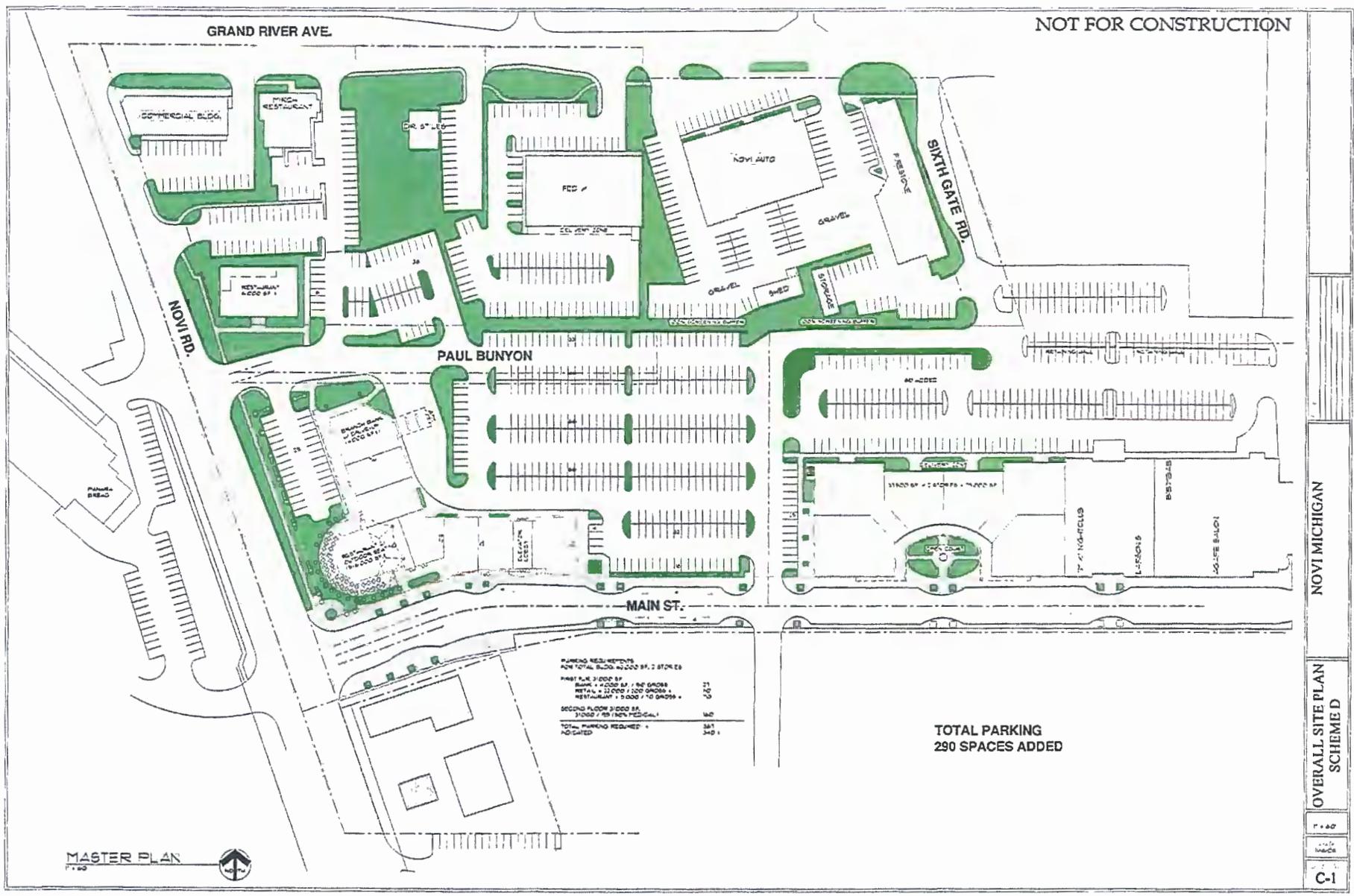
MASTER PLAN



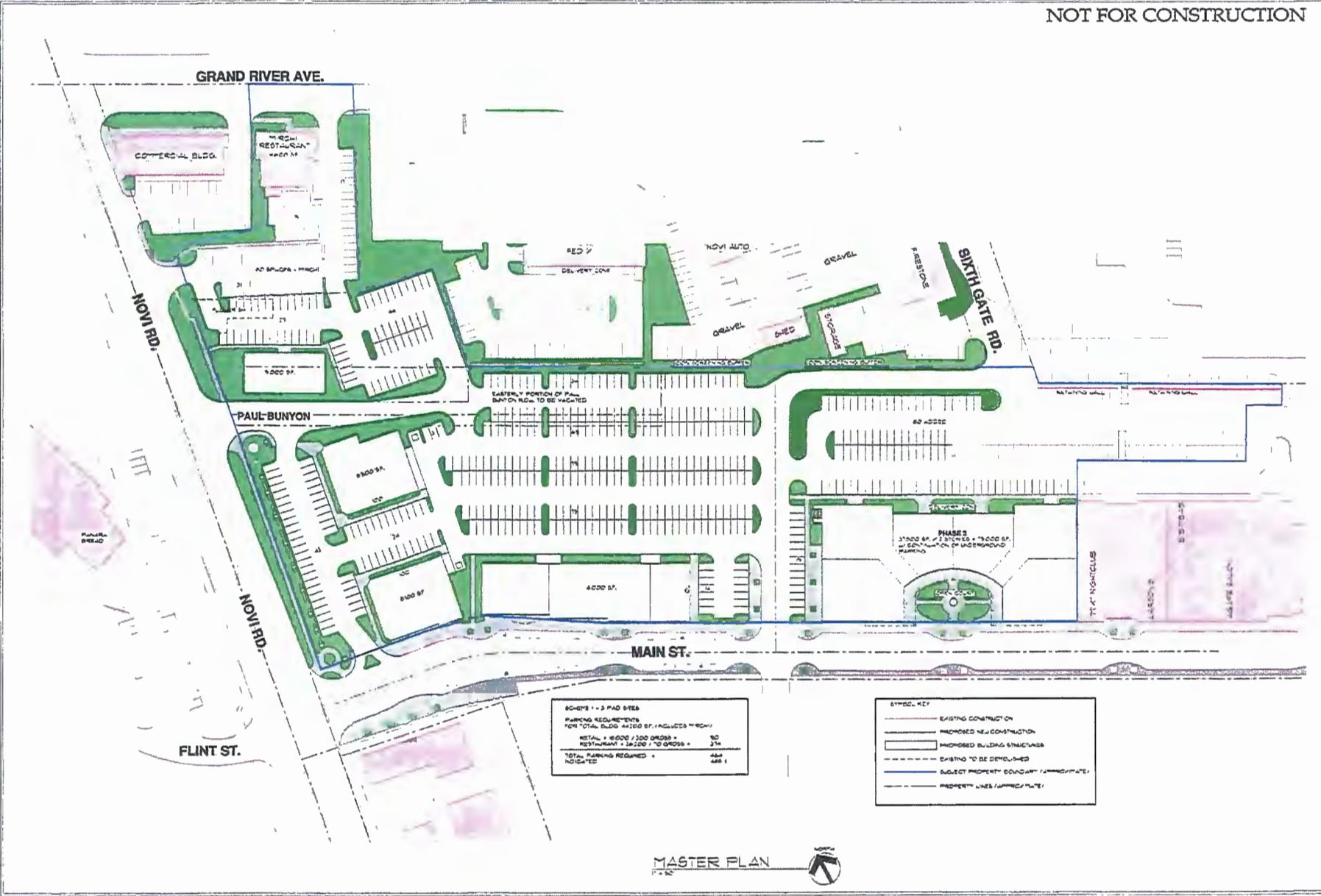
PARKING REQUIREMENTS	
FOR TOTAL BLDG FLOOR SF. 2 STORES	
FIRST FLOOR 3,000 SF	23
RETAIL 1,000 SF / 40 CARS	40
RESTAURANT 1,000 SF TO 2,000 SF	10
SECOND FLOOR 3,000 SF	140
3,000 SF / 120 CARS (MEDICAL)	
TOTAL PARKING REQUIRED *	347
ADDED	340

TOTAL PARKING
290 SPACES ADDED

1" = 40'
1/8" = 5'
C-1



NOT FOR CONSTRUCTION



SCHEME 1 - 3 PAD SITE

PARKING REQUIREMENTS FOR TOTAL BLDG. AREA OF 14,000 SQ. FT. (EXCLUDES TRUCK YARD)	80
RESTAURANT = 16,000 / 200 GROSS	30
RESTAURANT = 30,000 / 70 GROSS	374
TOTAL PARKING REQUIRED = INDICATED	4000
	488

SYMBOL KEY

(Solid line)	EXISTING CONSTRUCTION
(Dashed line)	PROPOSED NEW CONSTRUCTION
(Thick solid line)	PROPOSED BUILDING STRUCTURES
(Thin solid line)	EXISTING TO BE DEMOLISHED
(Blue dashed line)	SUBJECT PROPERTY BOUNDARY (APPROXIMATE)
(Thin solid line)	PROPERTY LINES (APPROXIMATE)

MASTER PLAN
1" = 30'

15-01110-01
 SCHEME H
 CONCEPTUAL DEVELOPMENT PLAN
 NOVI - MAIN STREET
 Scale
 1" = 30'
 Date
 1/26/06
 SHEET No
 G-1

22186 Daleview Drive
Novi
Michigan
48374

Mr. Clay Pearson, City Manager
City of Novi
45175 West Ten Mile Road
Novi
Michigan 49375
December 5, 2011

12/6/11
cc: Rob H
TBS
M... C
Bob MCB

For our
review
[Signature]

Dear Mr. Pearson:

I am formally requesting that the city initiate the vacation of that part of Paul Bunyan Drive that Novi still owns. This comes pursuant to your recent recommendation. Enclosed are copies of previous actions by the city regarding this matter.

I look forward to working with you and the Council on this issue.

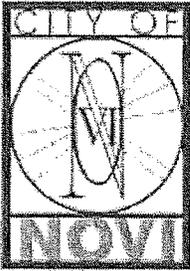
Respectfully yours,

Victor Cassis

Victor Cassis

**SUPPLEMENTAL INFORMATION
FROM APPLICANT
RECEIVED JANUARY 18, 2012**

MEMORANDUM



cityofnovi.org

TO: CLAY PEARSON, CITY MANAGER
FROM: BARBARA MCBETH, AICP, DEPUTY DIRECTOR COMMUNITY DEVELOPMENT
SUBJECT: PAUL BUNYAN SUPPLEMENTAL DOCUMENTS
DATE: JANUARY 19, 2012

The City Clerk's Office indicated that additional documents regarding the proposed Paul Bunyan street vacation were submitted yesterday for consideration by the City Council at the January 23rd meeting. These documents include a letter from Victor Cassis dated January 12, 2012, two conceptual site plans, an excerpt from a Master Plan document and a marked copy of the plan that had previously been submitted with the Triangle Main Street proposal in 2008.

Since these plans were only received today, and not with the original letter requesting the street vacation in December, staff has not had a chance to review and comment on any of these additional items. The only comment the City provides on this late submittal is contained in the letter from the City Attorney's office clarifying the City's position on a couple of statements made in Mr. Cassis' letter.

Please note, Planning staff will route the additional information for review by the Planning, Engineering, Fire and Assessing Departments in order to provide written comments on this additional information prior to the City Council's public hearing on this matter.

Victor Cassis

22186 Daleview Drive Novi, Michigan 48374

CITY OF NOVI
CITY CLERK'S OFFICE

2012 JAN 18 A 10: 22

January 12, 2012

Dear Mayor Gatt and Members of Council,

It is my understanding that you will be considering setting a public hearing on the issue of vacating a small, remaining strip of Paul Bunyan Street, owned by the City. I am in agreement regarding this vacation and will appear before Council on this matter on January 23rd.

The logic behind the vacation relies on the following:

- Most of Paul Bunyan has already been vacated by the city to the former Triangle Corp.; the city wanted and was willing to vacate the rest of Paul Bunyan to complement and accommodate Triangle's development in 2008
- Current remaining strip is in poor maintenance
- I own both sides of the street but have no intent to build on Paul Bunyan
- Paul Bunyan provides access to current and future development
- Our city manager has said on a number of occasions that the city is willing to vacate this piece
- Per a letter written by the city's attorney, Tom Schultz, the administration is asking me to give up property I own to further a concept for a "small outdoor seating area" or public patio in exchange for vacating Paul Bunyan
- The condominium agreement from the days of James Chen is, in my opinion, being raised to further complicate things. Vacation and condominium boundaries are entirely separate and independent of each other.

The history of this area presents former challenges and frustrations and today, opportunities for new prosperous tax base development and all important jobs. To briefly iterate, the master plan of the 1990's envisioned a pedestrian-oriented downtown. After much deliberation by several councils and the apprehensions expressed by many developers, approval was given for a design we now call Main Street. Unfortunately, the design, location, shifting city policies, and the economic climate over the years have hampered this important part of downtown. Vacancies and bankruptcies occurred perhaps spurred, in part, by the approval of a competing development, Fountain Park, at the very time James Chinn and Evergreen were assembling tenants for its development. Most of the large, potential tenants left Main Street commitments and signed on with Fountain Park. And so a significant portion of the city's vision and planning languished.

Having been in this city since 1974 and having been a significant taxpayer, business owner, and developer in this city I call home, I always watched with interest the progress on the "four corners" along Grand River and Novi Roads. Importantly, I abided by all the rules, used my own resources, and never requested any kind of special treatment. In fact I volunteered time, effort and energy serving on the ZBA, Planning Commission, City Council, and many city, school committees along with active membership in the Novi Chamber and Rotary Club.

When the opportunity presented itself in late 2010 to purchase 7.04 acres on the north part of Main Street from TCF Bank, I took the plunge and the risk due to my unabashed faith in Novi and its future. My own history with the city speaks for itself. My intention is to work together in partnership with neighboring landowners, TCF Bank, the city administration and the Council to assure the development of a premier, taxpaying asset to our city. To this end, I firmly remain committed to the city's desire to uphold its high principles while removing unnecessary barriers and restrictions. In the end, working together is the best solution for all involved. Vacating Paul Bunyan is just the first step.

Sincerely,



Victor Cassis

GRAND RIVER AVE.

NOT FOR CONSTRUCTION

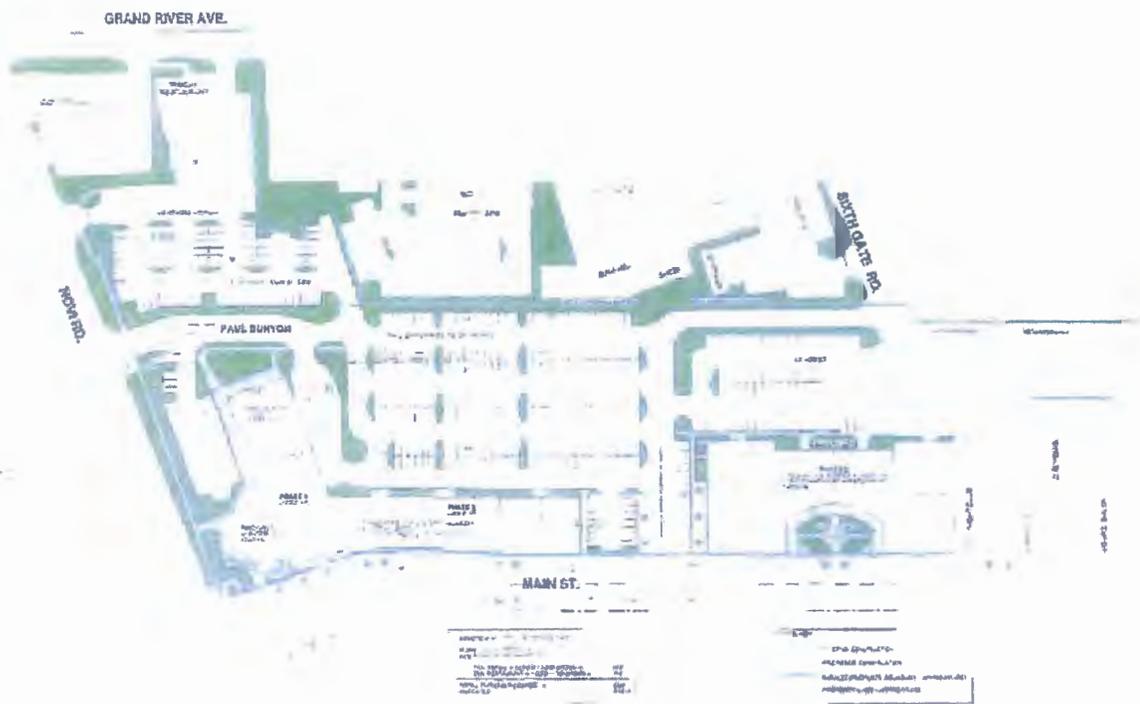


TOTAL PARKING
290 SPACES ADDED

NOV MICHIGAN
OVERALL SITE PLAN
SCHEMED



NOT FOR CONSTRUCTION



SCHEME II

CONCEPTUAL DEVELOPMENT PLAN
NOVI - MAIN STREET

9-1

4

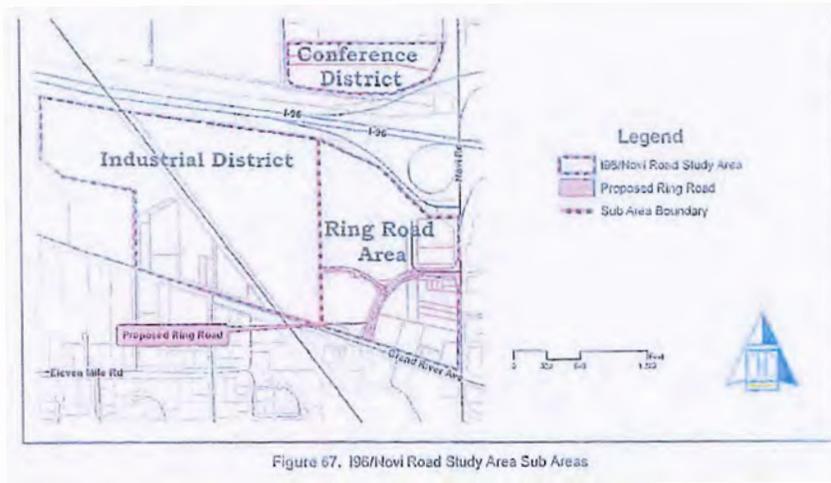
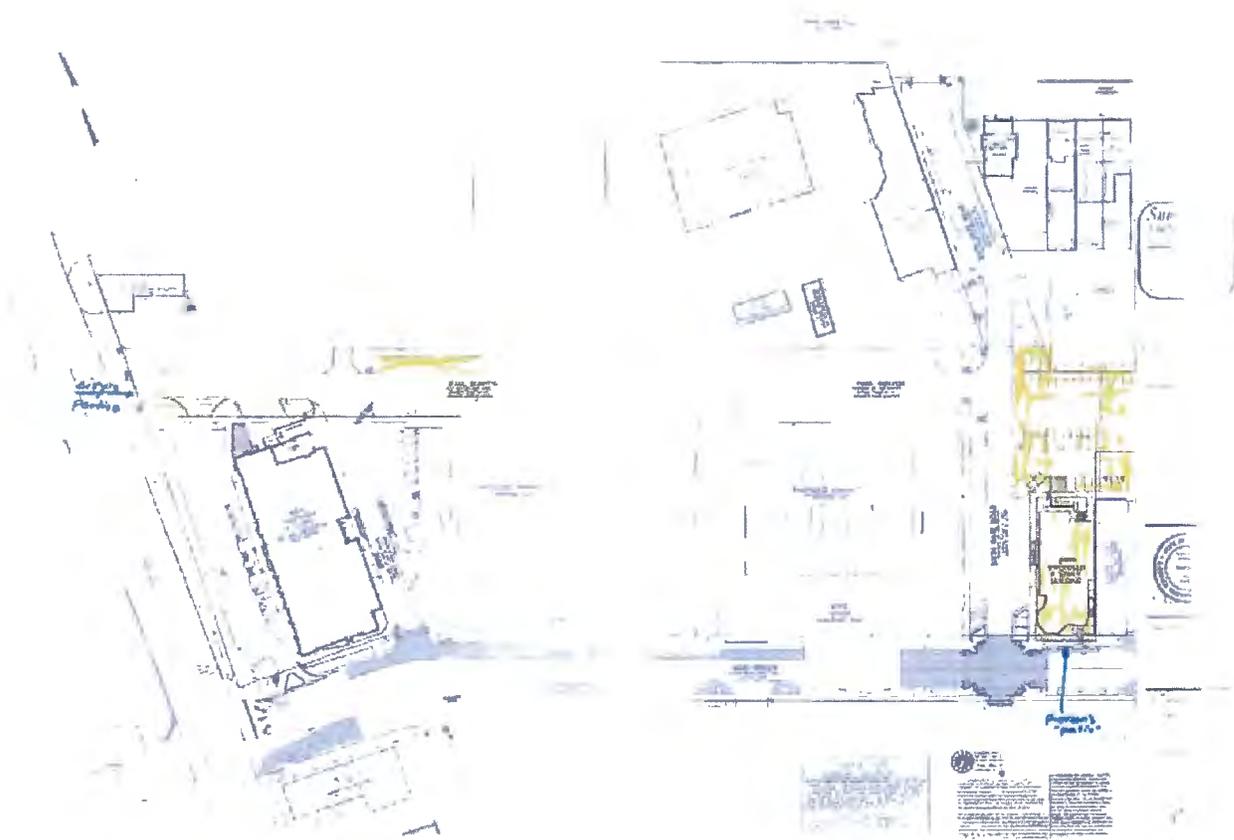


Figure 67. 196/Novi Road Study Area Sub Areas

Handwritten notes:
 Please duplicate & distribute to
 all 400 + County C
 Members



**LETTER FROM CITY ATTORNEY'S OFFICE
DATED JANUARY 18, 2012**



January 18, 2012

30903 Northwestern Highway
P.O. Box 3040
Farmington Hills, MI 48333-
3040
Tel: 248-851-9500
Fax: 248-851-2158
www.secretwardle.com

Thomas R. Schultz
Direct: 248-539-2847
tschultz@secretwardle.com

Barb McBeth,
Deputy Director of Community Development
City of Novi
45175 W. Ten Mile Road
Novi, MI 48375

Re: *Potential Vacation of Area of Paul Bunyan Drive*
Our File No. 55142 NOV

Dear Ms. McBeth:

You have asked us to review the proposed resolution to set a public hearing to vacate a portion of Paul Bunyan Drive for February 21, 2012. We have reviewed the resolution to set the hearing and find it acceptable. This step in the vacation process—setting a public hearing only—requires only a majority vote (the vacation itself, if City Council chooses to proceed with it, would require five votes). Note that Council is not obligated to set a hearing; the decision whether to vacate the road is discretionary, and the hearing is required only if the Council determines that it may do so. Council retains that discretion to vacate or not after the hearing is held.

You also asked us to review our previous letter of December 29, 2006 on the same subject involving a request by Triangle Development (Nona) to vacate this area of Paul Bunyan Drive, to determine whether it remains appropriate as an explanation process of vacation and its effects. After reviewing the letter, I believe that it may not entirely apply. For one thing, it appears that after the December, 2006 letter was written, there was some correspondence from Mr. Cassis' attorney (2007) indicating that the effect of the vacation might be different than expected by Triangle. That may be why the request was withdrawn.

It is unclear to us at this point what the effects of the vacation on ownership would be. In a platted subdivision, a vacated street or alley reverts to the abutting landowners. But the question here will be resolved by determination of what subdivision the property was in. The question may be affected by the dates or timing of previous vacations.

As you know the property ownership has changed somewhat since Triangle owned it. With the last vacation request, the adjacent property to the south was owned by Triangle, which also owned most of the immediately surrounding property—and in particular all of Unit 2 of the Main Market Condo. Some of Unit 2 of the Main

Ms. Barb McBeth
January 18 2012
Page 2

Market Condo is now owned by Mr. Cassis. However, there is a small strip of land (about 12 feet in width) running right along the south edge of Paul Bunyan Drive that does not appear to have been conveyed to Mr. Cassis. While we did receive a copy of Mr. Cassis' letter to Council dated January 12, 2012, indicating that he owns "both sides of the street," we are not yet sure of that, and it seems that TCF Bank might disagree. How, or if, that might affect what happens after vacation has not yet been determined. As noted above, that may be affected by the property lines between the Novi Manor and Novi Gardens Subdivisions in that area.

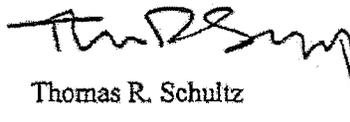
Second, that small strip is still in the Main Market Condo. The area if now vacated would not become part of the existing Main Market Condo; it would be a separate metes and bounds parcel until proposed for some sort of development.

The narrow strip that is potentially still held by TCF Bank is an issue that might be best resolved, if at all possible, before the City Council finalizes a vacation. The City's hope has been working with Mr. Cassis and TCF and the owners of Unit 1 of the Condo to find a way to dissolve the Condo and clear the decks legally for redevelopment. Vacation of Paul Bunyan may fit well into any eventual condominium resolution (or it might stay a separate parcel), but it is unclear at this point how vacation would help Mr. Cassis' efforts at redevelopment while the issue of the strip of land and the Condo remain unresolved. And, depending on the direction ownership takes, there may be an issue of accessibility to the strip being created.

Finally, we note the comment in Mr. Cassis' letter that the "administration is asking" him to give up some of his property. To be clear, the administration has not asked for that. We did at one point understand that the three co-owners of the Main Market Condo (including Mr. Cassis) were themselves contemplating some rearrangement of property lines (in order to make the dissolution somewhat easier). Mr. Cassis has since made clear that that isn't necessarily the case. The City has no issue with that, as we've attempted to since make clear as well.

If you have any questions regarding the above, please do not hesitate to call.

Very truly yours,



Thomas R. Schultz

TRS/jec
Enclosure

cc: Clay Pearson, City Manager
Charles Boulard, Community Development Director

Ms. Barb McBeth
January 18 2012
Page 3

Rob Hayes, Director of Department of Public Services
Maryanne Cornelius, Clerk
Glenn Lemmon, Assessor
Beth K. Saarala, Esq.

**LETTER FROM CITY ATTORNEY'S OFFICE
DATED DECEMBER 29, 2006**



December 29, 2006

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. Kudla
Direct: 248-539-2846
bkudla@secretwardle.com

Tim Schmitt, Planner
City of Novi
45175 W. Ten Mile Road
Novi, MI 48375

RE: *Potential Vacation of Paul Bunyan Drive*
Our File No. 55142 NOV

Dear Mr. Schmitt:

We have received and reviewed the materials provided with respect to Triangle Main Street's request that the City vacate the remaining public portion of Paul Bunyan Drive, which is a platted street located east of Novi Road and west of the previously vacated portion of Paul Bunyan Drive (aka Orchard, Sixth Gate). The remaining public portion of Paul Bunyan Drive is located within the Novi Gardens Subdivision.

If vacated, as far as the City's records are concerned, the road area will revert to the abutting property owner of the Novi Gardens Subdivision. The common-law rule in Michigan is that in a platted subdivision, a vacated street or alley reverts to the abutting landowners. See *Thompson-McCully Quarry Co v Berlin Charter Township*, 259 Mich App 483 (2003); *Township of Dalton v Muskegon Co Board of Co Road Commissioners*, 223 Mich App 53 (1997); *Valoppi v Detroit Engineering & Machine Co*, 339 Mich 674 (1954), MCL 560.221 *et seq.*

Some attorneys and title insurance companies have questioned whether a simple resolution to vacate a street by the City is sufficient to *vest title* to the vacated street in the adjacent owners, or whether a circuit court action is required to transfer title. We have generally read the applicable law (the Land Division Act) to allow vacation by resolution duly recorded at the Register of Deeds. We assume for purposes of this letter that the City does not intend to commence a circuit court vacation action (which would be required if the road were within 25 meters of a lake or watercourse). We further assume that the party requesting the vacation, Triangle Main Street, LLC, has made whatever inquiries it feels necessary with its title insurer to conclude that, upon a vacation resolution by the City (if approved), Triangle will have (or be able to acquire) title to the area, since it intends to make use of the area in its development.

In considering whether to vacate Paul Bunyan Drive, the City should consider the public benefit of the vacation rather than the private benefit to the abutting property owner. The determination to vacate a public roadway must be made in the public interest and on the basis of appropriate considerations of public benefit. The applicant indicates that one public benefit would be that the City would give up the burden of maintaining and repairing the road.

In considering the issue of vacation, the Planning and Engineering Departments should consider whether it is necessary for the City to maintain any easement over the roadway area. It is our understanding that property owners along Main Street currently use the public portion of Paul Bunyan Drive to access the rear of their property. In that regard, the City should require Triangle Main Street to enter into a Shared Access Easement or Easements with the Main Street property owners to continue access between the properties. It also appears that the Fire Department may use that portion of Paul Bunyan Drive for ingress and egress to the Fire Station. Members of the public may also use it to access the Main Street businesses. A public hearing on the manner may identify those and/or additional or different public uses of the road which may need to be addressed by reserving appropriate easements over the subject roadway. The City Engineer should consider whether an easement to access, maintain and repair existing utility facilities may also be necessary.

Section 7.6 of the City Charter provides that the issue of right-of-way vacation must be set for a public hearing. Notice of the public hearing must be provided one week in advance in the City's usual manner. We have prepared an enclosed a Resolution the City may use for setting a public hearing. Please note that the Resolution contains a requirement for notice to be mailed directly to adjacent parcels. This is not a requirement of the Charter or a statute but is common practice for this type of issue.

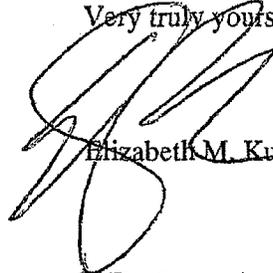
If City Council determines to proceed with the vacation after the public hearing, we have also drafted, and enclosed a second Resolution accomplishing the vacation for consideration at a separate City Council meeting. The Resolution vacating the right-of-way must be approved by five (5) members of City Council.

Subject to Planning, Engineering and the Fire Department's recommendations, and the requirement to reserve all necessary easements, this matter be placed on an upcoming City Council agenda for public hearing and consideration of vacation.

Tim Schmitt, Planner
December 29, 2006
Page 3

If you have any questions regarding the above, please do not hesitate to contact me.

Very truly yours,



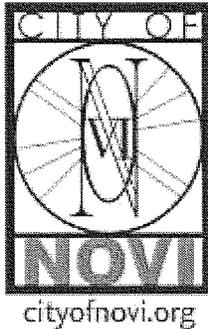
Elizabeth M. Kudla

EMK
Enclosures

cc: Clay Pearson, City Manager (w/Enclosures)
Maryanne Cornelius, City Clerk (w/Enclosures)
Barb McBeth, Planning Director (w/Enclosures)
Benny McCusker, DPW Director (w/Enclosures)
Kathy Smith-Roy, Finance Director (w/Enclosures)
Don Saven, Building Official (w/Enclosures)
Benjamin Croy, Civil Engineer (w/Enclosures)
Jeff Johnson, Fire Department (w/Enclosures)
Thomas R. Schultz, Esquire (w/Enclosures)

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**STAFF AND CONSULTANT REVIEW LETTERS
REGARDING STREET VACATION**



PLAN REVIEW CENTER **UPDATED PLANNING REPORT**

May 1, 2012
Paul Bunyan Drive Vacation

Applicant

Victor Cassis

Property Characteristics

- Site Location: South of Grand River Ave. and east of Novi Rd.
- Site Size: 0.638 acres
- Master Plan for Land Use: Town Center
- Zoning: TC-1, Town Center
- Surrounding Zoning: North, East, South, and West: TC-1
- Surrounding Land Uses: North: Various retail and restaurant uses;
East: Vacant and parking lot for Main Market and Novi Main Street Condominiums; Main Market Unit 1 (Atrium Building);
South: Vacant Main Market and Novi Main Street Condominiums;
West: Retail center across Novi Rd (City Center Plaza)
- School District: Novi Public Schools
- Proposed: Vacation of remaining 462 feet of Paul Bunyan Drive

Proposed

On December 6, 2011, the Planning Division received a request from Mr. Victor Cassis to vacate the remaining right-of-way for Paul Bunyan Drive. The current right-of-way extends from Novi Road about 550 feet to the east. See the attached map for locational details.

Recommendation

The Planning Staff **recommends approval** of the requested street vacation, subject to conditions as follows:

1. The Main Street Preliminary Site Plan SP 12-16 be approved by the City Council, and the following legal agreements be signed by all relevant parties:
 - a. Main Street Area Reciprocal Parking, Access, and Public/Private Utilities Agreement
 - b. First Amendment to Exchange Agreement (Main Street Area)
 - c. Termination of Condominium Project and Master Deed - Main Market Condominium
 - d. Termination of Condominium Project and Master Deed - Novi Main Street Condominium;
2. The City Council shall consider a resolution that provides for a public ingress and egress easement across the vacated property;

3. The suggested public ingress and egress easement shall maintain alignment with the existing commercial driveway for City Center Plaza on the west side of Novi Road, unless and until any future site plan amendments are approved by the City;
4. The suggested public ingress and egress easement shall be maintained in good repair and kept unrestricted, including the easterly portion of the former Paul Bunyan right-of-way previously vacated;
5. Ownership of the existing 0.17-acre "devil's strip" on the south side of the Paul Bunyan right-of-way shall be transferred to the owner of Unit 2/Proposed Parcel 2 consistent with note included on Main Street Preliminary Site Plan SP 12-16
6. An access easement shall be granted to the owner(s) of Parcel 50-22-23-102-027 to avoid creating a landlocked parcel, unless the owner agrees to combine that parcel with an adjacent parcel

Background

In 2004, the easterly half of the public right-of-way of Paul Bunyan was vacated. In 2007, City Council considered vacating the westerly half of the public right-of-way of Paul Bunyan in connection with the Triangle/Nona site plan but no action was taken. In December 2011, Victor Cassis requested that same westerly portion be vacated. Planning staff drafted a review letter of the vacation request dated December 15, 2011. In that letter, Staff recommended denial of the Paul Bunyan vacation request for a number of reasons.

Since that Planning review was drafted, there have been a series of meetings between the City, the owners and representatives of the three units of the Main Market condominium, and the owners and representatives of the other commercial properties surrounding Main Street. Several issues, including shared parking, access, cross-access, maintenance, and utilities have been discussed at length in an effort to dissolve the Main Market and Novi Main Street condominiums in a manner agreeable to all parties while maintaining the intent of the TC-1 zoning district. The result of those meetings is a Preliminary Site Plan SP 12-16 and a termination of the existing condominiums. On April 25, 2012, the Planning Commission reviewed the proposed plan and recommended preliminary site plan approval subject to a collection of draft legal agreements that remain in-process as of the date of this letter. Those legal agreements will be signed by all applicable parties as a condition of preliminary approval for SP 12-16. One of those draft agreements – the "Reciprocal Parking, Access, and Public/Private Utilities Agreement" – will address those concerns the Planning staff noted in the December 15, 2011 review letter. Planning staff has therefore amended its recommendation on the request to vacate the remaining portion of public right-of-way for Paul Bunyan.

The following provides some recent history of development issues in this area:

- In 2004, the City Council vacated a portion of Orchard Avenue/Paul Bunyan Drive, east of the current street vacation request in the developed portion of the original Main Street Development and Main Market condominium. The City Council approved the street vacation request, subject to the provision for a cross-access easement for public traffic and public utility easements.
- In 2006, Triangle Development received approval from the City Council for a Final Site Plan for a mixed-use development for the vacant land in the remaining portions of the Main Street development, subject to the condition that the City Council would be presented with a request to vacate the remaining Paul Bunyan Drive.

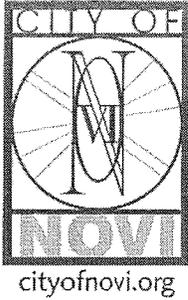
One reason for this condition was that the approved Final Site Plan showed parking spaces and access across Paul Bunyan Drive near the proposed medical office building at Novi Road, north of Main Street.

- In February 2007, Triangle Development sought vacation of the remaining portion of Paul Bunyan Drive. The City Council postponed action on the matter following discussion at the meeting.
- In May 2007, Triangle Development received approval from City Council for a Revised Final Site Plan that eliminated the need for the Paul Bunyan street vacation.
- Due to a change in financial conditions, the Triangle Main Street project did not commence construction. In 2010 the Triangle Main Street property was transferred to TCF Bank.
- Near the end of 2010, Victor Cassis purchased Units 1, 2, 3 and 4 of the Novi Main Condominium from TCF Bank. These units comprise most of the vacant land north of Main Street.
- In December 2011, the Community Development Department received a formal request from Mr. Cassis to vacate Paul Bunyan Drive. The request was reviewed by staff and prepared for review at the January 23, 2012 City Council meeting. At that time, the applicant asked that the street vacation request be postponed.
- On April 25, 2012, the Planning Commission recommended preliminary site plan approval for SP12-16, which proposed an amendment to the existing site plan (SP12-16) and a termination of the existing condominiums. The Planning Commission's recommendation to the City Council was for approval of the submitted site plan subject to a collection of draft legal agreements. Staff expects that the City Council will consider the site plan SP12-16 at the May 21 meeting, along with the street vacation request.

If you have any questions regarding these comments, please feel free to contact me.

David Campbell (B&W)

Prepared by David R. Campbell, AICP
dcampbell@cityofnovi.org



PLAN REVIEW CENTER REPORT

January 13, 2012

Engineering Review

Paul Bunyan Drive Vacation
ZCM12-01

Petitioner

Victor Cassis

Review Type

ZCM

Property Characteristics

- Site Location: East of Novi Road, North of Main Street
- Site Size: 0.75 acres (existing public right-of-way)

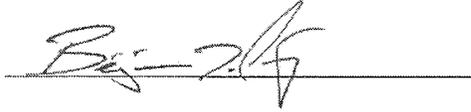
Project Summary

- Request to vacate the existing right-of-way of Paul Bunyan Drive between Novi Road and the previously vacated portion of Paul Bunyan Drive.

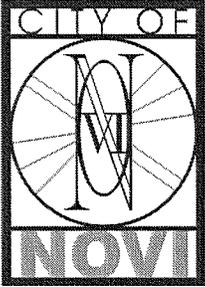
Comments:

1. A public sanitary sewer exists within the right-of-way proposed to be vacated. Prior to the vacation, a sanitary sewer easement shall be executed and recorded over the existing sewer.
2. One or more storm sewers exist within the right-of-way proposed to be vacated. It appears that drainage from adjacent parcels passes through these storm sewers, and therefore would require and executed and recorded easement prior to the vacation.
3. If any additional public utilities exist within the right-of-way, easements for that specific utility will also need to be executed and recorded. For instance, public water main appears to extend up to the right-of-way limits in two locations, but it is unclear if the main extends further into the right-of-way as well.
4. Parcel 22-23-102-027 has approximately 20-feet of frontage on Paul Bunyan Drive, and does not have frontage on any other public roadway. This parcel would be land-locked if the existing right-of-way were to be vacated.

Please contact Ben Croy at (248) 735-5635 with any questions.

A handwritten signature in black ink, appearing to read "Ben Croy", is written over a solid horizontal line.

cc: Ben Croy, Engineering
Brian Coburn, Engineering
Mark Spencer, Community Development Department



January 18, 2012

TO: Barbara McBeth, Deputy Director
Community Development, City of Novi

RE: Paul Bunyan Dr. Street Vacation

CITY COUNCIL

Mayor
Bob Gatt

Mayor Pro Tem
Dave Staudt

Terry K. Margolis

Andrew Mutch

Justin Fischer

Wayne Wrobel

Laura Marie Casey

City Manager
Clay J. Pearson

Director of Public Safety
Chief of Police
David E. Molloy

Director of EMS/Fire
Operations
Jeffery R. Johnson

Deputy Chief of Police
Thomas C. Lindberg

Assistant Chief of Police
Victor C.M. Lauria

Dear Ms. McBeth,

I have again reviewed the request to vacate the westerly portion of Paul Bunyan Dr. (a.k.a. Sixth Gate) from Novi Rd. to approximately 560' to the east. As stated in my 2006 letter, my only concern with this request is that there must be vehicle access to the old Novi Municipal building unless the building is demolished as part of this request.

I have no objections to this vacation as long as access to the building is maintained until it is demolished.

Sincerely,

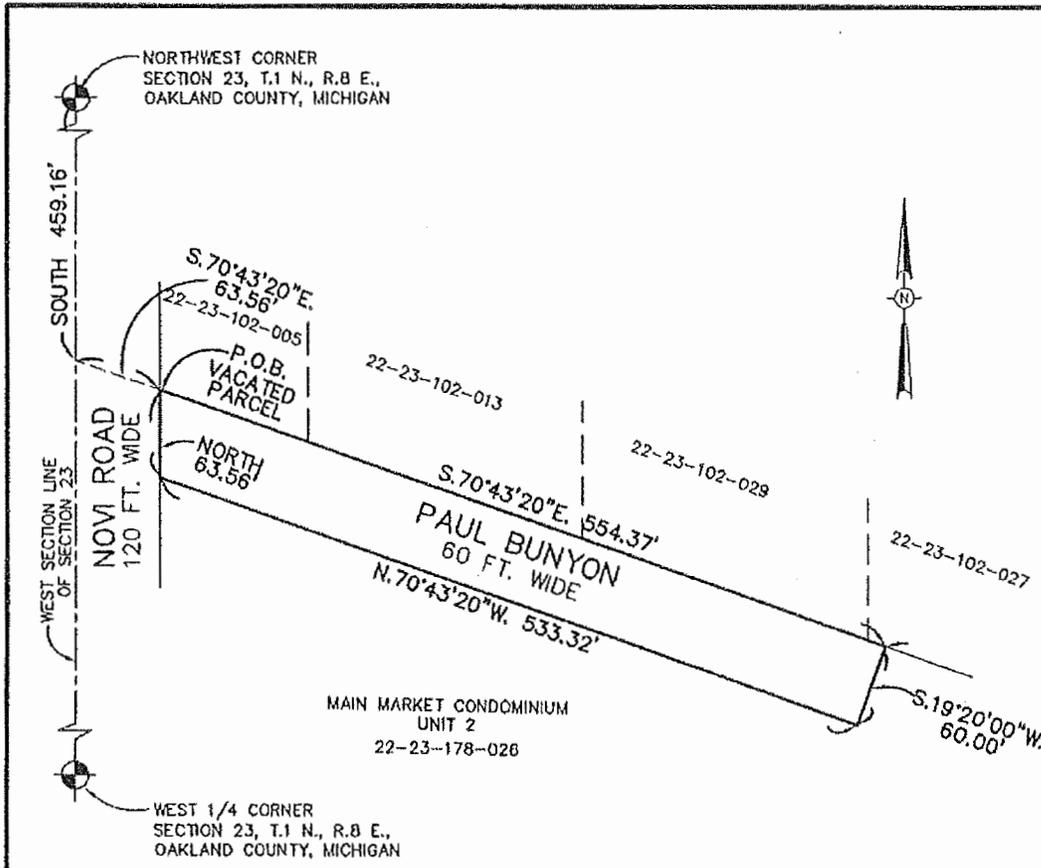
Michael W. Evans
Fire Marshal

cc: file

Novi Fire Department
45125 W. Ten Mile Rd.
Novi, Michigan 48375
248.349-2162
248.347-0570 fax

cityofnovi.org

LEGAL DESCRIPTION OF AREA TO BE VACATED



**VACATED PORTION OF
PAUL BUNYON STREET DESCRIPTION:**

PART OF THE NORTHWEST 1/4, SECTION 23, T.1N., R.8E., CITY OF NOVI, OAKLAND COUNTY, MICHIGAN MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF SAID SECTION THENCE DUE SOUTH ALONG THE WEST SECTION LINE ALSO BEING THE CENTERLINE OF NOV ROAD 459.16'; THENCE S.70°43'20"E. 63.56' TO THE EAST LINE OF NOV ROAD ALSO BEING THE POINT OF BEGINNING; THENCE S.70°43'20"E. 554.37'; THENCE S.19°20'00"W. 60.00'; THENCE N.70°43'20"W. 533.32'; THENCE DUE NORTH 63.56' TO THE POINT OF BEGINNING. PARCEL CONTAINING 0.7491 ACRES.

<u>PREPARED FOR:</u> TRIANGLE MAINSTREET L.L.C. 30403 THIRTEEN MILE ROAD FARMINGTON HILLS, MI. 48334 PHONE: (248)-932-9333	JOB NO.	0604	PAUL BUNYON STREET VACATION SUMMA ENGINEERING & ASSOCIATES 30095 NORTHWESTERN HIGHWAY SUITE 30A FARMINGTON HILLS, MICHIGAN 48834 PHONE: 248-932-4860
	SCALE	1"=100'	
	DATE	10/10/06	
	REVISION		
	SHEET	1 OF 1	

RECORDED PLATS IN AREA

**MEETING EXCERPTS
CITY COUNCIL – JANUARY 23, 2012**

**REGULAR MEETING OF THE COUNCIL OF THE CITY OF NOVI
MONDAY, JANUARY 23, 2012 AT 7:00 P.M.
COUNCIL CHAMBERS – NOVI CIVIC CENTER – 45175 W. TEN MILE ROAD**

MATTERS FOR COUNCIL ACTION

3. Consideration of resolution to set a public hearing for February 21, 2012 for the vacation of part of Orchard Avenue/Paul Bunyan Drive, also known as Sixth Gate, east of Novi Road and south of Grand River Avenue.

Property owner, Victor Cassis explained that he petitioned this matter before Council. On a side note, he said he was pleased to see Council proceed with direction for the lakeshore development of the Landings. He noted he was willing to have the issue postponed and is confident and optimistic that some of the issues he had about this area of Main Street can be resolved within a short period of time; whenever the Council feels it should be addressed. Mayor Gatt said he talked to Mr. Cassis before the Council meeting. After talking with City Manager Pearson, Mayor Gatt promised Mr. Cassis if they can't resolve this matter in 60 days that this matter would be put on the March 26th agenda.

Member Staudt said he appreciated the effort to resolve some of the situations that are evident. Main Street is very important to this Council. It is a very complex situation. We are confident working with the Administration we can work out the details to move this forward in an expeditious manner.

Member Fischer wanted to clarify the motion. Mayor Gatt said the motion is to consider to bring back the same motion tonight at the March 26th meeting. Mr. Cassis explained his dedication to the community as a longtime resident. He could not invest a lot of money in this area. He thought it was the best area in the City to invest in but let us move forward. We need a Main Street that can be appreciated by pedestrians. Mayor Gatt said that this was an important matter to Council and the City residents. We would like Main Street developed and to succeed.

CM-12-01-12 Moved by Staudt, seconded by Fischer; CARRIED UNANIMOUSLY:

To postpone the resolution to set the public hearing to the March 26th Council meeting for the vacation of part of Orchard Avenue/Paul Bunyan Drive, also known as Sixth Gate, east of Novi Road and south of Grand River Avenue.

Roll call vote on CM-12-01-12

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

**MEETING MINUTES EXCERPTS
2004 PAUL BUNYAN DRIVE VACATION**

**Various City Council and Planning Commission Minutes and Action Summaries
Regarding Paul Bunyan Drive**

**REGULAR MEETING OF THE COUNCIL OF THE CITY OF NOVI
MONDAY, APRIL 5, 2004**

Minutes Excerpts

3. Approval of Resolution to vacate a portion of Orchard Avenue/Paul Bunyan Drive, also known as Sixth Gate, located within the Novi Manor/Novi Garden Subdivisions in Section 23, the southeast quadrant of Grand River and Novi Road.

Mayor Pro Tem Landry asked if this is currently a public road.

Mr. Fisher replied that this is a dedicated, platted road that is on the books but is not improved as a road. There had been two earlier vacations; this property was not included in either of those.

Mayor Pro Tem Landry asked Mr. Fisher if he meant that the roads had not been dedicated and accepted in those vacations.

Mr. Fisher replied that he did not know as to whether there was a formal acceptance. His guess was that some activity had been taken on the property so that if anything, it is de facto.

Mayor Pro Tem Landry asked if the road is public and the City takes the action of vacating it, whether the land then becomes under the ownership of the parties on either side of the road to the middle of the former road.

Mr. Fisher said that this is the general rule. This particular case is an unusual situation because the property on one side was not part of the plat. Generally where a property was not part of the plat, the conveyance by operation of law does not go to that land, but only to the land within the plat. In this situation there is no property within the current plat because it has been vacated. The City's review, investigation and analysis is that the property to one side, which would be part of a redevelopment project, had been part of the plat. Therefore, this land would pass to them.

Mayor Pro Tem Landry commented that this had been, but is not currently, part of the plat.

Mr. Fisher said the only thing that is essentially left of the plat is this road.

Mayor Pro Tem Landry said he could appreciate the uniqueness of this situation. However, there could be an argument by Novi Auto Parts or Tommy's Tire that if the City were to vacate the road, they get half of it.

Mr. Fisher responded that he felt those companies could make the argument, though he did not feel that they would be successful.

Mayor Pro Tem Landry said his only point was that if the request was to vacate the road so as to make the condominium project more marketable, if the City were to vacate the land and half of the property goes to the contiguous land owner, it might make it less marketable. He said he could not support the proposal. Promises were made to Mr. Marcus. The current site plan shows the eastern terminus of Paul Bunyan Drive at a parking lot, and shows a parking lot roadway continuous. He asked if the City were to vacate this portion of Paul Bunyan Drive, whether any developer would be locked into this and thus required to keep the road open as Mr. Marcus had requested.

Mr. Fisher said he did not believe this was the case, which was why language was inserted into the language to accommodate the interest of the parties, pending a more specific development plan. There is no current development plan on the table. In order to serve as a placeholder until that happens and the City can work out the best interest of the parties, inserted was a reservation of an easement for public utilities, ingress and egress over the entire piece to the City. While the City is vacating the property, it is also reserving the ingress and egress on this plan.

Mayor Pro Tem Landry asked if this meant that if the City vacated that portion of Paul Bunyan that evening, whoever is to buy the land from Wells Fargo or whoever the mortgagee is, the City could always require that the road be kept open.

Mr. Fisher said he did not know if the road would continue to be a road, or if it would be a driveway, but it is certainly large enough under these circumstances to serve the purposes of those people in the area. He did not think it would be frontage as much as ingress and egress.

Mayor Pro Tem Landry asked if the City could require that the road be kept open such that a person could travel east on Paul Bunyan and gain access to Sixth Gate, or all the way down to Market Street; or, if this would be satisfied by simply having access from Main Street to proceed north and go out onto Paul Bunyan. He asked if this would satisfy the contingency that Mr. Fisher had suggested.

Mr. Fisher said that because this would expressly be for a reservation of ingress and egress, this would provide the continuous path from Novi Road to Sixth Gate. If the road did extend from the south up Sixth Gate, it would also connect with this ingress and egress easement. The hope is that the ultimate plan would come in such that the ingress and egress could be preserved for everybody and it would be consistent with the plan.

Mayor Pro Tem Landry said he would like to wait until Council sees the plan, and said he would not support the item.

Member Nagy said this item had come before the Planning Commission. She did not see any reason to vacate the road at all at this point in time, or in the future. The City is always contingent upon what the plan is. She would not support anything for which she did not know what the plan is.

CM-04-04-116 Moved by Nagy, seconded by Landry: To deny vacating a portion of Orchard Avenue/Paul Bunyan Drive, also known as Sixth Gate, located within the Novi Manor/Novi Garden Subdivisions in Section 23, the southeast quadrant of Grand River and Novi Road.

DISCUSSION

Member Lorenzo asked Mr. Fisher if, based upon the City Assessor's information that Evergreen III or their successors have paid property taxes on this, whether those parties could claim adverse possession, and whether the City would be obligated to refund their money or approve the vacation.

Mr. Fisher replied adverse possession is a very old doctrine that provides that if somebody occupies land openly and notoriously for a period of 15 years continuously and exclusively, that they become the owner of that property. One very significant exception to that rule is that there cannot be adverse possession of a government road. He did not believe that adverse possession would apply in this case. In terms of the tax issue, if someone made a timely tax application to the tax tribunal for refund, the tax tribunal might provide relief if they were improperly taxed. However, there are no refunds going backward that would be forthcoming.

Member Lorenzo asked if Council had any obligation to vacate the property in conjunction with the condominium.

Mr. Fisher said this was really a matter in Council's discretion. The anticipation was that the vacation was being promoted in order to allow for redevelopment of the land in that area. If Council were to find legitimate reasons to hold off and make a decision at a later time, then it could exercise its discretion accordingly.

Member Lorenzo asked if the condominium could simply be re-recorded with the County without the vacation. Apparently the condominium was supposed to include vacation, which is why the recorded document includes vacation that did not occur.

Mr. Fisher said the condominium would need the City to sign their master deed because the City would own part of the property.

Member Lorenzo asked if, were the City to do this, the condominium developer could record their document.

Mr. Fisher said they could, though he did not know if the City would want to do this because it would be taking on certain liabilities as a proprietor of a development.

Member Lorenzo asked if the developer needed the vacation recorded before commencing any type of a plan on the property.

Larry Griffiths, representing Western United Life Insurance, the owner of the property, said Wells Fargo owns unit 1 of the condominium, which is where the building is. Western United, through foreclosure, owns the remaining 18+ acres, which includes the easterly half of what is shown as Paul Bunyan Road. The City map does not show Paul Bunyan, but rather Sixth Gate. The part being discussed shows no road, with Sixth Gate coming down from the north. The City Assessor's office has for years shown the property as being vacated. The title company obtained to insure the mortgage shows the property as vacated. Therefore, this is something that slipped through the cracks in 1959 when the plat to the north was vacated. It was intended by all parties, including the City, that this be vacated. The purpose was to fix a problem that everyone thought was fixed 30 or 40 years ago. Their position, and the title company's position, is that it is already the property of Western United, but they understand that because of this glitch, they had to go in front of Council to confirm the vacation. They are the lender and will not develop the property. Western United is seeking a buyer of the property who will likely ultimately develop the property. Mr. Marcus and others will have their say. The site plan that was approved a number of years ago is certainly "out the window" and anybody that bought the property would have to come back to the Planning Commission and City Council to seek approval. Therefore, they feel that the property should be vacated as always shown, and that while they do not support the proposed easement, they do not have any objection to it because the developer will have to come before the City. This was a technicality that was overlooked 40 years ago. Everything in the City, including its own maps, has shown the property as being vacated.

Member Lorenzo asked if, with regard to site plan review and approval, the Planning Commission and Council would have the discretion to maintain the egress at that point in time.

Mr. Fisher said that this could be done only if the City reserves the easement.

Member Lorenzo asked if the easement could be reserved and the vacation approved.

Mr. Fisher replied that this was correct. This was the form that Council had before it for consideration. If the resolution before Council was adopted, it would achieve the vacation but reserve the easement.

Member Lorenzo asked if Council could do this tonight, and still provide the relief to Mr. Marcus that he is requesting.

Mr. Fisher said he did not know exactly what Mr. Marcus was requesting, but the idea would be to retain the ingress and egress.

Member Capello commented that his easement language was a little more "beefed up" to give the City the ability to construct and maintain any utilities or roadway over and across the easement. He asked what the detriment would be to not having the property vacated at all, as opposed to a very restrictive easement. It seemed that either way, it would not affect Western United if the City is planning on putting an easement on the property anyway.

Mr. Griffiths said the easement would just restrict the developer as to how they could use the land, but the developer would still own the property. For example, he assumed that if the easement calls for ingress and egress, this could be put as part of a parking lot, which is shown on the original site plan. This would not be a road, but would provide ingress and egress to the property owned by Wells Fargo immediately to the east of the property. Even with an easement there are certain rights of land owners to do with their property what they wish subject to easements and the ultimate decisions of the Planning Commission and City Council. Ultimately, this is a question of ownership. The City now supposedly owns this property; he questioned why the City wants the land. If this easement restricts the use and makes the developer address Council before any site plan is approved, then this has been accomplished. He wondered why the City would want to own the property when in fact, for the last 50 years, the City's own documents have shown that the property has been vacated. All they are trying to do is prevent a small, rectangular piece of land from hindering the redevelopment of that area. There is no road on the property now.

Member Capello asked if it would cause any delay in getting the condominium documents approved if Council did not vacate the land, making that area be re-drafted.

Mr. Griffiths said the condominium documents were already approved when they were recorded with Oakland County.

Member Capello questioned whether Council had already approved the documents.

Mr. Griffiths replied that Council had approved the documents. Western United has been before the Planning Commission and the City Council in November and December, when it approved the condominium subject to this issue.

Member Capello said he had thought that was why Western United had to come back again, because of this issue. He asked if not granting the vacation that evening would delay Western United's ability to sell this project.

Mr. Griffiths said this decision would ultimately have to be made by the prospective buyer.

Member Gatt commented that Council was discussing big business and development of condominiums, but everyone was losing sight of what Mayor Clark had said half an hour before: Mr. Marcus was made a promise by the City years and years ago. It behooves the City to live up to its promise. He invited Mr. Marcus to the podium.

Mr. Marcus said the City map shows that the road is open, but is not paved. Everyone knows that Paul Bunyan is a paved road because the City offices were there. He recalled earlier conversation that the owner would get less for their property without the vacation. He asked what he would get for his property after 40 years of using that road. The first 600+ feet of his property at Sixth Gate is paved, which is why the road is called Sixth Gate today. There is a sign for the road at Novi Road, and for many, many years Sixth Gate has been a road.

Member Gatt said he could attest to the fact that Paul Bunyan was a road. When he became a policeman in the City in 1975, they drove that road in and out of the police department 300 times a week. City Hall was there, there was a library there, and Sixth Gate was and continues to be a road. He said he would support Member Nagy's motion.

Mayor Csordas said that Mr. Griffiths is a patient person and gentleman. It was very clear what Mr. Griffiths was up against. The City wants to do everything that it can to help develop that property. The situation pitted emotion against hardcore business decision. There is nobody on Council that wants to take anything away from either Mr. Griffiths or Mr. Marcus, and it is very interesting to hear that the vacation was done all the way except for somebody writing it down, which is very unfortunate.

Mr. Griffiths said he thought that the proposal that had been placed before Council was a middle ground. Sixth Gate comes off of Novi Road. That road is paved, but he is not seeking vacation of that road. Nothing that Council will do will affect the paved road that is already there. Western United is only seeking the vacation of the easterly half of the road where there is no road now. Mr. Marcus had stated that somehow the vacation would affect his property and take away something that he has, but access from Novi Road to what is now Sixth Gate will remain until Council acts otherwise, forever. He had been confused by the notion that by Council's voting in favor of the vacation was taking away something from Mr. Marcus, which is not the case at all. The City couldn't have made any promises to Mr. Marcus with respect to property that he didn't own. Mr. Marcus, or any of the people along Sixth Gate, certainly never owned this property; it was part of the subdivision to the north. Western United is not asking to take anything away from Mr. Marcus. The easement that has been proposed by legal counsel before the City Council is the compromise that was thought to be fair to all parties. Nobody could use that property for anything other than ingress and egress without coming

before the City Council or the Planning Commission. The proposal is the happy medium that he feels is appropriate.

Mayor Csordas asked Mr. Klaver what portion of the proposed vacated road touches Mr. Marcus' property.

Mr. Klaver said he did not believe that any of the proposed vacated road touches the property.

Ms. McClain displayed a map of the area and noted the section of Paul Bunyan Drive that fronts Mr. Marcus' property.

Mr. Fisher noted that there were some things at stake with this item, including the condominium master deed that had been approved contingent upon this vacation. Before Council acts on the item, he suggested that the affected parties meet and use communication to bring some solution to the matter.

Mayor Csordas noted that he is not in real estate, but said he failed to see how the vacation would reduce the value of Mr. Marcus' property, since he would still have access to Novi Road. He does not want to setup a lawsuit between Western United and the City. He suggested that Council not go through any denial or approval, but allow Mr. Fisher, Mr. Griffiths and Mr. Marcus to talk the matter over so that Council can feel more comfortable about what is going on.

Member Nagy asked if there was a precedent set as to when Paul Bunyan Road was clearly used as a road. Paul Bunyan is frequently used as a road. She said she was not convinced of what difference the vacation makes to a potential buyer. Western United went before the Planning Commission and there was discussion at that level. She did not understand how the vacation might affect the potential buyer, and asked why the City could not just leave the land "as is" since it's a valuable piece in the middle of town.

Mr. Griffiths replied that to the extent that the property has 60 feet by 500 feet less area, the value of the entire property goes down whatever the value is per foot. He said he could not be sure because he is not near Novi Road very often, but he has never seen anyone ever drive from Novi Road across dirt and gravel to get to the Main Street area. Main Street and other roads accomplish this same task.

Member Nagy commented that tire tracks and the usage could be seen in the roadbed. She felt that perhaps the Mayor's suggestion might be the perfect suggestion, but she did not want to do anything where a property owner might be blocked off. She could not see Western United guaranteeing that at this point because the company is selling the land.

Mr. Griffiths replied that Member Nagy was correct. Western United is selling the land to a third party; all he could say was that obviously any third party who wants to develop

the property, because it is all vacant now, has to come before the Planning Commission and the City Council to get the site plan approved. Council has the ultimate control over that situation. If in fact the City approval of the condominium project, which was recorded with Oakland County many years ago, was subject to a resolution of this matter, then he has a real problem. He believed that what the minutes stated was that the condominium project was approved, but that Council left the 500-foot section out to the side to be ultimately resolved. Western United has been trying to pay the taxes on the property for the last 2 years. The problem is the tax assessor refuses to change the description of the tax parcels to meet the description of the condominium, whether it includes the 500 feet or not. The City has a tax parcel that includes all of the Wells Fargo property, and a large chunk of Western United's property. The companies are in a quandary where they are trying to pay taxes to the City but cannot.

Member Nagy asked Mr. Lemmon to explain why the parcel description cannot be changed by the assessing department.

Mr. Lemmon said that technically, the condominium does not exist, and is currently only six or seven acreage parcels. Until the condominium is approved and properly recorded, he has to recognize the property as acreage parcels. The problem with Wells Fargo and Western United is that when the properties went up for foreclosure, the companies bought the properties as condominium units. They did not know that the condominium had never truly been approved by the City Council. He cannot create the parcels for Western United and Wells Fargo that do not exist yet.

Member Nagy asked Mr. Fisher if this changed anything that he would have to say.

Mr. Fisher replied that this did not change anything that he would say. He still felt that there could be value in allowing a bit more free flow of communication on the matter to try to achieve a solution that everyone would be comfortable with.

Mr. Lemmon commented that Wells Fargo and Western United could have combined and re-divided their properties to follow property lines that would have mirrored the condominium lines, but those companies have never attempted this.

Member Nagy said she was still not in favor of vacating Paul Bunyan.

Member Capello said that the representations were made to Mr. Marcus that the road would always be kept open so that he would have access to that road. This is what Council is trying to accomplish.

Mr. Marcus commented that he has been paying taxes on his parcel that faces Paul Bunyan for 30 years. Now, Western United can come along and tell him that his property is dead end. He has been able to have access to Grand River for years and years. The City put gravel on the road that day and has been maintaining the road for years.

Member Capello said that Mr. Marcus was correct.

Mr. Marcus said that Jim Chen had considered building an office building there at one point, and told the Steering Committee not to worry about the road. He said the road has to be good for the people of the town. The road is used frequently by many people on all days of the week.

Member Capello said he was agreeing with Mr. Marcus that the representations to him have always been that the City would keep the road open to prevent it from becoming a dead end road.

Mr. Marcus said that if the road was going to be closed, it should have been done so years ago. There is a traffic problem on the road to get out to Novi Road as it is. It does not make sense that the developer would not want to work with the City and keep Paul Bunyan open.

Member Capello said that after talking to Mr. Marcus on the phone, he had spoken with Mr. Fisher. The language needs to be stricter, but the intent of retaining the easement would mean that Paul Bunyan will always be a road, will always be open, and the developer would be required to keep Paul Bunyan as an open road.

Mr. Marcus said that this was fine, as long as the road is always paved and people are allowed to drive through it.

Member Capello said this was the idea of the easement. Council cannot order the property in front of Mr. Marcus' business to be paved, only the section that was being discussed at that time. Paul Bunyan will always be open to the full extent of the road, the City will retain easements for utilities on that road, and the road will always have access to Mr. Marcus' property. In terms of traffic, currently traffic can only enter on Grand River Avenue, and Council is not guaranteeing that it can do that. The only issue, if the easement is restrictive, is who owns the property as the title holder, and not what the uses are going to be. In working with Mr. Fisher, he was trying to make sure that the road will always be open for Mr. Marcus.

Mr. Marcus commented that the City should not do anything with the road until it sees what the developer has in mind for the property. It is foolish to debate the issue before Council when there is not a plan to look at, because the developers should be working with the adjoining property owners.

Member Capello said that if developers do this and come back to Council with a plan, it may not guarantee that Mr. Marcus will have access to the downtown area. He asked Mr. Marcus if there was a chance that he would meet with the City Attorney and work something out.

Mr. Marcus replied that he would meet with Mr. Fisher.

CM-04-04-117 Moved by Lorenzo, seconded by Csordas; MOTION CARRIED: To postpone consideration of Approval of Resolution to vacate a portion of Orchard Avenue/Paul Bunyan Drive, also known as Sixth Gate, located within the Novi Manor/Novi Garden Subdivisions in Section 23, the southeast quadrant of Grand River and Novi Road, to tighten up language in the easement as had been discussed that evening.

DISCUSSION

Member Nagy said she could not support the motion. She wanted Mr. Marcus to be able to be present and have the ability to bring his attorney, and she wants more "fair play" in the matter.

Member Lorenzo said that if Mr. Marcus would like to discuss the matter with Mr. Fisher, this would also be fine, as well as the representatives for the property owners. The parties could hopefully come up with a more restrictive version that everyone can agree on.

Mayor Csordas said he appreciated that idea, and closed the discussion on the matter. He stated his support for the motion, as there is a way to continue discussion on Paul Bunyan. Further discussion would not hurt the situation, and would not hurt anything in the near future for either party.

Roll Call Vote on CM-04-04-117 Yeas: Gatt, Lorenzo, Csordas, Landry

Nays: Nagy, Capello

Absent: Paul

REGULAR MEETING OF THE COUNCIL OF THE CITY OF NOVI MONDAY, APRIL 19, 2004

Minutes Excerpts

MATTERS FOR COUNCIL ACTION – Part I

1. Approval of Resolution to vacate a portion of Orchard Avenue/Paul Bunyan Drive, also known as Sixth Gate, located within the Novi Manor/Novi Garden Subdivisions in Section 23, the southeast quadrant of Grand River and Novi Road.

Mayor Pro Tem Landry noted that at the prior Council meeting, Council discussed whether or not to simply vacate the road. Since that time, there has been a proposed resolution with some language. It was his understanding that there was some recent language added. With the most recent language, which he believed was in the best interest of all parties involved, including the City, he wished to approve the vacation.

CM-04-04-133 Moved by Landry, seconded by Paul; CARRIED UNANIMOUSLY: To approve of Resolution to vacate a portion of Orchard Avenue/Paul Bunyan Drive, also known as Sixth Gate, located within the Novi Manor/Novi Garden Subdivisions in Section 23, the southeast quadrant of Grand River and Novi Road, with the language providing that there is an easement for public utilities and for public vehicular ingress to an egress.

DISCUSSION

Member Capello asked if it was true that the easement runs to the benefit of the City.

Mr. Schultz replied that this was correct.

Member Capello asked if at sometime in the future the City wanted to vacate the easement, it could do that, or revise the easement.

Mr. Schultz replied that this was also correct.

Member Nagy noted that at the previous Council meeting when this matter was discussed, Mr. Marcus was supposed to meet with the other parties. She wanted to make sure that he was fully aware of what was in this document and that he agreed with it.

Mr. Marcus replied that the parties did meet to make sure that the ingress/egress was automotive and that he could get out to Grand River.

Member Nagy asked Mr. Marcus if he agreed with the language.

Mr. Marcus said he agreed with the language, and is not against development at all. He promotes that area as much as anybody does.

Roll Call Vote on CM-04-04-133 Yeas: Landry, Capello, Gatt, Lorenzo, Nagy, Paul, Csordas

Nays: None

Absent: None

**REGULAR MEETING OF THE COUNCIL OF THE CITY OF NOVI
MONDAY, NOVEMBER 13, 2006**

Minutes Excerpts

5. Consideration of the request of Triangle Main Street, LLC. for Main Street Novi, SP06-38, for approval of Preliminary Site Plan and Wetland Permit. The subject property is located in Section 23, South of Grand River Avenue and east of Novi Road in the TC-1, Town Center District. The subject property is approximately 20 acres and the applicant is proposing a mixed-use development.

Mr. Pearson said if it pleases the Council, the applicant has set up a presentation, they have their experts and staff would like to make a presentation as well after that.

Dave Nona, with Triangle Development, the developers for Novi Main Street mixed-use development states they have their team of consultants with them and hope to make a good presentation. It is the same presentation that was made to the Planning Commission and was well received by them. They will start with Alicia Heideman, of McKenna Associates, they are the planners to make the over all presentation and then she will present the other members of the team.

Alicia Heideman said that they are all honored to be there tonight to present to Council their exciting proposal for Main Street Novi. They know that the city has had some questions throughout this project and they have worked diligently to try and address those with both the booklet they handed out and also with the presentation, tonight. It has been a long collaborative process with city officials, staff, and the public providing input. The plan before you really incorporates the goals of the city and the intent of the town center district. They feel that this is the time to move forward so they can hopefully all reap the benefits of a town center in our community. She wanted to quickly go through some general design principles that they'd like to utilize to create viable urban centers. The goals are to provide a sense of community, public gathering places, and a more livable environment. They want to provide a mix of uses and three story and taller buildings to achieve pedestrian concentrations. This helps create a lively, safe and attractive environment. They want to create activity through the day and night, evening and weekend. They also want to adapt to a new emerging lifestyle with mixed-use districts. People want a wider range of goods, services, and experiences in one location. In addition, a mix of uses diversifies risk to the community while one type of use might be declining, another is able to fill the void and the compactness of the project decreases sprawl which is better for the environment. They are proud of the fact that they have utilized those design principles in their Main Street Novi proposal. They have created a compact pedestrian friendly environment with a good balance of uses that will create sustainability through time. They also have a high level of pedestrian amenities including seating and outdoor gathering areas, a public park and outdoor dining which would really create this place for people to go and visit. They really wanted to emphasize public gathering places to help make a sense of place for the community.

They are proposing public open space with a park and semi-public open spaces for the residents in the form of roof top courtyards. The roof top plazas are one level above grade which would give a sense of privacy for the residents while still having them feel like they are a part of the downtown environment. In addition, they reduce impervious surface and storm water run off. They have over sized sidewalks with amenities such as benches, public art, wayfinding, and outdoor dining. Their park is going to have an amphitheater. The amphitheater is a gradually sloping one which can be utilized for seating for public events and also for active recreation. They are proposing turf pavers for fire truck accessibility along the rear of the residential units. Many communities in the have used them, Farmington Hills, Grosse Pointe, and Hamburg Township are some that the McKenna staff has worked on themselves. She has spoken with the manufacturer of these turf pavers to try and address some questions that the Fire Marshal has had. One of the questions was weight. Can these turf pavers support the weight of Novi's fire engine? The heaviest fire truck the City of Novi has is 35 tons and these can support 40 tons. Another question was, are these going to be maintained over time and do they require a high level of maintenance. They do not require any additional maintenance and to plow them all you have to do is raise the plow one inch above grade. Another question was longevity, are these going to last 20 years from now, they don't want them to crumble under the weight of a fire truck. She asked the manufacturer. She was told that conservatively 50 years at least, however, these have only been in use the past 25 years so they don't know exactly, but they are used so infrequently that they feel they have a very long lifespan. Another question was delineation, how will the fire engine know where to drive and where to rest their stabilizers. During summer and spring months, it will be easy to delineate the turf pavers from the regular vegetation. For winter when there could be snow cover, they are proposing to put bollards and signage so the trucks will know where to go. Another item in front of Council was our wetland permit application to fill the wetland and create a park within the town center district. This park is an asset to the project and will be a focal point of the whole downtown. They want to create a setting for civic events, casual recreation and special events. The park also completes the environment for the residents in the area so they don't have to drive to find a place for active and passive recreation. They have a condo association which will fund marketing and event management for the park and they are really looking forward to partnering with the city to coordinate events that the whole community will benefit from. Since they are proposing to fill a wetland to provide the park, Triangle Development is proposing offsite mitigation for the one and a quarter pond and wetland. This would be north of the 96 freeway which is in the same sub-watershed as the wetland in Main Street Novi and this can be constructed to provide a similar habitat. They will provide no less than the amount that is impacted as required by the ordinance. They also had their wetland consultant present to answer any questions. At the Planning Commission and staff's letter, there were a few discussions regarding the originally proposed traffic circles at the two new intersections along Main Street. The traffic consultant had wanted to construct urban roundabouts instead of the circles. Although roundabouts are a safe form of intersection, they are in contrast to what they are trying to achieve. They are excellent in facilitating vehicular traffic in busy intersections. However, they want to slow

traffic down and roundabouts can not accommodate stop signs, they are a yield only approach. Their goal was to get vehicles to stop so they felt a more traditional intersection more appropriate for our downtown. Since safety is both theirs and the traffic consultant's number one priority, they felt that this was the best compromise. These intersections still provide traffic calming measures like before; they have the bump outs at the corners which slows traffic due to their decreased width. They are also providing what is called a speed table. This raises the pavement 4 inches and delineates it with colored pavers which provide a visual clue for vehicles to slow down because they are approaching an intersection. With the previous traffic circles, they did have a monument and a fountain in the middle. Though they're very nice architectural elements to the streetscape, obviously, they can no longer do that but they still are committed to providing architectural elements and she put some in the packet. They will provide different architectural public art, fountains, landscaping, all within the city's engineering guidelines and also out of the line of site triangles. She wanted to point out that they are committed to creating an attractive and special streetscape on Main Street. There have also been questions regarding access and shared parking agreements with the Main Street Court property. Their goal is to develop the property uniformly with Main Street Court, as is the intent of the Town Center District. They are keeping the existing access point open and are more than willing to sign a reciprocal access agreement. Also at staff's request, they have provided a shared parking steady combining both properties and as shown that there will be enough parking spaces during peak hour for all uses on both sites. Either with Main Street Court or without, they can provide the parking needed for the site. They would like to do a shared parking agreement and based on conversations with their attorney they think that they are agreeable to do so. They have roughly 23 spaces on the property which they can continue to use and hopefully they'll have a written agreement by the time they get to that phase. They have been contacting them continuously throughout this process, however, the owner is out of state and at this time they have not received the feed back that they had hoped for. She would like to reiterate that they have always been agreeable to shared parking and access and they will continue to try to work with them so they can hopefully still move forward with the preliminary site plan tonight. She introduced Mark Abanatha of Alexander Bogaerts who discussed building designs and form.

Mark Abanatha said they were very extremely excited about this project, it is a wonderful project to be involved with. They have worked on a number of key projects here at the city and this one he'd put up there at the top. They are trying to, as an architectural theme for the project; create what he would call an architecture that would be timeless. In other words, architecture that has been designed over time as cities and towns normally develops. Along with this, one of the things that Triangle brought to the table was to have several different architects involved. That not only brings a variety of architecture but a lot of different ideas as to how to approach the design. GAB and Associates is involved as well as Mike Boggio and their office Alexander Bogaerts and Associates. The styles that they're proposing for the project are what he would call three. One would be traditional where you have traditional styles of brick, stone, and a

lot of colonnades and details that you would see in traditional architecture. To keep things interesting, along with different architects they have also varied those styles.

They have gone from a traditional style, to a contemporary style. In the contemporary style they have brought some of the traditional details of brick and stone but they also introduced elements like mill finished aluminum and they have put sun awnings in that cantilever out from the windows that are seen on some of the more contemporary buildings. There will be large panels of glass that aren't typical to colonnaded windows and traditional architecture. All of this brings variety and interest to the project. They are also proposing a variety of units for the project. One of the things that they are looking at is 400 units over a period of years that this project will develop out. One of the things you want to do in a project like this is have different units to bring to the market, different square footages, and different styles. They have what they called a ranch style product; it would be off of a corridor, they have loft styles that are very popular now and you see those in a lot of urban areas and areas similar to this in terms of mixed use or infill. They are also bringing a real interesting townhouse product that you wouldn't normally see in a mid-rise building where you stack townhouse units on top of one another in 4 or 5 stories. All of these things will keep the project fresh; will bring a lot of interest to buyers, the varying square footage and the different products that will be there will keep this project moving in a positive direction over a period of time. They are also bringing a variety of heights. One of the things as they've had many meetings with staff and Planning Commission and Council on preliminary studies would be to vary the heights and create interest as you move down the streetscapes so you're not looking at all one story of 5 stories or 4 stories in height continuous. The existing Main Street buildings are roughly 3 stories in height, next to that they are attaching a one story potential restaurant, next to that you're back up to 5 stories, the building next to that, will be back down to 3 stories, then back up to 4 so you get a nice rhythm as you move down the street you don't have all one height. Not only are they varying the styles, but they are varying the heights and the materials. Down at street level they are creating a break between some of that mass in terms of the height they're creating what is a human scale with trees and detailing of the store fronts with varying canopy styles, some that are sloping, some that are a hung canopy. All of these things will bring a human scale as you walk down Main Street. Finally, one of the most important things is flexibility. This project isn't going to be built over a year, it is going to be built over a series of years and it is important for the City and the Council and Planning Commission to understand flexibility as the project goes forward. They are approving our preliminary plan but as time goes forward, they want to know that they have the ability to range the types and styles of buildings and architecture within these footprints, obviously keeping the spirit and the intent to what they have in front of Council. With that he introduced Mike Boggio, one of the other architects involved.

Mike Boggio said they were responsible for one building in the project. The building that they are designing is called the 800 building which is the building that is right on the corner of Novi and Main Street. The use of this building is restaurant and retail on the first floor, to keep the downtown theme going. Three additional stories of medical

offices, a total of 70,000 square feet of medical office space and 16,800 square feet of restaurant and retail space. This particular building is more traditional in style than some of the other buildings in the development. The predominant materials are a red brick and a cast stone. They have done some things with a vertical pier so they don't have ribbon type windows. They tried to keep the traditional looking architecture through those types of details. They have some arched topped windows, things like that. They've also got some canopies that are about 10 feet above the side walk to create some human scale on this particular building. This building is also kind of a buffer between the very high traveled Novi Road commercial district and the slower paced down town area. They've tried to design the building so there is a little bit of parking in front for the retail but it leads all the circulation and sidewalks toward the downtown area. They feel this is a very good transition between the down town area and the heavily traveled Novi Road. The building is red brick, cast stone, they have a center vertical element that will enhance the entry and has a sloping roof on top of it. There are some common elements in this building that are common with other buildings in the project, such as some sloping roofs, they've tried to design towers at the corners so they create some interest in this building with varying heights and types of vertical elements.

Alicia Heideman thanked Council again for giving them this opportunity and for considering their project.

Mr. Pearson introduced Barb McBeth. Again, this was a positive recommendation from the Planning Commission, Council has seen this project in concept form, also some ordinance tweaks, and they gave an overview and then focused on some of the planning department's findings.

Ms. McBeth said as Mr. Pearson just indicated the Planning Commission did review this request at a public hearing near the end of September. They recommended favorable consideration of the preliminary site plan and the wetland permit to City Council. City Council is also familiar with this project to a certain extent since some conceptual plans were presented at a Council meeting last June at which time a downtown development authority was also on the table for consideration. In August, following that meeting that revised plans were presented, the downtown development authority was removed as a consideration. The plans presented this evening do represent that they will be sponsored entirely by the private sector including the parking deck that is proposed. Also, as City Council knows earlier this year, text amendments came through with regards to the Town Center district and those amendments were approved as well. The plans, just as an overview, do represent about 1.2 million square feet of building area and 11 buildings including one parking structure. The proposal would bring an investment of 401 units to the city and 70,000 square feet of medical office space, 52,000 square feet of general office space, 30,000 square feet of restaurant space, 88,000 square feet of retail space, and about 400 parking spaces in the parking garage located on the north side of the property. The architectural design as the two architects have already explained is varied throughout the development but it does have a unified

look and feel with materials carried over between the buildings, the design itself is reminiscent of a traditional downtown with the grid street patterns and the project does represent an important assemblage of land here in the core area of the community that presents a variety and interesting complexity of uses. The applicant did continue as Ms. Heideman indicated to work with the planning department and the consultants since the public hearing and has worked to reduce a couple of the waivers and variances and issues concerned with the preliminary site plan. Of those 17 waivers and variances initially identified in the staff and consultant letters, the Planning Commission removed 6 of those as they were issues that had to do with landscaping. The Commission also approved a storm water management plan and recommended favorable consideration of the preliminary site plan and the wetland permit. They also provided a number of recommendations that were included in the packet. Among the items the applicant and the department have worked to resolve since that public hearing were those circular intersections and they were shown on the plans that were provided to Council in the packet. The two circular intersections that are proposed along Main Street, the applicant has now indicated that they would go with more traditional 4 legged intersections. The city's traffic engineer had recommended that the design that was presented on these plans be modified to enhance the safety of vehicles and pedestrians throughout the area. One of the suggestions was a more traditional roundabout and the other would be the traditional 4 way intersections. If this general design is acceptable as presented, they would like to work through the details of those designs at the time of final site plan review. Another issue that they have worked with the applicant on has included an attempt to resolve some of the staff and consultants concerns regarding deficiencies in the shared parking study as well as incorporation of the Main Street Court property. That property again is located on the east side of Novi Road. The issues with the connections between the property and incorporation of that property in the parking study were items of concern. As the applicant indicated, there have been a number of attempts to contact the owners of that property to come to a happy result on that. Our recommendation is, if the applicant is unable to come to a final agreement with Main Street Court regarding shared parking and drives that the final site plan would need to be modified to address those concerns. They also recommend that if City Council approves a preliminary site plan, that a condition be added to make sure the final site plan is modified to insure that the points of connection are maintained through the development as currently exist or in some way that is agreeable to staff and consultants. The motion sheet provided identifies items that the Council would need to act on if the preliminary site plan is to be approved. There are four items that Ms. McBeth highlighted. First of all, there is a requested waiver of the building set back requirements along Main Street. The applicant has actually provided quite a distance; in some cases 20 feet and then this landscape strip with the planters is another 5 feet or so. The applicant and staff has come to resolve that 15 feet of pavement would be appropriate in that location, therefore, staff would support the waver which would allow additional pedestrian amenities along the store fronts in those areas. Secondly, City Council has also asked to make a finding under section 1602.9 that the proposed façade treatments are acceptable the applicant is proposing a variety of facades for the buildings in the development. That includes EIFS, vinyl siding and some red sanding

seam metal on one of the buildings none of which are specifically permitted in the town center districts. Staff does support a favorable finding by the City Council as the architectural design is interesting throughout the development and the use of the materials would not detract from the existing developments in the area. Number three, the applicant has submitted a shared parking study and a revised study as well that indicates, based on the uses being proposed there would be sufficient parking on these two sites as she mentioned earlier. Staff is uncomfortable with the lack of response from Main Street Court but can support the shared parking agreement. If City Council makes as a condition of approval that the applicant provides shared parking agreements and cross access agreements for their site at the time of final site plan approval for that first phase. Number four, City Council is asked to act on the wetland permit for the proposed filling of the wetland that is located at the southwest corner of Main Street and Market Street. The filling of the pond is proposed primarily in order to establish an urban park, but it would also allow for some drive ways, building areas and parking. This would require both the City of Novi wetland permit as well as an MDEQ wetland permit. Mitigation is proposed as indicated to be located on the south side of the lake that is adjacent to the twelve oaks mall just north of I-96. The specific details of the mitigation are still being formulated by the applicant. The wetland permit was reviewed by the Planning Commission. The Commission recommended approval of that subject to a mitigation plan being developed as well as an MDEQ permit being obtained. Staff recognizes that the urban park that is shown on the submitted plans is an integral part of the design that was proposed and maintains an overall positive recommendation for the plan in concert with the Planning Commission's favorable recommendation. Of course, subject to the additional information that would be needed for approval for that wetland permit. The cities wetland consultant did not recommend approval due to the lack of the mitigation detail and a concern in whether the MDEQ would actually allow the offsite mitigation in this instance. Dr. Freeland from ECT and Dr. Tilton's office were present Steve Deering, traffic consultant, was also present and Tim Schmitt, the project planner for this year as well. Staff does seek direction from City Council on several items which would likely come back to City Council for further action in the future. The applicant has indicated that they would like to petition the City Council on the vacation of one public road that remains on the property and that is Paul Bunyan Drive. The applicant has been working with the adjacent property owners and they would be maintaining easement and access across those drive ways in the back portion of those sites. Staff does support that request for a number of reasons and will bring forward a full report to the City Council at a later date. The applicant will be requesting a design and construction standard variance to eliminate the end islands in all of the parking structures both above and below ground at this point, the staff doesn't see a reason to grant that variance but they would like to look at it in further detail and provide a report back to City Council for that as well. Also, as the applicant indicated that they would be likely requesting the use of turf pavers in certain areas of this site and the Fire Marshal has been working with them on this as well. She thinks the areas they are talking about are primarily in the south area. That would be instead of providing full pavement through there. At this time staff cannot support the use of turf pavers, again they don't have the full information they would need a complete application and request for that. The Fire

Marshal has been opposed to those in the past due to lack of maintenance for those in the winter time and the support for the fire vehicles. Finally, there were a number of ZBA variances that were still needed. Many of those relate to the interaction of this project with the Main Street Court.

Mayor Landry said it appears that the direction that was needed tonight was waivers with respect to building set back, façade treatment, shared parking and wetland permit, and the staff was also looking for direction on the vacation of Paul Bunyan Drive, the end islands, the turf pavers and the ZBA variance.

Member Mutch addressed Ms. Heideman. One of the items that Ms. McBeth mentioned was the request from the planning department to limit the building set backs from Main Street to 15 feet, what was the thought behind the proposal to have those building set further back from the street. Was that to provide outdoor dining opportunities or some other use in that area?

Ms. Heideman said it was because of the traffic circles. The way that the corner architectural features were on the 1000 and the 1100 buildings, they couldn't push them closer without encroaching onto that brick pavers sidewalk area, so now that those are eliminated, they can have them at 15 feet and they have planned the best area for outdoor dining to be on those corners so they still have enough width for that and even at 15 feet, you could still accommodate a few two top tables to go out there even along the regular width of the sidewalk.

Member Mutch said that a concern he had related to that was an issue that has been brought forward to Council with the existing Main Street development. When you have those kinds of uses and you also have the landscaping, within the sidewalk areas, is accessibility for people in wheelchairs or who otherwise are using some sort of assisting device to get around. He asked if they looked at that level of detail in terms of pedestrian areas to insure that they are not going to have problems with people in wheelchairs not being able to maneuver down the street.

Ms. Heideman said they have. 6 feet is needed clear to accommodate them, so the 15 feet is not including the landscape area.

Member Mutch said including these areas where they are going to have outdoor dining, they aren't going to have any issues.

Ms. Heideman said no, they would always keep it clear.

Member Mutch said his next question dealt with pedestrian connections to the surrounding properties. A couple areas that he had concern in term of pedestrian connectivity is going south from Union Street to the Main Street Court area. He's not seeing any continuous, he knows Main Street Court hasn't done a very good job at

providing their own internal sidewalk network but he doesn't see anything that gets you from your development to their development via sidewalk.

Ms. Heideman asked if he was speaking of where those cars were parked, adjacent to that property line.

Member Mutch said that is one location or coming across Union Street or the building west of that and then going toward Main Street Court. He thinks maybe that is where he would be expecting people to use the sidewalks at any 3 of those locations.

Ms. Heideman said they are hoping that by the time they get to that phase they will be working with the Main Street Court property because they actually want to somewhat redesign that whole area to realign that street so it goes out to Trans-x Drive in a straight fashion instead of the job they are proposing right now. So they are really hoping when they get to that phase they'll be able to provide that, they want to provide sidewalks, they really want to work with the property owner to create this whole section to be more cohesive and more traditional in design. At this time, this is what they have due to space but hopefully they will be able to accommodate that by the time they get to that phase.

Member Mutch said if they were envisioning that Union Street, as you go across that Main Street Court property, would be something more like what Union Street is on your development, as long as that happens, that addresses that concern. The street that is labeled City Gate, were they planning on improving that out to Grand River? He doesn't see any sidewalks in that area either and that needs to be addressed.

Ms. Heideman said they will have them.

Member Mutch said their goal for the Paul Bunyan Drive was to have the whole side of that drive vacated, but they will be providing access to those properties that do need access.

Ms. Heideman said yes, they have already worked with that property owner and come to an agreement and turned the application into the city.

Member Mutch asked if the parking garage would be a four story garage. One of the questions was total parking on site, was there any thought of going higher to provide additional parking? Why are they stopping at four?

Ms. Heideman said there are a couple reasons they are stopping at four. As far as being deficient in parking since they did redesign the traffic circles, they were able to gain 12 spaces; now they are only short about 30 on site, which represents less than 2% of all the available parking spaces. That is also at peak demand which happens for one hour a day. Also within that shared parking, the ULI has a 10-15% cushion in addition. That was one thing they were looking at, adding another deck to the parking

garage is a couple million dollars at least, it runs almost \$40 a square foot and a typical space in a parking garage is 350 square feet because they have such a high level of architectural detail on the garage, it makes it more expensive. Plus, they didn't want it to be tall and such a huge presence within a downtown.

Member Mutch said he understands that and it is a valid concern. In terms of the design of the garage, one of the things that came up was the fact that they are currently proposing it will be a no cost garage.

Ms. Heideman said that they did have some discussion, she said they could add more parking if they wanted to come into it, or to utilize it for their site. But at this time as proposed it is free.

Member Mutch said he doesn't have a particular problem that people might pay; you might have monthly parking, those kinds of concepts. The concern he has in terms of design is this issue raised by the traffic engineer that if you get to the point that you need to have a parking pass system the stacking and the back up. If that were to occur in the future if you decide to go in that direction, can this design accommodate or be rearranged in terms of the structure itself to accommodate that kind of change in use?

Ms. Heideman thought that they would instead look at a payment system that would accommodate the already existing garage since they can't predict.

Member Mutch asked if the garage design was covered.

Ms. Heideman said that there was parking on the roof, about 100 spaces.

Member Mutch asked about the architectural detail on the side of the building because it wasn't clear to him if it was going to be an open or enclosed structure.

Ms. Heideman mentioned it needed to be open a certain percentage to accommodate exhaust and so they don't have to put in a fire compression system. They are at the ratio of open to close.

Member Mutch said if he looked at the architectural renderings, the ones from Rich and Associates that show the garage, pretty much everything that is the grey blank window, was that an open kind of design there?

Ms. Heideman said she takes it as the first floor has both and the upper floors are completely open.

Member Mutch asked if the ground floor was completely parking and that no retail was going on in there.

Ms. Heideman said no not in the parking garage, they wouldn't have enough parking to then accommodate more retail or office uses.

Member Mutch said that is disappointing to him because the trend in parking garages is to incorporate the ground floor spaces of some nature to try to get away from the dead zone they are going to get from that.

Ms. Heideman said they would love to do that, which is why they located the parking garage in the back so they wouldn't create a dead zone; they have to find the balance between marketing these uses and providing parking to them while still keeping the pedestrian atmosphere. They can't actually accommodate because they are at our limit as shown on the shared parking study so they can't add any extra square footage unless they come to some other option to provide parking.

Member Mutch asked what phase the parking structure was.

Ms. Heideman said that it was the first phase.

Member Mutch said then pretty much they are going to be stuck with what they put up. He isn't saying it as a negative; that is just going to be the case. He asked about Mongolian Barbeque just utilizing some of their space or actually the idea that the structure would go up another level.

Ms. Heideman said that is something Triangle Development is going to have to talk to them about in the future because they are deficient spaces at this time and that was approved when they had their site plan approval. Its not a problem for them right now because they are not at 100% occupancy, but they will be in the future. That is something the developer will have to deal with and he would like to talk about it.

Mr. Nona, the developer, addressed this issue with the existing Mongolian barbeque building. That has a deficiency of about 250 car spaces. Right now, it has not been a problem but they definitely see that once the project is completely developed, it will become a problem. They do not want to restrict any of the building users of that building to use our parking and vive versa because that would go against the intent of this project. At the same time they can not afford to have that building with such a significant shortage of parking, creating problems for our users. They have started the process of bringing this issue to their attention and discussing it with them. He thinks there are certainly ways, they can add another deck; for example to increase their parking, they can put another deck or increase the height of the existing deck to provide additional parking. They can reduce the size of their commercial space and keep the same parking to accommodate their parking needs. In all these cases there is an obligation on their part to contribute to the cost of the additional parking.

Member Mutch agrees with that because it is an issue that they are responsible for. He hoped that they work something out, but see it as a separate issue from this particular

project under consideration. He doesn't have a problem with the lack of end islands in the parking garage design. One of the benefits of going to a lot of Tiger games was parking in a lot of parking garages in Detroit and he didn't recall one that had end islands. There is probably one out there that had one because the city told them they had to put them in, but he doesn't see them as necessary. A direction from Council should be to city administration to look at the design and construction standards to address parking garages because this is not going to be the one they are going to deal with due to land cost in the city and desire for applicant to maximize the amount of land they can build on so he thinks that is something that needs to be addressed and doesn't see a need for the islands in the garages. One of the concerns was the distance of some of the parking spaces to the residential being in excess of 300 feet which the idea of this town center design is not that you actually have to get out of your car and walk but he can also see that could be a concern. He asked if that was still a concern and if it is, where is that parking being provided that it is in excess of 300 feet?

Ms. Heideman said on the street of those buildings. Some locations where the building is set back due to the angle, it exceeds 300 feet of the actual residential unit.

Member Mutch asked if that was on the private streets and asked if she would work it out with the tenants.

Ms. Heideman said they would.

Member Mutch said the area adjacent to the residential where they have the existing industrial use, your kind of walling that around. What is the treatment on that wall, is that a brick wall?

Ms. Heideman said it is a 6 foot brick wall.

Member Mutch said long term they are anticipating this is going to redevelop. How is that going to work? What he doesn't want to see is 5 years down the road someone coming to develop that and they get stuck with this brick wall around the property.

Ms. Heideman said they would love to develop it uniformly. No matter who the property owner is in the future, it is their goal to develop it together, it only benefits their project. They don't see the residential units; they are the last phases of this project. Hopefully, they will have that worked out; otherwise when it does come to that time, they would love to work with that property owner. She wanted to quickly address the end islands because they have the end islands in the parking garage and below grade garages but on the street where someone driving and parking where it appears that they are on regular surface parking they are providing them, it just isn't within the enclosed structures because they felt that was a tripping hazard.

Member Mutch said they mentioned during the presentation fountains and public art and that they will be providing lots of it. He asked for an idea of what they can expect to see.

Ms. Heideman said they have the two intersections on Main Street which provides the opportunity for 8 different items, which they would love to have direction from Council on. Things have changed since the Planning Commission meeting where they hadn't worked out exactly what they were going to put in those monuments in those center islands. They would love direction at this time.

Member Mutch said he's sure that they would get 7 different ideas, He's not sure of direction now, but thanks for letting them know the opportunity is there. It is something they should be looking at. One more question was about the lighting on the streets because no design for street lighting had been provided.

Ms. Heideman said she believes it was in the book, but they are matching the existing street lights.

Member Mutch asked if the ones they have out there now were shielded on top.

Ms. Heideman said they were. They hang down like a lantern style. They found the exact manufacturer they were purchased from, the same spacing. The only place that changes is in the residential portion on this site; they lowered them to twelve feet.

Member Mutch was concerned about that because they don't need any more light pollution even though it is a downtown. The rest of his questions were on the wetlands. When he was reading through the review letters that were provided, one of the things he didn't see was an analysis in terms of the quality of the wetland. Specifically in terms of as it speaks to our ordinance in terms of being an essential wetlands. He also didn't see any discussion on when it was regulated by MDEQ although he understands that it is regulated by MDEQ. The question of essential wetlands then turns into if the wetland is built, how much mitigation is required.

Dr. Freeland stated that the wetland is state regulated because it is connected to some other wetlands that are connected ultimately to a stream tributary. If it's state regulated, the idea of its essentiality is really a moot point. The wetland there consists of an acre of open water surrounded by a fringe of about 2/10 of an acre of a combination of emergent herbaceous wetland and scrub shrub wetland. The open water wetland they would recommend a replacement ratio of 1 to 1, just because open water wetland is generally the easiest kind to recreate. The scrub shrub wetland and emergent wetland combination, they would recommend a mitigation ration of 1 and a half to 1. That is consistent to what he had seen the MDEQ require.

Member Mutch said regarding the conservation site they identified adjacent to the 12 Oaks Lake, at what state are the mitigation plans, are those to a level of detail that he felt comfortable approving it?

Dr. Freeland said no.

Member Mutch asked what his areas of concern were.

Dr. Freeland said they have a concept at this point, an identified area. There are a lot of questions regarding ownership, difficult site access issues, there's also a portion of regulated city woodland on that property, they don't like to see mitigation take place in regulated woodlands. The DEQ generally doesn't either according to what he's seen but they don't regulate woodlands the way the City of Novi does, therefore, they don't have a mechanism for requiring compensation for woodland impacts as Novi does.

Member Mutch said that those are very valid concerns.

Dr. Freeland said that since the September meeting with the Planning Commission, they have made some progress; they recognized the fact that they have a woodland issue on that potential mitigation site. If they do mitigate there, they will probably need a woodland permit as well as a wetland permit. They've done a more thorough inventory of the wetland on site and have identified and observed a number of plants and animals there. They have also provided additional justification for filling the wetland which they didn't feel they had at the Planning Commission meeting. They are making progress. Theoretically they could get to the point where they get enough information and an acceptable mitigation plan where they could approve this, but they are not there tonight.

Member Mutch said that is fair and what he was looking to hear in terms of where they are on that process. Last question is for Ms. McBeth, the question of the open space for the park. They are required to provide a certain amount of open space for the entire development, which he believed is 15%. If MDEQ says, no you can't fill that wetland, that park has to go away. Do they still meet that 15% open space with the remaining open space on the development.

Ms. McBeth said that the project planner says no, there would not be adequate space on the site.

Member Mutch said they would be looking at a redesign of some degree, building reduction or providing additional green space somewhere within the development. The issue of the wetland mitigation proposal, that is on a portion of the same property that they had approved for the PRO on the east side of 12 Oaks Lake. If you put a wetland there, does that take away from Singh's open space requirements or any of their approvals that were part of their PRO? How does that impact their PRO because they already have a separate development proposal and approval for that property?

Ms. McBeth said there was a development agreement with the Uptown Park proposal by Singh Development for 201 units, that was underlined zoning with RM2 so they would have been allowed somewhere more in the neighborhood of 500 units as a maximum for that site, they were well under the maximum density that would be required or allowed, so even if they did create the wetland over there, they would still be fine with the 201 units.

Member Mutch asked what plan B was if MDEQ says no and how do you address the open space requirements?

Mr. Nona said they do have a plan B in case the MDEQ does not grant a permit or it becomes too difficult to accomplish the plan that they have. That plan B would require some modification of the present plan, but he believes they would be able to add more open space over and above the existing pond, but they really haven't done the calculations, they believe they can make it work.

Member Mutch said this is a huge project that they have had before them a couple times, but not with this level of detail. The applicant noted that they are going to be dealing with for the next 10 or 15 years, if they are successful, and he hopes they are successful. He wanted to start out by saying first, he has been one of those people who always thought this could be the downtown for Novi and he knows a lot of people are skeptical about that, but this is something Novi needs, they need something that helps distinguish them from every other Greenfield suburb on I-96. He thinks this is a start towards that. One of the big weaknesses of the first Main Street development was the lack of residential within the development. It really hurt them, but this is where this project succeeds. He also appreciates the applicant's attention to the urban scale and the urban streetscape and the design elements which really make areas like this work or not work. A lot of people get hung up on what the architecture looks like; they get hung up in sort of the little appearance things. Good downtowns work because the functions interrelate well and the streetscape works well and the pedestrian traffic supports the businesses and the residential supports the health of the area. The things people get hung up on are, is it Victorian, something contemporary, that stuff is just what it looks like, not how it functions, that is what will determine whether it works long term or not and he thinks what you have brought forward is something that will work well and is something that will be successful. He thinks it will set Novi apart from other communities. The concerns he has are the wetland issues, he really is not comfortable with the wetland fill. He thinks the urban park is critical and important, maybe one of the most important parts in this development, but on the other hand, he is really concerned about the precedent they are setting in terms of other developments in the city, yes this is absolutely unique compared to anything else they will likely see. He has always tried to treat applicants fairly and give everybody the same application of the rules. He has concerns. If MDEQ had already signed off on this he would feel more comfortable moving forward. Member Mutch also has concerns because their wetlands consultant has indicated that he doesn't have the level of comfort in terms of the detail of the mitigation that needs to be addressed. He has the same concerns he does in terms of mitigating in regulated woodlands, He wouldn't support that and if they do approve a wetland permit with mitigation tonight, he would be looking for a conservation easement over that mitigation to ensure the long term protection of that site. The other big concern obviously is the plan B. He knows their hope is that MDEQ is going to say yes, but if they don't and they are looking at a redesign, he wants to make sure that it's a good design going forward and he wished they could have seen a plan B. If he would have seen a plan B, he could have supported a site plan approval, even if the wetland permit

is not granted because you already would have designed for it. It's going to be a tough vote for him on those two issues. Overall, he is impressed with what they have done and the attention to detail that they have given it, in terms of what they could get out of this area, this is pretty close to his vision of what it would be so he appreciates all the work they put into it.

Mr. Nona said they talked to the planning staff and the issue of the park is not going to be implemented until stage 3. They will have plenty of time to know whether they are going to get the MDEQ permit, of course that is going to require a mitigation plan and the reason they have not gone into too much detail in the mitigation plan is because they don't know whether it is going to be acceptable. They are, in fact, considering other sites. His point is, there will be plenty of future opportunities to come back to Council or the Planning Board on the issue of the park and plan A and plan B.

Mayor Pro Tem Capello said when Main Street came to them the first time, he wondered why they didn't attempt to fill the wetland at that time, and he didn't look at it as a very quality wetland. To him it was a swamp that bred mosquitoes. It didn't look very nice and didn't belong in a downtown district. He hopes as this gets approved that the city will support them in their request to MDEQ to fill that and make it something useable and useful in our downtown district and he thinks that is what they are trying to do. The thing he doesn't like on that area is that they have taken a street and ran it north and south blocking off the park area from the possible retail or restaurant uses that could be in there. If something is family orientated in there, as your kids are getting pops or ice creams or sandwiches, they are going to have to cross the street to get to the park. Together with that, he doesn't understand why the road east and west is blocked off. It makes perfect sense to continue that road through into the traffic circle. He knows they have talked about this and you have gotten some different direction but he would be happier if that side road with a little bit of parking there were converted all into park area and the road continuing east and west would go into that circular area. He has driven that several times, there is very little traffic on that road going back in the Singh development and he doesn't think it would be a burden on the additional traffic to carry traffic through there.

Ms. Heideman said that was an option they looked at and they were told that staff wouldn't support it.

Mayor Pro Tem Capello said that some people on Council might. You don't have any opposition if that were to change the plan. That isn't going to change anything in any major way. That also opens up some additional seating area for some outside, and where more perfect than to have seating right at the park. He thinks Member Mutch was right and he had to look at the plans a couple times, he was disappointed at first with the architecture, not to offend the architects in here. The buildings looked beautiful. It wasn't what he envisioned when Main Street started. To him, now it looks like a bunch of very beautiful individual buildings and you did that right by bringing in different architects, but at least on the retail part of it, he wanted to see more of break up for a

him memory, but it seems when they put in the street trees on the street they realized a year later that they would run into problems because the trees would get too big a block the signs on the building. Maybe that wasn't the right place to plant all of those trees. The types of trees that go there might be consideration to take into account because in adopting the new sign ordinance they were considering how are you going to drive down the street safely and still try to look and see what stores are there to know where you want to park by to go in. If trees are going to cover the signs, they're going to create additional problems. The other façade issue, he would prefer the copper color roof as opposed to the red, they have had the battle with everybody in the TC and TC1 district and they have made everybody stick to it, even Fridays, even though they didn't comply with the requirements of their building, they were supposed to have done that. That is the only change with the façade; otherwise, he thinks they're fine. He is going to go through the comments page by page. The Main Street Court, he knows they have done everything they can do, he doesn't think they have to do anything more with them, they will come to them some time in the future when they are going to need additional parking because they are going to want to put in a restaurant and they won't have

enough parking, they can talk to them about that at that point. He does agree with staff in regard to the 800 building layout that building, more so than any of the others, since it is right now Novi Road, he'd expected that to look a little more traditional downtown individual retail type of a building instead of a multi story office building. He does agree with the parking suggestions from staff. Building setbacks on Main Street not just the 1000 and 1100, he's fine with the 20 feet. He knows they want to bring the buildings close, but you go downtown Royal Oak, Ann Arbor where they didn't plan for that, and the outdoor seating, you don't want just a two top, you want a four top where four people could sit down and have dinner, so the additional space to me just means additional outside seating in the spring and summer time, when whether permits. He's fine with the additional setback variances for the 1300 building, shared parking situation. In the plan and he remembered they had this problem with the initial Main Street building you own some of the existing parking lot behind the existing main street building, correct?

Mr. Nona said most of the existing spaces that are there belong to that building. There is a condominium association that is a general common element of the parking for the association. They have an existing condo association, they have 2 units, and we have 1 unit. But technically they are considering that as their parking so, the parking analysis doesn't not include any of their uses or their parking.

Mayor Pro Tem Capello said that after all this time, if they have a parking problem there, he will be delighted. They will deal with it when it comes. The Paul Bunyan Sixth Gate, he presumes they were talking to Victor Cassis. Normally, what they do is they split the property between the two property owners. He asked if they were just assuming to take it all.

Mr. Nona said right now, he doesn't know exactly how he is going to develop his property, but they have agreed that they are going to provide him one or two access points and number two he will have the use of the parking on his side and number three they will put his building or development in a shared parking analysis with ours.

Mayor Pro Tem Capello asked if he would still have access onto Novi Road. Whatever they work out with him is ok, it only makes sense. He thinks on this site, they have to have the green space and the percentage, but when you are in a downtown district, it is hard to put that many trees into an area without encumbering traffic and pedestrian traffic. He doesn't know if with all the various issues they can come to a consensus, but if not he's sure that at the next meeting they will have everything resolved.

Member Nagy said that she read all the Planning Commission minutes and they did a great job. The staff did a great job. She really likes this project; she thinks for this area it is creative, innovative. She doesn't believe she has seen anything within our area that looks like this. She does have a couple questions; the first is in regards to the turf pavers. They had a particular project and she thinks it was a connection they wanted to use pavers, the fire department recommended against it, they denied it. Even though they answered some of the questions with regards to the maintenance of it, she does have a question with regard to the ADA. Is that going to provide any problems for the ADA?

Ms. Heideman said when she was reading, these make it easier and more wheelchair accessible than if it were just grass.

Member Nagy said what if she was walking through that area in high heels, would she to get her heel caught on it.

Ms. Heideman said that she can't answer that, the top soil is a little bit below the material that the fire truck will sit on, that way it doesn't compact the soil. You might, but not anymore than just regular dirt.

Member Nagy said, but in an area like that you aren't looking to be walking through dirt. People will walk through it. A concern about that is that she would like the Fire Department to be in total agreement about everything. The other thing is that she did look up on the internet the MDE application. At the present time not only have they not approved it, but according to the web site they are looking to receive more information. She would have liked to have a plan B because she's really a visual person and was trying to visualize where you would have put the green space. She agrees with Member Capello in the sense that, as much as she likes the whole idea of the park, it does seem to be a little separated from the rest of Main Street. She's not expecting them to change the design by what she is commenting on but she almost thought to herself, it would have been nicer to have it closer to the center of Main Street with buildings surrounding it so that you would walk past it no matter what direction you go. With regard to the parking structure, she doesn't believe they require end islands. She can see why they

don't want to spend any more money and go up another floor, but they are making 800 building the first building, then the parking garage.

Ms. Heideman said yes and also the building that is in front of the garage, 600.

Member Nagy asked which building was going to have the medical offices.

Ms. Heideman said that would be building 800.

Member Nagy said she saw that was a walkway. She wanted to know if it was covered because she goes to Beaumont hospital a lot and she likes the covered walkway. She thinks almost everywhere she goes, the hospitals have that in a lot of the buildings and she thinks it would be great for the people who go to the medical buildings. With regard to the street trees, she thinks the ones that are planted now, the branches need to be pruned up because you can't walk down the street. She doesn't like the idea of having that many pear trees, they are soft trees, and you can always do columnar or something like that that goes straight up. She doesn't want to take the green away because it adds to the aesthetics and the appeal of the area. She does have a thing about EIFS, she never really did like it that much. She doesn't particularly think she would like to see vinyl siding, vinyl siding tends to burn, it emits a chemical odor and if you ding it, it is dented. She is sure they are familiar with hardy plank, could that be a substitute? That looks just as good and it is fire retardant. That would also have an added value. It would give the same look they were trying to achieve and it would last longer, the minimum is 15 years without having to paint it. The only thing she understands they can't do it put a bunch of nail holes in it, you have to use specialized nails, but she thinks it would be much more attractive than vinyl siding and it is a newer material. With regards to the snow plowing, would that be the city's responsibility?

Ms. Heideman said no it would be Main Streets responsibility.

Member Nagy said so they would be the ones indicating where these turf pavers are.

Mr. Pearson said that administration needs to catch up and provide some directions to allow turf pavers. They are all good reasons as to why they should be permitted, they just haven't gotten around to catching up. He thinks one case that Council dealt with was residential which was a little bit different, but this is around the park area, it's a perfect application. The point is the weight bearing, they have more than that.

Member Nagy was trying to make sure our fire department gets covered here, but she appreciated the comments and took it under advisement. The main concern that she had was the wetland mitigation, they do have woodland ordinances and she doesn't want to see woodlands becoming wetlands. She knows that they are building in different phases but really would have liked to see what they would have done if they couldn't have gotten this because this is an essential regulated wetland and as much as the park looks attractive, she definitely thinks that they have put a lot of work into it and she

appreciated all the time and effort they have put into it. She also realized that somebody mentioned something about the different designs of the building. She thinks it will look nice because it won't look like a bunch of row house effect, when you have different architectural designs. It will also appeal to people with various tastes that come into that area.

CM-06-11-293 Moved by Nagy, seconded by Capello; CARRIED UNANIMOUSLY: To approve the request of Triangle Main Street, LLC. For Main Street Novi SP06-38

City Council waiver to modify building setbacks along Main Street, with no more than 15 feet of pavement between curb and building,

City Council finding under Section 1602.9 that proposed facades and materials being used meet the intent of TC zoning district bearing in mind hardy plank,

City Council acceptance of Shared Parking Study, incorporating Main Street Court parcel, with the applicant providing cross access and shared parking agreement over the Main Street Novi site at Final Site Plan,

City Council acceptance of applicant's proposed off-site mitigation, to be located on the south site of the Twelve Oaks Mall lake,

All Zoning Board of Appeals variances being granted or plans being modified to meet ordinance requirements,

Vacation of Paul Bunyan Street at the northwest corner of the site, adjacent to Novi Road,

Applicant redesign of intersections to remove traffic circles, or redesign to meet satisfaction of city's traffic engineer, with details to be reviewed at the time of Final Site Plan review,

Resolution of all remaining issues listed in the staff and consultant review letters at the time of Final Site Plan review.

To take Depot Street out and continue additional park land and continue Division Street around to the Market Street.

The city wholeheartedly supports this as a community amenity.

DISCUSSION

Mayor Landry clarified with respect to the shared parking; the motion indicated that the shared parking would be required as a condition of final site plan approval.

Member Nagy said yes.

Mayor Pro Tem Capello asked if the requirement to work out the shared parking concept in general or with Main Street court because he thinks they have done all they can to work it out with that neighborhood. He doesn't want to impose an additional burden on them to have to do any further negotiations.

Member Nagy said the motion would include applicant providing cross access and shared parking availability to Main Street Court.

Mayor Pro Tem Capello suggested they take that Depot Street out and continue additional park land and continue Division Street around to the Market Street.

Member Nagy said if that is a friendly amendment she accepts that.

Mayor Landry asked if that was acceptable to the applicant.

Ms. Heideman said yes.

Mr. Nona said a lot of this is going to depend on the final resolution of the wetland issue, in fact, plan B includes that Depot Street going all the way down without that side suggestion.

Mayor Pro Tem Capello said his next suggestion was that they make this subject to MDEQ approval because if they don't get it, Council wants the whole thing to come back.

Mayor Landry asked Mr. Schultz if shared parking is not with this group, who is it with?

Mr. Schultz said he thinks the intention of this particular item is to make sure that they keep both parties at the table on this issue with Main Street Court and what they'd like to have in that final site plan is appropriate an actual document that at least one party has signed or indicated an agreement that they will sign. He's not sure with the reformulation of the language, if Council intended to lessen that. They would like to keep it with this proponent giving its half of a cross access shared parking agreement in hand with us and then they deal with the other half if they are unable to do it themselves.

Mayor Pro Tem Capello told Mr. Schultz that it was his suggestion to not include that in the document, he thinks if they do that it will make it more difficult for Mr. Nona to negotiate with Main Street Court because then he is really behind the gun, and that is really unfair to him. He thinks it will work itself out as Main Street Court needs some relief in the future. He doesn't want to make that a requirement because he knows they've tried for months and months and months and can't get anywhere.

Mr. Schultz said they are back then to the issue that they spoke about with Council if there isn't at least the permission by this proponent to allow continued parking on their property then they run the risk of creating a non conforming situation on Main Street Court. If they allow this amendment without the agreement on the part of this proponent to have that parking, they didn't create a situation that doesn't exist now. Then, if the situation exists, what's going to happen is they will have to come back to the negotiating table and probably carry that road through as they always anticipated that it would come through as a result of an overall resolution and that's what he is trying to look towards the future, trying to make it easier in the future to get the thing resolved.

Mayor Pro Tem Capello clarified to Mr. Schultz that he was only suggesting that they require they do their part, their half of the shared parking. Once they agree that they would do it, they don't have to negotiate at all, they are done. Then when Main Street Court comes to us for approval of whatever they want approved, we can say contingent on you signing your half of the shared parking. The onus is off of these guys, is the way he understands it.

Mr. Schultz said they need them to maintain open access for that existing parking, give us the paperwork that they need in that regard.

Mayor Pro Tem Capello asked Mr. Nona if he opposed that.

Mr. Nona said not really because they have tried to work with them, in fact they have given them a couple of plans. They don't have a problem with that, he thinks they have made some sensible offers to them, they have agreed to open up the street in the area and he thinks they want to maintain a project that has open shared parking, so they are not going to prevent their people from parking. But, no they agree to work out the shared parking formula with them, even without a formal agreement.

Mayor Landry said that what was on the table now is only that they agree to do their part of the shared parking.

Mr. Nona said their project, by the way, works even if you take him out of the mix. They are short a few parking spots, but it still works. When you include that building into the mix, then it works better.

Mayor Pro Tem Capello said that the language that is in the proposed motion with the addition that it can be at final site plan, accomplishes what they need to.

Member Nagy asked what they would have to add to that is at final site plan. Letter C would end with the words "at final site plan".

Member Margolis would also like to echo that she thinks it is a wonderful development. She was on Main Street shopping on Saturday and looked again at the brown fields and they need this development there and have done a great job. If people could see the

mass of documents that they received and the work that they have put in with staff to come to agreements on these issues, she thinks that they need to be commended as a staff for that. She will support the motion; she doesn't have any problem with any of the problems in there. The issues that were brought up about the wetland, the reality is that will sort itself out with the MDEQ approval or not and then they will move forward from there. Just to give staff a couple of directions on the other items they talked about, she would agree with the comments earlier about the end islands. As someone who goes in and out of a parking structure multiple times a day she can't imagine there being end islands in a parking structure, so, she thinks they need to catch up in terms of the ordinances on that. The other items they had asked about and she's glad that Mr. Pearson brought up about the turf pavers because she actually has a note that this has come up a couple times, just since she has been on the Council. She gets the feeling that they are a little bit behind in terms of how they approach that issue. She would like to see staff work on that and see if they can come up with something that preserves the safety. She understands the concern to making sure that gets plowed. She thinks that is one of the big issues, to make sure it doesn't get over grown so there isn't access. If this is the new design that is coming in, she thinks there are a lot of reasons they need to look at that and make that positive. She has no problem with the vacation of the street and thinks that works well into the plan. She did have one question in terms of the amphitheater. While it has talk about a park and an amphitheater, she thinks there are some variations in the documents. That would belong to the condo association and are they talking about the residents condo association, it wouldn't be the business owners at that point she asked what was the concept with that?

Mr. Nona said their will be several levels of condos, there will be a site condo, for each of the buildings and then when they have our residential building that has condos within it each one of those buildings could have a separate condo superimposed on the original one that would be for the residential. He would say primarily this would be for the condo association, including business owners. They are open to working out any arrangements with the city parks and recreation to listen to their concerns, ideas, cooperation, taking it over.

Member Margolis said she would like to see staff talk with them about how they think that would work best. It is something the city could use, it is very positive about the site. She would want to make sure the city and business owners were comfortable with where that was going. She doesn't want to see an issue between the residents and the business owners in terms of how that site is used. She'd like to see that discussed.

Member Paul reiterated that she has no problem with turf pavers, she didn't on the last project and she has even less now because the condominium complex is going to be doing the snow removal and that was the biggest concern. Also, the other thing is, there is absorption and with the pervious surface, the turf builder has some absorption. It will benefit this project. She likes the green roof tops. How many roof tops is it proposed on?

Ms. Heideman said it is proposed on the residential buildings where they have added grade parking. It is between the 1400 buildings and the 1200 building on this site.

Member Margolis said some studies have been done and it is 1% more in building construction to have a green roof top, but it pays for itself within less than 3 years, in regards to cooling and heating and absorption. Hopefully, with some of their green designs will help with their MDEQ permit. Another suggestion is there might be some areas they want to put bio retention basins in, she's sure they're familiar with that. When you are getting rid of a wetland that is going into a tributary, that might be something to consider. She has no problem eliminating the trees at the edges of the parking garage. One question under planning, page 1, it talked about under the 800 building design and layout decreasing the sidewalk by 2 feet. Would that still allow the 6 feet for the ADA compliance.

Ms. Heideman said yes, the sidewalk will be 10 feet.

Member Margolis said she just wanted to check. Under traffic, in front of building 800 they're going to have the retail and the restaurants there, in the top portion of the building they're going to have your medical office. She asked if they're going to have signs delineating parking time in those front parking spots.

Mr. Nona said the medical building has requested a certain number of reserved parking for them. There will be some, but a small number, maybe 30 or 40. In the front and in the parking that would be reserved, they told them they will only do it between 8 and 5 so after hours it will be open to be used by the evening users.

Member Margolis said her concern was if they have lunch time restaurants, they won't have the flexibility for people to pull up and use it on a quick basis.

Mr. Nona said again they will only have a small number. It's less than 10% of what was available there.

Member Margolis said she thinks the wetland issue will work itself out and she finds it very important that they figure out what to do with the mitigation. They can't just fill and not have a place for the water to go. With all that being said, she thinks the project is excellent; she is looking forward to come to fruition and watch it because they have been talking about it for several years since she has been on Council.

Member Gatt said he will be consistent with what he has said for the last year and a half. He thanked them for coming to Novi and bringing such a beautiful, multimillion dollar project, Novi is the envy of southeast Michigan and they were just adding to that envy. They've thought of everything, even the parking time limits in front of the medical building. They were professionals and it showed.

Mayor Landry said he was not concerned at all about filling in the wetland. He thinks the amphitheater is a very important part, a very important feature. If this plan is going to work like they all want to it, it has to attract people, if people have to go there and patronize the shops and the residential park is part of that, he just sees a concrete pad, what's behind it.

Ms. Heideman said there is a wall behind it. It is actually in a strategic location, due to the grade situation in that area, that wall is actually a retaining wall also. If you go out to Main Street, you will see that the wetland is a lot further below grade than the street. That is why, it actually reduces fill that they have, the sloping lawn and then the concrete pad and the wall.

Mr. Nona would like to add if they have to place more than 10 thousand cubic yards of fill in a wetland area, then the issue goes out of the jurisdiction of MDEQ to the EPA, so they were trying to keep it below 10 thousand cubic yards and as a result, the grading is

not what they would like it to be. Our wetland consultant had indicated that if we get the blessing of the MDEQ, they are going to go to the EPA. If that requirement or restriction of 10 thousand cubic yards goes away, then they are going to do a nice grading plan in here. The plan for the park is not nearly final.

Mayor Landry said good, because they talk about amenities and they had plans for fountains in the circles, if they're not going to do that, he thinks to work, it's important how this park looks and to be a quality park. If it is, he's sure the city will be very interested in talking to them about sharing the upkeep and activities. To him, that's a real key element. He thinks it could really make this whole project go.

Mr. Nona said if they get the approval, it will be a lot better than what they see now.

Member Mutch had one question about the intersection redesign that incorporates the table concept. Are there any design and construction standard questions about that?

Mr. Pearson said that he doesn't know if they are in our existing design and construction standards. But they are out there in the literature, the traffic manual and so forth. He is familiar with those, and will work through that too.

Member Mutch was just wondering as far as approvals if there was anything separate that needed to be done.

Mr. Pearson said if there are, they will come back because he has not heard anyone say that they have to have that.

Mr. Schultz said if they need to, after reviewing it, they can do that at final site plan.

Member Mutch had a question about the Sixth Gate Street. He wanted to know if that was going to remain a public street and if they will be upgrading it.

Mr. Nona said right now because they do not own the property, yes.

Member Mutch asked if he was counting the parking along Main Street in their overall parking total.

Mr. Nona and Ms. Heideman said yes, but not the in front of the existing building.

Member Mutch said that is fine, it was more of a question of how that is handled, but the intent is they will still be maintaining that as a public street.

Mr. Pearson said they maintain the through lanes, not the parking sides on it. The city is not responsible for maintaining the planter boxes, or any other physical improvement that are along that road.

Member Mutch asked if that included the street light that he asked about.

Mr. Pearson said yes, the property owners are responsible for that. There are a couple folks that mentioned on part of Council the importance of the urban park and how that fits in. Apart from where and how to do the mitigation if Council chooses, he thinks it would be helpful to give some clear direction, concurrence that they can help the applicant along in terms of writing any letters or anything that's necessary with both MDEQ and EPA about the importance of this in the urban center. He thinks it would be a nice thing; they haven't talked about incentives or anything else in this project so it's maybe the least they can do to help facilitate that.

Mayor Landry said how about a friendly amendment that indicates some sort of declaration that the city wholeheartedly supports this as a community amenity.

Roll call vote on CM-06-10-293 Yeas: Capello, Gatt, Margolis, Mutch, Nagy, Paul, Landry

**REGULAR MEETING OF THE COUNCIL OF THE CITY OF NOVI
MONDAY, FEBRUARY 12, 2007 AT 7:00 P.M.**

Minutes Excerpts

PUBLIC HEARING

1. Vacation of a portion of Orchard Avenue/Paul Bunyan Drive

The public hearing was opened at 7:06 P.M.

Victor Cassis, 22186 Daleview Drive, said he owned the property to the north of Sixth Gate, and under the Subdivision Act, he had interest in the vacation of the street. As of now, he said he was in direct negotiations and trying to forge an agreement between himself and Triangle, which was to the south of the street. He was hoping they could do a shared parking agreement between them; they had not signed one yet but he wanted to go on record that he did have interest in this vacation.

The public hearing was closed at 7:07 P.M.

6. Consideration of resolution to vacate a portion of Orchard Avenue/Paul Bunyan/Sixth Gate Right of Way adjacent to the Main Street Novi development, east of Novi Road.

Mr. Schultz said a resolution was in Council packets that would accomplish the vacation if Council chose. He said they received a letter indicating that the easements that the City would typically require for access had not yet been provided. He said Council might want to consider that the effective date of the vacation be from the date the cross access easements were received by the City.

Member Mutch asked Mr. Schultz to address the point that Mr. Cassis brought up, the fact that he owned a portion of the property north of Paul Bunyan that fell within the plat. He said with his understanding of how roads were vacated, Mr. Cassis would then be entitled to a portion of that property with the rest going to the Main Street development to the south. He asked if that was the correct understanding of the situation, and was there anything Council needed to do to make that clearer or was that someone else's job to address who got what property.

Mr. Schultz said one of the issues that the vacation brought out was subsequent ownership taxation, which was from the City's perspective who the tax bill went to. He said the area of Harmon Glass on the north side of Paul Bunyan or a portion that would be vacated fell within the same plat that the rest of Paul Bunyan was located in. He said most of the area of Paul Bunyan that was going to be vacated would likely be treated by the City as falling under the subsequent ownership of the Triangle Group. The small portion close to Novi Road, part of the same plat, should go to the property owner on the other side who was Mr. Cassis. Mr. Schultz said they were working on their own sort of private cross access easements, and Mr. Cassis said today that they were not at the point where they had reached an agreement. He said in the resolution before Council, the City was reserving its own public easement for access. He suggested that the effective date of the resolution be from the date the City received acceptable easements from the site plan perspective, which was ongoing. In terms of the future, from the City's perspective, the question of what happens ended with the resolution. However, the property owners often want some guarantee that they own the area that had been vacated. Mr. Schultz said there were ways for the private property owners to do that and

could include a Circuit Court lawsuit that would name the City and others as defendants. He didn't know if there was a resolution by the private property owners that they were going to do that, it was not something the City needed to institute. At this point, the City was going to split the property along sort of accepted lines for assessment purposes. If they get a dispute, they would have to deal with it at that time.

Member Mutch said once this was vacated it would create two parcels. One that would be Mr. Cassis' parcel and one that would be the Main Street parcel. Then, from there forward, that was the City's responsibility as far as assessment, taxation and anything else that was going to be sorted out between the private parties. Mr. Schultz said correct, they would be combined for assessment purposes with whatever property was appropriately adjacent. He said whether that was sufficient for the private property owners or their title companies, or their subsequent purchasers was a different issue they would resolve on their own.

Member Mutch asked Mr. Cassis if he was comfortable that Council had addressed the concerns he had with the situation, and that they could move forward and then he could move forward with what he needed to do. Mr. Cassis suggested that Council wait to vacate until the final agreement between him and Triangle was settled. He said vacation could be asked for by one party and not by the other party so the other party still had their rights. He didn't want to oppose it until an agreement was reached because he felt that Triangle would come forward eventually.

Member Mutch said the site plans approved for Main Street were based on this being a public road and asked if the vacation created any kind of issues. He said they were seeking this because of the setback issues and asked if that was part of the site plan approval.

Mr. Schultz said the site plan did show the vacation of this area and contemplated that there be cross access easements. He said one of the issues they often run into was that the parties working on the cross access easements didn't have the same ideas as to what the terms should be. He said Council had held a public hearing on this, so in terms of when to approve the vacation was within Council's discretion. Member Mutch said in terms of the review of the

site plan and setbacks, etc. did that contemplate the potential that Mr. Cassis' property would be set up separately. He said Mr. Cassis was not obligated to be part of the site plan, and that might trigger setback issues. Mr. Schultz said he couldn't answer that question. Member Mutch said from a policy viewpoint they didn't want to delay this unnecessarily, however, on the other hand they didn't want to create another problem by moving forward.

Ms. McBeth said she had brought the site plan that was presented at the Planning Commission meeting and would put it on the overhead. She showed the area of vacation and said the preliminary site plan did contemplate either a street vacation or

some modifications being done to the final site plan. It seemed with the preliminary site plan that the applicant was going to pursue a street vacation and that was why it was being brought before City Council this evening.

Member Mutch said in looking at the plan, obviously, they contemplated using Mr. Cassis' property. Ms. McBeth said on this plan, yes. She said there was a discussion with the preliminary site plan that there would be curb cut access provided in a couple of locations on the north side. She said they always understood there would be modifications on the final site plan to provide access. Member Mutch hoped they would come to an agreement but if he decided he didn't want to be a part of that could she show on the map where Mr. Cassis'

property would be falling into the area of the vacation. Ms. McBeth showed him where Harmon Glass, the small parking lot, and the aerial photos showed the green grass area with trees. Member Mutch said then it did impact where the entrance and parking was falling. She pointed out the main entrance to the Harmon Glass building, and he said he was talking about the entrance where Paul Bunyan exists. He said obviously, if Mr. Cassis' property comes south, that would take up about half of that entrance area, correct. Ms. McBeth said yes.

Mayor Pro Tem Capello asked Ms. McBeth to show Council how far to the east of 554 ft. of vacated Paul Bunyan would go. She showed him the extension of the existing Paul Bunyan Dr. He asked if George Keros' piece was to the north. Ms. McBeth said it was the Novi Pavilion where Kinko's was.

Mayor Pro Tem Capello said normally when a street was vacated, it went from the center line to each of the abutting property owners. He asked if Mr. Cassis or Mr. Keros had waived off on having access to half of it. Mr. Schultz said certainly not as to Mr. Cassis. He said Mr. Cassis' parcel, the Harmon Glass parcel, was the only parcel along Paul Bunyan that was in the same plat. He didn't know the extent of it but would assume that at least half of the Paul Bunyan right-of-way that would then become ownership along with the Harmon Glass property. The property further east of there was not part of the same plat. He thought the expectation was that when the property was assessed all of that would go to the Triangle parcel and not to the Keros property.

Mayor Pro Tem Capello said then the issue was whether or not it was in the same plat. He asked about older subdivisions that didn't have a plat. Mr. Schultz said common grantors could make a difference in terms of who got the ownership of a vacated parcel. The general rule would be that it went to abutting property owners on either side. Mr. Schultz said but this parcel was always within single ownership with that plat. He said that was essentially the way it was handled further east on Paul Bunyan. Mayor Pro Tem Capello said then we are sure that Keros would have claim to this. Mr. Schultz said their expectation was that if the Council vacated, they would have Mr. Lemmon assess the property. If there was a dispute about the ownership or whether the assessment was appropriate, then the private property owners would take whatever remedies they

had amongst themselves with regard to the City. Mr. Schultz said our intention would most likely be to assess it the way they described.

Mayor Pro Tem Capello said Mr. Schultz brought up the issue of the effective date in getting the cross easements even though he saw that the resolution did reserve an easement for ingress and egress. He said he could see waiting to get an actual grant from them to record with the deed. However, the legal description described the entire 60 ft. wide piece without taking into account the possible 30 ft. strip that Mr. Cassis should be entitled to.

Mr. Schultz said that description was just for the vacation area. He said regarding the easement that would be whatever was negotiated during the site plan process. It didn't really contemplate or discuss what the ownership would be. Mayor Pro Tem Capello said the vacation doesn't vacate to a particular person it just vacates in general. Mr. Schultz said it vacated in general to the legal description and the ownership would be sorted out after. Mayor Pro Tem Capello said then we really don't have to worry about Mr. Cassis tonight. If he was going to get his 30 ft. from the center line towards his property, he would have the ability to negotiate with Mr. Nona on how that took place and how it affected his property. Mr. Schultz said it was fair to say but he would add the comment that one of the things that Council took into consideration in vacating any road was whether there was an objection from an adjacent property line. So, to the extent that Mr. Cassis had made comments on the record about the fairness of the vacation would be something Council would take into consideration. Mayor Pro Tem Capello asked if that was something he could decide when he determined who the vacation went to. Mr. Schultz said Council did not determine who it went to. The action of Council tonight was do they want to vacate this road and was now the appropriate time. If it determined, as part of the overall Triangle Development and the effect of the development on neighboring property owners, that it was the right thing to do, the action was to vacate and the ownership sorts itself out by operation of the statute. Mayor Pro Tem Capello asked who interpreted the statute and made that decision. Mr. Schultz said administratively what would happen was through Mr. Lemmon's office, just as they did further east, apportion the property probably along the lines of the eastern most part going to the Nona parcel, the western north part around Novi Road splitting under the statute between Mr. Cassis and Triangle. Mr. Schultz said it didn't need to be a part of Council's motion because it was an administrative operation. Mayor Pro Tem Capello said it didn't seem like this needed to be delayed if the result was that Mr. Cassis had control of his piece anyway. He would have full bargaining power with Mr. Nona.

Mr. Cassis said he was not an attorney but thought they might want to say something in conjunction with what Mr. Schultz just said. He said what if he didn't want to vacate his portion; what's the answer to that. How could Council vacate a street and half of it didn't want to vacate. After all, if it was vacated it had to be maintained and you have to take ownership.

He said what if he wanted the City to keep ownership. Mayor Pro Tem Capello asked if he knew what he wanted tonight. Mr. Cassis thought Council needed to delay this until he could come before Council with an agreement between himself and Triangle. Mr. Cassis said he sat down with Triangle months ago, he sent them a suggestion, paid an attorney to do it, and they chose not to come forward and do it in time so here we are. He thought it should be postponed.

Member Nagy said they could just not vacate that portion and leave the end of the road there and not do anything on it. She thought Mr. Cassis had a good point. She said they had talked about this whole area, vacation and who owned what area for a long time before Triangle even came before Council. She said she was not comfortable saying they would vacate this until Council got cross access easements, and then they don't work it out. She thought Mr. Cassis had a good point, and she would prefer that Mr. Cassis and Triangle work out whatever they were going to do. She said Council didn't even know if Mr. Cassis wanted to vacate. She thought they needed an agreement and Council was too premature on this issue. She said they should work it out, tell Council what they're doing, and then she would be happy to vacate it. She didn't feel comfortable on a legal basis doing something like this.

CM-07-02-042 Moved by Capello, seconded by Nagy; CARRIED UNANIMOUSLY:

To postpone the proposed vacation of a portion of Orchard Avenue/Paul Bunyan/Sixth Gate right-of-way until the first meeting in March.

DISCUSSION

Member Gatt said he would support the motion, and was thrilled that Triangle was going to come in and spend millions of dollars developing Main Street. On the other hand, Mr. Cassis was a pioneer of this City and he would not vote on anything that would hurt him in any way. He said let's let them work it out.

Member Margolis said there was a mention about waiting for a cross access easement, and her understanding was that was not the easement that Council would be pending. She said the easement that Council would make this pending would be the City easements to the property. Their cross access easements would be between the two of them.

Mr. Schultz said part of the site plan approval requirements would be both of those kinds of easements. A cross access easement between the two property owners was something they would expect to see along with the final site plan but he'd include language in the site plan and the documents that would also grant just a general public easement, which was reserved in the resolution. He said it was really both things. She said they would wait on this pending the City's public easement, and Mr. Schultz agreed. She said that would be needed in final site plan.

Member Margolis said she would support the motion to postpone but she was dismayed because she would like to see Main Street move forward. She thought it was really important but she didn't want to make a quick decision. She said Council made vacation decisions based on the public good. She stated she would be interested in information regarding what the City's legal exposure would be based on the discussion tonight, if Council went forward with this. She said there was talk about suits that could be filed in terms of ownership of this and asked what exposure would the City have in that situation, and it could come later.

Member Paul said she had no problem supporting this motion and waiting until they had more information, and hopefully the parties could agree. She wanted to see Main Street move forward and also wanted to respect the owners of the property who had been here for a very long time. She said this was probably the third or fourth time vacation had come up and all of it had been on this site in the 5 ½ years that she had on the Planning Commission and

Council. The first few times it was on the Planning Commission and it was speaking directly about the bank not recording the easements correctly, and Mr. Lemmon figured out there were some problems and came to the Planning Commission to change the lines. She said since this kept coming up and 5 ½ years later they were still talking about it, she would like to have a legal understanding and documentation from Mr. Schultz about all the ramifications this would incur for Council. She asked for the information in an off week packet.

Mayor Landry asked Mr. Schultz if he understood correctly that for the purposes of vacation, he was suggesting it be made effective when the public cross access easement had been obtained. However, Triangle Development would not get final site plan approval until the private cross access easement was worked out. Mr. Schultz said he was correct. Mayor Landry said so eventually these two parties would have to come together, and Mr. Schultz agreed.

Roll call vote on CM-07-02-042 Yeas: Nagy, Paul, Landry, Capello, Gatt, Margolis,

Mutch

Nays: None

**PLANNING COMMISSION
REGULAR MEETING
ACTION SUMMARY
WEDNESDAY, MARCH 14, 2007**

MATTERS FOR CONSIDERATION

1. MAIN STREET NOVI, SP 06-38

Consideration of the request of Triangle Main Street, LLC, for recommendation to the City Council for modification to conditions of Preliminary Site Plan approval. The subject property is located in Section 23, South of Grand River Avenue and east of Novi Road in the TC-1, Town Center District. The subject property is approximately 20 acres and the Applicant is proposing modifications to the previously approved site plan.

In the matter of the request of Triangle Development for modification to the Preliminary Site Plan approval for Main Street Novi, SP06-38, motion to recommend approval to the City Council for the Modified Preliminary Site Plan subject to: 1) All comments of the Planning Commission's motion of September 27, 2006 continuing to remain in force, with the removal of the condition to vacate Paul Bunyan Drive, and the following conditions; 2) Noting the recommendation from Staff to do the partial vacation as indicated in Alternate B; 3) A City Council Waiver of the specific building setback requirements for the 700 and 800 buildings along Paul Bunyan Drive; 4) A City Council Variance to allow a non-standard parking design in the public right-of-way should the vacation be changed; 5) A Zoning Board of Appeals Variance for the lack of parking lot setback along Paul Bunyan Drive; 6) A Zoning Board of Appeals Variance for the proposed dumpster location and lack of setback for the 800 building dumpster; 7) License agreements being developed to allow for any fixed objects to be located in the public right-of-way; 8) The Applicant providing additional right-of-way along the southern and eastern edges of the existing Paul Bunyan right-of-way; and 9) The Applicant continuing to work with its neighboring properties regarding future access to the properties to the north; for the reason that the plan as shown demonstrates the Applicant's willingness to work with the City to come to the best potential solution. *Motion carried 7-0.*

REGULAR MEETING OF THE COUNCIL OF THE CITY OF NOVI MONDAY, MAY 1, 2007

Minute Excerpts

Victor Cassis, 22186 Daleview, commented that he hoped Council understood that granting a little more time to do his presentation would be in order as they are being very much affected by this item tonight. Mr. Cassis said he was leading a relatively peaceful life until Mr. Nona decided to overbuild, and over develop a property next to him, and disturb his peaceful existence. He said he was present to object to the Main Street development as presented to Council tonight for two reasons. 1) As it negatively affected his property rights, and 2) as a 33 year taxpayer and active participant in this

community's life he cautioned this Council against repeating the mistakes of the past and venturing into contractual partnerships with private entities. Mr. Cassis said three years ago and after a 20 year wait he bought Tom Marcus' property, and it adjoins his Novi Inn property. He said Mr. Marcus offered the property to Mr. Nona, and he chose not to buy it. He said Mr. Nona came before the Planning Commission and Council with a development with over 15 variances. He drew, architected and shaped a development that enhances his financial interests. Mr. Cassis said Mr. Nona relied on the good offices of our City to smooth the path for a highly overdeveloped site plan, and the Council along with the Planning Commission did smooth the path. He said the City was to be commended for wanting to attract a development that was needed to bring closure to Main Street, and to the tax revenue it would bring. Mr. Cassis said Mr. Nona wanted to use a City street to alleviate his over 50 parking spaces shortage. He said the planners, City Council and the Planning Commission all said that the preferable solution was the vacation of Paul Bunyan and shared parking. Mr. Cassis said he engaged, very sympathetically, with Mr. Nona for a shared parking agreement drawn by his attorney at Mr. Nona's direction, and accepted by him verbally to Mr. Cassis except for two technical issues, which they both agreed to drop. Mr. Cassis said up until today and with many months of estrangement Mr. Nona left him in limbo with \$10,000 in attorney fees. Mr. Cassis asked where his peaceful existence was. Mr. Cassis stated he stood before Council today perplexed and wondering why Mr. Nona didn't want to choose the correct option that would spare the City from liabilities as it would be very difficult for him and his insurance to supply this City with insurance against the public coming in and out and doing any kind of sundry stuff on that City road. Mr. Cassis said he had never stood in the way of vacating Paul Bunyan. In fact, he was ready right here and right now to sign an agreement with Mr. Nona monitored by an impartial party of any City choosing, what more could they do. He asked why they would want to allow a big developer to come in, and he said he was very hopeful for his success, but Mr. Cassis had been here for 33 years. He had seen Trammel Crowe, Main Street, James Chen, and had seen them all. He said he had stayed here. Mr. Cassis said this was a big development and he asked Council to please make the right decision. If shared parking and vacation of Paul Bunyan were the preferable solutions he was ready and willing to execute that relief.

3. Consideration of the request of Triangle Development for Main Street Novi, SP06-38, for modifications to conditions of the Preliminary Site Plan approval. The subject property is located in Section 23, south of Grand River Avenue and east of Novi Road, in the TC-1, Town Center District. The subject property is approximately 20 acres and the applicant is proposing modifications to the previously approved site plan to accommodate leaving Paul Bunyan, aka Sixth Gate, as a public street.

Mr. Pearson said this had come back in this form after the Council asked the applicant to review their request originally for vacation. They had withdrawn their immediate request and were going the route of suggesting improvements to the City's right-of-way, which the City owned and controlled. He said these were revisions to the preliminary site plan and there were several conditions which were not atypical. He said there was a

positive recommendation from the Planning Commission and the City attorney had reviewed it and found that it met the requirements of the Zoning Ordinance and Council requirements.

Sarah Traxler, Senior Planner with McKenna and Associates, Inc., was present to represent Triangle Development LLC on site planning issues for the proposed Main Street Novi Project. She said Triangle Development LLC was very willing to work with the City to accomplish this landmark Main Street development. She said Council had a letter, written within the past couple of weeks, expressing their willingness to provide an additional curb cut at the north western portion of Paul Bunyan. She said in light of comments during audience participation portion of the meeting she wanted to make a few comments in reply, and she would be willing to answer any questions Council might have.

Ms. Traxler said the preliminary site plan was approved by this Council and recommended by the Planning Commission months ago. At that time, Council had in front of them a parking study by Reid, Cool, and Michalski, that pointed out that there was no parking shortage on this site but rather a parking surplus. She said that was their acknowledgement that when there were a mixture of uses on one site there would be an ebb and flow with the demand for parking spaces that often were not at the same times. Thereby providing a complementary situation by which different uses could accommodate fewer parking spaces than if they were counted simply as individual uses. She said that was the basis for Council's preliminary approval of this plan.

Ms. Traxler said they believed that the comments regarding the dumpster location, which would as Mr. Cassis' attorney Ernest Essad pointed out require a ZBA variance, was something that would be necessary were that road to remain in the public right-of-way. However, Building 800 was of exceptionally high quality and design standards. She said surrounding that dumpster was a brick wall dumpster enclosure that provided continuity in design with the building that provided something other than the standard dumpster. She said that view would be just as pleasant as the view at the building, and the building would be in view as well.

Ms. Traxler said most importantly to this discussion this evening was that they were prepared to delete the parking from the entire western most portion of Paul Bunyan if that suited the City. If the City wished to remove all those parking spaces in the public right-of-way, that was something they would be more than willing to accommodate. Therefore, that western portion of Paul Bunyan would be used simply for access to the development and to neighboring developments. It would also be landscaped to the high quality and design standards that were seen at the rest of the site.

Mr. Nona said Ms. Traxler was fairly new to the project, and he wanted to offer clarification on the issue of the parking study. He said they had studies done by Reid, Cool and Michalski. The shared parking study for his development only did show a shortage in parking of about 30 or so parking spaces. He said at the suggestion of the

Council they did a shared parking study with the Red, Hot and Blue building because they had some parking on his property that they had to move. He said that shared parking study when they combined their development with their development then that showed a surplus. He said that study was made available to the City Planning Department so there was a report to that effect. Mr. Nona said right now, as it was, they did have a parking shortage of about 30 parking spots, and that was for the entire development when it was built. As Ms. Traxler indicated, they were prepared to delete the side angle parking from the 250 feet western part of Paul Bunyan so that they would only have an access road in there. He said that way they would landscape both sides of the road and Mr. Cassis could do whatever he wanted to do when he developed that property.

Mr. Nona said he had several very friendly discussions with Mr. Cassis and the concept of the shared parking between Mr. Cassis' development and his development was something that he, Mr. Nona, had initiated and suggested. In fact, at the first meeting Mr. Nona said he offered to have his architect do conceptual site plan on Mr. Cassis' property to show what could be built on that property with and without shared parking. Mr. Nona said it was obvious that with shared parking Mr. Cassis could build approximately 20% more building than he would otherwise on a stand alone building. Mr. Nona said the problem came in when his attorney started putting the agreement together. He said when he put the agreement about shared parking the way it was written, his understanding of shared parking was that the customer's from Mr. Cassis could use Mr. Nona's parking but the customers of Main Street could not use the parking on the proposed Cassis property. Mr. Nona told him that was not the way shared parking worked, and he tried to explain that to Mr. Cassis, and that was basically the breakdown on the shared parking. Mr. Nona said he still had that agreement that was drafted by the attorney, and could make it available to Council, traffic consultants and to others to decipher.

Mr. Nona said, having said that, they were prepared to enter into shared parking because their intent was to have a nice Town Center development in Novi, whereby all the adjoining properties and developments could share parking. He said that was a concept for downtown. The reason they were putting in angled parking on Paul Bunyan was not because they were over building or because they needed parking; it was because they were providing street parking on all the streets that they were providing. He said it was a large development and they were putting a lot of effort and investment into it, and they really hadn't come in requesting any substantial assistance from the City. He said they appreciated all the cooperation and support that they had received but they stand to do what was right to work with Mr. Cassis and the City to accomplish a good development.

Mayor Pro Tem Capello said he made the motion to table this a while back to give Mr. Nona and Mr. Cassis an opportunity to talk to each other to see if they could resolve this. He said he had very little faith that they would come to any resolution, and his intuition was correct. He didn't feel that Council could hold up the development of Main

Street because of a boundary dispute between the two property owners. He said he had heard Mr. Nona say that he would withdraw that request for a variance and delete the west 250 feet of parking along the south side of Paul Bunyan Drive, correct. Mr. Nona said they were prepared to do that, if that was what Council wanted. Mayor Pro Tem Capello thought there was adequate parking there. They were putting in a parking structure, and if they had a parking problem they would have to deal with it more than Council would. He said their tenants would complain, move out or not move in. Mayor Pro Tem Capello said if Mr. Nona was comfortable so was he. He felt if there was a parking problem in a downtown district, good for them, because it would work itself out. He thought people would just park a little further away and walk. He was concerned that Mr. Cassis had a point in regard to the dumpster. Mayor Pro Tem Capello didn't feel that just having the same brick wall to enclose the dumpster that the building was made out of was adequate. He had seen too many of them, and if Paul Bunyan was now going to be an actual City street instead of a vacated street and part of a parking lot, and would be in that 250 feet, there would be landscaping along the right-of-way and they could landscape around that dumpster as opposed to just having a solid brick wall. Mr. Nona said in addition to the wall there would be landscaping around the dumpster, and he added that this was a dumpster around the medical building. He said the medical building was really visible from four sides. He said there was no front and back of the medical building, and it was brick on all sides, and was a high quality aesthetically pleasing building. Mr. Nona said if the dumpster was going to have a fairly tall brick wall and anything else that was needed to shield that area. Mayor Pro Tem Capello said then his answer was yes, and Mr. Nona was willing to give additional landscaping around that brick wall to make it less visible from Paul Bunyan since they were not vacating it.

Mayor Pro Tem Capello said at first he thought Mr. Cassis wanted two curb cuts, and then he thought today that he said he didn't want them. Mr. Cassis replied that he had never said he didn't want his own curb cut that was existing there. He said that was his and had been there and it should stay there. Mayor Pro Tem Capello asked if he wanted a second curb cut. Mr. Cassis responded that he didn't care whether Mr. Nona gave him a second curb cut or not. He said that area was another parcel of land and it was not developed. He said his main curb cut was what Mr. Nona was encroaching on, and Mr. Cassis didn't know where it would be. Mayor Pro Tem Capello said that Mr. Cassis had the main curb cut and asked again if he wanted another one. Mr. Cassis said he had no problem with a second curb cut.

Mayor Pro Tem Capello said he could be in favor of this with deleting item #3, enhancing item #4 with additional landscaping and keeping the curb cuts.

CM-07-05-092 Moved by Capello, seconded by Margolis; MOTION FAILED:

To approve the request of Triangle Development for Main Street SP06-38 for revision to the Preliminary Site Plan approval granted November 13, 2006 subject to the following recommendations of the Planning Commission:

- 1) All comments of the City Council's approval of November 13, 2006 approval remaining in effect, with the removal of the condition of to vacate Paul Bunyan,
- 2) City Council building setback waiver for the 700 and 800 buildings, with respect to the Paul Bunyan right-of-way, 3) Zoning Board of Appeals variance for lack of parking lot setback along the Paul Bunyan right-of-way,
- 4) Zoning Board of Appeals variance to allow a dumpster enclosure in the front yard, along Paul Bunyan right-of-way,
- 5) License Agreements being developed for all fixed objects and non-standard parking in the Paul Bunyan right-of-way,
- 6) Applicant providing additional right-of-way for Paul Bunyan along its southern length and the eastern edge,
- 7) Applicant providing two curb cuts to the properties to the north,
- 8) All the conditions and comments in the staff and consultant review letters.

Mayor Landry said it still had to be subject to the ZBA variance on #3. Mr. Schultz thought it would be a lesser variance but there would be some areas where the parking lot set back variance would still be needed. Mr. Schultz said, as he understood it, it was the area within that west 250 feet on the north side of the road that was now not going to be parking spots. He said there would be other areas that would still need setback relief. Mayor Pro Tem Capello would include that amendment.

Member Gatt said he had been a big supporter of this project from day one, and he continued to support it but he would not support this motion because he would prefer that Mr. Nona and Mr. Cassis try once again to work out a shared parking solution that both of them seem to want. Member Gatt said when Mr. Nona was describing the attorney's agreement Mr. Cassis was shaking his head like that was not what he understood it to be. He asked that this matter be tabled as he didn't want to vote on something that would hurt a 33 year resident of this City, and he would not support that.

Member Nagy echoed the comments of the previous speaker. She thought that Mr. Nona and Mr. Cassis' attorney came forward and made comments and she felt this was an inappropriate place to make comments. She commented that she didn't understand why this couldn't be worked out right now in the hallway. She wouldn't support the motion. She felt this had gone on for a long time and didn't seem to be that difficult to work out. She said Mr. Cassis had been around long enough to know what shared parking meant and being Chair of the Planning Commission he knew what it meant. She said somewhere there must be a breakdown in communication and the two of them needed to work it out. She said they do support the development and had worked with Mr. Nona. However, there was also a person present who owned property, had been a

good resident for 33 years, and had brought business into the community. She said they were two businessmen who should be able to sit down and figure this out. She said she would prefer that this not come to Council again with this tit for tat. She asked them to work it out, and said she would support a motion to table this.

Mr. Schultz said initially Council was talking about having the parties reach a shared parking arrangement because the proposal was to vacate Paul Bunyan. He said it would be owned by someone and there needed to be a right of ingress and egress. He said what was before

Council now was to leave it a public road, which the Planning Commission decided it was OK with. He said if the issue being considered by some Council members was let's go back to a shared parking arrangement; essentially that was a determination that Council wanted to see a road vacated again, which was tabled the last time Triangle was here. He said that was a policy decision that had to be made first before they could talk about whether there ought to be a shared parking arrangement. If the road wasn't vacated, the City had no ability to tell to the petitioner they had to go to the neighbor and give a shared parking arrangement. He thought there might have been some misconception, probably early on, that really once it becomes considered a public area again, they were in a different section of the ordinance. The Town Center Ordinance said "if parking is permitted on a public street and there is a public street adjacent to your property you can reduce your onsite off street parking area". He said that was essentially the issue here; should there be some consideration given to the site plan approval here if some of the parking spaces were shown on that public road. He thought what Mr. Nona said was that in deference to the idea that the property owner on the other side of the road might want to also use that public right-of-way to count for that credit, he would remove those from the plan and he would still meet the requirement. Mr. Schultz said he wanted to be sure that Council was aware that that was the overlying issue here. If it was going to stay a public street, shared parking was something they didn't have the ability to impose. If Council wanted it vacated, shared parking was something that was required. However, they had to answer the first question first that being would it stay a public street, and if so, it was hard for them to talk about requiring shared parking arrangements, and requiring an agreement.

Member Margolis commented that she would support the motion and certainly regretted that they had this difficulty between two well respected business owners in the community. She said as a Council member she was looking at the action they would take tonight. She believed it was reasonable under the circumstances. She noted when they were here before they decided to table the vacation of the street and move in a different direction. She said this was what came back to them and it had a positive recommendation from the Planning Commission and from staff so she would be supporting the motion. Secondly, she did not want to see the Main Street project continue to be delayed as it was too important to the City and to the City's future.

Member Paul asked Ms. McBeth to shed some light from a planning perspective, if she was comfortable with this site. Ms. McBeth said the plan was the same as essentially the plan that the Council approved in November 2006. She said they didn't make any noticeable modifications to the plan, and were just requesting the removal of the one condition, which was to vacate a portion of Paul Bunyan. She said they were as comfortable with the plan as they had been in the past. She noted that it seemed that the applicant was trying to take into consideration the property to the north, if the street was not vacated by providing the two curb cuts; one to the existing building, and one curb cut to the vacant piece of property.

Member Paul commented she was struggling because they had to very respectable business men in our community and she wanted to support both of them. She said Mr. Nona was bringing a new project that they were really looking forward to because it brought a lot of people into this area. She also wanted to support Mr. Cassis because he had been a business member of the community for 33 years and had been a very active participant in the City. However, she felt if the road needed to be vacated they would have to address both owners, but without the vacation she didn't see any legal reason they could hold this project up. She asked Mr. Schultz if she was correct. Mr. Schultz said if it stayed a public street, and that was the proposal, the question the Council would be asking itself was did they want to permit counting those spots that were in the public right-of-way and shown as improvements that the applicant was going to build, and if Council thought that was appropriate then they would approve the plan the way it was presented. He said they could require removal of those spaces, but then the question would be do they still meet parking requirements. Mr. Schultz thought the answer to that, within the 250 feet, was probably that they did. He said this was an approvable plan if the Council made the determination that it was OK to have that parking in the City right-of-way, which still remained the City's right-of-way and could be changed just like any other street. He said Council controlled the street regardless of what the site plan was. He said that was also true when the property owner to the north came in and said they wanted to change it to do this; it would still be the City's right-of-way and still Council's authority.

Member Paul asked Ms. McBeth to share with her some of the comments that Mr. Schultz made and add comments regarding if they use the parking spaces that were on Paul Bunyan, and would the parking requirements still be met, if those parking spaces were not included on Paul Bunyan Road. Ms. McBeth thought it was consistent with what Mr. Nona had indicated. She said they did supply the shared parking study, which showed that when they included the adjacent property to the south of the Red, Hot and Blue property they met the requirements. However, she understood there was also a revised shared parking agreement that they would expect to be submitted with the final site plan. She said they would make a determination, at that point, whether that was done accurately and had the adequate number of parking spaces. She noted that at this point they were not highlighting any waiver for parking spaces in the recommendations they had made because to this point they had not seen a need for a waiver for parking spaces.

Member Paul said with those comments she felt Council was required to make a judgment tonight and not table it again. She felt they were meeting the parking requirements. She wanted to hear other comments but didn't understand why they should not support this.

Member Mutch asked Ms. Traxler to illustrate to Council her earlier comment when she indicated that they would be removing the parking from the Paul Bunyan right-of-way.

Ms. Traxler showed, on the overhead, the parking they were prepared to eliminate on the northern portion of Paul Bunyan if that would make Council more comfortable with the proposal to eliminate the condition of vacating Paul Bunyan.

Member Paul said that would be strictly along the portion that Mr. Cassis owned. Ms. Traxler said yes. Member Mutch said going further east there was a second curb cut and then additional parking, which would all remain. Mr. Traxler responded yes, it would remain.

Member Mutch said in terms of vacating a portion of Paul Bunyan as he understood it now the site plan approval contemplates leaving a portion of that as a public street and the remainder would be vacated. Ms. McBeth commented that was one option that was discussed in the write up in the packet that the western portion adjacent to the two parcels controlled by Mr. Cassis, at this point, would remain a public road. The east portion could be vacated, and they were looking for some input and direction from Council, if they were to bring something like that forward. Member Mutch said, in terms of that demarcation between public and private would take place, was that approximately where that second curb cut would be. Ms. McBeth said the second curb cut would be included in the public road portion, and everything beyond that would be considered for possible street vacation. Member Mutch said currently it was still considered a public street, and Ms. McBeth agreed.

Member Mutch said he had an issue with that. He thought from a policy perspective Council needed to address that issue first. He didn't think it had to hold up the motion tonight but thought they were putting the cart before the horse here because they were approving a site plan with various conditions and sending it to the ZBA when vacating that eastern portion controlled a number of the issues they were talking about. Member Mutch also thought they needed to address it in terms of a control issue whether they, as a City, either need or want to retain control over that public right-of-way for that portion that was not adjacent to the properties that Mr. Cassis owned. Member Mutch said he would rather see that vacated and not be the City's responsibility. He thought that would get them out of some of the needs for setback variances, potentially, for Building 700, therefore, he thought they were out of order in that sense.

Member Mutch had a question about the parking requirements in the TC District. He said he was looking at this based on previous discussion with the understanding that if Paul Bunyan was vacated the northern half would go to Mr. Cassis, and the southern

half to Triangle. He was looking at this public street in the same sense, and asked how it was that Triangle, as previously contemplated, was able to take credit for the public street parking that was occurring on the north half of the street, and, in fact, were doing that for the portion further east.

Mr. Schultz responded that this was the first time Council had seen this area where the parking was as a public road instead of a vacated area that would be private property covered by a shared parking area. He said when that came to the Planning Commission they looked at the layout and it was essentially the same as had already been approved as an appropriate way to develop the site. Although, he didn't think there was a particular discussion about it at the Planning Commission, it did fall within that provision in Section 1602 of the TC District that if adjacent to public streets and there was parking permitted, which there was, that might reduce required parking. He said, essentially, the way staff did that was to say those counted as parking spaces, which amounted to the same thing. Mr. Schultz said theoretically Council could say it said Council could count those or the Planning Commission, if it was the reviewing body, could count those. He said in order to not have them count Council would have to say those were not going to count towards their required off street parking and therefore they would need to find other spaces.

Member Mutch said from a policy viewpoint, he didn't know if they would run into this issue elsewhere in Town Center, but he would have a problem with allowing an applicant who didn't own property on both sides of the road to get credit for the parking on both sides of the road. He recognized, in this case, that some of the parking would only exist because the applicant would improve the street, but from a City policy perspective they should get their side of the road only. He thought that would be the fair way to address that. If Mr. Nona was eliminating the parking on the western portion that was contemplating remaining a public street, it sort of made that issue moot, but moving further east he had a problem with that viewpoint. He had a problem precisely because of the issue Mr. Cassis or Mr. Essad raised during public comments, which was OK they got credit for those parking spots and when he came in to do his development, absent a shared parking agreement, essentially the public street in front of his business had been taken over and credit given to another developer. Member Mutch said he could understand his concern there. He said it seemed to him that it was contrary to the previous discussion that a shared parking agreement was only necessary if the street was vacated. He thought a shared parking agreement would be necessary in either case to at least lay out who would get credit for what in terms of the use of the public street.

Mr. Schultz said there was nothing in the ordinance that would preclude the Council or the Planning Commission if it was a site that only went to the Planning Commission, from giving credit, essentially, to both property owners. It could be a factual determination at the site plan approval stage that these were compatible and it was OK, given the uses that were there, for both of these abutting parcels on either side to get full credit for it. He said in other words, there would be no requirement to hash out an

agreement. Mr. Schultz said the only clear thing to him regarding which property would go which direction was the first area right along Novi Road where there were properties within that same initial plat. He said where Paul Bunyan came in if they vacated that plat, half would clearly go in one direction and the other half in another direction. He said when past that easy area, which was past the existing building there, they would be in a more complicated situation because the entire road was only in the one plat. He said part of the complication, he was guessing, in terms of which side did the property owners want to be on was it was not clear that all of that didn't go in the Triangle direction. He said they didn't make a decision last time and it was an issue of which direction it would go. He wanted to make clear that it was not obvious, that in that public road, the north side would attach to the property on the north. He said it might, but it was not clear.

Member Mutch said he recognized that but was looking at it as long as the City was controlling the public right-of-way, and as long as this would be a public street, it should be up to the City to decide how that parking would be credited. He thought the point Mr. Schultz raised earlier that Council could decide to split the difference and give parking credit to both might be something to be contemplated in the motion or in a future motion because that would address at least some of the concerns.

Member Mutch said he was trying to understand where Mr. Cassis' concerns were. He said the curb cut was an issue and asked if it was his understanding that if the curb cut was left in place as is, he was fine with that. Mr. Cassis said he was. Member Mutch said if Mr. Nona removed the parking spaces on the north side of the road would that address his concerns. Mr. Cassis said the real issue was to go even further east. He also wanted to remind Mr. Schultz, who Mr. Cassis was glad he brought out the plat situation, that from a very authoritative source with Metropolitan Title because of no vacation on that plat on the first 100 feet or so of Paul Bunyan starting from Novi Road. If the street was vacated it would all go to his side. He said all the way out to the end of his property which was the second lot, the vacated lot, should be vacated too. He said there was no reason for one side of the street to take it from the other side. Mr. Cassis said what would satisfy him was he didn't want to be put in a situation where he was, right now, putting together a development, and if he came to do the development, Council would tell him the Mr. Nona took everything already and there wasn't any spare parking for him to have any shared parking. Mr. Cassis said he would be out and these were the main reasons he was objecting to this. Member Mutch asked if Mr. Cassis wanted Council to come further west with the vacation of the street. Mr. Cassis said he thought so because it would remove the City from having it half vacated and half not vacated, which would make it an even more complicated situation.

Member Mutch asked him how far east of Novi Road he would want to leave it as public. Mr. Essad said he had an old plat which showed that there was approximately 512 feet, and thought Mr. Nona probably had a good survey of it. He said the point Mr. Cassis was making was that there was parking being counted to one parcel. If the development came to the north side they would want to count that parking again, and

ultimately there would be a shortage of parking because the parking was double counted for two different projects. He said elimination of the road and an agreement, as provided for by ordinance, eliminated the issue of the City involvement with it and the City parking, and put the parking into private hands with enough parking for everybody.

Member Mutch asked what part of Paul Bunyan they contemplated remaining public. Mr. Cassis showed Council on the overhead and said he couldn't go any further because he didn't own beyond what he indicated. He said it was up to Council and City policy.

Mr. Cassis pointed out the Tom Marcus property, how far back it went, and also pointed out what belonged to the old plat that had not been vacated yet. He said if it was vacated it would go all of Paul Bunyan to the north side, and who got what where didn't matter to Mr. Cassis. He said what he wanted to do was what was good for the City. He said he didn't want any favors he just didn't want mistakes of the past repeated in this City. Mr. Cassis said Council was entering into a license or whatever they wanted to call it with Mr. Nona, and he might sell it and Council had seen that happen from Mr. Chen and others.

Member Mutch said he was like other members as he didn't want to hold up this project any longer, but he thought they needed to address, as a Council, the issue of how much of the street would be vacated and how it would impact the various projects. He thought they also needed to discuss the issue of whether they could credit parking to both projects because it would address some of the concerns of Mr. Cassis regarding the impact on his property.

Member Mutch said regarding the properties Mr. Cassis showed Council, it looked like there was another parcel between his property and the parking lot on the north side, and asked if there was.

Mr. Schultz thought that parcel was a number of narrow platted lots combined together, and in the original plats the numbering of those lots continued to the south so that the frontage along Novi Road were originally in that same plat.

Mayor Landry said he would support the motion. He said this was before Council on February 12 th, and out of deference to the parties it was tabled to allow the involved parties time to work it out. He said that was almost 90 days ago, and he agreed with Mayor Pro Tem Capello that if it had not been worked out by now it would not be worked out among the parties. He said this plan was basically the plan previously approved by City Council, Planning Commission and Administration. He said what they were discussing was a concept of whether the parties could work out shared parking. He said what this did, in effect, was have the City do the shared parking because by allowing them to use the roadway Council had the ability to

allow both parties to use the roadway. He said that was Council accomplishing what they were unable to. Mayor Landry said Council could allow them to share the road and the parking. He said this project needed to go forward and Council needed to move this on. He noted Mr. Cassis would get his two curb cuts and the project moved on. He said none of the road would be vacated, and Mr. Schultz agreed. Mayor Landry said they would deal with the road vacation at a later time as the project needed to move forward.

Roll call vote on CM-07-05-092 Yeas: Capello, Margolis, Landry

Nays: Gatt, Mutch, Nagy, Paul

Member Paul asked if they could add as an addendum to the motion that the public road right-of-way on Paul Bunyan would have shared parking between both the north and the south side of the road.

Mayor Landry asked if that could be done, and Mr. Schultz said it could.

CM-07-05-093 Moved by Paul, seconded by Margolis; MOTION CARRIED:

To approve the request of Triangle Development for Main Street SP06-38 for revision to the Preliminary Site Plan approval granted November 13, 2006 subject to the following recommendations of the Planning Commission:

- 1) All comments of the City Council's approval of November 13, 2006 approval remaining in effect, with the removal of the condition of to vacate Paul Bunyan,**
- 2) City Council building setback waiver for the 700 and 800 buildings, with respect to the Paul Bunyan right-of-way,**
- 3) Zoning Board of Appeals variance for lack of parking lot setback along the Paul Bunyan right-of-way,**
- 4) Zoning Board of Appeals variance to allow a dumpster enclosure in the front yard, along Paul Bunyan right-of-way,**
- 5) License Agreements being developed for all fixed objects and non-standard parking in the Paul Bunyan right-of-way,**
- 6) Applicant providing additional right-of-way for Paul Bunyan along its southern length and the eastern edge,**
- 7) Applicant providing two curb cuts to the properties to the north,**
- 8) All the conditions and comments in the staff and consultant review letters.**

Also, shared parking for both the north and the south side property owners.

Roll call vote on CM-07-05-093 Yeas: Gatt, Margolis, Paul, Landry, Capello

Nays: Mutch, Nagy