



cityofnovi.org

CITY of NOVI CITY COUNCIL

Agenda Item L
February 22, 2010

SUBJECT: Acceptance of a Conservation Easement from Brightmoor Christian Church, for the property located on the north side of Thirteen Mile Road, west of M-5. The easement contains 2.9 acres.

SUBMITTING DEPARTMENT: Community Development Department - Planning *Plan*

CITY MANAGER APPROVAL: 

BACKGROUND INFORMATION:

Brightmoor Christian Church (previously known as Brightmoor Tabernacle) received Final Site Plan approval from the Planning Department on October 7, 1999, for SP 98-28A. The Planning Commission approved the Preliminary Site Plan on November 4, 1998 with a proposed conservation easement for wetland and wetland mitigation near the southeast part of the development. The development includes the Brightmoor Christian Church and school complex along with associated surface parking and drainage facilities.

The attached Exhibit B depicts the area being preserved. The easement covers about 7.3% of the 40.1 acre site. There are a substantial amount of wetlands and wetland mitigation that will fall within the easement.

The easement has been reviewed by the City's professional staff and consultants and is currently in a form acceptable to the City Attorney's office for approval by the City Council.

RECOMMENDED ACTION: Acceptance of a Conservation Easement from Brightmoor Christian Church, for the property located on the north side of Thirteen Mile Road, west of M-5. The easement contains about 2.9 acres.

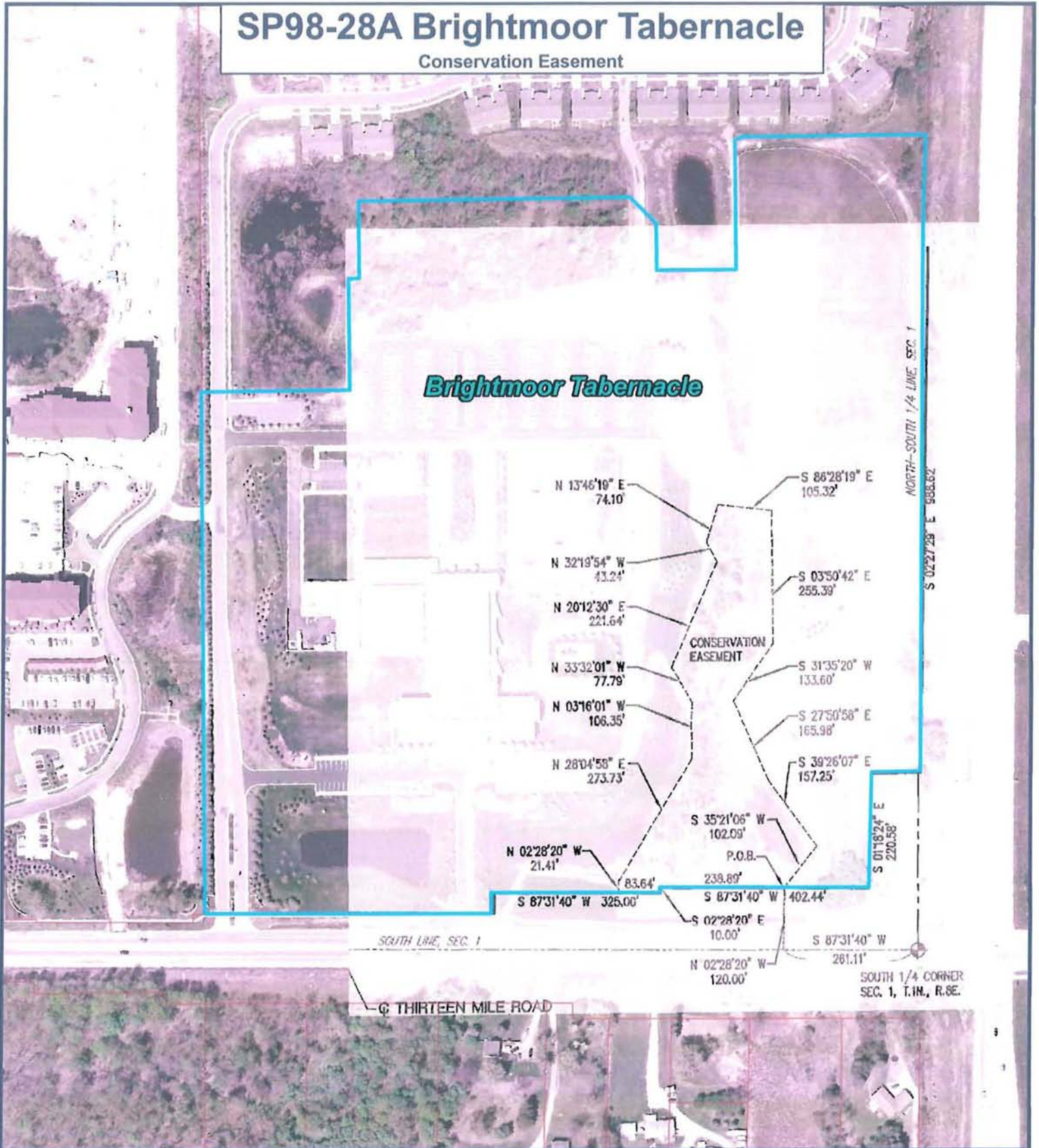
	1	2	Y	N
Mayor Landry				
Mayor Pro Tem Gatt				
Council Member Crawford				
Council Member Fischer				

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

Location Map

SP98-28A Brightmoor Tabernacle

Conservation Easement



Map Author: Mark Spencer
 Date: 1/4/10
 Project: Brightmoor Tabernacle Conservation Easement
 Version #: 1.0

Map Legend

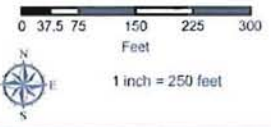
 Tax Parcels

MAP INTERPRETATION NOTICE

Map information depicted is not intended to replace or substitute for any official or primary source. This map was intended to meet National Map Accuracy Standards and use the most recent, accurate sources available to the people of the City of Novi. Boundary measurements and area calculations are approximate and should not be construed as survey measurements performed by a licensed Michigan Surveyor as defined in Michigan Public Act 132 of 1970 as amended. Please contact the City GIS Manager to confirm source and accuracy information related to this map.



City of Novi
 Planning Division
 Community Development Dept.
 45175 W Ten Mile Rd
 Novi, MI 48375
 cityofnovi.org



City Attorney Review Letter

February 12, 2010

30903 Northwestern Highway
P.O. Box 3040
Farmington Hills, MI 48333-3040
Tel: 248-851-9500
Fax: 248-851-2158
www.secretwardle.com

Elizabeth M. Kudla
Direct: 248-539-2816
bkudla@secretwardle.com

Barb McBeth, Deputy Community Development Director
City of Novi
45175 West Ten Mile Road
Novi, Michigan 48375-3024

**Re: Brightmoor Christian Church
Conservation Easement
Our File No: 72236. NOV**

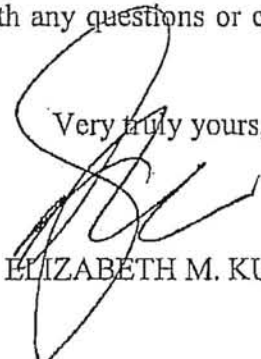
Dear Ms. McBeth:

We have reviewed and approved the Conservation Easement dated January 28, 2010, pertaining to the Brightmoor Christian Church Property, a copy of which is enclosed. The Conservation Easement provides for the protection, in perpetuity of wetlands in the southeast corner of the subject property. Except for activities approved by the City, the wetland areas, including trees and vegetation shall not be disturbed. The terms of the Conservation Easement are sufficient for these purposes. The exhibits describing and depicting the protected wetland areas have been approved by Community Development. The original Conservation Easement is not yet in our possession. It is our understanding that the City still has the original document.

Once approved by City Council and executed by the City, the original should be recorded with the Oakland County Register of Deeds.

Please feel free to contact us with any questions or concerns in regard to this matter.

Very truly yours,



ELIZABETH M. KUDLA

EMK

Enclosure

C: Maryanne Cornelius, Clerk (w/Enclosure)
Mark Spencer, Planner (w/Enclosure)
Norm Frechette, Administrative Pastor (w/Enclosure)
Thomas R. Schultz, Esquire (w/Enclosure)

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Conservation Easement and Exhibits

CONSERVATION EASEMENT

THIS CONSERVATION EASEMENT made this 28th day of Jan., 2010, by and between Brightmoor Christian Church, a Michigan Ecclesiastical Corporation, formerly known as Brightmoor Tabernacle of Detroit, a Michigan Ecclesiastical Corporation ("Grantor") whose address is 40800 Thirteen Mile Road, Novi, MI 48377 and the City of Novi, and its successors or assigns, whose address is 45175 W. Ten Mile Road, Novi, MI 48375, ("Grantee").

RECITATIONS:

A. Grantor a certain parcel of vacant land situated in Section 1, T.1N, R8E, of the City of Novi, Oakland County, Michigan, described in Exhibit A, attached hereto and made a part hereof ("Property"). Grantor has received final site plan approval for construction of an institutional development on the Property, subject to provision of an appropriate easement to protect the wetland areas located thereon from destruction or disturbance. Grantor desires to grant such an easement in order to protect the area.

B. The Conservation Easement Areas situated on the Property are more particularly described on Exhibit A, and depicted on Exhibit B made a part hereof.

NOW, THEREFORE, Grantor hereby reserves, conveys and grants the following Conservation Easement, which shall be binding upon the Developer, the Owner of the Subject Property, and their respective heirs, successors, assigns and/or transferees and shall be for the benefit of the City, all owners and purchasers of the property in the condominium, the Developer and their respective heirs, successors, assigns and/or transferees. This Conservation Easement is dedicated pursuant to subpart 11 of part 21 of the Natural Resources and Environmental Protection Act being MCL 324.2140, et. Seq., upon the terms and conditions set forth herein as follows:

1. The purpose of this Conservation Easement is to protect the existing wetlands, as shown on the attached and incorporated Exhibit. The subject areas shall be perpetually preserved and maintained, in their natural and undeveloped condition, unless authorized by permit from the City, and, if applicable, the Michigan Department of Environmental Quality and the appropriate federal agency.

2. Except for and subject to the activities which have been expressly authorized by permit, there shall be no disturbance of the Wetlands, including altering the topography of; placing fill material in; dredging, removing or excavating and soil, minerals, trees, or vegetation from constructing or placing any structures on; draining surface water from; or plowing, tilling, cultivating, or otherwise

altering or developing, and/or constructing, operating, maintaining any Use or Development in the Easement Area.

3. No grass or other vegetation shall be planted in the Wetlands with the exception of plantings approved, in advance, by the City in accordance with all applicable laws and ordinances.

4. This Conservation Easement does not grant or convey to Grantee, or any member of the general public, any right of ownership, possession or use of the Easement Area, except that, upon reasonable written notice to Grantor. Grantee and its authorized employees and agents (collectively, "Grantee's Representatives") may enter upon and inspect the Easement Area to determine whether the Easement Area is being maintained in compliance with the terms of the Conservation Easement.

5. In the event that the Grantor shall at any time fail to carry out the responsibilities specified within this Document, and/or in the event of a failure to preserve and/or maintain such areas or facilities in reasonable order and condition, the City may serve written notice upon the Grantor setting forth the deficiencies in maintenance and/or preservation. Notice shall also set forth a demand that the deficiencies be cured within a stated reasonable time period, and the date, time and place of the hearing before the City Council, or such other Council, body or official delegated by the City Council, for the purpose of allowing the Developer and/or Property Grantor to be heard as to why the City should not proceed with the maintenance and/or preservation which has not been undertaken. At the hearing, the time for curing the deficiencies and the hearing itself may be extended and/or continued to a date certain. If, following the hearing, the City Council, or other body or official, designated to conduct the hearing, shall determine that maintenance and/or preservation have not been undertaken within the time specified in the notice, the City shall thereupon have the power and authority, but not obligation, to enter upon the property, or cause its agents or contractors to enter upon the property and perform such maintenance and/or preservation as reasonably found by the City to be appropriate. The cost and expense of making and financing such maintenance and/or preservation, including the cost of notices by the City and reasonable legal fees incurred by the City, plus an administrative fee in the amount of 25% of the total of all costs and expenses incurred, shall be paid by the Grantor, and such amount shall constitute a lien on an equal pro rata basis as to all of the lots on the property. The City may require the payment of such monies prior to the commencement of work. If such costs and expenses have not been paid within 30 days of a billing to Grantor, all unpaid amounts may be placed on the delinquent tax roll of the City, pro rata, as to each lot, and shall accrue interest and penalties, and shall be collected as, and shall be deemed delinquent real property taxes, according to the laws made and provided for the collection of delinquent real property taxes. In the discretion of the City, such costs and expenses may be collected by suit initiated against the Grantor, and, in such event the Grantor shall pay all court costs and reasonable attorney fees incurred by the City in connection with such suit.

6. Within 90 days after the Conservation Easement shall have been recorded, Grantor at its sole expense, shall place such signs, defining the boundaries of the Easement Area and, describing its protected purpose, as indicated herein.

7. This Conservation Easement has been made and given for a consideration of a value less than One Hundred (\$ 100.00) Dollars, and, accordingly, is (i) exempt from the State Transfer Tax, pursuant to MSA 7.456(26)(2) and (ii) exempt from the County Transfer Tax, pursuant to MSA 7.456(5)(a).

8. Grantor shall state, acknowledge and/or disclose the existence of this Conservation Easement on legal instruments used to convey an interest in the property.

IN WITNESS WHEREOF, Grantor and Grantee have executed the Conservation Easement as at the day and year first above set forth.

GRANTOR

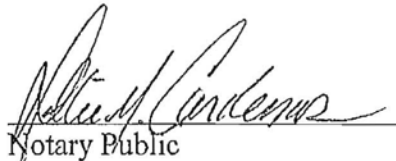
BRIGHTMOOR CHRISTIAN
CHURCH, a Michigan
Ecclesiastical Corporation,



By: Norman J. Kjos Jr.
President

STATE OF MICHIGAN)
)ss
COUNTY OF OAKLAND)

The foregoing instrument was acknowledged before me this 28th day of January, 2010, by Norman J. Kjos the President of Brightmoor Christian Church, on its behalf.



Notary Public
Oakland County, Michigan
My Commission Expires: 11/12/2011

HOLLIE M. CARDENAS
Notary Public, State of Michigan
County of Oakland
My Commission Expires Nov. 12, 2011
Acting in the County of Oakland

GRANTEE

CITY OF NOVI, a Michigan
Municipal Corporation

By: David Landry Its: Mayor

By: Maryanne Cornelius Its: Clerk

STATE OF MICHIGAN)
)ss
COUNTY OF OAKLAND)

The foregoing instrument was acknowledged before me on this ____ day of _____, 200_, by, David Landry and Maryanne Cornelius on behalf of the City of Novi, a Municipal Corporation.

Notary Public
Oakland County, Michigan
My Commission Expires: _____

Drafted by:

Elizabeth M. Kudla
30903 Northwestern Highway
P.O. Box 3040
Farmington Hills, MI 48333-3040

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

Exhibit A

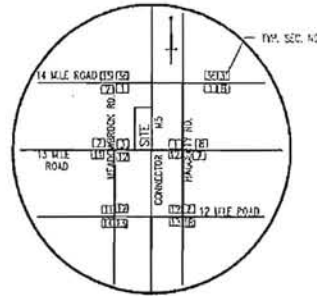
LEGAL DESCRIPTION – PARCEL

PART OF THE S.W. 1/4 OF THE S.E. 1/4 OF SECTION 1, T1N., R8E., CITY OF NOVI, OAKLAND COUNTY, MICHIGAN DESCRIBED AS:

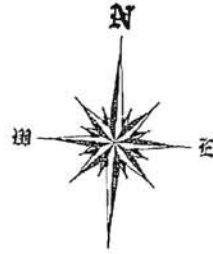
COMMENCING AT THE SOUTH 1/4 CORNER OF SAID SECTION 1 AND PROCEEDING ALONG THE NORTH AND SOUTH 1/4 LINE OF SAID SECTION 1, N 03°02'24" W, 342.99 FEET TO THE POINT OF BEGINNING; THENCE S 85°58'05" W, 89.71 FEET; THENCE S 01°18'24" E, 220.58 FEET TO THE NORTH RIGHT-OF-WAY LINE OF THIRTEEN MILE ROAD; THENCE THE FOLLOWING (5) COURSES ALONG SAID NORTH RIGHT-OF-WAY LINE; S 87°31'40" W, 402.44 FEET; THENCE S 02°28'20" E, 10.00 FEET; THENCE S 87°31'40" W, 325.00 FEET; THENCE S 02°28'40" E, 40.00 FEET; THENCE S 87°31'40" W, 549.59 FEET; THENCE N 03°16'01" W, 998.31 FEET; THENCE N 86°43'59" E, 284.86 FEET; THENCE N 03°16'01" W, 213.72 FEET; THENCE N 86°43'59" E, 20.00 FEET; THENCE N 03°16'01" W, 148.00 FEET; THENCE N 86°43'59" E, 521.75 FEET; THENCE S 48°16'01" E, 72.27 FEET; THENCE S 03°16'01" E, 89.66 FEET; THENCE N 86°57'37" E, 152.30 FEET; THENCE N 03°16'01" W, 247.41 FEET; THENCE N 63°44'51" E, 16.70 FEET; THENCE N 86°53'26" E, 334.29 FEET; THENCE N 86°53'26" E, 18.07 FEET; THENCE ALONG A CURVE TO THE LEFT, RADIUS=11730.16 FEET, CHORD BEARING S 01°53'54" E, 229.19 FEET, AN ARC DISTANCE OF 229.02 FEET; THENCE S 02°27'29" E, 988.62 FEET; THENCE S 85°58'05" W, 3.49 FEET TO THE POINT OF BEGINNING. PARCEL CONTAINS 40.15 ACRES OF LAND.

ISSUED FOR: Per City Review	REV'D BY: TCS	ISSUED FOR:	REV'D BY:
Sujak Engineering, PLC. CIVIL ENGINEERING, DESIGNING & PLANNING 4031 COOLIDGE HIGHWAY TROY, MI 48098 PHONE: 248.885-8431 FAX: 248.885-8432 EMAIL: SUJAK.ENGINEERING@COMCAST.NET			
DRAWN BY TCS	JOB No. 09-054	DESCRIPTION Conservation Easement	
DATE 12/5/09	SHEET No. 2 of 2	SCALE None	SW 1/4, Sec. 1, T.1N, R.8E.
SEAL			

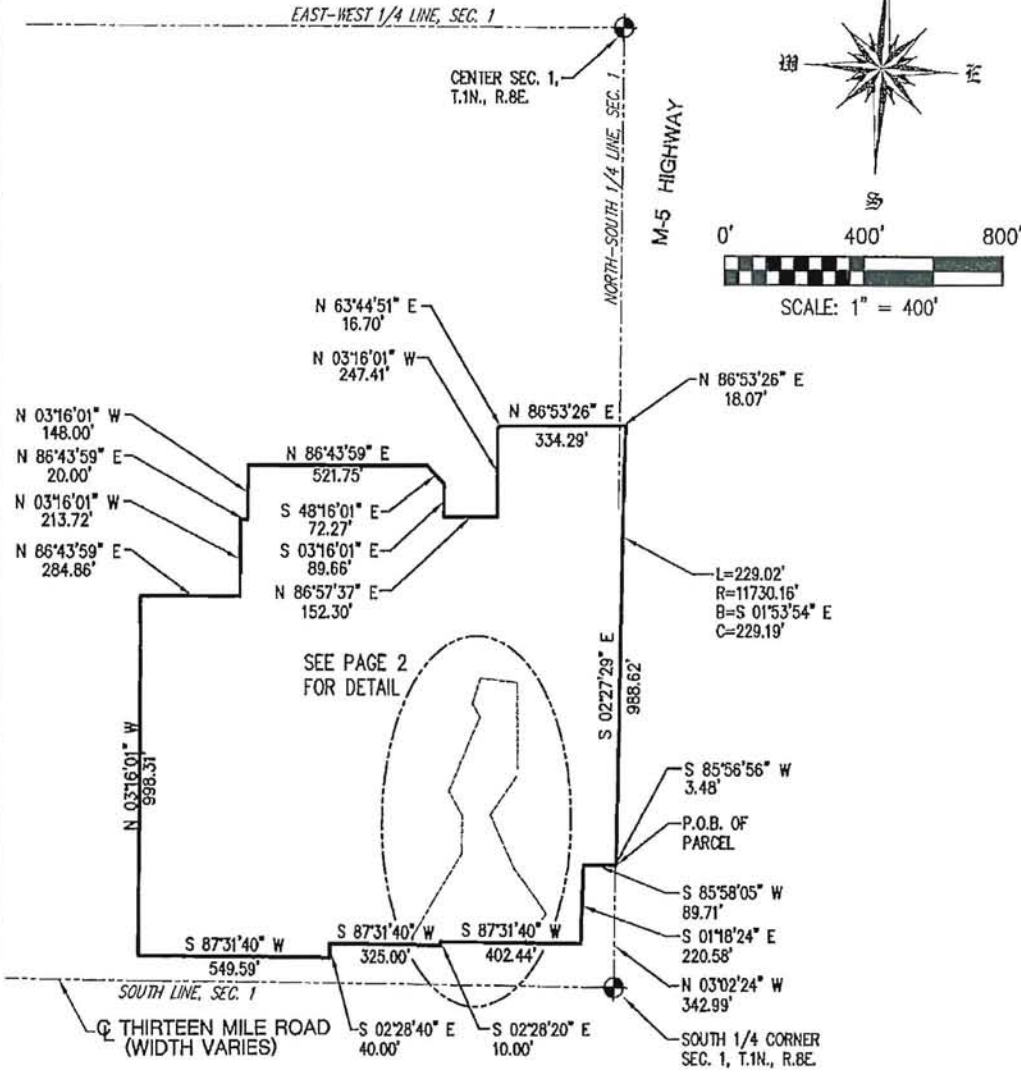
Exhibit A



LOCATION MAP



0' 400' 800'
SCALE: 1" = 400'



ISSUED FOR: Per City Review REV'D BY: TCS ISSUED FOR: REV'D BY:

Sujak Engineering, PLC.

CIVIL ENGINEERING, DESIGNING & PLANNING
4031 COOLIDGE HIGHWAY
TROY, MI 48098
PHONE: 248.885-8431
FAX: 248.885-8432
EMAIL: SUJAK.ENGINEERING@COMCAST.NET

DRAWN BY TCS JOB No. 09-054
DATE 12-5-09 SHEET No. 1 of 2 SCALE 1"=400'

DESCRIPTION Conservation Easement
SW 1/4, Sec. 1, T.1N., R.8E.

SEAL

Exhibit B

LEGAL DESCRIPTION – CONSERVATION EASEMENT

A Conservation Easement located in the S.W. 1/4 of Section 1, T.1N., R.8E., City of Novi, Oakland County, Michigan, being more particularly described as follows:

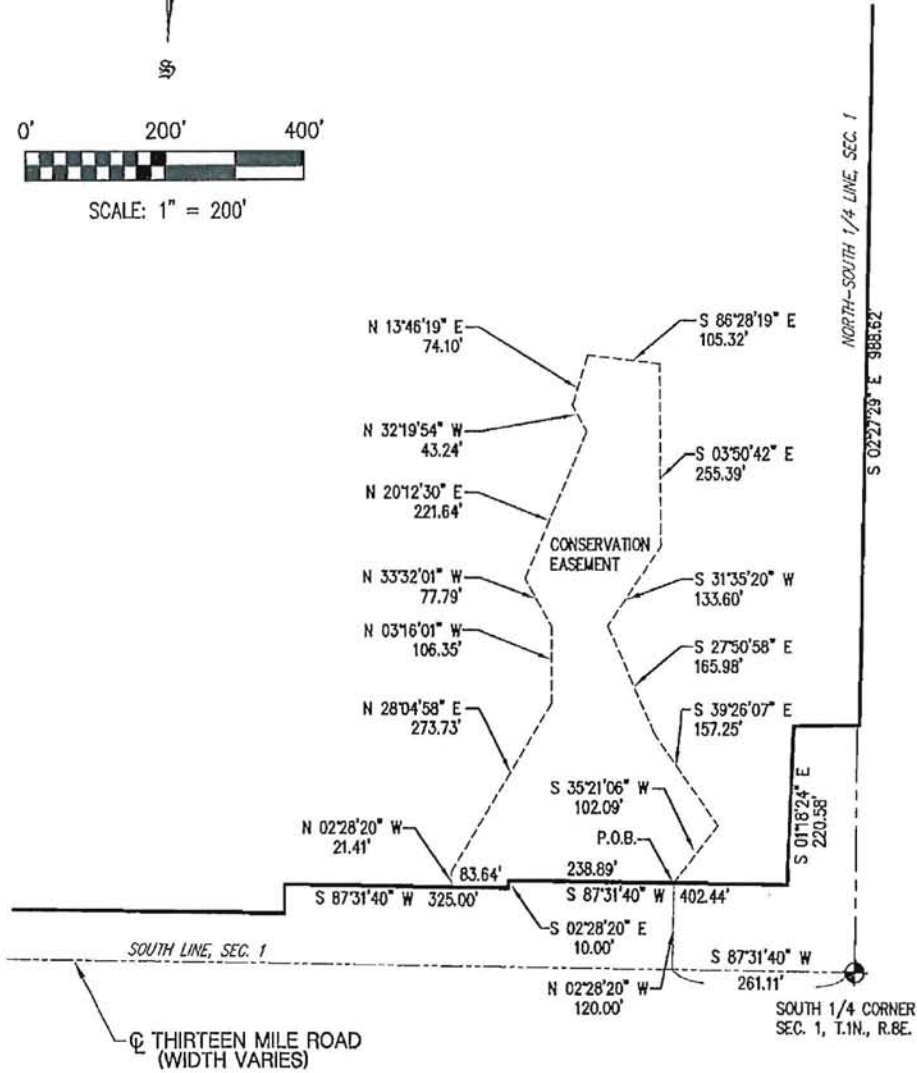
Commencing at the South 1/4 corner of said Section 1; thence S.87°31'40"W., 261.11 feet along the South line of said Section 1, said line also being the centerline of Thirteen Mile Road (width varies); thence N.02°28'20"W., 120.00 feet to the point of beginning, said point also lying on the North right-of-way line of said Thirteen Mile Road; thence along said right-of-way line, the following three (3) courses: 1) S.87°31'40"W., 238.89 feet; 2) S.02°28'20"E., 10.00 feet; 3) S.87°31'40"W., 83.64 feet; thence N.02°28'20"W., 21.41 feet; thence N.28°04'58"E., 273.73 feet; thence N.03°16'01"W., 106.35 feet; thence N.33°32'01"W., 77.79 feet; thence N.20°12'30"E., 221.64 feet; thence N.32°19'54"W., 43.24 feet; thence N.13°46'19"E., 74.10 feet; thence S.86°28'19"E., 105.32 feet; thence S.03°50'42"E., 255.39'; thence S.31°35'20"W., 133.60 feet; thence S.27°50'58"E., 165.98 feet; thence S.39°26'07"E., 157.25 feet; thence S.35°21'06"W., 102.09 feet to the Point of Beginning and containing 2.944 acres of land.

ISSUED FOR: Per City Review	REV'D BY: TCS	ISSUED FOR:	REV'D BY:
Sujak Engineering, PLC. CIVIL ENGINEERING, DESIGNING & PLANNING 4031 COOLIDGE HIGHWAY TROY, MI 48098 PHONE: 248.885-8431 FAX: 248.885-9432 EMAIL: SUJAK.ENGINEERING@COMCAST.NET			
DRAWN BY TCS	JOB No. 09-054	DESCRIPTION Conservation Easement SW 1/4, Sec. 1, T.1N, R.8E.	
DATE 12/5/09	SHEET No. 2 of 2		
SEAL			

Exhibit B



SCALE: 1" = 200'



ISSUED FOR: Per City Review

REV'D BY: TCS

ISSUED FOR:

REV'D BY:

Sujak Engineering, PLC.

CIVIL ENGINEERING, DESIGNING & PLANNING
 4031 COOLIDGE HIGHWAY
 TROY, MI 48098
 PHONE: 248.885-8431
 FAX: 248.885-8432
 E-MAIL: SUJAK.ENGINEERING@COMCAST.NET

DRAWN BY TCS JOB No. 09-054

DESCRIPTION Conservation Easement

DATE 12/5/09 SHEET No. 1 of 2 SCALE 1"=200'

SW 1/4, Sec. 1, T.1N., R.8E.

SEAL

Planning Commission Minutes

Excerpts

November 4, 1998

REGULAR MEETING OF THE NOVI PLANNING COMMISSION

WEDNESDAY, NOVEMBER 04, 1998 Excerpts

COUNCIL CHAMBERS - NOVI CIVIC CENTER - 45175 WEST TEN MILE ROAD

(248) 347-0475

Meeting called to order at 7:30 p.m. by Chairperson Weddington.

PRESENT: Members Canup, Capello, Churella, Csordas, Konedá, Piccinini, Chairperson Weddington

ABSENT/EXCUSED: Members Mutch, Watza

ALSO PRESENT: Planning/Traffic Consultant Rod Arroyo, Engineering Consultant David Bluhm, Assistant City Attorney Paul Weisberger, Landscape Architect Linda Lemke, David Wickens Environmental Specialist, Director of Planning & Community Development Jim Wahl, and Planning Assistant Kelly Schuler

PUBLIC HEARINGS

3. BRIGHTMOOR TABERNACLE SP98-28A

Project is located along the northwest corner of 13 Mile and the proposed M-5 Connector, east of Meadowbrook Road. The 34-acre site is zoned Residential Acreage (RA). Applicant is seeking Preliminary Site Plan, Special Land Use Permit, and Wetlands Permit approvals.

Calvin Ratz, Pastor of Brightmoor Tabernacle introduced Rev. Doug Rind, Chairman of the Development Committee, Rev. Tim Gambino, Administrator of the School, Chris Macky, Architect, Brad Cosuba, Wetlands Consultant, Rasid Hateem, Civil Engineer, Mrs. Jerry Van Houghton and Mr. Conrad Stouch, members of the Development Committee.

Mr. Ratz gave some background information on the church. He stated due to financial reasons, he will be building in stages and has been asked to submit the initial phase. He stated the first phase is designed to allow for further expansion according to a Master Plan. The church does not intend to use the entire area of the site for the church and school, he explained that the plan was to develop the northern portion of the property for single family housing. He stated the Agenda refers to the site as a 34 acre site, he clarified that it is a 103 acre site and did not know where the number 34 came from. He stated last June an informal information meeting was held with several hundred residents in the area and an overwhelming positive response was received from all who attended.

Chris Macky stated the type of use requires a large area that is contiguous for a large building and the parking. He stated there was a large wetland area in the south central portion of the site which is substantially low grade of Thirteen Mile Road. There is also a very large woodland at the northern end of the site. Another concern is the proximity of the site to M-5 and Thirteen Mile Road for safety reasons and the topography, which limits the site access to the western end in order to have proper distance from the intersection. He stated there was an area to the north that was being maintained to allow for parking expansion. Mr. Macky stated they were trying to preserve the woodlands and wetlands by locating the building in the upland area, skirting around the wetlands and woodlands. He stated they were also trying to preserve as much of the northern end of the site for a future development that is not necessarily associated with the church. He stated there is a portion of a wetland which would be traversed with the entrance drive along the west side. The portion of the wetland being impacted is a small finger that goes off to the east to a larger off site wetland. That wetland was sighted to be significant because of storm water retention. The portion of the wetland being impacted is not a part of the main body of the wetland that would be for storm water detention. The storm drainage does not affect the overall hydrology of the site nor the drainage patterns. In addition, Mr. Macky stated they propose to compensate it with creating a wetland on the site, adjacent to a more stable wetland. The second portion of the wetland concern is the northern most finger of the large wetland as it approaches the parking lot. Due to grading the northern end of the wetland needs to be filled. Mr. Macky stated alternative schemes had been looked at for developing the site, however, in order to stay out of the wetlands, it would constrict the amount of area at the front of the site to develop for the church and parking, therefore forcing it back towards the woodlands.

Rod Arroyo, Planning and Traffic Consultant stated the site was 103 acres, approximately 34 acres of the property is being developed. The site is located at an intersection that is currently being constructed, M-5 and Thirteen Mile Road. He could not recommend approval of the Special Land Use and Preliminary Site Plan application owing to two items. 1) Special Land Use standard that applies to churches that are located within the RA District and relates to front yard parking. He stated the applicant proposes a parking field in the front yard and per the Special Land Use Standards, front yard parking is not permitted. Mr. Arroyo stated the applicant can either relocate the parking or seek relief from the ZBA. There are two points of access shown, the applicant has identified that they would eventually like the main entry to be dedicated as a public road. Off street parking standards have been reviewed and adequate parking is provided. 2) The building height - In the RA District, a structure cannot exceed 35'. The height of the development is at 60' which substantially exceeds the maximum. The applicant has indicated that he will be approaching the ZBA to attempt to obtain a variance. Mr. Arroyo stated there were some minor changes that needed to be made regarding the width of some parking stall aisles which can be addressed at the time of Final.

David Bluhm, Engineering Consultant stated the applicant proposes public water extension to be constructed along the north side of Thirteen Mile Road from Meadowbrook Road across to their site. The City of Novi has constructed a casing pipe under M-5 for a future water main extension to the east and north to complete a loop. The applicant will extend the water main north into their site, looping around the site and back down to Thirteen Mile Road. Fire hydrants will service all sides of the site. The applicant proposes a sanitary sewer which will gravity drain to a pump station located at the corner of the approach and Thirteen Mile Road. The pump station will then have an associated force main to it which will direct the flows to the west and then down south on Meadowbrook Road to an existing sewer. It is intended to be a temporary measure as there is no public sewer in that area.

In regard to the topography, the north half of the site is very rolling with a lot of isolated wetland pockets and has very steep terrain in some areas. The southern half of the site generally drains from the northwest to the southeast to the large wetland. The applicant proposes to elevate the developed portion along the western edge of the wetland and along the south edge. A publicly designed and constructed roadway is also proposed to be extended which will be privately maintained. The applicant is proposing to take the western half of the development via storm sewers into a large constructed temporary sedimentation permanent water quality and detention basin. It will outlet across the driveway and across a short swale into the existing wetland. For the majority of the parking at the rear of the site, there is a proposed basin across the neck of the wetland which will provide temporary sedimentation, water quality and storm water detention, it will then outlet to the south and into the wetland. The wetland system then extends to the southeastern corner of the property and then extends to the south into the county drain. 5' concrete sidewalks are proposed along Thirteen Mile Road frontage. An ingress/egress easement will be required to provide proper emergency access for the site. Temporary pump station and force main will be left in place, there will need to an agreement entered with the City of Novi to allow it to be there on a temporary basis. The applicant will be asked to extend a dry public sewer across the frontage of the site, the City of Novi has plans to take that sewer, extend it to Pontiac Trail and Haggerty for the ultimate outlet for sewer. Mr. Bluhm noted that the water main extension along Thirteen Mile Road appears to be in areas where R.O.W. may not exist through the entire length. He stated the applicant will have to address easements as necessary through those areas to bring the watermain extension from Meadowbrook Road. Curbing will also be required around all of the driveway areas. The storm sewer shown near the emergency access drive will need some revisions. Mr. Bluhm stated he would like to see the applicant relocate the existing 8' bikepath due to the severe grades that exist in the area. Mr. Bluhm stated the plan demonstrated engineering feasibility and recommended approval.

Linda Lemke, Landscape Architect stated no regulated woodlands will be impacted, therefore, no Woodlands Permit will be required for the plan. She stated the trees to be saved outside of the regulated woodlands will need to show protective fencing on the plan. She stated the plans will need to be viewed for Final and a fence maintenance bond and woodlands inspection fee will be determined at that time. Ms. Lemke recommended approval of the Conceptual Landscape Plan. There still needs to be additional shrubs added in the detention basins along Thirteen Mile Road adjacent to the parking lots underneath the deciduous canopy trees. Ms. Lemke stated she would like to see more use of perennials and ornamental grasses at the time of Final to provide greater visual interest for the large site. The planting buffers meet the requirements. The site abuts R-2 to the north and west and would require a 4' 6" planted berm, however, there is existing heavy vegetation. Ms. Lemke had a number of items that would be reviewed for Final Site Plan submission and she recommended approval.

Mr. Arroyo stated there were two points of access. He clarified the need for an easement. He stated because the access is proposed to eventually be dedicated as a public road and could be extended to the north, there is a second point of access which would basically provide two points of access to the point. He stated if the property were to be sold off and it were a dedicated road, there needs to be a dedicated easement in favor of the City that would allow the City, for emergency access purposes, to cross through the property to get to the public road. He suggested that a condition of Final Site Plan approval be that an easement be granted that would allow for emergency purposes. Mr. Arroyo stated a traffic study was submitted as part of the development. The recommendations for improvements to Thirteen Mile Road include extending a center turn lane along the two access points and connecting the two with a full deceleration lane that would serve as an acceleration lane for the first entrance and a deceleration lane for the second entrance. These issues can be addressed at the time of Final. Mr. Arroyo stated the project can be expected to generate approximately 385 trips during the morning peak hour and 146 during the afternoon peak hour. He stated there were some minor parking lot issues that could be addressed at the time of Final and recommended approval of the Preliminary Site Plan.

David Wickens, Environmental Specialist stated due to the nature of the proposed impacts, Planning Commission approval is required for a Wetland Permit. The entire site contains 13 wetland pockets, 9 of the pockets are located within the proposed phase for development, 4 of the pockets are considered Regulated by the City of Novi, 1 is possibly Regulated by the State. He spoke in regard to the 4 Regulated pockets. Wetland 1 is located on the southeast portion of the site and extends off site to the south, 1.42 acres is contained on site. Wetland 2 is located in the southwestern portion and extends off site to the west, approximately 0.31 acres is contained on site. Wetland 3 is 1.32 acres, the applicant is not proposing any impact to it. Wetland 4 is located north of the proposed parking lot, no impacts are proposed. The applicant proposes to fill 0.1077 acres of Wetland 1 to allow construction of a slope east of the church parking lot. The applicant proposes to impact 0.31 acres of Wetland 2. Mr. Wickens stated the plan was not in keeping with the Ordinance Section 12.174A2, Section 12.174A3, and Section 12.174A7. He believed the plan was not in compliance with those three items of the Wetland and Watercourse Protection Ordinance. Regarding Wetland 2, he believed that the drive could be shifted to greatly reduce the amount of wetland impact. He believed there were feasible and prudent alternatives to the amount of fill. Mr. Wickens did not recommend approval of the Wetland Permit.

Doug Necci of JCK stated the project consists of approximately 45% brick 60% EIFS and 5% spandrel glass and all percentages are in full compliance with the Facade Chart, therefore, approval is recommended. Mr. Necci stated the issue of height is not technically part of the Facade Chart, therefore, he had not made a recommendation on that matter. He stated the 60' bay is on an internal portion of the building and the impact of the height is somewhat lessened by the fact that it is fronted by lower bay portions of the building. Mr. Necci thought from an aesthetic point of view, the mass of the building has been nicely addressed by the architect. He felt that the applicant has made a strong effort in softening the impact of the height of the building.

Chairperson Weddington announced she has received a letter from Michael W. Evans, Fire Marshal for the City of Novi Fire Department which states that the above plan has been reviewed and approval is recommended.

Chairperson Weddington announced it was a Public Hearing and opened the Matter to the Public.

Norman Steel, 15628 Goldwin stated even though it was not his first choice of what he would have liked to see developed to the east of him, he believed the applicant had the right to develop and hoped they would do a nice job. He expressed concern with how it would affect his land. He was afraid that he would get land locked if a street was not provided for access because of the severe wetland to the rear of his property. He asked that the Commission carefully look over the plans to make sure he was not land locked.

Chairperson Weddington asked if anyone else would like to address the Commission? Seeing no one she closed the Public Hearing and turned the Matter over to the Commission for Discussion.

DISCUSSION

Member Capello asked Mr. Bluhm regarding the 0.31 acre wetland fill, how did he propose that the road would meander around the wetland so it was not impacted?

Mr. Bluhm stated from a building setback point of view it would be an issue. He explained that he looked at it strictly from an engineering point of view and meeting the horizontal curvature requirements that a public roadway would have to meet, which is a 230' centerline radius. If the applicant were to come directly off 13 Mile Road with 100' perpendicular section of road, put a radius in and arc around the wetland and meet back at the northern point with the proposed road, it could miss 95% of the proposed impact. It does not address the setback issues, if the setbacks are measured beyond the R.O.W., it would also be an issue. From a road design point of view, the applicant could meet the road standards and miss 95% of the wetland.

Member Capello asked if the applicant received plan approval with the road going around the wetland, would the issue of the setbacks only come when they attempted to dedicate the road to the City?

Dennis Watson, Assistant City Attorney answered, yes.

Member Capello asked if it would affect the building?

Mr. Watson stated it would not affect the building now, however, if there was a dedication, it would make the building a non-conforming structure which might affect expansion or alterations to the building.

Member Capello asked the applicant if there would be any objection to meandering the road so that it would go around the wetland?

Mr. Ratz answered, yes. He explained that the future plans for the building include additional classrooms off of the end of the building. He stated moving the road would seriously curtail the expansion possibilities on that portion of the building. He stated when moving it back to the north, it would encroach on the area being reserved for future parking

Member Capello stated the only real problem he had with the plan was the front yard parking. He stated it was not allowed in the District and even though the applicant could go to the ZBA for a variance, he was not inclined to approve the Site Plan with front yard parking. He asked if the applicant had any alternatives?

Mr. Ratz answered the way the building is set up, the church function is on the northern end of the building, the school function is on the southern end. The parking on the southern end is intended for use by the school and this was how he intended to approach the ZBA. He pointed out that the parking is about 235' from the R.O.W., it is screened with the required landscape berms, it has landscaping in front.

Member Capello asked if the parking could be moved along the side of the building toward the front as opposed to right in the front?

Mr. Ratz did not feel it was an option to put the parking along the west side in the event that the road becomes public. He stated the east side has a grade that rapidly drops off toward the wetland.

Member Capello asked if any thought was given to the design of the building so that the school and drop off area was not put in the front?

Mr. Ratz stated since church parking could not be located in the front, the alternative was to have the school area in the front. He stated he chose to put the school on the downward side of the hill so the school traffic would be separated from the church traffic.

Mr. Macky stated in the designing of the footprint was configured in several different ways. He explained that the school was put on the west side as well as the east and north sides, however, the topography is very hilly and it seemed to work best with the school on that side.

PM-98-11-205 TO GRANT SPECIAL LAND USE PERMIT BASED ON THE FACTS CONTAINED IN THE CONSULTANTS LETTERS AND RECOMMENDATIONS SUBJECT TO THE RECOMMENDATIONS AND VARIANCES BEING GRANTED BY THE ZBA, FOR PRELIMINARY SITE PLAN APPROVAL AND WETLAND PERMIT APPROVAL TO BRIGHTMOOR TABERNACLE SP98-28A BASED ON THE INFORMATION TO ALLOW FOR THE FILLING OF 0.1077 ACRES OF WETLAND AND 0.31 ACRE OF WETLAND AND NOT REQUIRE ANY MITIGATION

Moved by Capello, seconded by Piccinini: CARRIED UNANIMOUSLY: To grant Special Land Use Permit, Preliminary Site Plan approval and Wetland Permit approval to Brightmoor Tabernacle SP98-28A subject to all of the Consultants recommendations and comments as well as the ZBA granting the variances required for height and front yard parking.

DISCUSSION

Member Capello did not feel that either of the two parcels of wetlands were of any significance and he did not feel that filling them would impact any of the surrounding wetlands. He did not feel that it would create any flooding or ponding on any of the adjoining property owners.

Member Churella asked what type of impact, if any, would filling the wetlands have on any underground water?

Mr. Wickens stated he could not speak to subsurface flows, however, the applicant is proposing to mitigate onto an isolated wetland pocket that he did not believe to be considered regulated by the City of Novi. He did not agree with the way the applicant is utilizing the mitigation option as a way to unnecessary fill a wetland and to justify it by regulating it. He thought mitigation should be

used as the final alternative when the impacts are deemed unnecessary for development. He disagreed with where and why the applicant was mitigating.

Brad Cosuba, Wetland Consultant of Brooks Williamson Associates agreed with Mr. Wickens. He stated the actual function of the wetland exists as storm water off site, he stated the off-site finger does not serve as that same purpose. If it were to be filled, it would not take away the function of the wetland.

Mr. Watson recommended that the Commission remove from the motion, the condition that there be no mitigation. He stated the Commission is established over a period of time, following the rules and regulations of the MDNR and MDEQ as to wetlands mitigation. The regulations call for mitigation under these circumstances. He stated if the Commission desires to stop doing so, he suggested that Ordinance changes be proposed through the Environmental Committee. He stated it should be done on a uniform basis establishing standards and criteria. He recommended that the motion be amended to withdraw that portion.

Member Capello stated it seemed that most of the consultants' report had to deal with other alternatives as opposed to filling the wetlands. In reviewing the plan and speaking to the applicant, he did not see that there were other alternatives that were reasonable or feasible. He stated the report did not give him any substantive information relative to the quality of the wetlands. He stated there recently was an opinion from the MDEQ that they did not require any mitigation. In regard to policies and procedures, Member Capello stated the MDEQ did not require mitigation in every circumstance, therefore, he did not feel that the Commission had to either.

Mr. Watson suggested that Member Capello bring the letter to the Environmental Committee for review to find out what the circumstances were in that given case. He suggested that the circumstances were not the same as in this case. He stated the MDEQ has cut offs for when mitigation is and is not required. He stated to base it on a letter that is not before the entire Commission and change the practice of dealing with wetlands was a terrible way of doing it.

Member Capello did not think the Commission was changing its practice in dealing with wetlands, he stated every wetland and every situation is taken on a case by case basis and a determination is made. He stated in the past, anytime anybody saw some vegetation that might be wetlands or some ponding, the developer was required to build a swamp somewhere else. He felt it was not right, however, he felt the two wetlands did not need to be dug up and replaced somewhere else.

Member Koneda stated the Environmental Committee was looking at an Ordinance revision that would make the actions taken on wetlands mitigation more consistent on every parcel. He thought it was scheduled to come before the Commission soon. He stated since the applicant has offered mitigation, he thought the offer should be accepted. In regard to Wetland 2, he agreed

with Mr. Wickens that mitigation should only be used as a last resort. He felt that Wetland 1 could be completely avoided and therefore thought the motion should be amended.

PM-98-11-206 TO AMEND THE MOTION TO DELETE THE EXCEPTION OF MITIGATION AND TO REQUIRE MITIGATION AS PREVIOUSLY PROPOSED

Moved by Koneda, seconded by Churella, CARRIED (4-3): To amend the motion to delete the exception of mitigation and to require mitigation as previously proposed.

VOTE ON PM-98-11-206 CARRIED

Yes: Koneda, Weddington, Churella, Csordas

No: Piccinini, Canup, Capello

VOTE ON PM-98-11-205 CARRIED UNANIMOUSLY

Yes: Csordas, Koneda, Piccinini, Weddington, Canup, Capello, Churella

No: None