



cityofnovi.org

CITY of NOVI CITY COUNCIL

Agenda Item N
August 13, 2012

SUBJECT: Approval of the request of the applicant, ACR Investments, for a one-year extension to the termination date provided in the PRO Agreement for Triangle Place, SP07-22, a 2,575 square foot office or retail development, proposed to be located on a 0.48 acre parcel of land located on the east side of Haggerty Road, north of Eight Mile Road.

SUBMITTING DEPARTMENT: Community Development Department - Planning ^{Book 5}

CITY MANAGER APPROVAL: 

BACKGROUND INFORMATION:

In 2007, the City Council approved a request for a Planned Rezoning Overlay (PRO) Agreement and conceptual plan for Triangle Place, the development of an office or retail building. The parcel is vacant land located on the east side of Haggerty Road, north of Eight Mile Road, in Section 36. The property totals 0.48 acres and contains an existing 20' wide utility easement which runs north and south through the center of the property. The PRO agreement accompanied a rezoning request from FS, Freeway Service, to B-3, General Business.

As part of the PRO, the applicant is required to provide a public benefit that would demonstrate more than just the usual benefits associated with standard rezoning and development of the property. The public benefit offered by the developer is to extend the public sidewalk along the property to the south for a distance of approximately 180 feet to connect to the existing Taco Bell sidewalk, with additional landscaping to be provided within the right-of-way, or will provide landscaping along the City-owned detention basin property to the west. Conceptual plans are attached as "Exhibit B" to the agreement.

The City Council approved the PRO request on August 13, 2007 and approved the PRO Agreement on December 17, 2007. The PRO was recorded on May 30, 2008, its effective date for purposes of approval extensions. Permits have not been issued and construction has not begun.

The City Council may grant an extension of the Rezoning with Planned Rezoning Overlay for a period of up to two (2) years, and may grant at the conclusion of such extension additional subsequent extensions for similar periods of time. In determining whether good cause exists for an extension, the City Council shall consider the following factors:

- (i) The applicant has demonstrated that required utility services have been delayed;
- (ii) The applicant has demonstrated that technical reviews of the final site plan (e.g., related to engineering approvals or approvals by other agencies) have raised unforeseen development delays;
- (iii) The applicant has demonstrated that unforeseen economic events or conditions have caused delays;
- (iv) The approved PRO Plan to be extended is in compliance with all current site plan criteria and current ordinances, laws, codes, and regulations;

(v) There is no pending zoning ordinance amendment that would otherwise substantially change the requirements of final site plan approval for the approved PRO Plan.

The City Council previously granted a one-year extension of the PRO on May 3, 2010, and May 23, 2011. Relevant meeting minutes are attached.

The applicant has provided the attached letter requesting a third one-year extension to the approval. The letter cites the economic conditions prior to the expiration were not conducive to the development of the project as the reason for the extension request. However, ACR Investments have seen the changing economic outlook more conducive to moving the project forward. Staff is recommending a one-year extension of the PRO Agreement, until May 30, 2013, consistent with the previously granted extension.

RECOMMENDED ACTION: Approval of the request of the applicant, ACR Investments, for a one-year extension to the termination date provided in the PRO Agreement for Triangle Place, SP07-22, a 2,575 square foot office or retail development, proposed to be located on a 0.48 acre parcel of land located on the east side of Haggerty Road, north of Eight Mile Road.

	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				

Triangle Place PRO

Location



Haggerty Rd

Map Author: Kristen Kapelanski
 Date: 08-03-12
 Project: Triangle Place PRO
 Version #: 1.0

Map Legend

 Subject Property



City of Novi

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

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 432 of 1970 as amended. Please contact the City GIS Manager to custom source and accuracy information related to the map.



1 inch = 125 feet

ACR Investments, LLC

2617 BEACON HILL AUBURN HILLS, MI 48326
(248) 373-5080 FAX (248) 373-2591

July 31, 2012

Mrs. Barbara McBeth
City of Novi
45175 W. Ten Mile Road
Novi, MI

HAND DELIVERED

RE: PRO Agreement; Triangle Place, SP07-22

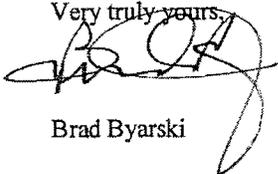
Dear Mrs. McBeth,

Please accept this letter as a formal request to extend the above referenced PRO Agreement and Preliminary Site plan approval for one year.

The economic conditions prior to the expiration were not conducive to the development of the project. We have seen the changing economic outlook more conducive to moving the project forward.

I would ask that the City Council consider this item in the next available meeting for extension and apologize for having been late with my notice. Please feel free to contact me if you should have any questions in this regard.

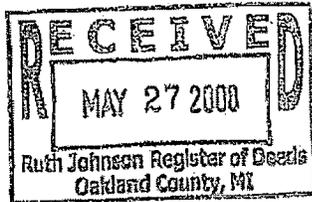
Very truly yours,



Brad Byarski

PRO AGREEMENT

LIBER 40345 PG 245



107141
LIBER 40345 PAGE 245
\$42.00 MORTGAGE
\$4.00 REINUMENTATION
05/30/2008 09:28:38 A.M. RECEIPT# 42768
PAID RECORDED - OAKLAND COUNTY
RUTH JOHNSON, CLERK/REGISTER OF DEEDS

PLANNED REZONING OVERLAY (PRO) AGREEMENT
HAGGERTY ROAD DEVELOPMENT

AGREEMENT, by and among ACR Investments, LLC, a Michigan limited liability company whose address is 2617 Beacon Hill, Auburn Hills, MI 48326 (referred to as "Developer"); and Jeffrey Rotberg, whose address is 2640 Heathfield Road, Bloomfield Hills, MI 48301 ("Fee Owner"); and the City of Novi, 45175 West Ten Mile Road, Novi, MI 48375-3024 ("City").

RECITATIONS:

- I. Fee Owner is the fee owner of the "Land" described on Exhibit A, attached and incorporated herein. Developer has an option to purchase the Land. Fee Owner and Developer shall be referred to jointly in this Agreement as the Owner. The representations contained herein and the Undertakings set forth shall apply with equal force and effect as to each.
- II. For purposes of improving and using the Land for an approximately 2,500 square foot office or retail building, Owner petitioned the City for an amendment of the Zoning Ordinance, as amended, so as to reclassify the Land from FS, Freeway Service District, to B-3, General Business District. The FS classification shall be referred to as the "Existing classification" and B-3 shall be referred to as the "Proposed Classification."
- III. The Proposed Classification would provide the Owner with certain material development options not available under the Existing Classification, and would be a distinct and material benefit and advantage to the Owner.
- IV. The City has reviewed and approved the Owner's proposed petition to amend the zoning district classification of the Land from the Existing Classification to the Proposed Classification under the terms of the Planned Rezoning Overlay (PRO) provisions of the City's Zoning Ordinance; has reviewed the Owner's proposed PRO Plan (including building façade, elevations, and design) attached hereto and incorporated herein as Exhibit B (the "PRO Plan"), which is a conceptual or illustrative plan for the potential development of the Land under the Proposed Classification, and not an approval to construct the proposed improvements as

Handwritten mark

Handwritten initials in a circle

O.K. - A.N.

shown; and has further reviewed the proposed PRO conditions offered or accepted by the Owner.

- V. In proposing the Proposed Classification to the City, Owner has expressed as a firm and unalterable intent that Owner will develop and use the Land in conformance with the following undertakings by Owner, as well as the following forbearances by the Owner (each and every one of such undertakings and forbearances shall together be referred to as the "Undertakings"):
- A. Owner shall develop and use the Land solely for an approximately 2,500 square foot office or retail building (with appropriate parking and site improvements), to the extent permitted under the Proposed Classification. Owner shall forbear from developing and/or using the Land in any manner other than as authorized and/or limited by this Agreement.
 - B. Owner shall develop the Land in accordance with all applicable laws and regulations, and with all applicable ordinances, including all applicable height, area, and bulk requirements of the Zoning Ordinance as relates to the Proposed Classification, except as expressly authorized herein. The PRO Plan is acknowledged by both the City and Owner to be a conceptual plan for the purpose of depicting the general area contemplated for development. Some deviations from the provisions of the City's ordinances, rules, or regulations are depicted in the PRO Plan are approved by virtue of this Agreement; however, except as to such specific deviations enumerated herein the Owner's right to develop the office or retail building under the requirements of the Proposed Classification shall be subject to and in accordance with all applications, reviews, approvals, permits, and authorizations required under applicable laws, ordinances, and regulations, including, but not limited to, site plan approval, storm water management plan approval, woodlands and wetlands permits, façade approval, landscape approval, and engineering plan approval, except as expressly provided in this Agreement. The building design, façade, and elevations shall be substantially similar (as determined by the City) to that submitted as part of the Owner's final approval request, as depicted in Exhibit B.
 - C. In addition to any other ordinance requirements, Owner shall seek, obtain approval for, and use best management practices and efforts with respect to all storm water and soil erosion requirements and measures throughout the site during the design and construction phases, and subsequent use, of the development contemplated in the Proposed Classification.
 - D. The following deviations from the standards of the zoning ordinance are hereby authorized pursuant to §3402.D.1.c of the City's zoning ordinance.

1. A 16-foot rear yard setback deviation (20 feet required, 4 feet provided).
2. A 10-foot deviation for front yard parking setback (20 feet required, 10 feet provided).
3. A 6-foot deviation for rear yard parking setback (10 feet required, 4 feet provided).
4. Placement of the loading zone on the west side of the building in the front yard (rear yard placement required under §2507 of the zoning ordinance).
5. At the Owner's option, but subject to approval by the City, either a screening wall in lieu of the required berm (wall to be 6 feet high and constructed of decorative masonry or brick matching the building façade materials) or landscaping to provide an aesthetically appropriate screening or separation.
6. Placement of a 10-foot wide greenbelt along the northern most side of the parking lot, rather than the 20-foot greenbelt (with 3-foot high berm with 2-foot wide crest) along the Haggerty Road frontage of the parking lot.

E. The following PRO Conditions shall apply to the Land and/or be undertaken by Owner:

1. The following principal permitted uses and/or special uses listed in the B-3 zoning district regulations are *not permitted* on the property:
 - Off-street parking lots
 - Restaurants having the character of a drive in or having a drive-through window
 - Theaters, assembly halls, concert halls, museums or similar places of assembly when conducted completely within enclosed buildings
 - Business schools and colleges or private schools operated for profit
 - Day Care Centers and Adult Day Care Centers
 - Private clubs, fraternal organizations, and lodge halls
 - Hotels and motels
 - Mortuary establishments
 - Auto wash
 - Bus passenger stations
 - New and used car salesroom, showroom, or office
 - Tattoo parlors
 - Outdoor space for exclusive sale of new or used automobiles, campers, recreation vehicles, mobile homes, or rental of trailers or automobiles
 - Businesses in the character of a drive-in or open front store

- Plant materials nursery for the retail sale of plant materials and sales of lawn furniture, playground equipment and garden supplies
 - Public or private indoor recreational facilities
 - Mini-lube or quick oil change establishments
 - Gasoline service station and automobile repair
 - Motels, hotels, and transient lodging facilities
2. Owner shall extend public sidewalk for approximately 180 linear feet along the adjacent property to the south of the subject property to complete the sidewalk connection, as shown on the PRO plan.
 3. Owner shall provide additional landscaping along the adjacent property (if permitted by the adjacent property owner) as shown on the PRO plan. If the adjacent property owner does not allow such landscaping, Owner shall provide an equivalent amount of landscaping along City-owned property on the west side of Haggerty Road, as shown on the attached alternate plan, Exhibit C. After the maintenance and guarantee period for such landscaping, Owner shall not be responsible for its maintenance or upkeep.
 4. If Owner is able to secure approval to discharge stormwater from the Land to the stormwater retention area on the west side of Haggerty Road (as opposed to dealing with it through typical on-site retention), Owner shall extend the public sidewalk approximately 500 linear feet along the City-owned property on the west side of Haggerty Road, as shown on the PRO plan.

NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

1. Upon the Proposed Classification becoming final following entry into this Agreement:
 - a. The Undertakings shall be carried out by Owner on and for the Land;
 - b. Owner shall act in conformance with the Undertakings;
 - c. The Owner shall forbear from acting in a manner inconsistent with the Undertakings; and
 - d. The Owner shall commence and complete all actions necessary to carry out all of the PRO Conditions.
2. In the event Owner attempts to or proceeds with actions to complete improvement of the Land in any manner other than as an approximately 2,500 square foot office or commercial building as shown on Exhibit B, the City shall be authorized to

revoke all outstanding building permits and certificates of occupancy issued for such building and use.

3. Owner acknowledges and agrees that the City has not required the Undertakings. The Undertakings have been voluntarily offered by Owner in order to provide an enhanced use and value of the Land, to protect the public safety and welfare, and to induce the City to rezone the Land to the Proposed Classification so as to provide material advantages and development options for the Owner.
4. All of the Undertakings represent actions, improvements, and/or forbearances that are directly beneficial to the Land and/or to the development of and/or marketing of the office or retail building on the Land. The burden of the Undertakings on the Owner is roughly proportionate to the burdens being created by the development, and to the benefit which will accrue to the Land as a result of the requirements represented in the Undertakings.
5. In addition to the provisions in Paragraph 2, above, in the event the Owner, or its respective successors, assigns, and/or transferees proceed with a proposal for, or other pursuit of, development of the Land in a manner which is in material violation of the Undertakings, the City shall, following notice and a reasonable opportunity to cure, have the right and option to take action using the procedure prescribed by law for the amendment of the Master Plan and Zoning Ordinance applicable to the Land to amend the Master Plan and zoning classifications of the Land to a reasonable classification determined appropriate by the City, and neither the Owner nor its respective successors, assigns, and/or transferees, shall have any vested rights in the Proposed Classification and/or use of the Land as permitted under the Proposed Classification, and Owner shall be estopped from objecting to the rezoning and reclassification to such reasonable classifications based upon the argument that such action represents a "downzoning" or based upon any other argument relating to the approval of the Proposed Classification and use of the Land; provided, this provision shall not preclude Owner from otherwise challenging the reasonableness of such rezoning as applied to the Land.
6. By execution of this Agreement, Owner acknowledges that it has acted in consideration of the City approving the Proposed Classification on the Land, and Owner agrees to be bound by the provisions of this Agreement.
7. After consulting with an attorney, the Owner understands and agrees that this Agreement is authorized by and consistent with all applicable state and federal laws and Constitutions, that the terms of this Agreement are reasonable, that it shall be estopped from taking a contrary position in the future, and, that the City shall be entitled to injunctive relief to prohibit any actions by the Owner inconsistent with the terms of this Agreement.
8. This Agreement shall be binding upon and inure to the benefit of the parties to this Agreement and their respective heirs, successors, assigns and transferees, and

Rachel Maresch
Print Name: Rachel Maresch

ACR INVESTMENTS, LLC,
a Michigan limited liability company

Print Name: _____

By: Anthony Randazzo
Its: Managing Member

STATE OF MICHIGAN)
) ss.
COUNTY OF OAKLAND)

On this 2nd day of May, 2008, before me appeared Anthony Randazzo of Managing Member of ACR Investments, LLC, a Michigan limited liability company, who states that he has signed this document of his own free will duly authorized on behalf of the company.

RACHEL MARESH
Notary Public, State of Michigan
County of Oakland
My Commission Expires Feb. 11, 2013
Acting in the County of Oakland

Rachel Maresch
Notary Public

Charlene McLean
Print Name: Charlene McLean
Marilyn S. Troutman
Print Name: MARILYN S. TROUTMAN

CITY OF NOVI
By: David B. Landry
David B. Landry, Mayor

Print Name: _____

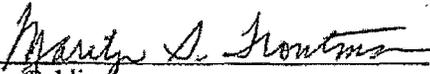
By: Maryanne Cornelius
Maryanne Cornelius, Clerk

Print Name: _____

STATE OF MICHIGAN)
) ss.
COUNTY OF OAKLAND)

On this 6th day of MAY, 2008, before me appeared David B. Landry Mayor and Maryanne Cornelius, who stated that they had signed this document of her own free will on behalf of the City of Novi in their respective official capacities, as stated above. & Clerk

LIBER 40345 PG252


Notary Public

Drafted by:

Thomas R. Schultz
30903 Northwestern Highway
Farmington Hills, MI 48334

When recorded return to:

Maryanne Cornelius, Clerk
City of Novi
45175 West Ten Mile Road
Novi, MI 48375-3024

1055962

Exhibit 'A'

PARCEL DESCRIPTION

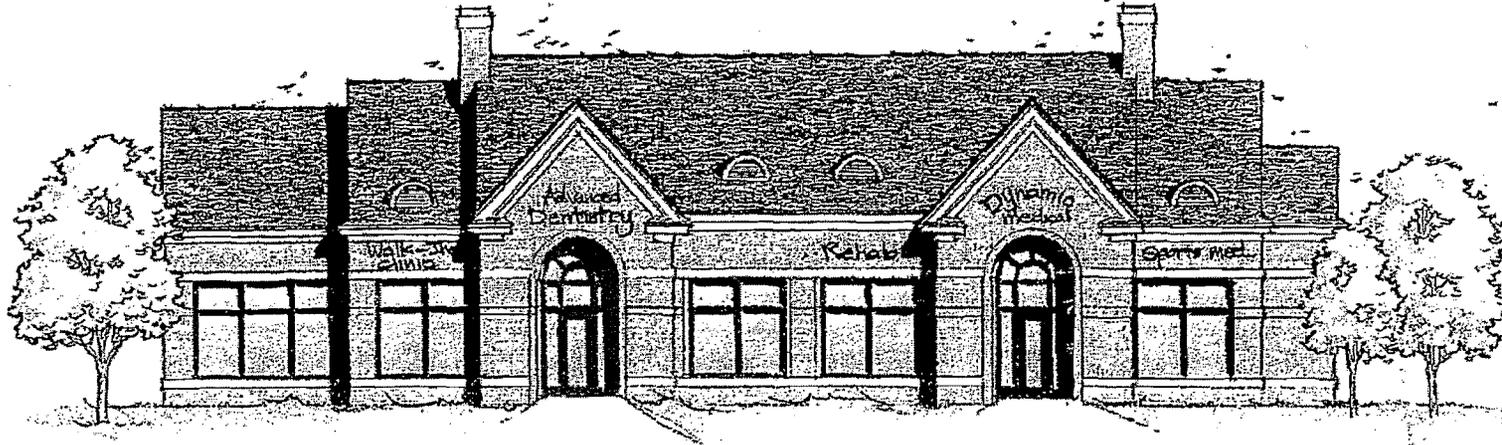
T1N, R8E, SEC 36 PART OF SE 1/4 BEG AT PT DIST N 01-52-04 W 1175.00 FT FROM SE SEC COR, TH N 86-04-35 W 129.87 FT, TH S 31-07-56 W 94.67 FT TO ELY R/W LINE HAGGERTY RD, TH N 27-22-11 E 195.87 FT, TH N 18-36-25 E 243.28 FT TO E SEC LINE, TH S 01-52-04 E 332.54 FT TO BEG 0.48 A03/13/86 FR RD

Also Described As;

A PARCEL OF LAND IN THE SOUTHEAST 1/4 OF SECTION 36, TOWN 1 NORTH, RANGE 8 EAST, IN THE CITY OF NOVI, OAKLAND COUNTY, MICHIGAN BEGINNING AT THE POINT DISTANT NORTH 01 DEGREES 52 MINUTES 04 SECONDS WEST 1175.00 FEET FROM THE SOUTHEAST SECTION CORNER, THENCE NORTH 86 DEGREES 04 MINUTES 35 SECONDS WEST 129.87 FEET, THENCE SOUTH 31 DEGREES 07 MINUTES 56 SECONDS WEST 94.67 FEET TO EASTERLY RIGHT OF WAY LINE, HAGGERTY ROAD, THENCE NORTH 27 DEGREES 22 MINUTES 11 SECONDS EAST 195.67 FEET, THENCE NORTH 18 DEGREES 36 MINUTES 25 SECONDS EAST 243.28 FEET TO THE EAST SECTION LINE, THENCE SOUTH 01 DEGREES 52 MINUTES 04 SECONDS EAST 332.54 FEET TO THE POINT OF BEGINNING.

22-36-476-006

EXHIBIT 'B'



Front Elevation - 'A'
Trowbridge Companies
Haggerty Retail/ Medical Office

1/8" = 1'-0"

11874 03 4-5 PG 2 5 5

Approved: [Signature] Architect, Inc.
Architect - [Signature] - 11/10/00
100 Apple Street
New Canaan, CT 06840
203.438.1100



**CITY COUNCIL MINUTES
EXCERPT – MAY 23, 2011**

EXCERPT FROM

**REGULAR MEETING OF THE COUNCIL OF THE CITY OF NOVI
MONDAY, MAY 23, 2011 AT 7:00 P.M.
COUNCIL CHAMBERS – NOVI CIVIC CENTER – 45175 W. TEN MILE ROAD**

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

PLEDGE OF ALLEGIANCE

ROLL CALL: Mayor Landry, Mayor Pro Tem Gatt, Council Members Fischer, Margolis – Absent/Excused, Mutch, Staudt, Wrobel

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

CM-11-05-067 Moved by Gatt, seconded by Fischer; CARRIED UNANIMOUSLY:

To approve the Consent Agenda as presented

Roll call vote on CM-11-05-067 Yeas: Fischer, Mutch, Staudt, Wrobel, Landry, Gatt

Nays: None

Absent: Margolis

A. Approve Minutes of:

1. May 9, 2011 – Regular meeting

B. Enter Executive Session immediately following the regular meeting of May 23, 2011 in the Council Annex for the purpose of discussing pending litigation and privileged correspondence from legal counsel.

C. Approval of a resolution authorizing cost participation for improvements to Meadowbrook Road between Ten Mile Road and Cherry Hill Road under a Federal Surface Transportation Program grant and local cost share agreement with the Michigan Department of Transportation in the amount of \$82,600.

D. Approval to award an amendment to the engineering services contract for construction engineering services related to the C & O and

Cedar Springs Regional Storm Water Detention Basin Improvements project to URS Corporation, in the amount of \$28,097.

E. Approval to award an amendment to the engineering services contract for additional construction inspection related to the water main and sanitary sewer relocations for the Novi Road Link (Ten Mile Road to Main Street) widening project to Spalding DeDecker Associates, Inc., in the amount of \$27,675.

F. Approval to award a construction contract for the C & O and Cedar Springs Regional Stormwater Detention Basin Improvements project to Oak Construction, the low bidder, in the amount of \$93,885.

G. Approval of a resolution of support for the "Commerce, Walled Lake and Wixom Trailway Management Council" grant application to the Michigan Natural Resources Trust Fund (MNRTF).

* H. Approval of the request of the applicant, ACR Investments, for a one-year extension to the termination date provided in the PRO Agreement for Triangle Place, SP07-22, a 2,575 square foot office or retail development, proposed to be located on a 0.48 acre parcel of land located on the east side of Haggerty Road, north of Eight Mile Road.

I. Approval of Resolution to close Ten Mile road from the Novi Civic Center to Taft Road and Taft Road to Nine Mile from 11:45 a.m. to 1:30 p.m. for the International Society for Krishna Consciousness (ISKCON) of Detroit's Festival of the Chariots Parade Saturday, July 23, 2011.

J. Approval of Claims and Accounts – Warrant No. 844

**CITY COUNCIL MINUTES
EXCERPT – MAY 3, 2010**

**REGULAR MEETING OF THE COUNCIL OF THE CITY OF NOVI
MONDAY, MAY 3, 2010 AT 7:00 P.M.
COUNCIL CHAMBERS - NOVI CIVIC CENTER - 45175 W. TEN MILE ROAD**

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

PLEDGE OF ALLEGIANCE

ROLL CALL: Mayor Landry, Mayor Pro Tem Gatt, Council Members Crawford, Fischer, Margolis, Mutch, Staudt

ALSO PRESENT: Clay Pearson, City Manager
Tom Schultz, City Attorney

APPROVAL OF AGENDA

**CM-10-05-069 Moved by Gatt; seconded by Margolis; CARRIED UNANIMOUSLY:
To approve the Agenda as presented.**

**Roll call vote on CM-10-05-069 Yeas: Gatt, Crawford, Fischer, Margolis, Mutch,
Staudt, Landry
Nays: None**

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

**CM-10-04-069 Moved by Gatt; seconded by Crawford; CARRIED UNANIMOUSLY:
To approve the Consent Agenda as presented.**

**Roll call vote on CM-10-04-069 Yeas: Crawford, Fischer, Margolis, Mutch, Staudt,
Landry, Gatt
Nays: None**

- A. Approve Minutes of:
 - 1. April 19, 2010 – Regular meeting
- B. Enter Executive Session immediately following the regular meeting of May 3, 2010 in the Council Annex for the purpose of discussing pending litigation and privileged correspondence from legal counsel.
- C. Approval of Zoning Ordinance Text Amendment 18.237, to amend Ordinance No. 97-18 as amended, the City of Novi Zoning Ordinance, at Article 25, General Provisions, Section 2508, Uses Not Otherwise Included Within a Specific Use District, in order to provide standards for siting wind energy turbines. **Second Reading**
- D. Approval of Zoning Ordinance Text Amendment 18.240, to amend Ordinance No. 97-18 as amended, the City of Novi Zoning Ordinance, at Article 25, General Provisions, Section 2520, Exterior Building Wall Façade Materials, and Section 2503, Accessory Uses in order to provide standards for the use of solar collectors. **Second Reading**
- E. Approval of adoption of resolution authorizing City contribution to acquisition of property pursuant to MNRTF Grant (Heritage Shoppes).

- F. Approval to award a contract for the City's Internet Mapping Portal upgrades to Geographic Information Services, Inc, the lowest qualified bidder, in the amount of \$32,704.50.
- G. Approval to adopt Ordinance Amendment No. 10-37.35, an ordinance to amend the City of Novi Code of Ordinances, Chapter 34 "Utilities", Article II "Water Systems", Division 1, to revise Section 34-21 and add Sections 34-26 through 34-33 to establish requirements relating to water meter location, accessibility, damage, testing, and reading. **Second Reading**
- H. Approval to award the bid for Fire Department uniforms to North Eastern Uniforms & Equipment, Inc., the lowest qualified bidder based on unit pricing, for an estimated annual amount of \$20,400.
- I. Approval to award the bid for Police Department uniforms to Allie Brothers, Inc., the lowest qualified bidder based on unit pricing, for an estimated annual amount of \$36,000.
- J. Approval to grant a temporary construction easement to the Road Commission for Oakland County for the construction of the Novi Road Link project (Ten Mile Road to Main Street) on parcel 22-22-400-027, a vacant parcel on Novi Road.
- K. Approval of a Storm Drainage Facility Maintenance Easement Agreement from Damas Grand River Properties, LLC for the Damas Grand River Building located at 44725 Grand River Avenue, between Taft and Novi Roads in Section 15 (parcel 22-15-376-012).
- L. Approval to award an amendment to the engineering services contract for construction engineering services related to the 2009 Federally Funded Major Road Projects to Orchard, Hiltz & McCliment, Inc. (OHM), for a not-to-exceed fee of \$37,466.
-  M. Approval of the request of the applicant, ACR Investments, for a one-year extension to the termination date provided in the PRO Agreement for Triangle Place, a 2,575 square foot office or retail development, proposed to be located on a 0.48 acre parcel of land located on the east side of Haggerty Road, north of Eight Mile Road.
- N. Approval to award a contract to Helder Greenhouse Construction Inc., the low bidder, for the purchase and construction of two MegaDome HP 30 material storage domes, in the amount of \$31,680.
- O. Approval of the Parks and Recreation facilities donation by Best Buy of West Oaks under the Naming Rights Agreement, subject to the following: (1) that the City waives the requirement for a written agreement given the Donor's time constraints; (2) that the donation be paid in full on or before May 22, 2010; (3) that the only consideration that the Donor receives for such donation is the placement of a sign on the Power Park "yellow" field for a 2-year period beginning on July 1, 2010 and ending on July 1, 2012, such sign to be provided by the City and placed as determined by the Director of Parks,

Recreation & Cultural Services; and (4) that all terms and conditions of the Naming Rights Policy apply to the donation and sign.

P. Approval of Claims and Accounts – Warrant No. 818

**CITY COUNCIL MINUTES
EXCERPT - DECEMBER 17, 2007**

**REGULAR MEETING OF THE COUNCIL OF THE CITY OF NOVI
MONDAY, DECEMBER 17, 2007 AT 7:00 P.M.
COUNCIL CHAMBERS – NOVI CIVIC CENTER – 45175 W. TEN MILE ROAD**

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

PLEDGE OF ALLEGIANCE

ROLL CALL: Mayor Landry, Mayor Pro Tem Capello-absent/excused, Council Members Crawford, Gatt, Margolis, Mutch, Staudt

ALSO PRESENT: Clay Pearson, City Manager
Pamela Antil, Assistant City Manager
Tom Schultz, City Attorney
Cindy Uglow, Neighborhood and Small Business Manager

APPROVAL OF AGENDA

Member Margolis added, to the Consent Agenda, Item I, Acceptance of a preservation easement for Novi Research Park SPE.

Member Staudt added, to Mayor and Council Issues, Item I, Sidewalk Prioritization Work Group.

**CM-07-12-346 Moved by Gatt, seconded by Margolis; CARRIED UNANIMOUSLY:
To approve the agenda as amended.**

Voice vote

3. **Consideration of the final Planned Rezoning Overlay (PRO) Agreement and Zoning Map Amendment 18.670 SP 07-22 from the applicant, Haggerty Road Development, to rezone property located east of Haggerty Road, north of Eight Mile Road from FS, Freeway Service District to B-3, General Business. The subject property is 0.41 acres.**

Matt Diffin, Diffin Development Consultants, was present and stated they were the civil engineer for the project, and Gerald Locricchio, representative for the developer, was also present. Mr. Diffin said they had been looking at this property and working with staff for a year and a half and had gone through numerous iterations on what could or couldn't be done with the project. Mr. Diffin said it was a triangular piece of property with an 8 and 12 inch gas main running through the center of it. It also had gas mains and electric underground easements along the front. He commented that it limited them as to where they could put their building and limited their parking and turn around areas. Mr. Diffin said they had met with the Fire Chief regarding the fire truck turn around, trash pick up and large delivery trucks, and said that was why this was placed where it was. They were asking for a few variations in the rezoning overlay. He said one was the building setback along the east side of the property, which would be reduced from 10 feet to 4 feet, and also a parking setback, which would also be reduced from 10 feet to 4 feet. He said this would allow the unloading delivery area to be in the front instead of the rear of the building. Mr. Diffin said they intended to meet all other zoning requirements. There was a list of uses that they had eliminated from the B-3 zoning that they would not be using and had basically kept it to standard office and retail uses. He said Kinko's

was looking at renting a space and that was what it was intended to be. So it would be more of a retail use, if this went forward. Mr. Diffin said there had been concerns about how their use would look up against the adjoining Farmington Hills property. He said there was an existing hotel and he believed they had been approved for a gas station/car wash use. Mr. Diffin said for their public benefit they were proposing to extend the sidewalk and landscaping along the roadway down to the Taco Bell located to the south of their site. He noted there was a City owned regional detention basin across the street. He said it was a unique situation along Haggerty Road as Oakland County had jurisdiction over the roadway and they didn't typically allow trees and landscaping to be put in the right-of-way. So, they would need an easement from Orchard Lake Condominium, the adjacent property, which was also located across the street in order to put landscaping on their property. He said if they couldn't get those easements, they would put the same amount of landscaping on the City property across the street. Mr. Diffin said storm water was Council's concern previously; there was a regional basin across the street, which ultimately drained to the Orchard Hills pond that was connected

by a 24 or 30 inch pipe that ran under the road. He said there was an outlet structure that was maintained by the City and then it drained out to the County drain along 275. He said if they couldn't get easements from Orchard Hills to drain into their pond, then they would have to figure out how to get the water across the street. Mr. Diffin said that would be possible but there would be more cost to do that. He said if they could drain into the Orchard Hills pond, they would take the savings and provide the City with additional sidewalks along their property across the street.

Mr. Diffin said previously they had two different options for the building façade. He said they received positive responses on both but Council had indicated they wanted them to pick one or the other. He showed Council what the intended user, Kinko's and the developer, had chose. He said the façade and all signage would meet the zoning ordinance as written.

Mayor Landry asked if Council could have the applicant improve property that wasn't touching their property, as part of this rezoning. Mr. Schultz responded that because it wasn't a straight rezoning but was a Planned Rezoning Overlay agreement, they had negotiated the conditions and as part of that process they had put those conditions in the agreement, recorded against the property, and it was essentially a contract. He said this was the only kind of development that they were permitted to do those conditions on. He said it was a joint agreement and it could be done here. Mayor Landry questioned the roughly proportional, and Mr. Schultz said they had acknowledged it was roughly proportional in the agreement.

Member Margolis said most of the Council had agreed previously that a PRO was the way to do this. She said one of her questions had been to get a better sense of the use of the property, and she felt they had given more information on that.

CM-07-12-350 Moved by Margolis, seconded by Crawford; CARRIED UNANIMOUSLY: To accept Planned Rezoning Overlay (PRO) Agreement and Zoning Map Amendment 18.670 SP 07-22 from the applicant, Haggerty Road Development, to rezone property located east of Haggerty Road, north of Eight Mile Road from FS, Freeway Service District to B-3, General Business. The subject property is 0.41 acres, subject to the conditions listed in the staff and Consultant Review letters and for the reasons stated in the Planning Review letter, and the PRO Agreement.

DISCUSSION

Mayor Landry asked if specific reasons were needed with respect to the Planned Rezoning Overlay. Mr. Schultz thought it would be appropriate to refer to the agreement and say included in the agreement were the reasons and the benefits that allowed the rezoning.

The maker and seconder of the motion accepted the amendment.

Member Mutch asked if there was language in the agreement that addressed the façade. Mr. Schultz said the expectation was to insert that drawing into Exhibit B as part of the plan. He said he had talked to the applicant and thought they would be fine incorporating some language that specifically called that out, if Council would like. Mr. Schultz said the applicant had already agreed to do that so they would insert that language as well.

Member Mutch thought having the language there would be good in case there was a question later. He asked if there would be a site plan process once Council approved the agreement. Mr. Schultz said there would be a site plan process to be followed in the normal course, and they would have to comply with the conceptual plan and meet all the ordinance requirements except those they were exempted from in the agreement.

Member Mutch said he would support the motion. He thought, for this piece of property, having some kind of vehicle to do this kind of development was the only good way to do it. He said Council would have control over some of the specifics and thought the public benefits were significant. He asked Administration to clarify the question of whether they could or could not landscape within the County right-of-way. He said this question had come up at Council and at the Planning Commission and he would like to have a better understanding of this situation.

Roll call vote on CM-07-12-350

**Yeas: Mutch, Staudt, Landry, Crawford, Gatt,
Margolis**

Nays: None

Absent: Capello

**CITY COUNCIL MINUTES
EXCERPT - AUGUST 13, 2007**

**REGULAR MEETING OF THE COUNCIL OF THE CITY OF NOVI
MONDAY, AUGUST 13, 2007 AT 7:00 P.M.
COUNCIL CHAMBERS – NOVI CIVIC CENTER – 45175 W. TEN MILE ROAD**

www.cityofnovi.org

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

PLEDGE OF ALLEGIANCE

ROLL CALL: Mayor Landry, Mayor Pro Tem Capello, Council Members Gatt, Margolis, Mutch, Nagy-absent/excused, Paul-absent*

*Member Paul arrived at 7:04 P.M.

ALSO PRESENT: Clay Pearson, City Manager
Pam Antil, Assistant City Manager
Tom Schultz, City Attorney
Barbara McBeth, Deputy Director of Community Development
Rob Hayes, City Engineer

APPROVAL OF AGENDA

Member Mutch added appointment of Lee BeGole to the vacant position on the Historical Commission as Item N on the Consent Agenda.

CM-07-08-249 Moved by Capello, seconded by Gatt : **CARRIED UNANIMOUSLY:**
To approve the agenda as amended.

Voice vote

MATTERS FOR COUNCIL ACTION – Part I

- 5. Consideration of Zoning Map Amendment 18.670 with Planned Rezoning Overlay (PRO) SP 07-22 from the applicant, Haggerty Road Development, to rezone property located east of Haggerty Road, north of Eight Mile Road FS, Freeway Service District to B-3, General Business and consideration of the PRO Concept Plan. The subject property is 0.41 acres.**

Mayor Pro Tem Capello said he didn't have a problem looking at this property and rezoning it, and had no problem with office use or retail use. The problem he had was trying to use the PRO mechanism to get there. Normally the PRO's he had looked at had specific detailed site plans but this was very general, and was something they were going to put in there that they thought would work, maybe retail or office. He said he would be happy to work with them but he didn't think the PRO was the proper avenue, and would rather have them come back with a specific zoning and an idea of what they wanted to put in there.

Member Margolis understood where Mayor Pro Tem Capello was going but the problem she had was she thought they were led in this direction by the Planning Commission. Mr. Pearson said he thought it was a combination, and given the site constraints and the limited options, this was a vehicle to do that. Mr. Schultz said they originally had come before the Master Plan and Zoning Committee with a straight rezoning, and they said the best vehicle to do what they wanted was the PRO. He realized the proposal before Council didn't tie them down much on what the actual building would be, but that was certainly something the Council could look at as part of the PRO process. Mr. Schultz said the straight rezoning request was what the Planning Commission had difficulty with because once they gave that rezoning pretty much any use or building could come in there that met ordinance requirements.

Member Margolis said one of the things they were trying to do was make the process easier for people and not send them in a circular direction. She was concerned that if they now turn around and say they wanted to go back to rezoning, it would be a mistake. She said she had the same reaction that they were not saying what the building would be. They had two options that would be similar, one would be more office and one would be more retail. Mr. Schultz said she was correct. He said there was discussion with the proponent and he thought they were concerned about tying down a particular building because they weren't sure of their market yet. He said that was something Council could explore.

Mayor Landry asked if the City Council could pass this tonight with an amendment that they come back with a particular façade of the building. Mr. Schultz responded that the PRO contemplated the attachment of conditions as part of the approval. So, if Council decided to go forward with this, the motion would actually be a preliminary approval of the zoning with the direction to his office to come back with an agreement. He said they could direct that as part of the agreement process when they iron out what facades, etc. might be. He thought when they saw it again as a final action it would have more detail. Mayor Landry said then this would just be to direct Mr. Schultz's office to begin preparation of the PRO, which would come back for Council to pass or not. Mr. Schultz agreed, this was step one of a two step action with the final action on the rezoning next time in front of Council.

Member Mutch said he would favor the PRO concept and thought along the same lines as Member Margolis. He said there was no way they would build anything on the site that's going to meet the zoning ordinance requirements unless they build a 10 ft. wide building. At the minimum the applicant was looking at going before the ZBA and getting Planning Commission approval subject to a number of variances. He said the PRO process would allow Council to acknowledge the deficiencies of the site, lay out the parameters that would be acceptable, and potentially save the applicant some steps. Member Mutch thought that was the advantage to this process versus the potential that they could get to ZBA, have it denied and then have to go to Circuit Court. He said he would support the PRO process. Member Mutch said in the response letter from Diffin Development they talked about the sidewalk on the west side of Haggerty Road in front of the City owned detention basin. They indicated they were willing to provide the additional walk, if the City

could get approval from Orchard Hills Place Condominiums to agree to allow the development to utilize their detention pond. He asked Administration where they were on that. He asked Mr. Schultz if they haven't made progress on that, could Council say they didn't want this to be subject to whether Council allowed that detention. He asked if the developer got to define the terms.

Mr. Schultz said this PRO process was, unlike the contract zoning issue that had come up before, a true agreement. He thought Council could say they wanted it but they would not be the ones to get the approval from Orchard Hills Place, if they wanted it to come before Council with that authorization. He didn't know where they were on the approval, but the intention at this point was that that's an amenity or public benefit that should be part of the tentative conditions that they were asking them to come back with. He said if they couldn't make it happen, then at the next meeting Council would have to decide whether that was a make or break kind of issue.

Mr. Pearson assumed that since this was just a concept they had taken that on and tried to approach them. He said they are the ones that wanted the PRO and who suggested this as their public benefit, and like any other kind of easement that was required by private developers, it would be required of them. Mr. Pearson said he didn't want to ask for that on their behalf, this was their idea and they should follow through on it.

Member Mutch said in the Planning Commission minutes there was some concern from the adjacent property owner in Farmington Hills about the impact. He asked how they were screening the east side of the site, the back of the building and the parking lot from the hotel use next door. Ms. Mc Beth showed Council the site plan. She said the building was about 4 ft. from the property line so there wasn't room for screening. She thought when they get to the site plan designs they would need to figure out whether they intend to put up a screening wall or landscaping. At this point, they had not proposed any kind of screening other than landscaping. Member Mutch said even for the parking area and she said yes. Member Mutch didn't have an issue with the building facing the hotel unless the elevation was such that it needed to be screened, but the parking should be screened because of some of the concerns that had been addressed. He said the parking was standard in Novi and he would expect them to accommodate that as much as possible. Member Mutch said the whole Freeway Service District applied to five or six properties total. Ms. Mc Beth agreed, and said this was the only area of the City in which there was a Freeway Service District (FS). Member Mutch said he understood she was looking at getting rid of the zoning district and replacing it with one of the existing districts. Ms. Mc Beth agreed, and said as part of this review they were looking at the various standards in the Freeway Service District and seeing whether they applied or not to existing uses out there. They were also looking at if they were expecting redevelopment in this area, whether it would be appropriate to use the Freeway Service District or some other district. The planning staff had begun looking at modifications to see if it made sense to continue the Freeway Service District, or if they would take a look at that entire area of 5 or 6 properties and look at a different zoning district. Member Mutch thought the Council had been consistent over the last 1 ½ years in looking at streamlining those

processes where possible. He said it didn't make sense to have a zoning district for 5 or 6 uses when there was B-3 or a similar zoning district that was the equivalent of that.

Member Paul agreed with Mr. Pearson that it was the applicant's responsibility to go forward and try to get an agreement with their neighbors to share their detention basin. She said they had made residents put in a sidewalk no matter what the situation was, so she couldn't imagine they would give someone that wanted a PRO any leeway in that regard. She felt that should be part of the agreement right up front. She thought it made sense to look at streamlining the process. There were some things in B-3 that she didn't think would be quite fitting. She thought a gas station would be cumbersome to the flow of traffic. She hoped when they came forward with the PRO they would have an idea of what the building use would be for sure.

Mayor Pro Tem Capello agreed with Mayor Landry that they should come back with a little more detail, and he would be able to work with it. He remembered when Best Buy, etc. went in there and they told Council it would be a part of the office complex, and there were blue and yellow, green and white and a red and white signs, and they took it totally out of context. He said he was a little fearful of that. He noted it said regional basin, and asked if it was truly a regional basin that the City monitored and maintained. Mr. Schultz said he didn't know if it was a regional basin, but as he understood it it was City owned property, and they could look into it.

Member Paul said since they were having questionable problems with the site, some of the things Council was looking at was rain gardens or bio retention swales. She thought since they had such a narrow piece of property, it might be something they would consider. She said it would help them before they hit their runoff especially if they didn't have the full ability to reach the runoff agreement with their neighbors.

**CM-07-08-255 Moved by Paul, seconded by Mutch; CARRIED UNANIMOUSLY:
To approve Zoning Map Amendment 18.670 with Planned
Rezoning Overlay (PRO) SP 07-22 from the applicant, Haggerty
Road Development, to rezone property located east of Haggerty
Road, north of Eight Mile Road FS, Freeway Service District to
B-3, General Business and consideration of the PRO Concept
Plan. The subject property is 0.41 acres. Subject to the
applicant getting the storm water agreement with their neighbors
as well as screening in the parking area. Also, this is a
preliminary approval to come back before Council with more
specifics regarding the site.**

DISCUSSION

Mayor Landry asked if Council needed to discuss public benefit on the record now or when it was approved in final. Mr. Schultz replied it was not required to do it now but they

could and add the public benefits to the motion. Mr. Schultz said it probably should be done now, but it would certainly be done as part of the agreement.

Member Mutch understood the value in doing that but with some of these public benefit issues up in the air, in terms of being finalized, he would feel more comfortable stating them on final approval. Mayor Landry said that was fine; he just didn't want it to get by without the record being clear.

Member Margolis referred to the back of the 4th page in their packet item and asked if she was correct that where it said "Uses Removed from the District", that these were uses that would be removed when this PRO came back to Council for approval. Mr. Schultz said she was correct. She said this detailed that retail businesses, gasoline service stations, and tattoo parlors would be removed. Mr. Schultz said the agreement would clean that up and list in detail what was not permitted in the district as rezoned.

Roll call vote on CM-07-08-255

**Yeas: Paul, Landry, Capello, Gatt, Margolis,
Mutch**

Nays: None

Absent: Nagy