



# CITY of NOVI CITY COUNCIL

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**Agenda Item 4  
September 24, 2007**

**SUBJECT:** Consideration the Proposed First Amendment to SDO Agreement with Hummer of Novi, located at the corner of Grand River Avenue and Meadowbrook Road, to allow the parking of non-Hummer used vehicles under certain conditions and in certain locations.

**SUBMITTING DEPARTMENT:** <sup>Burb</sup>Community Development – Planning

**CITY MANAGER APPROVAL:** *PA for CJP*

**BACKGROUND INFORMATION:**

Parking of non-Hummer vehicles on the "pads" along Meadowbrook Road and/or Grand River Avenue in front of the Hummer dealership has been subject of discussion at previous City Council meetings. The City has taken the position that the initial Development Agreement and subsequent SDO Agreement between the City and the Hummer developer limits the use of the property to the sale and display of Hummer vehicles. Hummer has taken the opposite position. (See the attached letter from Hummer's attorney dated September 27, 2006.) The City believes that its position is correct and is supported by both agreements. (See the City's response dated October 5, 2006.)

The City administration has discussed with Hummer a possible amendment to the SDO Agreement to deal with the issue. The City staff circulated to Hummer a draft agreement that would permit the sale of non-Hummer used vehicles from the property, but not their display on the pads in front of the building. Hummer has responded with a proposal that would allow the display of non-Hummer vehicles on pads in front of the building if the cars met certain criteria (were of \$20,000 or greater in value). A copy of each proposed amendment is attached for Council's review.

On July 2, 2007, City Council referred the matter to the Planning Commission for a public hearing and recommendation back to the City Council on the proposed amendment to the text of the SDO Agreement. The Planning Commission's discussion and motion resulted in a recommendation to further amend the suggested SDO Agreement to allow:

- 1) The dealer to display, service and sell new and used vehicles, i.e., used vehicles by whatever method they are purchased; and
- 2) The display of the used vehicles be limited to the easternmost Grand River pad.

A third document is now prepared providing the Planning Commission's recommended conditions to allow parking and sales of other brands of vehicles throughout the development, but limiting the display of the non-Hummer vehicles to the eastern-most Grand River Avenue display pad. The matter is now being returned to the City Council for consideration.

**RECOMMENDED ACTION:** Consideration of the Proposed First Amendment to SDO Agreement with Hummer of Novi, located at the corner of Grand River Avenue and Meadowbrook Road, to allow the parking of non-Hummer used vehicles under certain conditions and in certain locations.

	1	2	Y	N
Mayor Landry				
Mayor Pro Tem Capello				
Council Member Gatt				
Council Member Margolis				

	1	2	Y	N
Council Member Mutch				
Council Member Nagy				
Council Member Paul				

**SDO AMENDMENT  
RECOMMENDED BY THE  
PLANNING COMMISSION  
(STRIKE-THROUGH VERSION)**

[PLANNING COMMISSION RECOMMENDATION]

STATE OF MICHIGAN  
COUNTY OF OAKLAND  
CITY OF NOVI

FIRST AMENDMENT TO SDO AGREEMENT

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HUMMER OF NOVI GATEWAY

AGREEMENT, dated June \_\_\_\_, 2007, by and between the City of Novi, whose address is 45175 West Ten Mile Road, Novi, MI, 48375 (the "City") and Gardan, LLC, whose address is 3147 Interlaken Street, West Bloomfield, MI, (the "Owner"); and Hummer of Novi, whose address is 3147 Interlaken Street, West Bloomfield, MI (the "Developer").

**RECITALS:**

- I. Owner and the City previously entered into a Special Development Option (SDO) Agreement (the "Original SDO Agreement") in connection with certain property located in the City of Novi on Grand River Avenue and Meadowbrook Road. The Original SDO Agreement governs the use and development of the property for a "Hummer" auto dealership. The Original SDO Agreement covers the property described in the attached Exhibit A, and was approved by the City Council on June 21, 2004.

- II. The Original SDO Agreement states in Article I, "General Project Description," that "The Project entails the development of an automobile dealership facility that supports the sale and servicing of General Motors Hummer franchise vehicles." Article III of the Agreement, entitled "Uses Permitted," states that "Uses permitted within the Project shall consist of a new and used car salesroom, show room, and office, and for service and parts and accessory sales related thereto, with outdoor space for exclusive sale of new or used vehicles as shown on the Conceptual Plan, subject to the terms of this Agreement, and further subject to

Deleted: <#>A First Amendment to the SDO Agreement relating to signage was approved by the City Council on March \_\_\_\_, 2006.

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any modifications required by the City Council at the time of approval of the Site Plan.”

III. The Agreement attached and incorporated a Conceptual Plan that states “The proposed development will be an automotive dealership selling and servicing new and used Hummer brand models.”

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IV. Owner has requested approval from the City to sell used cars other than Hummer brand vehicles from the property, including the display of such used vehicles along the road frontages of the property.

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V. The City Council having agreed to allow such limited sales of such class or description of used vehicles, the parties now wish to formalize that approval through this First Amendment to SDO, relating only to the sale of non-Hummer brand used vehicles and the display of such non-Hummer used vehicles on one of the “pads” along the road frontages of Grand Rive Avenue. No other amendment to the Original SDO Agreement is intended or contemplated, and the other terms and conditions thereof are hereby confirmed and restated.

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Deleted: and Meadowbrook Road

**NOW, THEREFORE, IT IS AGREED AS FOLLOWS:**

1. Owner shall be permitted to park and store used non-Hummer vehicles on the premises in the parking lot areas designated on the conceptual Plan and the Site Plan for parking and storage. Owner shall further be permitted to park or store non-Hummer used vehicles on the easternmost “pad” depicted on the Plans along the road frontage of Grand Rive Avenue.

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2. This First Amendment to SDO Agreement amends only sale and parking of used non-Hummer vehicles. In all other respects, the Original SDO Agreement shall remain unchanged.

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3. This First Amendment to SDO Agreement shall be binding upon and inure to the benefit of the parties to this Agreement and their respective heirs, successors, assigns and transferees, and an affidavit providing notice of this Agreement may be recorded by either party with the office of the Oakland County Register of Deeds.

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4. This First Amendment to SDO Agreement may be signed in counterparts.

[signatures on following pages]

WITNESSES:

OWNER:

GARDAN, LLC

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
BY:  
ITS:

STATE OF MICHIGAN )  
                                  )SS.  
COUNTY OF OAKLAND )

On this \_\_\_ day of \_\_\_\_\_, 2007, before me appeared \_\_\_\_\_, authorized representative of Owner, who states that he/she has signed this document of his/her own free will on behalf of Owner.

\_\_\_\_\_  
Notary Public

WITNESSES:

**DEVELOPER:**  
**HUMMER OF NOVI**

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
BY:  
ITS:

STATE OF MICHIGAN )  
                                  )SS.  
COUNTY OF OAKLAND )

On this \_\_\_ day of \_\_\_\_\_, 2007, before me appeared \_\_\_\_\_, authorized representative of Developer, who states that he/she has signed this document of his/her own free will on behalf of Developer.

\_\_\_\_\_  
Notary Public

WITNESSES:

**CITY OF NOVI**

\_\_\_\_\_

\_\_\_\_\_  
BY: David B. Landry, Mayor

\_\_\_\_\_

\_\_\_\_\_  
BY: Maryanne Cornelius, Clerk

STATE OF MICHIGAN    )  
                                  )SS.  
COUNTY OF OAKLAND    )

On this \_\_\_ day of \_\_\_\_\_, 2007, before me appeared David B. Landry and Maryanne Cornelius, who stated that they have signed this document of their own free will on behalf of the City of Novi in their respective official capacities, as stated above.

\_\_\_\_\_  
Notary Public

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**SDO AMENDMENT  
RECOMMENDED BY THE  
PLANNING COMMISSION  
(CLEAN VERSION)**

**[PLANNING COMMISSION RECOMMENDATION]**

**STATE OF MICHIGAN  
COUNTY OF OAKLAND  
CITY OF NOVI**

**FIRST AMENDMENT TO SDO AGREEMENT**

**HUMMER OF NOVI GATEWAY**

AGREEMENT, dated June \_\_\_\_, 2007, by and between the City of Novi, whose address is 45175 West Ten Mile Road, Novi, MI, 48375 (the “**City**”) and Gardan, LLC, whose address is 3147 Interlaken Street, West Bloomfield, MI, (the “**Owner**”); and Hummer of Novi, whose address is 3147 Interlaken Street, West Bloomfield, MI (the “**Developer**”).

**RECITALS:**

- I. Owner and the City previously entered into a Special Development Option (SDO) Agreement (the “Original SDO Agreement”) in connection with certain property located in the City of Novi on Grand River Avenue and Meadowbrook Road. The Original SDO Agreement governs the use and development of the property for a “Hummer” auto dealership. The Original SDO Agreement covers the property described in the attached Exhibit A, and was approved by the City Council on June 21, 2004.
- II. The Original SDO Agreement states in Article I, “General Project Description,” that “The Project entails the development of an automobile dealership facility that supports the sale and servicing of General Motors Hummer franchise vehicles.” Article III of the Agreement, entitled “Uses Permitted,” states that “Uses permitted within the Project shall consist of a new and used car salesroom, show room, and office, and for service and parts and accessory sales related thereto, with outdoor space for exclusive sale of new or used vehicles as shown on the Conceptual Plan, subject to the terms of this Agreement, and further subject to



any modifications required by the City Council at the time of approval of the Site Plan.”

- III. The Agreement attached and incorporated a Conceptual Plan that states “The proposed development will be an automotive dealership selling and servicing new and used Hummer brand models.”
- IV. Owner has requested approval from the City to sell used cars other than Hummer brand vehicles from the property, including the display of such used vehicles along the road frontages of the property.
- V. The City Council having agreed to allow such limited sales of such class or description of used vehicles, the parties now wish to formalize that approval through this First Amendment to SDO, relating only to the sale of non-Hummer brand used vehicles and the display of such non-Hummer used vehicles on one of the “pads” along the road frontages of Grand Rive Avenue. No other amendment to the Original SDO Agreement is intended or contemplated, and the other terms and conditions thereof are hereby confirmed and restated.

***NOW, THEREFORE, IT IS AGREED AS FOLLOWS:***

- 1. Owner shall be permitted to park and store used non-Hummer vehicles on the premises in the parking lot areas designated on the conceptual Plan and the Site Plan for parking and storage. Owner shall further be permitted to park or store non-Hummer used vehicles on the easternmost “pad” depicted on the Plans along the road frontage of Grand Rive Avenue.
- 2. This First Amendment to SDO Agreement amends only sale and parking of used non-Hummer vehicles. In all other respects, the Original SDO Agreement shall remain unchanged.
- 3. This First Amendment to SDO Agreement shall be binding upon and inure to the benefit of the parties to this Agreement and their respective heirs, successors, assigns and transferees, and an affidavit providing notice of this Agreement may be recorded by either party with the office of the Oakland County Register of Deeds.
- 4. This First Amendment to SDO Agreement may be signed in counterparts.

[signatures on following pages]

WITNESSES:

**OWNER:**

**GARDAN, LLC**

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
BY:  
ITS:

STATE OF MICHIGAN    )  
                                  )SS.  
COUNTY OF OAKLAND    )

On this \_\_\_ day of \_\_\_\_\_, 2007, before me appeared \_\_\_\_\_, authorized representative of Owner, who states that he/she has signed this document of his/her own free will on behalf of Owner.

\_\_\_\_\_  
Notary Public

WITNESSES:

**DEVELOPER:**

**HUMMER OF NOVI**

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
BY:  
ITS:

STATE OF MICHIGAN    )  
                                  )SS.  
COUNTY OF OAKLAND    )

On this \_\_\_ day of \_\_\_\_\_, 2007, before me appeared \_\_\_\_\_, authorized representative of Developer, who states that he/she has signed this document of his/her own free will on behalf of Developer.

\_\_\_\_\_  
Notary Public

WITNESSES:

**CITY OF NOVI**

\_\_\_\_\_

\_\_\_\_\_  
BY: David B. Landry, Mayor

\_\_\_\_\_

\_\_\_\_\_  
BY: Maryanne Cornelius, Clerk

STATE OF MICHIGAN     )  
                                  )SS.  
COUNTY OF OAKLAND    )

On this \_\_\_ day of \_\_\_\_\_, 2007, before me appeared David B. Landry and Maryanne Cornelius, who stated that they have signed this document of their own free will on behalf of the City of Novi in their respective official capacities, as stated above.

\_\_\_\_\_  
Notary Public

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**PLANNING COMMISSION  
MINUTES  
AUGUST 8, 2007**

**PLANNING COMMISSION  
REGULAR MEETING  
WEDNESDAY, AUGUST 8, 2007 7:00 PM  
COUNCIL CHAMBERS - NOVI CIVIC CENTER  
45175 W. TEN MILE, NOVI, MI 48375  
(248) 347-0475**

**Present:** Members Brian Burke, Andrew Gutman, Michael Lynch, Mark Pehrson, Wayne Wrobel

**Absent:** Members John Avdoulos (excused), Victor Cassis (excused), Michael Meyer (excused)

**1. Hummer of Novi, SP04-09**

The Public Hearing was opened on the request of Hummer of Novi for a recommendation to City Council for a proposed second amendment to the Special Development Option Agreement. The subject property is located in Section 24, at the northeast corner of Grand River Avenue and Meadowbrook Road, in the GE, Gateway East District. The subject property is approximately 6.7 acres.

Planner Mark Spencer explained that City Council has discussed the sale of used vehicles at the Hummer dealership. The Hummer Agreement was not specific in describing the vehicles that could be sold on site. The site plan has a note that indicates the sale is restricted to Hummer vehicles. City Council requested that this matter go through the Special Development Option approval process for an amendment. Planning Commission is asked to make a recommendation on this matter to City Council.

Mr. Spencer said that drafts of sample language were provided by the City Attorney and by Hummer's attorney. The Hummer version describes this change as a clarification and provides for the sale of used vehicles that were not taken in for trade. The City Attorney's version describes this change as an amendment, and it restricts the sale of used vehicles to only trade-in vehicles. Mr. Spencer said that the Applicant has volunteered to place a restriction on the display of used vehicles to non-Hummer vehicles with a resale value of \$20,000 or more.

Matt Quinn addressed the Planning Commission on behalf of Gary Wood, owner of Hummer of Novi. Mr. Quinn found the situation humorous to some extent – all of the negotiations that took place over nine months have nothing to do with why this Planning Commission recommendation has become necessary. Some draft person put a note on the site plan stating that the site would be used for Hummer vehicles only. There was never intent on Mr. Wood's part that he ever be limited on this site on the strict sale of Hummer-only used vehicles. This would be a financial disaster and decreases the value of the property and business.

Mr. Wood and his partner, Mr. Dave Frost, were surprised when they received a notice of non-compliance because they were displaying used vehicles on the Grand River display pad. Mr. Quinn reviewed the documents and found that they were not in violation of any language in the agreements. Ultimately it was the little note on the plan that caused this problem.

Mr. Quinn asked the Planning Commission to make a recommendation to City Council that this dealer be allowed to remove the stipulation from the site plan. None of the written documentation would need to be changed if this site plan change is made. This would be the simplest manner in which the dealer could sell non-Hummer used vehicles. In addition to that option, Mr. Quinn suggested that the Planning Commission could recommend to City Council that used vehicles be

allowed on the site, and only vehicles with a sticker price greater than \$20,000 would be displayed on the pad.

Mr. Quinn said that the City's proposal is not acceptable. It states that only trade-ins could be stored on site or displayed on the pad. That again is financial disaster. It doesn't serve the City's purpose – the dealer could take in a \$50 junker and display it on the pad.

No one from the audience wished to speak and no correspondence was received so Member Pehrson closed the Public Hearing.

Member Burke understood where the mishap occurred – he assumed the "Hummers Only" statement meant that the dealership would not be a conglomerate of GM franchises. It is unrealistic for the City to tell the dealer he can't sell non-Hummer used vehicles – by trade-in, auction, fleet vehicle sales, etc. Member Burke thought the language should allow the sale of new and used vehicles and they should be allowed to be displayed on one pad only. Member Burke preferred the Grand River pad. The choice of vehicles would be left up to the owner. So as not to damage his own reputation, Member Burke assumed the owner would make a wise choice in product placement. Placing a dollar amount on the vehicle is unrealistic because it becomes unenforceable and it is an arbitrary number.

Member Wrobel agreed. He would agree to allow one pad designated for used cars. Mr. Quinn confirmed with Member Wrobel that there are only three display pads: Meadowbrook, Grand River and the intersection. Member Wrobel noted that a Hummer was parked on the gravel road over the weekend and that is not an appropriate place to park a vehicle.

Member Wrobel understood that an agreement had been reached with the City. Yes, something slipped through. It is the responsibility of both parties to make sure these mistakes don't happen. Member Wrobel felt that until a change is made to correct this problem, the dealer should be living up to his agreement with City Council. Member Wrobel has been watching this over the last month and non-Hummer vehicles have been sitting on the pad, from day one. That is a slap on the City and Member Wrobel resented the dealer keeping non-Hummer cars on the pad during this negotiation.

Member Wrobel understood the need for a dealer to sell used cars. He didn't think that used cars were the primary income. He would choose the Grand River pad as the location for used car display.

Member Gutman agreed with the others. He asked the City Attorney if the language could be changed to allow one pad designated for used cars, and could the value of the car be removed from the equation. Kristen Kolb said that is possible because this is a negotiated deal. If the Planning Commission proposes terms, Mr. Quinn can provide that information to his client and then respond to the City if the terms were not satisfactory. Ms. Kolb said that in the original Special Development Option Agreement, the general project description states, "The project entails the development of an automobile dealership facility that supports the sale and servicing of General Motor's Hummer franchise vehicles." This is the language that City Attorney Tom Schultz brought to City Council, and then cited the need for an amendment to the Agreement.

Member Gutman asked Mr. Quinn whether he had a problem with the language. Mr. Quinn didn't see a problem.

Member Burke said that the points that should be specifically stated are: The dealer should be allowed to display, service and sell new and used vehicles, i.e., used vehicles by whatever method they are purchased; and the display of the used vehicles be limited to the easternmost Grand River pad.

Moved by Member Burke, seconded by Member Gutman:

**In the matter of the Hummer of Novi Special Development Option Agreement, motion to recommend amending the agreement to City Council to allow: 1) The dealer to display, service and sell new and used vehicles, i.e., used vehicles by whatever method they are purchased; and 2) The display of the used vehicles be limited to the easternmost Grand River pad.**

#### **DISCUSSION**

Member Lynch thought this was a good compromise. He felt that the existing language did in fact restrict the dealer to Hummer only vehicles. It concerned Member Lynch that the dealer continued to display used vehicles during this negotiation. It is not in the City's interest to hamper a business's success. However, when the issue was raised, it seemed like the owner disregarded the City's position and continued to sell and display used vehicles. These actions could have resulted in the City refusing to negotiate further with the dealer. Nonetheless, Member Lynch would support the motion because it is the best thing to do for the City. Member Lynch said that the Jaguar and Lexus dealerships do not do this. He was disappointed with the behavior of the dealer. He thought the language was pretty clear – the sale and service of Hummer vehicles. Member Lynch was concerned that this agreement would be signed and then something else would happen.

Member Pehrson said that the City would be responsible for enforcing the Agreement and making adjustments wherever it saw fit. Member Pehrson called for the vote.

#### **ROLL CALL VOTE ON HUMMER POSITIVE RECOMMENDATION MOTION MADE BY MEMBER BURKE AND SECONDED BY MEMBER GUTMAN:**

**In the matter of the Hummer of Novi Special Development Option Agreement, motion to recommend amending the agreement to City Council to allow: 1) The dealer to display, service and sell new and used vehicles, i.e., used vehicles by whatever method they are purchased; and 2) The display of the used vehicles be limited to the easternmost Grand River pad. *Motion carried 5-0.***

**CITY COUNCIL MINUTES  
JULY 2, 2007**



**REGULAR MEETING OF THE COUNCIL OF THE CITY OF NOVI  
DRAFT MONDAY, JULY 2, 2007 AT 7:00 P.M.  
COUNCIL CHAMBERS – NOVI CIVIC CENTER – 45175 W. TEN MILE ROAD**

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

- 2. Consideration of Referral to the Planning Commission of the Proposed Second Amendment to SDO Agreement with Hummer of Novi, located at the corner of Grand River Avenue and Meadowbrook Road, to allow the parking of non-Hummer used vehicles under certain conditions and in certain locations.**

Matthew Quinn, appeared on behalf of Hummer of Novi, he said his client Gary Wood of Dan Frost, and it was his opinion also to believe that there was no necessity to send this matter to the Planning Commission for any type of an amendment. He said it was their belief that the original development agreement that was later superseded by the SDO agreement was plain on its reading. It described the dealership in its general use as a Hummer dealership, then it went on to describe what could happen on the premises which was the sale of new and used automobiles. Evidently throughout the years, the City was under the belief that somehow his client was not allowed to sell any used car that he would like off that property. He said that from day 1 that dealership would not have been there if his client understood that he could not sell other used vehicles, other than Hummer used vehicles on that site. He could not make a living only selling one type of automobile. He said he would venture to say, this was a guess, that no where in the state of Michigan or in the United States was any dealer limited to selling one type of vehicle from a place of business because it doesn't make since and can not exist. He said that particular dealership sells 20 to 25 used cars per month from that site. They chose to sell high end used vehicles, larger Suburban's, Tahoe's, and Porsches, because it fits in with the scheme and concept of a Hummer dealership which is considered an upscale automobile truck dealership. What brought this all on was that his client, with a used car manager, put out an older used car on a display pod, that used car manager had been fired because that was even in violation of their own internal rules that they had placed. In his discussions with Mr. Schultz over the last year, maybe longer, they had a difference of opinion as to what that agreement said. His client's first position is that nothing needs to be done, he can live with the agreement the way it is, which meant he could continue to sell Hummer cars, and other types of vehicles also. His client had committed to him from that point on that on the display pad he would put nothing more than what they considered to be high end cars. In his mind it could affect the value of his dealership, if it ever had to be sold, if there was any limiting language anywhere recorded against the property. He said there were two options, with Mr. Schultz and him passing language around, at one time Mr. Schultz gave him a proposed amendment to the SDO that said, they were allowed to sell used cars there, but they could only be used cars that were taken in trade for the sale of a Hummer vehicle. Again, economically that could not happen. To respond to his

proposal, he made a proposal that, as a clarification of the earlier agreement that his client agreed to only put used vehicles of a sticker value of \$20,000 or more, out on the display pod. About a year ago he responded to one of the City's letters with an aggressive letter, with not a good tone to it, because he was so upset that would come forward. Number one they didn't think it should go anywhere, they could live by what it said, their interpretation of it. If for some reason the City wanted to spend more time and go to a public hearing through the Planning Commission and have it come back, they would like Council's recommendation on their draft to go to the Planning Commission.

Mayor Pro Tem Capello said he would start because he was the one that kept pushing the issue when ever he saw the used cars parked on Grand River Avenue outside the Hummer dealership. He said he spent a lot of time working with Mr. Quinn's client to work with a language of the SDO to allow the Hummer dealership at Grand River and Meadowbrook, the gateway to our City; they just got done putting in a substantial amount of time working on the gateway ordinance so they had something to be proud of. A car dealership was not the right thing to put at the entrance way to the gateway at Grand River and Meadowbrook. Only because it was a Hummer dealership did they allow it. Only because of all the restrictions did they allow it. He said after all the time he put in, and he put in more time than anyone else sitting up there, directly with his client, it was very late in the game that he realized they were going to sell used cars there. He was always told they were just going to sell Hummer's. When he found out there were used cars, he was told, they have to take the cars in on trade so they have to sell them. That was where the language would only allow the sale of used cars, his client said you would never see them, don't worry they would be in the back lots, all you would see were Hummer vehicles from the road. He said every time he saw a used vehicle out there that was not a Hummer he called Tom Schultz and told him to give his client a ticket that continued for a period of time. At the beginning his client would move the cars and put the Hummers back out, but lately he was not doing that so that was the reason this came before Council. If there was confusion in regard to the language, whether or not his client could take in used vehicles and sell them from that lot, he was not sure. He admitted that when it was passed, he was fully aware he would sell used vehicles from that dealership, but he was also promised by him that they would never be displayed out in front, especially on Grand River Avenue. He could live with language that would allow the sale of the used vehicle, he understood the sales probably even a little more than what they take in and that was still ok, given the condition of the economy. He thought they asked for too much, especially for him to now say they want to advertise their used cars out in front and have a typical car dealership as they have to the west down the street which he thought was a black eye to the Grand River area they are trying to build up.

Member Nagy said she had a different take on it. She understood the amount of time Mayor Pro Tem Capello spent with the dealership, however, she didn't think it should have gone in there in the first place but they all had different views. They are where they are and she thought it was unreasonable for Council to possibly in any way prohibit the value of someone's dealership, their ability to make a dollar and ability to restrict

what would go on that pad and what would not. She said they talked about gateways, she never thought of that area as being a gateway to the City, she thought of the outer corners, 8 Mile and Haggerty, 14 Mile and Novi Road. They had never asked or made an agreement of any dealership in the City to do this. If they wanted to put a Lincoln Navigator on their pad, who would it bother? Most people were whizzing past there and they see the Hummer and maybe they look at the cars when they are at the light, or they look at what is on the pad, but she didn't see how it would offend anyone. They would somehow in some way try to restrict the man from displaying a used vehicle, and in her mind it interfered with his ability to earn a living. She didn't think it bothered anyone, she hadn't heard any complaints from any residents in the City of Novi that whatever is on the pad bothers them. She said there were dealerships all along the area up to Haggerty, there were all sorts of displays of cars everywhere. She thought to single that dealership out was unconscionable and she was not sure it was legal. She understood reading through the letters, but it seemed petty on their part to try to do that. She didn't understand why it would bother someone if there was a used SUV Lincoln Navigator; obviously they were not getting beat up old cars as trade-ins in the first place, why it would bother anyone and why they wanted to make a big deal out of it is beyond her. She thought they were trying to restrict the man's income, or the dealership's value. She thought they were interfering in a way that, as a Council, they shouldn't be doing. She thought the language that was in there, she understood that two attorney's could argue about all the language there was in the world, but why they would want to do this and spend the time monitoring what was and what was not on the pad, when whoever does this monitoring could spend their time more valuably than that. She said she was not in favor of restricting the people in any manner.

Mr. Schultz said that Mr. Quinn was right; they had a disagreement about the language of the agreement in the plan said. There were words in the plans which were approved by the Commission and the Council that talked about new and used Hummer vehicles in limiting language. If the intention was that it was appropriate for there to be something other than Hummer vehicles, they had to change the words, or they had to construe them in such a way that they didn't have any limitation the \$20,000 vehicle number that Mr. Quinn threw out there would be an arbitrary thing, there were no standards for it. If Council wanted to accept the argument, the appropriate thing is to change the language, and then start, if anywhere, at the Planning Commission. He understood Mr. Quinn's point that they didn't agree to that, but the language is what it is, they had given their opinion. He didn't think they could just leave there thinking there was an agreement on a \$20,000 used vehicle on the pad and up, there was no language that would put that restriction in there without action by the Commission or Council.

Mayor Landry said he would place his comments on the record. There were two issues going on, first of all, what did the agreement say. There was a contract entered between two parties, both represented by Council, what does it say? If they believe it says they are limited to Hummer vehicles, the second issue was what do they do about it? The applicant didn't want to be limited to Hummer vehicles. With respect to the first issue, what did the agreement say as he read the agreement, it said, they were limited to Hummer vehicles. If he read part one, it said the project entailed the development of

an automobile dealership facility that supported the sale and servicing of General Motors Hummer franchise vehicles. Paragraph 4 of that same section said exclusive sale of new or used vehicles as permitted under the agreement, subject to and in accordance with all the specifications and the conceptual plan and approved site plan. When he looked at the notes to those plans, it said intended use, the proposed development would be an automobile dealership selling and servicing new and used Hummer brand models. To him as he read it, it was limited to Hummer vehicles. That was issue one, his interpretation was that they were limited to Hummer vehicles. However, the applicant did not want to be limited to Hummer vehicles. They should treat the applicant like they treat anyone who wanted to change the language in a special development option. It was their option to ask the City to do that, in order to do that they should refer to the Planning Commission and let the Planning Commission do their role of having the hearing, flushing the issues out, letting the applicant make a lot of the arguments that Mr. Quinn had made about business and necessity and those arguments which may be valid, let it come back before Council, let them consider them, it may be very valid that they may not want to limit them to Hummer vehicles. That was something that was different than what does the SDO say. To him it said you were limited to Hummers. His take was that they should send it to the Planning Commission, let them do their job, let it come back to Council, and let them have the ultimate decision on whether they wanted to change it or not. If they were going to the Planning Commission it was the fielder's choice, if the applicant wanted to send his language it was fine with him. It was their choice; they were the ones coming to Council asking to change the language. His recommendation was to send it to the Planning Commission with Mr. Quinn's language since he was the one asking for the change.

Member Gatt said that he admired the way the Mayor put things into perspective and brought a very difficult subject down to the ability for everyone to understand. He thought it was a disagreement between two lawyers, and their interpretation of a contract. He agreed with the Mayor that it should go and they should change the contract or agreement that would read that the Hummer dealership could sell used cars. If it mattered to Mr. Quinn he was fully in support of his concept. He thought the dealership should be able to sell any car they want. They shouldn't limit their ability to sell used cars. He agreed with the Mayor that it had to go to the Planning Commission to get cleaned up.

**CM-07-07-235**      **Moved by Margolis, seconded by Gatt; CARRIED UNANIMOUSLY: To refer the matter to the Planning Commission, propose a second amendment to the SDO agreement with Hummer of Novi located at the corner of Grand River Avenue and Meadowbrook Road to allow the parking of non-Hummer used vehicles under certain conditions and in certain locations and that Council would refer Mr. Quinn's letter to the Planning Commission.**

**Discussion**

Member Margolis said she agreed that had to go to the Planning Commission and she is always appreciative of the Mayor's straight forward approach to it. She said she didn't have a problem with it being non-Hummer vehicles, she understood in this type of environment why that would have to take place. She appreciated the applicant's offer to limit it to a certain class of vehicles, that was something she was interested in, but she didn't have a problem with it.

**Roll call vote on CM-07-07-235**

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

**CITY COUNCIL MINUTES  
MAY 1, 2007**

**REGULAR MEETING OF THE COUNCIL OF THE CITY OF NOVI  
MONDAY, MAY 1, 2007 AT 7:00 P.M.  
COUNCIL CHAMBERS – NOVI CIVIC CENTER – 45175 W. TEN MILE ROAD**

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

**3. Unlawful parking of used cars by the Hummer Dealership on Grand River  
– Mayor Pro Tem Capello**

Mayor Pro Tem Capello said when the Hummer Dealership came to Council to expand the Gateway District, the image they were going to create on the corner of Meadowbrook and Grand River was very important to Council. He said he and Mayor Landry met with them on numerous occasions, worked with the ordinance and worked with them, and came up with an agreement. He said, in his view, it wasn't until the ninth hour that he realized that they also planned to sell used cars. He said the only reason he was going to let them go there and they were going to get his vote was because they were selling Hummer and it would give Novi a unique business establishment on that corner. He commented that on several occasions he saw that they were displaying used cars in front of the building. He said they were very selective regarding how many cars they could display, they promised to keep the used cars in the back of the lot not visible to the roadway, however, they continually display used cars on Grand River. He asked Mr. Schultz to discern what they could display and where. He thought that information would be on the site plan but was not sure it was on the contract documents. He said they were not going to listen to the City after being told several times, and suggested it was time to write some tickets. Mr. Schultz said he would be happy to bring correspondence next time. He said he did have a meeting with Mr. Quinn, and the way they left it was they were going to present some language with assistance and drafting it from his office for Council's consideration to document the agreement that there be nothing but Hummers in that front display area. Mr. Schultz said the ball was in his court to be sure that got to Council.

Mayor Pro Tem Capello asked if the site plan was clear enough to issue tickets. Mr. Schultz said they were told they would have the opportunity to make their pitch on that issue before the tickets were written, and he felt he had to honor that. Mayor Pro Tem Capello said that was fine.

LETTER FROM CITY ATTORNEY  
TO MR. QUINN  
MAY 10, 2007



May 10, 2007

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

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

Matthew C. Quinn, Esq.  
Cooper, Shifman, Gabe, Quinn & Seymour  
1026 West Eleven Mile Road  
Royal Oak, MI 48067

Via Fax (248) 399-1711

RE: *Hummer of Novi*  
Our File No. 55142 NOV

Dear Mr. Quinn:

This letter follows up our recent conversation. The issue of parking non-Hummer vehicles on the pads in front of the Hummer dealership (usually along the Grand River frontage) has resurfaced. By virtue of the attached letter from our office dated October 5, 2006, you and your client have been made aware of the City's position that the Special Development Option Agreement (SDO agreement) between Hummer of Novi and the City specifies that the use of the property is to be for new and used Hummer vehicles *only*.

Following that most recent letter, there was a period of compliance by Hummer, but we did discuss the idea of your coming before the City Council to at least request an appropriate amendment to the SDO agreement to that would allow the use of certain areas of the property for parking non-Hummer vehicles. Your request was that, to avoid extensive back-and-forth, our office prepare a proposed amendment for Council's consideration should it be interested in taking the issue up.

I have prepared a draft Second Amendment to the SDO allowing the sale of non-Hummer vehicles on the property, but not the display of non-Hummer vehicles on any of the pads adjacent to either Grand River or Meadowbrook. Such a revision would seem to address both the City's expectation that the dealership in fact be a Hummer dealership in more than just name and your client's business reality of occasionally accepting other vehicles in "trade" for a new Hummer. I do not know whether the City Council is interested in making this or any other change to the SDO.

Please let me know your thoughts on this suggested language as soon as possible. I expect that Council will want to address this matter in a formal way by its June 4, 2007 meeting.

Matthew C. Quinn, Esq.  
May 10, 2007  
Page 2

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

Very truly yours,

Thomas R. Schultz

TRS/jes  
cc: Clay Pearson, City Manager  
Maryanne Cornelius, City Clerk  
Cindy Uglow, Neighborhood Services  
Barb McBeth, Planning Director

C:\NrPortbl\manage\SEEFEL\868687\_1.DOC

**MODIFIED S.D.O. AGREEMENT  
PREPARED BY THE  
CITY ATTORNEY**

City-Drafted

[POSSIBLE AMENDMENT DRAFTED BY CITY]

STATE OF MICHIGAN

COUNTY OF OAKLAND

CITY OF NOVI

SECOND AMENDMENT TO SDO AGREEMENT

HUMMER OF NOVI GATEWAY

AGREEMENT, dated June \_\_\_\_, 2007, by and between the City of Novi, whose address is 45175 West Ten Mile Road, Novi, MI, 48375 (the "City") and Gardan, LLC, whose address is 3147 Interlaken Street, West Bloomfield, MI, (the "Owner"); and Hummer of Novi, whose address is 3147 Interlaken Street, West Bloomfield, MI (the "Developer").

**RECITALS:**

- I. Owner and the City previously entered into a Special Development Option (SDO) Agreement (the "Original SDO Agreement") in connection with certain property located in the City of Novi on Grand River Avenue and Meadowbrook Road. The Original SDO Agreement governs the use and development of the property for a "Hummer" auto dealership. The Original SDO Agreement covers the property described in the attached Exhibit A, and was approved by the City Council on June 21, 2004.
- II. A First Amendment to the SDO Agreement relating to signage was approved by the City Council on March \_\_\_\_, 2006.
- III. The Original SDO Agreement states in Article I, "General Project Description," that "The Project entails the development of an automobile dealership facility that supports the sale and servicing of General Motors Hummer franchise vehicles." Article III of the Agreement, entitled "Uses Permitted," states that "Uses permitted within the Project shall consist of a new and used car salesroom, show room, and office, and for service and parts and accessory sales related thereto,

with outdoor space for exclusive sale of new or used vehicles as shown on the Conceptual Plan, subject to the terms of this Agreement, and further subject to any modifications required by the City Council at the time of approval of the Site Plan.”

- IV. The Agreement attached and incorporated a Conceptual Plan that states “The proposed development will be an automotive dealership selling and servicing new and used Hummer brand models.”
- V. Owner has requested approval from the City to sell used cars, taken in trade for new Hummer vehicles at the Novi Hummer dealership, from the property.
- VI. The City Council having agreed to allow such limited sales of such class or description of used vehicles, the parties now wish to formalize that approval through this Second Amendment to SDO, relating only to the sale—and not the display of such non-Hummer used vehicles on the “pads” along the road frontages of Grand River Avenue and Meadowbrook Road. No other amendment to the Original SDO Agreement is intended or contemplated, and the other terms and conditions thereof are hereby confirmed and restated.

***NOW, THEREFORE, IT IS AGREED AS FOLLOWS:***

- 1. Owner shall be permitted to park and store used non-Hummer vehicles taken in trade for the sale of Hummer vehicles on the premises in the parking lot areas designated on the conceptual; Plan and the Site Plan for parking and storage. Owner shall not, however, be permitted to park or store any non-Hummer vehicles on the “pads” depicted on the Plans along the road frontages of Grand River Avenue and Meadowbrook Road.
- 2. This Second Amendment to SDO Agreement amends only sale and parking of used non-Hummer vehicles taken in trade for the sale of Hummer vehicles. In all other respects, the Original SDO Agreement shall remain unchanged.
- 3. This Second Amendment to SDO Agreement shall be binding upon and inure to the benefit of the parties to this Agreement and their respective heirs, successors, assigns and transferees, and an affidavit providing notice of this Agreement may be recorded by either party with the office of the Oakland County Register of Deeds.
- 4. This First Amendment to SDO Agreement may be signed in counterparts.

[signatures on following pages]

WITNESSES:

**OWNER:**

**GARDAN, LLC**

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
BY:  
ITS:

STATE OF MICHIGAN    )  
                                  )SS.  
COUNTY OF OAKLAND    )

On this \_\_\_ day of \_\_\_\_\_, 2007, before me appeared \_\_\_\_\_, authorized representative of Owner, who states that he/she has signed this document of his/her own free will on behalf of Owner.

\_\_\_\_\_  
Notary Public

WITNESSES:

**DEVELOPER:**

**HUMMER OF NOVI**

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
BY:  
ITS:

STATE OF MICHIGAN    )  
                                  )SS.  
COUNTY OF OAKLAND    )

On this \_\_\_ day of \_\_\_\_\_, 2007, before me appeared \_\_\_\_\_, authorized representative of Developer, who states that he/she has signed this document of his/her own free will on behalf of Developer.

\_\_\_\_\_  
Notary Public

WITNESSES:

CITY OF NOVI

\_\_\_\_\_

\_\_\_\_\_  
BY: David B. Landry, Mayor

\_\_\_\_\_

\_\_\_\_\_  
BY: Maryanne Cornelius, Clerk

STATE OF MICHIGAN    )  
                                  )SS.  
COUNTY OF OAKLAND    )

On this \_\_\_ day of \_\_\_\_\_, 2007, before me appeared David B. Landry and Maryanne Cornelius, who stated that they have signed this document of their own free will on behalf of the City of Novi in their respective official capacities, as stated above.

\_\_\_\_\_  
Notary Public

934200

**EMAIL FROM MR. QUINN'S OFFICE  
AND  
MODIFIED S.D.O. AGREEMENT  
PREPARED BY THE  
MR. QUINN'S OFFICE**



**Schultz, Thomas**

---

**From:** Kim [kwolfe@CooperShifman.com] on behalf of Matthew Quinn [quinn@CooperShifman.com]  
**Sent:** Friday, June 15, 2007 12:10 PM  
**To:** Schultz, Thomas  
**Cc:** grw10@aol.com  
**Subject:** Hummer of Novi SDO Agreement  
**Attachments:** Second Amendment to SDO Agreement.DOC

Tom:

Attached is my proposed revised Second Amendment to the SDO Agreement. This Agreement is set up on the basis that it is intended to "clarify" the site plan requirements instead of making the changes an adversarial process. I have also tried to use the terminology set forth in the Concept Plan and Final Site Plan within this Agreement. Please review and contact me for further discussion prior to placing this on the City Council Agenda.

Very truly yours,  
Matthew C. Quinn  
Cooper, Shifman, Gabe, Quinn & Seymour  
1026 West Eleven Mile Road  
Royal Oak, MI 48067  
(248) 399-9703  
(248) 399-1711 fax  
[quinn@coopershifman.com](mailto:quinn@coopershifman.com)

Confidential: This electronic message and all contents contain information from the law firm of Cooper, Shifman, Gabe, Quinn & Seymour which may be privileged, confidential or otherwise protected from disclosure. The information is intended to be for the addressee only. If you are not the addressee, any disclosure, copy, distribution or use of the contents of this message is prohibited. If you have received this electronic message in error, please notify us immediately at (248) 399-9703 and destroy the original message and all copies.

6/28/2007

POSSIBLE AMENDMENT DRAFTED BY HUMMER

STATE OF MICHIGAN

COUNTY OF OAKLAND

CITY OF NOVI

SECOND AMENDMENT TO SDO AGREEMENT

HUMMER OF NOVI GATEWAY

AGREEMENT, dated June 21, 2007, by and between the City of Novi, whose address is 45175 West Ten Mile Road, Novi, MI, 48375 (the "City") and Gardan, LLC, whose address is 3147 Interlaken Street, West Bloomfield, MI, (the "Owner"); and Hummer of Novi, whose address is 3147 Interlaken Street, West Bloomfield, MI (the "Developer").

**RECITALS:**

- I. Owner and the City previously entered into a Special Development Option (SDO) Agreement (the "Original SDO Agreement") in connection with certain property located in the City of Novi on Grand River Avenue and Meadowbrook Road. The Original SDO Agreement governs the use and development of the property for a "Hummer" auto dealership. The Original SDO Agreement covers the property described in the attached Exhibit A, and was approved by the City Council on June 21, 2004.
- II. A First Amendment to the SDO Agreement relating to signage was approved by the City Council on March \_\_\_\_\_, 2006.
- III. The Original SDO Agreement states in Article I, "General Project Description," that "The Project entails the development of an automobile dealership facility that supports the sale and servicing of General Motors Hummer franchise vehicles." Article III of the Agreement, entitled "Uses Permitted," states that "Uses permitted within the Project shall consist of a new and used car salesroom, show room, and office, and for service and parts and accessory sales related thereto,

with outdoor space for exclusive sale of new or used vehicles as shown on the Conceptual Plan, subject to the terms of this Agreement, and further subject to any modifications required by the City Council at the time of approval of the Site Plan.”

- IV. The Agreement attached and incorporated a Conceptual Plan that states as the intended use: –“The proposed development will be an automotive dealership selling and servicing new and used Hummer brand models.”
- V. Owner and Developer have requested approval a clarification from the City on its ability to sell used cars, taken in trade for new Hummer vehicles at the Novi Hummer dealership vehicles, from the property.
- VI. The City Council having agreed to clarify allow such limited sales of such class or description of used vehicles, the parties now wish to formalize that approval clarification through this Second Amendment to SDO, relating only to the sale and not the display of such non-Hummer used vehicles on the “pads” along the road frontages of Grand River Avenue and Meadowbrook Road. No other amendment to the Original SDO Agreement is intended or contemplated, and the other terms and conditions thereof are hereby confirmed and restated.

***NOW, THEREFORE, IT IS AGREED AS FOLLOWS:***

4. It is hereby clarified that the Owner is allowed to park, display and store used non-Hummer vehicles on the premises in the display parking lot areas designated on the Conceptual Plan and the Final Site Plan. It is further clarified that the Owner is permitted to park and display non-Hummer vehicles on the display area “pads” depicted on the plans along the road frontages of Grand River Avenue and Meadowbrook Road, however, such used vehicles shall have a sticker price of not less than \$20,000. ~~shall be permitted to park and store used non-Hummer vehicles taken in trade for the sale of Hummer vehicles on the premises in the parking lot areas designated on the conceptual Plan and the Site Plan for parking and storage. Owner shall not, however, be permitted to park or store any non-Hummer vehicles on the “pads” depicted on the Plans along the road frontages of Grand River Avenue and Meadowbrook Road.~~
  - 1.
  2. This Second Amendment to SDO Agreement amends only sale and parking of used non-Hummer vehicles ~~taken in trade for the sale of Hummer vehicles.~~ In all other respects, the Original SDO Agreement shall remain unchanged.
  3. This Second Amendment to SDO Agreement shall be binding upon and inure to the benefit of the parties to this Agreement and their respective heirs, successors, assigns and transferees, and an affidavit providing notice of this Agreement may

be recorded by either party with the office of the Oakland County Register of Deeds.

4. This First Amendment to SDO Agreement may be signed in counterparts.

[signatures on following pages]

WITNESSES:

**OWNER:**

**GARDAN, LLC**

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
BY:  
ITS:

STATE OF MICHIGAN    )  
                                  )SS.  
COUNTY OF OAKLAND    )

On this \_\_\_ day of \_\_\_\_\_, 2007, before me appeared \_\_\_\_\_, authorized representative of Owner, who states that he/she has signed this document of his/her own free will on behalf of Owner.

\_\_\_\_\_  
Notary Public

WITNESSES:

**DEVELOPER:**

**HUMMER OF NOVI**

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
BY:  
ITS:

STATE OF MICHIGAN    )  
                                  )SS.  
COUNTY OF OAKLAND    )

On this \_\_\_ day of \_\_\_\_\_, 2007, before me appeared \_\_\_\_\_, authorized representative of Developer, who states that he/she has signed this document of his/her own free will on behalf of Developer.

\_\_\_\_\_  
Notary Public

WITNESSES:

CITY OF NOVI

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
BY: David B. Landry, Mayor

\_\_\_\_\_  
BY: Maryanne Cornelius, Clerk

STATE OF MICHIGAN     )  
                                  )SS.  
COUNTY OF OAKLAND    )

On this \_\_\_ day of \_\_\_\_\_, 2007, before me appeared David B. Landry and Maryanne Cornelius, who stated that they have signed this document of their own free will on behalf of the City of Novi in their respective official capacities, as stated above.

\_\_\_\_\_  
Notary Public

934200

**LETTER FROM CITY ATTORNEY  
OCTOBER 5, 2006**



October 5, 2006

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

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

Matthew C. Quinn, Esq.  
Cooper, Shifman, Gabe, Quinn & Seymour  
1026 West Eleven Mile Road  
Royal Oak, MI 48067

Via Fax (248) 399-1711

RE: *Hummer of Novi*  
Our File No. 55142 NOV

Dear Mr. Quinn:

Our office recently received a copy of your letter of September 27, 2006 to Cindy Uglow. Aside from the tone of the letter—not your usual courteous, businesslike manner—it is unclear to me exactly what the basis is for your contention that the Special Development Option Agreement (SDO agreement) between Hummer of Novi and the City does not specify that the use of the property is to be for new and used Hummer vehicles.

You make some incomplete references to language in the SDO agreement governing the use of the property as being only generally for “new and used car salesroom, etc.” and the “sale of new or used vehicles.” While I assume the point is that these phrases do not use the word “Hummer,” the SDO agreement—which is the agreement that governs this issue, not the initial “Development Agreement”—specifically states in the very first paragraph, Article I, “General Project Description,” that “The project entails the development of an automobile dealership facility that supports *the sale and servicing of General Motors Hummer’s franchise vehicles.*”

In addition, the “Uses Permitted” section of the agreement, Article III, specifically states that “Uses permitted within the Project shall consist of a new and used car salesroom, show room, and office, and for service and parts and accessory sales related thereto, *with outdoor space for exclusive sale of new or used vehicles as shown on the Conceptual Plan*, subject to the terms of this Agreement, and further subject to any modifications required by the City Council at the time of approval of the Site Plan.”

Both the Conceptual Plan and the final Site Plan have clear and unequivocal notations on them that state that “The proposed development will be an automotive dealership selling and servicing new and used *Hummer brand models.*” Contrary to your contention that these notations are irrelevant, notations on such plans are generally reviewed in intimate detail by both the developer and



Matthew C. Quinn, Esq.  
October 5, 2006  
Page 2

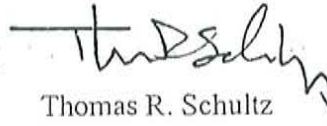
the City, and are indeed relevant; rarely would a detail as significant as the intended use of the property escape scrutiny over such a long approval process.

As a separate matter, your letter addresses the reference in Ms. Uglow's correspondence to the zoning ordinance as a basis for a possible City enforcement action in this case. You suggest that the City's only means of redress for a violation would actually be the circuit court, referring to Article XIV, General Provisions, Subsection D. While I agree that that section certainly does permit the City to enforce the provisions of the agreement in the circuit court, it does not provide that such would be the City's *only* means of enforcement.

Your letter closes with a suggestion that, if the matter is not simply "dropped" altogether, your client should be placed on a City Council agenda for discussion of an appropriate amendment to the SDO agreement to address your client's recent desire to use areas of the property for parking non-Hummer vehicles, should the City Council determine that to be appropriate. I will discuss that possibility with the City Manager and respond to you with regard to your client's options in that event, unless Mr. Pearson does so to you directly.

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

Very truly yours,

  
Thomas R. Schultz

TRS/jes

cc: Clay Pearson, City Manager  
Maryanne Cornelius, City Clerk  
Cindy Uglow, Neighborhood Services  
Barb McBeth, Planning Director

LETTER FROM MR. QUINN  
SEPTEMBER 27, 2006

LAW OFFICES  
COOPER, SHIFMAN, GABE, QUINN & SEYMOUR  
1026 WEST ELEVEN MILE ROAD -- ROYAL OAK -- MICHIGAN 48067-2451

CHARLES Y. COOPER  
ARNOLD J. SHIFMAN  
CHARLES H. GABE  
MATTHEW C. QUINN  
PHILIP H. SEYMOUR  
KELLI A. ELDRED  
SCOTT R. BAKER

TELEPHONE (248) 399-9703 -- FACSIMILE (248) 399-1711

EMAIL: [quinn@coopershifman.com](mailto:quinn@coopershifman.com)



NOVI OFFICE  
26200 TOWN CENTER DRIVE  
SUITE 145  
P.O. BOX 352  
NOVI, MICHIGAN 48375-0352  
TELEPHONE (248) 349-8050

September 27, 2006

Cindy Uglow  
Neighborhood Services  
City of Novi  
45175 W. Ten Mile Road  
Novi, MI 48375-3024

RE: Hummer of Novi

Dear Cindy:

Thank you for your letter directed to Scott Riddle regarding the Hummer of Novi automobile dealership dated September 15, 2006. I want you to know that I have known you for many years and I have the utmost respect for your ability to do your job. I also know that you were given direction by someone in the Administration to issue the Notice of Violation letter. Unfortunately, someone is wasting your time as well as the City's money by directing you to issue such a letter.

This entire issue is almost laughable. The Hummer of Novi site is governed by two contractual agreements. The first contract was a Development Agreement entered into between Hummer of Novi, Inc. and the City of Novi in December of 2003. I will point out to you that nowhere in the contents of the Development Agreement nor in the Special Development Option Agreement is there any reference whatsoever to anything other than "new and used vehicles".

In the Development Agreement, Recitations, paragraph II specifically states "for purposes of improving and using the Land for retail business use for service and parts and accessory sales of and for new and used vehicles and with outdoor space for exclusive sale of new or used vehicles..." Also, Recitations, paragraph IV (A) states "owner shall develop and use the Land solely for new and used car salesroom, showroom, offices and for service and parts of accessory sales and with outdoor space for exclusive sale of new or used vehicles..." A signed copy of the Development Agreement is attached.

Page two

The next written contract which governs this property is the Special Development Option Agreement entered into between the City of Novi and Gardan LLC, who was the owner of the property, and Hummer of Novi, as the Developer. Once again, in paragraph I, General Project Description, sub-paragraph 4 states "Owner agrees to develop and use the Property solely for new and used car salesroom, showroom and offices and for service and parts and accessory sales related thereto, with outdoor space for exclusive sale of new or used vehicles as permitted under this Agreement..." Within the same Agreement, paragraph III, Uses Permitted states "uses permitted within the Project shall consist of new and used car salesroom, showroom and office, and for service and parts and accessory sales related thereto, with outdoor space for exclusive sale of new or used vehicles as shown on the Conceptual Plan..." Further, under paragraph XIV, General Provisions, subparagraph E. states "this Agreement may not be amended except in writing signed by the parties and recorded in the same manner as this Agreement..." This Agreement was signed in August of 2004. At the time of drafting this letter I do not have available to me a signed copy of the Agreement but I have attached hereto an unsigned copy.

I would also like to point out that assuming for a moment that there was some violation of the Agreement, paragraph XIV. General Provisions. (D) states "A material breach of this Agreement by Owner shall constitute a nuisance per se. In the event of a breach of this Agreement, by Owner, its agents, officers, employees or persons acting in concert with it, the City may notify Owner of the occurrence of the breach and issue a written notice requiring the breach be cured within 30 days."

Now, given the background of this issue which is based upon the written Agreements, it is hard to believe that the City of Novi is stating that on the Final Site Plan, which is merely an engineering plan which sets forth the parking requirements, lot area, road frontage requirements, off street loading area requirements and fire department notes and other engineering notes, and that a non-ordinance required note on the Plan controls. The City would like to forget the two written Agreements and the multiple inches of review letters from the City of Novi Planning Department and the Applications for the rezoning. That note was merely an oversight from some draft person at Alpine Engineering and never was intended to supersede hours of attorney time, Planning Commission time, Council time and client time in coming up with the specific language of the Development Agreement and the Special Development Option Agreement. To even think so is ludicrous!

As referenced previously, the Special Development Option requires that a claim for nuisance per se be litigated in the Oakland County Circuit Court for a determination. Such a litigation would be an entire waste of time and money by the City of Novi because the undersigned does not believe that any Judge on the Oakland County Circuit Court Bench would ever determine that the written language contained in two separate Contracts are in any way overruled by a non-required superfluous note on a Site Plan.

Page three

However, if the City is intending to pursue this matter, the undersigned and my client demand that this issue be placed on the agenda for the City Council so that all members of Council, the media and the public can understand how ridiculous this entire matter is.

I would ask that you respond in writing to me and advise if this matter is being dropped at this time or of the City Council meeting agenda date at which we are expected to appear.

Very truly yours,

COOPER, SHIFMAN, GABE,  
QUINN & SEYMOUR

A handwritten signature in black ink, appearing to read 'M. C. Quinn', with a long horizontal flourish extending to the right.

Matthew C. Quinn

MCCQ/kw

Enc.

cc: Clay Pearson – City Manager  
Barbara McBeth – Planning Director  
Tom Schultz – City Attorney ✓  
Scott Riddle  
Gary Wood – Hummer of Novi  
David Landry – Mayor

**DETAIL FROM APPROVED SITE PLAN  
NOTE REGARDING  
"HUMMER BRAND MODELS"**

**APPLICANT:**  
SCOTT A. RIDDLE, INCORPORATED  
ALPINE ENGINEERING, INC.  
46892 WEST RD., SUITE 109  
NOMI, MI 48377  
PHONE (248) 202-4518  
FAX (248) 538-7877

**ARCHITECT:**  
HARRY RIDDLE ARCHITECT  
221 PARKVIEW DR.  
BLOOMINGTON, IL 61701  
PHONE (309) 662-3551  
FAX (309) 662-1858

**PARKING REQUIREMENTS:**

SALES AREA (USABLE) = 4634 SF  
SERVICE BAYS = 14 EA

VISITOR SPACES REQUIRED:  
SALES AREA 4634/200 = 23 SPACES  
SERVICE BAYS = 14 SPACES  
VISITOR SPACES REQUIRED=37 SPACES

VISITOR SPACES PROVIDED= 41 SPACES  
BARRIER FREE SPACES = 4 SPACES

EMPLOYEE PARKING:  
ANTICIPATED EMPLOYEES = 45  
EMPLOYEE PARKING PROVIDED = 47 SPACES

DISPLAY PARKING= 151 SPACES  
TOTAL PARKING SPACES = 239 SPACES

**LOT AREA/OPEN SPACE:**

LOT AREA 292,723 SF  
OPEN SPACE 138,374 SF (47% OPEN SPACE)

**FRONTAGE:**

MEADOWBROOK: 678.17'  
GRAND RIVER: 456.44'

**INTENDED USE:**

THE PROPOSED DEVELOPMENT WILL BE AN  
AUTOMOTIVE DEALERSHIP SELLING AND  
SERVICING NEW AND USED HUMMER BRAND  
MODELS. THIS DEVELOPMENT WILL BE  
CONSTRUCTED IN ONE PHASE. INTENDED  
COMPLETION DATE: SPRING 2005

**OFF-STREET LOADING AREA:**

BUILDING FRONTAGE= 120 LF  
LOADING AREA REQUIRED = 10 SF / FRONT FOOT  
TOTAL LOADING AREA REQUIRED = 1200 SF  
TOTAL LOADING AREA PROVIDED = 1200 SF

**FIRE DEPARTMENT NOTES:**

1) ALL WATER MAINS AND FIRE HYDRANTS ARE TO  
BE INSTALLED AND BE IN SERVICE PRIOR TO  
CONSTRUCTION ABOVE THE FOUNDATION.

2) THE BUILDING ADDRESS IS TO BE POSTED FACING  
THE STREET THROUGHOUT CONSTRUCTION. THE  
ADDRESS IS TO BE AT LEAST 3 INCHES HIGH ON A

**CIVIL ENGINEER:**  
ALPINE ENGINEERING, INC.  
46892 WEST RD., SUITE 109  
NOMI, MI 48377  
PHONE (248) 926-3701  
FAX (248) 926-3765

**LANDSCAPE:**  
ALLEN DESIGN  
557 CARPENTER  
NORTHVILLE, MI 48167  
PHONE (248) 467-4668  
FAX (248) 349-0559

**LOCATION MAP**  
NOT TO SCALE



**SITE DATA:**

CURRENT ZONING= GATEWAY  
REQUIRED SETBACKS- 70'-90' THOROUGHFARE  
THOROUGHFARE 70' - 90'  
SIDE 0'  
REAR 30'

TOTAL BUILDING AREA 23,117 SF  
TOTAL ON SITE PAVED AREA 112,494 SF

**NOTES:**

1) THE 10-YR STORMWATER DETENTION VOLUME IS  
ACCOMMODATED ON SITE. THE 100-YR STORMWATER  
DETENTION IS PROVIDED IN THE CITY OF NOMI REGIONAL  
DETENTION BASIN. DESIGN CRITERIA FOR STORM WATER  
RUNOFF AREA DISCHARGE = 0.15 CFS/AC.

2) ROOFTOP EQUIPMENT MUST BE SCREENED PER  
ORDINANCE REQUIREMENTS

3) EXTERIOR LIGHTING MUST COMPLY WITH SECTION 2511  
OF THE CITY OF NOMI CODE.

4) RIGHT OF WAY PERMIT IS REQUIRED FROM THE CITY  
OF NOMI FOR ANY WORK IN THE GRAND RIVER DRIVE  
AND MEADOWBROOK RIGHT-OF-WAYS.

5) ALL SIGNS SHALL CONFORM TO ALL APPLICABLE  
CODES AND ORDINANCES (CHAPTER 29) OF THE CITY  
OF NOMI, AND WHERE REQUIRED SHALL BE RENEWED  
AND APPROVED BY THE DEPARTMENT OF BUILDING AND  
SAFETY AND A PERMIT ISSUED.

6) ALL PARKING AND TRAFFIC CONTROL SIGNS SHALL  
COMPLY WITH THE DESIGN AND PLACEMENT  
REQUIREMENTS OF THE "MICHIGAN MANUAL OF UNIFORM  
TRAFFIC CONTROL DEVICES" (MMUTCD).

7) NOTIFY THE CITY OF NOMI A MINIMUM OF 48 HOURS  
PRIOR TO THE START OF CONSTRUCTION.

BY ALL CONSTRUCTION MUST BE CONFORMING TO THE

COMMERCIAL  
SITE PLANNING

SURVEYING

RESIDENTIAL

**LOCATION MAPS**

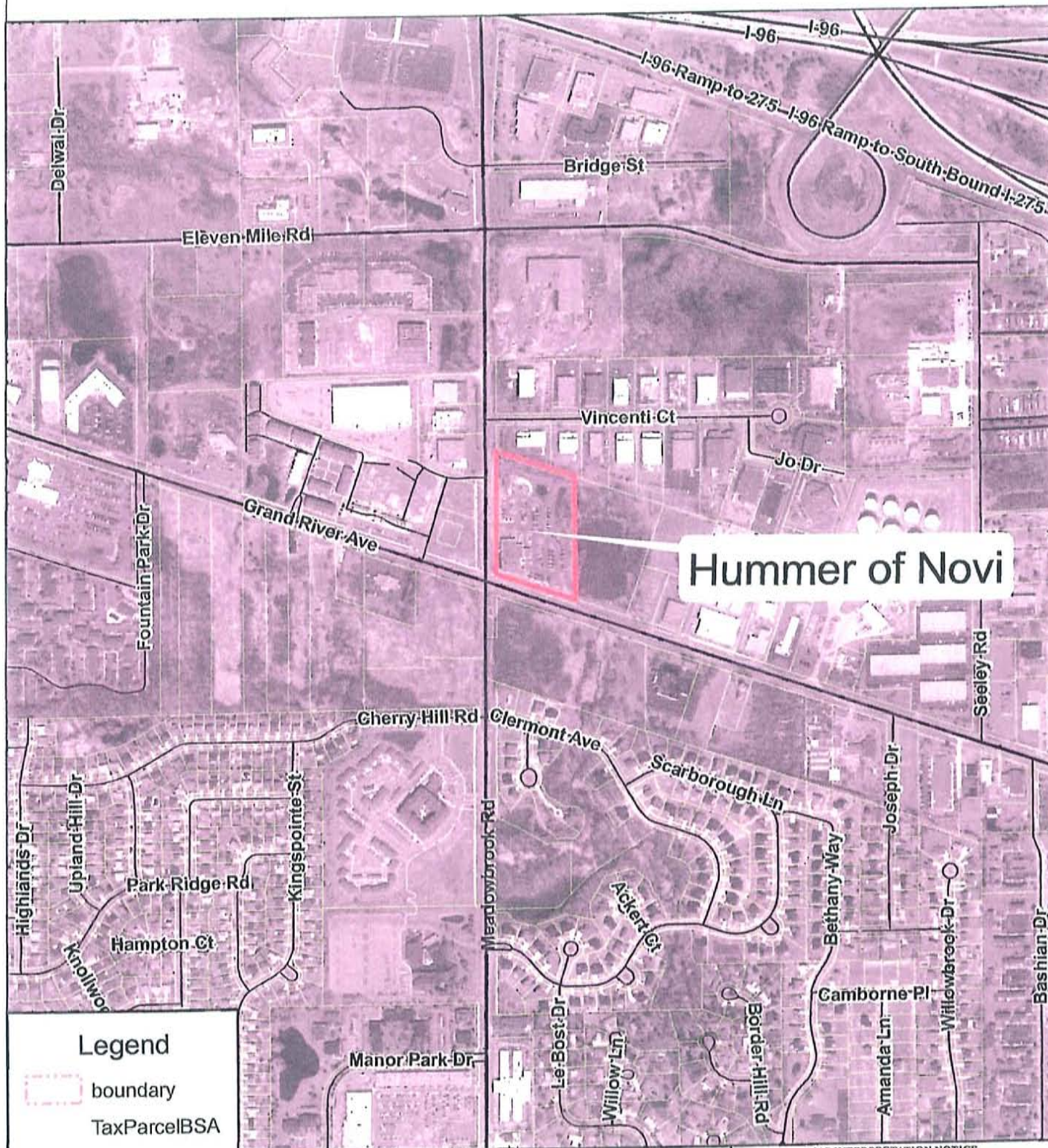




# Hummer of Novi

# Hummer of Novi

## Location Map



**Hummer of Novi**

### Legend

- boundary
- TaxParcelBSA



### CITY OF NOVI PLAN REVIEW CENTER

Created by Mark Spencer  
 6/27/07  
 NOVI PLANNING DEPARTMENT  
 45175 W. TEN MILE ROAD  
 NOVI, MI 48375-3024  
 (248) 347-0475  
 WWW.CITYOFNOVI.ORG



/hummerlocation.mxd

### MAP INTERPRETATION NOTICE

Map information depicted is not intended to replace or substitute for any official or primary source. This map was intended to meet National Map Accuracy Standards and use the most recent, accurate sources available to the people of the City of Novi. Boundary measurements and area calculations are approximate and should not be construed as survey measurements performed by a licensed Michigan Surveyor as defined in Michigan Public Act 132 of 1970 as amended. Please contact the City GIS Manager to confirm source and accuracy information related to this map.

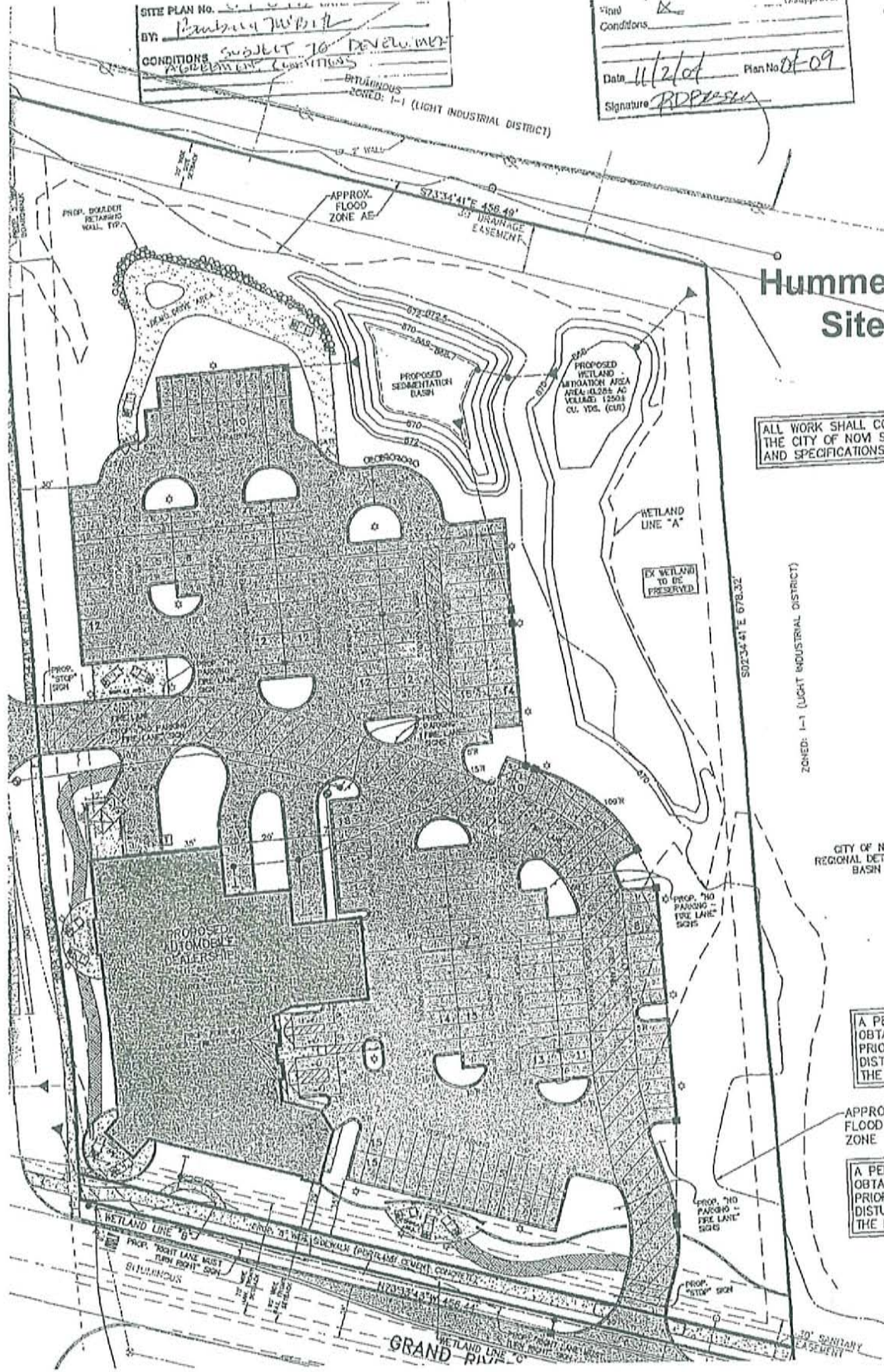
SITE PLAN No.                       
 BY: Hammer of Novi  
 CONDITIONS SUBJECT TO DEVELOPER'S  
PROPOSED EASEMENTS  
 BY:                       
 ZONED: I-1 (LIGHT INDUSTRIAL DISTRICT)

Find                       
 Conditions                       
 Date 11/2/04 Plan No. 07-09  
 Signature                     

# Hammer of Novi Site Plan

ALL WORK SHALL COMPLY WITH THE CITY OF NOVI STANDARDS AND SPECIFICATIONS

**▲**  
north



ZONED: I-1 (LIGHT INDUSTRIAL DISTRICT)

CITY OF NOVI  
REGIONAL DETROIT BASIN

A PERMIT REQUIRED TO OBTAIN PRIORITY DISTRICT THE

APPROXIMATE FLOOD ZONE

A PERMIT REQUIRED TO OBTAIN PRIORITY DISTRICT THE

GRAND RIVER