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## CITY of NOVI CITY COUNCIL

**Agenda Item 1**  
**August 22, 2011**

**SUBJECT:** Approval of recommendation by the Planning Commission for the City Council to cease making an annual appointment of a dual Planning Commission/ZBA member.

**SUBMITTING DEPARTMENT:** Community Development Department - Planning <sup>Bur</sup>

**CITY MANAGER APPROVAL:** 

### **BACKGROUND INFORMATION:**

At the July 11<sup>th</sup> City Council meeting, the City Council members discussed the merits of continuing the practice of appointing a joint Planning Commission/Zoning Board of Appeals (ZBA) member, as has been done over the last few years. Changes to State law a few years ago required communities to provide this joint member. The law has changed again and it is now an option for communities to provide this joint member.

The City Council discussed the need for Commission members to recuse themselves on ZBA cases that had previously come before the Planning Commission, and questioned whether Novi's peer communities have modified their policies based on the new law. Staff provides the following research:

- Novi's ZBA Action Summaries for the meetings held in 2011 show that out of the 50 cases brought before the ZBA through July, a total of seven had previously been heard by the Planning Commission (14%, or an average of one per month).
- A survey of some of our surrounding communities shows that all of the following communities maintain a joint Planning Commission/ZBA member: Farmington Hills, Troy, Canton, Plymouth, Northville Township, and the City of Northville.

The City Council asked the Planning Commission for input on whether there is value and interest in continuing this practice.

### **Planning Commission discussion**

Planning Commission members discussed this matter at the July 27<sup>th</sup> meeting as a part of the selection and appointment of Commission members to various committees. Individual Commission members stated that, while they did not see the value to the ZBA or the Planning Commission in continuing this position, if any member wanted to serve in this capacity, the Commission would agree to recommend that person to the City Council. Of the five members present, no one wished to serve. There was a consensus that the Commission would respectfully share with the City Council, that the Commission does not see a real value in continuing the joint member position.

### **Zoning Board of Appeals**

In speaking with ZBA Chair David Ghannam about this issue, Mr. Ghannam said that he does not have a preference regarding whether there is a joint member or not. Mr. Ghannam further stated that he feels that it is important to maintain an odd number of Zoning Board of Appeals members, to help alleviate any tie votes on matters coming before the ZBA. Currently, there are six regular members and one alternate.

The City Code is flexible in terms of whether the joint or dual membership is to continue, so no changes to the City Code are anticipated at this time. Below is an excerpt from the City Code related to the dual membership for reference (emphasis added):

Section 3100 Creation and Membership

There is hereby established a Zoning Board of Appeals, which shall perform its duties and exercise its powers as provided in Article VI of Act 110 of the Public Acts of 2006 [MCL 125.3601-125.3607], as amended, the Michigan Zoning Enabling Act, and in such a way that the objectives of the Act and this Ordinance shall be observed, public safety secured, and substantial justice done. The Board shall consist of seven (7) members appointed by the City Council and shall be representative of the population distribution and of the various interests present in the City, except that, **if required by the Michigan Zoning Enabling Act, one member shall be a member of the Planning Commission.** Appointments shall be as follows: Three (3) members, including the Planning Commission member, if any, appointed for a period of one (1) year; two (2) members appointed for a period of two (2) years; and two (2) members appointed for a period of three (3) years, respectively; thereafter each member to hold office for the full three (3) year term. The City Council may also appoint not more than two alternate members, who shall serve as members of the Board only in the absence of a regular member if the regular member is unable to attend a meeting or if a regular member will abstain from voting on a particular matter for a permitted reason. Any vacancies in the Board shall be filled by appointment by the Council for the remainder of the unexpired term, and a successor shall be appointed not more than (one) 1 month after the term of the preceding member has expired.

If the City Council decides to eliminate the joint member, then the Zoning Board of Appeals will have one vacant regular seat.

Staff suggests that the City Council vote to provide clarity and closure on this issue. A recommended action is provided based on the Planning Commission's recommendation.

**RECOMMENDED ACTION:** Approval of recommendation by the Planning Commission for the City Council to cease making an annual appointment of a dual Planning Commission/ZBA member.

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

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

**EXCERPT FROM  
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

**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.