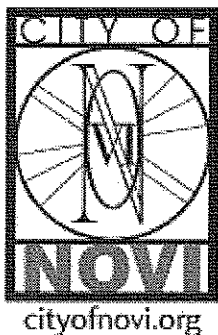


# MEMORANDUM



**TO:** MEMBERS OF THE PLANNING COMMISSION  
**FROM:** KRISTEN KAPELANSKI, A/CP, PLANNER *K. Kapelanski*  
**THRU:** BARBARA MCBETH, A/CP, DEPUTY DIRECTOR  
**SUBJECT:** TEXT AMENDMENT 18.239 - GAS STATION LIQUOR SALES  
**DATE:** NOVEMBER 6, 2009

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At the October 28<sup>th</sup> Planning Commission meeting, the Commission discussed a possible text amendment to regulate liquor, beer and wine sales at gas stations. The Commission asked staff to provide additional information regarding the issue at an upcoming meeting, before "setting" a public hearing date. Among the additional information requested by the Commission were the location of existing and potential gas stations in the City of Novi, an understanding of what the State Law allows, information regarding surrounding community's regulations on this matter, and recommendations from staff.

### Liquor Control Commission

The Liquor Control Commission of the State of Michigan regulates and approves all liquor licenses within the State. Presently, gas stations are permitted to apply for and receive a liquor license for the sale of packaged alcohol to be consumed off the premises. In order to receive a license, gas stations must meet one of the two following requirements: 1) The station must be at least 55,000 square feet; or 2) The station must carry a minimum of \$250,000 worth of merchandise (excluding alcohol sales). An application would then be filed and reviewed by the Liquor Control Commission.

### Novi's Current Ordinances for Gas Stations

Novi's Zoning Ordinance currently allows gas stations as a Special Land Use in the B-2, Community Business District, and in the B-3, General Business District. Additionally, gas stations are a Permitted Use in the FS, Freeway Service District.

The standards for a gas station in the B-2 or B-3 districts are as follows:

- 1) Entrances to the gas station shall be no less than one hundred feet from a street intersection or from adjacent residential districts;
- 2) The minimum lot area shall be one acre;

- 3) A service station shall be located on a site so as to minimize its impact on any adjacent residential district, OS-1, OSC or B-1 District;
- 4) Attached canopies shall comply with the minimum setback standards of the district and detached canopies shall comply with the setback standards for accessory structures;
- 5) The storage of vehicles overnight is prohibited except for working vehicles (wreckers, etc.) and vehicles or trailers for general rental and those awaiting mechanical repair. Wrecked vehicles may be stored for a period not to exceed twenty-four hours;
- 6) A noise impact statement is required.

There are no additional special standards for gas stations in the Freeway Service district. There are a total of 12 gas stations currently located in Novi, with one of those located in the Freeway Service District, one located in the RA District as part of a PUD/Consent Judgment and the remaining 10 located in the B-2 or B-3 districts. Additional land is zoned or planned for land uses that would allow gas stations. Please see the attached maps for additional information.

#### Other Local Ordinances

I have done a review of ordinances in the area and found three Metro-Detroit communities that currently regulate the sale of liquor, beer and wine at gas stations. The zoning ordinances of West Bloomfield and Southfield prohibit the sale of any alcohol at gas stations. The City of Troy requires all gas stations wishing to sell alcohol to appear before their Liquor Advisory Committee which reviews the request to determine whether or not it meets the State standards for a liquor license to sell alcohol at a gas station. Generally these standards require the gas station to be either a minimum of 55,000 sq. ft. or carry a minimum of \$250,000 worth of merchandise mirroring the current State legislation. The Troy Liquor Advisory Committee then either recommends the City has no additional comment for the State or passes along a negative recommendation stating the applicant does not meet the required State standards.

#### Liquor License Already Granted

Staff is aware of only one gas station in Novi with a license from the Liquor Control Commission to sell liquor, beer and wine: the Sunshine Market at the southeast corner of Novi Road and Thirteen Mile Road. This license was reviewed by City Departments, including the Police Department, at the request of the Liquor Control Commission. Since there are currently no local ordinances regulating the sale of alcohol at gas stations, approval was recommended. Additionally, the State

Law appears to allow grocery stores and warehouse club stores (such as Meijer, Kroger, Costco and Sam's Club) to provide fuel pumps along with alcohol sales in the store. The Sam's Club on Wixom Road, south of Grand River has fuel pumps and alcohol for sale as part of their larger warehouse store operation.

#### Ordinance Options

It seems Novi would have several options when considering the policy issues related to the question and Zoning Ordinance provisions to address the sale of beer, wine and liquor at gas stations:

(1) The Planning Commission could recommend leaving the ordinance as it is, effectively allowing gas stations to sell alcohol provided the gas station operator obtain the proper approval from the State (which also leaves us to follow future changes at the state level without any local rules);

(2) A text amendment prohibiting the sale of any alcoholic beverages at gas stations could be recommended to the City Council (an example, modified from West Bloomfield's ordinance, was provided in the previous packet); or

(3) A text amendment listing the sale of alcoholic beverages at gas stations as a Special Land Use, subject to one or more of the minimum requirements for a liquor license from the State could be proposed for the B-2, B-3 and FS zoning districts. Gas stations are already a Special Land Use in the B-2 and B-3 districts.

Attached you will find a map indicating existing gas stations throughout the city and a map showing the districts that currently permit gas stations as either a Principal Permitted Use or Special Land Use as well as a pertinent newspaper article.

The Macomb Daily (macombdaily.com), Serving Macomb County

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News

## Liquor licenses stir debate

Sunday, August 9, 2009

By Carol Hopkins, Journal Register News Service

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Stores, gas stations spar over the right to sell booze

Sixty-five Oakland County gas stations now sell alcohol and Randy Yaldo, owner of the Get & Go Mini Mart in Ferndale, isn't happy about the fact more stations are getting liquor licenses.

"The state makes it easier for them," said Yaldo, who has owned his business on Hilton Road for nearly three years.

"The state should put party stores' (requests) before gas stations. Gas stations will always have the gas to sell."

All around Oakland County, gas stations have requests for liquor licenses pending with the state.

In Michigan, there are 1,650 active licensees with gas pumps, said Andrea Miller, spokeswoman with the Michigan Liquor Control Commission.

Among the total are Meijer stores, Sam's Clubs and Costcos.

Michigan application numbers prove more stations are asking for licenses. In 2004, 70 gas stations applied for licenses, according to Miller. In 2008, 170 applied and, this year, 95 have applied through July 22.

Applicants can have no less than \$250,000 in inventory at the time of application for a license, Miller said.

As new gas stations expand and carry more food items, more are now able to meet liquor-law inventory requirements, officials noted.

Jane Shallal, president and CEO of the Farmington Hills-based Associated Food and Petroleum Dealers, said because gas stations don't have repair shops and their profit margin is low on gasoline, "they are trying to drive people into the stores, and they're applying to sell beer and wine."

Betty Fortino, Waterford Township clerk, said Waterford has seen an increase in gas station liquor law applications in the past three years.

"As soon as one got a license, the others wanted one," Fortino said.

Police are required to do background checks on liquor license applicants.

"In the past few years, the state keeps changing the law and lowering the requirements," Waterford Police Chief Daniel

McCaw said.

"The township board has consistently said no to gas station licenses, and then the applicant appeals to the state and most times they're approved."

Dave Payne, Bloomfield Township supervisor, said he is noticing a rise in gas station liquor license applicants.

"We've had two or three in the last year," he said.

"We are generally opposed. There are enough places to buy packaged liquor. Some applicants also have fast food associated with their station and mixing the two is just looking for violations and problems."

Party store owners don't like the new competition.

Steven Zeer, owner of Quick Stop Party Store in West Bloomfield, told the West Bloomfield board in June that giving the gas stations access to liquor licenses is not good for the township.

"The package stores in our township have always hired adult clerks, supported licensing and mandatory alcohol server training," he said.

In contrast, he said, gas stations often are staffed by teenagers and the parent companies don't push for the same training for those employees. Zeer also said that such a change would kill his business.

Robert, a clerk who did not want to give his last name at a White Lake Township-based party store, said granting gas station liquor licenses is wrong.

"The only reason the city and state are doing it is to make more tax dollars from it, and it's hurting our stores," he said.

"Governments are going broke and that's why they're doing it."

On July 2, West Bloomfield trustees passed a zoning ordinance that prohibits gas stations from selling alcoholic beverages in the township.

The township modeled its ordinance on the City of Southfield's, in effect for 15 years, said Jack Beras, Southfield city attorney.

West Bloomfield Trustee Steve Kaplan said the township's ordinance could be challenged in court.

"We believe the ordinance will be upheld because it relates to the essence of government promoting the health, safety and welfare of its residents," said Kaplan.

"Local control is still a viable concept in Michigan."

Beras, of Southfield, said over the years, he has only seen one challenge to Southfield's ordinance, but that applicant withdrew.

"The Liquor Control Commission gives respect to local zoning ordinances," Beras said.

The Liquor Control Commission's Ken Wozniak doesn't see the trend changing for gas station applications.

"They're always trying to find a way," Wozniak said.

"It's lucrative. Lots of (gas station) buildings now are quite substantial convenience stores (and meet the criteria)."

As to the charge that the state is promoting drunken driving by allowing more sales at gas stations, Wozniak disagrees.

"Who doesn't drive to get a six-pack?" he asked.

"If they don't get it at a gas station, they'll drive to get it at a 7-Eleven."

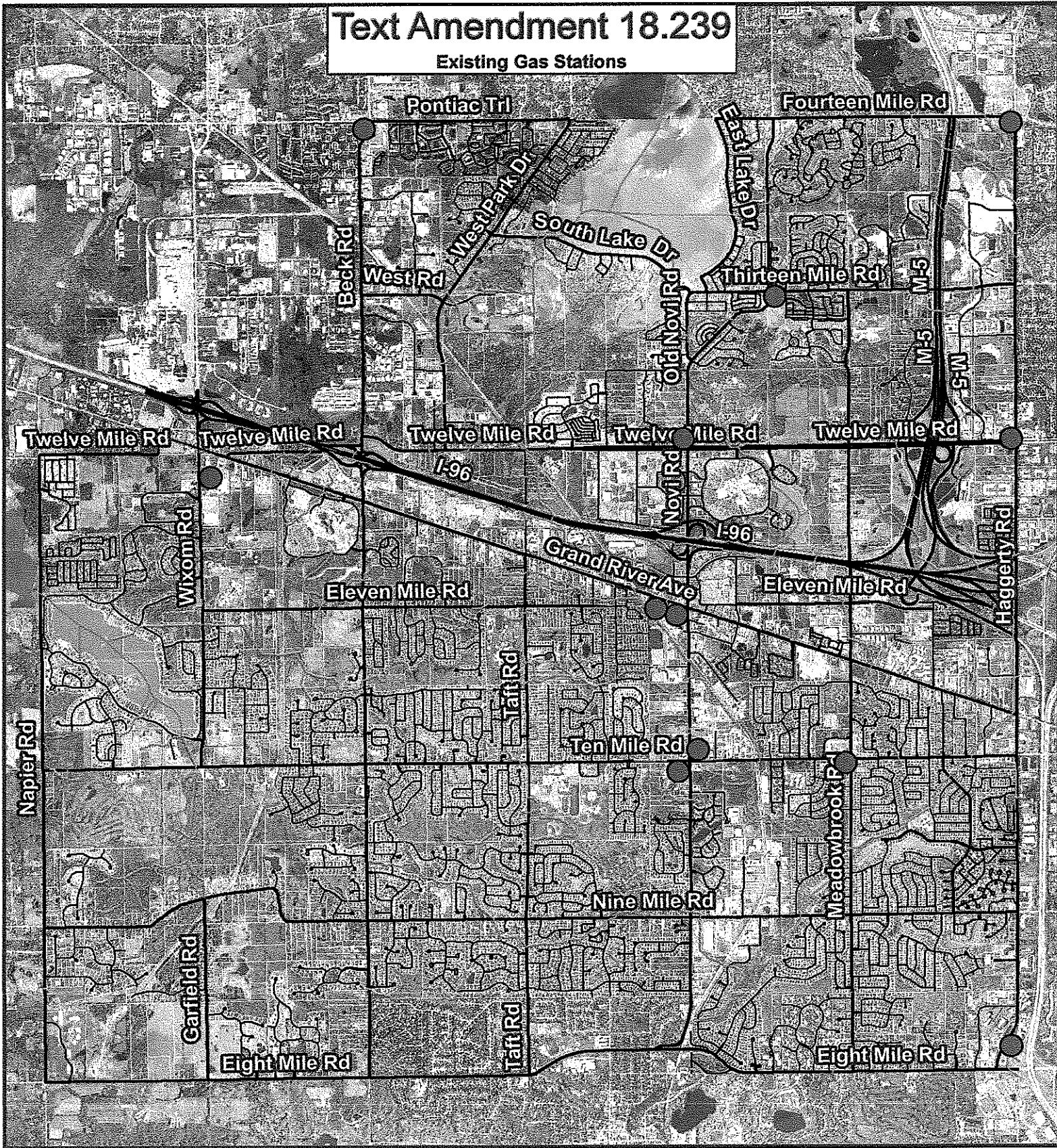
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URL: <http://www.macombdaily.com/articles/2009/08/09/news/srv0000006072189.prt>

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# Text Amendment 18.239

## Existing Gas Stations



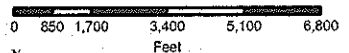
Map Author: Kristen Kapelanski  
Date: 11/06/09  
Project: Liquor License Text Amendment  
Version #: 1.0

### Map Legend

● Existing Gas Station



**City of Novi**  
Department Division  
Department Name  
45175 W Ten Mile Rd  
Novi, MI 48375  
cityofnovi.org



1 inch = 4,390 feet

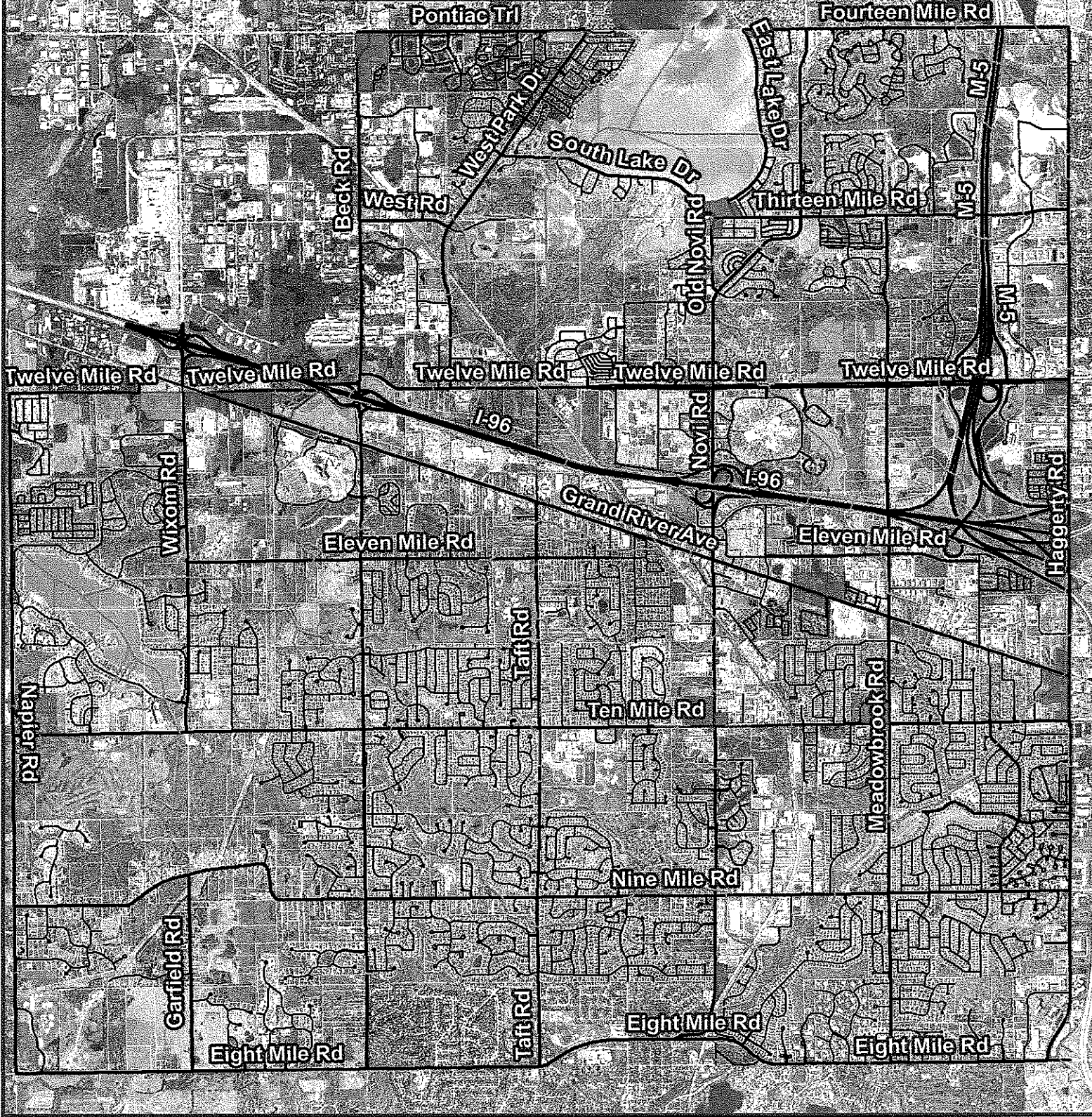
#### MAP INTERPRETATION NOTICE

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# Text Amendment 18.239

## Zoning Districts Permitting Gas Stations






Map Author: Kristen Kapelanski  
 Date: 11/06/09  
 Project: Liquor License Text Amendment  
 Version #: 1.0

**MAP INTERPRETATION NOTICE**

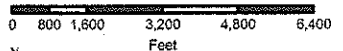
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**Map Legend**

-  B-2: Community Business District
-  B-3: General Business District
-  FS: Freeway Service District



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1 inch = 4,208 feet



# Text Amendment 18.239

## Existing Gas Stations - Beck Road and Pontiac Trail



Map Author: Kristen Kapelanski  
 Date: 11/06/09  
 Project: Liquor License Text Amendment  
 - Map 1 Zoom  
 Version #: 1.0

### Map Legend

● Existing Gas Station



**City of Novi**  
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 cityofnovi.org



1 inch = 181 feet

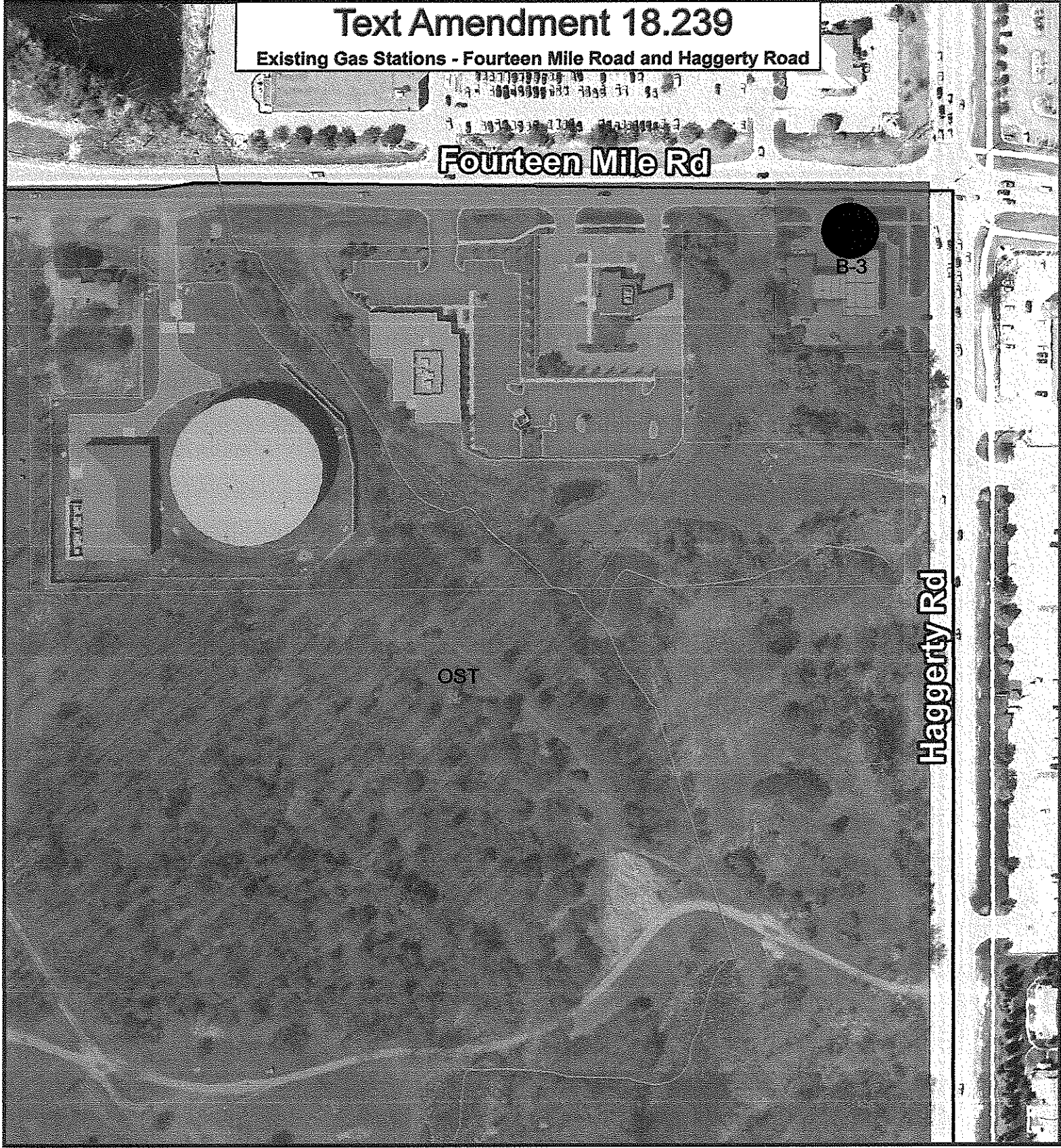
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# Text Amendment 18.239

## Existing Gas Stations - Fourteen Mile Road and Haggerty Road



Map Author: Kristen Kapelanski  
 Date: 11/06/09  
 Project: Liquor License Text Amendment  
 - Map 2 Zoom  
 Version #: 1.0

### Map Legend

● Existing Gas Station

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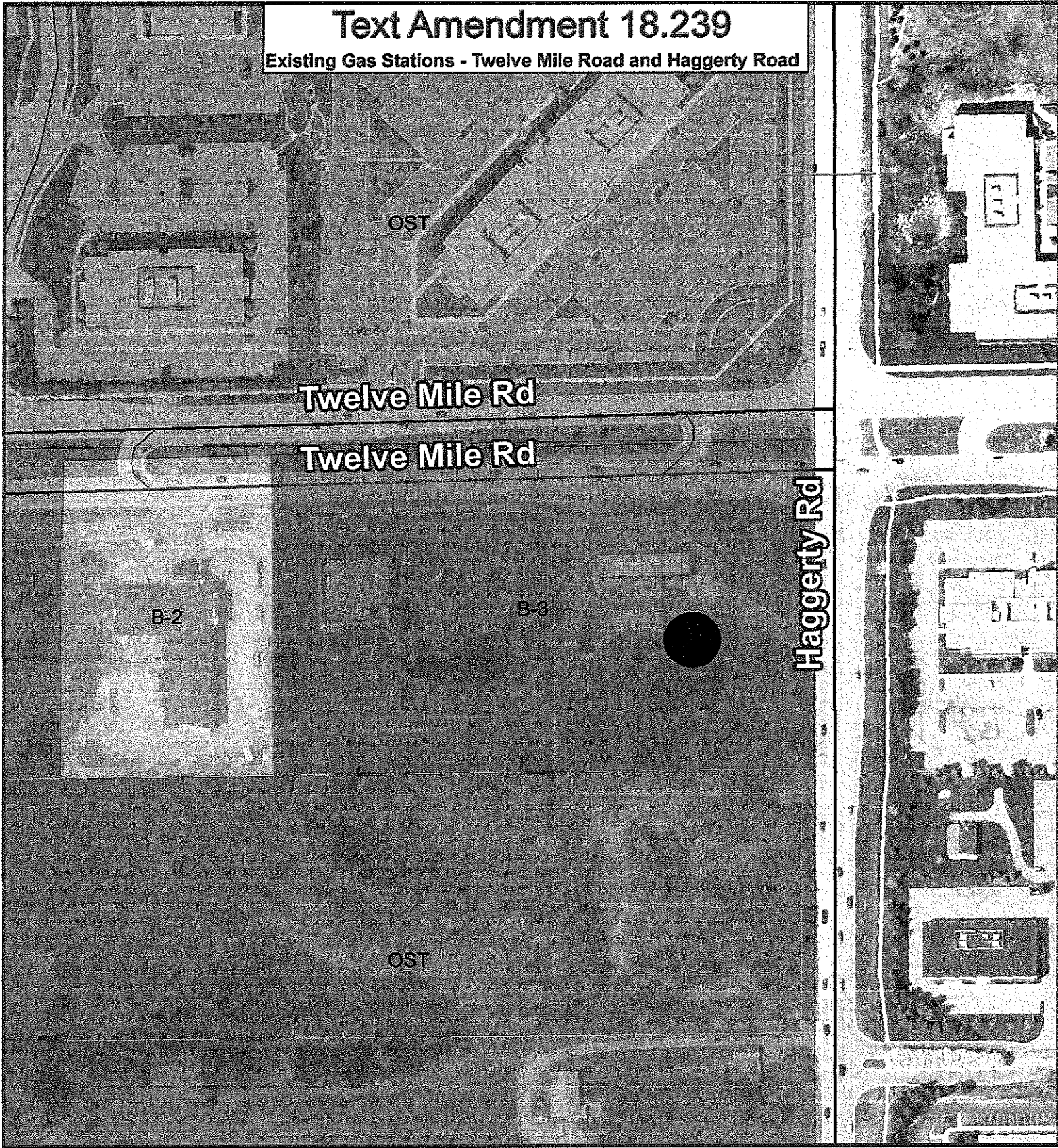


1 inch = 181 feet



# Text Amendment 18.239

## Existing Gas Stations - Twelve Mile Road and Haggerty Road



Map Author: Kristen Kapelanski  
 Date: 11/06/09  
 Project: Liquor License Text Amendment  
 - Map 3 Zoom  
 Version #: 1.0

### Map Legend

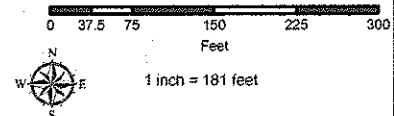
Existing Gas Station

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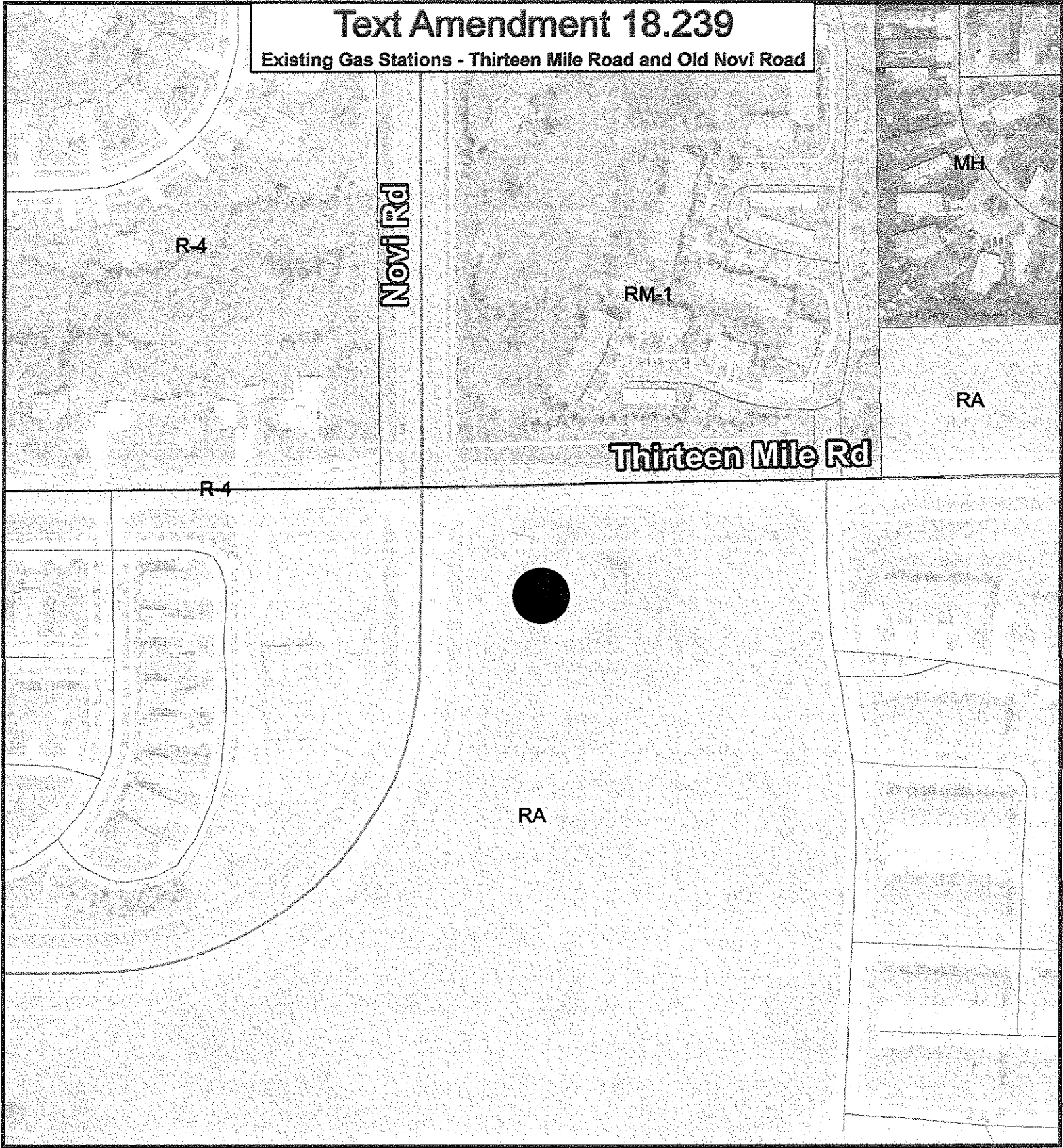


**City of Novi**  
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 46175 W Ten Mile Rd  
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# Text Amendment 18.239

## Existing Gas Stations - Thirteen Mile Road and Old Novi Road



Map Author: Kristen Kapelanski  
 Date: 11/06/09  
 Project: Liquor License Text Amendment  
 - Map 4 Zoom  
 Version #: 1.0

**MAP INTERPRETATION NOTICE**

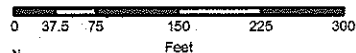
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Map Legend

 Existing Gas Station



**City of Novi**  
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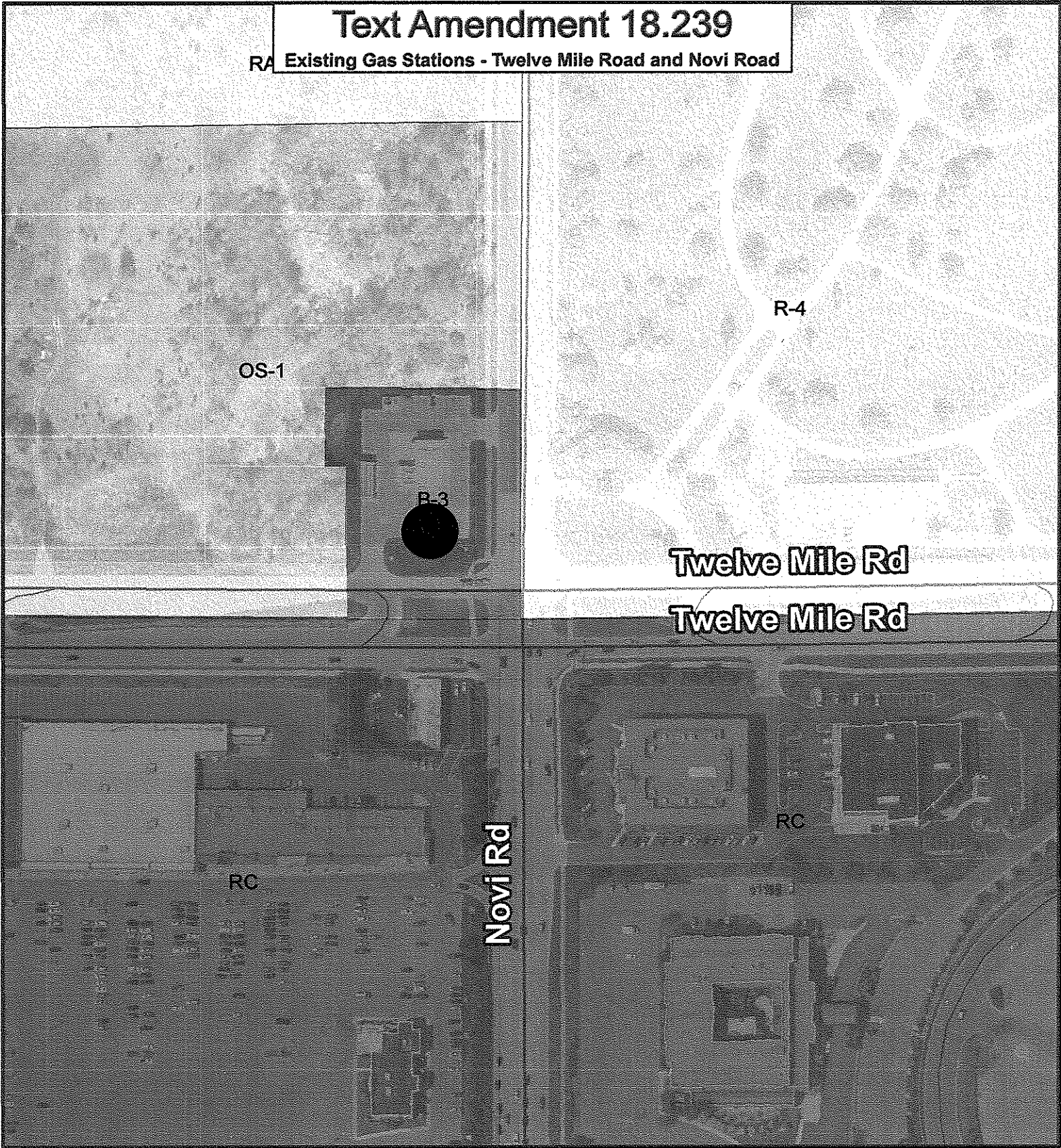


1 inch = 181 feet



# Text Amendment 18.239

RA Existing Gas Stations - Twelve Mile Road and Novi Road



Map Author: Kristen Kapelanski  
Date: 11/06/09  
Project: Liquor License Text Amendment  
- Map 5 Zoom  
Version #: 1.0

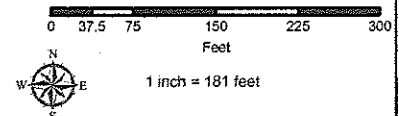
### Map Legend

 Existing Gas Station



**City of Novi**  
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Department Name  
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Novi, MI 48375  
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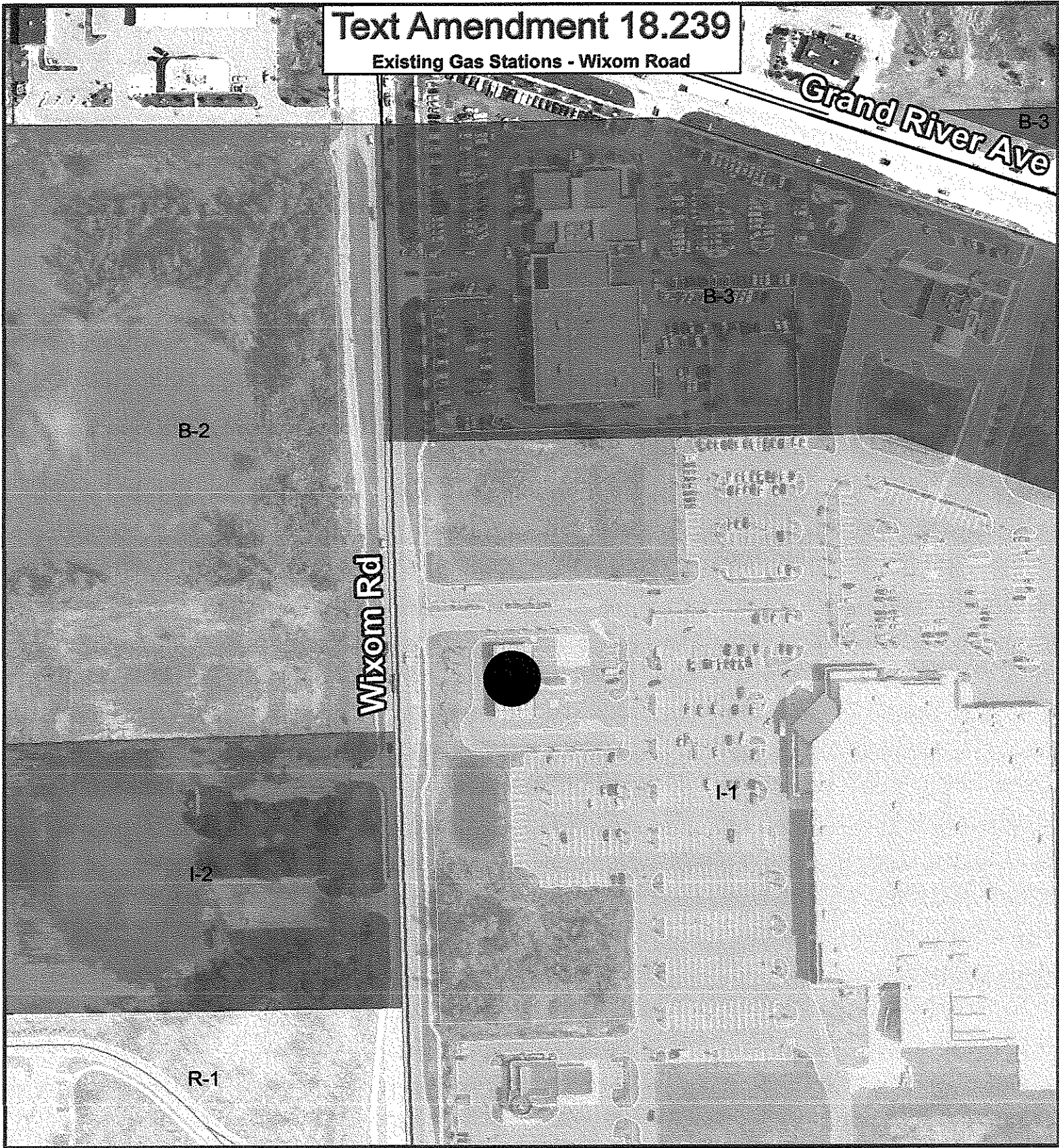
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# Text Amendment 18.239

Existing Gas Stations - Wixom Road



Map Author: Kristen Kapelanski  
Date: 11/06/09  
Project: Liquor License Text Amendment  
- Map 6 Zoom  
Version #: 1.0

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#### Map Legend

 Existing Gas Station



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1 inch = 181 feet



EXPO

# Text Amendment 18.239

## Existing Gas Stations - Grand River Avenue

I-1

TC

TC

Novi Rd

Grand River Ave

TC-1

TC-1

TC

TC-1

TC-1

I-1

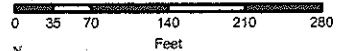
Map Author: Kristen Kapelanski  
Date: 11/06/09  
Project: Liquor License Text Amendment  
- Map 7 Zoom  
Version #: 1.0

### Map Legend

● Existing Gas Station



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1 inch = 181 feet

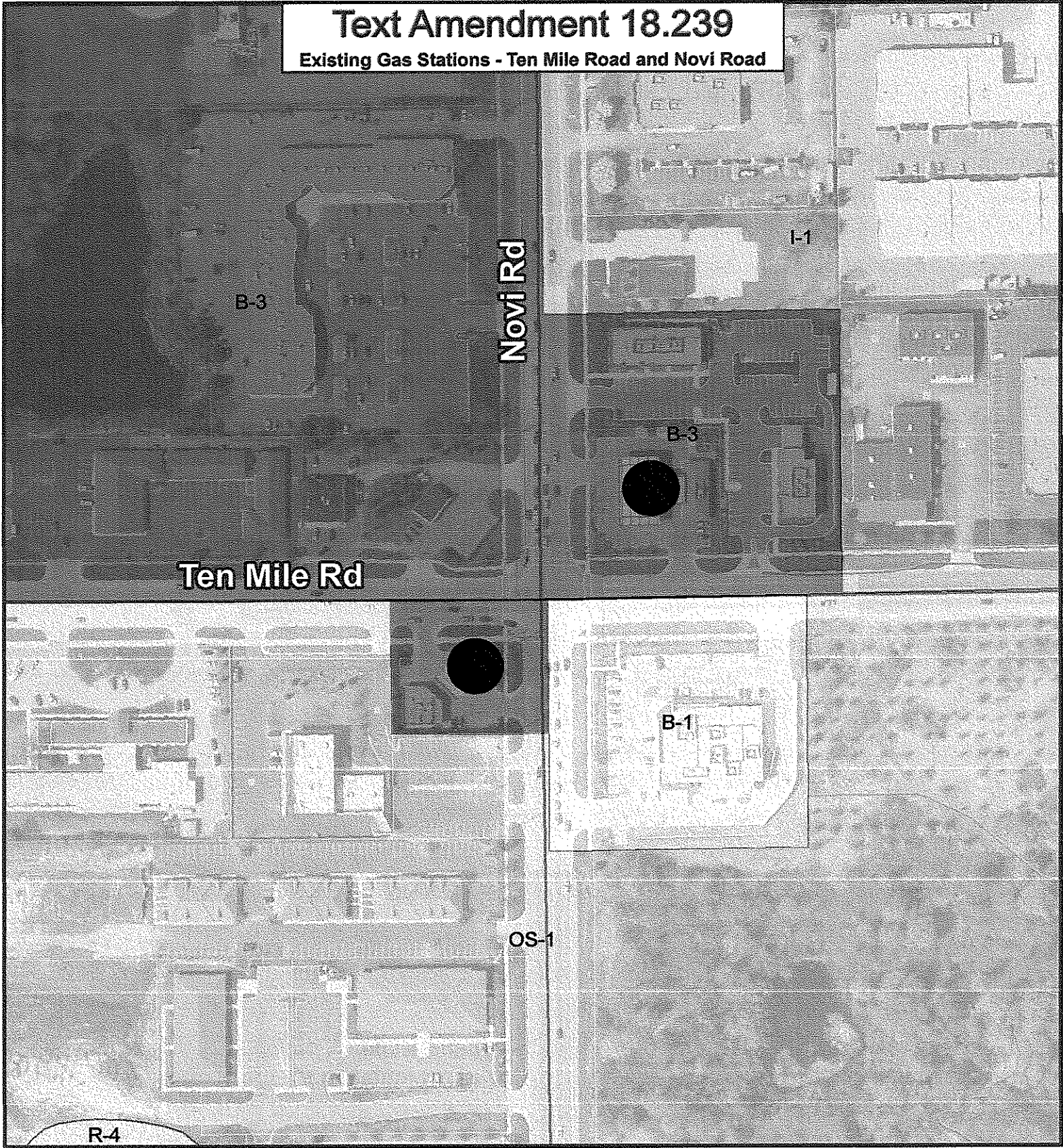
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# Text Amendment 18.239

## Existing Gas Stations - Ten Mile Road and Novi Road



Map Author: Kristen Kapelanski  
 Date: 11/08/09  
 Project: Liquor License Text Amendment  
 - Map 8 Zoom  
 Version #: 1.0

### Map Legend

Existing Gas Station



**City of Novi**  
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 Novi, MI 48375  
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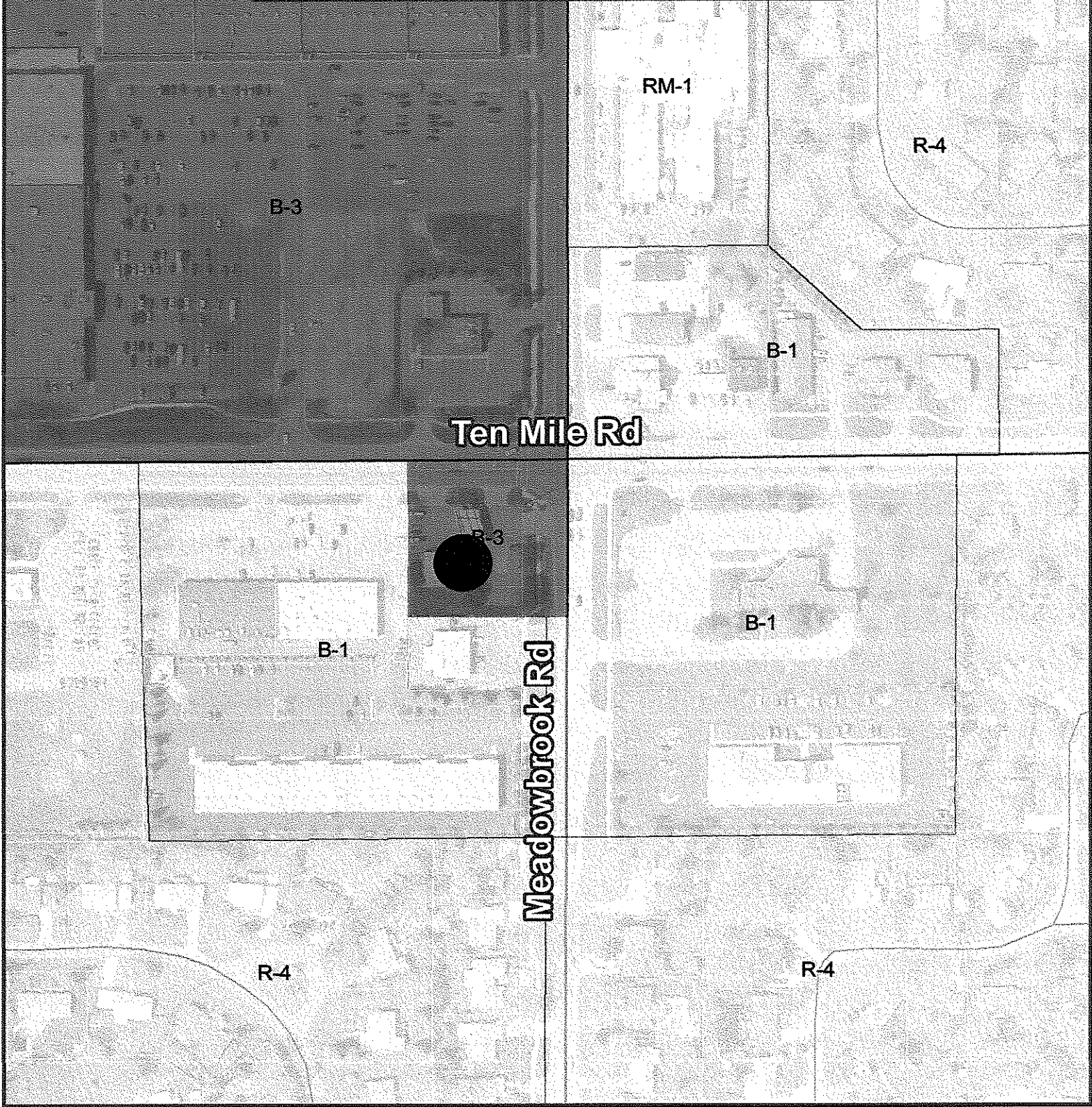
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# Text Amendment 18.239

## Existing Gas Stations - Ten Mile Road and Meadowbrook Road




Map Author: Kristen Kapelanski  
 Date: 11/06/09  
 Project: Liquor License Text Amendment  
 - Map 9 Zoom  
 Version #: 1.0

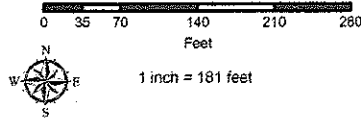
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### Map Legend

● Existing Gas Station



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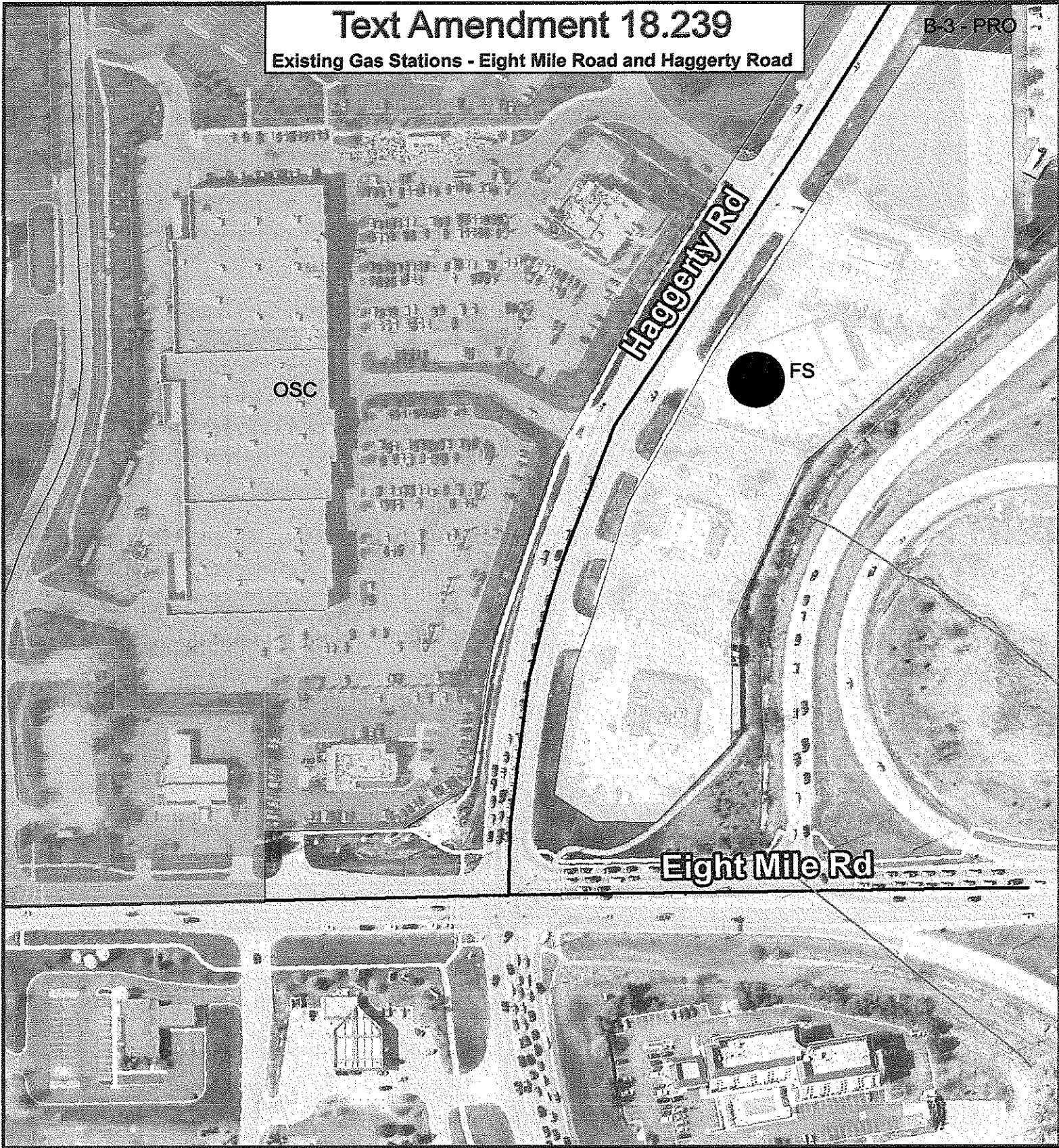
0 35 70 140 210 280  
 Feet  
 1 inch = 181 feet



# Text Amendment 18.239

## Existing Gas Stations - Eight Mile Road and Haggerty Road

B-3 - PRO




Map Author: Kristen Kapelanski  
 Date: 11/06/09  
 Project: Liquor License Text Amendment  
 - Map 10 Zoom  
 Version #: 1.0

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### Map Legend

● Existing Gas Station




cityofnovi.org

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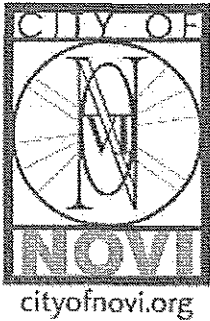
0 35 70 140 210 280  
Feet

1 inch = 181 feet





## MEMORANDUM



**TO:** BARBARA MCBETH, COMMUNITY DEVELOPMENT  
**FROM:** DAVID E. MOLLOY, CHIEF OF POLICE *DEM*  
KEITH A. WUOTINEN, LIEUTENANT *KW*  
**SUBJECT:** GAS STATION LIQUOR LICENCES  
**DATE:** NOVEMBER 13, 2009

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### Background:

The Planning Commission is having a public hearing on November 18, 2009, regarding the issue of liquor licenses at gas stations. Currently, under State law, gas stations can apply for and receive a liquor license for pre-packaged beer, wine and/or liquor, under Michigan Compiled Law 436.1541 of the Michigan Liquor Control Code. The code also specifies that the gas station must have at least \$250,000.00 (at cost) of non-alcohol inventory (excluding gasoline), of those goods and services customarily marketed by approved types of businesses.

Some communities allow their gas stations to have liquor licenses, some prohibit this and others regulate the matter as far as business size, location and other factors. There are several reasons why a governmental body may choose to regulate or prohibit these types of sales.

### Reasons to prohibit gas stations from having liquor licenses:

- 1) Alcohol is a product that should not conveniently be available to the motoring public while purchasing fuel. This ease of access to alcohol while driving could increase the instances where a driver may choose to purchase alcohol and then consume it (illegally) while driving.
- 2) Gas station employees may have a difficult time detecting intoxicated persons in the same way as other licensed establishments before making the alcohol sale. Also there is no required server training for persons selling alcohol for off-premises consumption.
- 3) Many gas stations are open later hours than other traditional off-site stores, thereby increasing late night sales of alcohol to persons who may be leaving on-premises establishments, and could cause increased consumption by those persons driving.
- 4) The additional sales of alcohol could increase the amount of vehicular traffic at these gas stations beyond the point they were designed to handle.
- 5) If prohibited, this may decrease the number of drunk drivers on the roadways.

- 6) Having more licensed establishments in Novi will increase the number of businesses that the police department will have to inspect on a quarterly basis, thereby taking up more police time and resources.

Other Jurisdictions response on this topic:

The issue of whether to allow these licenses at gas stations in any given community has generated some discussion and debate in other communities as well, with some of those communities choosing to regulate or ban alcohol sales at gas stations. For example, in July 2009, the West Bloomfield Township Board of Trustees unanimously approved a zoning ordinance that operates as a complete ban on alcohol sales at gas stations. The rationale that was given in West Bloomfield is that such a ban "will reduce the amount of drinking and driving in West Bloomfield", according to Trustee Steve Kaplan, as quoted in a Spinal Column article on July 8, 2009.

The Michigan Liquor Control Commission allows such a license, but they also do not like the licenses. Ken Wozniak, a spokesperson for the Michigan Liquor Control Commission, was quoted as saying "[t]he commission still, philosophically, doesn't like the idea. They think it's not a good public policy." (July 1, 2008, "The Fresh Story").

Recommendation and Conclusion:

The police department recommends that gas stations not be allowed to have these liquor licenses. However, if the licenses are allowed, it would be preferable to have them allowed in a way that permits reasonable regulation and restriction such that any unintended or undesirable consequences do not occur. This could be accomplished through Special Land Use Approval with some minimum requirements set forth, including a duplication of the requirements set forth in the liquor control code that requires a certain level of inventory (above and beyond inventory related to gasoline and alcohol). By making the inventory requirements part of the Novi Code, we can then also enforce those provisions. Currently the MLCC does not conduct any type of inspections to ensure that gas stations maintain the level of inventory that they claim to have. If Novi is going to allow these licenses then perhaps an inspection provision for local authorities can be included to verify stated inventory and other requirements.

cc: Clay J. Pearson, City Manager  
Thomas Schultz, Esq., City Attorney

(h) Dining cars or other railroad or Pullman cars, watercraft, or aircraft, where alcoholic liquor may be sold for consumption on the premises only, subject to rules promulgated by the commission.

(i) Brewpubs where beer manufactured on the premises by the licensee may be sold for consumption on or off the premises by any of the following licensees:

(/i) Class C.

(/ii) Tavern.

(/iii) Class A hotel.

(/iv) Class B hotel.

(j) Micro brewers where beer produced by the micro brewer may be sold to a consumer for consumption on or off the brewery premises.

(k) Class G-1 license where beer, wine, mixed spirit drink, and spirits may be sold for consumption on the premises only to members required to pay an annual membership fee and consumption is limited to these members and their bona fide guests.

(l) Class G-2 license where beer and wine may be sold for consumption on the premises only to members required to pay an annual membership fee and consumption is limited to these members and their bona fide guests.

(2) A wine maker may sell wine made by that wine maker in a restaurant for consumption on or off the premises if the restaurant is owned by the wine maker or operated by another person under an agreement approved by the commission and located on the premises where the wine maker is licensed.

(3) A wine maker, with the prior written approval of the commission, may conduct wine tastings of wines made by that wine maker and may sell the wine made by that wine maker for consumption off the premises at a location other than the premises where the wine maker is licensed to manufacture wine, under the following conditions:

(a) The premises upon which the wine tasting occurs conforms to local and state sanitation requirements.

(b) Payment of a \$100.00 fee per location is made to the commission.

(c) The wine tasting locations shall be considered licensed premises.

(d) Wine tasting does not take place between the hours of 2 a.m. and 7 a.m. Monday through Saturday, or between 2 a.m. and 12 noon on Sunday.

(e) The premises and the licensee comply with and are subject to all applicable rules promulgated by the commission.

History: 1998, Act 58, Imd. Eff. Apr. 14, 1998; Am. 2001, Act 223, Eff. March 22, 2002.

#### 436.1539 Marina as specially designated merchant or distributor; license; conditions.

Sec. 539. A marina that is situated on 1 of the Great Lakes, on that part of an inland waterway or tributary connected to and navigable to 1 of the Great Lakes, or on a Great Lakes connecting waterway may be issued a license as a specially designated merchant or specially designated distributor, notwithstanding the fact that the marina maintains motor vehicle fuel pumps on or adjacent to the licensed premises, or maintains a financial interest in any motor vehicle fuel pumps if both of the following conditions are met:

(a) The marina's primary business is the sale of boats or the provision of services and supplies to recreational power cruisers and sailboats of the type that typically travel on the Great Lakes.

(b) The fuel pumps are used for dispensing fuel only to boats described in subdivision (a).

History: 1998, Act 58, Imd. Eff. Apr. 14, 1998.

#### 436.1541 Motor vehicle fuel pumps.

Sec. 541. (1) The commission shall not prohibit an applicant for or the holder of a specially designated distributor license or specially designated merchant license from owning or operating motor vehicle fuel pumps on or adjacent to the licensed premises, if both of the following conditions are met:

(a) One or both of the following conditions exist:

(/i) The applicant or licensee is located in a neighborhood shopping center composed of 1 or more commercial establishments organized or operated as a unit which is related in location, size, and type of shop to the trade area that the unit serves, which provides not less than 50,000 square feet of gross leasable retail space, and which provides 5 private off-street parking spaces for each 1,000 square feet of gross leasable retail space.

(/i) The applicant or licensee maintains a minimum inventory on the premises, excluding alcoholic liquor and motor vehicle fuel, of not less than \$250,000.00, at cost, of those goods and services customarily marketed by approved types of businesses.

(b) The site of payment and selection of alcoholic liquor is not less than 50 feet from that point where motor vehicle fuel is dispensed.

(2) The commission shall not prohibit an applicant for or the holder of a specially designated merchant license from owning or operating motor vehicle fuel pumps on or adjacent to the licensed premises if both of the following conditions are met:

(a) The applicant or licensee is located in either of the following:

(/i) A city, incorporated village, or township with a population of 3,000 or less and a county with a population of 31,000 or more.

(/ii) A city, incorporated village, or township with a population of 3,500 or less and a county with a population of less than 31,000.

(b) The applicant or licensee maintains a minimum inventory on the premises, excluding alcoholic liquor and motor vehicle fuel, of not less than \$10,000.00, at cost, of those goods and services customarily marketed by approved types of businesses.

(3) The commission shall not prohibit an applicant for or the holder of a specially designated distributor license from owning or operating motor vehicle fuel pumps on or adjacent to the licensed premises if both of the following conditions are met:

(a) The applicant or licensee is located in either of the following:

(/i) A city, incorporated village, or township with a population of 3,000 or less and a county with a population of 31,000 or more.

(/ii) A city, incorporated village, or township with a population of 3,500 or less and a county with a population of less than 31,000.

(b) The applicant or licensee maintains a minimum inventory on the premises, excluding alcoholic liquor and motor vehicle fuel, of not less than \$12,500.00, at cost, of those goods and services customarily marketed by approved types of businesses.

(4) A person who was issued a specially designated merchant license or specially designated distributor license at a location at which another person owned, operated or maintained motor vehicle fuel pumps at the same location may have or acquire an interest in the ownership, operation or maintenance of those motor vehicle fuel pumps.

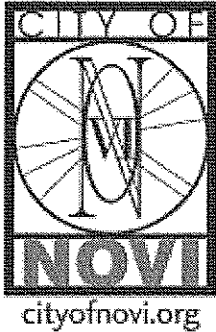
(5) The commission may transfer ownership of a specially designated merchant license or specially designated distributor license to a person who owns or is acquiring an interest in motor vehicle fuel pumps already in operation at the same location at which the license is issued.

History: 1998, Act 59, Imd. Eff. Apr. 14, 1998.

**436.1543 Disposition and use of retailers' license and license renewal fees; special fund; "license fee enhancement" defined.**

Sec. 543. (1) Quarterly, upon recommendation of the commission, the state shall pay pursuant to appropriation in the manner prescribed by law to the city, village, or township in which a full-time police department or full-time ordinance enforcement department is maintained or, if a police department or full-time ordinance enforcement department is not maintained, to the county, to be credited to the sheriff's department of the county in which the licensed premises are located, 55% of the amount of the proceeds of the retailers' license fees and license renewal fees collected in that jurisdiction, for the specific purpose of enforcing this act and the rules promulgated under this act. Forty-one and one-half percent of the amount of the proceeds of retailers' license and license renewal fees collected shall be deposited in a special fund to be annually appropriated to the commission for carrying out the licensing and enforcement provisions of this act. Any unencumbered or uncommitted money in the special fund shall revert to the general fund of the state 12 months after the end of each fiscal year in which the funds were collected. The legislature shall appropriate 3-1/2% of the amount of the proceeds of retailers' license and license renewal fees collected to be credited to a special fund in the state treasury for the purposes of promoting and sustaining programs for the prevention, rehabilitation, care, and treatment of alcoholics. This subsection does not apply to retail license fees collected for railroad or Pullman cars, watercraft, or aircraft, or to the transfer fees provided in section 529.

# MEMORANDUM



TO: Members of the Planning Commission  
FROM: <sup>Bau</sup> Barbara McBeth, AICP, Community Development  
SUBJECT: Text Amendment 18.239 Gas Station Liquor Licenses  
DATE: January 22, 2010

The Planning Commission has discussed a possible text amendment to regulate liquor, beer and wine sales at gas stations. In discussing the matter last week with Chair Pehrson and to facilitate further discussion by the Planning Commission, Chair Pehrson suggested summarizing the matter to provide clear black and white questions. Taking further inspiration from Member Baratta's investigation and expertise in this area (see attached correspondence), staff presents the following, as refreshed and restated questions for the Planning Commission to consider.

## **Question 1**

One question staff is posing is whether "gasoline service station" is adequately defined in the ordinance:

*"A place for the retail dispensing, sale, or offering for sale of motor fuels directly to the users of motor vehicles together with the sale of minor accessories and services for motor vehicles, but not including major automobile repair."*

As discussed at last week's meeting, the proposed definition of a gasoline service station now would add sundries such as gum, candy cigarettes, etc.; basic convenience grocery items, such as milk and bread; prepared food items; and possibly alcoholic beverages. With the first part of the new definition, we are really catching up with the mini-mart or C-Store model that gas stations have used for a number of years. The past interpretation of Novi's Zoning Ordinance is that the sale of bread, milk gum, etc., has been considered "typically incidental" or "accessory to" the gas station use. However, staff thought the question of alcohol sales at gas stations pushes the limits on what would normally be incidental to a gasoline service station – hence the ordinance amendment and all of the discussion.

## **Question 2**

Another question being posed is whether the Planning Commission and the City Council would like to see sales of alcoholic beverages as another permitted use at gasoline service stations. The first draft language offered for consideration provided reasons why it would not be appropriate to allow alcohol sales at service stations:

(a) Alcohol is not a product that should be conveniently available to the motoring public at a location where they purchase fuel for their vehicle. Such availability has a strong potential to encourage or facilitate alcohol related driving offenses and accidents that might not otherwise occur if a motorist in need of fuel had to make a separate stop to purchase alcohol.

(b) The nature of modern day automobile service stations and the multiple transactions employees must handle at the same time is inconsistent with the proper administration and enforcement of the State's liquor control laws and prohibitions on sales to minors and visibly intoxicated persons and the Michigan Liquor Control Code of 1998, MCL 436.1906, does not require server training programs for off-premises licensees and their employees.



(c) Many gasoline service stations are open later than other stores where alcohol is sold, creating the ability for persons who had been consuming alcohol in an on-premises establishment to conveniently purchase alcohol after leaving that establishment, increasing the chances of alcohol related driving offenses and accidents and potentially undermining the liability of on-premises licensees for serving alcohol to minors or visibly intoxicated persons under the rebuttable presumption in MCL 436.1801(8), that licensees other than the one who made the last sale are not liable for damages caused by a minor or visibly intoxicated person they served.

(d) Allowing the sale of alcohol at automobile service stations would increase the volume of motor vehicle traffic and parking demands on properties that were not planned or designed to accommodate the increased demand, resulting in increased vehicle conflicts and accidents.

(e) Locations that sell alcohol are a separate retail use under this chapter, which the City pursuant to its zoning authority to ensure that use of land is situated in appropriate locations and relationships, reduce hazards to life and property, and to promote and protect the public health, safety and welfare, has determined should not be allowed at automobile service station locations.

Of course, the Planning Commission may not agree that any of these reasons provided in the draft ordinance language would be sufficient to prepare an ordinance that would prohibit alcohol sales at gas stations. That's why staff offered the other alternatives.

### **Additional Questions**

Staff agrees with Member Baratta's statement that one question for the Commission to consider is the relative convenience of purchasing the product from a gas station or a retail store. But staff thinks there's more than just a question of convenience involved in this zoning issue, and offers the following additional questions for the Commission to consider:

- Is there a land use or traffic conflict for most gasoline service stations to add another product (just being introduced in Novi at this time) to the variety of services currently offered at gas stations – gasoline sales, tire filling, minor service and repair, car washes, retail convenience items, a quick sandwich?
- Are the hours of operation an issue, as gas stations tend to be open later than other retail stores?
- Is there an added concern about proper training of employees for sales to minors or to intoxicated people, given the other duties service station employees are responsible for?
- Is it perceived that there are already enough places to purchase alcohol that don't have the extra "challenges" noted above?

### **Alternative 1**

Staff suggests that if the Commission finds that the answers to any or all of the questions above would cause a concern about including this additional use to the definition of gasoline service stations, then it would be appropriate to recommend the Alternative 1 to the City Council:

Gasoline service station means a place for the retail dispensing, sale, or offering for sale of motor fuels directly to users of motor vehicles together with the sale of minor accessories and services for motor vehicles, but not including major automobile repair, with the only permitted accessory uses being the servicing and minor repair of motor vehicles; retail sales of minor automotive related convenience products and accessories such as windshield washer fluid, motor oil, wipers and window scrapers; and retail sales of non-automotive related products, including (i) sundries such as gum, candy, cigarettes, newspapers, magazines, and other

individually packaged convenience items; (ii) basic convenience grocery items, such as milk and bread; (iii) pre-prepared food items that are not subject to licensing by the Michigan Department of Agriculture or the Oakland County Health Department; and (iv) non-alcoholic beverages only, it being the finding and public policy determination of the City that the sale of beer, wine, liquor, or other beverages containing alcohol should never be found or determined to be customarily incidental to an automobile service station for the following reasons:

(a) Alcohol is not a product that should be conveniently available to the motoring public at a location where they purchase fuel for their vehicle. Such availability has a strong potential to encourage or facilitate alcohol related driving offenses and accidents that might not otherwise occur if a motorist in need of fuel had to make a separate stop to purchase alcohol.

(b) The nature of modern day automobile service stations and the multiple transactions employees must handle at the same time is inconsistent with the proper administration and enforcement of the State's liquor control laws and prohibitions on sales to minors and visibly intoxicated persons and the Michigan Liquor Control Code of 1998, MCL 436.1906, does not require server training programs for off-premises licensees and their employees.

(c) Many gasoline service stations are open later than other stores where alcohol is sold, creating the ability for persons who had been consuming alcohol in an on-premises establishment to conveniently purchase alcohol after leaving that establishment, increasing the chances of alcohol related driving offenses and accidents and potentially undermining the liability of on-premises licensees for serving alcohol to minors or visibly intoxicated persons under the rebuttable presumption in MCL 436.1801(8), that licensees other than the one who made the last sale are not liable for damages caused by a minor or visibly intoxicated person they served.

(d) Allowing the sale of alcohol at automobile service stations would increase the volume of motor vehicle traffic and parking demands on properties that were not planned or designed to accommodate the increased demand, resulting in increased vehicle conflicts and accidents.

(e) Locations that sell alcohol are a separate retail use under this chapter, which the City pursuant to its zoning authority to ensure that use of land is situated in appropriate locations and relationships, reduce hazards to life and property, and to promote and protect the public health, safety and welfare, has determined should not be allowed at automobile service station locations.

## **Alternative 2**

Staff suggests that if the Commission finds that the answers to any or all of the questions provided above would **not be a concern**, the Commission could recommend the second alternative to the City Council to clearly indicate that liquor, beer and wine would be permitted to be sold at Novi gasoline service stations, subject to approval by the Michigan Liquor Control Commission:

Gasoline service station means a place for the retail dispensing, sale, or offering for sale of motor fuels directly to users of motor vehicles together with the sale of minor accessories and services for motor vehicles, but not including major automobile repair, with the only permitted accessory uses being the servicing and minor repair of motor vehicles; retail sales of minor automotive related convenience products and accessories such as windshield washer fluid, motor oil, wipers and window scrapers; and retail sales of non-automotive related products, including (i) sundries such as gum, candy, cigarettes, newspapers, magazines, and other individually packaged convenience items; (ii) basic convenience grocery items, such as milk and

bread; (iii) pre-prepared food items that are not subject to licensing by the Michigan Department of Agriculture or the Oakland County Health Department; and (iv) non-alcoholic beverages as well as liquor, beer and wine as permitted by the Michigan Liquor Control Commission for off-premises consumption.

### **Alternative 3**

Staff suggests that if the Commission finds that the sales of alcoholic beverages at gasoline service stations could be mitigated through certain provisions, such as larger store size, and consistent with one of the current standards of the Liquor Control Commission, the third alternative may be appropriate for the Planning Commission to recommend to the City Council:

Gasoline service station means a place for the retail dispensing, sale, or offering for sale of motor fuels directly to users of motor vehicles together with the sale of minor accessories and services for motor vehicles, but not including major automobile repair, with the only permitted accessory uses being the servicing and minor repair of motor vehicles; retail sales of minor automotive related convenience products and accessories such as windshield washer fluid, motor oil, wipers and window scrapers; and retail sales of non-automotive related products, including (i) sundries such as gum, candy, cigarettes, newspapers, magazines, and other individually packaged convenience items; (ii) basic convenience grocery items, such as milk and bread; (iii) pre-prepared food items that are not subject to licensing by the Michigan Department of Agriculture or the Oakland County Health Department; and (iv) non-alcoholic beverages. The sale of alcoholic beverages shall be permitted subject to all of the Liquor Control Commission's standards and the following shall be demonstrated on the site plan:

- (a) The sale of alcoholic beverages shall be permitted as an accessory use, subject to the approval of the Liquor Control Commission and the standards imposed by the Commission and state law, only where the gasoline service station is located in a neighborhood shopping center composed of one or more commercial establishments organized and operated as a unit, which provides not less than 50,000 square feet of gross leasable retail space.

### **Additional follow-up to Planning Commission's previous questions**

Kristen Kapelanski prepared the following additional information for consideration by the Planning Commission in reaching a recommendation on this matter.

### **Studies linking alcohol sales at gas stations and instances of impaired driving**

At previous meetings, the Commission expressed an interest in reviewing any studies demonstrating the relationship between alcohol sales at gas stations and instances of impaired driving. The Community Development Department staff and members of the Police Department have done extensive research in an attempt to locate such a study but have **not** found anything specifically addressing gas stations and impaired driving arrests. The City's Traffic Engineering Consultant has also indicated that he is not aware of any such studies.

### **Existing Gas Stations in Novi – size and location considerations**

At the January 13<sup>th</sup> Planning Commission meeting, the Commission inquired whether or not any existing gas stations, in addition to the Sunshine Market, would meet the requirements of the Liquor Control Commission for the sale of alcohol at gas stations. The Liquor Control Commission requires gas stations wishing to sell alcohol to be a minimum of 50,000 square feet and/or carry merchandise totaling \$250,000 or greater excluding alcohol and gasoline. In addition, the point of sale must be a minimum of 50 feet from the nearest gas pump. The chart below includes the size of all existing gas stations within the City and an approximation of whether they would meet the required 50 feet distance between the point of sale and the nearest gas pump based on a review of

aerial photos. The \$250,000 inventory requirement was not evaluated as the City does not keep records of retail inventories. Based on the information below, only the existing Sam's Club store, which has an accessory gas station, would meet the minimum size requirement. The existing Sunshine Market currently has a liquor license.

<b>Existing Gas Station</b>	<b>Address</b>	<b>Approx. Size</b>	<b>Point of Sale to Gas Pump Distance <math>\geq</math> 50 feet</b>
Speedway	47395 W. Pontiac Trail	4,081 sq. ft.	No
Speedway	31275 Haggerty Road	2,409 sq. ft.	Dependent upon location of register
Sunshine Market	42355 W. 13 Mile Road	5,500 sq. ft.	Yes
BP	43420 12 Mile Road	1,275 sq. ft.	No
Amoco	39471 12 Mile Road	1,093 sq. ft.	Dependent upon location of register
Sam's Club	27300 Wixom Road	138,715 sq. ft.	Yes
Sunoco	43601 Grand River Avenue	1,409 sq. ft.	No
Mobil	43407 Grand River Avenue	1,802 sq. ft.	No
Speedway	24210 Novi Road	2,409 sq. ft.	Dependent upon location of register
Total	24141 Novi Road	2,248 sq. ft.	No
Sunoco	41425 10 Mile Road	2,688 sq. ft.	No
Marathon	21070 Haggerty Road	2,338 sq. ft.	No

### **Conclusion**

All three text amendment alternatives modify the Zoning Ordinance definition of gasoline service stations to include "mini-mart" or C-store types of uses, and also adjust the parking requirements for gasoline service stations. The three alternatives provide differing regulations regarding the sale of alcohol as a permitted use at gasoline service stations - prohibiting those sales; allowing those sales subject to LCC licensing; or allowing those sales in certain circumstances. Please refer to the attachments for the actual ordinance language being proposed.

Thank you again for all of the time spent considering these amendments.

**CORRESPONDENCE FROM  
MEMBER BARATTA**



January 15, 2010

RE: Zoning ordinance text amendment-to amend gas stations to sell alcohol

Kristen

I believe that our objectives in this matter are as follows:

1. Provide an atmosphere in Novi to be pro development.
2. To maintain Novi as a safe environment.
3. To allow fuel stations to develop the evolution of their business model to remain profitable.
4. To avoid unintended consequences with respects to modifying this designation for fuel stations so as not to adversely affect other business models in Novi such as food stores.

The City of Novi is pro development as evidenced through our hard work over the years including this issue. Our goal is to promote development that is safe and in a cost efficient manner. This results in a successful development.

The data with respects to the propensity of driving while intoxicated and the sale of alcohol at service stations was lacking but there is a probably of a positive correlation. I think that the correlation is more concerned with increased availability, the limited number of employees and limited retail training at a service station. The limited number and training of employees at a typical service station to cover critical tasks could lead to greater incidents of underage drivers acquiring alcohol. This is a result of the typical business model of a service station. You allocate personnel costs based on need, gross sales and profit. The human resource component is an expense line in a business model. Therefore retailers have been evolving to increase sales and profits to offset an increasing cost structure. This leads to additional departments being added to the model. The example is the traditional grocery store model that was 20,000 in the 1970's and expanded to the 50,000 plus size in the 1990 and 2000's. They typically added florists, prescription drugs, etc to their model in order to generate added sales and profits.

In the fuel station model they are adding greater amounts of food items and now they are seeking to add alcohol to their merchandise mix. It is interesting to investigate why they propose to add this category and I draw the conclusion that there is limited competition and a better margin than other categories. I am sure that the department would not be added unless there was a profitable demand for the product. Therefore assuming that there will be incremental sales for the product and this could lead to a greater incidence of alcohol related problems the business model must generate enough profit to support the necessary training and number of employees to ensure that the product is being dispensed as safe as possible. I would hold the service stations to the same level of care as the food stores. In fact it is arguable that these service station are no longer service stations but a new category of smaller food stores that sell fuel ie. (MINI MARKET).

I use the food store as my example because they seem to dispense the product as safely as possible and they are now installing fuel stations. They have the business model that can provide the necessary gross profit to have the number and the training programs for their employees. They also provide a critical service to the community with the distribution of food items. The fuel stations are developing a merchandise mix to compete with the food stores in a number of food categories. While their margins maybe higher due to their convenience nature, there is no reason they can't increase their competitive nature.

Therefore to create a level playing field for the food stores and Mini market I think that a new category should be created that provides for a 20,000 square foot store with a 1 per 200 parking ratio and meeting those other requirements of a food store with respects to a retail store. The 20,000 square foot building should require a cost of approximately \$3-4 million dollars to develop and would be a nice anchor to a future shopping center if they seek to create additional retail shops. The fuel pumps should be located at least 50 foot away from the store to reduce the incidents of alcohol being too convenient to drivers. I also think that they can probably generate approximately \$4-4.5 million in sales using a normal retail number of \$200 per square foot to provide the necessary number and training of their personnel.

Sincerely,

Dave Baratta