

**REGULAR MEETING OF THE COUNCIL OF THE CITY OF NOVI**  
**DRAFT – MONDAY, SEPTEMBER 10, 2007 AT 7:00 P.M.**  
**COUNCIL CHAMBERS – NOVI CIVIC CENTER – 45175 W. TEN MILE ROAD**  
[www.cityofnovi.org](http://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 7:01 P.M.

**ALSO PRESENT:** Clay Pearson, City Manager  
Pamela Antil, Assistant City Manager  
Tom Schultz, City Attorney  
Barbara Mc Beth, Deputy Director of Community Development

**APPROVAL OF AGENDA**

**CM-07-09-072** Moved by Capello, seconded by Gatt; **CARRIED UNANIMOUSLY:**  
To approve the agenda as presented.

**Voice Vote**

**PRESENTATIONS**

**1. Automated Inspection Requests and Results Hotline – Steve Rumple**

Mr. Rumple announced the successful implementation of the Interactive Voice Response (IVR) system that was supported and approved by Council earlier this year. The IVR system is an inspection hot line that would improve customer service and would streamline scheduling and inspections for the department. He said a summary report was included in Council packets outlining the system capabilities and a customer survey recently conducted to solicit user feedback. The implementation of the systems was made possible by the support of Council and the coordinated efforts of the IT Department. The dedicated staff members directly responsible for the implementation were Sara Marchioni, Steve Losacco, Malinda Martin, John Weigand, Bonnie Shrader, Andy Gerecke, Ayane Grubbs, Rob Petty and John Hines.

Andy Gerecke, Building Inspector, said the most important component of the IVR system was that it allowed the inspectors to spend more time in the field doing inspections and answering questions for homeowners and builders. It would allow them to enter inspection results and correction codes from the field via their cell phones, and the results would be immediately available for the contractors and homeowners to verify. Mr. Gerecke said overall the comments he had received from builders and developers regarding the system had been positive and most had used the system while working in other communities. He said they liked the ability to call in and verify their inspection results 24 hours a day.

Bonnie Shrader, Customer Service Representative for Community Development/Building Department, said the IVR system had been a great benefit to the department since they went live July 18<sup>th</sup> with a press release on the web site. Since then they had logged over 2,700

calls. She said the new system allowed the clerical staff in the department to do their jobs more efficiently and it freed up more of their time to help the customers at the counter. Ms. Shrader said it was also a benefit to the contractors and homeowners because they could access the system 7 days a week and 24 hours a day to schedule building, electrical, plumbing and heating inspections. She said inspections could be cancelled, their results could be heard and they could leave messages for individual inspectors. All that was needed to do this was the permit number and the inspection line number, which was 248-347-0480. Ms. Shrader said they recently conducted a survey of the IVR system and the feedback was very positive, which was included in Council packets along with a brochure that was given to everyone who came in for a permit.

Member Margolis commended the staff for putting this in place as they just continue to make progress in making this City a much better place to do business. She also commended them for the customer survey and for putting it into Council packets. She thought it showed a group of people willing to take a look and continuing to make changes to make things better. She said a comment she saw a couple of times was that it was more difficult to schedule multiple inspections. She asked if there was a way people could get around that, and had they discussed this internally.

Rob Petty, Director of Information Technology, responded that it was something he and Mr. Rumble had already met about, and they had a list of items/enhancements that they want to work with the vendor, Selectron, to accomplish. He said obviously that was an item they had to address right away and there were a couple others, such as having to wait to hit the prompts. Mr. Petty said they needed to educate the customer and vendor better that they could enter multiple digits. He said they could enter 175 and get to where they want to be.

Member Mutch said another thing that came out of the survey was having the codes to be able to work their way through the system. He asked if that was what was reflected in the brochure, and Mr. Rumble said it was. Mr. Rumble said they were in the process of putting together a tri fold handout with the codes on it that the contractors could put in their wallets. Member Mutch said then this had been available but they didn't have it in front of them. Mr. Rumble agreed and said they had been pretty aggressive about getting this launched and didn't wait for a training session, but put it out there because it was the quickest way to get the information to them. Member Mutch felt as they used this they would educate themselves on the procedure. He echoed the comments of the benefits of the system, and thought Mr. Rumble's staff indicated it would allow them to focus their skills on dealing with those situations where they could really showcase their talents versus handling a lot of paperwork.

Mayor Landry thought the IVR system was indicative of the Novi Community Development and the Building Department. He said they were so overworked it was not even funny. He said with the hospital and the mall what they had done in the last couple of years most cities would go through their entire life without ever having to deal with one of those projects. Mayor Landry said they were dealing with two of them at the same time and were doing a marvelous job. He noted he had been on Council for six years and when he started in 2001 he heard a lot of complaints about the Building Department, and he was now hearing much fewer complaints. He said they were doing a great job, improving everyday and they were not afraid to look at themselves and say "how can we improve". Mayor Landry said he wanted them to know that Council supported them because they were doing a marvelous job, and for them to keep it up. He said this was indicative of the way we are keeping up, we are moving and we

are upping our game. He said this was outstanding and they deserve a great deal of credit for this, congratulations.

## REPORTS

### 1. SPECIAL/COMMITTEE - None

### 2. CITY MANAGER - Fall for Novi - September 15th from 10 - 1 p.m.

Mr. Pearson invited the community to the City and Community Open House, Saturday, September 15<sup>th</sup> and was known as Fall for Novi. He said it would be at the Civic Center campus and the Police Department would be open for an open house and review. He said the Civic Center would have booths and tables of information for residents and business people from 10 A.M. to 1 P.M. Mr. Pearson encouraged community members and appreciated Council's support.

### 3. DEPARTMENTAL - None

### 4. ATTORNEY - None

## AUDIENCE PARTICIPATION

**Jonathan Brateman**, Jonathan Brateman Properties, was present and had given handouts to Council to review. He said when he was before Council in the spring and had asked for a text amendment on the NCC amendment that the district include instructional centers. He said it was specifically targeted at the complex at Grand River and Karim and it was previously known as Wolverine Orthotic. He said they were working with a Japanese instructional center who have units throughout the country and a preparatory school system would more accurately define what they do. He said they continued in the lease negotiation process, the text amendment was passed unanimously by the Planning Commission and City Council. He said with the understanding that the use would be able to be done, the lease was signed and approximately June 11<sup>th</sup> the landlord, George Pascaras, brought a letter with the use of the premises to the Building Department. He read the use "office use and tutorial counseling services to children 2 ½ years old to 18 years old" with approximately 15 students at any given time. Mr. Brateman said they were working through the plan for the Building Department and waiting for a building permit. He said there seemed, at the last moment while waiting for the permit, there was a question at the Building Department and going back to the Planning Department, and back to the client, etc. exactly what do these people do and was it allowed. He said there was some interpretation by some that this could be a day care center. He said it was not a day care center and they would be teaching computer skills and language skills.

Mr. Brateman said he was asking for direction from the Council to the Building Department on Instructional centers and that it was understood that instructional centers were a distinct and separate classification from day care centers. He said that training a child under 5 years old might occur and while that child might be a preschooler, never the less, it did not make an instructional facility whose entire purpose was the teaching of preschoolers in language or use of computers into a day care center. Also, they were training a child in the absence of their parents for more than one hour but less than four hours occurs it did not define the space as a day care center. Also, that preschooler's instruction would be allowed as long as the space

committed to that use was the lesser of 25% of the space or 750 sq. ft. Mr. Brateman said they had a tenant that was wondering if they could get into the space and whether the landlord would be able to get a building permit to go forward. He said he was asking the City to give an answer to the Building Department saying there was a difference between instructional centers and day care centers and this fit an instructional center and there was no reason a building permit should not be given.

Mayor Landry asked Mr. Pearson for a response from the Administration.

**Lynn Kocan**, 23088 Ennishore Drive, was present to discuss comments regarding Consent Agenda Item C, modification of the Meadowbrook Lake Dam. She said a lot of work had been done in Meadowbrook Lake Park this summer with regard to the streambank erosion control etc. She said the experience with Restoration Dredging who did that job was truly commendable. However, they now had an excessive area cordoned off with regard to what was being allowed to be cut or not cut in the park. She said the indirect part of this directly related to Item C had to do with how much of the active area of the park would now be preserved as erosion control area, and how that translated to what would be done in the dam area. She said in some areas they couldn't cut within 10-15 ft. of the stream and in other areas it was closer to 60-80 feet away from the stream. She was hoping the City would get back to them regarding the plans and said Member Mutch suggested they should have a meeting with the homeowner's association and the City to determine what would happen there. She said going back to the recommendation of June 2005 from Anderson Eckstein and Westrick, it looked like items 1.6 and 1.7 had been done with the streambank erosion control. Item 1.8 had to do with the streambank being planted but it was the other vegetation along the reshaped banks of the stream she was questioning. She wanted to know if they would be able to cut it because it was intruding on part of the active area of the parkland.

She said, with regard to the June 2005 letter, there was a recommendation 1.5 and it talked about saw cutting channels into the apron to allow the stream to flow without any backwater. She didn't think it was a part of the summer job or the RFP for tonight. She said it sounded like if the saw cutting was done it would aid in erosion control efforts which might be able to minimize the amount of uncut area in the parkland. It was only a \$5,000 to \$10,000 recommendation and she believed it was minor in terms of construction award amount but could be major with regard to erosion control of the realigned streambanks done this summer. The dam modification in front of Council tonight looked like they were going to take out all of the concrete and then do erosion control. She assumed it would be similar to what had been done this summer. She asked how that would impact the playground area and the ball diamond that were currently there. She said if they started adding 30, 40, 50 or 60 feet on each side of the streambank area, they would lose their parkland. She asked that her concerns be considered as part of the project and that Council take the active parkland area of Meadowbrook Lake residents into consideration in their decision.

## **CONSENT AGENDA REMOVALS AND APPROVALS**

Mayor Pro Tem Capello removed Item D.  
Member Gatt removed Item C.

**CM-07-09-273      Moved by Margolis, seconded by Paul; CARRIED UNANIMOUSLY:  
To approve the Consent Agenda as amended.**

**Roll call vote on CM-07-09-273      Yeas: Landry, Capello, Gatt, Margolis, Mutch,  
Paul  
Nays: None  
Absent: Nagy**

- A. Approve Minutes of:
  - 1. August 27, 2007 – Joint Special meeting
  - 2. August 27, 2007 – Regular meeting
- B. Enter Executive Session immediately following the regular meeting of September 10, 2007 in the Council Annex for the purpose of discussing pending litigation, labor negotiations and privileged correspondence from legal counsel.
- E. Approval of Traffic Control Order #07-03 for the installation of a Do Not Block Intersection sign for northbound Beck Road motorists at Sierra Drive.
- F. Approval of Traffic Control Order #07-04 for the installation of a No Parking sign on the south side of Brownstone Drive from Holmes Road to 100 feet east.
- G. Approval of Traffic Control Order #07-05 for the installation of No Parking signs on the east and west sides of Garfield Road from Eight Mile Road to 500 feet north.
- H. Approval to award the 2007 Chip Seal Maintenance Contract to Highway Maintenance Construction in the amount of \$ 44,878.50.
- I. Approval of Claims and Accounts – Warrant No. 752

#### **MATTERS FOR COUNCIL ACTION – Part I**

- 1. **Consideration of Approval of form of Agreement Regarding Transfer of Land, involving City-owned property on the north side of Twelve Mile west of the CSX Railroad (parcel nos. 22-09-451-008 and 22-09-451-009) and other property located on Nine Mile Road adjacent the City's Rotary Park (parcel no 22-35-200-016).**

Mr. Pearson stated this was a land transfer that had been discussed and in the works for quite some time. It was now at the point that they felt comfortable bringing it to Council for their consideration and further discussion. Mr. Schultz had also been working on this.

Mr. Schultz said the property involved was City owned property on Twelve Mile Road just west of the CSX railroad tracks on the north side and east of West Park Drive. He said the City owned the property outright but it was subject to an agreement with the owner of property adjacent and to the west by which at some point when the City decided what of that Twelve Mile parcel it needed for right-of-way it agreed it would convey the remainder of the property to the owner of the former Steelcrete property. Obviously, the City had not done any right-of-way improvements on Twelve Mile so far but the adjacent property owner had come to the City, as

did the predecessor owner, and said if the City agreed to do this now, they would agree to do some other things. He said the other things primarily at issue in the agreement are 1) to clean up some area that the wetlands consultant had said had some materials in it. The property owner to whom the City would convey this would do that at their own expense and the City would not bear the cost. 2) The second item that the property owner adjacent had talked about doing was, at this point, conveying a piece of property that they got in a tax sale that was adjacent to Rotary Park; convey that to the City outright as part of this transfer arrangement. Mr. Schultz said the agreement before Council was essentially a property transfer arrangement. The Council would decide how much right-of-way to keep and out of the 9.5 acre parcel, it broke down to about two acres of property 150 feet from the center line of the road adjacent to the railroad tracks and then it steps down. He said in exchange for the City agreeing to transfer the remaining 7.5% we have an agreement with regard to the clean up and the transfer of the other property on Nine Mile adjacent to Rotary Park. This version of the agreement had been in the works for an awfully long time and as of this morning he thought the other side was interested in this final version. He said they were looking for whether Council wanted them to move ahead and finalize this. It would be subject to final review by the City Manager and the City Attorney's office, finalize the exhibits to see if there was anything they missed.

Mayor Landry said they were looking for direction from Council as to whether to pursue this or not but if Council was inclined to pursue this the final contract would have to be reviewed by Mr. Pearson and Mr. Schultz. Mr. Schultz agreed. He said if there were any major changes they would bring it back, if it was essentially this form with some tweaks they would let Council know what changed and give Council an opportunity to see whether they wanted it back.

Member Paul asked how much property the City needed to retain on Twelve Mile if they ever wanted to expand to five lanes. Mr. Schultz said the Master Planned right-of-way for that was 180 feet for the entire Twelve Mile, which was consistent with what they had on the remainder of Twelve Mile. He said it was a 90 foot half right-of-way and would accommodate what the City had to the east of there. He said from their perspective and as he understood it from the City engineers that final 90 feet was sufficient for that widened Twelve Mile Road as planned.

Member Paul asked if that was inclusive in this document, and Mr. Schultz said it was. She asked if the person asking for the transfer would be willing to pay the legal fees that had been accrued so far for the City because this was something they requested. Mr. Schultz said he didn't think so. He said they had an on going discussion with them about whether or not this was something that needed to be done now or could wait until the City did the improvements to the road. He thought they had, on the table, what they were willing to offer in the 2.3 acre parcel on Nine Mile Road. He said the clean up could be substantial and they had talked about attorney's fees but it was not on the table right now. Member Paul asked what the legal fees were at this point. Mr. Schultz responded that he had not added those up but it had been ongoing since 2002 with the prior property owner. Member Paul asked what the estimated cost of the wetland clean up was. Mr. Schultz said he wasn't sure there had been a formal amount placed on it. Member Paul said it was contaminated and Mr. Schultz said they didn't know that. In fact, at this point, he had no reason to think that it was. He said it was materials and they would go through and do whatever environmental testing was required, and they had a certain period of time to do that. If it turns out that it was more than they expected, they have the ability to decline the transaction as the City would when the Nine Mile property was looked at. Member Paul asked if that would be reflected by Dr. Tilton and ECT, and would they be

looking at both the Nine Mile and Twelve Mile site. Mr. Schultz said yes, they had looked at the materials on the Twelve Mile property and identified the area where they likely needed to be removed. He said the City would have to issue a wetlands permit as some of it was in the wetlands. In terms of the Nine Mile property, at this point, it doesn't look like there's anything there but they would do that due diligence within the next 60 days. Member Paul said looking at the Nine Mile parcel she didn't see it as being a large gain for the City. She said they already had the sidewalk, street right-of-way that's needed and it was just adding to parkland space. She said it really didn't enhance a large area that they would be able to do a whole lot with. She said when looking at Twelve Mile she wanted to eventually see that as five lanes all the way to I-96 but didn't know if they would have the money to do that any time soon until they talk with the voters and see what they wanted to do. Member Paul said she would like to see a little more for the party of interest. They really want to see this property be exchanged, and she asked if there was any direct benefit to the City.

Mr. Pearson said it was two fold. It was good faith with the property owners to the west since there was an agreement that they were entitled to the remainder property. The analysis showed that by all intentions the City would be retaining the Twelve Mile right-of-way frontage needed and there was a remainder property. Also, it was putting the property back on the tax rolls and taking it off the City's, and it would be the clean up, restoration, etc. of material that had been accumulated on this semi forgotten property over the years. He thought those would be the benefits and why it was worthy to bring it to Council consideration. Member Paul asked if he could tell her about the taxes the City would be accruing on the land. Mr. Pearson said minimal as vacant property and more substantial when they follow through on a development proposal. However, he had no idea what kind of physical improvement they were talking about. Member Paul said she was in favor of it but she hoped that they would see if they could pay for legal fees.

Mayor Pro Tem Capello asked if the City was under a written agreement with them to transfer the property to them. Mr. Schultz responded in March 1998 when the City was putting together the right-of-way for the Taft Road improvements and utilities it agreed with the former owner that in exchange essentially for a deal on the cost of those easements when the City was done with this property, which the City owned outright then, it would transfer the remainder that we didn't need for right-of-way. He said there was an unrecorded written agreement binding on successor's heirs and assigns. Their position was the City should know now and he didn't think the City was obligated to do it now. Mayor Pro Tem Capello asked if it ran with the land or was it personal to the Steelcrete Company. Mr. Schultz said it purports to run with the land. Mayor Pro Tem Capello said then at some point the City would be legally obligated to transfer something to them. Mr. Schultz said eventually. Mayor Pro Tem Capello said he was concerned with Member Paul saying she thought the City would have a four lane boulevard along there somewhere. He said the City purchased the land from them and the transfer back do they have to buy it back at the value that the City purchased it or was it an actual gift. Mr. Schultz said the City already owns the property. He said the City bought the John Carlo property separately, so the City owned it but they knew it was adjacent to their property and so in relation to the City's negotiation with Steelcrete for easements on that property, not the City property but the Steelcrete property, this was part of the consideration. Mr. Schultz said it was "here's what you pay us, it's whatever amount and we could get more, but the extra compensation would come down the road when you don't need the remainder of the John Carlo property, transfer what you don't need to us, Steelcrete". Mayor Pro Tem Capello asked if there was about 7 ½ acres there. Mr. Schultz said 9 ½ acres right now, 7 ½

would be transferred. Mayor Pro Tem Capello said in the market that would be a million dollars and asked if the City got that much of a concession when we negotiated the cost of the right-of-way. Mr. Schultz asked if he meant the arrangement back in March of 1998; he said he had not gone back and decided whether that was a good deal to review the agreement.

Member Mutch said he didn't remember all the details of the property acquisition for West Park Drive, but thought that Steelcrete owned a substantial portion of the property that might have been involved in that. When Mr. Schultz talked about the property exchange it wasn't just frontage along Twelve Mile but was more the property to allow West Park Drive to be constructed to the north. Mr. Schultz agreed. Member Mutch said in addition to the roadway there was water and sewer extensions taking place at the same time. So he understood the concern of some Council members. He thought if they saw some of the agreements from 1998 and saw the properties involved it might not look like such an offset or so disproportionate. He said in terms of the road right-of-way, his understanding was the minimum they were reserving was 90 feet half right-of-way. Mr. Schultz said they were actually reserving 150 ft., 120 ft., and then the minimum was 90 ft. furthest away from the railroad crossing. He said there was a provision that said if they didn't end up using all 150 ft. up by the railroad track, they would have an obligation to convey that at the end too. However, that would be at the City's discretion. He said the smallest the City would have was that full 180 ft. Member Mutch said when talking about the right-of-way width they were talking about one half going to the center line of the road, so at the minimum it could accommodate 180 ft. wide roadway. Mr. Schultz said he was correct. Member Mutch said Twelve Mile in front of Twelve Oaks Mall was a 90 ft. half right-of-way and that was a four lane fully improved boulevard with sidewalks so he didn't have any concerns that there wouldn't be enough along the entire length. Member Mutch said there was language in the agreement that talked about them being able to fill certain portions of the property. He asked if they would be able to touch any of those areas with fill outside of the regulated wetlands, Exhibit D, where it showed wetland areas beyond the drain easement. Mr. Schultz replied that was the intention. Member Mutch asked if that was clear in the language. Mr. Schultz believed it was clear but one of the last things they would do would be to make sure the exhibits, notes and all the plans reflect what the expectation was.

Member Mutch said at the point that the City took title to the Rotary Park property, assuming everything came back clean with the environmental, he would like to see it come back to Council to be formally designated as parkland as was done with recent acquisitions. He thought it made sense to incorporate that into Rotary Park.

Member Margolis said her understanding was that they were agreeing in this agreement to clean up of both the area that was being transferred as well as the area that was being retained by the City. Mr. Schultz said that was correct. He didn't think that was where the materials were found but that would be an obligation, if the City found them. She said he had talked about doing due diligence on the piece that the City was receiving adjacent to Rotary Park to make sure, before that's transferred, that there were no clean up issues on that piece. Mr. Schultz responded she was correct. Member Margolis said there had been talk about legal fees and she assumed that most legal fees associated with this agreement were pretty much costs that had been expended and used. Mr. Schultz said he would think so. She asked if there was anything in the agreement when this eventually got transferred, because it would have to be done at some point, that there be any consideration of legal fees at that point. Mr. Schultz responded not in the agreement as it stood now. Member Margolis said then this was



a wash based on it's doing it now instead of later and we're not losing legal fees that we're paying at this point that we wouldn't lose later. Mr. Schultz agreed. He said this would be part of that finalization March 1998 agreement and he didn't believe that agreement said anything about who would cover their costs, and typically you end up covering your own costs in any kind of closing transaction. He said the March agreement didn't necessarily contemplate having a written agreement like this but on the other hand the City was doing more than just giving a deed to the property. The City was also getting other property, waivers and all of that was a little extra work. He said in terms of who would pay for those amounts that had already been expended at this point they were costs that had been paid by the City. Member Margolis said and would normally be paid by the City, and Mr. Schultz agreed.

Member Margolis stated she was comfortable with the agreement given the comments she made in terms of the things they needed to check up on. She thought this made sense; the City was retaining the right-of-way needed, getting extra clean up, getting extra parkland and it made sense to her to move this forward.

Mayor Landry commented that it appeared that the City cut a deal in 1998 and that at some point the City would have to give this property up. He said there had been an offer to give it up now and in exchange for giving it up now the City would get extra parkland and they would clean up a piece of property that clearly needed to be cleaned up. He thought it made sense to do it now and was convinced that the City was reserving enough property in case it wanted to expand the road. He thought this was something that should be done.

**CM-07-09-274      Moved by Paul, seconded by Margolis; CARRIED UNANIMOUSLY:  
To approve form of Agreement Regarding Transfer of Land, involving  
City-owned property on the north side of Twelve Mile west of the  
CSX Railroad (parcel nos. 22-09-451-008 and 22-09-451-009) and  
other property located on Nine Mile Road adjacent the City's Rotary  
Park (parcel no 22-35-200-016).**

**Roll call vote on CM-07-09-274      Yeas: Capello, Gatt, Margolis, Mutch, Paul,  
Landry  
Nays: None  
Absent: Nagy**

**2. Consideration to purchase eight (8) 2008 Ford Crown Victoria Police Interceptors for the Police Department Uniform Patrol Division from Gorno Ford of Woodhaven, Michigan through the Oakland County cooperative bid purchase program, in the amount of \$164,152.**

**CM-07-09-275      Moved by Gatt, seconded by Margolis; CARRIED UNANIMOUSLY:  
To approve purchase of eight (8) 2008 Ford Crown Victoria Police  
Interceptors for the Police Department Uniform Patrol Division from  
Gorno Ford of Woodhaven, Michigan through the Oakland County  
cooperative bid purchase program, in the amount of \$164,152.**



Member Mutch said OHM was the second lowest bidder, and the major issue with the lowest bid was the timeline based on the time schedule the City had of wanting this completed within 240 days. He asked if that was correct. Mr. Pearson said time and also OHM had a high degree of familiarity with the system and therefore they could do this much more efficiently. He said based on the qualifications the City would save with OHM in the long run. Member Mutch said URS was talking about not being completed until sometime late in 2008, which was quite a bit past the City's deadline. Mr. Pearson agreed.

**Roll call vote on CM-07-09-276**

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

**Nays: None**

**Absent: Nagy**

**4. To Consider a Completion Agreement for SP#03-46 Provincial Glades RUD  
in accordance with the requirements of Chapter 26.5.**

Mike Fellows, petitioner, was present and said they were seeking relief from the strict application of the ordinance relating to the content of completion agreements. He said the City staff had provided him with the proposed completion agreement and asked him to revise, edit and comment, which he did and provided to Council. In addition, he submitted a short letter describing his reasoning for those revisions. Mr. Fellows said they were very happy to do a completion agreement and to put into writing a commitment to finish up the uncompleted things that were in the Provincial Glades job. He thought the schedule for the completion of those items should be appropriately tied to the type of development that it was and the natural sequence of construction for that kind of development. He said it was quite a bit different from a small single use building as far as completion of landscaping and tree items.

Mr. Fellows said there were already 13 or 14 existing letters of credit, financial guarantees, which were posted and were in place for this job. They were just renewed a couple of months ago and to revise them now was additional expense to them and the ones in place were perfectly adequate. He asked that, if they do revise them, they wait until the current ones expire and then put the new ones into place. He said there was a second house under construction in that job, which was very near completion and the owners were very anxious to move in. He said they didn't submit that plan as a model because they were pretty sure, and as it turned out they were right, that the utilities would be accepted and except for this completion agreement issue, which he wasn't aware of, there would be no problem issuing a C of O for that house. Mr. Fellows commented that he was informed by the City attorney that pending the completion and signing of the completion agreement the C of O for that house would be held up. He said since the job had 70 homes and would normally get either three or four model C of O's anyhow he was asking that if there was any discussion or the completion agreement lingers longer than the completion of the house that the homeowners would be allowed to move in and the C of O would be issued.

Mr. Pearson said Provincial Glades started the residential a couple years ago, and it was a beautiful development on Nine Mile Road just east of Napier Road. He said he was there today and the road was in place, obviously without the final lift and a number of utilities. He said the development had not taken place at the speed and occupancy that had originally been contemplated. The City did require a series of financial guarantees for the protection of both

the City and the residents that live near the development and also the residents that are the first ones in the development. Mr. Pearson said this was unique in that before today they didn't know that anyone would be in there. He said the City had pretty substantial and clear requirements for financial guarantees. Letters of credit were covering different types of improvements, which were tied to specific improvements. There might be 14 letters of credit overall but the City didn't have the latitude to say they were going to take money from A and cover B because then there wouldn't be any money to cover A. Mr. Pearson said the new ordinance required that the completion agreement come before Council after two years, which was the point this was at now.

Ms. McBeth said the streets and utilities were partially in and inspections were done in July of this year to verify the completion of these items, and that was where they started with the completion agreement. She highlighted the several differences between the City staff's recommended completion agreement and the applicant's modification to that. 1) There was a reduction in the performance guarantee multiplier for the cost to complete the remaining items from the 200% multiplier as the ordinance required to 150%. 2) There was a modification for the forum of posting the performance guarantees instead of the funds being posted as an irrevocable letter of credit the developer would prefer to post a performance bond. 3) There was just a modification for the initial period of consideration for that term for that financial guarantee from one year to two years. 4) The developer proposes numerous modifications to the City's consulting engineer's estimates for costs of completion throughout the paperwork that Council had this evening. 5) The developer proposes to modify the suggested timeframe for completion of the portion of Singh Trail for this property from no later than June 29, 2009 as staff had suggested to sometime before the C of O for the 63 homes out of the 70 home development or when the completion of the remainder of Singh Trail took place. 6) The applicant proposes to modify the time and dates for the installation of the woodland replacements, restoration of the wetland buffer, and installation of the top course for the paving along Nine Mile Road, which was required as part of the RUD agreement. 7) The applicant proposes to remove from the financial guarantee just some small repairs to the adjacent property as noted by the City's consulting engineer in the field. There was a sidewalk flag offense and some driveway damage that recently took place.

Ms. McBeth said they were hoping to hear Council's comments regarding this, and they hoped to come back with something that everyone would be agreeable to for a completion agreement.

Mayor Pro Tem Capello said he saw that a couple of the comments had to do with the new Financial Guarantee Ordinance. He wanted Mr. Fellows to understand why he was going to be opposed to a couple of those things. He said the major problems Council has had in the City in regard to completion had been residential subdivisions, and that was why the ordinance was amended and was why the requirement for the \$250,000 in cash, the first portion of the guarantee, was there and was why the 200% was there. He said they had spent a lot of time with Cousineau, Guidobono and Harris and came up with something they believed was workable for the builders. He commented that it was something that should work for everybody. Mayor Pro Tem Capello understood that there were problems out there and there were certain things that Council couldn't go back on. He thought that when they felt like they were starting to get into financial trouble Council should work with him but he didn't think they could work with him by reducing his financial commitment and increasing the City's risk to get this completed.

In regard to the extension of time to complete the Singh Trail, Mayor Pro Tem Capello wholly agreed. He said if they didn't have the cash flow coming in to do that at this point, he didn't have a problem with that. He didn't want to keep it open that wide to wait until the 63<sup>rd</sup> home got its C of O. He said he hoped that with Administration, in regard to the home he talked about, if completed before the agreement was done a temporary C of O could be given subject to completion of the agreement as long as, in good faith, they were moving forward. He commented that any of the areas that Council could help without creating additional risk to the City, he would be more than willing to look at and work with Mr. Fellows. Mr. Fellows was one of the few builders that was still building houses in Novi, and there was no reason for Council to tie his hands and make it more difficult to do that.

Mayor Pro Tem Capello understood, regarding the woodlands and wetlands, why they should probably jump on that and try to preserve the buffers and those types of things. The woodland replacements were costly to Mr. Fellows and he didn't have a problem if Mr. Fellows planted those trees two or three years from now because someone in the community would still get the benefit of those.

Mayor Pro Tem Capello said it looked like the sidewalk issue was somewhat resolved and he would leave that up to Administration, and whatever they worked out would be fine with him. As far as the letters of credit that are in place, Mayor Pro Tem Capello understood there was a cost to Mr. Fellows to renegotiate them in the middle of the term. He said he didn't have a problem waiting until they come up again and then letting him renegotiate them as long as Ms. Smith-Roy was confident that the City had sufficient financial guarantees to cover it. He thought they might have to get another bond or guarantee for a certain amount of money but overall he was fine with that concept, and felt there was no sense in making him spend that money now.

**CM-07-09-277      Moved by Capello, seconded by Margolis, CARRIED UNANIMOUSLY:  
To modify the suggested timeframe for completion of the portion of Singh Trail for this property. In regard to the home about to be completed, a temporary C of O be given subject to completion before the agreement was done as long as they were moving forward in good faith. To modify the time and dates for the installation of the woodland replacements and restoration of the wetland buffer. Also, that the sidewalk repair be made by Mr. Fellows before fall, that the letters of credit that are in place be renegotiated when they come up again as long as the Finance Director was confident that the City had sufficient financial guarantees. Also, when these items are incorporated into the agreement it be brought back to Council.**

Member Paul said she and Mayor Pro Tem Capello sat on that committee together with all of the developers trying to make heads or tails of this because the City had developers who put it in financial risk. She said the City had been completing roads that were in ill repair that some of the developers had left the City. Member Paul said that was why Council was covering the risks and had changed the ordinance. She asked Ms. Smith-Roy and Ms. McBeth to clarify what their intent would be regarding the sidewalk.

Ms. McBeth said there were several damages to the adjacent property and it was not clear whose fault this was. She thought Mr. Fellows had offered to make a certain amount of repairs. She thought they would all prefer that this be completed this fall rather than waiting the two years, which was the recommended timeframe for the completion agreement. She said they would rather resolve this and not have it as part of the completion agreement.

Member Paul said that was the only comment that she wanted to talk with the maker of the motion about. She said the staff clearly made the comment that they would like that to be repaired this fall for good reason. Member Paul felt they couldn't leave the sidewalk in ill repair if someone would be walking on it, it was unsafe and with winter coming it was not a good idea. She said it was not a large section.

Mayor Pro Tem Capello said his comment was to send it to Administration and whatever they worked out would be fine with him, and he figured they would do whatever they needed to do. He didn't mind that as a friendly amendment if the idea was to let two of the Administration and Mr. Fellows figure out what was really wrong. He didn't think they had identified whose fault it was.

Member Paul said that's why she asked for clarification because she thought they really wanted that in the letter as what was written and what had been verbally stated.

Mr. Fellows said the sidewalk was not related to any damage to adjacent property. He thought it was just a broken flag that was on their property at their entrance and was their frontage that no one walked on. He said they would be happy to fix it before fall. The repairs to adjacent property was a different issue and it was not clear how that was caused. He said their property was being developed and the sewer line was being put in the same time a water main was being installed by the City and both Provincial Glades contractors and City contractors were up and down that street. He said there was also damage to a fence and to the grading of property owned by Mr. Visnyak on the other side of the road. He said in an attempt to be a good neighbor he had already reimbursed him for some cost for his fence repair and had also gone out, at their expense, and regraded his right-of-way and put some top soil out there. The only thing that remained to be fixed, that he was aware of, on his property was a 40 ft. piece of fence. Mr. Fellows said he didn't know who caused the damage but didn't think it was fair to ask him to post a financial guarantee to fix something that they didn't know he broke. He said it was a very minor thing and he had hoped it wouldn't be an issue but he was against being on the hook for money, especially at 200% of someone else's inflated estimate to repair that property.

Member Paul said the main thing she was concerned about was the sidewalk and let the City Administration work out the fence. She wanted the sidewalk being fixed by Mr. Fellows as a friendly amendment. Mayor Pro Tem Capello accepted the friendly amendment and said the understanding was that Mr. Fellows was not going to post the financial guarantee until it was proven to the City that he caused the damage.

Member Paul said she was in agreement with what had been stated previously and hoped Mr. Fellows understood that Council was trying to protect the citizens and not trying to hurt him in any way as he was one of Novi's business citizens they were hoping to work with in the future as well.

Member Mutch asked if there were two homes completed in his development. Mr. Fellows responded there was one completed and one that was very close, and the third one just got started. Member Mutch said the City was asking for financial guarantee of \$1.8 million total. Mr. Fellows said if all of the City's consultant estimates were used and the 200% multiplier was applied, he thought it was over \$1.8 million. Member Mutch said he was familiar with their work and said the first phase was great and then the economy went south and the second phase had been a challenge and Mr. Fellows had a lot more visibility at that location than the location on Nine Mile. He recognized that the site was a significant challenge and he said the numbers were big and jumped out at him. He thought some of the concerns Mr. Fellows expressed regarding what Council was asking him to guarantee money for in terms of what needed to be completed and whether that was paid up front or at a certain percentage were legitimate concerns. On the other hand a lot of those meetings preceded his time on Council, so he didn't have the familiarity with a lot of the past problems other than the general discussion as well as the details of what the committee members who worked through it went through. Therefore, to a degree, he would defer to their experience and expertise but he would be open to looking at some of these. He said the Singh Trail was an important component of the park system when completed, but he had more confidence that Mr. Fellows would be completed than he had with the rest of it would ever be completed. He said the reality was that Mr. Fellows was building and there was nothing going on with the other property. He thought they were looking at several years minimum before seeing that kind of work completed based on how things were going now. Member Mutch said regarding financial issues, he thought they absolutely had to protect the City's interests, and didn't want to leave either the City or residents who were moving into that development on the hook, if Mr. Fellows was not there. However, Council had to balance that with the reality of what this economy was today. He said when a reputable builder and developer had a development with a lot of selling points to it, and they had only sold two homes out of 70 that was a pretty stark number and was something that Council had to take into consideration as they worked with Mr. Fellows. The last thing Council wanted to do was hammer him to a point where he couldn't financially afford it. He said he would look forward to what came back from Administration based on Mayor Pro Tem Capello's comments.

Mayor Landry echoed the comments of Mayor Pro Tem Capello and would not be in favor or altering the numbers. However, he would be OK with extending the initial period from one year to two, had no problem with when the Singh Trail had to be done and was sure they could work something out that was fair to Mr. Fellows. He didn't think it made sense for Mr. Fellows to have his part of the trail there and the rest of it not be there. It didn't make sense to put him through that expense. Mayor Landry thought something could also be worked out regarding the woodland replacement and the wetlands preservation regarding the timing of all that. He said it appeared that they had worked through the sidewalk flag and let's get to the bottom of this because if it wasn't Mr. Fellows' fault he shouldn't have to pay for it. He applauded Mr. Fellows for making the first effort to be a good neighbor with respect to his neighbor. He said he would support the motion, and asked if the motion proposed gave Administration the direction they needed. Mr. Pearson believed it did and looked forward to working this out with Mr. Fellows.

**Roll call vote on CM-07-09-277**

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

**Nays: None**

**Absent: Nagy**

**5. Consideration of Ordinance No. 07-157.04, an amendment to the Novi Code of Ordinances, Chapters 31 (Streets, Sidewalks and Other Public Places), to add requirements to address franchise utility construction in the City's rights-of-way.  
Second Reading**

Mr. Pearson said this ordinance had been revised based upon input from Bright House and AT&T but in a large perspective the ordinance was a recommendation from staff and the City attorney on ways to strengthen the protection of the City's rights-of-way. He said there were a lot of utilities and a lot of people doing all types of work and it was incumbent upon the City for future projects to have a good handle on where these private utility improvements were being made. Mr. Pearson said also, to protect the public health, safety and welfare in terms of crisscrossing and conflicts of utilities. He said the ordinance had been discussed in length by staff and others to make sure they understood what other people were doing, and the objective in no way was to needlessly or unnecessarily hamper utilities who were making investments or improvements in providing very essential services. He said they felt strongly that what was before Council was a good balance of all of those things.

Mr. Schultz said in Council packets was a letter from his office under Kristin Kolb's signature from September 3, 2007, and what they had tried to do was outline for Council with bullet points, bolding and italics, exactly what the changes were. He also received a letter, as well as Council, from Dickinson Wright who represented AT&T and it looked like many of the comments were similar to the ones his office had received. Mr. Schultz said City staff and City officials met directly with AT&T and got a list of objections which looked to be similar. He said there was another document in Council packets that had a bullet point response to each of those to the extent they were able to respond.

Mr. Schultz said what they had done in response to the Dickinson Wright points and with correspondence from Bright house was to make a few changes, which were outlined on the first and second page of the September 3, 2007 letter. He said some were substantial and some were not, and some were clarifications. Mr. Schultz said of those that were substantial include the establishment of a variance procedure that would allow the City Engineer to address some of the parcel by parcel concerns that were outlined in the Dickenson Wright letter where some of the standards might not make sense depending on the facts. He said this would give Mr. Hayes or his office the authority and actually set some standards on how he would exercise that, since the practical difficulty standard was in the City's Code of Ordinances already. In addition, they had a general appeal of decisions made under this permit process directly up to the City Council, and this was not just AT&T it would be anyone doing anything in our right-of-way would be subject to this ordinance and would have that authority.

Mr. Schultz said they had said in correspondence to the Council that there was a statute that allowed use of City rights-of-way by many different users including these cable facilities, and this was not intended to stop that. It was an effort to set a reasonable standard set of rules that everyone would live by and allow the City to manage its right-of-way. Mr. Schultz thought it was a reasonable effort, and obviously there had been some disagreement and that was the issue for Council tonight.

Mayor Pro Tem Capello commented he saw the comments from AT&T and attended a meeting with them, and at the meeting they provided no substantive comments in regard to the proposed ordinance. He said as a resident of the City he saw a real need to have these boxes



regulated, and he didn't think the permitting process was any different than the process in place now. He didn't believe it would slow anything down and if AT&T believed it would slow them down in regard to getting a network in place in the City of Novi, then he would suggest they start moving right now.

**CM-07-09-278**      **Moved by Capello, seconded by Margolis; CARRIED UNANIMOUSLY: To approve Ordinance No. 07-157.04, an amendment to the Novi Code of Ordinances, Chapters 31 (Streets, Sidewalks and Other Public Places), to add requirements to address franchise utility construction in the City's rights-of-way. Second Reading including the comments from Mr. Schultz's office relative to some of the comments from AT&T.**

## **DISCUSSION**

Member Paul said it was not just AT&T. She remembered the gas company coming in on Taft Road and on Novi Road where they had to do major repairs with the DPW fixing a water line that cost the City a lot of money on Novi Road. The gas company came along Taft Road and did some repairs and had great damage to the woods that was there and the City had to restore them. She said there were a lot of complaints from the residents of Addington Park a long that Taft/Ten Mile corridor. This was just to protect all of the City right-of-ways and not just from one company but from all the utilities that use it. Member Paul said she just wanted to protect the residents as much as possible because of how much the City had to pay out to do the repairs in the instances while she had been sitting on Council.

Member Mutch said he would second the comments of Member Paul. He noted that he had some questions about the first reading about the application of the Administrative fee, and the City Administration did respond back to that and established why that fee amount was set at the number it was. Therefore, he was comfortable supporting that. Member Mutch said in terms of the concerns or challenges that had been raised to the ordinance, as far as he could see the biggest complaint from AT&T was the fact that they were being asked to follow standards that the previous cable installation did not. He said what happened was that over time the ordinance standards change and depending at what point they construct their network, whatever the current standards of the day that were adopted and placed, they would have to abide by. He said there would be costs associated with that and if they did it 15 years ago, it would have been one set of standards, and if they did it 5 years ago it would be a different set of standards. He said these are the standards today. Member Mutch said the concerns that the City had raised were valid, and Council had seen examples such as the ones stated and he knew some in his immediate area where roads and sidewalks had been torn up and had not been fixed in an expedient manner. He said it was not singling out a particular utility, but it was just what happened in the process. He thought the ordinance was very fair but Council was requesting that utilities document where they were installing their facilities, they put them in safe locations so they don't create traffic hazards, and that whoever installed the equipment was asked to abide by the same standards. He said anyone who came into this community would have to follow the same standards as AT&T or any utility in the public right-of-way. He said none of the requirements struck him as onerous or costly; they were reasonable, and anyone who did development in Novi dealt with permitting, landscaping and the review process. Member Mutch said he didn't understand why one company should be given an exception to those rules or be treated differently. He said as he saw it, they would

be able to move forward protecting the health, safety and welfare of the community and insuring that the utilities were installed and maintained properly and he had every confidence that they would be able to follow the standards.

Member Gatt thought what Member Mutch said made perfect sense. He said it was just not comprehensible to hold a company coming into Novi today to the same standards they held a company to many years ago. If building a house in Novi, the standards and laws had changed from years ago too. He commented that neighbors that had called were concerned about competition and they didn't want to stop AT&T or any other cable company from providing service to the City. He said his answer was that AT&T or any other company would use the ingenuity that they no doubt have and that they would overcome this obstacle being put into place to safeguard the residents. Also, the ordinance provided a reasonable avenue for them to come to Council and mitigate any differences that might arise. He said he would support the motion and felt it would not stop competition from coming into Novi.

Mayor Landry said this ordinance was developer neutral. It applied to anyone using the City rights-of-way whether they're XYZ Corporation or AT&T Corporation. He said the City's rights-of-way were limited in size; there were gas lines, telephone lines, water lines, cable lines and all wanting to locate in the road right-of-way. He said there was only so much land and the City had not only a right but an obligation to make sure that those were done in a proper way so they didn't interfere with each other or site distances at corners. Mayor Landry said the City had an obligation to the residents of this community to make sure that what was built in the right-of-way was done in a proper fashion, and that was all this ordinance did. Mayor Landry said there was an article in the newspaper that the City Council was trying to take their rights away. He said he took umbrage at that as he and his colleagues were taking no ones rights away. Mayor Landry said he and his colleagues were addressing the rights and the needs of the citizens of this City, which had to be done in a fair manner which meant the rules applied to everyone.

Mayor Landry said he wanted to tell everyone what Council had done specifically for AT&T. He said to accommodate AT&T they had a first reading a month ago of this statute, and ordinarily it would go on the next Council meeting two weeks later. However, AT&T contacted the City and asked that it be put off for them, and Council put it off at their request. AT&T said they would like a personal meeting, and Mayor Landry, Mr. Pearson and Mayor Pro Tem Capello met with seven members of AT&T. AT&T was asked to put their comments in writing and they did and the proposed ordinance was changed based on some of the comments made by AT&T. Mayor Landry said they had accommodated AT&T more so than they would usually do in a situation like this. He said what Council was faced with and even tonight was told from the podium this ordinance might result in more boxes going up. Mayor Landry said that was interesting because when they asked AT&T to tell them where they were going to put the boxes they responded they couldn't tell them that because it was proprietary. He said they don't like the ordinance but wouldn't tell Council where they intended to put the boxes, but they didn't want to be bound by whatever's was in this. He commented that was not the way it worked and that it worked the same for everyone whether XYZ or AT&T.

Mayor Landry said he would support this, it was fair and applied to everyone across the board and AT&T had been given an opportunity to weigh in. He said they had considered their comments, made alterations from the first draft to this draft based on some of those comments, and Council thanked them for their input.

Roll call vote on CM-07-09-278

Yeas: Paul, Landry, Capello, Gatt, Margolis,  
Mutch  
Nays: None  
Absent: Nagy

## CONSENT AGENDA REMOVALS FOR COUNCIL ACTION

- C. **Approval to award a contract for design and construction engineering services for the Meadowbrook Lake Dam Modifications project to URS Corporation for a not-to-exceed design fee of \$39,885 and a construction engineering fee equal to a fixed 6.0% of the estimated construction cost (estimated to be \$17,100) for a total of \$56,985 – Member Gatt**

Member Gatt disclosed that he was a resident of Meadowbrook Lakes and if Council wanted him to recuse himself he would, but he hoped they wouldn't. Mayor Pro Tem Capello saw no reason to recuse him because he received no direct benefit out of this.

Member Gatt said based on the comments of a resident of that subdivision, Lynn Kocan, he thought they were very reasonable and thought it was something they had to consider.

**CM-07-09-279 Moved by Gatt, seconded by Mutch; MOTION CARRIED: To table this matter and direct the City Officials to work with the Meadowbrook Lakes Homeowner's Association to reach a consensus agreement regarding the scope of work to be performed before moving forward.**

## DISCUSSION

Member Paul asked if Mr. Pearson could meet with the homeowner's association with Mr. Hayes and an Anderson Eckstein representative, to have further conclusion to what had to be done.

Mr. Pearson pointed out, as Ms. Kocan did, that this was a design contract and so by approving this they would be able to get into some of those issues regarding what needed to be done and how it was going to be done. He said some of the points were carryovers and clean ups from the previous projects in terms of the scope of the buffer zone and they would be happy to work those through with her. He said he didn't want to get all of that intermingled but they could always bring in Anderson Eckstein on an hourly sort of thing but this contract would get them moving in the direction to get things done in terms of modification to the dam itself, public input and those kinds of things. He said tabling this might slow the progress of the things they were trying to get done in the first place.

Member Paul said it said design and construction so they were looking at both. Mr. Pearson said the construction was just recognizing and getting it done ahead of time. He said she would see the design contract once that's done, then their plans, bidding and then it would come back to Council for award of contract. He said there was feasibility, analysis, permitting and construction was not until April 2008 until September 2008, so there would be a lot of opportunity to talk about some of the things brought up earlier. Member Paul said she brought up the question of her parkland and there's a playground area and a ball diamond. She asked if those were included in the construction design as well. Mr. Pearson said the City had a

drainage easement on either side of the streambank a little farther on the south side than the north, and in terms of modifications to the dam what that would do to any future floodway planning, etc. regarding how that would or wouldn't affect any of the structures that they put on that property. Member Paul said there was also discrepancy regarding how much needed to be cut. She said she knew that people mowed up right to the grass line in the past and she knew they were trying to improve that so the absorption rate would be far greater and slow down the streambank erosion. She asked if that was something they were trying to address and have some uniformity in the distance of the actual grass being mowed. She said she knew that they had talked about putting signs up so people wouldn't mow within those signs. Mr. Pearson said there was work done on the streambank and he thought everybody agreed that the raceway concrete channel needed to be removed as it wasn't the right way to handle that. He said further down there were streambank improvements to take care of some erosion, and the buffer that was there should be a non-mowed buffer for a lot of reasons. He said they would need to ask Mr. Hayes how much of that was temporary lake established and how much would be longer term.

Mr. Hayes said one of the main contributors to streambank erosion was mowing right up to the edge of the water because the root system in grassy plants was real shallow so there wasn't a lot to hold the earth in place. He said they would like to see a 25 ft. vegetated buffer from all edges of water that the City had an easement over or had jurisdiction over by owning a certain piece of property. In this case, to clarify some of the concerns that were raised, as part of the streambank stabilization project they planted a 50-60 ft. wide area and the cordoned off area that was taped off was just to delineate the limits of construction and to keep mowers out of that area. He said unfortunately it had been mowed so they had to start from scratch to get that vegetation reestablished. When all was said and done they would like to have a 25 ft. wide buffer, if at all possible. He said they would like to work with the association to have that once the vegetation was established. Member Paul asked if there was a letter being sent out or any type of education meeting for this association so they would know they couldn't mow in that area. Mr. Hayes replied, as part of this project, they had several meetings that discussed the project preliminarily and then they tried to keep the association in the loop during the course of the work, and the outcome was very successful with the City's good contractor. He said they had also tried to continue that education process to insure that there was some sort of buffer along the bank of the Middle Rouge. Member Paul supported the buffer and thought the uniformity would be a good idea or maybe specified areas. She thought that possibly continued information to these residents would be helpful in regard to the future plan. She was not sure tabling was the best solution in this regard after hearing Mr. Pearson's comments but did think there should be an educational meeting with the homeowner's association so they could resolve some of the issues. Member Paul said, looking at page 5, 1.5 was what Ms. Kocan shared as her concern regarding the \$5,000 to \$10,000 in the concrete apron. She asked if this was the one they thought was very important and wanted to construct this project. Mr. Hayes said yes, it was one of the four major tasks associated with the project. He said a key component in the design of this project would be public involvement. URS had in its scope hours set aside to meet with the association and stakeholders because there was some key decisions that they would need some help with that involve modifying the dam. The concrete channel downstream of the dam was pretty much a no brainer and was a technology from the 60's that was just used to convey water as fast as possible. He said that was great for that channel but downstream was where all the erosion was because the velocity was so high. He commented they would like to remove that concrete channel and replace it with something a little more natural that would slow the velocities down. He said it would all be within the

existing width of the channel. Member Paul said this was a very active homeowner's association and Ms. Kocan was probably the leader in that area and she thought it would be great if they could meet with her and have a plan of what the educational process would be. She thought they should approve this with some recommendations in that regard but the tabling took precedence.

Mayor Pro Tem Capello thought Ms. Kocan's comments were probably well taken but he didn't think they had anything to do with this particular contract. He thought that was something she could address with engineering directly. In fact, this contract was not for construction; it was design and construction engineering and Mr. Hayes just said the dam itself would control velocity and he thought velocity had something to do with stabilization or lack of stabilization. He thought it was probably a smart thing to award this contract, let them work with the other engineering firm that did the stabilization study, Ms. Paul and the homeowners and then they could all come to a consensus on how to fix this. He thought to stop this now they would be taking out a particularly important leg in what they were trying to accomplish there.

Member Mutch disagreed with Mayor Pro Tem Capello because he thought tabling this until the next meeting would give the homeowners association and Mr. Hayes an opportunity to meet and discuss the scope of the project. Obviously, they were affected to a degree that most homeowners were not by this particular project. He said it sounded like as involved as Ms. Kocan was, she was unaware of that until today that there might have been a communication gap in terms of who knew what was going to happen at that location. He said he had also raised questions with legal counsel about some issues related to the easement that was originally granted that might affect the design of the project and still didn't have answers to that. He said he would not be comfortable voting for this tonight, and felt another two weeks would allow another meeting and the legal issues to be reviewed. He said the timeline for this was spring 2008 for design and permitting so he didn't think a two week delay would affect the project. He agreed with Mayor Pro Tem Capello that there were some issues raised tonight regarding where they could cut and not cut that don't apply to this particular issue. He thought a meeting with the City and the homeowners would get everyone on the same page and then they could have the project proceed as it needed to without any questions about what was going on. He said he would support the motion to table.

Member Margolis said she understood the idea of waiting and tabling this but felt what they were doing by doing that was delaying getting the expertise involved to answer some of the questions they were talking about. Again, this was design and construction engineering services so they were really asking a consultant to come in and look at some of these issues, and deal with them. She said some of the issues brought up had to do with how much of the common land was now being taken away by this lack of ability to mow, and on top of that how much would the dam increase that. She thought to answer those questions intelligently they needed to get the design services in there. Member Margolis said the concern she heard for this proposal was that recommendation 1-5 was not included in this design and construction. She thought the reason it was not included was that "all recommendations and report will have been completed except for tasks that MDEQ would not permit as part of the streambank stabilization", and she thought that was exactly the recommendation it was referring to.

Mr. Hayes said that was correct, item 1-5 was modifying the concrete apron that inlets to the culvert that went beneath Nine Mile Road. He said they tried to include that in the Streambank stabilization project but DEQ wouldn't permit it because they deemed that it would disrupt the natural habitat and they weren't comfortable with the City touching that apron. Member

Margolis asked if the design contract would encompass trying to determine what other ways that same thing could be accomplished that would be accomplished by that recommendation. He said it was not in this particular scope but they could certainly look at other ways to work around the problems that were caused by that raised apron. Member Margolis said her suggestion was they do something interim where Council could approve this with the idea that there be a report back to us in a month that the homeowners were happy with the solution as they were moving forward.

Member Gatt said he concurred with everything that was said regarding this tonight but he didn't think two weeks would kill this project. He had heard Mr. Pearson say he could arrange a meeting with a representative from Anderson Eckstein on an hourly basis if necessary, and get with the homeowners association and come back in two weeks and Council would vote and approve it if the homeowners association had bought into it. He felt this was an important matter that raises a lot of concerns and he didn't think two weeks was asking too much.

Member Paul asked if Council was 100% sure of where all of the easement right-of-ways were. Mr. Schultz thought the City did have documents for the easement at Member Mutch's suggestion, and as a matter of course they would review those and make sure that what they planned to do in the easement they were permitted to do under the terms of the easement. He said that was the initial step and the engineer would be party to that as they start their work anyway. He said they would make sure that was all in place and the City was not outside the scope of the easement. Member Paul said since that was not 100% defined and Council didn't have that information before them, she would agree with the tabling for two weeks. She said she would like to have boundary clarification.

Mr. Schultz stated he didn't want to leave the impression that the City didn't think they had the right to do what was proposed to be done. He said the expectation was the City had the easement and had the right to do it, but they would confirm that. Member Paul said she was in support of the two week and having Administration come back.

Member Mutch said he would agree with Mr. Schultz. He said the question wasn't whether the easement existed or not. He said there was an easement on both sides of the river. The question that he raised was the conditions that were attached to the original easement that was granted and how that would affect the scope and design of the project.

Mayor Landry said he would vote in favor of the two week tabling. He thought the City Manager was right in that they were not making any decisions here, this was just design engineering. He thought Member Margolis was correct that the residents would be better informed once that design engineering was done. However, more information was better than less information and the City was so far into this project that they didn't want to scare anyone, they wanted everyone to be heard, and didn't want anyone to think the City was slipping anything by them. He said for the two weeks he thought it was a good idea. However, personally he didn't want to do it longer than two weeks, and there were probably going to be more questions raised than answered, and he didn't expect anything to be resolved in two weeks. Mayor Landry didn't have a problem letting the residents know what they were doing and yes, they want their input, and letting them know how many other opportunities there would be for them to be involved in the process. He would support the two weeks and bringing it back on the Consent Agenda.

Roll call vote on CM-07-09-279

Yeas: Landry, Capello, Gatt, Mutch, Paul  
Nays: Margolis  
Absent: Nagy

- D. Approval to extend the Photography Contract (2nd renewal) for a twelve (12) month period to Princeton Studios at the same terms, conditions and pricing as the original contract of September 2005.**

Mayor Pro Tem Capello said his problem with this was the fact that the City was collecting a 15% fee and he thought they did very little work. He asked Mr. Schultz if the City could collect a fee for the services that were performed in this contract, and the answer was yes. He still had a concern that the City should be collecting a fee for an outside service that it had very little participation in, particularly a percentage fee – as opposed to a flat fee of a couple dollars.

**CM-07-09-280 Moved by Capello, seconded by Mutch; CARRIED UNANIMOUSLY: To approve extension of the Photography Contract (2<sup>nd</sup> renewal) for a twelve (12) month period to Princeton Studios at the same terms, conditions and pricing as the original contract of September 2005.**

Roll call vote on CM-07-09-280

Yeas: Capello, Gatt, Margolis, Mutch, Paul, Landry  
Nays: None  
Absent: Nagy

## **MAYOR AND COUNCIL ISSUES**

### **1. Discussion of the following items - Member Mutch**

#### **a. Nine Mile Road Bike Path Grant Opportunity**

Member Mutch wanted to discuss grant funding for a bike path. He said under the current CIP plan there was a plan to construct either a sidewalk or bike path next year on the north side of Nine Mile Road between Haggerty and Meadowbrook Roads. He said through the sidewalk prioritization process it was identified as one of the top projects, and would be funded next year. Member Mutch said currently the project would be funded entirely through City tax dollars. However, after doing some research and talking with Mr. Hayes, he became aware of an alternative funding source through MDOT, which was their Transportation Enhancement Program. He commented this program targeted projects like bike paths, and would fund 80% of the eligible costs related to the project. One of the challenges of applying for this type of funding was the timeline involved, because MDOT was not working on the same timeline as the City. He said there would be requirements for the grant application due to the fact that they would be working with a State agency and Federal funding. Member Mutch requested Council give Administration the opportunity to look at applying for the Transportation Enhancement Grant for that sidewalk segment with the intention that it would be funded in next year's budget, and that any funds for that plan would be matched by City dollars. So, the 20% match would be from City funds. He said hopefully they would receive the grant and have additional funds for another sidewalk project or some other use. Member Mutch said he wanted to give Administration enough time to pursue that, if that was an opportunity for grant funding, far enough in advance of the budget and for engineering and construction.

Member Paul thought this was a very good idea because there were many neighborhoods without internal sidewalks. She felt that keeping people off of Nine Mile Road was a good venue. She asked that they remember the City was in the process of completing the Nine Mile sidewalk between Beck Road and Taft Road in front of the Northville school on the northern border. She said the other area that didn't have a sidewalk was between Taft Road and Novi Road, and it would complete the whole area and head towards Community Sports Park. Member Paul said Council might want to consider a proposal of completion on the north side of the Road. She said Dunbarton Pines had a very large portion of the sidewalk on the north side of Nine Mile Road.

Member Margolis asked why this particular piece and was the grant only eligible for this piece. She liked the prioritizing of the sidewalk plan and would hate to see them move from that to changing to a different piece for some reason.

Member Mutch said this was project #2 for next year and based on current funding, this would be funded next year. The reason this one was chosen for the grant program was they had some specific targets regarding what projects they would fund. He said one of the criteria was connection to regional pathway systems, and this project would provide a direct connection to the I-275 bikeway east of Haggerty. He said if they looked at what the priority sidewalks were, and the ones that might be eligible for this type of funding, and that were at the top of the list, this was the only one that fit the criteria. Member Mutch said he didn't think they could get funding through this program for any of the segments that were within the near range. He said, with the money freed up, they could look at some of those other segments. One of their goals had been to work through the list and that was what he had done. He selected one from the top of this list, which would avoid questions regarding getting out of order. He felt this was staying consistent with their goals.

Member Margolis commented she had no problem with Administration investigating this. However, when this came back to Council she would like information regarding how cumbersome the grant would be to apply for.

Mayor Pro Tem Capello asked why this ended up on an agenda, if it's 80% free money and it's up for next year. Why couldn't Administration have looked at this and then brought it to Council. Mr. Pearson said this would be a little different in that it was planned, not budgeted, for 2008-2009. In the normal course of events, Council went through the budget cycle at the beginning of the year, determined if the money was available to do the project, and then once budgeted they would look for available grants. He said they would like the opportunity to pursue this and he would also wonder about commitments, even for the 20%, which was obviously doable, but the commitment would be made for next year. Mr. Pearson didn't know when the deadline was but thought it was at the end of the year so there would be time to get through this.

Member Mutch said he spoke with Mr. Hayes about this and it was a rolling grant program, so as they were submitted they would be considered. The goal was to give Administration the flexibility that if this was an opportunity to be pursued, they could do it to ensure it could be funded and constructed next year versus looking at the grant process after they had gone through the process. He said that would likely push off any design and construction until 2009. He said if there was some insurmountable hurdle with the program, the City could fund it 100%.



Mayor Landry commented this segment might be on a CIP list for next year, but it was not funded yet. He asked that Administration bring back information such as what the cost to the City would be, how much time would be invested in it, and if it looked like something the City could benefit from, then they could make the decision to do it.

#### **b. Entrance Streetlights in new Developments**

Member Mutch said current City policy placed the burden of the installation of entrance streetlights onto the homeowners association versus it being provided by the developer like the sidewalks, roads and utilities. He commented there had been some problems with this because of the length of construction there wasn't an organized homeowner's association until several years into the process. Or, sometimes the developer retained control of the homeowner's association until a certain point in the development, and the problem it created was there were no streetlights at those entrances, which was a safety issue. Member Mutch thought the goal from the City's viewpoint was not to be burdened with paying the ongoing electrical costs for the light. He said he didn't have a problem with that, but in terms of a process, it didn't make sense to him that the burden of the light should be placed on the homeowner's association. Member Mutch asked the Administration to review the current policy in terms of making the streetlights the responsibility of the initial developer of the subdivision. He didn't have a problem with the City having to process it then and carry the cost over to the homeowner's association for the long term maintenance and cost. There was no reason for resident safety to be put at risk because there was no streetlight where there should be one. He asked for Council's support for that action.

Member Paul concurred especially at corners and with down light only. She commented that some subdivisions would like internal streetlights and suggested investigating both at the same time.

Mayor Landry asked Mr. Schultz where such an ordinance would be located. Mr. Schultz said it could be a part of the Zoning Ordinance for new developments in terms of standard or adequate street lighting at a particular location on a site plan. In terms of developments that already exist, they could bring those agreements forward and largely based on a policy that was adopted some time ago, they could look at that policy. However, they would almost be looking at two different things; ones after the fact and ones a part of an ordinance, and it would be different standards. Mayor Landry stated he would not be in favor of imposing this on existing subdivisions, but if they were going to investigate this and it was going to be a part of the Zoning Ordinance, it should go to the Planning Commission with a date on it that Council wanted it back. The Planning Commission should work this up rather than the Administration. He thought it was a good idea to investigate this but didn't want to jump the normal process. If it was the Zoning Ordinance, the Planning Commission had to weigh in on it.

Mayor Pro Tem Capello stated he could understand some of the concerns as he had discussed street lighting with homeowner's associations. However, he thought they were jumping the gun to impose this on the associations. He thought there were a lot of residents in Novi who liked the fact that their streets were not all lit with these overhead lights that made them feel like they were driving downtown Detroit. There might be other ways to satisfy the safety requirements with the existing lighting as most subdivisions do have lights on their signs. He didn't think payment was an issue and thought most of the newer subdivisions had electrical service to the entrance of the subdivision to run their lights, Christmas lights and to

run their sprinkler systems. So he didn't see that as a problem, but the problem he saw was that residents in general didn't want to see the entire City lit up like they were driving down the expressway. He commented he didn't have a problem with it going to the Planning Commission.

Member Margolis thought it was a good idea for this to go to the Planning Commission. She echoed Mayor Pro Tem Capello's comments as she was not sure this was something that Council wanted to impose. However, in terms of the work load for the Planning Commission right now, she suggested Council be extremely flexible as they were dealing with quite a few issues. She didn't feel this had to be at the top of their list.

Member Mutch agreed and said he didn't have a specific timeline on this. He wanted to clarify the scope of what he was proposing, and said he was only looking at the entrances to subdivisions and not the internal subdivision streets. He thought the policy spoke to those locations on the major roads, and he thought that was common sense public safety. He understood the concerns of the other Council members not wanting anymore lighting than necessary, but thought at a subdivision entrance on a major road at minimum was having a streetlight to illuminate the entrance.

Mayor Landry asked if anyone had an objection to sending the question of the possibility of requiring subdivision entrance street lighting to the Planning Commission. There were no objections and Mayor Landry asked the Administration to do that.

### **c. Active Parkland Acquisition - City of Novi and other communities**

Member Mutch requested that the City Administration start actively looking at active parkland needs. He said for the past several years the Parks, Recreation and Forestry Commission, through their Master Plan and the department through their Strategic Plan, had identified a need to acquire active recreational land within the City. He said the need was being driven by the demand from the users in terms of baseball, football, softball, soccer and lacrosse, which all needed active recreation land. The problem was what was currently in the City's inventory, and the fields that could be put on that land couldn't accommodate the use and demand that the City already had, much less over the next 10 or 15 years. This was why this had been the top goal of the department. What Council had heard from the department and the residents was that because of the level of demand they were running into situations where they were literally wearing the fields out from the amount of use. He said there was really no way around that. If there were X number of teams and a certain number of fields, either they would go without a certain number of teams playing or find more fields. This request was to figure out where that land would be and start the process to acquire it. Member Mutch had noted in a memo to Council that this was one of the biggest challenges for the City, because of the vacant land that was left in the City, very little of it was suitable for active recreation use. He said the department and the recent policy they passed on to Council talked about acquiring active recreational sites of 40 acres or larger. He said there were about 50 plus parcels in the City that were still vacant and 40 acres and larger. However, ruling out the wetlands and existing parkland and OST property, there were only a handful of parcels left that would meet that criteria.

Member Mutch commented that the other significant challenge was the cost of land within the City. Even in the current market, vacant residential land was being priced at \$100,000 an acre

or higher. Therefore, to acquire a 40 acre parcel of vacant residential land, they were talking about a \$4 million expenditure and that just got the raw land; it didn't include the cost to develop it. He said they had tried in the past to discuss whether they could work with developers or other agencies to come to an accommodation where they could work together to get that vacant land. The problem was they couldn't offer enough to developers to get them to set aside developable land for active recreation. The Singh Trail property was a perfect example as they were more than willing to donate to the City the parts that they couldn't develop because of woodlands and wetlands. He said from a natural resource viewpoint, those were fabulous pieces of property and the City was glad to have them. However, they were not suitable for active recreation and the likelihood that they would set aside 40 acres of their developable land; well he couldn't fathom what they would ask as a tradeoff.

Member Mutch said one of the ideas discussed in his memo was the possibility that the City might have to look at Novi's borders, Lyon Township, Salem Township where land prices were marketing at a significant discount compared to Novi. Obviously, it would be a disadvantage being located outside of the City limits but it might be the only thing that's affordable.

Member Mutch thought they might have a unique opportunity. He said the State was in an economic downturn that was affecting development within the community, some land prices had dropped and people were willing to sell. He thought now was the time for the City to start the process of finding out where property could be found, either within or outside of the City at the borders for active recreational use. Then, come budget time in the spring, there might be some potential sites to talk about regarding funding. He said they couldn't even have that discussion unless they had some idea of what was available and what they could potentially use. He said this was a Council goal, Parks, Recreation and Forestry goal and department goal to identify some properties for active recreation. He wanted Council to say this was something they wanted to see happen in a timeframe that would allow discussion at budget time. He thought the process had to be started now because if they didn't, the timeframe to identify those properties and have that discussion would take too long for them to have it at the budget discussions. He asked that Council make this a priority and get information so Council could start moving forward on this.

Member Margolis agreed with Member Mutch and said this had been the direction to Administration during the last budget cycle and the last planning cycle. She said they moved forward as they usually did and tonight Council had their parkland acquisition strategy, and in that general frame she didn't have a problem with this issue. However, she did have a couple of problems with the specifics. She didn't think it was necessary, at this point, to direct the Administration to do anything other than what they had been doing. Member Margolis said they've done a pretty comprehensive plan around how they were going to look at parkland acquisition. She said she had real concerns about two specific issues in the memo. She said personally she didn't think they needed to be looking outside of the City for parkland. She thought Member Mutch was just asking for a whole host of problems, and thought it would become a huge issue. Member Margolis said the idea of compiling a list of parkland that they would be interested in was totally opposite to any plan to get any kind of parkland at any kind of decent price. She said they should certainly not give people a list of what they were looking at. Member Margolis said all they had to look at was what happened to the City of Detroit when they started talking about putting in riverfront casinos. She said that property that sat there forever just flew up in price. She would not be comfortable with those two things, and

was very confident that they were working toward this as it was one of their priorities, and was comfortable with where they were now and thought the Administration knew that.

Member Gatt concurred with everything Member Margolis said. He would not now or ever be in favor of purchasing land outside the City of Novi for any reason.

Mayor Pro Tem Capello said this was nothing new; a couple years ago this was brought up at the Council table. He said they even suggested maybe looking down by Eight Mile and Napier where the property was cheaper as Salem Township didn't have water or sewer yet. He said Lyon Township was getting it but it was not in yet. They even discussed joint venturing with Salem or Lyon Townships or other communities that presently didn't have the need because they weren't built out yet. This was nothing new, Mr. Auler knew about it, and they were looking at it. He didn't see any reason to give them any direction because it was common knowledge and they had been discussing it for years. He said just go ahead and do what they had been doing.

Member Paul said there were communities that share parkland as Mayor Pro Tem Capello stated or had parkland at different borders. As an example, Northville Schools and Novi City limits, and Northville had some Plymouth parks and they were Northville borders. She didn't think it was a bad idea to look at property that was cheaper because if they looked at the economy, the best alternative was to get parkland however they could get it. She said she knew the soccer fields were used so much that at times it was difficult to get turf, and if it rained it was a bath of mud. She knew Parks and Recreation had done a very good job trying to move forward in this. However, Council could talk about it a long time, they could have plans as a goal, but to move a little forward regarding what an area of interest would be or how the City would pay for it was a different perspective than where they were at now. She understood the previous speakers regarding price, but this was a public entity and all of their comments were public, and was the limitation of being in the public's eye. Member Paul said unfortunately, it didn't seem there was support to go much further in regard to a plan and how to accomplish the goals that were set as a Council, but she thought that was very shortsighted on Council's part. Member Paul said the land wouldn't be there forever.

Mayor Landry thought everyone would be in favor of acquiring more parkland, but unfortunately it was one of the most expensive things on their wish list. He said it was discussed at the Council goal session, and the Administration responded correctly, Parks, Recreation and Forestry had a plan they were working on and were doing things about it, and the Commission was discussing it. Mayor Landry said he was not in favor of purchasing parkland in another City unless it was literally on the border, contiguous to the City. He didn't think residents should have to travel somewhere else for Parks and Recreation activities. Mayor Landry stated he was satisfied with what the Administration was doing now. After this was placed on the Mayor and Council Agenda two meetings ago they received a copy from Mr. Auler indicating what had been done, there were specific pieces of property they were looking at, and he didn't see any need to change any of that or do anything more. He said this could be discussed more at goal sessions this winter if necessary, but right now he didn't feel the need to instruct Administration to do anything differently than they were doing.

Member Mutch said he appreciated Council's consideration, and from whatever viewpoint Council was coming from, he understood their concerns. He said this had been an issue that had been out there for at least three or four years. He thought at some point, this Council

would have to give Administration, direction, endorsement or support to move this beyond discussion, because it would require significant financial investment. He doubted that the department would go too far in that process without Council's support and that this would be considered at budget time. He said it would happen sooner or later and hoped they weren't losing opportunities to do this at a price that would be less than it would in the future. He looked forward to see what would come forward from Administration, because the need would not go away and the window of opportunity was small.

### **AUDIENCE PARTICIPATION**

**Linda Krieger**, 44920 Byrne Drive, spoke regarding item 5. She felt it was important to know where utilities were placed and thanked Council for looking out for residents.

There being no other business to come before Council, the meeting was adjourned at 9:15 P.M.

### **ADJOURNMENT**

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David Landry, Mayor

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Maryanne Cornelius, City Clerk

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Transcribed by Charlene Mc Lean

Date approved: