

CITY of NOVI CITY COUNCIL

Agenda Item 3
October 6, 2008

SUBJECT: Consideration of the request of Thompson-Brown Realtors for a two-year extension to the termination date provided in the PRO Agreement for Oberlin Single Family Condominium, a 58-unit residential condominium development, proposed to be located on a 38.86 acre parcel of land located on the south side of Eleven Mile Road, west of Beck Road.

SUBMITTING DEPARTMENT: Community Development Department - Planning

CITY MANAGER APPROVAL: 

BACKGROUND INFORMATION:

In 2006, the City Council approved a request for a Planned Rezoning Overlay (PRO) Agreement and conceptual plan for Oberlin Single Family Condos. The property is located on the south side of Eleven Mile Road, west of Beck Road, consisting of 38.86 acres. The PRO agreement accompanied a rezoning request from RA, Residential Acreage, to R-1, One Family Residential.

The PRO agreement indicates that the development will be a residential condominium community consisting of no more than 58 units, with private roads, and the preservation of no less than 54 percent of the site's open space and natural features. The applicant agreed to contribute \$58,000 toward sidewalk construction in the general area, and to provide a pedestrian and non-motorized access easement through the ITC corridor located west of the proposed development. The agreement calls for the construction of a minimum of 3.5 acres of wetlands as mitigation for the proposed fill of identified flood plain, and the provision of additional flood storage volume and long-term sedimentation control enhancements. Conceptual plans are attached as "Exhibit B" to the agreement.

For the Planned Rezoning Overlay ordinance, Section 3402 (d) (3) indicates, "Unless extended by the City Council for good cause, the Rezoning with Planned Rezoning Overlay shall expire following a period of two (2) years from the effective date of the Rezoning unless approved bona fide development of the property pursuant to building and other required permits issued by the City commences within such two (2) year period and proceeds diligently and in good faith as required by ordinance to completion." Permits have not been issued and construction has not begun.

The applicant has provided the attached letter requesting an extension to the approval for a two year period. The letter cites the past and current economic conditions and other unavoidable delays as the reasons for the request for an extension.

There is no set time period for an extension in the PRO ordinance. Another PRO, Uptown Place on Meadowbrook Road, was recently given a one-year extension of its PRO agreement. Staff recommends a similar time frame for this agreement.

RECOMMENDED ACTION: Approval of a one-year extension to the termination date provided in the PRO Agreement for Oberlin Single Family Condominium, a 58-unit residential condominium development, proposed to be located on a 38.86 acre parcel of land located on the south side of Eleven Mile Road, west of Beck Road.

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

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



THOMPSON-BROWN REALTORS®



30180 Orchard Lake Road • Suite 200 • Farmington Hills, MI 48334

Phone: (248) 539-8700 • Fax: (248) 539-8720

September 10, 2008

Clay J. Pearson, City Manager
City of Novi
45175 W. Ten Mile Road
Novi, MI 48375-3024

Rec'd 9-18-08 csp
To: Bob McBeth
Pls process.
cc: TRS
Jan A
Maryann
Randy A

RE: Request for two (2) year extension to term of PRO Agreement OBERLIN SINGLE-FAMILY Condominiums. Such extension to commence at the expiration of the existing two (2) year current term.

The Owners of the three parcels which comprise the previously approved and recorded OBERLIN SINGLE FAMILY Condominiums and whose signatures appear below, have requested that Thompson-Brown as their Real Estate agent prepare and submit this request for a two year extension commencing at the expiration of the initial two year period which will be two years from the recording and effective date of December 13, 2006 or January 18, 2007 or January 26, 2007 as determined by the City of Novi.

A copy of the previously City of Novi approved and recorded Planned Rezoning Overlay (PRO) Agreement is attached for your reference.

The signature on behalf of Singh Properties Co., LLC Michigan Limited Liability Company does not appear for the reason that such company no longer has any interest in the subject property.


Section 3402 (D)(3)(a), Planned Rezoning Overlay (PRO), of the City of Novi Zoning Ordinance provides that "In the event bona fide development has not commenced within two (2) years from the effective date of the Rezoning, the Rezoning and Planned Overlay shall be void and of no effect". With the past and current economic and anticipated in the reasonable future, economic conditions and other unavoidable delays, the undersigned Owners are requesting that the City of Novi formally grant a two (2) year extension to and from the termination date of the PRO Agreement for OBERLIN SINGLE FAMILY Condominium.

C. Pearson, City Manager
City of Novi
Page 2

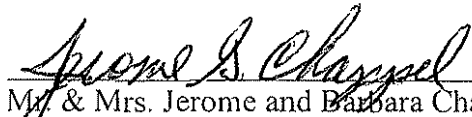
Please advise if you should require any further information and/or explanation in order for the City of Novi to consider the requested two (2) year extension to the PRO Agreement for the OBERLIN SINGLE FAMILY Condominium.

Very truly yours,

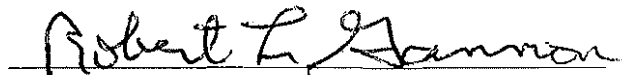

THOMPSON-BROWN REALTORS



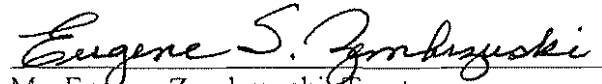
William W. Bowman, Sr., S.I.O.R.
President



Mr. & Mrs. Jerome and Barbara Chappel
48081 Eleven Mile Road
Novi, MI 48374



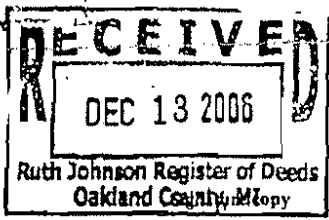
Mr. & Mrs. Robert and Barbara Gannon
47515 Eleven Mile Road
Novi, MI 48374



Mr. Eugene Zembrzuski, Trustee
S. Virginia Kaluzny Trust
2842 Shadywood
Troy, MI 48098

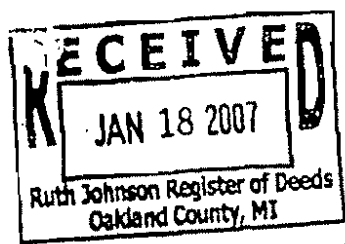
Enclosures

cc: T. Schultz
E. Kudla



20213
LIBER 38684 PAGE 1
\$70.00 MISC RECORDING
\$4.00 REMONUMENTATION
01/26/2007 09:02:09 A.M. RECEIPT# 9795

PAID RECORDED - OAKLAND COUNTY
RUTH JOHNSON, CLERK/REGISTER OF DEEDS



PLANNED REZONING OVERLAY (PRO) AGREEMENT

42 Proposed OBERLIN SINGLE-FAMILY CONDOMINIUM

AGREEMENT, by and between Singh Properties Co., LLC, a Michigan limited liability company, whose address is 7125 Orchard Lake Road, Suite 200, West Bloomfield, MI 48322 ("Developer"), S. Virginia Kalusny, Jerome G. Chappel and Barbara Chappel, Robert Gannon and Barbara Gannon (collectively "Owners"), and the City of Novi, 45175 West Ten Mile Road, Novi, MI 48375-3024 ("City").

RECITATIONS:

- I. Owners are fee owners of the "Land" described on Exhibit A, attached and incorporated herein. The Land is approximately 38.86 acres in area, located south of Eleven Mile Road and west of Beck Road.
- II. Developer has contracted with Owners to purchase the Land.
- III. Developer, with Owners' consent, petitioned the City for an amendment of the Zoning Ordinance, as amended, so as to reclassify the Land from RA (residential acreage), to R-1 (one-family residential), in order to allow the use and improvement of the Land for a single-family residential condominium community consisting of 58 detached units. For purposes of this Agreement, the RA classification under the zoning ordinance shall be referred to as the "Existing Classification"; and the R-1 classification under the zoning ordinance shall be referred to in this Agreement as the "Proposed Classification."
- IV. The Proposed Classification would provide the Developer with certain material development options not available under the Existing Classification, and would be a distinct and material benefit and advantage to the Developer.
- V. The City has reviewed and approved the Developer's proposed petition to amend the zoning district classification of the Land from the Existing Classification to the Proposed Classification under the terms of the Planned Rezoning Overlay (PRO) provisions of the City's zoning ordinance, and has reviewed the Developer's proposed PRO Plan, attached hereto and incorporated herein as Exhibit B (the "PRO Plan"), which is a conceptual or illustrative plan for the potential development of the Land under the Proposed Classification, and not an

O.K. - KB

approval to construct the proposed improvements as shown. The City has also reviewed and established certain proposed PRO conditions, and has as part of its review process secured Developer's offer, acknowledgment, and approval of same.

VI. In approving the proposed PRO Agreement, PRO Plan, and PRO Conditions, the City has determined that the proposed development will result in an enhancement of the project area by virtue of the assemblage of discrete smaller parcels along Eleven Mile Road, certain of which have significant natural features that make individual development problematic, and one of which is largely undisturbed under the development as proposed. The proposed plan also preserves approximately 54 percent of the property, and maximizes the preservation of the "core habitat area" contained within its limits. Preservation of this substantial area comports with the general purposes and intent of the City's "cluster option" form of development, which authorizes the clustering of homes in an effort to preserve open spaces and natural features. While not all of the specific requirements of the cluster option are met here, under the unique circumstances of the Land (its specific location and the assemblage of discrete parcels) and when considered along with the specific PRO Conditions applicable to the development, the City finds that the benefits of the development form an appropriate basis for the granting of the re-zoning subject to the terms and conditions of this Agreement.

VII. In requesting the Proposed Classification to the City, Developer has expressed as its intent that Developer will develop and use the Land in conformance with the following undertakings by Developer, as well as the following forbearances by the Developer (each and every one of such undertakings and forbearances shall together be referred to as the "Undertakings"):

A. Developer shall develop and use the Land solely for a ^{*}single-family residential detached condominium community of no more than 58 units, as authorized under the zoning ordinance for the Proposed Classification, and shall forbear from developing and/or using the Land in any manner other than as authorized and/or limited by this Agreement.

B. Except as expressly set forth herein, Developer shall develop the Land in accordance with all applicable laws and regulations, and with all applicable ordinances, including all applicable height, area, and bulk requirements of the Zoning Ordinance as relates to the Proposed Classification. More specifically, except for a side yard setback authorization of no less than 15 feet as shown on Exhibit B, no deviations from the provisions of the City's ordinances, rules, or regulations depicted in the PRO Plan are contemplated approved by virtue of this Agreement. The attachment of the conceptual PRO Plan to this Agreement shall not be construed as granting the Developer the right to construct the improvements as shown in the Plan, and the Developer's right to develop

* Proposed EK

the plan shall be subject to and in accordance with all applications, reviews, approvals, permits, and authorizations required under applicable laws, ordinances, and regulations, including, but not limited to, site plan approval, storm water management plan approval, woodlands and wetlands permits, façade approval, landscape plan approval, and engineering plan approval. Houses shall be permitted to have patios and/or decks.

- C. In addition to any other ordinance requirements, and in recognition of the substantial natural features on the Land, Developer shall seek, obtain approval for, and use best management practices and efforts with respect to all wetland, storm water, and soil erosion requirements and measures throughout the site during the design and construction phases, and subsequent use, of the development contemplated in the Proposed Classification. The wetland buffer and wetland impacts as shown on Exhibit B shall be permitted.
- D. The following PRO Conditions shall apply (in addition to those limitations and/or conditions stated in Paragraphs A through C, above):
1. The streets in the development shall be private. Both the City and Developer expressly disclaim any intention for the streets to be public at any point in the future. The streets shall be built to City of Novi public road standards. Developer agrees, on its behalf and on behalf of its successors and assigns, including the successor owners of individual units within the development and any ~~*~~ condominium association hereafter established as part of the development, to maintain the streets within the development in good condition and repair and fit for travel in a manner consistent with the standards and requirements for public residential streets within the City of Novi. At a minimum, "good condition and repair and fit for travel" shall mean assuring the continued structural integrity of the traveled portion of the roadway, repairing pot holes and cracks, assuring adequate drainage for the streets once constructed, undertaking the regular removal of snow, debris, and other obstacles, and undertaking any and all such other activities as are required to ensure that the condition and repair of the streets is comparable to the condition and repair of typical, well-maintained public streets within the City of Novi.

In the event the Developer (or its successors and assigns) fails or refuses to perform or undertake the necessary maintenance of the streets as described in the immediately preceding paragraph, the City may (but shall have no obligation or duty whatsoever to do so) enter upon the property for the purposes of bringing the streets into compliance with the obligations of this Section D(1). Before

Proposed ^{4*}

such entry, the City shall give thirty (30) days notice to Developer (or any known successors or assigns) of its intention to conduct a hearing at which the Developer (or any known successors/assigns) may be heard as to why the City should not proceed with the maintenance not undertaken in accordance with the foregoing.

If following the hearing the City determines that maintenance described herein has not been undertaken, or the obligations of the Developer and its successors and assigns have not been complied with, the City shall have the power and authority (but not the duty or obligation) to enter upon the property, and/or to cause its agents or contractors to enter upon the property, and to perform such maintenance and repair activities as the City deems to be appropriate. The cost and expense of such maintenance and repair activities incurred by the City, plus an administrative fee equal to 10% of all such costs and expenses incurred, shall be assessed proportionately to each unit within the development. If any such assessment is not paid within thirty (30) days of a billing by the City the assessment shall be deemed to be delinquent and shall become and constitute a lien upon each such unit. Such lien may be recorded with the Oakland County Register of Deeds. From the date of delinquency of any such assessment, interest at the highest lawful rate per annum shall be added to the delinquent balance. The sidewalk along Eleven Mile Road shall be extended 100 feet west of the subject property and 150 feet east of the property in the area depicted on the attached Exhibit B.

2. On or before the date of the full preconstruction conference for improvements on the property, Developer will contribute \$58,000 toward sidewalk construction in the general area of the development, the timing and location of such construction to be determined by the City in its sole discretion.
3. An easement for access, in a form acceptable to the City Attorney, shall be established in the ITC corridor west of the Land or, if not available from ITC, on the eastern side of the Land (as determined at the time of site plan approval) in order to allow pedestrian and non-motorized vehicle access from Eleven Mile to the property immediately south of the Land. Such easement shall be delivered to the City on or before the date of the full preconstruction conference for improvements on the property.
4. On-site preservation of open space and natural features shall be no less than the 54 percent described and depicted in the attached Exhibit B, and shall maximize preservation of the core habitat area. The preservation area shall be placed into a conservation easement

to be conveyed at time of acceptance of utilities, with terms and conditions acceptable to the City Attorney's office.

5. The construction of a minimum of 3.5 acres of wetlands as mitigation for proposed fill in the identified flood plain area shall be accomplished as shown on the attached Exhibit B.
6. Storm water basins and facilities shall be designed and constructed by Developer, and inspected by the City, in accordance with all applicable City, County of Oakland, and State of Michigan ordinances, codes, regulations, and laws. Additional flood storage volume and long-term sedimentation control enhancements shall be constructed as depicted on the attached Exhibit B.
7. As part of final site plan review, Developer shall submit to the City proposed covenants, restrictions and master deed/by-laws to be recorded for the development (together referred to as "Covenants and Master Deed"). The Covenants and Master Deed shall be subject to review and approval by the City Attorney as part of final site plan approval. As part of such Covenants and Master Deed, there shall be provisions obligating Developer and all future successor owners of the Land and the Association to maintain, repair, and preserve all common areas, landscaping, signage, open spaces, natural feature areas, wetlands, woodlands, habitat areas, privately owned detention and drainage facilities, temporary sanitary sewage facilities and any other common elements and improvements in and for the development. Such maintenance, repair, and preservation shall be to a high standard of care.

The Covenants and Master Deed shall additionally provide that, in the event Developer or successor owners of the Land and/or the Association shall at any time fail to carry out one or more responsibilities or obligations relative to maintenance, repair and/or preservation, the City may (but shall have no obligation or duty whatsoever to do so) enter upon the property for the purposes of determining the condition or compliance of the Land with respect to such maintenance, repair, and preservation requirements. Before such entry, the City shall give thirty (30) days notice to Owners (or any known successors or assigns) of its intention to conduct a hearing at which the Developer (or any known successors/assigns) may be heard as to why the City should not proceed with such activity.

If following the hearing the City determines that maintenance, repair, and preservation described herein has not been undertaken, or the obligations of the Developer and its successors and assigns

have not been complied with, the City shall have the power and authority (but not the duty or obligation) to enter upon the property, and/or to cause its agents or contractors to enter upon the property, and to perform such maintenance, repair, and preservation activities as the City deems to be appropriate. The cost and expense of such maintenance, repair, and preservation activities incurred by the City, plus an administrative fee equal to 10% of all such costs and expenses incurred, shall be assessed proportionately to each unit within the development. If any such assessment is not paid within thirty (30) days of a billing by the City the assessment shall be deemed to be delinquent and shall become and constitute a lien upon each such unit. Such lien may be recorded with the Oakland County Register of Deeds. From the date of delinquency of any such assessment, interest at the highest lawful rate per annum shall be added to the delinquent balance.

The City may bring an action in the Oakland County Circuit Court to collect the assessment and/or indebtedness and/or to foreclose the lien. All costs of such legal action, including actual attorney fees, shall be added to any judgment in favor of the City. Alternatively, the City may, in its discretion, place any delinquent assessment and/or indebtedness upon the City's delinquent tax roll and collect the assessment and/or indebtedness as part of, and as if the indebtedness constituted, a delinquent tax assessment, in which case all interest and penalties applicable to such delinquent tax assessment shall apply in lieu of other interest.

- VII. By consenting to the Developer's petition to rezone the property pursuant to the PRO provisions of the City's zoning ordinance, and by signing this Agreement, Owners acknowledge and agree that this PRO Agreement, the PRO Plan, and the PRO Conditions stated herein shall govern the use and development of the property upon approval by the City and the signature of the parties, as provided herein and in the zoning ordinance, and that the use and development contrary to the terms of this Agreement and the Undertakings is thereafter prohibited.


NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

1. Upon the Proposed Classification becoming final following entry into this Agreement:
 - a. The Undertakings shall be carried out by Developer on and for the Land;
 - b. Developer shall act in conformance with the Undertakings; and,
 - c. The Developer shall forbear from acting in a manner inconsistent with the Undertakings.

- d. The Developer shall carry out and comply with the PRO Conditions described as part of the Undertakings.
2. It is acknowledged and agreed that the City has not required the Undertakings, including the PRO Conditions. The Undertakings have been voluntarily offered by Developer in order to provide an enhanced use and value of the Land, to protect the public safety and welfare, and to induce the City to rezone the Land to the Proposed Classification so as to provide material advantages and development options for the Developer.
3. All of the Undertakings represent actions, improvements, and/or forbearances that are directly beneficial to the Land and/or to the development of and/or marketing of residential units on the Land. The burden of the Undertakings on the Developer is roughly proportionate to the burdens being created by the development, and to the benefit which will accrue to the Land as a result of the requirements represented in the Undertakings. After having had the opportunity to consult with an attorney, Developer specifically understands and agrees that this Agreement and the Undertakings are authorized by and consistent with all applicable state and federal laws and constitutions, that the terms of this Agreement and the Undertakings are reasonable, that it shall be estopped from taking a contrary position in the future, and that the City shall be entitled to injunctive relief to prohibit actions by the Developer inconsistent with the terms of this Agreement and the Undertakings.
4. In addition to the provisions in Paragraph 1, above, in the event the Owners or Developer, or their respective successors, assigns, and/or transferees proceed with a proposal for, or other pursuit of, development of the Land in a manner which is in material violation of the Undertakings, the City shall, following notice and a reasonable opportunity to cure, have the right and option to take action using the procedure prescribed by law for the amendment of the Master Plan and Zoning Ordinance applicable to the Land to amend the Master Plan and zoning classifications of the Land to a reasonable classification determined appropriate by the City, and neither the Owners or Developer nor their respective successors, assigns, and/or transferees shall have any vested rights in the Proposed Classification and/or use of the Land as permitted under the Proposed Classification, and Owners and Developer shall be estopped from objecting to the rezoning and reclassification to such reasonable classifications based upon the argument that such action represents a "downzoning" or based upon any other argument relating to the approval of the Proposed Classification and use of the Land; provided, this provision shall not preclude Owners or Developer from otherwise challenging the reasonableness of such rezoning as applied to the Land.
5. By execution of this Agreement, Owners and Developer acknowledge that they have acted in consideration of the City approving the Proposed Classification on

STATE OF MICHIGAN)
)ss.
COUNTY OF OAKLAND)


On this 22ND day of September, 2006, before me appeared S. Virginia Kaluzny who stated that she had signed this document of her own free will.


Notary Public

JANE E. DIETRICH
Notary Public, State of Michigan
County of Oakland
My Commission Expires Jun. 8, 2012
Acting in the County of Oakland

STATE OF MICHIGAN)
)ss.
COUNTY OF OAKLAND)

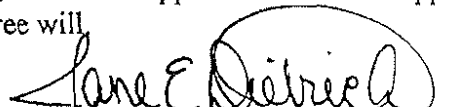
On this 22ND day of September, 2006, before me appeared Jerome G. Chappel who stated that he had signed this document of his own free will.


Notary Public

JANE E. DIETRICH
Notary Public, State of Michigan
County of Oakland
My Commission Expires Jun. 8, 2012
Acting in the County of Oakland

STATE OF MICHIGAN)
)ss.
COUNTY OF OAKLAND)


On this 22ND day of September, 2006, before me appeared Barbara Chappel who stated that she had signed this document of her own free will.


Notary Public

JANE E. DIETRICH
Notary Public, State of Michigan
County of Oakland
My Commission Expires Jun. 8, 2012
Acting in the County of Oakland

STATE OF MICHIGAN)
)ss.
COUNTY OF OAKLAND)

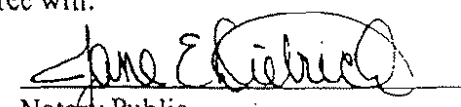
On this 22ND day of September, 2006, before me appeared Robert Gannon who stated that he had signed this document of his own free will.


Notary Public

JANE E. DIETRICH
Notary Public, State of Michigan
County of Oakland
My Commission Expires Jun. 8, 2012
Acting in the County of Oakland

STATE OF MICHIGAN)
)ss.
COUNTY OF OAKLAND)

On this 22ND day of September, 2006, before me appeared Barbara Gannon who stated that she had signed this document of her own free will.


Notary Public

JANE E. DIETRICH
Notary Public, State of Michigan
County of Oakland
My Commission Expires Jun. 8, 2012
Acting in the County of Oakland

EXHIBIT A
PROPERTY DESCRIPTION

October 21, 2004
Job No. 03-046

Legal Description - **Kaluzny**
(Tax id. 22-20-200-001)

A part of the Northeast 1/4 of Section 20, Town 1 North, Range 8 East, City of Novi, Oakland County, Michigan; being more particularly described as commencing at the North 1/4 Corner of said Section 20, for a Point of Beginning; thence North 87°24'47" East, 660.00 feet, along the North line of said Section 20 and the centerline of Eleven Mile Road, (said point being South 87°24'47" West, 1980.71 feet from the Northeast Corner of said Section 20); thence South 02°28'56" East, 1315.69 feet; thence South 87°12'05" West, 659.85 feet, to a point on the North and South 1/4 line of said Section 20, (said point being North 02°29'20" West, 1340.50 feet from the Center of said Section 20); thence North 02°29'20" West, 1318.13 feet, along the North and South 1/4 line of said Section 20, to the Point of Beginning. All of the above containing 19.951 Acres. All of the above being subject to the rights of the public in Eleven Mile Road. All of the above being subject to easements, restrictions and right-of-ways of record. ✓

October 21, 2004
Job No. 03-046

Legal Description - **Chappel**
(Tax id. 22-20-200-002)

A part of the Northeast 1/4 of Section 20, Town 1 North, Range 8 East, City of Novi, Oakland County, Michigan; being more particularly described as commencing at the North 1/4 Corner of said Section 20; thence North 87°24'47" East, 660.00 feet, along the North line of said Section 20 and the centerline of Eleven Mile Road, to the Point of Beginning; thence continuing North 87°24'47" East, 329.50 feet, along the North line of said Section 20 and the centerline of said Eleven Mile Road, (said point being South 87°24'47" West, 1651.21 feet from the Northeast Corner of said Section 20); thence South 02°30'48" East, 1182.40 feet; thence South 02°31'39" East, 132.07 feet; thence South 87°12'05" West, 330.25 feet; thence North 02°28'56" West, 1315.69 feet, (previously described as 1315.70 feet), to the Point of Beginning. All of the above containing 9.958 Acres. All of the above being subject to the rights of the public in Eleven Mile Road. All of the above being subject to easements, restrictions and right-of-ways of record. ✓

October 21, 2004
Job No. 03-046

Legal Description - Gannon
(Tax id. 22-20-200-003)

A part of the Northeast 1/4 of Section 20, Town 1 North, Range 8 East, City of Novi, Oakland County, Michigan; being more particularly described as commencing at the North 1/4 Corner of said Section 20; thence North 87°24'47" East, 989.50 feet, along the North line of said Section 20 and the centerline of Eleven Mile Road, for a Point of Beginning; thence continuing North 87°24'47" East, 329.50 feet, (said point being South 87°24'47" West, 1320.71 feet from the Northeast Corner of said Section 20); thence South 02°32'46" East, 1181.18 feet; thence South 87°12'05" West, 330.18 feet; thence North 02°30'48" West, 1182.40 feet, (previously described as 1182.46 feet); to the Point of Beginning. All of the above containing 8.949 Acres. All of the above being subject to the rights of the public in Eleven Mile Road. All of the above being subject to easements, restrictions and right-of-ways of record.

October 21, 2004
Job No. 03-046

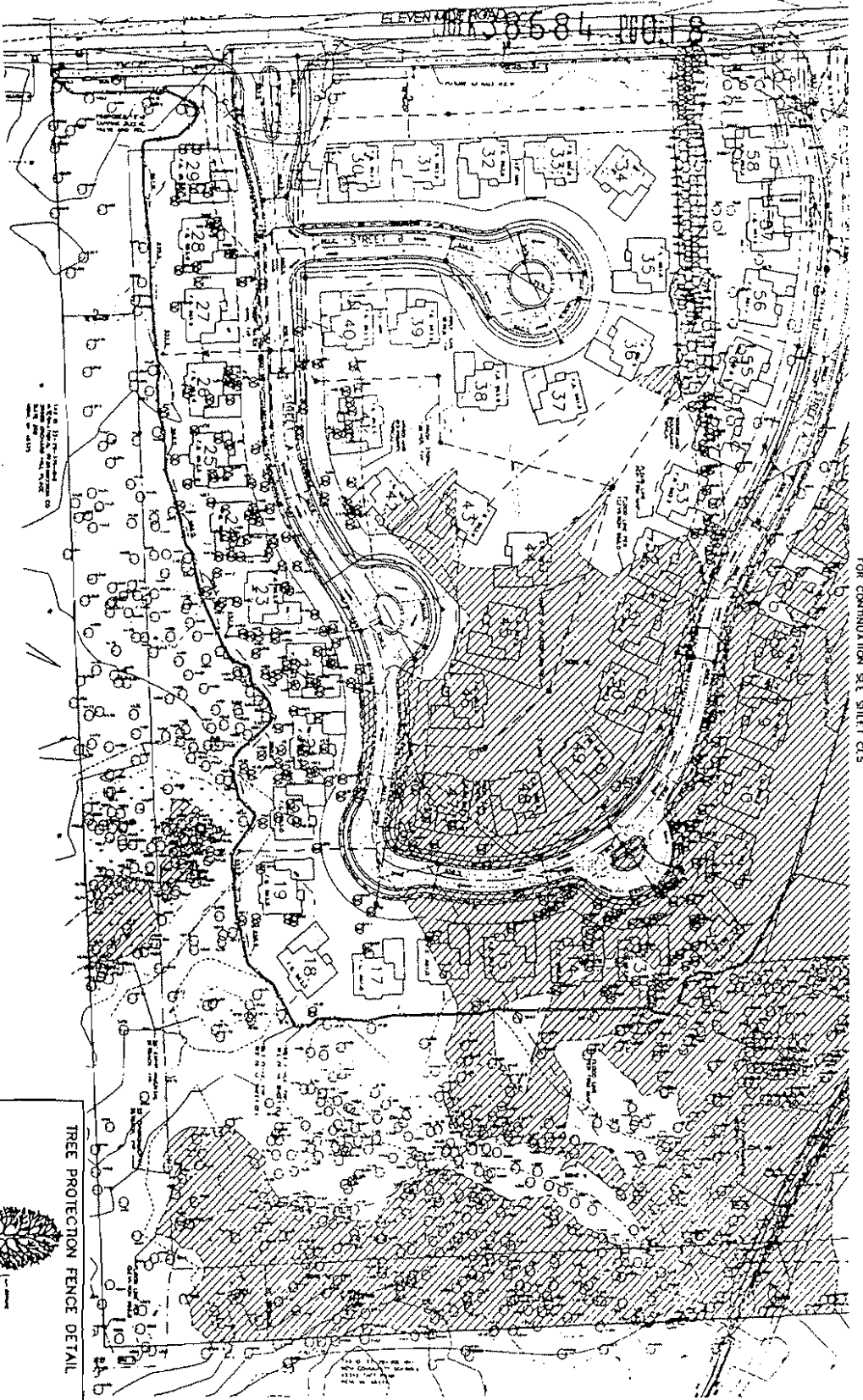
Legal Description - Combination
(Tax id. 22-20-200-001 and 22-20-200-002 and 22-20-200-003)

A part of the Northeast 1/4 of Section 20, Town 1 North, Range 8 East, City of Novi, Oakland County, Michigan; being more particularly described as commencing at the North 1/4 Corner of said Section 20, for a Point of Beginning; thence North 87°24'47" East, 1319.00 feet, along the North line of said Section 20 and the centerline of Eleven Mile Road, (said point being South 87°24'47" West, 1320.71 feet from the Northeast Corner of said Section 20); thence South 02°32'46" East, 1181.18 feet; thence South 87°12'05" West, 330.18 feet; thence South 02°31'39" East, 132.07 feet; thence South 87°12'05" West, 990.10 feet, to a point on the North and South 1/4 line of said Section 20, (said point being North 02°29'20" West, 1340.50 feet from the Center of said Section 20); thence North 02°29'20" West, 1318.13 feet, along the North and South 1/4 line of said Section 20, to the Point of Beginning. All of the above containing 38.858 Acres. All of the above being subject to the rights of the public in Eleven Mile Road. All of the above being subject to easements, restrictions and right-of-ways of record.

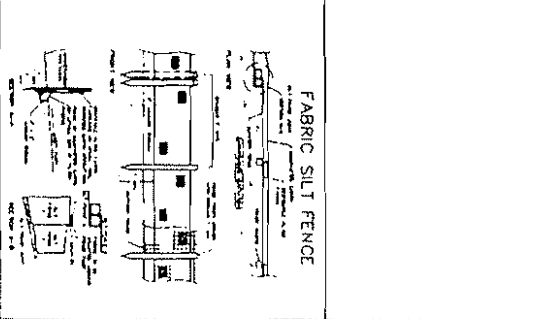
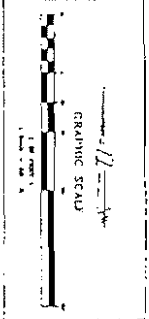
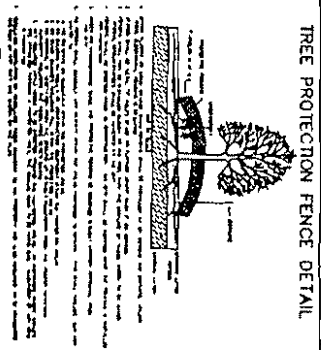
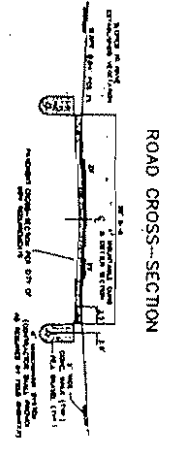
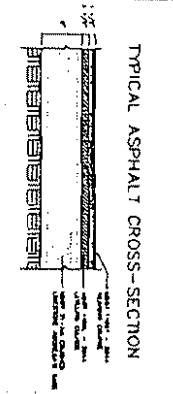
EXHIBIT "B"

PRO PLAN (Conceptual)

[attached]



FOR CONTINUATION SEE SHEET C05



LEGEND

EXISTING: ...

PROPOSED: ...

FABRIC SILT FENCE

CONSTRUCTION: ...

REVISIONS

NO.	DATE	DESCRIPTION

CRADING PLAN

OBERLIN CONDOMINIUMS

DESIGNED BY: ...

CITY OF HOULI, QUELLEN COUNTY, SOUTHERN ...

UTILITY MARKING

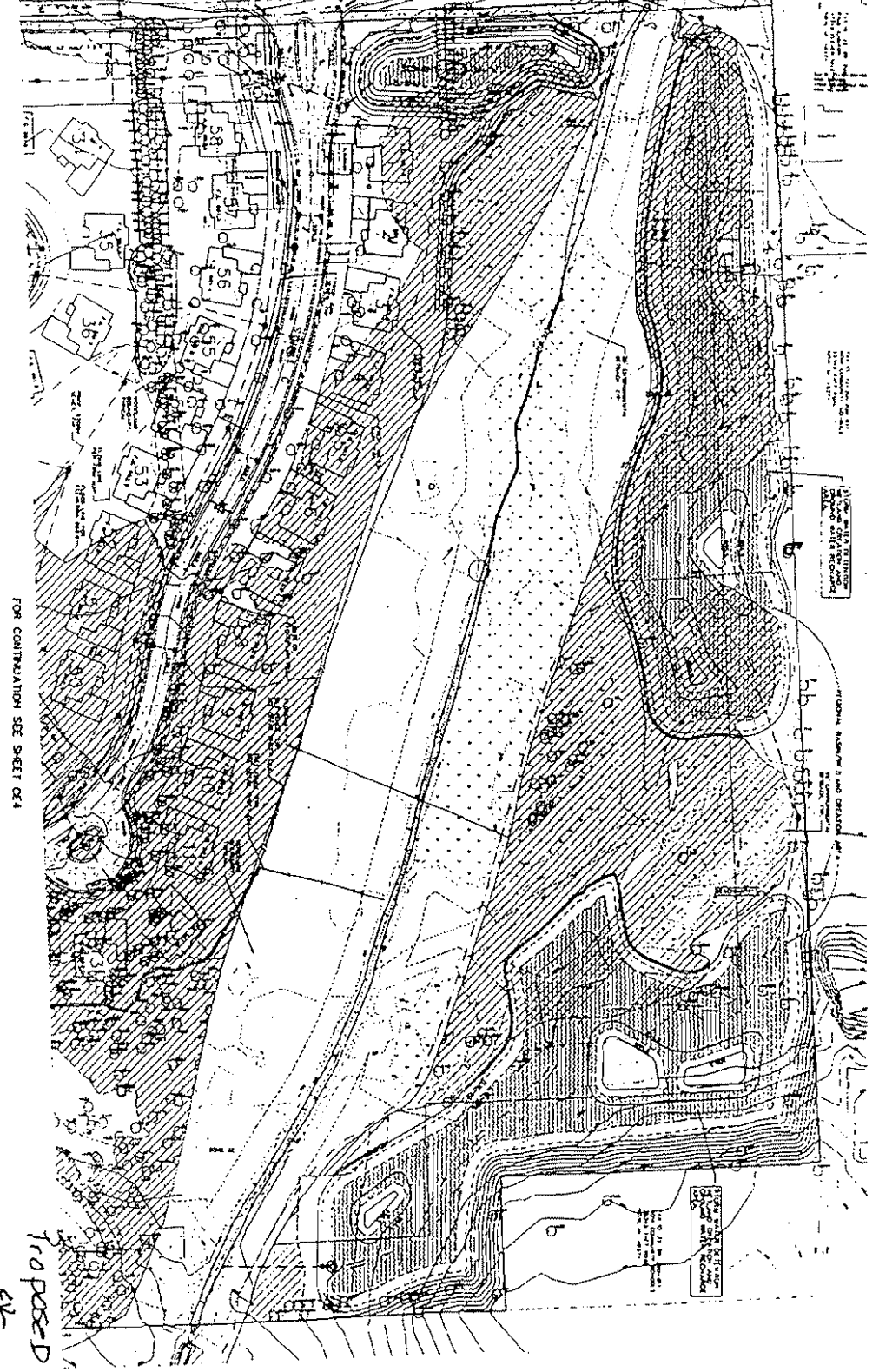
UTILITY MARKING ...

ENGINE, SURVEY & MAPPING ASSOCIATES, P.C.

1000 ...

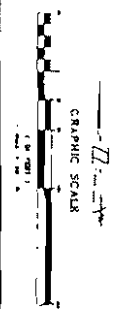
CE4

6 / 011 18.08.08



FOR CONTINUATION SEE SHEET C24

PROPOSED
C24



DETENTION BASINS

1. DETENTION BASIN NO. 1 (10,000 G.P.)
2. DETENTION BASIN NO. 2 (10,000 G.P.)
3. DETENTION BASIN NO. 3 (10,000 G.P.)
4. DETENTION BASIN NO. 4 (10,000 G.P.)
5. DETENTION BASIN NO. 5 (10,000 G.P.)
6. DETENTION BASIN NO. 6 (10,000 G.P.)
7. DETENTION BASIN NO. 7 (10,000 G.P.)
8. DETENTION BASIN NO. 8 (10,000 G.P.)
9. DETENTION BASIN NO. 9 (10,000 G.P.)
10. DETENTION BASIN NO. 10 (10,000 G.P.)

LEGEND

EXISTING
 - Contour Lines
 - Building Footprints
 - Parking Areas
 - Utility Lines
 - Easements
 - Property Lines
 - etc.

PROPOSED
 - Detention Basins
 - Grading
 - etc.

OBERLIN CONDOMINIUMS

DESIGNED BY JAMES M. SMITH
 ARCHITECTURE
 1000 N. 10TH ST., SUITE 200
 DENVER, CO 80202
 PHONE: 303.733.1111
 FAX: 303.733.1112
 WWW: JMSA.COM

REVISIONS

NO.	DATE	DESCRIPTION
1		
2		
3		
4		
5		
6		
7		
8		
9		
10		

GRADING PLAN

ENGINEER: **SMITH & MERRILL ASSOCIATES, P.C.**
 ARCHITECT: **SMITH & MERRILL ASSOCIATES, P.C.**
 JOB NUMBER: **CS-648**

CES

Drafted by ~~_____~~

~~When Recorded, Return to:~~

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

When Recorded, Return To:
Maryanne Cornelius, City Clerk
City of Novi
45175 W. 10 Mile Road
Novi, MI 48375

Tax Identification Nos.: 22-20-200-001
22-20-200-002
22-20-200-003

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Record 1

Instrument #	Year	Date	- Time	Document Type	Consideration
0020213	2007	01/26/2007	- 09:02:09	AGREEMENT- ANY TYPE	\$.00
Liber				Page	
38684				001	
Property Seq#		Part	Half	Quarters	Sec
0001		P		NE	20
Government Unit		Town	Range	Acres	Area
OA		01 N	08 E		22 N
Pin #					
22-20-200-001					
Property Seq#		Part	Half	Quarters	Sec
0002		P		NE	20
Government Unit		Town	Range	Acres	Area
OA		01 N	08 E		22 N
Pin #					
22-20-200-002					
Property Seq#		Part	Half	Quarters	Sec
0003		P		NE	20
Government Unit		Town	Range	Acres	Area
OA		01 N	08 E		22 N
Pin #					
22-20-200-003					
Property Seq#		Part	Half	Quarters	Sec
0004		P		NE	20
Government Unit		Town	Range	Acres	Area
OA		01 N	08 E		22 N

Pin #
22-20-200-001
22-20-200-002
22-20-200-003

Party	Party	Name	Col
GRANTOR	0001	SINGH PROPERTIES CO	N
GRANTEE	0002	KALUSNY S VIRGINIA	N
GRANTEE	0003	CHAPPEL JEROME G	N
GRANTEE	0004	CHAPPEL BARBARA	N
GRANTEE	0005	GANNON ROBERT	N
GRANTEE	0006	GANNON BARBARA	N
Document Date :			
11202006			

Record & Return

MARYANNE CORNELIUS
 CITY CLERK
 45175 WEST TEN MILE ROAD
 NOVI , MI 48375

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DIRECT DIAL: (248) 865-1602
FAX: (248) 865-1630
E-MAIL: kahm@SinghMail.com

October 9, 2007

Clay J. Pearson
City Manager
City of Novi
45175 W. Ten Mile Road
Novi, Michigan 48375-3024

Re: Request for Extension to Term of PRO Agreement
Uptown Park; 38.621 Acres West of Meadowbrook and South of Twelve Mile
Novi, Michigan

Dear Clay:

As you know, we entered into a Planned Rezoning Overlay (PRO) Agreement with the City of Novi regarding the referenced property on October 10, 2005, which was recorded in the Oakland County Register of Deeds on December 12, 2005. A recorded copy of the PRO Agreement is attached for your reference.

Section 3402(D)(3)(a), Planned Rezoning Overlay (PRO), of the City of Novi Zoning Ordinance provides that, ... *"In the event bona fide development has not commenced within two (2) years from the effective date of the Rezoning, the Rezoning and Planned Rezoning Overlay shall be void and of no effect"*. With the two year anniversary of the effective date of December 12, 2005 approaching, we are respectfully requesting the City's consideration to grant a two (2) year extension to the termination date of the PRO Agreement for Uptown Park.

Recitation V(A) of the PRO Agreement provides for the development of the property solely for a residential condominium community of no more than 201 units. Given the current economic conditions in the southeast Michigan area, particularly relative to the residential market, we have not chosen to proceed with the development of the property at this time. Therefore, we are seeking an extension to allow for an improvement in market conditions, which would be more conducive to a condominium project.

Please advise if you should require any further information and/or explanation in order to consider the requested two (2) year extension to the PRO Agreement for Uptown Park.

Very truly yours,

G. Michael Kahm
Vice President

Enclosure

**COUNCIL MINUTES
MARCH 20, 2006**

**REGULAR MEETING OF THE COUNCIL OF THE CITY OF NOVI
MONDAY, MARCH 20, 2006 AT 7:00 P.M.
COUNCIL CHAMBERS – NOVI CIVIC CENTER – 45175 W. TEN MILE ROAD**

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

PLEDGE OF ALLEGIANCE

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

Member Paul arrived at 7:02 P.M.

4. Approval of a Planned Rezoning Overlay Agreement, SP 05-29, with Singh Development, in conjunction with Zoning Map Amendment 18.654, for property north of Eleven Mile Road, west of Beck Road. The subject property is 38.86 acres, and 58 dwelling units are consistent with the approved concept plan.

Mr. Galvin was present on behalf of the applicant. He asked Council to approve the agreement prepared by Mr. Schultz after consulting with City staff. The agreement presented to Council contained each of the items included in the approval that the Council gave to the project. He said this project will incorporate three parcels, which are difficult for development. There are a number of amenities including preservation of 54% of the core area woodlands and wetlands, conservation easement, the creation of additional storage for storm drainage, specifically more than 250,000 cubic feet of additional storage, which will not be used by this property. Also, the extension of sidewalks along Eleven Mile Road beyond the property line, and the creation of 3.5 acres of additional wet lands. Mr. Galvin said as a part of the amenities for the community they committed to provide to the City an extension of the walkway, pathway and easement either through their property or on the contiguous ITC corridor. He said they were talking about something that would run from Eleven Mile to the extent of their property line.

Mr. Galvin said they spoke with ITC and believed that their negotiations would be successful, although they do not have the ITC easement in hand tonight, which would allow a continuation along the ITC easement through to Delmont. He believed they could provide all of this to the City. The agreement tonight contains two alternatives, they would either provide the extension, or failing that the path would be brought by Providence Hospital, over Eleven Mile, and down through their property. It would be extended through all of their property. Mr. Galvin thought they had met those issues that were a part of previous discussions with the Council. The agreement they presented to Council reflected the vote at the last meeting concerning this subject, and based upon the fact that they presented

to Council an agreement that conformed to Council's prior vote and a little extra not here previously. Mr. Galvin asked that Council approve the agreement.

Mr. Pearson said what the applicant was proposing was to give the City the easements for our eventual construction, and did not involve the applicant building any of the work along the ITC corridor.

Member Margolis said she appreciated their working in good faith with Council, and following along with the original agreement. She thought this was an excellent development, and appreciated the assembly of the parcels.

CM-06-03-068 Moved by Margolis, seconded by Gatt; MOTION CARRIED:

To approve of a Planned Rezoning Overlay Agreement, SP 05-29, with Singh Development, in conjunction with Zoning Map Amendment 18.654, for property south of Eleven Mile Road, west of Beck Road. The subject property is 38.86 acres, and 58 dwelling units are consistent with the approved concept plan.

DISCUSSION

Mayor Pro Tem Capello thanked the applicant for going beyond what Council asked them to do in acquiring the easement from Eleven Mile Road down to Ten Mile Road. He said it was a huge link to the trail system and would hook up with the Singh Trail.

Member Paul said going through this project initially; her understanding was that there were recommendations from the staff that this did not meet the ordinances. She appreciated the parcels coming together so that there was one grouping and one development, and not many curb cuts along Eleven Mile Road. Member Paul said other builders and developers have come forward with different proposals, but if it doesn't meet the zoning ordinances, and doesn't meet staff recommendations Council usually doesn't support it. She said that was why she didn't support it at the November 28, 2005 Council meeting. She believed the zoning ordinances were the laws and had to be upheld. In the last project we had everything that met the Master Plan and met all the zoning codes. Member Paul said this met the Master Plan but with the amount of wetlands and woodlands, it doesn't meet the zoning ordinances. She would not support the motion, and she didn't believe the amenities were equivalent to what the proposed density requirements entailed. Therefore, the developer helped the City get the easement, but the trail was not continuing through, and the City would have to pay for it. She said she didn't know if the City would ever have the money to continue that project, and meet the requirements of what the City needed and what the community was looking for in amenities. She appreciated the assembly of the property, and their attempt to get the easement, but she was looking for a little more.

Member Mutch pointed out an error in the motion. It should be south of Eleven Mile and not North. He said the motion also included the Planned Rezoning Overlay Agreement. Mr. Galvin agreed.

Member Mutch asked if the City would own the easement through the ITC corridor that Singh's pursuing. Mr. Pearson said they proposed that when it was available it would be brought to Council for consideration to accept, in our favor, just like any other easement. He said yes, it would be from ITC granting the City an easement.

Member Mutch commented he didn't know what discussions the applicant had with ITC, but he would like to see it move in that direction. His understanding was that ITC allows communities to build trails in the ITC corridor, but obviously the trail builders, which will be the City, have to own the easement. If Singh controls that easement it wouldn't do the City any good down the road for construction. Member Mutch said he didn't support this when it first came through.

He thought this project and the previous project were illustrative of the approach he has with these PRO's. This project is maximizing the Master Plan density as compared to the previous project. It does have some nice environmental protections but he didn't think any of them were above and beyond what they would get with a traditional residential development in this area. The proposal to construct additional wetlands, as he noted at the last meeting, would take some upland areas and convert them to wetlands with no direct benefit to the City. He said the upland areas work in combination with the wetlands and both are needed. He said he's always supportive of protecting existing wetlands, but didn't feel they always needed to build additional wetlands; he didn't see it as a direct public benefit to the City. Member Mutch said the sidewalk extensions were comparable to the previous project, and that was good. However, he was not seeing the mix of amenities that directly benefit the public that Council was looking for from PRO agreements. He said as other developers come forward for PRO's, he thought Council would want to insure that they saw the direct public benefit, and ideally not maximizing the density on site that we are seeing with this. Member Mutch said he would support this agreement going forward. They have met the needs and he appreciated seeing the ITC Corridor come forward, and would encourage the City Administration to look at the entire ITC Corridor as a potential pathway. We have three City parks along this western corridor, Community Sports Park, the Singh Trail properties, and Wildlife Woods. He would like to see this not only in the Ten/Eleven Mile stretch, but the entire ITC Corridor to future pathway construction when the funds are available.

Member Nagy said she would support this project. She agreed with Member Mutch regarding PRO's having a direct public benefit, and she would have liked to have seen a little bit more in terms of pathway. She said in Section One of the actual Planned Zoning Overlay Agreement, which is the 3rd page under D, it says "the streets and the development shall be private", why not use the word "will" as

it sounds more enforceable. Member Nagy said she lives in a condo, and she wanted to make sure the word was stronger, and that future Councils would not accept the streets. She apologized for missing some of the discussion and asked if there had been any discussion regarding the trail system. Mayor Landry said he believed what the applicant indicated was that they had a favorable response from ITC to allow the trail to go all the way from Eleven Mile to Ten Mile, but they don't have a guarantee in hand. Therefore, they are proposing in the PRO alternate language that if they can't obtain the easement to go the ITC route, they would guarantee Council they would provide an extension of the trail through their property. Mr. Galvin agreed. Member Nagy asked if they would be supplying the finances to build the trail. Mayor Landry said no, that was never a part of the deal. In fact the City Manager pointed that out. Member Nagy said she would support the motion.

Roll call vote on CM-06-03-068 Yeas: Landry, Capello, Gatt, Mutch, Margolis, Nagy

Nays: Paul

**COUNCIL MINUTES
NOVEMBER 28, 2005**

**REGULAR MEETING OF THE COUNCIL OF THE CITY OF NOVI
MONDAY, NOVEMBER 28, 2005 AT 7:00 P.M.
COUNCIL CHAMBERS – NOVI CIVIC CENTER – 45175 W. TEN MILE ROAD**

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

PLEDGE OF ALLEGIANCE

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

Consideration of the request of John Houser of Singh Development for Zoning Map Amendment 18.654 and Planned Rezoning Overlay SP 05-29 for property located in Section 20, south of Eleven Mile Road and west of Beck Road from R-A, Residential Acreage to R-1, One Family Residential with a Planned Rezoning Overlay. The site is approximately 38.86 acres and the applicant is proposing 58 dwelling units.

Joe Galvin, represented Singh LLC, was asking for rezoning from an RA to an R1 designation. He displayed a map of why the PRO should be developed. One parcel was owned by Ms. Kaluzny who has lived on the property for 80 years. Another parcel was owned by Mr. and Mrs. Chappel for the past 40 years and another owned by Mr. and Mrs. Gannon. These three (3) pieces of property will be difficult to build on because of the unregulated woodlands and flood plain areas, only a small portion is desirable. Given the longevity of the ownership of these parcels by their particular owners, and their reasonable investment back expectation, both personal and economic, it is an important benefit for the City to assemble these parcels for a single development. There will be a preservation of the core habitat area which will also benefit the City. This couldn't be done without the PRO function. Singh LLC is known to the city and all of the projects have been well built and they feel they are a good corporate citizen to the City.

The Planning Commission had some serious reservations and the traffic study initially presented didn't include Catholic Central and the expansion of Providence Hospital. There will be no significant impact of traffic in the area even with the updated traffic study. The other thing the Planning Commission talked about in detail was that because they didn't have 50% of the property eligible for natural features, it was determined insufficient. They reviewed this and discovered that in addition to the fact that they will add features that will preserve 54% of the site in a permanent conservation easement and additional feet of storm water storage and sedimentation control, there is more than 50% of the site in natural features that would be preserved and the problem is that one of the natural features is not included and we are allowed to use wetlands and woodlands. Without double counting the flood lands in the floodway they have an

unbuildable land of 0.27 acres and that brings them over the 54% at the start. They meet the intention and the purpose of the ordinance which is to protect woodlands and wetlands, etc. They pick up drainage for 70 ¼ acres within the camel together with 21.47 acres of other stuff offsite and they manage it and create sedimentation control which is necessary. If Mr. Chappel were here tonight he would explain how he takes his tractor and cleans out that drain on his property to his property line. We are going to cure an existing problem because there is no drainage control on Eleven Mile Road. They meet intention of the ordinance.

The Planning Commission also pointed to the direct count of the cluster option. They could do a cluster plan that would meet the ordinance; however, it would be invading a greater portion of the natural features. They propose to construct a roadway to relieve the city of paying for the maintenance. They also propose to extend the Eleven Mile frontage sidewalk 250 feet and propose to contribute \$58,000 (\$1,000 per unit) to construct additional sidewalks along Eleven Mile Road where the City could use for that purpose.

Ms. McBeth commented the property was outlined in red and located on the south side of Eleven Mile and west of Beck Road. The school property is zoned RA, to the west is ITC lines, south east is Kirkway Place and to the north is R1 zoning. Large woodlands are located on the property and they are in compliance with the master plan. This would allow 58 dwelling units, with no traffic impact. No recommendation was made and the Planning Department, in this case, doesn't recommend it because the ordinance outlines that the applicant must show the land will be enhanced typical to a R1 project and required to show a substantial public benefit, one has not been demonstrated regarding substantial ordinance deviations that are being requested.

Two major concerns with that cluster option is first, that the site qualifies under the literal application of the cluster option and second, the setbacks between the units are substandard compared with the requirements of that ordinance. The applicant has shown a willingness to work with the department to eliminate the cul de sac at the southwest corner which was approaching into the core habitat area that continues off of this site and onto the Bosco property (which is the school property). The Planning Commission recommended denial of the PRO at a recent public hearing. Ms. McBeth displayed a map showing the proposed sidewalk to be constructed.

This site does maximize residential density which is contrary to a City Council and a long stand policy of limiting additional residential density beyond what is expected in the Master Plan for land use. The criteria appropriate for R1 zoning is 1.65 units to the acre but it doesn't guarantee that it is possible to build 1.65 units on the proposed site since there are other regulatory considerations. Second, the request does not meet the literal application of the one family cluster option. Regardless of the other environmental benefits of this proposal such as

the creation of additional water storage, the Planning Department's opinion that this site would not initially qualify under the one family cluster option. Other options were discussed with the applicant. The staff recommended whether or not the public will benefit by the proposed plan in comparison to what the builder will be receiving in terms of increased density over the traditional subdivision development. Traditional subdivision platting would result in no more than 27 homes but given the preservation area the applicant is proposing 58 homes.

Mayor Pro Tem Capello thought this was a good project even though it does abut school property and some natural features.

**CM-05-11- 367 Moved by Mayor Pro Tem Capello, seconded by Gatt:
MOTION CARRIED: To approve the request of John Houser of Singh Development for Zoning Map Amendment 18.654 and Planned Rezoning Overlay SP 05-29 for property located in Section 20, south of Eleven Mile Road and west of Beck Road from R-A, Residential Acreage to R-1, One Family Residential with a Planned Rezoning Overlay. With a maximum of 58 dwelling units.**

DISCUSSION:

Member Paul is concerned about the increased demands of services from 27 to 58 homes. When we increase population, we increase demands on City Services. One of our goals is to not increase density or population. She proposed that we continue but not for all 58 homes and would like to look at the actual flood storage volume. She does not want to include that now because it is not a part of the City's laws. She noted the residents in the area already complain about not being able to make a left hand turn at Wixom and Eleven Mile Roads during school hours. She felt there would be two drivers per home that would add to the traffic. The Planning Commission and Planning Department unanimously did not support this. Plan Rezoning Overlay should have a public benefit. Other Singh proposals have included parks, clubhouse, etc. There is no real public benefit. The \$58,000 is a small stipend for this developer and not really enough for consideration. While she appreciates sidewalks, that isn't enough to allow this development for what the city will have to do long term.

Member Nagy appreciated the efforts of Singh Development but noticed we keep increasing density and she isn't about to increase density on Beck Road. The way the proposal reads, the developers increase in density negates any public benefit. This area has mature trees, open space, woodlands and wetlands. She would have liked to have seen fewer homes. This would also create more traffic problems. Novi watershed quality is also being affected by this.

Member Gatt disagreed with Planning Commission, he felt that this is a worthwhile endeavor. The applicant has shown an enhanced land development and substantial public benefit, especially regarding the sidewalks.

Member Mutch asked questions of the Planning Department regarding the applicant being able to build a maximum 27-30 homes and what would be the impact of this. Barb McBeth said the east and south part of the site are to remain undeveloped because of the high quality regulated woodlands. Member Mutch asked regarding the density yield? Barb McBeth said some residential options allow for decreased lot sized up to 33 homes with R1 zoning. Member Mutch asked whether or not according to the regulations being proposed (in terms of how the sites are located and the setback) are those more restrictive under R1 zoning. Barb McBeth said the setbacks around the perimeter are greater but the spacing in between the homes from the right of way decreased from the typical single family platted subdivision or site condominium which would require lot lines and set backs from those lot lines. Member Mutch asked if they qualified for cluster, how would that compare? Barb McBeth said there are about 6 feet in between the homes but they could be attached under the single family cluster option, under R1 it is 20 ft. between the homes and 10 ft. to the lot lines. Member Mutch asked Mr. Galvin the starting price of these homes. Joe Galvin stated the homes will cost approximately \$450,000 and will range in size from 2400-3200 square feet. Member Mutch asked if the wetlands will be maintained by the Condo Association. Mr. Galvin stated it's a material physical enhancement to what is already there. But for the omission of 2.70 acres, it qualifies in every respect.

Member Mutch asked regarding the building setbacks? Joe Galvin stated it is 15 feet on their plan. They could meet the cluster option. Member Mutch asked for clarification that the distance between the condo's proposed is 15 feet and Mr. Galvin stated, yes.

Member Mutch asked Attorney Schultz about the PRO, authorization and eligibility, regarding whether or not site restrictions are strict or limited than what is allowed by the ordinance or does it only have to be one portion of the standard? Based on statements made by Mr. Galvin and Ms. McBeth, they are strict. Tom Schultz stated the PRO says Council may or may not be inclined to rezone to what they want. The burden would fall to Singh to offer what is more restrictive. Council's decision is, "do you agree that the intent has been met." Their submission is they will fall under one or two of those provisions. At this stage, in terms of what the Council is being asked to do, the Council determines it may approve the PRO and directs the agreement to be prepared to set forth conditions of the approval. Final consideration is whether or not those are acceptable when the final agreement is approved by Council.

Member Mutch stated the PRO doesn't exist to solely to benefit either the city or developer. It is a voluntary agreement. This is either a density transfer or

increase. One option is R1 where the developer could get 33 units. As proposed they would get 58 units. That is a significant benefit to the developer. What he does like about the plan is the Woodland protection but doesn't agree with wetland creation. He objects and thought that part should come to the city for future land swap with the school. He doesn't see the general public benefit. If we increase the density, there is no general public benefit. It would be great to reduce density or transfer it from another location. Those are the types of proposals with the PRO that he would agree to. If we increase density everywhere, it will financially cause problems in the future and change the character of the city and that's not what residents want in their future.

Member Margolis felt there was substantial benefit to the three parcels being put together and substantial conservation on the third parcel which will remain undeveloped in this proposal. She doesn't know that this would happen if these parcels weren't brought together in another development. The idea of the cluster development has met the intent or our literal interpretation of that piece. The benefit of the sidewalks would be a benefit to the community. She thinks this is a quality development that we need to support.

Mayor Landry noted the City is at a stage where what is left to develop are difficult parcels not the easy open flat upland pieces. The importance is the lot to the east looks like all wetlands and not developable and their taking over this piece and including it in their plan will be helpful in the future. The assembly in this case is beneficial. This density is in conformance with the master plan. It's within the R1 density. It saves 98 regulated trees, they improve a drain, incorporated all three lots. Mayor Landry supported the motion.

Mayor Pro Tem Capello stated the traffic problems have been abated with the opening of the Beck Road interchange. Master plan approved it at R1 residential use and it didn't look at that particular piece to determine how many houses could be built based on the natural features, it determined the acreage and said the density is based on R1 for the entire acreage not portions of it. We planned on infrastructure based on the master plan. So the 58 units were technically in the plan.

Mayor Pro Tem Capello asked Mike Kahm about the property, would he dedicate an easement area for non motorized traffic to get from Eleven Mile to the southern property and would add that as a benefit as part of his motion.

Member Paul asked if he could clarify where the easement would be located. Mr. Kahm stated they could do it along the western (or eastern) corridor. He also stated there is a utility corridor that goes along the eastern boundary of the parcels and travels north to Providence Hospital depending when you want in that future master plan.

Member Paul asked about the driveway to a larger wetland. If they don't expand the wetland, that might not be necessary and some dry land could be given to the school or to the city. Member Paul asked Barb McBeth about R1, what is the number that meets the Master Plan? Barb McBeth said 58 is the answer as the maximum allowed. She also addressed the setbacks. The buildings are proposed to be 15 feet apart. It assumes the homes would be built in clusters. And, at least 75 feet between the clusters of homes which is not shown on the plans from Singh Development LLC.

Member Paul asked about private roads vs. public and would it be a problem in the future if they ask for it to be turned into public roads, with the setback issues will the roads be a problem for snow plows or are the roads built to our standards for public roads? Barb McBeth said Exhibit B shows the distance of the homes to the roadways to be 60 feet right-of-way and the City would never be able to accept that road because it is too close.

Member Paul asked if there will be a middle turn lane on Eleven Mile Road so people can make a left-hand turn into this subdivision. Barb McBeth said it is not recommended at this time but may be looked in more detail during preliminary site plan review.

Member Nagy wanted to clarify that this is not a discussion about Singh Development, she thinks Singh is a good developer and they have done a lot of nice projects. This is about rezoning from residential acreage RA to R1. The Master Plan is a guide and not written in stone. This is not recommended by Planning Commission and Planning Department and we should not go against their recommendation. There are so many things that don't meet the ordinance. This is about setting a precedent for any other PRO. Member Nagy would not support the motion.

Member Mutch asked Mr. Galvin about letter G, the \$58,000 contribution. Mr. Galvin stated that the language would suggest it because there is no contiguous piece, it could be built as much as a half mile (or wherever the City wants). Member Mutch asked if they could disconnect that condition from the motion. Mr. Schultz agreed they could. Member Mutch would not support the motion, he didn't like the density problem and the uniformity of spacing of the cluster option and thought we should follow the rules of the ordinance.

Attorney Schultz wanted to clarify that the motion was to approve the eight conditions plus the one that was added with regard to the potential trail. The ordinance calls for a designation of the tentative conditions and a direction to the applicant. The City Attorney will have to work on an agreement and then they can come back to the Council for approval. Council has not given it's approval, but at this point we have the direction on the conditions and the requirement to work on the agreement with the idea that Council may approve this the next time it comes back.

Mayor Pro Tem Capello said it was not his intent, he understood the agreement was coming back to us, his intent was to approve the rezoning with the PRO condition upon the 9 conditions all those conditions being a benefit to the community and that they agree to provide. The benefits to the community and benefits they agree to provide. He is assuming that the agreement is going to come back to us for approval but not approval of the rezoning of the PRO overlay.

Attorney Schultz said there are optional forms of development that do work that way, like a RUD approval. This ordinance is set up specifically that says after the Planning Commission's public hearing and their recommendation, if it appears Council may approve, then it directs the preparation of the agreement and specifies the tentative conditions. Then, it comes back under the agreement that Council shall make a final determination to approve, approve with conditions or deny the rezoning with the planned zoning overlay. The motion says that any approval of the rezone is conditioned on the PRO agreement that the concept of the ordinance is satisfied.

Roll Call Vote on CM-05-11-367 Yeas: Margolis, Landry, Capello, Gatt,

Nays: Mutch, Nagy, Paul,