

**REGULAR MEETING OF THE COUNCIL OF THE CITY OF NOVI
MONDAY, AUGUST 24, 2015 AT 7:00 P.M.
COUNCIL CHAMBERS – NOVI CIVIC CENTER – 45175 TEN MILE ROAD**

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

PLEDGE OF ALLEGIANCE

ROLL CALL: Mayor Gatt, Mayor Pro Tem Staudt, Council Members Casey, Markham, Mutch, Poupard, Wrobel

ALSO PRESENT: Peter Auger, City Manager
Victor Cardenas, Assistant City Manager
Thomas Schultz, City Attorney

APPROVAL OF AGENDA:

CM 15-08-116 Moved by Wrobel, seconded by Casey; CARRIED UNANIMOUSLY:

To approve the Agenda as presented.

Roll call vote on CM 15-08-116 **Yeas: Staudt, Casey, Markham, Mutch,
Poupard, Wrobel, Gatt**
Nays: None

PUBLIC HEARING – None

PRESENTATIONS:

1. 2015 Constitution Week Proclamation - Daughters of the American Revolution

Mayor Gatt presented the proclamation to Deb Davis. Ms. Davis spoke about the origination of the Daughters of the American Revolution. It was the Society in 1955 who decided to dedicate September 17 – 23, 2015 for having children’s education of the Constitution. She invited everyone to visit the Novi Library to see their poster.

REPORTS:

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

AUDIENCE COMMENT:

Stacey Rose, 23940 Forest Park Dr., suggested minor modifications to the proposed Valencia South PRO agreement to better represent their collective intentions and expectations. He felt it had been indicated that 18 foot evergreens would be planted in the 30 foot conservation easement to create a strong buffer. The current agreement does not require the evergreens and does not ensure adequate replacement tree

credits. He also thought there were unknowns that would leave gaps of replacement trees to be planted in the conservation easement. He thought plantings may be limited to a 10 foot strip in the center of the 30 foot easement to maintain a ten foot clearance in neighboring utility easements. The impact on the conservation easement to accommodate appropriate drainage design was unclear. He was concerned about storm sewer easements must accompany additional drains and restrictions on planting within the drains. The types, sizes of trees in the easement showed uncertainty. He suggested the PRO specify the impacts on the 30 foot conservation easement be addressed to avoid gaps in the screening of homes. In addition, he recommends minimum 80-90% opacity should be specified in the agreement as recommended in the City landscape review.

Christen Pietraz, 48380 Burntwood Ct., noted as of June 17th, many letters and signatures regarding the rezoning had been obtained. They had come back with small adjustments and felt this resulted in a daunting process. She urged they demand respect for their requests and worried about the future of Novi.

LaReta Roder, 25910 Clark St., said she has lived in Novi for about 38 years. She spoke about replacing their furnace which required them to get an electrical and heating inspection to make sure it met code. She understood it is good to maintain standards. When the work was completed, she called to schedule the inspections and was told she would have to go to the City website to schedule the inspection. She explained she was technologically challenged and wasn't able to do that. She was told to call her contractor and have them do it. She explained since the contractor didn't know her schedule, it really wasn't going to work. She was then told to come to the City offices and do it at the counter. She came into the City about an hour and a half after talking with them. She again explained she needed to make appointments for heating and electrical inspections. She again was told it needed to be done on the computer on the counter that was turned off. She said it wasn't a friendly way to do it and was asked if she would like to speak to a supervisor. She said not really and they informed her they would pass the message on. She was then informed that the website was down. She told them that no one told her. They told her they didn't know about it until an hour ago. She again said it wasn't a friendly way to do business. She was told it was their policy and the contractors like it. She replied it figures, I am just the taxpayer. She said then the magic happened. In about sixty seconds, they were able to manually schedule both appointments and provide her with the inspector's business cards and instructed her to call the morning of the appointment to obtain the window of time they would be there. She returned home very frustrated with both the system and her inability to use it. She told them if it wasn't broke, don't fix it. She felt the City's system was broken and the City needed to fix it. She commented that long after the contractors have completed their projects and left, she would still be paying her taxes.

Colleen McClorey, 48188 Andover Dr., stated that Council had a fiduciary responsibility to the citizens related to wells and said they were concerned that the builder was only requested to post a \$75,000 bond. She asked that the City have a standard that is

reasonable and fair for the surrounding areas if their wells were affected. She asked that they consider raising the bond level on the PRO.

Tom Duncan, 60440 Eleven Mile Road, owner of Duncan Disposal, discussed the topic of a limited trash hauler. He owned Duncan Disposal and has serviced thousands of citizens in Novi. He spoke about the recent ordinance that had been approved. He was concerned it would prohibit business and competition in the City. He was disappointed that the ordinance didn't have a public hearing. He thought this would affect every homeowner, and he felt their business was being grabbed from them after 42 years. They have provided great service. He felt Novi wasn't business friendly because the City arbitrarily stripped them of rights to do business with their own customers. Granted, a competitor stumbled during its transition from an acquisition of another company's business, but he felt that free enterprise was to be maintained as an option versus the City creating a monopoly of the local trash industry. He would follow up with another letter to Council.

Scott Duncan, 1276 Buckboard Circle, owner of Duncan Disposal, said there were two reasons given by the City for forced contracting. One day for trash, recycling and yard waste on an individual street. This can also be taken care of by having the City of Novi make an ordinance specifying which certain parts of the City could be serviced by any company. It is already done in large Michigan cities. He cited examples of Kentwood and Wyoming. He felt officials would go with the lowest bidder. In the process they lose their choice to pick the right choice for the community and completely remove citizen input. Prices are less than the individually subscribed service from an independent company but Special Assessment districts could be formed within the City to maintain improved pricing while maintaining their custom services and hauler relationships. He felt it infringed on people's rights to not be able to choose who picked up their trash and recycling. He mentioned that the City doesn't control other services provided to citizens and felt it would be ridiculous. If there were a shortage of haulers he thought it would make sense, but there isn't. He noted there were several haulers that are committed to accommodate everyone. He cited other services that may have hazardous equipment and chemicals carried throughout the City. He didn't know why there was a rush for such a dramatic change without hearing from the citizens. There are other sizable cities in Michigan that allow a competitive market for licensed waste haulers in their cities such as Grand Rapids.

Marti Anderson, 48360 Burntwood Ct., noted Novi had a lot of great qualities. She struggled to understand why we have regulated woodland ordinances, but she felt they were not followed. They wanted several changes to the present plan and hoped for a win-win.

James McGuire, 48028 Andover Dr., abuts the proposed development. He felt that the homeowners were treated shabbily. He was embarrassed by Council with what he thought were comments made with finger pointing. If the citizens felt intimidated, they would not get involved. It took a lot to come before Council.

Bruce Flaherty, 48048 Andover Dr., noted he sent an alternative plan where they were asked to remove 5 houses and get 90 feet of conservation easement around the entire subdivision. He never received an answer back. He felt that they could offset prices. He also felt disappointed with Council of how they treated people.

Janice Krupic, 48076 Andover Dr., thought someone on Council said they would determine who the winners and losers were, and she hoped they would make it a win-win situation.

Damon Pietraz, 48380 Burntwood Ct., moved to Novi within the past year. He expected that there would be development, but that he also would be able to look out the front door and have green space and have his water well protected. He felt the developer wasn't listening.

CONSENT AGENDA REMOVALS AND APPROVALS:

CM 15-08-117 Moved by Wrobel, seconded by Casey; CARRIED UNANIMOUSLY:

To approve the Consent Agenda as presented.

- A. Approve Minutes of:
 - 1. August 10, 2015 – Regular meeting
- B. Approval of resolution to permanently transfer Precincts 9 and 11 currently located at Brightmoor Christian Church to Crosspointe Meadows Church, 29000 Meadowbrook Road, effective immediately.
- C. Approval of Ordinance No. 15-99.16, an ordinance to amend the City of Novi Code of Ordinances, Chapter 15, Fire Protection and Prevention, to adopt the International Fire Code, 2012 Edition, by reference with certain amendments.
SECOND READING
- D. Approval of an Inter-agency Agreement between the Alliance of Rouge Communities and the City of Novi for participation in the federal grant referred to as the "Great Lakes Restoration Initiative: Restoring Tree Canopy in the Rouge River Area of Concern" with no matching costs required from the City of Novi.
- E. Approval of Resolution to close the intersection of Ten Mile Road and Taft Road from 5:00 PM to 6:00 PM for the Novi High School Homecoming Parade on Friday October 9, 2015.
- F. Approval of Traffic Control Order 15-18 to prohibit left turns from westbound Citygate Drive to southbound Beck Road between the hours of 7 AM to 7 PM.

- G. Approval to award an amendment to the engineering services agreement with Spalding DeDecker Associates for additional design engineering services for the Eight Mile Road Pathway (Beck to Garfield) project in the amount of \$30,395; and approval of a resolution to amend the budget to add \$30,395 to this line item.
- H. Approval to award an amendment to the engineering services agreement with URS Corporation for additional construction engineering services for the Grand River Avenue Right Turn Lane Extension (at Beck Road) in the amount of \$33,760; and approval of a resolution to amend the budget to add \$33,760 to this line item.
- I. Approval to award an amendment to the engineering services agreement with URS Corporation for additional design engineering services for the ITC Pathway Phase1A project in the amount of \$27,134; and approval of a resolution to amend the budget to add \$23,134 to this line item.
- J. Approval to award an amendment to the engineering services agreement with Spalding DeDecker for additional design engineering services for the Providence Park Connector Trail (ITC Pathway Phase 3B) in the amount of \$24,272; and approval of a resolution to amend the budget to add \$24,272 to this line item.
- K. Acceptance of a pathway easement as a donation from Providence Hospital and Medical Centers, Inc., as part of the Rose Senior Living site located south of Grand River Avenue and west of Beck Road (parcel 22-17-400-040) to accommodate the future extension of the ITC Trail from the Medilodge property to Beck Road.
- L. Acceptance of a Wetlands Conservation Easement and a Woodlands Conservation Easement from Providence Hospital and Medical Centers, Inc. for woodland and wetland conservation areas offered as a part of the Rose Senior Living development, located on the west side of Beck Road south of Grand River Avenue in Section 17 of the City.
- M. Approval of a Storm Drainage Facility Maintenance Easement Agreement from Providence Hospital and Medical Centers, Inc., as part of the Rose Senior Living site located south of Grand River Avenue and west of Beck Road (parcel 22-17-400-040).
- N. Approval of Uniform Video Service Local Franchise Agreement with Bright House Networks, LLC, to provide video service in the City of Novi.
- O. Approval of Community Single Use License with International Transmission Company (ITC) in connection with the City of Novi 5K Emergency Challenge Run.

P. Approval of Claims and Accounts – Warrant No. 946

Roll call vote on CM 15-08-117

**Yeas: Casey, Markham, Mutch, Poupard,
Wrobel, Gatt, Staudt**

Nays: None

MATTERS FOR COUNCIL ACTION:

1. Approval of Zoning Ordinance Text Amendment 18.275 to amend the City of Novi Zoning Ordinance at Article 3, Zoning Districts, Section 3.14, I-1 District Required Conditions, in order to allow for accessory outside storage as a Special Land Use in the Light Industrial District. **FIRST READING**

CM 15-08-118 Moved by Wrobel, seconded by Casey; CARRIED UNANIMOUSLY:

To approve Zoning Ordinance Text Amendment 18.275 to amend the City of Novi Zoning Ordinance at Article 3, Zoning Districts, Section 3.14, I-1 District Required Conditions, in order to allow for accessory outside storage as a Special Land Use in the Light Industrial District. FIRST READING

Member Mutch asked what was trying to be accomplished with this change. He knew about a specific land owner with a specific use for outside storage and if there were other requests. He wanted to know what the review process will be if it operates as a light industrial district. City Attorney Schultz answered the impetus of the change was a single property owner applying for an approval for a temporary use to consider whether outdoor storage may be appropriate in the I-1 District. It starts with an applicant and then a review by staff. The Planning Commission then considers if it is appropriate for a new potential use. They recommended it be permitted under criteria as a special land use. It is available to anyone who owns I-1 property and meets the criteria. Member Mutch asked if this outdoor storage use was going to be allowed adjacent to residential. City Attorney Schultz said it would be allowed under certain circumstances. Member Mutch asked how the limit of one year or less will be enforced. City Attorney Schultz said the idea is that the materials can't be setting out for more than a year. Member Mutch asked if it is an ongoing outdoor storage area and the items in the area would turn over on a regular basis. He asked how that can be enforced. He said some things are obvious but would it prevent someone from doing a long term storage operation. City Attorney Schultz explained it would be an enforcement question, but there may be obvious signs such as grass growing around it. It may not be easy to enforce. Member Mutch noted storage is allowed in I-2 zoning and asked why expand it to I-1. City Attorney Schultz thought staff and the Commission looked at it and felt it may be allowed in the I-1 districts. Instead of making it a use as a right, they made it a specific land, special land use approval and each one gets considered on its own merits. Member Mutch wanted to know the limitations and how they will control the use. City Attorney Schultz read through the ordinance and

explained a number of them. Member Mutch asked if the applicant abuts residential. City Attorney Schultz said he believes the property abuts multiple family residential. Member Mutch had some concerns with the request. He understood the applicant desired something in the ordinance and his alternative would be to go to the ZBA to get a variance. City Attorney Schultz said they did not because this was a use variance and difficult to get. Member Mutch noted the expansion of the storage yard use in the Light Industrial. He would be more comfortable if it was strictly limited for some light industrial users. He was concerned it was open ended with no language that limited it. He didn't want to see I-1 properties being used with significant amount of storage on site. They don't generate tax revenue and thought it shouldn't be encouraged. He also was concerned with allowing it adjacent to residential. He would like to see from City administration something that delineates the I-1 uses that are adjacent to residential and whether it should be allowed adjacent to single-family residential. It is the nature of the uses and he could see some enforcement issues that may arise with this use. He will consider the first reading.

Roll call vote on CM 15-08-118

**Yeas: Markham, Mutch, Poupard, Wrobel,
Gatt, Staudt, Casey,
Nays: None**

2. Approval of the request of Beck South, LLC for JSP13-75 with Zoning Map Amendment 18.706 to rezone property in Section 29, on the southwest corner of Beck Road and Ten Mile Road from R-1, One-Family Residential to R-3, One-Family Residential with a Planned Rezoning Overlay, and to approve the corresponding concept plan and PRO Agreement between the City and the applicant. The property totals 41.31 acres and the applicant is proposing a 64-unit single-family residential development.

City Manager Auger said all the items in the PRO that Council had asked for were addressed by the Attorneys.

Member Casey asked City staff to clarify if there were any utility easements in the conservation easement or if there is anything that could negatively impact or encroach what is being planned for the 30 foot buffer. Deputy Community Development Director McBeth said there is a potential for a storm water facility in the area. The intent is to try to preserve the woodlands in the 30 foot easement on the West and South property lines as much as possible but if there is a need to establish positive drainage, then there may be some modification to the grades to accommodate that. Member Casey clarified if it would be a one-time occurrence where what is being planned for one of the lots in the development may cause or potentially cause runoff into one of the back yards of the abutting neighbors and that particular lot would need to be corrected, so that there will not be drainage into the abutting neighborhood. Deputy Director McBeth agreed and the intent is to not have any negative impact or negative drainage into the adjacent properties. City Attorney Schultz said on page 4 of the agreement, they are not to build any structures in the 30 foot easement area with the

exception of a catch basin running between lots, but only if approved by the City and only if necessary to make sure there is proper drainage in either direction. The intention is to limit it to situations where the City engineer has approved it. Member Casey asked if there needs to be a storm or catch basin in the easement, what kind of space around would also need protected planting. She described an example to determine what would be required and asked if there would be a 6 foot buffer where there couldn't have any trees or vegetation near that basin. Deputy Director McBeth said it would be possible to have a zone around that area that would need to be protected. City Engineer Hayes said, in response to the question, it depends on the species of tree, drip line and other factors. Member Casey asked if he could give a range. City Engineer Hayes said conservatively he would determine for a common tree to be 10 feet from the center line of the trunk to where the center line of the structure would be located. Member Casey asked at what point in time in the process would it be determined that there could be an impact of the easement. Director McBeth explained that this is the concept plan stage and there is a lot more to be learned in terms of detail at the preliminary site plan and final site plan stage. The intent, if it is approved, is to have the City landscape architect work with the applicant to determine the spots for the replacement trees. Member Casey said it could be several months in the future by the time that occurs. There would not be much remedy at that point to figure out a different solution to keep the buffer intact. Director McBeth said that would be the point to working closely with the applicant to field-verify where the trees can be preserved and where replacements would be suited. City Attorney Schultz said it is a shared process from approval to the issuance of occupancy permits. The developer is going to look at placing the catch basin in a limited number of areas away from the easement, if at all possible, with a slight intrusion into the easement if the City allows it. There is an Engineer and the Landscape Architect for the City involved in the determination with any remedy or make sure there is no or limited impact to the property adjacent than is required. Unlike the usual project, this agreement contemplates a much more significant involvement of the City staff than normal. Member Casey said what she was seeking to understand was how guaranteed is this 30 foot conservation easement. She wanted to make sure it is a solid agreement in terms of any changes. She suggested instead of the agreement saying there is a goal of opacity of 80-90% year round that it says, "it will be at minimum 80% opacity". She wanted stronger language that doesn't just give a goal, but it states that, "we require opacity at this level." She asked Mr. Howard Fingerroot, Developer of Beck South, if he would be open to the amendment if part of the approval that it states the developer will meet 80% opacity requirement in the conservation easement. Mr. Fingerroot wasn't sure what that meant. He has a fairly good working knowledge of landscaping and didn't know if he looked at something whether it was 75% or 90% opaque. They are trees with leaves and at what point in time would it be measured. There is a common goal because what is good for the neighbor is also for the new residents coming in. A more visual shield is good for both parties. He didn't know practically how it would be defined, how to measure it and if it has to be determined every year. The species and size of trees within ranges can be determined. He said there is not an 18 foot tree store. They go to a farm and bring trees within a range. He agreed with her and was happy to have metrics, but they have to be metrics that are practical. City Attorney Schultz

asked if he was optimistic there was a standard in the agreement that can make sure it is met the same way as the referenced ordinance. There can be language that said 75%-80% opacity as determined by the City staff in accordance with City ordinances in the way the standards are applied. He thought they could do it and Mr. Fingerroot would accept it if it was a requirement. Mr. Fingerroot said he was not challenged by it, but wanted to make sure it is thought through. Member Casey said she would like the language changed without stating it as a goal. Mr. Fingerroot agreed with something like that. Member Casey said there was some feedback with a suggestion there would be some 18 feet evergreens that could be planted. She would like to see it is written into the PRO. She wanted to get the kinds of specificity around trees and height in the PRO and not leave it vague. She didn't want loose language with some words that are not very clear. She asked City Attorney Schultz if it can be written in the PRO. City Attorney Schultz cited a paragraph in the PRO that talks about that subject that oversized trees shall be planted and it gives the credit for them. He said they could make it more specific. The trees could be identified and shown more clearly on the landscape plans. The Landscape Architect can clearly be given some authority to say where else oversized trees should go. Member Casey would like the oversized trees to go specifically in the conservation easement. City Attorney Schultz agreed. Member Casey said within the PRO, there is reference to exhibit C, the City has, as part of the review process, the ability to amend the letters as the process advances. City Attorney Schultz agreed that when it goes from a concept plan to an actual site plan, which has more detail and information, the consultants may look at it and for any potential problems, it would go back to the City and the City can state what the remedy would be. Member Casey asked at what point in time will the transformer and utility boxes be outlined in the plan. City Attorney Schultz said the only thing to be put in the conservation easement, after the agreement is approved, is the catch basin. The language now is that nothing else encroaches. Member Casey asked what happens if the draw on the escrow for sewers and wells goes above \$75,001 and what would be the remedy for those after the escrow caps if there is a problem. City Manager Auger said they do not anticipate any issues with the dewatering. If there are any issues they would have to be resolved before the next stage. All the City staff and Engineers are aware of the concerns of the Council and staff on this issue. Member Casey asked who would pay for any remediation. Manager Auger said there should not be any well issues from the data the developer has presented. He felt that is why the developer put the \$75,000 forward because he didn't think it would be used either. Member Casey asked what would happen if something happened. Mr. Auger said the cost for a well is about \$5-7K and there would have to be quite a few wells before the \$75,000 is reached. City Engineer Hayes said he has experience designing ground water pumping systems for environmental cleanup. The developer would be dewatering at an elevation of about 14 feet. The shallowest spring well that he could find there is about 60 feet deep. If there is a water column of 46 feet that has to be pumped down and the nearest well is a couple hundred feet away, dewatering would have to be 13 million gallons of water to impact that shallow of a well. The chances of a well being impacted are extremely rare. Member Casey said she appreciated the confidence the City has but she still hasn't heard an answer if it happened. City Engineer Hayes said there is enough money for about 15 wells. Member Casey wanted to know what

would happen if there were 16 wells. She asked who would be liable for the repair. City Engineer Hayes said in order for the developer to impact the nearest well, he would have to discharge a high amount of water. Right now, it would be about 20,000 gallons at the most. Member Casey asked if the resident would be liable. City Attorney Schultz said the City has the requirement for a dewatering plan to make sure that it is within the tolerance, but a deposit isn't required for any other development because the general rule is that they own property on that water system and they are entitled to develop the property even if it includes a minor inconvenience to the adjacent property owners. They established the \$75,000 bond because there will be a lot of discretion with the PRO. It was a reasonable number that is very high considering the circumstances. They cannot go as far as to say that the 16th well would be the resident's responsibility just like any other property owner. Member Casey respects the expertise of the staff and didn't think they have a good solution on the chance there is something unexpected happens. City Manager Auger said that \$75,000 is that high number and if they put \$100,000 to \$150,000 the same question would be asked. We don't anticipate any issues. There is no State law that would require a developer to put a bond up like this. The only reason they were able to ask the developer is because it is a PRO process. This is not the first stage and they will have to hook up to sanitary sewers at about 12 feet. If he doesn't get that done right, the rest of the project will not get done and he wouldn't be able to sell homes. The developer and staff understood the criteria and he was confident the \$75,000 will be enough. Member Casey asked if the residents will come to the City if the \$75,000 is not enough. Mr. Fingerroot clarified comments on the catch basins in the conservation easement that it is not the developments property that will cause a flow of water into the neighbors and the only reason for the catch basin was that it is necessary to catch all the flow from the neighboring properties. If they plant a tree and it blocks the flow of the water, they would have to mitigate it.

Member Mutch asked about the PRO language as it is currently written. The residents would be responsible for damage to their wells above the \$75,000 bond and the City would not be responsible and he couldn't understand why it is so difficult to state it. He asked if residents do encounter a situation through the dewatering process, with whom they would file a claim. City Attorney Schultz said they have not prepared that document and the City designed the process according to the agreement. Member Mutch confirmed a resident would not be able to take a greater share than another. City Attorney said there would be a final decision through the City staff and there would be a limit. Member Mutch asked when would the process be developed and put in place. City Attorney Schultz said at the time the permit for the dewatering and site work happens. Member Mutch said the claim process would be handled by the City and has final say. Member Mutch asked if it will be an easement over the property in the provision under D. 4 for the 30 foot wide tree preservation and planting easement and confirmed that the City would enforce any issues with it. In subsection 3, he asked if the language applies for the trees that have been currently identified or if any die in the future. City Attorney Schultz said the intent is that it is a cleanup in making it a buffer. The language allows them to remove some trees and plant new ones to increase the screening. He didn't think it is a perpetual and eternal obligation to replace them unless they are woodland replacement trees that would carry that obligation.

Member Mutch asked if they have identified existing trees that are dead and are getting credits, is it different than if they kill additional trees in the process. He felt they should be replaced also. City Attorney Schultz said if they damage a tree, they would have to replace it. Member Mutch wanted to get back to the specificity and didn't think it was clear that was the intent. He was concerned that the count may not be accurate and it was clear from the site plan, there would be significant impacts along the conservation area. He was concerned about how many of those trees will survive that process and he felt if they are impacted they should be replaced. He would like some clarity in the agreement. He noted it is important for the residents to understand that whatever is approved in the PRO process by Council will be final. He knew they discussed that staff has some authority to make adjustments but this will be the final product. He felt this developer chose to put the smallest lots in the site adjacent to the residential area and has created many of the problems discussed. If the larger lots were adjacent to the residential, there would be fewer lots and would better accommodate the woodlands. If the smaller lots were in the interior of the plan, there would be less of an impact on the core area and the developer may have lost a few more lots. He didn't know the number by making that adjustment, but it would have been a better plan. There will be 982 trees removed on the site and the largest tree removed is almost 4 feet in diameter. There are 36 specimen trees that are larger than baseline for trees of significant size in the community. He said they are sacrificing the trees when the City should be protecting them. He felt what was best for the residents at large was best for the residents of the adjoining subdivisions. He noted fewer lots would be less traffic and more protected woodlands would be valuable. He felt the argument that the tradeoff between the tax base and development with the additional homes somehow accrues to the City is a false choice for the City. He felt it could have been a less dense development and protected more woodland that would be just as economically beneficial as what is being proposed. He appreciated Member Casey's efforts to get the best plan out of the process. He can't support the City ordinances to be cast aside in many areas for this development and not get the best possible development out of the process.

Member Markham appreciated the many comments from the residents, studying the documents, and they have taken this process seriously. She thought with this development they were trying to put too much on this site. She felt 64 homes were too many and slightly less than the maximum number of R-1 homes. It is the maximum number of homes that can be put on the property. The only difference between the R-1 and R-3 is that some of the lot sizes are smaller. This plan still encroaches into the highest quality section of the woodlands which is the southwest portion of the property. She believed there could have been a premier development that protected the woodlands and also valued them as an asset. She saw that they were trying to minimize it. She thought the trees were understood to be pretty but not important. She said the solid contiguous woodlands on the property of 1,700 of high quality trees were very important to the storm water management and habitat. It has been minimized in the overall design of the development.

Member Casey summarized that she asked for change in language regarding opacity as an "is" and not "should". Also, she asked for specificity and height of trees and how that would be incorporated in the agreement. City Attorney Schultz said adding some additional requirements to a motion would be appropriate.

Mr. Fingerroot confirmed that she wanted a certain level of opaqueness. He would agree to. The answer to the metric is already defined in the City ordinances. He said that it would not be a problem. In terms of height, he would use a range rather than a specific height. He said the reason being is when they go to farms to buy the trees, if it is an 18 foot tree they may grow a foot a year and they know how much they grow per year. They also have an idea of what type of trees within their farm that will live from the transplant process itself. It is too difficult if just 18 feet is required, but if they are given plus or minus 2 feet or 3 feet would be more practical. It is not because he wants to save money but because a 16 feet tree may grow a foot a year and would have a much better probability of surviving. He would be amenable to how it is proposed but with a range and not specific.

Member Casey said that within the landscape design on the outer edges, that there is a notation of an 18 foot tree height with no plus or minus or is there within the ordinance there is that kind of range that Mr. Fingerroot mentioned.

Deputy Director McBeth said it is a specific standard as much as it could be and it could say a range of plus or minor two feet or a minimum of 18 feet or taller.

City Attorney Schultz explained that the motion is designed to the way they want. If they want to accept the premise from Mr. Fingerroot, the Planning staff and Landscape Architect would review the plan and ultimately review the plantings to make sure they conform to the general requirement of 18 feet and whether they have met the intent of the language. The more specific directions, they will be clearer in their direction as to what they accept.

Member Casey asked if she would have the opportunity to give him direction and to come for final approval or was this final. She would rather get the language the way she liked it and not do something spontaneously to give direction that says, "I want to see" and "should be on opacity with a minimum of 18 feet trees planted in the buffer with additional specifications."

City Attorney Schultz thought they were not insurmountable language barriers. He understood that if there is a particular tree height and opacity shall be 80%, then it can be written that way. He didn't think those things were insurmountable.

Member Casey asked City Engineer Hayes to remind her what the current ordinance standards are in cases of dewatering where there is impact to wells and sewer outside the development. He explained they require dewatering plans, the size of the pumps to be used, the area of influence the pumps would have, the estimated depth of the groundwater to be impacted, and they have the ability to require monitoring wells

installed. Sometimes the City does it or the developer may take it upon himself. There is the possibility of a third party to oversee the actual dewatering to make sure whether or not there is an impact so it can be verified. She asked what if there is an impact. He said if there is an impact based on verification through the monitoring they gauge the degree to which somebody's property has been damaged. Member Casey asked if the City would take it from there. He said if in the extremely rare chance that there are more than 15 wells impacted then it would be the resident's responsibility. He didn't think there were more than 15 wells there. Member Casey believed that the area to the west is well and sewer. City Engineer Hayes confirmed the area that will be influenced by the minor amount of pumping that the developer will do is minuscule. He considers it a non-issue.

Member Casey felt she hasn't pushed Mr. Fingerroot on the \$75,000 bond. She asked him previously in regards to the buffer. She said she will include language on opacity, a minimum of 18 feet in the conservation easement and she will count on the developer's new watering plan and the confidence of staff. She directed a statement to Mr. Fingerroot that she would hope he would make good a well that a resident is responsible based on the confidence he is advocating and what she is hearing from everyone else. Mr. Fingerroot said he is not challenged by it at all. This development is one of about 120 to 130 subdivisions he has developed in Southeast Michigan and he has never had this issue. He has spent \$25,000 with a hydro-geo person because the City asked him to. He mapped out every well and looked at the soil borings. He figured everything out and said there was nothing there. He said he handed it to the Engineer and said the same thing. He gave \$75,000 just so they can make sure everybody is comfortable. If it goes above and beyond that, he will be a good neighbor and will continue to be a good neighbor. If he damages someone's property he would make good on it. He is concerned they will get into trouble with one thing. He thought they will need to give some discretion to the City landscapers in terms of an absolute height. He is concerned the City landscaper may say if they plant all these trees the likelihood of ten year survival is very low and they should plant in another area because of the soil conditions. He didn't know what it was and he is not a landscape expert. He has a reasonable working knowledge of landscaping and dewatering. He continued there are experts that know a tremendous amount more than he does. He would like them to propose that the City landscaper has some discretion and provide the intent of 18 feet. He said there is a survivability issue when there are larger trees spaded in. He can't quote what it is. It does make a difference what species they are and what the soil conditions are. It is different throughout the site. There may be clay soils in one area, fine sandy soil in another or two feet of topsoil. They have to have a real expert. He said it would be the City landscaper to try to make the City's desires met. He emphasized it is no good if in ten years, if half the trees are dead because they tried to over specify. He said it would be out of his control and will be within the City's experts.

Member Casey said then she will leave it up to the City's experts.

City Attorney Schultz explained that in the agreement, the oversized trees will be planted as depicted and making a reference to that being 18 feet height. As Member Casey pointed out, City staff will do what they do in their normal course to make sure the plan is compliable. Deputy Director McBeth confirmed the plan already has reference to the 18 feet trees.

CM 15-08-119 Moved by Casey, seconded by Wrobel; MOTION CARRIED: 5-2

Final approval of the request of Beck South, LLC for JSP13-75 with Zoning Map Amendment 18.706 to rezone property in Section 29, on the southwest corner of Beck Road and Ten Mile Road from R-1, One-Family Residential to R-3, One-Family Residential with a Planned Rezoning Overlay Concept Plan and to approve the corresponding concept plan and PRO Agreement between the City and the applicant, subject to the conditions listed in the staff and consultant review letters, for the following reasons, and subject to final review and approval as to form, including any required minor and non-substantive changes, by the City Manager and City Attorney's office:

- a) *The proposed development meets the intent of the Master Plan to provide single family residential uses on the property that are consistent with and comparable to surrounding developments:*
- b) *The proposed density of 1.65 units per acre matches the master planned density for the site:*
- c) *The proposed development is consistent with a listed objective for the southwest quadrant of the City, "Maintain the existing low density residential development and natural features preservation patterns"; and*
- d) *The consolidation of the several parcels affected into an integrated single-family land development project will result in an enhancement of the project area as compared to development of smaller land areas.*
- e) *The final approval document requires the developer meet an 80% or greater opacity and plant a minimum of 18 foot trees in the conservation easement.*

Roll call vote on CM 15-08-119

**Yeas: Poupard, Wrobel, Gatt, Staudt, Casey
Nays: Markham, Mutch**

3. Approval to purchase three Force America CommandAll regulating controllers and three wing plows for the City's winter maintenance fleet from Truck and Trailer Specialties Inc., the low bidder, in the amount of \$154,188; and approval of a resolution to amend the budget to add \$24,200 to this line item.

Member Mutch said when this was first submitted a couple of budget years ago, the City was initially going to do six controllers on trucks and the next year the wing plows were added as additional improvements to the trucks. He asked why only three trucks were being requested. City Engineer Hayes said there has been an increase in the cost of technology as these units become more and more popular. The supply has not been able to keep up with the demand. Member Mutch asked if the controllers regulate the disbursement of brine off the back of the truck in certain weather conditions. City Engineer Hayes said they also do the rock salt. They want to make sure they do only what is necessary to conserve the costs. The concern Member Mutch had was that it was a priority of Council to have the fleet done as much as possible in the winter conditions and would rather have six trucks versus three. City Engineer Hayes said there are a lot of similarities being seen here as seen in the construction industry. As the economy has improved, the cost of labor has gone up and would require the vendor to use the mechanics to retrofit the trucks with the proper hydraulics to get the equipment installed. Those costs have increased along with the technology. Member Mutch asked if the equipment stands alone and asked if there is some logic to having the two pieces of equipment done together or other logic. City Engineer Hayes said they are trying to minimize the amount time that the trucks will be out of service. They identified three of their newer trucks that need both the wing plows and the controllers. City Engineer Hayes confirmed that they will be done after the winter season because there is a long lead time in getting the equipment and then to have the retrofit scheduled. They will try their best to get it expedited.

CM 15-08-120 Moved by Mutch, seconded by Poupard; CARRIED UNANIMOUSLY:

To approve purchase three Force America CommandAll regulating controllers and three wing plows for the City's winter maintenance fleet from Truck and Trailer Specialties Inc., the low bidder, in the amount of \$154,188; and approval of a resolution to amend the budget to add \$24,200 to this line item.

Roll call vote on CM 15-08-120

**Yeas: Mutch, Poupard, Wrobel, Gatt, Staudt,
Casey, Markham
Nays: None**

4. Approval to award a construction contract for 2015 Neighborhood Road Program Contract 2 (Asphalt) to Cadillac Asphalt LLC, the low bidder, in the amount of \$1,209,822, subject to final review and approval of form of agreement by City Manager's office and the City Attorney.

CM 15-08-121 Moved by Mutch, seconded by Wrobel; CARRIED UNANIMOUSLY:

To approve an award of a construction contract for 2015 Neighborhood Road Program Contract 2 (Asphalt) to Cadillac

- a) **The alternative proposed by the applicant is adequate for the intended use and is not substantially different from the slope of other pre-ADA sidewalks throughout the City,**
- b) **That, although the sidewalk may not strictly comply with ADA standards, it is not substantially greater than the maximum slope required by the ordinance.**
- c) **That compliance with the requirement would result in practical difficulty to the applicant because the sidewalk has been constructed and would have to be removed.**

This variance is subject to a condition that the Maybury Park Estates Association, as the entity responsible for maintaining the sidewalk as a general common element to the condominium, sign a hold harmless with respect to liability for the slope condition and confirm its obligation to replace the paving with a compliant slope if otherwise required pursuant to the ADA.

Member Casey confirmed that they were approving both variances. She was less concerned about the driveway and more concerned about the potential ADA (American Disabilities Act) implications of the sidewalk. The petitioners were asked to explain the issue with the building of the house. Rachel O'Sullivan explained the original builder went bankrupt and had to hire a new builder. The new builder didn't have the responsibilities as the original builder such as the sidewalk. She has handled a portion of it. In June, they had an application for their temporary certificate of occupancy and they assumed their sidewalk was inspected at that time but it was not. There was a list of write ups that needed to be done before they acquired their permanent C of O. It wasn't until they did their landscape and did the final grade in September, 2014 that they were told their cement was not approved. Member Casey noted the sidewalk needs to be brought up to compliance with ADA. City Attorney Schultz explained the language is included in the motion that requires the hold harmless and the sidewalk to be replaced when it comes up next to be replaced.

Member Mutch said he was sympathetic with the residents because they were put in a difficult position with the original builder going bankrupt and having to act as their own contractor to install site improvements. He questioned the process where a homeowner has to install a sidewalk in front of their house. He wanted to know why there weren't site guarantees to allow the work to be done and why it was put on the homeowner.

Community Development Director Charles Boulard said the roads and sidewalks will be private in this development. The common area roads, sidewalks and improvements will be covered by the site financial guarantees. The various lots are bought by builders and individuals. The responsibility is passed on to them to install the sidewalk and it is not generally efficient to install the sidewalks prior to building the house because they can

be ruined and the sidewalk needs to be thicker at the driveway. In this case, there is a restoration bond of \$1,500 and a \$1,000 TCO bond that was posted. On the TCO, it listed a final grade approval and was measured by the City's consulting engineers. Member Mutch asked for clarification. He asked if the applicant was the resident who posted the bonds. Director Boulard said the TCO bond was and he didn't know if the restoration bond was posted by the original builder and then in the course of the bankruptcy was passed to the homeowner. Ms. O'Sullivan stated it was posted by the original builder. She worked it out within the City offices to put it in their name so it wouldn't go back to the original builder. Director Boulard believed other things required by the TCO have been completed, then the bond money would be released to the homeowner. Member Mutch didn't think \$1,500 was sufficient to replace the sidewalk and Director Boulard agreed with him. Member Mutch felt they could deal with this request, but he didn't want to see situations where a resident was required to install site improvements of this nature. This may become a public street in the future and he didn't think it was fair that the homeowner would be responsible for the cost to replace it. He understood that they don't do the improvements up front but then someone needs to set aside sufficient amount of money so when there is a situation when a builder goes bankrupt, that the City can have the resources to the work and get it done correctly. He understood the contractor didn't do the work correctly and now there is a situation where we ask the resident to do it at significant cost or accept it as it is. He would like more information as to whether this was a one-time situation or does this need to be addressed in the future. Member Mutch also stated that the Homeowner's Association has not been contacted even though the motion states they have to accept liability for the maintenance of the sidewalk and asked what if they don't accept liability. City Attorney Schultz said it may come back, but they are responsible for it. Member Mutch asked if it can be approved without that provision. City Attorney Schultz said no and they are responsible for the fact that there is a non-ADA compliant improvement in their common element. It is important to make sure to put the burden on the Association and not the City. Member Mutch confirmed that there may be a situation where it may not get approved if the Association won't accept it and it may come back to Council without the stipulation.

Member Poupard asked what gives the City the right to permit a non-compliant sidewalk because it is against the ADA laws. City Attorney Schultz said there are construction standards that require compliance and the ability to deviate from that. The hold harmless agreement clarifies the motion by saying at some point in the future when the sidewalk needs to be repaired, it will be repaired to actual standards.

Roll call vote on CM 15-08-123

**Yeas: Staudt, Casey, Markham, Mutch,
Poupard, Wrobel, Gatt**
Nays: None

7. Adoption of Resolution authorizing cost participation under a Federal Safety Hazard Elimination Program, approval of a cost participation agreement with Michigan Department of Transportation for the Grand River/Beck Dual Left Turn

Lane project, which is funded by a federal safety grant in the amount of \$448,160 with a match by the City in the amount of \$188,940, and is offset by Tri-Party Funds; and approval of a resolution to amend the budget to roll over funds from FY14-15 for this budget line item.

CM 15-08-124 Moved by Poupard, seconded by Mutch; CARRIED UNANIMOUSLY:

To approve adoption of Resolution authorizing cost participation under a Federal Safety Hazard Elimination Program, approval of a cost participation agreement with Michigan Department of Transportation for the Grand River/Beck Dual Left Turn Lane project, which is funded by a federal safety grant in the amount of \$448,160 with a match by the City in the amount of \$188,940, and is offset by Tri-Party Funds; and approval of a resolution to amend the budget to roll over funds from FY14-15 for this budget line item.

**Roll call vote on CM 15-08-124 Yeas: Casey, Markham, Mutch, Poupard, Wrobel, Gatt, Staudt
Nays: None**

8. Approval to award an amendment to the engineering services agreement with Orchard, Hiltz & McCliment for construction engineering services for the 2015 Neighborhood Road Program Contract 2 (Asphalt) in the amount of \$105,721; and approval of a resolution to amend the budget to roll over funds from FY14-15 for this budget line item.

CM 15-08-125 Moved by Wrobel, seconded by Casey; CARRIED UNANIMOUSLY:

To approve the award of an amendment to the engineering services agreement with Orchard, Hiltz & McCliment for construction engineering services for the 2015 Neighborhood Road Program Contract 2 (Asphalt) in the amount of \$105,721; and approval of a resolution to amend the budget to roll over funds from FY14-15 for this budget line item.

**Roll call vote on CM 15-08-125 Yeas: Staudt, Casey, Markham, Mutch, Poupard, Wrobel, Gatt
Nays: None**

9. Approval to award an amendment to the engineering services agreement with Orchard, Hiltz & McCliment for construction engineering services for the 2015 Neighborhood Road Program Contract 3 (Concrete) in the amount of \$132,747.

CM 15-08-126 Moved by Wrobel, seconded by Casey; CARRIED UNANIMOUSLY:

To approve the award of an amendment to the engineering services agreement with Orchard, Hiltz & McCliment for construction engineering services for the 2015 Neighborhood Road Program Contract 3 (Concrete) in the amount of \$132,747.

**Roll call vote on CM 15-08-126 Yeas: Staudt, Casey, Markham, Mutch, Poupard, Wrobel, Gatt
Nays: None**

10. Approval to award the contract for as-needed Supplemental Building & Trade Inspection Services and Plan Review Services to SAFEbuilt Michigan, LLC, subject to final review and approval of form of agreement by City Manager's office and the City Attorney for an estimated annual maximum cost of \$115,500 and a budget amendment for an additional \$28,800 in Professional Services Funds.

CM 15-08-127 Moved by Mutch, seconded by Staudt; CARRIED UNANIMOUSLY:

To approve an award of the contract for as-needed Supplemental Building & Trade Inspection Services and Plan Review Services to SAFEbuilt Michigan, LLC, subject to final review and approval of form of agreement by City Manager's office and the City Attorney for an estimated annual maximum cost of \$115,500 and a budget amendment for an additional \$28,800 in Professional Services Funds.

**Roll call vote on CM 15-08-127 Yeas: Staudt, Casey, Markham, Mutch, Poupard, Wrobel, Gatt
Nays: None**

11. Consideration of the 2016 City Council Meeting Calendar.

CM 15-08-128 Moved by Wrobel, seconded by Casey; CARRIED UNANIMOUSLY:

To approve the 2016 City Council Meeting Calendar.

**Roll call vote on CM 15-08-128 Yeas: Wrobel, Gatt, Staudt, Casey, Markham, Mutch, Poupard
Nays: None**

AUDIENCE COMMENT:

Scott Duncan, 1276 Buckboard Circle, asked Council why they would want to destroy a service and business model that has worked perfectly in the last 42 years in Novi. Duncan was the first company in the Community to offer recycling over 20 years ago and provided it for free. Also, they were first to offer 96 gallon trash cans free and over the last ten years have offered 96 gallon recycling carts. Adopting an ordinance that limits innovation such as these examples and withholds the citizens choice, restricts competition and doesn't offer independence of each person residing in the house would not be the best for its citizens.

COMMITTEE REPORTS – None

MAYOR AND COUNCIL ISSUES – None

ADJOURNMENT – There being no further business to come before Council, the meeting was adjourned at 9:03 P.M.

Maryanne Cornelius, City Clerk

Robert J. Gatt, Mayor

Transcribed by Jane Keller

Date approved: September 14, 2015