

**REGULAR MEETING OF THE COUNCIL OF THE CITY OF NOVI
MONDAY, NOVEMBER 24, 2014 AT 7:00 P.M.
COUNCIL CHAMBERS – NOVI CIVIC CENTER – 45175 TEN MILE ROAD**

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

PLEDGE OF ALLEGIANCE

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

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

APPROVAL OF AGENDA:

CM 14-11-177 Moved by Wrobel, seconded by Casey; CARRIED UNANIMOUSLY:

To approve the Agenda as presented.

Roll call vote on CM 14-11-177 **Yeas: Staudt, Casey, Markham, Mutch,
Poupard, Wrobel, Gatt**
Nays: None

PUBLIC HEARING

1. 2015 Community Development Block Grant Program

Public hearing was opened at 7:01 p.m. Susan Woods, representing HAVEN, stated the domestic violence agency has served 141 families and individuals in Novi over the 2013-2014 fiscal year and is asking for continued support. Public hearing was closed at 7:02 p.m.

PRESENTATIONS

1. Results of National Citizen Survey Perceptions – Dr. Thomas Miller, National Research Center

Dr. Miller spoke about the findings of the Citizen Survey. A representative sample is done which is a scientific survey of residents. The survey asks residents' perspectives of how the community is doing and quality of services. There are many different reports that he would recommend. He explained the results apply to other stakeholders with government, such as, other community organizations. The survey looked at 8 factions (cited on the slide #3). This survey has taken place every other year since 2006. There was a 28% response rate. He displayed a schematic of national benchmark comparisons so as to see how Novi residents compare to other residents throughout the United States. Tracking this information over a period of time, can be regularly used for governing bodies' decisions to decide what direction to move in. Safety and economy

were most important to residents. Key findings had to do with quality of life. They have been continuously above and have increased, education and enrichment, cleanliness and overall economic health. The second key finding was how residents feel safe here and that includes 9 out of 10 feeling safe or very safe. Overall economic health ratings were high or very high. Special thanks were given to Sheryl Walsh as the liaison for the City and to Dr. Miller. One of the questions on the survey relates to City priorities that were essential or very important. They felt information sources such as the Engage, City website, Novi News, homeowner associations were very important. Conclusions show, which was based on the data, exceptional quality of life, importance of public safety, economic health, and the exceptional quality of them were most important. Remarkable findings show Novi improving since 2006. He wanted to draw attention to the perception that community engagement here is not strong compared to other places. Street repair ratings have declined that could be due to the unusually difficult winter last year. Many characteristics are better than other communities as they support many activities.

Mayor Gatt noted his surprise at the community engagement levels being lower. Street repairs are definitely needed after this past winter. Member Wrobel asked about the low response rate of the questionnaire and if it can be improved. Dr. Miller noted that people may be burnt out from completing surveys. He recommended more publicity and an additional contact may aid. Another area of concern was the online survey. They are exploring having everyone reply online and providing ways of opting people in with a larger sample size. Member Wrobel noted he took the online survey and his observation was that it was endless. Member Markham commented about community engagement and how to link school districts in the community. Contacts begin with the school districts and thought the outer school districts didn't feel connected to the community without reaching out on their own.

2. Comprehensive Financial Audit for year-end June 30, 2014 – Andrews, Hooper, Pavlik

Roger Hitchcock presented the financial audit. They had great cooperation from management and with the new staff this year. There were no significant matters noted during the audit process. There was an un-modified clean opinion again like last year. He mentioned a material weakness of monitoring agreements with sewer and water connection fees that were created in 1979. Management found 50 agreements that required a correction of an error, but excellent results on the financial statement. The GFOA (Government Finance Officers Association) certificate of excellence in financial reporting was received for the 16th year. S & P bond rating of AA+. In note #14 on page 51, there are new GASB requirements. He noted GASB 68 and 71 will come into effect next year. There is one exposure draft that will come into effect 2015 of Other Post Retirement Benefits. It will create a liability like the pensions by 2017. Liability exposure is about \$4 million now. He went through the percentages of each of the graphs to display the overall 30% Fund Balance. He noted that Novi is in a good position. Mayor Gatt thanked the City Management for all the work they do. Member Mutch noted the fact that we get \$28,000 per year from Lansing. That seems unbelievable at a rate of .50 cents per resident. He also asked about the material

weakness as to how that has been addressed. Mr. Hitchcock noted management brought all these concerns to their attention. Most of those came from management and that is a very strong group. Member Mutch asked if there were any other things. Mr. Hitchcock stated no others were necessary. Member Markham noted this has been a transition year for our Finance Department and appreciated that we've had a very smooth transition. Staff is to be commended for that.

3. Comprehensive Annual Financial Report ending June 30, 2014 – Carl Johnson,
Finance Director

Mr. Johnson went through some key items to be highlighted. He thanked each of his staff for their assistance during the audit and noted they are the backbone of the department. The audit had a clean opinion on page 2; correction of an error goes into detail on page 56. This related to monitoring agreements back in 1979 related to a Council resolution. Annually, we receive \$3-5 million for the tap-in fees. There were 50 of these outstanding cases. The potential refunds are over \$2.5 million dollars. The refunds have been ready to go and should have been recorded as a liability. Also, four funds were combined in the Municipal Street Fund that should have been broken out under the State's requirements and there were two funds that were reclassified under the Special Revenue Funds. The fund balance listed on page 25 was restated. The Municipal Street Fund had 17 different Special Assessment Funds that hadn't been closed out over the last 20 years. There are 3 new funds in the Financial Statements under Special Revenue; West Oaks street lighting, West Lake Street Lighting and Town Center Street Lighting which are ongoing. The other correction was the Special Assessment Revolving fund that is designated as capital for future road purposes and was reclassified as Capital Projects fund now. The Drain Perpetual Special Care fund was reclassified. The Street Improvement fund was added because the balances are based on timing. We've had a lot of construction contracts that are carryover from year to year. This new fund will track those. It will zero itself out at the end of this fiscal year with \$4.7 million dollars. The next item was the Special Assessment Districts that were lumped together. They closed all of them that needed to be closed. The result is that restricted funds significantly changed. Currently, there are no restrictions and \$3 million is now available to the city. This frees up \$5-6 million after the Special Assessments were cleaned up. The Drain Fund has a zero balance. The General fund has \$24.6 million in the current year, but the largest sources are the \$19 million of revenue in taxes and state shared revenues. He noted our growth and revenue will be small. Our total revenue was up only \$112,000. The expenditures are only \$33,000 less than last year. Our fund balance is 29%. It is outstanding. OPEB liabilities are fully funded as of June 31, 2014. Regarding pension liabilities, he spoke about the liabilities continue to increase even though we pay what we should and a little extra. Debt is good. As millages fall off, we have an opportunity for the \$1.5 million to be redirected to the drains or other items. Mayor Gatt noted that it was a very comprehensive report. Member Mutch asked about unrestricted funds being available for street projects. Mr. Johnson said they were. Member Mutch asked the nature of the funds as far as projected funds. Mr. Johnson answered the only thing that changed is the \$3 million in the Municipal Road fund. He explained the lifting of the restrictions of SAD funds is due

to the way they were administered. Member Mutch asked about OPEB liability and pension funds and what strategy can be used to allow us to address outstanding pension obligation. He is looking in the budget for an ongoing strategy besides what we are doing that will address the liability. Mr. Johnson said the defined benefit plans are all closed except for 2. We went with option A rather than B and that capped the liability and will continue to address it. Mayor Pro Tem Staudt asked if Mr. Johnson would encourage them to spend some of the fund balance. He answered that if it is a planned use of fund balance and once you've hit your goals is fine, but not regularly. 15-20% is needed for cash flow purposes. Member Markham asked about tax abatements. When we grant one, that allows them to provide half the tax revenue over a period of time. How is that reflected in the budget? Mr. Johnson said it is in the revenue. It is a reduced amount of revenue that is shown in the financial statement. Member Markham felt it was hidden in the budget as they are allowed to pay half. Mayor Pro Tem Staudt confirmed that there is no expenditure for tax abatements.

REPORTS:

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

AUDIENCE COMMENT:

Kim Bondar, 43999 Durson, noted all businesses must abide by all codes and ordinances. He asked Council to deny the request from Eberspaecher. He explained the offending noise comes from the parking lot of Eberspaecher. The offending noise has not been addressed. The applicant's sound data proved they violated the ordinance on several occasions outside of extended hours.

Darnel Krause, 44057 Marlson, asked that the permanent variance be denied. They've moved trucks as early as 4:15 a.m. and employees come in with vehicles that show up at 2:30 or 3:00 a.m. playing loud music. He asked that Council consider the citizens.

Stephanie Ernster, 43925 Settlers Creek Ct., noted excessive noise has occurred with the sound of metal crashing into bins. She called Police Department at 5 a.m. on a Sunday. She is concerned that the sound study was done in June through August when trees are at their fullest. In the fall and winter, there is no barrier. She had questions about the current code.

Josette Poirier, 43980 Durson, had no complaint but lives close. They back up to CVS. She felt that if the distance was cut down from 400 to 210 feet, she worried that CVS will want to do the same thing with three shifts. They cannot ask for a variance and increase hours too. CVS isn't a problem at this point, but other companies will want to follow suit. They wondered if they would have to accept this for the growth of the City for 220 more jobs.

James Wasolek, 25884 Clark St. said he has been a resident for 35 years. He stated this company has been a noise nuisance, as we can't silence air brakes, large trucks, back up beepers on trucks and hi los, air horns, loud talking, car doors slamming, three shifts of workers coming and going. Most important, the residents won't be silenced. Many home owners don't have air conditioning; they can't enjoy a peaceful morning or evening. The so-called berm has sunk and trees are dead. None of them want to be woken up at 5:00 a.m. Sleep is another issue with noise going on until 11 p.m. He felt this company made a poor choice on the location and citizens are not going to pay for their mistake with loud noise levels. He asked Council to reject the request and return it to the original ordinance.

Jason Richard, 25890 Clark St., a three-year resident, doesn't understand even with its own study, how Eberspaecher could violate its own rules. Why should they be allowed to expand when they can't follow current rules? He didn't think this was something that should have been granted. He asked Council to listen to citizens that live there daily.

CONSENT AGENDA REMOVALS AND APPROVALS:

CM 14-11-178 Moved by Wrobel, seconded by Casey; CARRIED UNANIMOUSLY:

To approve the Consent Agenda as presented.

- A. Approve Minutes of:
 - 1. November 10, 2014 – Regular meeting
 - 2. November 13, 2014 – Special meeting

- B. Approval of the Resolution for Adoption of the Novi Parks, Recreation and Cultural Services Strategic Community Recreation and Master Parks Plan 2015 to 2019.

- C. Approval of bid award to administer the 2015 Program Year for the Community Development Block Grant (CDBG) Minor Home Repair Program to Oakland Livingston Human Service Agency (OLHSA) in the amount of \$15,501.

- D. Approve the Program Year 2015 Community Development Block Grant (CDBG) Application in the approximate amount of \$91,505 and authorize the Mayor to sign the Application and Sub-recipient Agreement.

- E. Approval of traffic control orders 14-21 through 14-24 for the placement of an all-way stop at the intersection of White Pines Drive and Moorgate Drive in Royal Crown subdivision.

- F. Approval of traffic control orders 14-25 through 14-48 for traffic control signage within Island Lake of Novi Phases 2A, 2B, 3A, 3B and 3C.

- G. Approval to award the purchase and installation of one hot water boiler and one heating boiler at the Novi Ice Arena facility, to Serve-Ice, the low qualified bidder in the amount of \$23,442; and to amend the budget.
- H. Approval to apply for a 2014 Assistance to Firefighters Grant (AFG) for a Digital Fire Attack Training System with a total potential match of \$2,110 by the City of Novi.
- I. Approval to award an amendment to the engineering services agreement with Spalding DeDecker for construction engineering services for the Regency Centre and Knightsbridge Gate Lift Station Upgrades in the amount of \$14,269.
- J. Approval of Resolution Concerning Acquisition and Approving Declaration of Necessity and Taking and authorization of Offer to Purchase in the total amount of \$500 for the acquisition of Lot 34, Shore Acres Subdivision (parcel 22-02-176-018) for the purpose of constructing the NC-1 pathway connection between East Lake Drive and Novi Road.
- K. Approval of a Street Light Purchase Agreement with Detroit Edison Company for the installation and ongoing operation costs of street lights within the Preserve at Island Lake (Phase 8) development on Ten Mile Road; and approval of an agreement with Toll Brothers MI II for the sharing of installation and ongoing operation costs per the City's Street Lighting Policy.
- L. Approval of a new Taxicab License for Kurt's Green Transport Service with one (1) Taxicab.
- M. Approval of Claims and Accounts – Warrant No. 928

Roll call vote on CM 14-11-178

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

MATTERS FOR COUNCIL ACTION

- 1. Consideration of a request of Eberspaecher North America, Inc. for a variance from Section 22-100(d)(1) of the City Code prohibiting loading and unloading of any commercial vehicle between the hours of 8:00 p.m. and 7:00 a.m. within 400 feet of a residential structure. The applicant would like to conduct loading and unloading activities between the hours of 5:00 a.m. and 11:00 p.m. within 210 feet of the adjacent residential property.

City Manager Auger added Eberspaecher has done several items in the past nine months to try to be good neighbors to the residential unit. They've also agreed, if going forward, to another half dozen items such as: shrinking the delivery pick-up by two hours, creating a gate so other trucks don't use their parking lot as a holding area that

they are using currently, and creating an 18 foot sound barrier wall across the property closer to the residential areas. The choice for Council is, are they moving in the right direction so that Administration and staff can visit next year and they can continue on. They are looking for a larger building that they can consolidate their other corporation into, which could be in two years. Mayor Gatt asked if there had been police complaints and if this has been going on for six months. Mr. Auger said he thought it has been around six months. The calls that came in to the Police Department weren't targeted towards Eberspaecher but had identified CVS. The challenge is when there are two trucking operations in the same place. It is difficult to identify where the noise is actually coming from. He believed there were about three police calls over the last six months. Mayor Gatt asked what the results of the calls were. Mr. Auger said that it was hard to tell where the sounds were coming from, was it the CVS or the Eberspaecher. Mayor Gatt asked the representative from Eberspaecher if they wanted to speak before Council on this issue before he opened it up for Council.

Larry Wojciechowski, Plant Manager for Eberspaecher Gen Mar Facility, noted City Manager Auger has spoken very eloquently on what they have done in the past. Since he last spoke before Council in February, we did what we were required and requested some sound studies be done on the facility to determine what types of noises were emitted that our neighbors would be seeing from our operations. They did the sound studies and put the sound recording devices as close to the residences as they possibly could staying within the property line adjacent to the property owners to make sure they could see what the impact was. Yes, some of the noises did reach the sound levels. The result of the sound study has been presented. There were over 400 hours of studies that were performed. The events that were generated out of Eberspaecher were less than noises that were emitted from regular city sounds. As a neighbor to our neighbors, we are emitting sounds that are within the same decibel levels that they were seeing from traffic from Novi Road, Police/Fire trucks traveling around the areas, thunderstorms, airplanes, trains, and things our Community normally hears on a day-to-day basis and we do not give it a second thought. Yes, we are new to the Community and we are trying to work well within those guidelines. We have done a number of things and we are continuing to do a number of things. We are reducing our hours as of January 1st from 6:00 a.m. to 10:00 p.m. He said that is the shipping window that they are looking at putting into effect January 1st.

We have been working with our traffic logistics company to reduce it even further. Our customer, though, is putting a limit on the 6:00 a.m. deliver/pickup from our facility and that is where we are at right now. We are also looking at putting up a wall, which we are working with our sound company to find out what the best composition is going to be. They are looking at concrete, composite materials, appropriate height which would be 18 feet, and wrapping it, not all the way around the buildings, but to protect the homes the best that they can. Most of the wall will be on the parking lot and it will not be intrusive to the neighbors. We will not put a wall on the neighbors' property lines. They will keep the wall on our own facility so it can stop the sound at its source and prevent it from reaching our neighbors the best they can. The other thing we are doing as the City Manager said, we are within the next 24 months, looking at consolidating all of our North American operations into a larger facility. That is going to help reduce

staffing; it is also going to reduce shipping hours and it will reduce overall hours of operations. These things do take time to find an appropriate location and an appropriate facility. The City of Novi has reached out to help find an appropriate facility that will house 3 other facilities from Novi, Wixom, and Brighton facilities. Combining them is difficult. It is a big task and it is going to take some time to coordinate those efforts and can't be done overnight. We are working towards it and the company president estimated they are going to have this all done within the next 24 months.

Mayor Gatt asked two questions: what would be the ramifications if this Council did not grant a variance and they could not work between the hours of 8:00 p.m. – 7:00 a.m. Mr. Wojciechowski said they would have to work with their customer to stop the operations and it would be very catastrophic to the company. They would have to move out the operations within a very short period of time. Jobs will be lost and they would have to leave the City. They would lose the revenues and lose 200 jobs at that plant. They don't have a place to put them right now. The customer would take the jobs and give them to somebody else. So they would lose it as an organization.

Mayor Gatt confirmed with Mr. Wojciechowski that he is proposing to move the operations from 6:00 a.m. to 10:00 p.m. One hour in the morning would cause that much of an impact on the operation? Mr. Wojciechowski said they are doing that right now. They are working with their logistics company and their customer too. Their original first window is at 4:00 – 4:30 in the morning. They have avoided those windows already by working with their logistic company and the customer and got away from that early time frame. They are pushing that envelope to 6:00 in the morning. It would be catastrophic to push it to 7:00 a.m. Mayor Gatt asked if he was at the Council meeting six months ago. Mr. Wojciechowski said he was. Mayor Gatt asked if he recalled asking him or his representatives to go into the neighborhood, talk to the people and be good neighbors. Did anybody from your company do that, he asked. Mr. Wojciechowski said no, they did not.

Mayor Pro Tem Staudt asked if the customer that is requiring the 6:00 a.m. pickup, was aware of this situation. Mr. Wojciechowski said yes, they are. Mayor Pro Tem Staudt confirmed that they have not volunteered to change their process even a half hour to 7:00 a.m. Mr. Wojciechowski answered no they cannot. Member Staudt mentioned he would like to know who it is because he would like to give a call to their president tomorrow. Mr. Wojciechowski said it was Sterling Heights Assembly Plant. Mayor Pro Tem Staudt said regarding the late night issues that you have, what requires them to stay open to 10:00 p.m. Mr. Wojciechowski said the final shipping window to our customer. Mayor Pro Tem Staudt asked if he couldn't move that back to 9:00 p.m. to accommodate instead of perhaps leaving them a little more time in the morning cutting it back a little bit at night. Mr. Wojciechowski said right now the customer's hours of operation are 4:30 a.m. until 12:30 a.m. They have defined window times for us to make deliveries to them and our latest one on record is at 12:30 at night so they have that material for their start up in the morning. Mayor Pro Tem Staudt asked when they purchased the plant, did he anticipate these hours of operation. Mr. Wojciechowski said, no sir. Mayor Pro Tem Staudt asked what happened. Mr.

Wojciechowski said what happened was the plant that they are talking about looking for in the next 24 months was on their agenda for last year. Their parent organization decided that they did not have the capital within their company to go ahead and make that purchase. They have a German based organization and the economy in Germany over the last couple years has been very tight. Making capital expenditures of that nature and that magnitude were asked to be delayed. The job that is in their facility is the exhaust system for the Chrysler 200 was slated for a brand new plant. However, due to the economics they had to reconfigure themselves and reorganize the Gen Mar facility to accept this building for the period of time. Mayor Pro Tem Staudt confirmed that he was aware of the noise restrictions at the time they purchased the building. Mr. Wojciechowski said correct, the intent of the facility was going to be a specialty products facility. There are two different types of manufacturing that can occur, one that does high volume for the automotive industry where 1,000 vehicles a day are being made, that is the case of the Chrysler 200, or a lower volume and a special niche market which is what this facility was intended. The initial intent was to be purchased to produce that. Some of those products are exhaust after treatment for Case and Holland Farm equipment. They are in the process right now beginning that transition, two years down the road. The Case and Holland systems are one or two a day that are being made and shipped out. So, the ability to work within the confines of the City ordinance becomes that much easier. Mayor Pro Tem Staudt explained that he must understand, as he stands here with the residents, that you are basically telling Council that because of your corporate situation or financial issues that you've used this plant for something that it was never intended to be used for and they didn't expect them to be working on a 24 hour shift. Mr. Wojciechowski said yes, they did not expect that at all, when they first walked into that facility.

Member Wrobel said he was disappointed he didn't get together and talk to the local residents as was suggested the last time. He directed to Mr. Auger, if anyone could answer the question, if they put an 18 foot tall barrier, would it do any good. Mr. Auger didn't think there is that expertise to state it, but if you look at the highway walls that go up around the highways, it is about the same size. Member Wrobel also wanted to know because he heard that some of the problems are CVS and some is Eberspaecher and he only wanted to hold them accountable for the noise they are making and not for what is carry over noise from CVS. He didn't know if they had any data saying CVS is doing this or Eberspaecher is doing this. Mr. Auger said one of the issues is the CVS lot is actually a gated lot if you drive down their road. Their delivery trucks are only allowed in to their lot at certain times to make their pickups. So if they get to property first they pull into the Eberspaecher parking lot and back in there to wait for their time slot. The gate that they are looking to put in would restrict any vehicles of a certain height to come in during those times and that is why the company came forward with that design. It will keep those trucks somewhere else. They will have to park somewhere else instead of near the neighborhood. Member Wrobel would like to accommodate this company because he wants them to stay in Novi. He understood that when they first came here, this wasn't the kind of operation they were doing. He is also concerned about the citizens. They have been there a long time and there are certain expectations of what the noise is going to be. He will be curious to see what his other colleagues state regarding this issue.

Member Mutch asked Mr. Wojciechowski questions relating to some of the statements that he made; just to better understand, what the nature of the work is that is being done inside the facility. Mr. Wojciechowski said they take metal components that they purchase and they weld them together in order to make an exhaust system. The worst noises that they have are the trucks coming into the facility inside of the plant. They do have a forklift trucks that move material from point A to point B. Those trucks do have back up beepers on them. They are currently working with their supplier forklift company to reduce the noise decibels on those vehicles themselves, put socks on the horns on them if nothing else in order to make the noise effective for within the facility and less of a chance to permeate outside of the facility. Member Mutch noted it sounds to him that it is a manufacturing operation. They are taking raw materials and creating exhaust systems. He just wanted to be clear on that. He asked how long they have been in the current facility. Mr. Wojciechowski said they have been in there since August, 2011. Member Mutch asked what kind of work was being done when they first went into the facility. Mr. Wojciechowski said he was hired as the plant manager for the facility and the work they were going to do in there would be the specialty products that they would be making, the lower volume, and the one or two units a day that they would be producing. They started and did not actually manufacture a part out of that facility until December, 2013. Member Mutch asked for that two year time period what was the nature of the activity in the building. Mr. Wojciechowski said the nature of the activity of the building was to prepare for manufacturing. Member Mutch summarized they were setting up staging the facility. He said they went in front of the Planning Commission and got approval for parking lot improvements and storage tank for argon gas. Mr. Wojciechowski added it started out with modifying offices when they got into the facility and making sure that they did all the proper upgrades to fire equipment within the City codes. Once it was determined that the manufacturing that was going to be done with the facility shifted, they realized that this small facility and the small parking lot was not going to hold what they needed to do. So therefore, we did have to expand and yes, they did go before Planning Commission and modify the parking. Member Mutch asked, in terms of the duration of the hours of operation, has it always been a 24 hour operation or what did they start with and at what point did they transition to 24 hours. Mr. Wojciechowski said it was not a 24 hour operation until the middle of May, 2014. Member Mutch asked what their hours of operation were when he came before Council initially in February-March, 2014. Mr. Wojciechowski said they were a one shift operation when at 5:00 p.m. It was quiet. Member Mutch asked when the shift started in the morning. Mr. Wojciechowski said it started at 6:00 a.m. Member Mutch confirmed the time line, from December, 2013 till May, 2014 they were operating from 6 a.m. to 5 p.m., then from May, 2014 forward it has been a 24 hour operation. Member Mutch again asked about their effort to locate a facility where they will consolidate operations. He asked if they had a facility picked out. Mr. Wojciechowski said they have been unsuccessful in finding one as of right now. Member Mutch asked if they are looking in Novi. Mr. Wojciechowski said they are looking at a number of locations; some are within Novi, with the combination of the three facilities, they are trying to find a spot that is centrally located to those three facilities so they can keep those employees and not have to train an entire new workforce. Member Mutch said a couple of things have been referenced in terms of the sound studies that were done

since they were last here. In reviewing the sound studies, it is characterized by the company he hired to do the analysis. It is evident that there are number of time periods, and residents have attested to it, where there is noise that is being attributed to their operation. He knew the sound engineers made an effort to try to differentiate whether it was Mother Nature or whether there was a train going by or CVS. As he looked at the reports that have been provided to them, he saw a number of times where there is excessive noise from their facility. Again, as it was pointed out, not only during the expanded time period that they requested Council granted earlier this year, but beyond that, beyond the 11:00 p.m. and before 5:00 a.m. That creates a concern for him and doesn't look to him like there is enough control to be able to prevent these excessive sounds even within the window that they requested. The problem he has is if he grants the 5:00 a.m. to 11:00 p.m. then what's to say somebody is not come back and they want a waiver for beyond that. If we as a City are going to allow this kind of noise impact on a residential neighborhood at 5:00 a.m. or up to 11:00 p.m. at night, what are our standards because Council would be saying that they don't care? He said if this was his house and he was getting woken up at 5:00 a.m. by truck traffic, he would not be happy. The problem he has is that they are not guidelines; the City has standards that are put in place to try to balance the needs of residents versus business. It has worked for a number of years. One of the things they have learned is that next to a residential area, it creates an excessive amount of noise relative to everything else that is going on. From the information that they have provided, it is clear to him, what happened was that they went into the facility expecting to do one thing and ended up doing another. Now they are being asked to allow a 24 hour operation with shipping for 18 out of 24 hours next to a residential use. He doesn't see a track record of meeting those ordinance standards. They have only met the standards. He cited noise complaints filed with the City. He felt Council had been very generous and the company was given the opportunity.

Member Markham was also concerned with the sound study that was done in the summer when there is tree cover. She was not concerned about noise during the day or regular operating hours. It is the extended hours where they were not able to show that they could operate within those extended hours. She originally voted to allow them to operate this way. She would like to see them remain in Novi but she thought the burden is on them to work with their customers, their logistics people, and their operation to stay within the constraints of what our City ordinances require. She could not support the variance at this time.

Member Casey echoed the two previous speakers. She was opposed to granting the variance and she understands the position he is in. She understands what he did to negotiate the deals in the first place with the clients. She sympathizes with the situation he is in, especially, understanding how the corporate office is not giving them the fullest amount of support. Her opposition has not changed and his data only strengthens her opposition to granting the variance. If he could come back with other things to protect the residents behind them and she is not able to support it now.

CM 14-11-179

Moved by Staudt, seconded by Gatt; MOTION DENIED: 4-3

Regarding the request from Eberspaecher North America, Inc. for a variance from Section 22-100(d)(1) of the City Code to allow loading and unloading of any commercial vehicle between the hours of 8:00p.m. and 7:00a.m. within 400 feet of a residential structure, with a finding that the standards of City Code Section 1-12, have not been met, and specifically that:

(a) The applicant has not demonstrated that there is anything unique about its operation as compared to other uses that require work adjacent to residential properties during nighttime hours;

(b) The deviation for the ordinance that is being requested is substantial, and the applicant has not proposed an alternative that adequately protects the interests of the adjacent residential properties; and

(c) The granting of the variance will be detrimental to the public health, safety and welfare and injurious to the adjoining and neighboring properties due to the additional noise generated from the operations of the facility at early and late (nighttime) hours in close proximity of the neighboring residential homes.

The applicant will be allowed to maintain the current variance of 5 a.m. to 11 p.m. for a period of 90 days, and then they will need to revert back to the ordinance.

Mayor Pro Tem Staudt said the biggest mistake was not going back and talking to the residents. He told him to go back to their corporate operations and let them know that this was not a good decision. He would suggest 90 days for a time line be given to the company. Member Wrobel asked for clarification of the motion. What are the times that they are proposing? Mayor Pro Tem Staudt said whatever the current variance times are.

Member Mutch stated he was very clear initially on this and could not support the variance extension. There wouldn't have been a variance to allow them to operate; based on the applicant's testimony he would never institute the 24 hour operation at this location. He hasn't seen steps to address the noise. It is the problem going forward. He asked for confirmation that it has been documented that the applicant has exceeded the noise ordinance standards. City Attorney Schultz said he is not a noise expert, and the study on its own is not something that can just be used to write a ticket and then get a judgment on the issue in court. We have to take the noise study, if the motion passes, and decide if it is enough to get into court to get a violation established. He didn't know enough about the study to determine whether or not that is going to happen in this case. Member Mutch clarified that it wasn't whether they would win the case, it was whether by definition of the ordinance when they exceeded the noise ordinance standards it would be a violation of an ordinance. City Attorney Schultz said it was the same thing; he couldn't say at this point, without further analysis of the study, that it proves any particular violation. It may, but that conclusion has not been reached. Member Mutch said it was unfortunate. He wouldn't support the motion.

Member Casey said she could not support the extension of the variance. They asked the residents to go along with us on this pilot for six months and she couldn't see giving them another three months to have them live with the noise from 5:00 a.m. to 11 p.m.

Roll call vote on CM 14-11-179

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

2. Approval to award a unit price service contract for forestry services to Asplundh Tree Expert Company (for a one-year term with three one-year renewal options) for an estimated annual price of \$123,000.

CM 14-11-180 Moved by Wrobel, seconded by Casey; CARRIED UNANIMOUSLY:

To approve to award a unit price service contract for forestry services to Asplundh Tree Expert Company (for a one-year term with three one-year renewal options) for an estimated annual price of \$123,000.

Roll call vote on CM 14-11-180

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

3. Approval of the final payment to VIL Construction, Inc., for the Pavilion Shore Park project in the amount of \$264,055.02.

CM 14-11-181 Moved by Wrobel, seconded by Staudt; CARRIED UNANIMOUSLY:

To approve the final payment to VIL Construction, Inc., for the Pavilion Shore Park project in the amount of \$264,055.02.

Roll call vote on CM 14-11-181

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

4. Approval to award a construction contract for Regency Centre and Knightsbridge Gate Lift Station Upgrades to Great Lakes Power & Lighting, the low bidder, in the amount of \$121,980.

CM 14-11-182 Moved by Casey, seconded by Mutch; CARRIED UNANIMOUSLY:

To approve to award a construction contract for Regency Centre and Knightsbridge Gate Lift Station Upgrades to Great Lakes Power & Lighting, the low bidder, in the amount of \$121,980.

Roll call vote on CM 14-11-182

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

Nays: None

5. Approval to award the Civic Center and Police Headquarters Air Handler Replacement Project to R.W. Mead and Sons, Inc., the low bidder, in the amount of \$456,950.

CM 14-11-183 Moved by Casey, seconded by Mutch; CARRIED UNANIMOUSLY:

To approve to award the Civic Center and Police Headquarters Air Handler Replacement Project to R.W. Mead and Sons, Inc., the low bidder, in the amount of \$456,950.

Roll call vote on CM 14-11-183

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

Nays: None

6. Consideration of Zoning Ordinance Text Amendment 18.271 to update, amend and re-format Appendix A, "Zoning", of the City of Novi Code of Ordinances (the prior Ordinance No. 97-18, as amended) and related Zoning Map for purposes of incorporating Clearzoning formatting and clarifying certain provisions. **FIRST READING**

City Manager Auger explained staff has spent a lot of time working with Clearzoning, it will be a formatting change and makes it a lot easier for people when they come to do business with the City. They can find it online and search it. It will clean up a lot of issues for staff.

Member Mutch commented the changes that were in the new formatting will be a vast improvement over the current zoning ordinance. It will make it much easier. He would like to see one provision revised between First and Second Readings is Section 3.29.3(a). In the new format it deals with residential density within residential unit developments. It has come up during previous discussions of the RUD projects. The current ordinance standard uses net density calculation. Every section of our zoning ordinance net density is used except in the RUD. In the RUD we allow a property owner to utilize unbuildable land for the calculation of density. It creates unfair situation where two similar situated property owners could have different densities allowed. It is inconsistent with every other section of the ordinance. In approving the first reading, he would like it

to be addressed and change the RUD provision to make it net density. Then it will be uniform across our entire zoning ordinance and every piece of property will be treated equally.

CM 14-11-184 Moved by Mutch, seconded by Casey; CARRIED UNANIMOUSLY:

To approve the Zoning Ordinance Text Amendment 18.271 to update, amend and re-format Appendix A, "Zoning", of the City of Novi Code of Ordinances (the prior Ordinance No. 97-18, as amended) and related Zoning Map for purposes of incorporating Clearzoning formatting and clarifying certain provisions including the change from gross density to net density in the RUD provisions of the zoning ordinance. FIRST READING

Roll call vote on CM 14-11-184

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

Nays: None

7. Consideration of Ordinance No. 14-124.19, Chapter 11 "Design and Construction Standards", Articles XI "Bicycle Paths", and Article XII "Pedestrian Safety Paths"; and Ordinance No. 14-45.30, Appendix C of the City of Novi Code of Ordinance, Article VI, "Design Standards", Section 4.05, "Pedestrian Safety Paths, Bicycle Paths and Public Walkways", in order to amend the existing design and construction standards to incorporate the Engineering Design Manual standards for off-road non-motorized facilities and to repeal conflicting Design and Construction Standards for Bicycle Paths, Pedestrian Safety Paths and public walkways. **FIRST READING**

Member Mutch commented this went through the Ordinance Review Committee in which it was approved to go to City Council. The one item that was highlighted in the memo is the discussion of what to do with sidewalk segments on roads with single lots. This will include language that will allow City Administration to grant a variance based on certain standards. If there is no sidewalk within 300 feet of where the City is requiring it, there is an option to allow the property owner to contribute equivalent to the construction cost of the sidewalk that can be used to fill gaps in the existing system. It will relieve the property owner of the obligation to create a sidewalk on the property. He also asked staff about the language regarding pathway easements connecting sidewalks to a sub or school. He would like to increase the easement widths in subdivisions. In a subdivision situation there needs to be about 20 feet. It creates enough distance on either side of the pathway or sidewalk that they don't run into conflicts with adjoining property owners.

CM 14-11-185 Moved by Mutch, seconded by Markham; CARRIED UNANIMOUSLY:

To approve Ordinance No. 14-124.19, Chapter 11 “Design and Construction Standards”, Articles XI “Bicycle Paths”, and Article XII “Pedestrian Safety Paths”; and Ordinance No. 14-45.30, Appendix C of the City of Novi Code of Ordinance, Article VI, “Design Standards”, Section 4.05, “Pedestrian Safety Paths, Bicycle Paths and Public Walkways”, in order to amend the existing design and construction standards to incorporate the Engineering Design Manual standards for off-road non-motorized facilities and to repeal conflicting Design and Construction Standards for Bicycle Paths, Pedestrian Safety Paths and public walkways. FIRST READING

Roll call vote on CM 14-11-185

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

Nays: None

AUDIENCE COMMENT:

Kim Bondar. 43999 Durson, said he appreciated Council's consideration regarding Eberspaecher. He cautioned that it should not turn into another CVS issue. Residents can determine between CVS noise and Eberspaecher noise. He made several complaints to police but those were never logged.

COMMITTEE REPORTS:

Member Markham reported on the Walkable Novi committee. They met twice and approved the updated 2014-15 non-motorized plans draft, reviewed top 20 pathways and made a few tweaks to the system. Haverhill subdivision residents have uncompleted pathway segments and they were able to consolidate those to help those residents. Those would be dealt with during the next CIP (Capital Improvements Program).

Member Markham also commented on the SEMCOG committee that is the Access to Core Services Task Force. They identify core services in the region, employment centers, and municipal services to link regional long range transportation planning with core service centers to fill in the gaps. We have regional malls, hospital, and Suburban Collection Showplace. That committee will help us with our transportation gaps.

MAYOR AND COUNCIL ISSUES - None

CONSENT AGENDA REMOVALS FOR COUNCIL ACTION - None

ADJOURNMENT – There being no further business to come before Council, the meeting was adjourned at 9:24 P.M.

Robert J. Gatt, Mayor

Maryanne Cornelius, City Clerk

Transcribed by Jane Keller

Date approved: December 8, 2014