

**REGULAR MEETING OF THE COUNCIL OF THE CITY OF NOVI  
DRAFT - MONDAY, FEBRUARY 12, 2007 AT 7:00 P.M.  
COUNCIL CHAMBERS – NOVI CIVIC CENTER – 45175 W. TEN MILE ROAD**

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

**PLEDGE OF ALLEGIANCE**      Cub Scout Pack 746, Den 1, Thornton Creek Elementary School (Second Grade Wolves)  
Leader: Kelly Agnello  
Members: Tommy Agnello, Alex Braeseker, Evan Ferrante, Conrad Landis, Drew Lemke, Joe McCormick and Timmy Wojciechowski

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

**ALSO PRESENT:**    Clay Pearson, City Manager  
Pamela Antil, Assistant City Manager  
Tom Schultz, City Attorney  
Rob Hayes, City Engineer  
Kathy Smith-Roy, Director of Finance

**APPROVAL OF AGENDA**

**CM-07-02-029**        **Moved by Gatt, seconded by Margolis; CARRIED UNANIMOUSLY:  
To approve the agenda as presented.**

**Roll call vote on CM-07-02-029**            **Yeas: Capello, Gatt, Margolis, Mutch, Nagy,  
Paul, Landry**  
**Nays: None**

**PRESENTATIONS**

**1. Proclamation honoring retirement of Brenda Lussier from the City of Novi Library**

Mayor Landry read the proclamation for Ms. Lussier and presented her with same. Ms. Lussier was retiring as Library Director after 27 years of service to the community. Mayor Landry presented her with a gift and thanked her on behalf of Council and the City of Novi.

Ms. Lussier thanked everyone and said Novi was always at a very pivotal point and the library was at an extremely important point of its history right now. She said many people had worked very hard to get to this point where they were looking forward to expansion. She said it was with the help of everyone and the continued help of the City Council and moving forward with the library that she would look forward to cheering from another position, not necessarily on the staff, but very much interested in keeping the support alive in the community for the library.

**PUBLIC HEARING**

**1. Vacation of a portion of Orchard Avenue/Paul Bunyan Drive**

The public hearing was opened at 7:06 P.M.

**Victor Cassis**, 22186 Daleview Drive, said he owned the property to the north of Sixth Gate, and under the Subdivision Act, he had interest in the vacation of the street. As of now, he said he was in direct negotiations and trying to forge an agreement between himself and Triangle, which was to the south of the street. He was hoping they could do a shared parking agreement between them; they had not signed one yet but he wanted to go on record that he did have interest in this vacation.

The public hearing was closed at 7:07 P.M.

## REPORTS

### 1. SPECIAL/COMMITTEE - None

### 2. CITY MANAGER

Mr. Pearson announced that on Saturday, March 10<sup>th</sup>, Novi Youth Assistance, which was one of the very proud organizations in this community that helped youth, was having their Bowl ATthon at the Novi Bowl. He said it was one of their biggest fundraisers and the City participated by getting volunteers, sponsors and bowling. He said there had been a friendly rivalry between the Police and Fire Departments for a number of years. Mr. Pearson said this year there would be a City Manager's team bowling against the School Superintendent's team. He said donation sheets would be passed around shortly.

### 3. DEPARTMENTAL - None

### 4. ATTORNEY - None

## AUDIENCE PARTICIPATION

**Curt Hamilton**, 24292 Scarlet Court, was present on behalf of the Briarwood Village Homeowner's Association, a small community of 77 homes located at Ten Mile and Beck Roads. He said he was present to ask the Council to consider taking ownership of the roads and sewers in Briarwood Village, which were privately owned. He said they understood the issue of Vista Hills was on the agenda this evening and it was the reason they were present today. Mr. Hamilton said they had researched this for a number of months and felt that this was the right time to come forward with their petition. He said many private streets had been turned over to the City so they felt that the precedent had been set, and in all fairness to the homeowners in Briarwood Village due consideration ought to be given to their request. He said they paid the same amount of taxes as other people with public streets in their neighborhoods. Briarwood Village was not a gated or closed community so their streets were, in essence, public streets, and they gained no benefit from the streets being private. He said they had already taken proactive steps to preserve the quality of their roads. They had consolidated their trash removal to a single company thus reducing the number of trucks on their streets, and reduced the salting of their streets to a minimum. Mr. Hamilton said they had concrete streets that were in pretty good shape with just a little cracking at the edges. He said the association had also set aside some funding to make the street repairs when deemed necessary. He said it was their understanding that there were not many private streets remaining in the City, so the concern of future similar requests should be held to a

minimum. He said the subdivision had no sidewalks and the homeowners were not requesting and didn't expect sidewalks in the future. Mr. Hamilton said the initial choice of the private streets was not one of the homeowners but one made by the developer at the initiation of the homeowners association. He said the cost to maintain the roads was not adequately accounted for in the initial association dues, and downplayed the true cost of the road maintenance to potential home buyers. He said they didn't feel they had the expertise within the community to appropriately evaluate good versus poor business practices in regard to road repair. He stated they had done some road repair and felt it was done properly with the advice of the City with cold patching and such. However, they were not confident that what they had chosen was the best course of action whether a patching or replacing concrete with concrete. He said the uncertainty of the cost to maintain the roads had proven to be a negative factor in their ability to sell their homes as people looked at it as a downside and not a benefit. Mr. Hamilton said they were asking the City to consider preparing the necessary documents to accept ownership of the roads as public streets, and the sewers.

Mayor Landry asked the administration to contact Mr. Hamilton and indicate there had to be a formal written request for the City Council take this action. Mayor Landry didn't want Mr. Hamilton leaving the meeting thinking this would end up on an agenda in the future.

Mr. Hamilton said he had e-mailed a letter to the City Council. Mayor Landry said the City Manager's office would contact him.

**CONSENT AGENDA REMOVALS AND APPROVALS (See items A-J)**

**CM-07-02-030      Moved by Capello, seconded by Margolis; CARRIED UNANIMOUSLY:  
To approve the Consent Agenda as presented.**

**Roll call vote on CM-7-02-030      Yeas: Gatt, Margolis, Mutch, Nagy, Paul, Landry,  
Capello  
Nays: None**

- A. Approve Minutes of:
  - 1. February 5, 2007 – Regular and Interview meeting
- B. Enter Executive Session immediately following the regular meeting of February 12, 2007 in the Council Annex for the purpose of discussing labor negotiations.
- C. Approval of the final balancing change order and final payment to Goretski Construction Company, Inc. for Phase I Eleven Mile Road Pathway project (between Beck and Taft Roads and on Meadowbrook Road from Orchard Hills West to Chattman Drive) in the amount of \$7,579.16.
- D. Approval to award landscape contract to Professional Grounds Services, the low bidder, in the amount of \$24,605 and the fertilization contract to TruGreen Chemlawn, the low bidder, in the amount of \$3,610 for services at Meadowbrook Commons, as recommended by Keystone Management Company.

- E. Approval to purchase one (1) Dodge Magnum Police Package vehicle for the Police Department Uniform Patrol Division from Bill Snethkamp's Lansing Dodge through the Michigan State cooperative bid purchase program, at a cost of \$23,337.50 from State Drug Forfeiture Funds.
- F. Approval of the final balancing change order and final payment to Cadillac Asphalt, LLC for the 2006 Neighborhood Asphalt Street Reconstruction, Rehabilitation and Repaving project in the amount of \$78,992.01.
- G. Approval of the final balancing change order and final payment to Hard Rock Concrete, Inc. for the 2006 Neighborhood Concrete Street Reconstruction project in the amount of \$78,273.46.
- H. Approval of the final balancing change order and final payment to Six-S, Inc. for the Nine Mile Road (between Novi and Meadowbrook Roads) Reconstruction project in the amount of \$54,997.32.
- I. Consideration of a request from Northern Equities Group, applicant for Haggerty Corridor Corporate Park - Phase II, for a variance from Section 11-276(b) of the Design and Construction Standards requiring safety paths to be placed along the frontage of the arterial and collector street system in accordance with the Bicycle & Pedestrian Master Plan, to postpone construction of the safety paths along proposed Cabot and McKenzie Drives.
- J. Approval of Claims and Accounts – Warrant No. 739

#### **MATTERS FOR COUNCIL ACTION – Part I**

1. **Approval of Resolution adopting the Storm Water Phase II Study Report and authorizing Administration to apply for a Clean Michigan Initiative grant for capital improvements to two regional storm water detention basins (Taft Road and Bishop basins).**

Mr. Pearson said this Storm Water Phase II Study Report was commissioned by Council in 2006, and it had several different components. This Phase II Report dealt with the regional detention basins and some of the maintenance practices, and what was found in each one of those.

Mr. Hayes said they commissioned OHM to perform this study, and this was the outcome of the 2005 Storm Water Master Plan update done by Fishbeck. He said one of the major tasks they identified was to do a detailed evaluation of the regional storm water detention basins to determine, in general, how well they were performing and what specific improvements needed to be made both on the capital side and the maintenance side. Ron Cavallaro, of OHM, was present to answer questions, but in general his report indicated that the basins were performing satisfactorily. However, there were some key concerns that they shared and they needed to be addressed by specific capital improvements and/or maintenance activities in the future.

Member Paul asked if the money for capital improvements would come out of the Water Maintenance Funds. Mr. Hayes said it would come from the Drain Revenue Fund. She asked how much was in that fund and he replied he didn't have an exact number. She said when looking at the study on page 1 there was a question of who owned the Jamestown Green Basin property. She asked if they could find out who took care of the Jamestown Green Basin since they couldn't locate easement documents or a maintenance agreement. She asked if that could be investigated to see if it was being done and who was doing it.

Mr. Hayes said they couldn't locate the maintenance agreement. However, the plat showed that it was a private basin and the DPW had not been maintaining it because the understanding all along was that it was private. She asked if someone from the MDEQ or the DPW was checking it to make sure it was draining properly etc. Mr. Hayes said the DPW had been checking it but they had not been doing any physical maintenance to it. She said if the City owned it the City took care of it, but if the homeowners association was taking care of the property did the City watch what they were doing and what their maintenance was. Mr. Hayes said by virtue of the fact that it was a regional detention basin, even though it was private; the DPW did spot check it to try to gauge what was or was not being done.

Member Paul said on page 2, #7 it said instead of mowing the embankments around the perimeter they were being mowed down very low and almost to the water edge. She asked why they weren't trying to naturalize this segment. She asked if there was a way they could save the actual mowing, which was \$6,000 annually, and thought that could be decreased if there was a naturalized border around it. Mr. Hayes said there would be some savings but they were moving towards having a riparian vegetated buffer around all the regional basins. She said when she looked at the lack of buffer areas in #8, there were 7 basins whose buffers were mowed extremely close to the waters edge. She said in the second grouping there was West Oaks and Cedar Springs and there was all kinds of algae growth. She asked what he wanted to do to educate these people not to fertilize so much so there would be increased algae in that area. Mr. Hayes said there was an ongoing program through the Neighborhood Services Department. There are brochures and the annual seminar where they try to educate people about the proper care of their lawns so they minimize the nutrients placed on the lawns that make their way onto the water courses. He said educating everyone was an ongoing process.

Member Paul quoted from #10 which said "An inlet pipe to the Meadowbrook Glens Basin was crushed". She said she and Mr. Pearson met with a homeowner in front of Meadowbrook Glens and asked if the crushed inlet he was speaking of was along the north side of Ten Mile across from the wetland. Mr. Hayes said no, it was further back in the development. She said the one on Ten Mile was in bad repair also. Mr. Hayes thought that was just part of the wetland system and was not a regional basin. Member Paul said it was odd, because the water drainage came out right by the western entrance and then up and under the road and over to the wetland.

Member Paul said under Lack of Buffer Area on page 4, one of the recommendations was to put some type of no-mow zone, and people in the uplands and wetlands don't follow those signs unless something was blocking that area. She suggested roping it off for the first year so that growth would occur and they would know when to stop mowing. She asked what his recommendation for the no-mow line would be. Mr. Hayes said the recommendation was to go with the signs but they could also look into something more proactive to give a line of

demarcation that said don't mow inside of this perimeter. Member Paul said perhaps Mr. Cavallaro could share some of his experience.

Mr. Cavallaro said in similar circumstances they had put signs at close intervals to help get that established. He said the State did a lot along the dune areas for their own department who did the maintenance along the roads and it had worked well there. He thought if the signs were close enough, and they met with the DPW and talked to them, which they had done, it would suffice. If that didn't work then they would have to look at something else. She asked how often the DPW went out to the sites, and was the City mowing the areas they owned.

Mr. Hayes said the DPW went out after every rain event to inspect each basin; they mow as needed, which was probably every 4 to 6 weeks. Member Paul said on page 5, #15 it said due to flooding in the Meadowbrook Lake District, all new development sites upstream of this location had to have their own detention basin. She asked what could be done to control the flooding in that area, because a lot of money had been spent to repair that. She wanted to talk about how much money was spent in dredging and now there's flooding there. Mr. Hayes said Meadowbrook Lake was an impoundment and whatever water came in an equal volume went out, and it was not really performing as a detention basin. He said one of their major concerns was sedimentation to Meadowbrook Lake and that was why, in addition to their flooding concern, they needed to minimize the amount of sediment that made it to the lake. He commented that on site detention would help to address that problem. As far as the flooding was concerned there was at least one project they were recommending in the upcoming Capital Improvements Program to address flooding downstream of Meadowbrook Lake Dam. Mr. Hayes said they were looking at installing new gates on the dam so the DPW could control the level of the lake, provide detention and make improvements to the embankment to the west of the floodway. Member Paul said they had looked at parts that fed into Meadowbrook Lake and there were some stream bank problems along the way that weren't stabilized, and they had talked about addressing those. She asked if that was also what he was speaking of. Mr. Hayes said that was a separate project authorized last year, and a stream bank stabilization project would be constructed in late spring. He said they finally received their DEQ permit, and he would make improvements directly upstream and downstream of the lake, but there was a lot more to be done.

Member Paul asked Mr. Cavallaro if when looking at this area specifically and looking upstream, could bio-swales be put in to help decrease the amount of water flowing in and decrease the sediment. Mr. Cavallaro said absolutely, any place infiltration could be enhanced would help out because it was an issue that would not go away even with detention basins. He said there would still be an extra volume, and anything they could do to enhance infiltration would definitely help. She asked if he would explain how the bio-swale would work and what kind of areas they would have to infiltrate to make a dent in this flooding and sediment.

Mr. Cavallaro responded that with bio-swales and bio-retentions the basic premise was to put in a material that soaked more water into the ground, took it down below so that it shaved off that peak flow that would normally run off the pavement or through the detention basin. He said the infiltration could be enhanced even more by putting in native vegetation that had deeper root structures. He said if there was taller grass rather than 2 inch high grass it would also remove sediment. Member Paul asked how many areas would be beneficial to go upstream and prevent some of the flooding and sediment problems they've had with Meadowbrook Lake. Mr. Cavallaro said one project they were looking at was a road that was

failing next to a stream; it had no curbs and the runoff went directly off the pavement and it had some asphalt swales down to the creek. In that project they were looking at putting in a small rain garden or bio-retention basin and then instead of the water going over the currently mowed grass it would go into this higher vegetation, would be stored there for a short period of time and then hopefully infiltrate down into the creek. He said things like retro fitting road projects as they come in, putting them in medians and dipping the medians down instead of up would help over time.

Member Paul referred to page #6, where there were five high priority projects totaling \$629,000 and asked where the money would come from and if they could phase the project so they could look at all the projects, do all the inlets this year, and do a second part the following year. Mr. Cavallaro said the Taft and Bishop would be the first two because they handled a good amount of flow compared to some of the others. He said to do those two together, possibly with some grant money, and that would save some money. Then see how they work and the benefits, and try to do two or three more. He said in certain instances they might be able to do several of the different items of other projects, possibly retrofit some structures or some of the more maintenance items, and lump those into some of the other projects which could result in cost savings. She asked if he had an ordinance he worked with in another community with bio-swales. Mr. Cavallaro said they were working on one now to try to provide incentives to developers to put in bio-swales, bio-retention basins, and those kinds of things in Washtenaw County. It was something in the works, and they had investigated them throughout the country, and there were some but they still weren't up to the requirements that the State of Michigan had. He said they were working on that and thought it would be available within 6 months. Member Paul noted it was something Council had discussed and she thought Mr. Hayes was working on something too.

Member Nagy thanked them for the report and said she was very supportive. She knew the City had tried to inform residents of the need not to mow down to the water level. She and Mr. Hayes had discussed that all along Village Oaks Lake the residents mowed all the way down. She knew it was difficult for people to listen to their associations but considering money just spent on dredging and natural vegetation, residents should be sent a letter regarding this because she didn't think the information got to the community at large. She thought the signs were good and suggested that green buildings might help.

Member Mutch asked if the City had any standards or ordinance requirements for maintenance of what effectively were regional basins even though they were privately owned. Mr. Hayes said all the requirements would be embodied by the maintenance agreement entered into with the association. He didn't believe there were any specific ordinance requirements for private basins. Member Mutch asked if there were any maintenance agreements with Jamestown or Meadowbrook Glens for maintenance of those facilities. Mr. Hayes said not that they had been able to locate. Member Mutch said that was an issue that needed to be addressed. He didn't see that as a specific recommendation so whether that's direction to the City Administration, he didn't know if it needed to be specifically spelled out in the report, but thought it was something that needed to be addressed. Member Mutch said whether owned and maintained by the City or owned by the homeowners association, and whether or not it was maintained was an open question at this point. If there were things that needed to be repaired, that needed to be addressed as well. Member Mutch said they needed to know what

was going on there because it would impact the system as a whole. He noted that one of the things that jumped out at him while reviewing the February report was the significant increase in cost estimates from the January draft Mr. Hayes had provided. He said it almost doubled, and asked Mr. Hayes to touch on why those costs increased significantly.

Mr. Hayes replied that they had several meetings with the DPW and determined they needed better access to a majority of the regional basins. In order to give them the access they needed to get their equipment in to properly maintain the basins, they had OHM add some significant costs to provide access. Mr. Cavallaro said the access was the biggest item. He said at this point, they didn't know what type of material or access that would be but thought it was a little on the high side, and expected that number would come down in several cases. Member Mutch said to be clear on what the access issue was, all of them listed involved City ownership and City property. He asked if it was actually constructing some kind of access drive for equipment. Mr. Hayes said yes, building a permanent access road to the basins. Member Mutch said the numbers were fairly significant even spread over a five year period. He reminded Council that the Drain Revenue Fund had a significant fund balance as well even with all the significant projects they had done over the past couple of years. He thought any time they could get grants was great and wanted to pursue opportunities to reduce the cost to the City. However, they also had to be aware that they had a resource in the Drain Revenue Fund, and a lot of communities didn't have this fund. He said they did have a resource and they should take full advantage of the opportunities it provided to do these kinds of improvements. Member Mutch asked if, in the upcoming budget, these would be Capital Improvement items. Mr. Hayes replied they would. Member Mutch said some of the maintenance issues would not be specifically spelled out as Capital Improvement; they would be built into the DPW budget. Mr. Hayes agreed.

Member Mutch said one of the issues he highlighted in the report was the attenuation where there was more water than they could handle in the system. It resulted in the worst case scenario, downstream flooding or negative impact on water quality, stream bank erosion and everything that went with that. He said the one improvement they talked about were the gates to try to hold the water longer before going down stream. He asked what else could be done. He was looking at Meadowbrook Lake which was a huge, costly project to dredge out every 15 or 20 years because of sedimentation. He said if looking upstream at Meadowbrook Lake you're not looking at sedimentation from development at this point. If the ordinances are being enforced there's no runoff from farm fields or construction sites. It's this flooding tearing out the sides of the stream banks and carrying the dirt downstream and making a negative impact on the water quality. However, from a financial viewpoint, in creating this huge liability for the City down the road, he asked what else could be done, besides the gates, to address the sedimentation and attenuation so the volume of water coming down stream could be controlled.

Mr. Hayes said one of the recommendations in the report was to look at a proactive stream bank stabilization program specifically upstream of Meadowbrook Lake along the Middle Rouge. He said by armoring the banks either through physical means with typical construction materials or preferably with native materials the sedimentation could be reduced significantly. He said couple that with improvements recommended in each of the regional basins where the improvements seen here would help to reduce sedimentation. He said that should have significant impact on keeping Meadowbrook Lake relatively sediment free.

Mr. Cavallaro said it would help if the City continued providing or making developers provide detention for their individual projects. He said that practice had to be continued and enforce larger events such as the 100 year. Mr. Cavallaro said the other recommendation was the four basins they had discussed had inadequate attenuation because the streams are exhibiting erosion. One of the major causes of that was excessive flows of a frequent nature, so the 1, 2, 5 and maybe 10 year flows, instead of happening once a year on Thornton Creek up to the top of the banks, was happening maybe 5 times a year now. He said this was because the volume of storm water, no matter how much was detained, would still go up. So, because that event was happening five times, the stream was used to it happening once a year, and now it was happening five times and didn't give the vegetation time to regenerate, so it eroded the edge of the stream. Then it happened again and again. He said they recommended that they look at those higher frequency events, the 1 and 2 year events, and try to retro fit a couple of these basins to take care of those because they weren't originally designed 20 years ago on that premise. He said today they knew that was one of the major problems of stream bank erosion so they thought there was an opportunity under the CMI Grant to retrofit those basins to help out in that nature.

Member Mutch said one of the report recommendations was for areas generally up stream with Meadowbrook Lake, having a designation of no unrestrained storm water runoff, and specifically requiring developers to have basins to detain on site before releasing into the system. He asked him to give Council an idea of how big an area this would be, and how many potential developments would be impacted by this requirement. Also, was there anything in place now to require them to follow that, and how would it be enforced. He thought where this might be tricky were certain parcels up stream of the C & O basin had already paid in storm water fees saying they could discharge directly into the C & O basin or into the river before it got to the basin.

Mr. Hayes said as far as areas that were tributary to Meadowbrook Lake, it would be approximately 14 square miles that actually drained into Meadowbrook Lake. Member Mutch asked if that entire area would fall under that restriction and if that was what they would be recommending. Mr. Cavallaro said everything that was tributary to that area, but he didn't know the exact line. Member Mutch said they were looking all the way back up to Walled Lake. Mr. Cavallaro said yes, everything on the east side especially that's coming down to that point. He said the previous study noted there was flooding at the confluence of Thornton, Ingersol, and the Rouge and that was where the problem was and had been occurring for years. He said because there was a problem there, it was important to take care that any future development would have that requirement upstream of that area. He said if there was an undeveloped parcel that had been paying into that it might be an issue they would have to work on with that individual. However, for the most part, the recommendation should be followed as best they could. Member Mutch said one that came to mind was the Main Street development and the discussion they had on how the storm water runoff was being handled. Member Mutch thought it would be helpful for the Council if Mr. Hayes provided a graphic that illustrated the area for future information, and follow up on how they would enforce that through existing ordinances or future amendments. He said obviously, short of doing some significant new basins, there's no other way to build into the system a way to relieve the amount of water going in. He said as they continued to pave the water runoff was continuing to increase. The standards said it was not supposed to but in real life it seemed to be a lot more water going into the system and they were seeing the impacts of that.

Member Mutch said there were areas upstream of Meadowbrook Lake where Ingersol Creek ran through the property the City was looking at acquiring with the grant, and then it continued between Village Oaks and Brookfarm Park. He said it was interesting to go back and look at the old aerial photos of that area because back in the 60's that was a large meandering wooded wetland kind of complex. Then with farming, the County Drain Commission and development, it was now a straight line ditch that ran through there. It seemed to him that it was probably great for people to get water out of there as quick as possible. However, in terms of addressing the concerns of water quality, storm water flows, attenuation could they look at going back and re-naturalizing that kind of stream flow getting away from the straight line ditch. He thought possibly a grant project could add some meandering back to that system, and asked if that would help. Mr. Cavallaro said it would definitely help and the DEQ would love it. He said they were straightened out in the 60's to get the flow downstream, which was the philosophy then. In a number of projects he had been involved in he went to the DEQ about bringing meanders back in and looking at historical photos to go back and mimic them. He said the stream wanted to be that long so in another 20 years from now if it was not armored it would create those meanders on its own. Member Mutch said if it could be done and they could go back to that, get rid of the sedimentation and erosion that was occurring and moving downstream because it was straightened, it would want to turn and it would pull that material downstream. Mr. Cavallaro said absolutely, it would help and would reduce the amount of sediment going into Village Oaks in that case.

Member Mutch thought there were a lot of great recommendations, and some areas still needed to be addressed in terms of the private basins and those costs. He said one of the things that jumped out at him, while working on the grant on the properties on Meadowbrook Road, was just downstream of the dam on Meadowbrook Lake was the highest diversity of fish population in the entire Rouge River system's 400 square mile watershed. He said that was great, and said they were doing something good upstream. However, they couldn't continue to get in situations like Meadowbrook Lake as the dumping ground for sediment and storm water runoff. He encouraged this as a starting point, and thought they should be creative and see what they could do to protect that natural resource so it would be an amenity for the residents, and upstream as well. He said he would support the recommendations.

**CM-07-02-031      Moved by Nagy, seconded by Paul; CARRIED UNANIMOUSLY:  
To approve Resolution adopting the Storm Water Phase  
II Study Report and authorizing Administration to apply for a Clean  
Michigan Initiative grant for capital improvements to two regional  
storm water detention basins (Taft Road and Bishop basins).**

**Roll call vote on CM-07-02-031      Yeas: Margolis, Mutch, Nagy, Paul, Landry,  
Capello, Gatt  
Nays: None**

- 2. Consideration of Ordinance 07-40.06, an ordinance to amend the Code of Ordinances, Chapter 26, "Peddlers, Solicitors and Transient Merchants" in order to clarify the provisions relating to non-commercial solicitation and the standards for granting a permit for such solicitation. Second Reading**

Mr. Pearson advised Council that after the first reading staff met with a couple of the charitable solicitation agencies. He believed they had come to some understanding and compromise that was in the strike out version being submitted for final consideration.

**CM-07-02-032** Moved by Paul, seconded by Nagy; **CARRIED UNANIMOUSLY:**  
To approve Ordinance 07-40.06, an ordinance to amend the Code of Ordinances, Chapter 26, "Peddlers, Solicitors and Transient Merchants" in order to clarify the provisions relating to non-commercial solicitation and the standards for granting a permit for such solicitation. Second Reading

Roll call vote on CM-07-02-032 Yeas: Mutch, Nagy, Paul, Landry, Capello, Gatt,  
Gatt, Margolis  
Nays: None

**AUDIENCE PARTICIPATION – None**

**MATTERS FOR COUNCIL ACTION – Part II**

**3. Appointments to Boards and Commissions**

Mayor Landry asked that Council vote their ballot and pass it to City Clerk Cornelius to be tabulated, and they could do the appointments by the Mayor.

Mayor Landry said there were three boards that were Mayoral appointments with the consent of Council. The first was the Economic Development Corporation for the term ending March 1, 2012. Mayor Landry put forth the name of Robert Churella.

**CM-07-02-033** Moved by Paul, seconded by Margolis; **CARRIED UNANIMOUSLY:**  
To approve Mayoral appointment of Robert Churella to the Economic Development Corporation with a term ending March 1, 2012.

Roll call vote of CM-07-02-033 Yeas: Nagy, Paul, Landry, Capello, Gatt,  
Margolis, Mutch  
Nays: None

Mayor Landry's second appointment was Fred Ciampa whose term would end on March 1, 2010.

**CM-07-02-034** Moved by Paul, seconded by Margolis; **CARRIED UNANIMOUSLY:**  
To approve Mayoral appointment of Fred Ciampa to the Economic Development Corporation with a term ending March 1, 2010.

Roll call vote on CM-07-02-034 Yeas: Nagy, Paul, Landry, Capello, Gatt, Margolis,  
Mutch  
Nays: None

Mayor Landry's third appointment was Todd Kuzma whose term would end on March 1, 2010.

**CM-07-02-035** Moved by Margolis, seconded by Paul; **CARRIED UNANIMOUSLY:**  
To approve Mayoral appointment of Todd Kuzma to the Economic  
Development Corporation with a term ending March 1, 2010.

Roll call vote on CM-07-02-035 Yeas: Paul, Landry, Capello, Gatt, Margolis,  
Mutch, Nagy  
Nays: None

Mayor Landry said for the Library Board there were two terms expiring March 1, 2010. Mayor Landry said the first name he would put forth would be Mark Sturing.

**CM-07-02-036** Moved by Margolis, seconded by Capello; **MOTION CARRIED:**  
To approve Mayoral appointment of Mark Sturing to the Library  
Board with a term ending March 1, 2010.

Roll call vote on CM-07-02-036 Yeas: Landry, Capello, Gatt, Margolis, Mutch,  
Paul  
Nays: Nagy

Mayor Landry said the next name he would put forth would be Ramesh Verma with a term expiring March 1, 2010.

**CM-07-02-037** Moved by Paul, seconded by Margolis; **CARRIED UNANIMOUSLY:**  
To approve Mayoral appointment of Ramesh Verma with a term  
Expiring March 1, 2010.

Roll call vote on CM-07-02-037 Yeas: Capello, Gatt, Margolis, Mutch, Nagy, Paul,  
Landry  
Nays: None

**COMMISSION/BOARD**

**REAPPOINTED**

BEAUTIFICATION COMMITTEE ..... Barbara Greenberg

BUILDING AUTHORITY..... Larry Czekaj

CONSTRUCTION BOARD OF APPEALS ..... David Byrwa  
David Stec

HISTORICAL COMMISSION No applicant

STORM WATER MANAGEMENT  
AND WATERSHED STEWARDSHIP COMMITTEE No applicant

**4. Approval of Ordinance 07-37.33 for the water and sewer system development charges (connection fees) – First Reading**

Mr. Pearson said this item represented significant staff work and a genuine streamlining of ordinances as they went through elaborate calculations on an individual parcel basis. They were recommending this combination effect based upon some actual construction and agreed upon standard benchmarks to calculate connection fees in the future.

Member Margolis asked for an explanation of the incremental cost method versus the equity method. Ms. Smith-Roy said she wanted to give credit to Zora Singer and Tina Glenn who had been working on this for about a year. She said the difference between the two methods was the incremental cost method would charge users from this point forward for the cost. So, it actually turned out to be a little bit higher number. She said they had gone with the most conservative number they could use in terms of the charges for this. She said the equity method was also recommended by the American Water Works Association and was based on the cost of the system less depreciation plus the cash reserves, and then the tap units would be computed in total and it was a per tap unit which would be applied from here forward so there would be no retro activity for it.

Member Margolis said the incremental cost method would be a higher cost and Ms. Smith-Roy agreed. Member Margolis said her understanding was the way connection charges would be calculated for new users was that they were converting from an incremental cost method to an equity method. Ms. Smith-Roy said it would be converted from a per system charge. She said instead of the incremental cost method, they took each unit of capital infrastructure that was put in and charged it to the immediate users of that system. She said in the packet was a map of each one of those paybacks or fee sections that was set up. The incremental method would just take what the future would be, the future REU's left, so it was a little different computation. She said moving forward, the equity method was recommended. Member Margolis said that would be a truer cost of the increase from this point forward. Ms. Smith-Roy agreed.

Member Margolis said on page 2 of the memo, they talked about providing language in the ordinance that would allow the City to administer the remaining sections be paid from the Water and Sewer Fund. She asked Ms. Smith-Roy to explain the remaining sections. Ms. Smith-Roy said included in Council packets were maps of the payback and other agreements that were still in place. The remaining paybacks and contracts would continue to be collected and accounted for, however this accounting activity would be invisible to the developer/builder paying the fees. She said the resolution was structured and the supporting resolution prevented the City from having a loss in that it said "if there were any of those charges, those paybacks that were still in effect are greater than the charge". She said they would charge the larger amount. Ms. Smith-Roy said the recent SAD 170 Payback Agreement would be an example of that. Member Margolis said she saw a section in the strikeout version that looked like they were changing from the ability of people to do installment payments to larger developments only. Ms. Smith-Roy said that wasn't the intention. She said the intention was to continue to allow the same administrative options that were available to users right now. One was the monitoring agreement where if a developer or builder disputed the Oakland County Rating System, the City would allow them to go on a monitoring agreement for three years and the other option was the financing method. She said both of those were intended to be left in tact.

Mayor Pro Tem Capello said Main Street was planned for certain multiple uses, residential, commercial and office, and he understood that where vacant, there would be some type of connection fee assessed. He said he assumed there was a dollar amount assessed to the general geographic area that was still vacant. Ms. Smith-Roy agreed, and said what they were proposing was instead of the fees currently in place, which could be multiple fees right now, there would be this new connection fee as soon as the second resolution was passed and the proper time period had passed. These new connection fees would be in lieu of that. It would be one fee to the person paying it. She said she was sure there were no remaining paybacks in that area. Mayor Pro Tem Capello said for the residential and office, it would probably be easy to compute what the fee was and it would be consistent based on square footage and number of dwelling units per resident unit. Mayor Pro Tem Capello said for retail, there would be a different connection fee for a 3,000 sq. ft. women's accessory store as compared to a 3,000 sq. ft. restaurant next door. Ms. Smith-Roy said yes, Oakland County provided them with an estimate of REU's for each type of business entity. She said it was typical in those circumstances Mayor Pro Tem Capello was describing in the mixed use areas for those entities to enter into monitoring agreements. She said then they could get a more accurate reflection of what the usage was. She said if building permits come through for a business that's changing, they would take a fresh look at that entity. For example, if it was a retail or office and converted to a restaurant, they would revisit that and then bill for the difference. Mayor Pro Tem Capello said let's say the first floor of the entire building was retail, and those users would pay a fee for retail use and one tenant moved out and a similar use moved in there shouldn't be any additional fee, correct? Ms. Smith-Roy agreed.

Mayor Pro Tem Capello said since they had allocated say \$2 million over this geographic area, and retail moved out and a restaurant moved in, they would be charged another connection fee, correct? Mrs. Smith-Roy said yes, they would revisit that business. He asked what would be done if a restaurant moved out and retail moved in. She replied they would revisit it, there would be a credit remaining on the books, but they would not receive that credit until a future time period. He said if this went on infinitely and retail moved out and the restaurant moved in the City would get more money, and if the restaurant moved out and retail moved in the City wouldn't get back any money. If retail moved out and restaurant moved in, would they be charged more money again? She said no, there would be no charge at that point. He said at some point, once the City was totally compensated for the capital improvement allocated to that geographic area, they should stop charging, right. Ms. Smith-Roy said that was partially true in the old way they were doing it because there were all of these different agreements and contracts in place. She said what was proposed now was that every user in the system would share equally in whatever the equivalent units were. She said they were not assigning a dollar amount to a specific geographic area. Instead, they were assigning a dollar amount for a tap charge to go into the entire Novi system. Mayor Pro Tem Capello said at some point the City would be compensated for the capital improvement of the system. So, wouldn't there be a point where the City would stop collecting tap fees. Ms. Smith-Roy said correct, that was not uncommon if looking to fully built out, mature communities. Those capital charges either end up on the usage charge or in some form of debt charge such as issued bonds. Mayor Pro Tem Capello asked, with the new ordinance, when that would stop. She replied it would be when the City was built out because the tap fees were calculated based on build out, and the build out number was approximately 39,000 tap units and the tap units were between 25,000 and 27,000 right now. Mayor Pro Tem Capello said even if there was a capital improvement that went in at the northeast section of the City, and didn't affect the Main Street area, all the

Main Street tenants, as they moved in and out would continue to pay for capital improvements that might be more recent up in the northeast section of town. Ms. Smith-Roy said yes, they had included the entire capital infrastructure for the whole City. They didn't break it down into separates so they didn't separate the infrastructure improvements that improve just the Main Street area. She said one of the benefits of the re-computation was that it distributed it more evenly, because now these customers were receiving a benefit of the City wide system. The flows and pressures are better for water so those improvements of having a complete system were being passed on to the customers. Mayor Pro Tem Capello said he understood it fully but did not agree with it.

Member Mutch said Ms. Smith-Roy mentioned that when they calculated the fee, they took into account all the capital costs for the system. He said someone researched what the entire water system would cost at build out to complete, and then that had been allocated across all users in creating this charge. Ms. Smith-Roy agreed. Member Mutch said for example, one of the things talked about at Council was the impact of future development in terms of needing to find additional sewer capacity in the system. He asked if that was part of the calculation. Ms. Smith-Roy said it was, and they had included all of the items that were included in the CIP Program, and that included the additional capacity items. Member Mutch said when someone connects into the system as a new user, they were paying a connection charge that incorporated that fee. She said yes. Member Mutch said for someone already on the system were they paying in any way. She said no, the way the rate system was set up for usage charges versus capital connection charges was that they actually segregated those costs. She said operation and maintenance costs were charged to users, and capital infrastructure charges were charged as connection fees. Member Mutch said then the homeowner living in Village Oaks who had been paying into the system for 30 years wouldn't be paying the cost if someone developed a new subdivision on the west side of town, or a commercial development at Twelve Oaks Mall; they would not be subsidizing that cost under this current system. Ms. Smith-Roy said no they would, and they had not under either system. She said they had never included capital infrastructure in user rates. Member Mutch said but they do through the CIP Program. We have built and paid for capital improvements, which included extensions of the water and sewer systems that were not charged back to the direct beneficiaries, correct? Ms. Smith-Roy said that was not correct, it was included in what was the previous connection charge. She said they were changing the methodology of how it would be charged but were not changing the facts that infrastructure was charged through connection charges, and user fees were strictly for maintenance and operations. Member Mutch said if the system was extended for new development and the City paid for it, what they paid in would recoup all those costs. Ms. Smith-Roy said correct, based on the capital improvement they had to calculate it. Member Mutch said that was the concern he had, and it was similar to Mayor Pro Tem Capello's concern. Member Mutch thought streamlining the system was good and moving towards a more equal basis for everyone joining the system but he didn't want to see users subsidizing new users. He said people who had been paying for 5 years or 50 years should not be subsidizing the cost of someone who had never paid in. He thought as long as they were capturing all those costs, he was comfortable with that, but he didn't want to see the City getting into the position where they hadn't set aside the money or projected costs accurately enough, and as they get toward build out they burn through their reserves. She said their intention was to maintain a very small reserve, and that had been a policy decision of Novi since the beginning. Ms. Smith-Roy said, for example, in the water and sewer usage rates

they had not included any thing for depreciation but are moving in the direction of small incremental portions of that. She said essentially when a major portion of the system was going to need replacement, the City would have to issue bonds and that would be passed through the user rates. Member Mutch said they had just not set aside money, and Ms. Smith-Roy said not for replacement; it would be double charging because bonds had been issued originally to put the system in and the users paid for those.

Member Paul said when a property owner bought a site, and it was deemed to have some sort of improvements on it but wasn't recorded when the property was purchased, what would happen in that case. Member Paul said a developer told her of a situation where they purchased a property that had some type of long term agreement with the City that had never been documented from 30 years prior. So when they purchased their land, there was no identification of how much they owed for their sewer tap. She said that was very difficult because it was in the millions. Ms. Smith-Roy replied she would need more information to research that. She said they had many agreements that were very well documented. There were a variety of contracts and agreements, and Member Paul asked her what kind of agreements there were. Ms. Smith-Roy said they were in the form of payback agreements where they were individual payback agreements where the developer put in the infrastructure and then the City collected the fee and paid back the developer. There had been agreements where the City entered into a cost sharing and the City paid a portion and the developer paid a portion. She said they would compute and collect the fee and the portion due to the developer would be paid back to them. The remaining portion would go into the Water and Sewer Fund. She said there were a number of contracts such as special assessment contracts, and there was quite a variety of these contracts. Member Paul thought this was a special assessment contract, but on one of the parcels it was not identified. So, if they looked at all the records of the City, there were sewer agreements with people where there are already users, and she asked about the areas where the last 12% was not developed. She asked if there were agreements on all those properties and if there were foreign agreements that would be turning up at the water and sewer districts when someone went to purchase the property. Ms. Smith-Roy said the way it worked now was the property owners were responsible for checking with the Water and Sewer Department to see what fees were available. She said they do quotes daily for individuals looking to see what kind of development they could put in. The map in Council's packets showed the different fee arrangements that they have now. She said if there was more specific information, and if Member Paul wanted to pass along the parcel ID number, she could research it. Member Paul didn't have the number with her but was concerned about how they would collect if it had never been recorded. She asked Ms. Smith-Roy if she was saying that had been taken care of and there were no unidentified parcels. Ms. Smith-Roy responded that as far as she knew they could collect anywhere in the City for someone tapping into the water and sewer, but she would leave that to the City Attorney.

Mr. Schultz said most of these things are very well documented, and an SAD in particular because of the formality that was attached to it. He said they were, as part of the proposal, going to have a number of agreements they were going to finish out, which were also on record and described in the ordinances. He said hopefully the situation described was not something they would typically see or that a property owner would be subject to. Member Paul said she would give Ms. Smith-Roy the ID number.

Member Margolis said according to this they would move to a resolution and a resolution would be passed by Council each year to set these rates. Ms. Smith-Roy agreed. She asked

if based on this discussion and this reading then that resolution would be calculated each year based on the amount of build out that had to occur in the City and then a recalculation.

Ms. Smith-Roy said no, their intention was to adopt a resolution for user fees every year based on the operations. However, in terms of the capital infrastructure charges they were recommending reviewing that every 5 or 10 years. She said it had been 17 years since it was last reviewed.

**CM-07-02-038 Moved by Margolis, seconded by Nagy; CARRIED UNANIMOUSLY:  
To approve Ordinance 07-37.33 for the water and sewer system  
development charges (connection fees) – First Reading**

**Roll call vote on CM-07-02-038 Yeas: Capello, Gatt, Margolis, Mutch, Nagy, Paul,  
Landry  
Nays; None**

- 5. Consideration of a request from Jane Gardner for a variance from Section 11-276(b) of the Design and Construction Standards requiring pathways along the arterial roadway network in accordance with the City Bicycle and Pedestrian master plan for the single family home under construction at 46000 Eleven Mile Road.**

Member Paul informed Council that this applicant was a personal friend and that she would like to recuse herself.

**CM-07-02-039 Moved by Nagy, seconded by Capello; MOTION CARRIED:  
That Council member Paul be recused from the item because  
of her personal relationship with the applicant.**

## **DISCUSSION**

Mayor Pro Tem Capello said he understood that Member Paul was friends with Jane Gardner and asked if it would affect the way she voted on this issue. Member Paul said she would like to recuse herself. He asked if she had a financial interest, and she said she did not. She wanted to recuse herself because she was a personal friend.

**Roll call vote on CM-07-02-039 Yeas: Margolis, Mutch, Nagy, Landry,  
Nays: Gatt, Capello**

Ms. Gardner, 46000 W. 11 Mile Road, said she loved sidewalks and really had no problem with putting a sidewalk in front of her property. However, she wanted to discuss putting the sidewalk in front of her property at this time. She said she lived across the street from the sidewalk that they were trying to put in on the other side of 11 Mile. She said her portion was about 256 ft. on 11 Mile, and her neighbors on either side for several properties were in no way going to put in a sidewalk on their property at all. She said according to the City plan the sidewalk on her side of the street was not planned for another 5 to 10 years, if it went in. She said she had posted a bond of \$2,800 to the City and received a temporary certificate of occupancy for the home. She posted the bond to pay for the sidewalk at the time that the City was ready to put it on her side of the street. She said since this would not be done for a long

time, she thought it would be a benefit to the City and the looks of the City if the sidewalks went in at the same time. She said on the south side of 11 Mile Road the sidewalks were patch work, and she felt it would be a benefit to the City to put the sidewalk in on the north side all at once. She said a variance had been granted to Mr. Hartshorne who lived at 46450 11 Mile Rd. so there was precedence for the variance. Ms. Gardner said when they put the sidewalk in she and her husband would cooperate in any way they could with the City to get the sidewalk in in the best possible manner. She said they had lived in the community for 13 years, really liked sidewalks, and previously had lived in Walden Woods, which they chose because it had sidewalks and they had four children. She just didn't see a benefit now to have 250 ft. of sidewalk that would start and stop on her property and would not continue on her side of 11 Mile Road except when they finally reached the new development, Ashbury Park. She said she requested the variance and a permanent certificate of occupancy to be granted.

Member Gatt said he voted no on the recusal because Council rules were that unless there was a monetary interest in something recusal should not be done. He said sometimes Council had to say no to their neighbors and friends, and a similar matter came before Council a year ago and Mayor Pro Tem Capello and Member Paul voted no. He said there was an ordinance in place and last year he did vote yes but it was the first request on that side of the street. He said the ordinance was there for a purpose and if it was not going to be enforced then they should do away with it. Member Gatt commented that a year ago the owner was made to put money in escrow and then the City was going to build that sidewalk when they determined it was proper. He would like to see Ms. Gardner's and the other owners sidewalks go in at the same time as soon as the weather permitted. He said the reason they wanted those sidewalks was so people could walk their Labs and walk to school. Member Gatt didn't see where it would meet the qualification where putting in a sidewalk would result in an exceptional, practical difficulty to Ms. Gardner. Member Gatt said he could not support it because the ordinance was there for a real reason, and now that there were two homes ready to put sidewalks in they wouldn't be doing their job if they didn't move forward.

Member Nagy said she would grant the waiver and she understood what the City was saying. She said the problem was that there were only two people approached about this and the last gentleman was all for putting money into escrow. She said there were other houses along there and what she didn't understand was why they were going to people individually to put sidewalks in.

Mr. Pearson said this was new construction and that was the way the sidewalk network in the City had been built out. They elected and built the house, this was a requirement, and the staff could not recommend a waiver.

Member Nagy said she understood that but felt they were taking the wrong approach. She thought their intentions were good about putting sidewalks in but along 11 Mile they were piecemealing it. She would be in favor of doing what they had done before, which was asking Ms. Gardner to put the money into escrow until there was a true connection for all of 11 mile. She knew this was for new construction but it made no sense. She said the school was there but the sidewalk was on the south side of 11 Mile not on the north side, and if they walked on the north side when the sidewalk ran out they would be walking on someone's grass. She thought they should take the money, put it into escrow like they did for the other gentleman, and when ready to do all of the north side then do it. Member Nagy asked if the applicant had to meet all three criteria or just one.

Mr. Schultz said the test was set up for all three criteria.

**CM-07-02-040 Moved by Nagy, seconded by Mutch; MOTION FAILED:**  
**That Jane Gardner put money into escrow for the sidewalks, as it would result in exceptional, practical difficulty to the applicant, and the alternative proposed wouldn't be adequate for the intended use and would not be substantially deviant from the performance that would be obtained by strict enforcement of the standards, and the granting of the variance would not be detrimental to the public, health, safety or welfare nor injurious to adjoining or neighboring property.**

## DISCUSSION

Ms. Gardner said they had lived across from the property they built on for 12 years, and she understood the need for sidewalks. However, she didn't understand why the variance could not be granted for her on this piecemeal piece. The need for the sidewalk was there but they needed to complete the sidewalk that they had on 11 Mile. She said there was no sidewalk in front of Parkview Elementary at all, and she wouldn't mind taking her bond money and putting it towards finishing the sidewalk in front of the school. She wasn't sure what benefit her tiny piece of sidewalk for 5 or 10 years would do any child in the neighborhood, hers included. Whereas, taking the money she set aside or that Mr. Hartshorne set aside and actually completing the project would be a benefit to the community, the children, and to everyone in the area. She was confused about where the priorities were in terms of the safety of our children and the beautification of the community.

Mayor Pro Tem Capello noted he had the same question about the Parkview piece for a long time. However, that was school property and it was outside of Council's control. He said for the last couple of years the City has had very good discussions with the school regarding their completing the sidewalks on their properties. He thought as each year went on they completed another segment of sidewalk on their property. He assumed that since they completed a majority of the sidewalk on the south side of 11 mile Road last year that they would be finishing that sometime in the near future. Mayor Pro Tem Capello thought that when Council put the money into escrow for Mr. Hartshorne it was wrong. He said he fully understood that this was being done in segments, but every development did that. He said if Council bought that argument for everyone no matter how big the segment they would never have these pieces put together so eventually they could fill them in. He said this wasn't on the top priority of sidewalk construction but it was somewhere above 40% so it would not be 10 years before it would be completed. He said she was just delaying this for a couple of years, and he asked her to look at the Kings situation on 11 Mile Road. The sidewalk went in last year and by that time their sprinkling system was in, their landscaping was done and that forced the City to move the sidewalk closer to the curb, which they should have done, and reroute the sprinkler system. Mayor Pro Tem Capello said he thought she would want the sidewalk in before the landscaping, etc., and Ms. Gardner said the landscaping was already in. Ms. Gardner said even though they put the money in escrow, and of all the plans and the 10 weeks spent getting through the Planning Commission, they were not notified until a year and a half after their plans were approved by the City that they also had to put the sidewalk in. After their landscaping and sprinklers, etc. were in, they received a letter from the City saying the sidewalk had to be in, and they had forgotten that when their plan was approved. Mayor

Pro Tem Capello said that might be the case and they were correcting that. He said there was a similar situation on Ten Mile Road between Dinser's and Beck Road. Ms. Gardner said she understood that, but there was not a lot of new construction left on 11 Mile Road. She said there was her house and a piece of property for sale by Taft, which had been for sale for 3 or 4 years. She said there wouldn't be any more new construction, the homes there were permanent homes and they would not go anywhere. She said these were five acre parcels and the people weren't selling them for new construction as the homes were already in place. She said it was not like an Asbury Park would be going in next to her. She saw this as this one little piece of concrete that they would put in and then in 5 years or so, if it became a priority to the City on this side of the street, then as the City put it in, it would again kind of not attach, like it was with the Asbury Park's sidewalk. She said the sidewalk was so far up into their construction that it ended in the middle of their property. She said she understood the need for sidewalks and didn't mind putting the money up so when the City wanted to do them as a whole it would be a great idea, and would look better on her property and the whole way down. It wouldn't look like the other side of 11 Mile which didn't look good because it went in piece by piece. She said if they had ever driven down there it didn't beautify the City, which was her concern with her property.

Member Mutch said he wanted to bring the discussion up a level and not focus on this specific property and sidewalk. He would talk about how the policy had gotten them into this situation for at least a second time. He said for years there were ordinance requirements that said when there was new construction on a main road, sidewalks had to be put in, and for years that was not enforced or required people putting in single family homes to do that. He thought that was an oversight and fortunately and for the better, Council had been enforcing it for the past couple of years. He said they had gotten sidewalks in with new homes in some locations and then, obviously, ran into situations like Ms. Gardner's where instead of filling a gap or filling in the missing piece in the system, they were creating a situation that was not ideal. He thought that the discussion they had not had as a Council or Administration was the application of the policy for parcels like this. The reality was that a person building a single family home on a main road was not in the same situation as a developer putting in a 50, 100, or 200 home subdivision, strip mall or industrial park. Member Mutch said they were kidding themselves if they thought they were. They are two completely different situations. He said yes, the ordinance applied equally but the result obviously, with the 11 Mile Road situation was Council saw the limitations of that. He said before even talking about how to deal with this situation they needed to address that policy. He was not advocating they move away from the policy as he thought it was good. However, he thought it needed to have some flexibility to address unusual circumstances. He reminded Council that under the Consent Agenda, Item I, Council approved a variance to the Design and Construction Standards, without any discussion, for safety paths for a situation in the Haggerty Corridor Corporate Park because of the nature of the construction and how they wanted to phase their sidewalks. He thought they made a good case why that needed to happen and at some point, they would build the sidewalks they were required to build. However, Council recognized in that situation that a strict application of the ordinance without any consideration of the situation didn't make sense, and it didn't make sense in this situation either. He said he was an advocate for sidewalks and was out there every opportunity they've had to get them.

Member Mutch said going back to Ms. Gardner's situation. He said the property owners on the south side of the road didn't have to pay a cent to have their sidewalk put in. The City paid for the entire cost and probably compensated some of the owners for easements, right-of-way

and costs associated with that. Mr. Hartshorne was given the waiver and the City set up a way for him to pay in, and whether Council agreed with that or not, it was a precedent that Council set. Now, Council was saying to this applicant that they were going to treat her differently than her neighbor, and he didn't think that was fair. Member Mutch thought she made a lot of good points, and she was setting aside the money for the future. She said with this property, it didn't make sense to design a sidewalk, which Council would end up with if they required her to meet the ordinance standards, that was 60 ft. off the road in this area. It just didn't work on 11 Mile for all the reasons Ms. Gardner explained with the existing properties. He said at the point a sidewalk was put in, it would make sense to design it to meander to address the existing landscaping. It was silly to have a sidewalk that practically went into someone's backyard. He thought the solution proposed was a good one. Ms. Gardner had been forthcoming with the funding that would help the City pay for it and it was more than the City would get for most of these sidewalk projects. He said most of the sidewalk projects had to be funded completely by the City. He thought Council would be giving Ms. Gardner equal treatment to the neighbor to the west who was similarly situated, and Council would not be discriminatory as they were giving each resident the same treatment. He said they needed to re-evaluate how the policy worked with the single family parcels so a system could be put together that would get them away from having to grant variances but also insured the City got either the funding or the construction in place. He said they could not devise that at the table tonight. So, they had to deal with what they had, which was a reasonable proposal, and treat her similarly to the previous proposal. Member Mutch said in the future this would allow them to build the sidewalk with the funds of Ms. Gardner, her neighbor and whatever funds they found to do that. Member Mutch said he would support the variance.

Member Mutch said for clarification for Mr. Schultz, he asked if an escrow or a bond would be the best thing for Council to have for a financial instrument that would set the money aside, and not get the property owner in a situation where it was sort of hanging out there as a financial commitment.

Mr. Schultz said if Council headed in that direction it would be better to have cash than anything else as opposed to a bond, letter of credit or actual escrow deposit of cash. He said from the City's perspective the issue was always would it be enough money 2, 3, or 4 years later based upon an estimate of this years construction costs. He said the question of the amount was important too.

Member Mutch asked Ms. Gardner if she would have a problem posting a letter of credit or cash as opposed to a bond. She said she had posted \$2,800 in cash with the City in May 2006. She thought it had been cashed against her account. Member Mutch said for this particular property, he thought this was the best way to address the situation. Council needed to go back and figure out how to make this policy work for the future. He didn't think they were serving themselves or Ms. Gardner by having the sidewalk going for that small segment in the context of where this was occurring. He said if her piece was the last piece, it wouldn't make sense for her not to put it in, and it sounded like she would. He said he didn't want to treat her differently than they treated her neighbor.

Member Margolis asked what the requirement was regarding when the sidewalk could go in with the bond she put down. What was the agreement? Mr. Pearson said now the obligation was on the City and they could install it any time they wanted to. It could be done this week or in 10 years. She said she had struggled with this since she read it. She said she read about

Mr. Hartshorne and said she was one that said yes it looked like they needed a piece of sidewalk in front of Ms. Gardener's home. However, when reading this she realized that that was a mistake. She didn't think there was anything wrong with the policy and was not in favor of looking at this again. She said what she saw here, quite rightly, was Ms. Gardner coming forth saying wait a minute this other parcel didn't go in, and then a third parcel comes along and says these other two parcels haven't gone in. So, before they knew it, there was a variety of parcels given a variance and that was why there wasn't a gap to fill. She said she was wrong on that first piece, and her suggestion was that if the variance wasn't granted tonight, and she couldn't support it because she could see a domino effect in the City, she would be in favor of a secondary motion to move forward on the other piece. She said that way at least they were starting to complete the pieces as they went along as was the intention of the policy. Member Margolis said Council kind of thwarted it last time, which was a reminder to her to look at the bigger picture every time she made a decision even though it affected one particular person. She said the comment was made that a variance was passed for another development. The reality was so they could put sidewalks in as those properties were developed and occupied. She thought that versus letting their construction traffic drive over the sidewalks as they tried to construct within the development were two totally different animals. Once those properties were in and the construction trucks were away, those sidewalks would be built. She said she would not be supporting this because she thought they needed to do what the policy intended to do in the first place.

Mayor Landry stated he didn't support Mr. Hartshorne's variance and he wouldn't support this variance either. He understood why someone wouldn't want a sidewalk to nowhere in front of their home. The City's policy was that it could not afford to put sidewalks in so the rule the City passed was as each new development was put in they put the sidewalk in front of their home or business, and it got piecemealed out. The City, after seeing where the gaps were, could prioritize them and fill them in. He said if they didn't require private people to put their sidewalks in the City wouldn't know where the gaps were. Mayor Landry said secondly, the landowners who ask for variances were more than willing to put the money aside right now, as this applicant was, but they didn't know if, in 5 years, that money would be enough to pay for the sidewalk. Plus, there was the administrative nightmare of having all these little escrow agreements all over the City. He said it was a tough issue but he thought the City policy was the way to go. He thought they should require private owners to put the sidewalks in and when done, the City would fill in the gaps as best they could. He would not support a motion for the variance but would support a motion to take Mr. Hartshorne's money and build that sidewalk immediately, as he felt it was unfair to have this person build a sidewalk and not Mr. Hartshorne.

Member Nagy said she would support her motion. Although, she understood what the previous speakers who were not in favor of this were saying. However, she thought the difficult thing was the fact that this was really an unusual area in the first place. There was new construction and existing developed houses. She knew that the City was piecemealing things in but she thought they needed to look at the policy to see if it made sense. She thought the rules should be bent in certain areas as they had been in other areas. She thought the escrows could be combined to make one escrow that was interest bearing instead of so many small escrows. Also, 11 Mile Road was so unusual. The Asbury sidewalk, which she was happy was in there and in the front middle section of the Vedro property; Vedro is to the east had fencing and they would have to go across everyone's property to continue it. There was no ability to meander along those five homes because there wasn't enough room. She

thought they needed to look at the fact that they were putting money away, but maybe by the time they get all the sidewalks built, Ms. Gardner's sidewalk would have to be replaced. Member Nagy said she knew they made an agreement with Mr. Hartshorne, she voted for it, and she was not going to go back on it. She said the same logic could be applied to that as was applied to this situation. She said Mr. Hartshorne had already been told he could do this and it had been an extended period of time. She said even though the money was there it was totally unfair to make a decision and then go back to that person and take it back. She said they did it for this developer because he had a good reason, they had done it before for other people and this was just one single individual. She thought it was wrong to expect them to put a piecemeal thing in front of their house because the City had a policy that might need to be reviewed. She thought it was equally wrong to take Mr. Hartshorne's property and tell him Council had changed their mind because the City took money from him. She said their minds weren't changed because new facts came to light; these were the same set of circumstances and facts. If there was another motion made she would not support it.

Mayor Pro Tem Capello stated he wanted to stand on Member Margolis' comment. He thought it was unfair to say to Ms. Gardner and to the public that a variance was granted for Northern Equities, therefore this variance should be granted. Northern Equities said they would put the sidewalks in when the buildings were up along the road so the construction didn't damage the sidewalks. He said similar to what they were asking Ms. Gardner to do. He said they granted a variance in very specific wetland areas where the impact on the wetland and the storm drain, talked about earlier tonight, would be impacted so they said in those small areas there would be no wetland. He said in areas where Northern Equities didn't control the property and didn't have to put a sidewalk in, they had agreed to fill in those gaps with a path. He said any comment about granting Northern Equities so they should grant Ms. Gardner was misleading to Ms. Gardner and the public.

Member Mutch wanted to clarify his comments. He said his point was not that Ms. Gardner and Northern Equities situations were exactly the same as they were obviously not. They were two different variance requests. He said the point was Council had looked at both and recognized that the strict application of the ordinance didn't make sense, in his mind. Member Mutch said they were not in a situation where Ms. Gardner did not want to build the sidewalk, that it would never be built, or there would never be the funds to do that leaving a gap that would never be filled. Ms. Gardner offered to set aside the money to build it and the sidewalk would be completed at some point just not strictly according to ordinance standards.

Member Mutch said based on Ms. Gardner's plot plan provided in the packet, obviously, there wasn't a 60 foot right-of-way in this location. He asked if she was required to provide an easement for the sidewalk if it fell outside of the statutory right-of-way or would the City have to compensate her for that.

Mr. Schultz said he didn't know if the sidewalk was shown in the existing easement or right-of-way or not but the obligation was to put the sidewalk in with the construction even if she had to provide the appropriate easement for it. Member Mutch said without compensation, and Mr. Schultz agreed.

Member Mutch said for the property owners on the south side or, for example, on 11 Mile and Beck with Ms. Ward they did have to acquire an easement to put it in because it fell outside the right-of-way. Mr. Schultz said that's correct without the new construction.

Roll call vote on CM-07-02-040

Yeas: Mutch, Nagy  
Nays: Margolis, Landry, Capello, Gatt  
Abstain: Paul

**CM-07-02-041 Moved by Gatt, seconded by Margolis; MOTION CARRIED:  
To deny the request of the applicant to receive a variance from  
the Sidewalk Ordinance in front of her property because building a  
sidewalk would not result in exceptional practical difficulty to the  
applicant, and that Council direct the City to build the sidewalk in  
front of Mr. Hartshorne's house.**

Mayor Landry asked for a friendly amendment to add that Council direct the City to build the sidewalk in front of Mr. Hartshorne's house. Member Gatt accepted the amendment.

## **DISCUSSION**

Member Mutch said he wouldn't support the motion; it didn't make any sense to build the sidewalk in front of Mr. Hartshorne's property if this was some kind of idea of fairness. He thought he highlighted some of the problems they were facing in that area, and Member Mutch still believed that for that section of 11 Mile, it made a lot more sense to do that as a total project. Member Mutch said Mr. Hartshorne explained when he was before Council that it would be next to impossible to put the sidewalk in at the 60 ft. statutory right-of-way. So, what they would ask our City engineers, because it was now a City project, was to go back and to some extent design the east and west of that to figure out the best place to put the path dealing with the landscaping that was there. He thought discussing this at this point was premature. He said obviously the motion would be denied but to take any action beyond that without the information Council should have didn't make any sense.

Roll call vote on CM-07-02-041

Yeas: Landry, Capello, Gatt, Margolis  
Nays: Mutch, Nagy  
Abstain: Paul

## **6. Consideration of resolution to vacate a portion of Orchard Avenue/Paul Bunyan/Sixth Gate Right of Way adjacent to the Main Street Novi development, east of Novi Road.**

Mr. Schultz said a resolution was in Council packets that would accomplish the vacation if Council chose. He said they received a letter indicating that the easements that the City would typically require for access had not yet been provided. He said Council might want to consider that the effective date of the vacation be from the date the cross access easements were received by the City.

Member Mutch asked Mr. Schultz to address the point that Mr. Cassis brought up, the fact that he owned a portion of the property north of Paul Bunyan that fell within the plat. He said with his understanding of how roads were vacated, Mr. Cassis would then be entitled to a portion of that property with the rest going to the Main Street development to the south. He asked if that

was the correct understanding of the situation, and was there anything Council needed to do to make that clearer or was that someone else's job to address who got what property.

Mr. Schultz said one of the issues that the vacation brought out was subsequent ownership taxation, which was from the City's perspective who the tax bill went to. He said the area of Harmon Glass on the north side of Paul Bunyan or a portion that would be vacated fell within the same plat that the rest of Paul Bunyan was located in. He said most of the area of Paul Bunyan that was going to be vacated would likely be treated by the City as falling under the subsequent ownership of the Triangle Group. The small portion close to Novi Road, part of the same plat, should go to the property owner on the other side who was Mr. Cassis. Mr. Schultz said they were working on their own sort of private cross access easements, and Mr. Cassis said today that they were not at the point where they had reached an agreement. He said in the resolution before Council, the City was reserving its own public easement for access. He suggested that the effective date of the resolution be from the date the City received acceptable easements from the site plan perspective, which was ongoing. In terms of the future, from the City's perspective, the question of what happens ended with the resolution. However, the property owners often want some guarantee that they own the area that had been vacated. Mr. Schultz said there were ways for the private property owners to do that and could include a Circuit Court lawsuit that would name the City and others as defendants. He didn't know if there was a resolution by the private property owners that they were going to do that, it was not something the City needed to institute. At this point, the City was going to split the property along sort of accepted lines for assessment purposes. If they get a dispute, they would have to deal with it at that time.

Member Mutch said once this was vacated it would create two parcels. One that would be Mr. Cassis' parcel and one that would be the Main Street parcel. Then, from there forward, that was the City's responsibility as far as assessment, taxation and anything else that was going to be sorted out between the private parties. Mr. Schultz said correct, they would be combined for assessment purposes with whatever property was appropriately adjacent. He said whether that was sufficient for the private property owners or their title companies, or their subsequent purchasers was a different issue they would resolve on their own.

Member Mutch asked Mr. Cassis if he was comfortable that Council had addressed the concerns he had with the situation, and that they could move forward and then he could move forward with what he needed to do. Mr. Cassis suggested that Council wait to vacate until the final agreement between him and Triangle was settled. He said vacation could be asked for by one party and not by the other party so the other party still had their rights. He didn't want to oppose it until an agreement was reached because he felt that Triangle would come forward eventually.

Member Mutch said the site plans approved for Main Street were based on this being a public road and asked if the vacation created any kind of issues. He said they were seeking this because of the setback issues and asked if that was part of the site plan approval.

Mr. Schultz said the site plan did show the vacation of this area and contemplated that there be cross access easements. He said one of the issues they often run into was that the parties working on the cross access easements didn't have the same ideas as to what the terms should be. He said Council had held a public hearing on this, so in terms of when to approve the vacation was within Council's discretion. Member Mutch said in terms of the review of the

site plan and setbacks, etc. did that contemplate the potential that Mr. Cassis' property would be set up separately. He said Mr. Cassis was not obligated to be part of the site plan, and that might trigger setback issues. Mr. Schultz said he couldn't answer that question. Member Mutch said from a policy viewpoint they didn't want to delay this unnecessarily, however, on the other hand they didn't want to create another problem by moving forward.

Ms. McBeth said she had brought the site plan that was presented at the Planning Commission meeting and would put it on the overhead. She showed the area of vacation and said the preliminary site plan did contemplate either a street vacation or some modifications being done to the final site plan. It seemed with the preliminary site plan that the applicant was going to pursue a street vacation and that was why it was being brought before City Council this evening.

Member Mutch said in looking at the plan, obviously, they contemplated using Mr. Cassis' property. Ms. McBeth said on this plan, yes. She said there was a discussion with the preliminary site plan that there would be curb cut access provided in a couple of locations on the north side. She said they always understood there would be modifications on the final site plan to provide access. Member Mutch hoped they would come to an agreement but if he decided he didn't want to be a part of that could she show on the map where Mr. Cassis' property would be falling into the area of the vacation. Ms. McBeth showed him where Harmon Glass, the small parking lot, and the aerial photos showed the green grass area with trees. Member Mutch said then it did impact where the entrance and parking was falling. She pointed out the main entrance to the Harmon Glass building, and he said he was talking about the entrance where Paul Bunyan exists. He said obviously, if Mr. Cassis' property comes south, that would take up about half of that entrance area, correct. Ms. McBeth said yes.

Mayor Pro Tem Capello asked Ms. McBeth to show Council how far to the east of 554 ft. of vacated Paul Bunyan would go. She showed him the extension of the existing Paul Bunyan Dr. He asked if George Keros' piece was to the north. Ms. McBeth said it was the Novi Pavilion where Kinko's was.

Mayor Pro Tem Capello said normally when a street was vacated, it went from the center line to each of the abutting property owners. He asked if Mr. Cassis or Mr. Keros had waived off on having access to half of it. Mr. Schultz said certainly not as to Mr. Cassis. He said Mr. Cassis' parcel, the Harmon Glass parcel, was the only parcel along Paul Bunyan that was in the same plat. He didn't know the extent of it but would assume that at least half of the Paul Bunyan right-of-way that would then become ownership along with the Harmon Glass property. The property further east of there was not part of the same plat. He thought the expectation was that when the property was assessed all of that would go to the Triangle parcel and not to the Keros property.

Mayor Pro Tem Capello said then the issue was whether or not it was in the same plat. He asked about older subdivisions that didn't have a plat. Mr. Schultz said common grantors could make a difference in terms of who got the ownership of a vacated parcel. The general rule would be that it went to abutting property owners on either side. Mr. Schultz said but this parcel was always within single ownership with that plat. He said that was essentially the way it was handled further east on Paul Bunyan. Mayor Pro Tem Capello said then we are sure that Keros would have claim to this. Mr. Schultz said their expectation was that if the Council vacated, they would have Mr. Lemmon assess the property. If there was a dispute

about the ownership or whether the assessment was appropriate, then the private property owners would take whatever remedies they had amongst themselves with regard to the City. Mr. Schultz said our intention would most likely be to assess it the way they described.

Mayor Pro Tem Capello said Mr. Schultz brought up the issue of the effective date in getting the cross easements even though he saw that the resolution did reserve an easement for ingress and egress. He said he could see waiting to get an actual grant from them to record with the deed. However, the legal description described the entire 60 ft. wide piece without taking into account the possible 30 ft. strip that Mr. Cassis should be entitled to.

Mr. Schultz said that description was just for the vacation area. He said regarding the easement that would be whatever was negotiated during the site plan process. It didn't really contemplate or discuss what the ownership would be. Mayor Pro Tem Capello said the vacation doesn't vacate to a particular person it just vacates in general. Mr. Schultz said it vacated in general to the legal description and the ownership would be sorted out after. Mayor Pro Tem Capello said then we really don't have to worry about Mr. Cassis tonight. If he was going to get his 30 ft. from the center line towards his property, he would have the ability to negotiate with Mr. Nona on how that took place and how it affected his property. Mr. Schultz said it was fair to say but he would add the comment that one of the things that Council took into consideration in vacating any road was whether there was an objection from an adjacent property line. So, to the extent that Mr. Cassis had made comments on the record about the fairness of the vacation would be something Council would take into consideration. Mayor Pro Tem Capello asked if that was something he could decide when he determined who the vacation went to. Mr. Schultz said Council did not determine who it went to. The action of Council tonight was do they want to vacate this road and was now the appropriate time. If it determined, as part of the overall Triangle Development and the effect of the development on neighboring property owners, that it was the right thing to do, the action was to vacate and the ownership sorts itself out by operation of the statute. Mayor Pro Tem Capello asked who interpreted the statute and made that decision. Mr. Schultz said administratively what would happen was through Mr. Lemmon's office, just as they did further east, apportion the property probably along the lines of the eastern most part going to the Nona parcel, the western north part around Novi Road splitting under the statute between Mr. Cassis and Triangle. Mr. Schultz said it didn't need to be a part of Council's motion because it was an administrative operation. Mayor Pro Tem Capello said it didn't seem like this needed to be delayed if the result was that Mr. Cassis had control of his piece anyway. He would have full bargaining power with Mr. Nona.

Mr. Cassis said he was not an attorney but thought they might want to say something in conjunction with what Mr. Schultz just said. He said what if he didn't want to vacate his portion; what's the answer to that. How could Council vacate a street and half of it didn't want to vacate. After all, if it was vacated it had to be maintained and you have to take ownership. He said what if he wanted the City to keep ownership. Mayor Pro Tem Capello asked if he knew what he wanted tonight. Mr. Cassis thought Council needed to delay this until he could come before Council with an agreement between himself and Triangle. Mr. Cassis said he sat down with Triangle months ago, he sent them a suggestion, paid an attorney to do it, and they chose not to come forward and do it in time so here we are. He thought it should be postponed.

Member Nagy said they could just not vacate that portion and leave the end of the road there and not do anything on it. She thought Mr. Cassis had a good point. She said they had talked about this whole area, vacation and who owned what area for a long time before Triangle even came before Council. She said she was not comfortable saying they would vacate this until Council got cross access easements, and then they don't work it out. She thought Mr. Cassis had a good point, and she would prefer that Mr. Cassis and Triangle work out whatever they were going to do. She said Council didn't even know if Mr. Cassis wanted to vacate. She thought they needed an agreement and Council was too premature on this issue. She said they should work it out, tell Council what they're doing, and then she would be happy to vacate it. She didn't feel comfortable on a legal basis doing something like this.

**CM-07-02-042      Moved by Capello, seconded by Nagy; CARRIED UNANIMOUSLY:  
To postpone the proposed vacation of a portion of Orchard  
Avenue/Paul Bunyan/Sixth Gate right-of-way until the first meeting in  
March.**

## DISCUSSION

Member Gatt said he would support the motion, and was thrilled that Triangle was going to come in and spend millions of dollars developing Main Street. On the other hand, Mr. Cassis was a pioneer of this City and he would not vote on anything that would hurt him in any way. He said let's let them work it out.

Member Margolis said there was a mention about waiting for a cross access easement, and her understanding was that was not the easement that Council would be pending. She said the easement that Council would make this pending would be the City easements to the property. Their cross access easements would be between the two of them.

Mr. Schultz said part of the site plan approval requirements would be both of those kinds of easements. A cross access easement between the two property owners was something they would expect to see along with the final site plan but he'd include language in the site plan and the documents that would also grant just a general public easement, which was reserved in the resolution. He said it was really both things. She said they would wait on this pending the City's public easement, and Mr. Schultz agreed. She said that would be needed in final site plan.

Member Margolis said she would support the motion to postpone but she was dismayed because she would like to see Main Street move forward. She thought it was really important but she didn't want to make a quick decision. She said Council made vacation decisions based on the public good. She stated she would be interested in information regarding what the City's legal exposure would be based on the discussion tonight, if Council went forward with this. She said there was talk about suits that could be filed in terms of ownership of this and asked what exposure would the City have in that situation, and it could come later.

Member Paul said she had no problem supporting this motion and waiting until they had more information, and hopefully the parties could agree. She wanted to see Main Street move forward and also wanted to respect the owners of the property who had been here for a very long time. She said this was probably the third or fourth time vacation had come up and all of it had been on this site in the 5 ½ years that she had on the Planning Commission and

Council. The first few times it was on the Planning Commission and it was speaking directly about the bank not recording the easements correctly, and Mr. Lemmon figured out there were some problems and came to the Planning Commission to change the lines. She said since this kept coming up and 5 ½ years later they were still talking about it, she would like to have a legal understanding and documentation from Mr. Schultz about all the ramifications this would incur for Council. She asked for the information in an off week packet.

Mayor Landry asked Mr. Schultz if he understood correctly that for the purposes of vacation, he was suggesting it be made effective when the public cross access easement had been obtained. However, Triangle Development would not get final site plan approval until the private cross access easement was worked out. Mr. Schultz said he was correct. Mayor Landry said so eventually these two parties would have to come together, and Mr. Schultz agreed.

**Roll call vote on CM-07-02-042**

**Yeas: Nagy, Paul, Landry, Capello, Gatt, Margolis,  
Mutch**

**Nays: None**

## **MAYOR AND COUNCIL ISSUES**

### **1. Mayor's Exchange with the City of Wyoming: Thursday, May 16 Novi travels to Wyoming and Wednesday, May 22 Novi hosts Wyoming - Mayor Landry**

Mayor Landry said they had a very beneficial Mayor's exchange, which was actually the Council and Administrative exchange last year. This year they were looking at the City of Wyoming. This would be in May; however there had been a change since the agenda had been printed.

Mr. Pearson said they had spoken with the City of Wyoming and they were looking forward to the exchange as well. However, the dates suggested were Wednesday, May 2, and Tuesday, May 8<sup>th</sup>. Mayor Landry asked how those dates were for everyone. There were no objections to those dates. Mr. Pearson said they would formalize that in a note.

### **2. Vista Hills Street Acceptance – Member Mutch**

Member Mutch said at least a month ago Council got information regarding the Vista Hills street situation that Council had first discussed in July, 2006. He said the issue was that Vista Hills had some private streets they wanted the City to take over. At that time, Council agreed to look at that, and the City went out and looked at those streets. He said his understanding was there were questions regarding the extent of the repairs needed, and whether they would have the money to cover it. He said options were offered as to how they could proceed, whether they would be required to cover all the costs for repairs before the City accepted the streets or some of the costs. At this point, he would be looking to get this issue moving one way or another and have it back for Council consideration. When this was talked about in July

there was discussion of the fact that with Vista Hills being private streets and then moving to public streets that there were other subdivisions and condominium associations in the City in a similar situation, and whether Council would want to give consideration to looking at those. He said there had been one presentation this evening from Briarwood, and he knew there had

been discussion of a couple other associations in a similar holding pattern regarding whether they would approach the City or not. Member Mutch said before dealing with Vista Hills specifically, Council needed to discuss again how they wanted to proceed with private streets moving to public streets. He thought there was confusion in the community about what the Council wanted in terms of a policy and moving forward. He didn't think there was enough background information to make any decisions unless Council members brought it. He thought this would be something to discuss on a future agenda.

Mayor Landry said he would be very much in favor of trying to formalize, and at least attack the problem of what they were going to do with this. However, he thought they had crossed the rubicon in Vista Hills. He said they had been at this for a long time. He said they had invested, and he thought they were the ones that Council told if they fixed the road and brought them up to standards, Council would seriously consider accepting them. Mayor Landry thought they should move forward on Vista Hills, but this was something they clearly needed to talk about what they would do in the future.

Member Nagy thought Member Mutch was right. She said it was really the policy that they needed to have because she thought there were 3 or 4 places that had not been accepted. She said the ones she knew of were Briarwood, Maples of Novi and Lakewood, which were not private roads because the public used them all the time. She thought Member Mutch was also indicating that Council said OK to Vista Hills but they didn't pay the full amount because the streets weren't in the condition they said they were in. Member Nagy said one of the things that happened to associations, more homeowners associations than condominium associations, was they just didn't put enough money away for roads. She said it got very expensive to do their roads, and what she was looking for in terms of change of policy was fairness to the taxpayer. Member Nagy said everyone in her area, Lakewood Park Homes, didn't get the same tax benefit that everyone else did. She said neither did Briarwood because people could go through those streets and there was nothing on those streets that said they were private. She said it was a policy issue because if the streets had not been accepted in Briarwood, Maples of Novi and Lakewood, and the rest of the City had been accepted, she thought it was getting to be very discriminatory. Member Nagy said their last policy when talking about the Vistas, the City Attorney said it was at the discretion of Council and that same discretion, in her mind, was really discriminatory. She said they also chip seal areas on the north side that didn't meet City standards either, and it wasn't fair to the taxpayer. Member Nagy thought the policy needed to be looked at because it was blatantly unfair if Council continued to do things at their discretion.

Member Gatt asked what drove an association to build a development with private roads. Mr. Schultz said it was a development choice by the developer before the association was created. He said there were many reasons such as financial and practical that went into that determination. It might be cheaper, a different kind of road, etc., and it depended on the particular circumstance and the developer. Member Gatt asked if there were any private developments with these private roads that met all of the City standards, and just chose to be private. Mr. Schultz said that was not a question he could answer handily.

Member Margolis thought they needed more information as this was a policy issue they needed to look at. She wanted to know what were the private streets in the area, what agreements were in place, what the streets were, and what had been accepted and why. She didn't want to spend a ton of money doing that investigation but she thought that information

was needed before looking at this. She said she was concerned about Vista Hills. Member Margolis commented that her understanding was there were certain discussions with them that their roads could be accepted, so she thought they had to honor those kinds of discussions. She requested that information be included in the Council packet.

Member Paul said this was a policy discussion that should have happened the first time they accepted some of the private roads. She said if they went back to Walden Woods, it was a private condominium complex, those residents did not know they had private streets, and the City accepted them. She said the City had paid close to a million dollars for road repair on their concrete roads, and this had also been done in several other subdivisions. She thought the precedence had already been set so now the questions asked by Briarwood Village and Vista Hills was kind of secondary because the precedence had already been set. She thought a formal discussion would be good but the fairness was that everyone had to be treated equally.

Member Mutch agreed with the Mayor that Council had already made a commitment to Vista Hills based on the previous meeting. He asked what state the roads had to be in before Council would accept them; he thought that was still an open question. Member Mutch said individually, as Council members, they needed to make clear whether it was OK for the Administration to bring that forward, and based on the conversation tonight he assumed Council was comfortable with that moving forward. As Member Margolis noted, he said there was a lot of information that needed to be put together before they could have a policy discussion to at least understand what the scope was. Member Mutch said not every situation was the same. He thought there were differences between some of these street acceptances in terms of what was built to public standards in the last five years versus things built 10 or 12 years ago and what the standards were at that time. He said they had to be clear about that but the basic fairness issue was a good point because there were people paying taxes, paying for the neighborhood road program and they were not seeing a benefit from that. He thought that needed to be a part of the discussion.

Member Nagy thought the issue was a policy discussion, and was glad that Member Mutch brought up the things that Council needed to look at. She said every thing was different, Council's were different and acceptance rules were different with things built 10 to 30 years ago. She said she wasn't looking for anything specific for the area she represented but was looking to be fair to all taxpayers, because if you're one of the people with private roads and you're budgeting money all through the years for the repairs of the roads, yet there's a road bond that the taxes go to, it wasn't fair to the taxpayers. She felt that a lot of historical research had to be done, and she didn't want just engineering answers.

**AUDIENCE PARTICIPATION – None**

**ADJOURNMENT**

There being no further business to come before Council, the meeting was adjourned at 9:33 P.M.

\_\_\_\_\_  
David Landry, Mayor

\_\_\_\_\_  
Maryanne Cornelius, City Clerk

\_\_\_\_\_  
Transcribed by Charlene Mc Lean

Date approved: