



CITY of NOVI CITY COUNCIL

Agenda Item 11
June 27, 2016

SUBJECT: Consideration to approve "Agreement for Improvement and Occupancy of Property," in connection with a parcel of land located on the south side of Grand River west of Taft Road to be used for temporary City recreation (soccer) fields and temporary parking facilities by the property owner, subject to final review and approval as to form by the City Manager and City Attorney's Office.

SUBMITTING DEPARTMENT: Parks, Recreation and Cultural Services

CITY MANAGER APPROVAL: 

BACKGROUND INFORMATION:

In July, 2015, City Council adopted a Resolution Regarding Cooperative Agreement for Provision of Recreation Fields with Temporary Parking Opportunity. The Resolution related to a parcel of property owned or controlled by the Suburban Collection Showplace and/or a related entity. The Resolution acknowledged that the City was looking for space to temporarily locate recreation fields to be used primarily for soccer fields while improvements to other City parks were being made. The Resolution essentially was adopted to show support for the creation of an agreement between the City and the property owner detailing the respective obligations and uses of the parties, which would include occasional use of the field and parking improvements by the property owner.

Attached is that contemplated agreement. Consistent with the Resolution, it contemplates that the property owner will be responsible to make the improvements necessary to establish two U-13 style soccer fields, and for the costs for establishing same. The plans for the fields and related parking improvements have been reviewed by the Planning Commission, which has granted preliminary site plan approval, which included the removal of certain regulated trees, which are being replaced in accordance with the City's ordinance requirements; some wetland fill, and a landscape plan. The Parks Recreation & Cultural Services Commission has also reviewed and approved the plans.

The Agreement makes the City the primary user of the property, although as a practical matter the expectation is that the fields will be used mostly as practice fields and mostly during the week rather than on weekends.

The Agreement does allow some parking use by the property owner in connection with events at the Suburban Collection Showplace. In particular, the Agreement calls out the State Fair and the Motor City Comic Con Convention. The Agreement also contemplates, however, that the City and the property owner will convene on an annual basis to identify other potential Showplace uses or events that might require additional parking. The idea is that the events where the property would be used for other than community recreational uses would be limited, and would not exceed in any case more than 30 days per year.

The City is paying for the installation of the necessary irrigation, and for the ongoing (non-capital) maintenance of the property—provided, however, that the property owner will be responsible to repair any damage to the fields, once established, incurred during a parking event.

The Agreement also contains certain waiver of City Design and Construction Standards for the parking areas, which are to be gravel. The City Administration is able to recommend that condition only by virtue of the temporary nature of both uses.

At the Planning Commission, neighbors from the adjacent subdivision did speak and express concerns about how either of the uses would affect their property. The property is zoned for light industrial uses which could, of course, be more intense. The City's recreation field uses would have no lighting, no amplified sound, and again would be for a limited period of time, primarily during the week. The parking uses in connection with the Suburban Collection Showplace events would be limited as far as the number of days are concerned. Provisions have been placed in the Agreement relating to a prohibition on entering adjacent properties from this property. Parking has been limited to event staging and employee parking unless the City expressly approves customer parking operated for charitable/community event purposes. The version of the Agreement attached also precludes overnight camping/bunkhouses in connection with any event. The property owner may seek to discuss that further with the Council.

RECOMMENDED ACTION: Approval of "Agreement for Improvement and Occupancy of Property," in connection with a parcel of land located on the south side of Grand River west of Taft Road to be used for temporary City recreation (soccer) fields and temporary parking facilities by the property owner, subject to final review and approval as to form by the City manager and City Attorney's office.

	1	2	Y	N
Mayor Gatt				
Mayor Pro Tem Staudt				
Council Member Burke				
Council Member Casey				

	1	2	Y	N
Council Member Markham				
Council Member Mutch				
Council Member Wrobel				

Proposed Agreement

6/23/16

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

**AGREEMENT FOR IMPROVEMENT AND OCCUPANCY OF PROPERTY
COMMUNITY RECREATION FIELDS**

THIS AGREEMENT ("Agreement") is entered into by and between Servman, LLC, a Michigan limited liability company, whose address is 46100 Grand River Avenue, Novi, MI 48374 (hereinafter the "Property Owner"), and the City of Novi, whose address is 45175 Ten Mile Road, Novi, MI 48375 (hereinafter the "City" or "City of Novi") for the purposes of installing community recreation fields for joint use on the Property as described below and as further identified on attached Exhibit "A" commonly known as parcel #22-16-300-04 (the "Property").

WHEREAS, the Property Owner owns the Property described herein, which is zoned I-1, Light Industrial; and

WHEREAS, the City of Novi is interested in using the Property, on a temporary basis and for a period of approximately five (5) years, for community recreation fields; and

WHEREAS, the Property Owner seeks to also use the Property, on an occasional basis, for temporary automobile and trailer parking and related logistical activities in connection with certain approved events held at the Suburban Collection Showplace and Fairgrounds; and

WHEREAS, the City has determined that the uses are permissible under the City's Zoning Ordinance as to property being operated by the City as a public recreation facility; and

WHEREAS, improvements to the Property are required to be made in order for such joint use to occur; and

WHEREAS, the Property Owner agrees to be responsible for the initial construction of improvements (the "Project") as well as capital repairs, and to secure approvals as are necessary for such improvements from the City and any other required governmental agency approvals; and

WHEREAS, the parties agree that the City shall be responsible, in light of the public benefits of the Project, for all application fees, inspection fees, and City escrow or professional review fees; and

WHEREAS, due to the temporary nature of the recreational use of the Property, the City has determined that it is appropriate to grant certain design and construction waivers or variances as is authorized by City Code.

NOW THEREFORE THE PARTIES HEREBY AGREE AS FOLLOWS:

1. Improvements:

- a. The Property Owner shall be responsible to clear and grade the property to a smooth and level surface sufficient for a community recreation facility to be used primarily for two U-13 style soccer fields. The parties expect that such clearing and grading can be accomplished using onsite materials, but if off-site materials are required, Property owner bears the responsibility for safe and legal transportation and utilization of same in connection with the improvement of the Property. The Property Owner shall secure all approvals for such work (including, without limitation, a Land Improvement Permit) as is deemed required by the City.
- b. The Property Owner shall be responsible to seed the fields with a grass type approved by the City, and shall be responsible for undertaking all efforts necessary to insure that the plantings mature into an appropriate grass surface for the contemplated community recreation fields use by no later than April 15, 2017.
- c. The grading activity and the establishment of the community recreation fields shall be in accordance with a site plan to be approved by the City administration, and thereafter by the City of Novi Planning Commission. The layout of the fields (and related parking improvements) shall be generally in accordance with the plan attached as Exhibit B. The Property Owner shall secure all approvals for such work (including any deviations or variances from any requirements of the City Code) as is deemed required by the City, and shall make and install all improvements pursuant to such approvals by no later than April 15, 2017.
- d. The Property Owner and the City agree to coordinate the installation of irrigation for the community recreation fields in a manner approved by the City administration, at the City's cost. The City shall provide a design for the system at the time of final site plan approval. The City shall be responsible for the cost of the materials for the irrigation improvements and the installation. The Property Owner and the City, and their respective contractors for the improvements, shall ensure that the work for both is timed to allow the installation of the irrigation system at the same time as the field improvements. The piping for the irrigation system shall be stubbed above ground in the public right-of-way on the Grand River side of the sidewalk and near the existing hydrant. The parties agree that water will be available to the Property through an existing water line that currently serves as fire hydrant on Grand River. The City intends to supply water to the irrigation system through seasonal use of a meter and backflow devices off the existing hydrant for irrigation purposes only. This arrangement for water supply will cease with the termination of this agreement, and shall be for no purpose other than irrigation.

- e. It is anticipated that the fields will be in a usable condition by April 15, 2017. The Property Owner shall also be responsible to install a gravel parking area and access drives generally in accordance with the plan attached as Exhibit B. The Property Owner shall be responsible to secure approval for installation of a gravel parking lot from the City Planning Commission and/or City Council.
 - f. The City shall be responsible for all application, inspection, and escrow and professional review fees in connection with the Project.
2. Use. The City shall have first priority for the use of the community recreation fields on the basis of a schedule to be agreed to on an annual basis by the parties. The initial schedule for use of the Property shall be agreed to by the parties no later than September 1, 2016. Thereafter, the parties shall annually agree upon a schedule by December 1, each year.

When the Property is not being used by the City, Property Owner shall have the right to utilize the Property for logistical support and trailer and vehicle parking for certain agreed-upon large scale events to be held at the Suburban Collection Showplace and Fairgrounds. Property Owner will be permitted to use the Property for such purposes during the Michigan State Fair and the "Comic Con" event regularly scheduled during the month of May. For any additional events, the dates and times will be determined between the parties annually as described above; provided, however, that the total number of days of use by the Property Owners shall not exceed 30. Such uses shall not include customer parking for events, except during authorized events in connection with charitable or community organization ancillary parking programs as approved by the City. Employee parking and event participant parking shall be permitted in connection with authorized events. For all events, access to any parcel of land adjacent to the Property from the Property shall be strictly prohibited. No overnight camping or other similar occupation by event participants will be allowed. The Property shall be considered to be primarily or principally used as public community recreational purposes; the Property Owner's use shall be by agreement.

3. Maintenance. Once the community recreation fields have been fully established, and the drive and parking lot areas have been installed, by the Property Owner, the City shall be responsible for regular and routine maintenance only (not capital improvements) of such areas, including striping, mowing, trash clean up, seasonal irrigation system maintenance, and occasional grading or other necessary measures to keep the drive and parking areas reasonably safe for use.

Notwithstanding the foregoing, Property Owner represents and agrees that its occasional use of the Property as provided herein shall not impair or damage the fields, including the irrigation system, in any way. If such use results in damage, Property Owner shall be responsible for repair to the condition satisfactory to the City.

4. City Improvements. The City shall have the right to make non-permanent improvements, at its expense, to the Property in connection with its use, such as (by way of example at not limitation):

- Installation/placement of bumper blocks

- Installation/placement of port-a-john or similar sanitation facilities, and drinking facilities
- Installation/placement of bike racks
- Installation/placement of signs

The City also reserves the right to restrict/block access to the Property when not in use by the City or by the Property Owner under the schedule agreed to by the parties.

5. Waivers/Variations as to Certain Improvements. By ordinance, the City Council has authority to grant waivers or variances as to certain required improvements in connection with the development of property. In light of the fact that the proposed field and parking improvements are temporary, and upon a further determination that the site plan as proposed is safe and consistent with the proposed limited uses of the Property, the Council grants the following ordinance deviations, waivers, or variances:

- a. Variance from Sec. 11-239(b)(1), (2) of Novi City Code for absence of hard surface for parking lot and driveway.
- b. Variance from Sec. 11-23(b)(1), (2) of Novi City Code for absence of curb and gutter for parking lot and driveway.
- c. Variance from Sec. 11-239(b)(3) of Novi City Code for absence of pavement markings and layout including end islands.
- d. Variance from Sec. 11-239(b)(4) of Novi City Code for not meeting the minimum requirements for drainage and grading including storm water management.
- e. Variance from Sec. 11-216(c)(8) of Novi City Code for absence of a right turn taper lane along Grand River Avenue.

6. Insurance. Each party shall keep and maintain insurance coverage in connection with their respective uses of the Property, and shall name the other party as an additional insured as relates to their uses and activities on the Property. Property owner shall provide such coverage as is provided for its use of the Suburban Collection Showplace. The City shall provide such coverage as is provided for its other recreation fields.

The parties agree that the City shall have no liability or responsibility with regard to the Property Owner's use of the Property for parking, and Property Owner shall indemnify the City as against any and all claims, actions, suits, proceedings, costs, expenses, damages, and liabilities, including reasonable attorney fees and costs arising out of, or connected with, the Property Owner's use of the Property, including bodily injury or property damage.

7. Term. This Agreement shall be effective upon signature by the parties, and shall be for a period of five (5) recreation "seasons." If the fields are available for the City's use by April 15, 2017, then the first season will end September 1, 2017, and the final date of the Agreement will be September 1, 2021.

8. Termination. Either party may terminate this Agreement without cause on six months' notice to the other party, and with cause on thirty (30) days' notice. "Cause" shall mean a breach of or default under this Agreement that is not cured within ten (10) days' after notice. If the City terminates the Agreement without cause under this provision, Property Owner's right to use the Property as described herein in connection with the Suburban Collection Showplace and Fairgrounds shall continue through the five (5) year term of the Agreement. However, if the Agreement is terminated by the City for cause, then Property Owner's right to use the Property as described herein shall terminate, and Property Owner shall use the Property only in accordance with the City Code and ordinances not modified in this Agreement or in connection with this Agreement. If Property Owner terminates the Agreement, with or without cause, its right to use the Property as described herein shall terminate, and Property Owner shall use the Property only in accordance with the City Code and ordinances not modified in this Agreement or in connection with this Agreement.
9. Environmental Issues. Property Owner has informed the City of existing site contamination as a result of the prior use of the Property as an apple orchard. Property Owner represents that all improvements and construction activities on the Property shall comply with all applicable federal, state, and local laws, rules, and regulations, with regard to same. Property Owner also represents and agrees that, upon occupancy by the City, the condition of the property shall be in compliance with all such laws, rules, and regulations applicable to the City's proposed recreational use of the Property, including but not limited to the Due Care Plan submitted to the City dated _____, 2016.
10. Waiver. Any failure of either party to insist on strict performance of any provisions of this Agreement shall not be deemed a waiver of the provisions of the Agreement in any subsequent default.
11. Amendment. This Agreement may not be amended, changed, modified, or discharged except by a writing signed by both parties.
12. Notices. All notices under this Agreement shall be in writing and shall be deemed to be given when they are either delivered personally or mailed by certified or registered mail to the receiving party at the address stated in this Agreement or at an address furnished to the other party in writing during the term of this Agreement.
13. Captions and Headings. The captions and headings used in this Agreement are intended only for convenience and are not to be used in construing the Agreement.
14. Applicable Law. This Agreement shall be construed under Michigan Law.
15. Successors and Assigns. This Agreement is binding on successors and assigns.
16. Severability. If any provision of this Agreement is unenforceable, the other provisions of the Agreement shall remain valid and enforceable to the fullest extent permitted by law.
17. Entire Agreement. This Agreement shall constitute the entire agreement between the parties. Any prior understanding or representation of any kind preceding the date of

this Agreement shall not be binding upon either party except to the extent incorporated in this Agreement. This Agreement does not address and is not intended to affect in any way any permanent use of the Property by the Property Owner at the expiration or termination of this Agreement.

18. Binding Effect. The covenants and conditions contained in this Agreement shall apply to and bind the successor's legal representatives and assigns of the parties to this Agreement and all covenants are to be construed as conditions of this Agreement.

IN WITNESS WHEREOF:

Servman, LLC

City of Novi

By: Blair M. Bowman
Its: Manager/Member

By: Robert J. Gatt
Its: Mayor

**City Council Approved Resolution for the Subject Property
Agenda Item G, July 13, 2015**

CITY OF NOVI
COUNTY OF OAKLAND, MICHIGAN

**RESOLUTION REGARDING COOPERATIVE AGREEMENT FOR PROVISION OF RECREATION
FIELDS WITH TEMPORARY PARKING OPPORTUNITY**

Minutes of a Meeting of the City Council of the City of Novi, County of Oakland, Michigan, held in the City Hall of said City on July 13, 2015, at 7:00 o'clock P.M. Prevailing Eastern Time.

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

ABSENT: None

The following preamble and Resolution were offered by Councilmember Casey and supported by Councilmember Poupard.

WHEREAS, the City of Novi is dedicated to providing recreational facilities to support an active community; and

WHEREAS, the game of soccer and other youth and adult sports using soccer fields continue to increase in popularity such that there is growing need for practice and game facilities, and

WHEREAS, cooperative uses of facilities and amenities by public and private entities for complementary uses can benefit all parties; and

WHEREAS, the Michigan State Fair, held on the grounds of the Suburban Collection Showplace, continues to grow as an important destination and economic event in the City of Novi; and

WHEREAS, the Michigan State Fair draws more visitors to the City of Novi than most and can create significant parking and staging challenges in the immediate area, particularly with respect to adjacent properties; and

WHEREAS, the property located on the south side of Grand River Avenue and controlled by the owners of the Suburban Collection showplace, parcel 50-22-16-300-094, is well suited for use providing additional staging and parking for the Michigan State Fair; and

WHEREAS, the owners of the property desire to undertake surface improvements to the property that would make it useful for staging and parking of vehicles in connection with the State Fair in particular, and

WHEREAS, such improvements have the potential to also render the property useful for recreational purposes of the kind desired by the City, including the establishment of an area for youth soccer fields; and

WHEREAS, in light of the overlapping of interests between the City and the property owner, and the potential benefits of a joint undertaking with respect to the improvements to the property, as well as its subsequent maintenance, the owner has proposed to clear, grade, and plant an area of the property sufficient to establish (2) full size soccer fields, and a parking lot, such improvements to be available to the community in general, with the City's Department of Parks, Recreation and Cultural Services being given a "right of first refusal" priority for programming beginning May 2016 through November 2022; and

WHEREAS, said fields and parking lot, as constructed by the property owner, would be available for use by the City of Novi PPRCS department, except for specified periods each summer for the Michigan State Fair (during which time the parking lot and fields would be available for use for participant parking and staging for the Fair), with the City being responsible for maintenance and repair of the fields during its periods of use; and

WHEREAS, the property currently contains soil contamination that has been identified as requiring abatement, and the property owner has, in cooperation with its consultants created a plan for removal and or capping of these materials onsite in accordance with MDEQ requirements to allow productive use of the land and has agreed to complete this abatement as part of the development of the recreation fields

NOW, THEREFORE, BE IT RESOLVED as follows:

1. The City of Novi supports the efforts of the owner to develop the site for recreational fields and related parking lot improvements, in accordance with the City of Novi development standards and applicable approval processes.
2. If this improvement project moves forward to formal approval, the City will meet in good faith with the property owner to establish an agreement for joint use of the improvements, including, but not limited to, the following
 - a. The City to provide development assistance by contributing 50% of the cost of Woodland specimen tree survey for the northerly 800 feet of parcel 50-22-16-300-094 and an adjacent area of companion parcels 50-22-16-251-023 and 50-22-16-176-022 providing improved access. Such contribution to be repaid by the owner if the above referenced fields are not provided beginning May 2016
 - b. Property owner to secure all required development approvals (including required remediation) and to pay for the cost of the improvements.
 - c. Maintenance and repair of the fields and parking lot once constructed and approved by the City, with the property owner being responsible for any repairs required following the Fair.
 - d. City to have use of the fields and parking area for its recreation programming at all times requested when not in use by the property owner for the State Fair, with an appropriate mechanism for notice of such programming to be agreed upon
 - e. Other appropriate terms and conditions typical for such shared use agreements.

AYES: Gatt, Staudt, Casey, Markham, Mutch, Poupard, Wrobel (7)

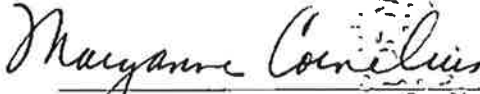
NAYS: None (0)


RESOLUTION DECLARED ADOPTED


Marianne Cornelius, City Clerk

CERTIFICATION

I hereby certify that the foregoing is a true and complete copy of a resolution adopted by the City Council of the City of Novi, County of Oakland, and State of Michigan, at a regular meeting held this 13th day of July, 2015, and that public notice of said meeting was given pursuant to and in full compliance with Act No. 267, Public Acts of Michigan, 1976, and that the minutes of said meeting have been kept and made available to the public as required by said Act.

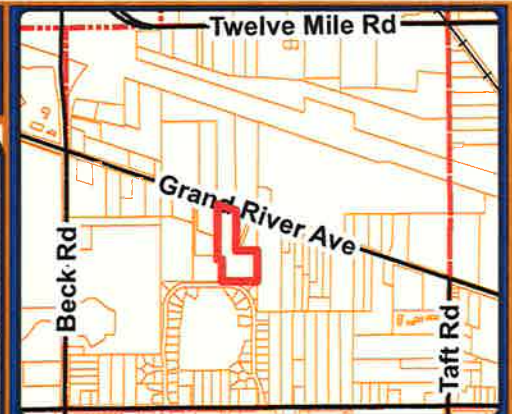

Marianne Cornelius, City Clerk
City of Novi



MAPS
Location
Zoning
Future Land Use
Natural Features

JSP 16-20 Grand River Soccer Park

Location



Legend

 Sections



City of Novi

Dept. of Community Development
City Hall / Civic Center
45175 W Ten Mile Rd
Novi, MI 48375
cityofnovi.org

Map Author: Sri Komaragiri
Date: 05/20/16
Project: JSP 16-20 Grand River Soccer Park
Version #: 1

0 35 70 140 210
Feet

1 inch = 167 feet

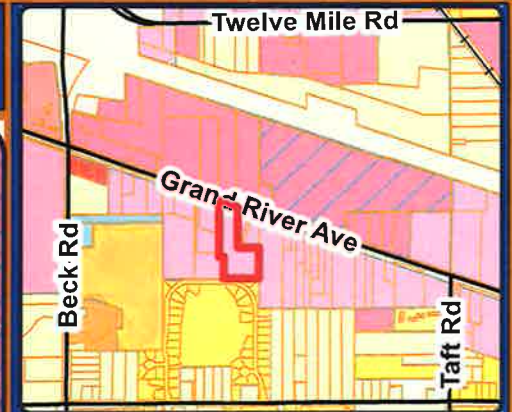
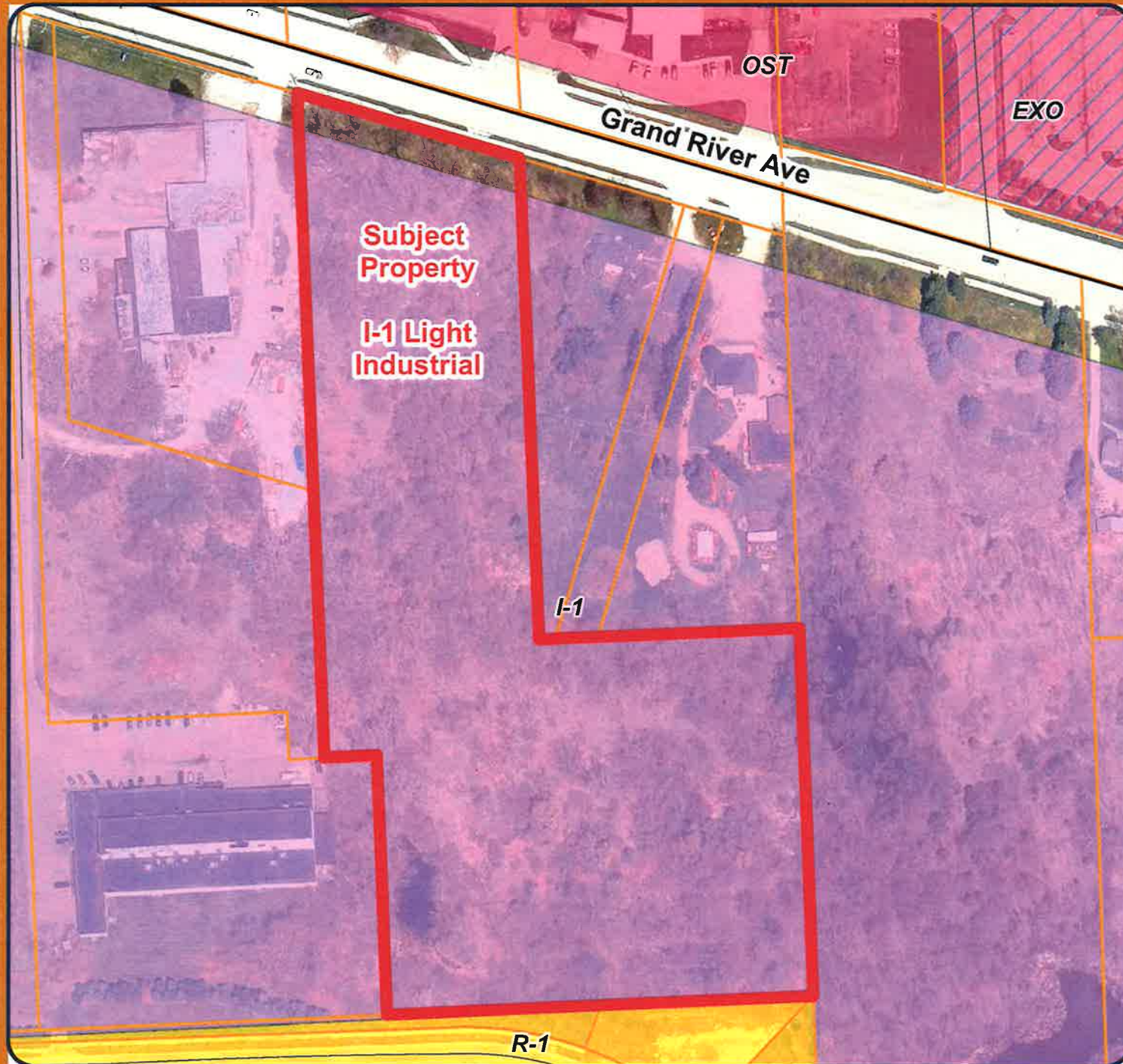


MAP INTERPRETATION NOTICE

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JSP 16-20 Grand River Soccer Park

Zoning



Legend

- R-A: Residential Acreage
- R-1: One-Family Residential District
- R-2: One-Family Residential
- R-3: One-Family Residential District
- R-4: One-Family Residential District
- RM-1: Low-Density Multiple Family
- RM-2: High-Density Multiple Family
- B-2: Community Business District
- B-3: General Business District
- EXO: OST District with EXO Overlay
- FS: Freeway Service District
- I-1: Light Industrial District
- OS-1: Office Service District
- OSC: Office Service Commercial
- OST: Office Service Technology



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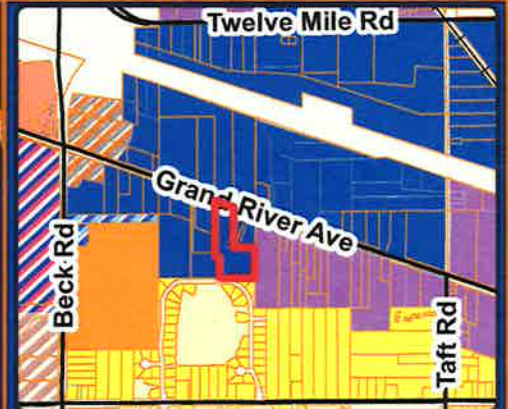


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JSP 16-20 Grand River Soccer Park

Future Land Use



Legend

- SINGLE FAMILY
- MULTIPLE FAMILY
- SUBURBAN LOW-RISE
- COMMUNITY OFFICE
- OFFICE RES DEV TECH
- OFFICE COMMERCIAL
- OFFICE RD TECH w/RETAIL OVERLAY
- INDUSTRIAL RES DEV TECH
- LOCAL COMMERCIAL
- EDUCATIONAL FACILITY
- PUBLIC PARK
- PRIVATE PARK



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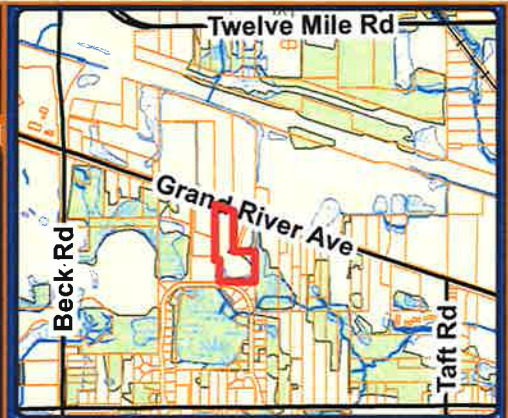


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JSP 16-20 Grand River Soccer Park

Natural Features



Legend

-  Wetlands
-  Woodlands



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SITE PLAN
(As presented to the Planning Commission)

