

**REGULAR MEETING OF THE COUNCIL OF THE CITY OF NOVI
MONDAY, JULY 11, 2011 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

ROLL CALL: Mayor Landry, Mayor Pro Tem Gatt, Council Members Fischer, Margolis, Mutch, Staudt, Wrobel

APPROVAL OF AGENDA

Mayor Landry added a second item to Mayor and Council Issues, a discussion regarding the possibility of a City Policy for Commercial District tax abatements.

CM-11-07-093 Moved by Wrobel, seconded by Margolis; CARRIED UNANIMOUSLY:

To approve the Agenda as amended

Roll call vote on CM-11-07-93	Yeas:	Gatt, Fischer, Margolis, Mutch, Staudt, Wrobel, Landry
	Nays:	None

PUBLIC HEARING

1. **Establishment of the Industrial Development District – West side of Haggerty Road between Thirteen and Fourteen Mile Roads - No public comment was received.**

PRESENTATIONS – None

REPORTS:

1. **MANAGER/STAFF – None**
2. **ATTORNEY – None**

AUDIENCE COMMENT – None

CONSENT AGENDA REMOVALS AND APPROVALS (See items A-N)

CM-11-07-094 Moved by Fischer, seconded by Margolis; CARRIED UNANIMOUSLY:

To approve the Consent Agenda as presented

Roll call vote on CM-11-07-094	Yeas:	Fischer, Margolis, Mutch, Staudt, Wrobel, Landry, Gatt
	Nays:	None

- A. Approve Minutes of:

1. June 20, 2011 – Regular meeting
- B. Enter Executive Session immediately following the regular meeting of July 11, 2011 in the Council Annex for the purpose of discussing pending litigation, labor negotiations and privileged correspondence from legal counsel.
- C. Approval of recommendation from Consultant Review Committee to award a two-year Traffic Engineering Consulting Services Contract to Birchler Arroyo (with option for a one-year renewal) and adoption of revised fee schedule.
- D. Adoption of Property Tax Penalty Resolution (pursuant to City Charter Section 9.16 Collection Fees and MCL 211.44 (3) General Property Tax Act).
- E. Approval of the transfer of ownership of 2011 B Hotel Licensed Business with dance-entertainment permit, located at 27355 Cabaret, Novi, MI 48375, Oakland County, from Etkin White Novi LLC to Apple Nine Hospitality Management, Inc. (A Virginia Corporation).
- F. Approval to award an engineering services contract for construction engineering services related to the Meadowbrook Lake Dam Improvement project to URS Corporation, in the amount of \$48,616.
- G. Approval of a two year Personal Property Assessment Contract with Oakland County Equalization, at a cost of \$13.80 per parcel, for an estimated cost of \$37,000 per year.
- H. Approval to purchase Courts and Law Enforcement Management Information System (CLEMIS) and Fire Records Management System (FMRS) fees and services from Oakland County for the 2011-12 fiscal year in the amount of \$55,337.
- I. Approval to enter into annual maintenance and service agreement (7/1/11 – 7/1/2012) with Advanced Wireless Telecom (AWT) for the Next Generation E-911 system in the Novi Public Safety Emergency Communications Center for \$17,831.43.
- J. Approval to award an engineering services contract for construction engineering services related to the Crescent Boulevard Extension (Phase 1) project to URS Corporation, in the amount of \$40,277.
- K. Approval to award an engineering services contract for design engineering services related to the Bishop/Ingersol and Brookfarm Park Streambank Stabilization project to Orchard, Hiltz & McCliment, Inc. (OHM), in the amount of \$19,600.
- L. Acceptance of a highway easement from Joseph S. Trudeau Jr. for the property located at 42900 Ten Mile Road in conjunction with the Ten Mile Pathway project as a donation by the property owner (parcel 50-22-23-376-006).

- M. Approval of a Storm Drainage Facility Maintenance Easement Agreement from Marty Feldman Chevrolet, Inc. for the Marty Feldman-Kia Dealership development located at 42355 Grand River Avenue, in Section 23 (parcel 22-23-251-015).
- N. Approval of Claims and Accounts – Warrant No. 847

MATTERS FOR COUNCIL ACTION – Part I

1. Approval of Resolution to establish Industrial Development District for 39525 MacKenzie Drive, part of the Haggerty Corridor Corporate Park Phase II.

Anke Lorscheid, CFO of Tognum America, said they serviced and manufactured diesel engines for Marine defense vehicles. She said they would be relocating their headquarters to Novi which would bring 200 jobs to the City. They signed an 11 year lease and believed they would occupy the building by February 2012.

Mr. Pearson said this would form the Industrial District and there would be a second step if it proceeded which included a certificate endorsed by City Council. The certificate would then have to be adopted by the State of Michigan. He said there would also be an agreement at the next City Council meeting if this item was passed. He said Tognum had been looking for a location to consolidate their operations and grow. They committed to bring approximately 220 jobs and there was a strong potential to grow to more than 276 jobs. He said it was a good fit for Novi; it would be located in the Northern Equities M-5 corridor. He said their type of business would help diversify the tax base in Novi; they were the parent company of MTU and Detroit Diesel. He felt comfortable that it met Council's stated policies on tax abatements. The abatement would be for six to eight years, eight years if they met the job target. He said tonight was strictly about the creation of the district.

Member Margolis thanked Tognum, the City staff and Northern Equities for continuing to grow the City. She said she wasn't normally a huge fan of tax abatements but there was a policy for that reason and the company met the policy. She said they kept it limited to attract quality projects. She said the defense industry work was very important for the State of Michigan and Novi. She said there were a lot of provisions that protected the City such as the length of time of the abatement and being sure that the jobs being promised were actually brought to the City. She said she was in support of creation of the district.

CM-11-07-095 Moved by Margolis, seconded by Gatt; CARRIED UNANIMOUSLY:

To approve the Resolution to establish Industrial Development District for 39525 MacKenzie Drive, part of the Haggerty Corridor Corporate Park Phase II

Member Mutch asked Mr. Schultz if the applicant would be able to get an abatement from the State Tax Commission absent a written agreement with the City or if the written agreement provided the City a level of protection in terms of being able to define the scope of the agreement once it reached the State level.

Mr. Schultz said they tried to focus on the creation of the district portion because the answer to the question wasn't completely clear. In reading the statute it stated that the City was not the approving entity for the certificate, yet the requirement for the agreement was still there. He said there were no cases that stated what would happen and he hadn't had one denied by a municipality that went on to the Tax Commission. He said with limited experience of seeing the denial process he would have to say if there were no agreement, there would be no certificate. He reiterated that now was the time to talk about different parameters if they weren't in agreement.

Member Mutch asked Mr. Schultz if his understanding was as long as they agreed to something, it would be controlling, when going forward to the State Tax Commission.

Mr. Schultz said for the most part that would be true but they ran into the same problem once the certificate was issued because the City was not the revoking body. He said there were provisions in the agreement that said if Tognum didn't comply with the requirements, the City could revoke the certificate but they would really be asking the State Tax Commission to revoke the certificate. He said there was a clawback provision that said if they didn't get the revocation from the State for any reason it was still an agreement. The City might have to go to the Oakland County Circuit Court to enforce it and get the repayment. He stated that the agreement said if the company didn't honor the agreement, such as if they left early, they would have to repay the amounts they received.

Member Mutch said that was the key point of the discussion to establish the district. He said he understood that the establishment of the district was the point to say no, but the agreement was where they would actually lay out the pros and cons. He said he wanted to clarify if five years down the road they found that Tognum hadn't met the terms of the agreement did the City have statutory authority to go to court and request repayment of taxes that weren't levied to begin with because of the tax abatement.

Mr. Schultz said the requirement for the agreement in the statute gave that authority. He said the clawbacks weren't in every agreement but they were pretty standard in many agreements.

Member Mutch said that was also an important point because the City had done very few of these, maybe three in 20 years. He said from a philosophical view point he liked the approach of the City providing a level playing field for all business members. The City's job was to provide the infrastructure, the services and a reasonable tax rate. He said if for some reason they weren't accomplishing that it was something that needed to be worked on by the City. He said he would support it to move forward but probably wouldn't support the tax abatement request itself because of his viewpoints. He said as Member Margolis noted, Tognum met the criteria of the policy and they brought a lot

of benefits to the City. He said his position wasn't based on any concern from the proposal of the development, he thought it was of high quality and fit in the Haggerty Corporate Park. He said the City might have to adjust their viewpoint because businesses would look to us to fill a void that the State opened up by getting rid of credits that businesses previously accessed.

Mayor Landry said that any agreement would ultimately be executed as a contract; therefore, if they breached the contract the City could sue them for breach of contract.

Mr. Schultz said the City could enforce any of the repayment rights that they laid out in the agreement.

Member Fischer confirmed that the range of jobs would be between 210 to 276 jobs and that the average salary would be from \$40,000 to over \$100,000. He asked if the base salary included fringe.

Ms. Lorscheid said that was base salary.

Member Fischer asked what the mix of jobs would entail.

Ms. Lorscheid said it consisted of finance, human resources, sales, after-sales, engineering, marketing, information technology and the legal department.

Member Fischer said because that was a large part of what was looked at in tax abatements he supported the district establishment.

Roll call vote on CM-11-07-095 **Yeas: Margolis, Mutch, Staudt, Wrobel,
Landry, Gatt, Fischer**
Nays: None

2. Approval to award a construction contract for the Meadowbrook Lake Dam Improvement project to V.I.L. Construction, Inc., the low bidder, in the amount of \$400,261.

Mr. Pearson said this project was a long time coming and he was looking forward to accomplishing it. He thanked engineering, Mr. Schultz and the neighbors.

CM-11-07-096 Moved by Gatt, seconded by Mutch; CARRIED UNANIMOUSLY:

To approve the award of a construction contract for the Meadowbrook Lake Dam Improvement project to V.I.L. Construction, Inc., the low bidder, in the amount of \$400,261

Mayor Landry said he echoed the City Manager, it ended up being a little more expensive than anticipated, but it was being carried through.

Roll call vote on CM-11-07-096

Yeas: Mutch, Staudt, Wrobel, Landry, Gatt,
Fischer, Margolis
Nays: None

3. Consideration of Zoning Ordinance Text Amendment 18.248 to amend the City of Novi Zoning Ordinance at Article 25, "General Provisions," Section 2515, "Fences (Residential and Non-Residential)" in order to add regulations regarding maintenance and materials, with certain exemptions. First Reading

Mr. Pearson said this idea started at Council and was referred to the Planning Commission; it had a positive recommendation.

CM-11-07-097 Moved by Margolis, seconded by Fischer; CARRIED UNANIMOUSLY:

To approve the Zoning Ordinance Text Amendment 18.248 to amend the City of Novi Zoning Ordinance at Article 25, "General Provisions," Section 2515, "Fences (Residential and Non-Residential)" in order to add regulations regarding maintenance and materials, with certain exemptions. First Reading

Member Mutch had a question about subsection D, exemptions from the standards. He said it referred to fences required as a safety barrier at a swimming pool or constructed to identify the entryway of a neighborhood or development, and wire fences two feet or less in height and located at least ten feet from a property line. He wanted additional information on how the height and distance setback with wire fences was determined. He said he was asking because he had wire fencing around his garden to keep out the animals which fell within the standards, but other's might not.

Ms. McBeth said the distance from the property line reflected the distance of an accessory structure from the property line. She said the height of two feet was assumed to keep the animals out.

Member Mutch said some people in the City were on fairly small lots and a ten foot setback from all sides of the property line could be a little excessive. He asked staff to compare the setback to some other communities before it came back for a second reading.

Member Fischer asked for explanation on the intent of the exemption for fences required as a safety barrier at a swimming pool.

Ms. McBeth said there was a building code standard that required fences around swimming pools; they tried not to override the requirement of a fence being required around a swimming pool.

Member Fischer requested a clarification on disrepair including noticeable leaning fences or missing sections to include portions of section as well. He said the actual

pickets falling off of a section should be included as something not being promoted in the City.

Roll call vote on CM-11-07-097 **Yeas:** **Staudt, Wrobel, Landry, Gatt, Fischer, Margolis, Mutch**
Nays: **None**

- 4. Consideration of Zoning Ordinance Text Amendment 18.250 to amend the City of Novi Zoning Ordinance at Article 9, "NCC Non-Center Commercial District," Section 902; at Article 13, "B-1 Local Business District," Section 1302; at Article 14, "B-2 Community Business District," Section 1402; and at Article 16, "TC and TC-1 Town Center Districts," Section 1602, in order to add veterinary clinics as a special land use in each district. First Reading**

CM-11-07-098 **Moved by Margolis, seconded by Gatt; CARRIED UNANIMOUSLY:**

To approve the Zoning Ordinance Text Amendment 18.250 to amend the City of Novi Zoning Ordinance at Article 9, "NCC Non-Center Commercial District," Section 902; at Article 13, "B-1 Local Business District," Section 1302; at Article 14, "B-2 Community Business District," Section 1402; and at Article 16, "TC and TC-1 Town Center Districts," Section 1602, in order to add veterinary clinics as a special land use in each district. First Reading

Member Mutch said he had a concern about the range of districts proposed to be added. He checked with Ms. McBeth about the zoning for the B-1 district and she indicated that there was only one parcel, the Walgreens at Ten Mile and Novi Road, which qualified under the B-1 zoning for this use because of the requirement that the setback from residential had to be at least 600 feet. He said typically the B-1 zoning district was for small local businesses located adjacent to residential areas. His concern was by allowing that use in the B-1 district, someone might move forward on a proposal to locate a veterinary clinic in that district and then discover that they didn't qualify. They would then have to start the process over or take it in front of the ZBA. He said the requirement was important to avoid conflict with adjoining residential properties. He would like to exclude that from the B-1 district in the second reading.

Roll call vote on CM-11-07-098 **Yeas:** **Wrobel, Landry, Gatt, Fischer, Margolis, Mutch, Staudt**
Nays: **None**

- 5. Consideration of Zoning Map Amendment 18.698 on the request of the Kaluzny Trust, Jerome G. and Barbara C. Chappel and Robert L. and Barbara J. Gannon for rezoning of property in Section 20, located on the south side of Eleven Mile Road, west of Beck Road, from the RA, Residential Acreage District to the R-4, One-Family Residential District. The subject property is 38.86 acres.**

Mr. Pearson said it had a positive recommendation from the Planning Commission and staff; it was in compliance with the Master Plan for Land Use.

CM-11-07-099 Moved by Margolis, seconded by Fischer; CARRIED UNANIMOUSLY:

To approve the Zoning Map Amendment 18.698 on the request of the Kaluzny Trust, Jerome G. and Barbara C. Chappel and Robert L. and Barbara J. Gannon for rezoning of property in Section 20, located on the south side of Eleven Mile Road, west of Beck Road, from the RA, Residential Acreage District to the R-4, One-Family Residential District, for the following reasons:

- 1. As the highest density one-family residential district, the proposed R-4 District is consistent with the single family residential use designation in the Master Plan for Land Use 2010;**
- 2. Eleven Mile Road is largely residential in character in this area and residential zoning is appropriate for this location; and**
- 3. Adequate infrastructure exists to support the potential increase in residential density.**

Roll call vote on CM-11-07-099 **Yeas: Landry, Gatt, Fischer, Margolis, Mutch, Staudt, Wrobel**
Nays: None

6. Approval to award a construction contract for the Crescent Boulevard Extension (Phase 1) project to Tiseo Brothers, Inc., the low bidder, in the amount of \$364,524.

Mr. Pearson said this project had been long in the making in terms of City design and property acquisitions. He said it was a project that would improve traffic on the arterials.

CM-11-07-100 Moved by Gatt, seconded by Margolis; CARRIED UNANIMOUSLY:

To approve the award of a construction contract for the Crescent Boulevard Extension (Phase 1) project to Tiseo Brothers, Inc., the low bidder, in the amount of \$364,524

Roll call vote on CM-11-07-100 **Yeas: Gatt, Fischer, Margolis, Mutch, Staudt, Wrobel, Landry**
Nays: None

AUDIENCE COMMENT – None

BREAK

MATTERS FOR COUNCIL ACTION – Part II

7. Approval to purchase five (5) 2011 Ford Crown Victoria Police Interceptors (CVPI) from Signature Ford, Owosso, MI for the Novi Police Department Uniform Division in the amount of \$104,210, based on the lowest quotes received from dealers with current State and County contracts.

CM-11-07-101 Moved by Gatt, seconded by Fischer; CARRIED UNANIMOUSLY:

To approve the purchase five (5) 2011 Ford Crown Victoria Police Interceptors (CVPI) from Signature Ford, Owosso, MI for the Novi Police Department Uniform Division in the amount of \$104,210, based on the lowest quotes received from dealers with current State and County contracts

Mr. Pearson said it was part of a shared purchase and a source of funds in the approved budget was drug asset forfeiture funds.

Roll call vote on CM-11-07-101 Yeas: Fischer, Margolis, Mutch, Staudt, Wrobel, Landry, Gatt
Nays: None

8. Appointments to Boards and Commissions

CM-11-07-102 Moved by Landry, seconded by Gatt; MOTION CARRIED: 6 – 1

To appoint Tony Anthony to the Planning Commission with a term expiring June 30, 2014

Roll call vote on CM-11-07-102 Yeas: Mutch, Staudt, Wrobel, Landry, Gatt, Fischer
Nays: Margolis

Debra Blashfield was appointed to the Housing and Community Development Advisory Committee.

The following were appointed to the Parks, Recreation & Cultural Services Commission:

1. Paul Policicchio
2. Hideki "Harry" Torimoto

James Gerblick was appointed to the Zoning Board of Appeals alternate position.

COMMITTEE REPORTS – None

MAYOR AND COUNCIL ISSUES

1. Consideration of elimination of Planning Commission Representative on Zoning Board of Appeals – Council Member Wrobel

Member Wrobel said the idea came about with the new Planning Act, the opportunity presented itself for a member of the Planning Commission to serve on the ZBA as a conduit to keep the ZBA informed of what the Planning Commission was thinking on various ideas and cases. He said at that time he thought it was a very good idea and he served as that position for the first year. He said based on how the law was revised, the Planning Commission representative could no longer discuss or vote on anything that appeared before Planning Commission while serving on the ZBA. He said it made that position no longer beneficial and he didn't think it was necessary to have that position anymore.

Member Fischer said it was an interesting proposal and was worthy of discussion. He said it was unfortunate that being on the Planning Commission precluded someone from partaking in discussions at the ZBA level. He said his understanding of the law was that it was possible to appoint a Zoning Board of Appeals member to the Planning Commission.

Mr. Schultz said the ZBA section of the Zoning Statute initially said any member of the Zoning Board of Appeals shall be a member of the Planning Commission. He said in 2006 there was a member of the ZBA who was also on the Planning Commission. He said when they amended the statute to clarify the conflicts that people were originally concerned about; they also clarified that the Planning Commission member who was sitting as a full member on the ZBA could be limited. He said there was a seat on the ZBA that could be a Planning Commission member. He said the statute was worded to say if you had done something at the level of the Planning Commission then you were potentially limited at the ZBA level.

Member Fischer said historically that member had been decided by the Planning Commission.

Mr. Schultz said the way the Council had filled that seat of the ZBA was to defer to the Planning Commission to see who they wanted to designate.

Member Fischer said he always supported the set up. He said in spite of the ability to vote on specific cases that went before both the Planning Commission and the ZBA, the member of the Planning Commission provided a different perspective on other Planning matters that came before the ZBA. He said he thought there was still some added value.

Member Margolis said the issue was the amount of work that someone had to do. She said she would be interested in how it was being handled in other communities.

Mr. Pearson said there was a window of opportunity with the upcoming vacancies and appointments. He said if they wanted to follow through on it they would want to do so now because next month there would be an appointment and a vacancy.

Mr. Schultz said the ordinance was already in place stating they may have a joint member.

Mayor Landry said he served on the Planning Commission for a short time but it was not while there was a joint member. He said not having served on the ZBA he would defer to those who had for the usefulness of this member. He said it seemed to him to be difficult to serve and not be able to vote because they would have to absent themselves from any issue that would potentially come in front of the Planning Commission. He asked what percentage of issues that came in front of the ZBA a Planning Commissioner would have to recuse themselves from.

Member Wrobel said from recollection it could have been one every other meeting.

Mayor Landry asked if the benefits to the ZBA and/or the Planning Commission of having that member present for all of the other discussions outweighed the burden of having the person not be able to participate in some cases. He asked what they did if one of the 5 members didn't want to serve.

Mr. Schultz said they couldn't order them to have a Planning Commissioner serve on the ZBA. He said they had been careful to discuss who would be the joint member and so far people had been interested. He said if no one volunteered it would be up to the Mayor to appoint someone.

Mayor Pro Tem Gatt suggested they asked the Planning Commission members if one of them wanted to serve on ZBA, knowing the rules and ramifications, and if they didn't then he thought the course was clear.

Mayor Landry asked if anyone disagreed with Mayor Pro Tem Gatt's suggestion.

Member Wrobel said he agreed with having the Planning Commission make the decision.

Member Fischer said he also agreed with opening it up to the Planning Commission for a recommendation. He said he would like to see some sort of long term policy decision made instead of a year by year basis.

2. Discussion regarding the possibility of a City Policy regarding Commercial District tax abatements – Mayor Landry

Mayor Landry said the legislature in Lansing had passed legislation to potentially allow tax abatements in commercial districts and there was a resident, the Suburban Collection Showplace, who was very anxious to come before Council and seek a tax abatement. He said the Expo Center had one under the industrial tax abatement policy but there was no policy regarding the commercial district. He said if the Governor didn't sign it into law, it would be irrelevant. But if the Governor did sign it into law he would be interested in Council having a policy in place before an applicant came to them. He suggested asking the Ordinance Review Committee to look at it and get direction from Mr. Schultz. He said he thought the City had to get in front of this issue.

Member Mutch said his understanding of the change in the State Legislation allowed someone with commercial property to seek a tax abatement for rehabilitation similar to what currently existed in the State law for industrial properties that were obsolete and needed rehabilitation.

Mr. Schultz said that was an accurate description. He said the statute existed and was broad in the same way that the industrial facilities was. He said the change was narrowly directed to that type of use. He asked if they were drafting a policy for the new addition which was narrow or for the whole statute.

Member Mutch asked Mayor Landry if the goal was to deal with the specific language dealing with the Suburban Collection Showplace or to get into the broader language of the statute.

Mayor Landry said if the legislation now allowed certain commercial properties to seek tax abatements, he would be interested in the City coming up with a policy on what the attitude was toward the whole statute. He said they needed to have a significant and specific policy statement as they did with the industrial area.

Member Mutch said he knew Mr. Bowman worked on an expeditious timeline. He asked if he would want Ordinance Review to focus initially on that specific section or look at the whole policy, which would take a little longer to bring to Council.

Mayor Landry said once they got into the Ordinance Review Committee they could talk about that themselves and see what they saw fit.

COMMUNICATIONS – None

AUDIENCE COMMENT – None

ADJOURNMENT

There being no further business to come before Council, the meeting was adjourned at 7:49 P.M.

David Landry, Mayor

Maryanne Cornelius, City Clerk

Transcribed by Natalie Laitinen

Date approved: July 18, 2011