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Section 2400(property located at 24800 Novi Road)

A request for a variance for the front yard building setback, which is required to be 100 ft., however, a variance of 24 ft. is being requested, which would allow 76 ft. proposed setback for the building setback at this location. This Board previously heard case number 06-042, on June 6, 2006 at which time a front yard building setback variance of 15 ft. was granted for 24800 Novi Road. Therefore, this is a request to increase the previously granted variance to 24 ft., from the previously granted 15 ft. variance.

Section 2400(24800 Novi Road)

A variance is being requested for the parking lot setback in the front yard. The setback required is 100 ft.. The setback in the front parking lot for 24800 Novi Road is proposed to be 2 ft.; requiring a variance of 98 ft. being requested. This Board previously granted a variance of 97 ft. in case number 06-042, submitted to the Board by the RCOC. This is a request to increase the variance by an additional 1 ft..

Section 2400(24460 Novi Road)

A front yard parking lot setback is being requested from the required setback of 100 ft.. The proposed setback would be for 21 ft. instead of the required 100 ft.. Therefore a variance of 79 ft. is being requested. This Board previously granted a variance of 77 ft. in ZBA case 06-042, which was previously requested by the RCOC in 2006.

Section 28-5 of Ordinance 09-100.38

The owner is requesting variances to allow existing signs located at 24800 Novi Road and 25000 Novi Road (Michigan CAT), to allow an existing sign, located at 24800 Novi Road, which states: "Michigan CAT" measuring 23 ft. in height based on relocation of this existing 23 ft. high sign measuring 82 sq. ft. in area, to be relocated approximately 3 ft. to 5 ft. east of the new Novi Road right of way line, in an area in the greenbelt area, between the new Novi Road ROW, and the front parking space area for 24800 Novi Road; and to move a sign located at 25000 Novi Road, being 19.7 ft. in height, measuring 108 sq. ft. in area, more or less, which identifies the "entrance" which would likewise be relocated approximately 3 ft. to 5 ft. east of the new Novi Road right of way line; and an identification sign at 25000 Novi Road, which states "Michigan CAT Power Systems" being a two tiered sign containing the logo of the owner, approximately 3 ft. to 5 ft. east of the new Novi Road right of way line. This would likewise include a variance to allow support structures on the signs to be relocated so that they can be detached and reattached to the signage at 25000 Novi Road. This property is located north of Ten Mile Road and east of Novi Road. These variance requests are being made to facilitate the right of way acquisition along Novi Road. In ZBA case 06-051, at this Board's regular June 6, 2006 meeting, this Board previously granted sign variances requested for relocation of the signage outside of the right of way, and to allow the support structures on these signs to be detached and reattached; or if they cannot be removed, with the same dimensions that currently exist.

#9

The Road Commission for Oakland County ("RCOC") is undertaking a road improvement project along Novi Road, between Grand River Avenue south to Ten Mile Road, in which a highway overpass will be constructed, over the existing CSX Railroad right of way, in the southeast portion of the City of Novi. The subject property is located southeast of the Novi Road alignment, which is the subject of the road improvement project.

The property itself consists of approximately 26.01 acres, more or less, net of the existing Novi Road easement, which is the west 33 ft. of the property. The RCOC is acquiring a highway easement over a 27 ft. wide strip of land which is contiguous, to the original 33 ft. wide Novi Road easement; along the entire Novi Road frontage of this property. The area which will be encumbered by a new public highway easement is estimated to be 36,332 sq. ft. , more or less. This area of the property includes landscaped areas and driveways that lead into the property from Novi Road. There is no building which is located within the highway easement area being acquired. Part of the requested variances include a request to detach and reattach existing signage for the subject property, so that they will be beyond the new Novi Road right of way.

Under the Uniform Condemnation Procedures Act (UCPA), Section 4(2), corresponding to MCL 213.54(2), provides that if an acquisition of a portion of a parcel of property is needed by a condemning agency, leaving the remainder of the parcel in nonconformity with a zoning ordinance requirement, then the condemning agency can either, before or after acquisition, apply for a zoning variance for the remainder of the property. When determining whether to grant the zoning variance, the local unit of government (City of Novi ZBA) must consider the potential benefits to the public use for which the property is being acquired, in addition to those criteria applicable under the relevant zoning statute, ordinance or regulation. The condemning agency must have actually or will actually acquire the portion of the parcel of property for the proposed public use for the zoning variance to become effective for the remainder of the parcel. If a variance is granted under MCL 213.54(2), then the remainder parcel is to be considered by the City of Novi to be in conformity with the zoning ordinance for all future uses, with respect to the nonconformity for which the zoning variance was granted. However, if the property was also nonconforming for other reasons, then granting of that variance will have no effect on the status of those other preexisting nonconformities. (See attachments).

Under the Zoning Enabling Act, Section 604(MCL 125.3604), there is specific statutory authority to allow for the variance from a zoning ordinance requirement to be applied for and granted.

Due to the road project along Novi Road, this site will become a non-conformity with the City of Novi's zoning requirements. Under MCL 213.54(2), the RCOC is requesting that the ZBA for the City of Novi consider the potential benefits to the public use for which the property is being acquired, in addition to the practical difficulty, caused by the road improvement project, for which the owner of the property is not responsible. The inability of the owner to conform to City of Novi's zoning ordinance requirements, is directly related to the Novi Road improvement project occurring at this location. Granting the requested variances will allow the spirit of the City of Novi zoning ordinance to be observed; public safety secured and substantial justice done.

With respect to grade and elevation changes, the partial taking by the RCOC will alter the road grade in front of the subject property by approximately 1 ft.. In the new right of way acquisition area, a sidewalk area will be installed between the roadway and the building in question. Because of the new Novi Road right of way line, caused by the partial taking from the subject property, the setback for the building at 24800 Novi Road; the parking lot setback for the property at 24800 Novi Road; and the parking lot setback for 24460 Novi Road, will all be impacted. Previous building setback and parking lot setback variances were granted by this Board, at the request of the RCOC in 2006. However, with the final alignment being determined, the extent of those previously granted variances have to be increased as set forth in this Application to the ZBA. The RCOC is requesting that the City of Novi ZBA grant the requested variances, so that the spirit of the City of Novi zoning ordinances is observed; public safety secured and substantial justice is done. The RCOC is seeking variance relief from this ZBA, to lessen the effect that this partial taking of property will have in terms of rendering the property nonconforming, under the City of Novi zoning ordinance requirements. The RCOC's road improvement project along Novi Road will improve public health, safety and welfare, with the construction of the CSX overpass bridge. This will maintain the flow of traffic through a densely developed area, both as currently existing and under the City of Novi's Master Plan, with respect to presently vacant parcels. The granting of the variance relief sought will substantially reduce the impact of the partial taking on the property owner.

Under MCL 213.54(2), in considering the RCOC Application for the variance relief sought, the ZBA "shall consider the potential benefits of the public use for which the property would be acquired, in addition to those criteria applicable under the relevant zoning statute, ordinance or regulation." These variances are necessitated by road improvements to Novi Road within the City of Novi. Sufficient grounds exist to grant each of the variances sought.

#10

Each of the property owners whose property is located within the alignment affected by the Novi Road Midsection Project, which consists of construction of the CSX bridge overpass, is a unique circumstance, whereby a partial taking by way of acquisition from their property has had to occur, so that the CSX bridge overpass can be built. This partial acquisition is due to circumstances beyond the control of each of the property owners. This activity is authorized by law and by the Michigan Constitution. To undertake this acquisition, the RCOC was required to deposit in escrow a sum of money which was estimated to be just compensation for the partial acquisition from the subject property, leaving the property owner with the ability to contest the amount of the compensation, as to whether it is adequate or inadequate in court. These are unique circumstances which are beyond the control of the property owner. The property owner neither caused nor created these circumstances, and the RCOC should not be penalized by seeking the requested variances. The variances, if granted, should include as part of the Resolution adopted by the Zoning Board of Appeals, the language contained in Section 4(2) of the Uniform Condemnation Procedures Act. This corresponds to MCL 213.54(2). The specific language requested is as follows:

“The property shall be considered by the City of Novi to be in conformity with the zoning ordinance for all future uses with respect to the nonconformity for which each variance was granted. Moreover, if the subject property was also nonconforming for other reasons, by granting the requested variances, the City of Novi ZBA has not taken any position on the effect on the status of the other preexisting nonconformities. The owner of the subject property may not increase the nonconformity for which each zoning variance was granted, without the consent of the City of Novi.”

The RCOC stands ready, willing and able to provide a further explanation, detail, drawings or supporting documentation, as either may be requested or needed by the ZBA.

125.3603. General powers and duties of board; voting requirements for determinations

Notes of Decisions

9. Appeals, generally

Zoning board of appeals (ZBA) validly exercised its powers by reviewing and affirming the township board's decision to deny a landowner's proposed planned unit development (PUD); ordinance which provided for appeal to ZBA for a planned

unit development (PUD) was authorized by statute, which provided that for PUD decisions, "an appeal may be taken to the board of appeals only if provided for in the zoning ordinance." *Hughes v. Almira Twp.* (2009) 771 N.W.2d 453, 284 Mich. App. 50. Zoning And Planning ⇐ 440.1

125.3604. Appeals; right to appeal; statement of grounds for determination of board; time for appeal; stay of proceedings; notice and hearing; representation of parties; dispositions by board; granting of variances

Sec. 604. (1) An appeal to the zoning board of appeals may be taken by a person aggrieved or by an officer, department, board, or bureau of this state or the local unit of government. In addition, a variance in the zoning ordinance may be applied for and granted under section 4 of the uniform condemnation procedures act, 1980 PA 87, MCL 213.54, and as provided under this act. The zoning board of appeals shall state the grounds of any determination made by the board.

(2) An appeal under this section shall be taken within such time as * * * prescribed by the zoning board of appeals by general rule, by * * * filing with the body or officer from whom the appeal is taken and with the zoning board of appeals * * * a notice of appeal specifying the grounds for the appeal. The body or officer from whom the appeal is taken shall immediately transmit to the zoning board of appeals all of the papers constituting the record upon which the action appealed from was taken.

(3) An appeal to the zoning board of appeals stays all proceedings in furtherance of the action appealed * * *. However, if the body or officer from whom the appeal is taken certifies to the zoning board of appeals after the notice of appeal is filed that, by reason of facts stated in the certificate, a stay would in the opinion of the body or officer cause imminent peril to life or property, * * * proceedings may be stayed only by a restraining order issued by the zoning board of appeals or a circuit court.

(4) Following receipt of a written request * * * for a variance, the zoning board of appeals shall fix a reasonable time for the hearing of the request and give notice as provided in section 103.¹

(5) * * * If the zoning board of appeals receives a written request seeking an interpretation of the zoning ordinance or an appeal of an administrative decision, * * * the zoning board of appeals shall conduct a public hearing on the request. Notice shall be given as required under section 103. However, if the request does not involve a specific parcel of property, notice need only be published as provided in section 103(1) and given to the person making the request as provided in section 103(3).

(6) At a hearing under subsection (5), a party may appear * * * personally or by agent or attorney. The zoning board of appeals may reverse or affirm, wholly or partly, or modify the order, requirement, decision, or determination and may issue or direct the issuance of a permit.

(7) If there are practical difficulties for nonuse variances as provided in subsection (8) or unnecessary hardship for use variances as provided in subsection (9) in the way of carrying out the strict letter of the zoning ordinance, the zoning board of appeals may grant a variance in accordance with this section, so that the spirit of the zoning ordinance is observed, public safety secured, and substantial justice done. The ordinance shall establish procedures for the review and standards for approval of all types of variances. The zoning board of appeals may impose conditions as * * * otherwise allowed under this act.

(8) The zoning board of appeals of all local units of government shall have the authority to grant nonuse variances relating to the construction structural changes or alterations

(9) The authority to grant variances from uses of land is limited to the following:

(a) Cities and villages.

(b) Townships and counties that as of February 15, 2006 had an ordinance that uses the phrase "use variance" or "variances from uses of land" to expressly authorize the granting of use variances by the zoning board of appeals.

(c) Townships and counties that granted a use variance before February 15, 2006.

(10) The authority granted under subsection (9) is subject to the zoning ordinance of the local unit of government otherwise being in compliance with subsection (7) and having an ordinance provision that requires a vote of $\frac{2}{3}$ of the members of the zoning board of appeals to approve a use variance.

(11) The authority to grant use variances under subsection (9) is permissive, and this section * * * does not require a local unit of government to adopt ordinance provisions to allow for the granting of use variances.

P.A.2006, No. 110, § 604, Eff. July 1, 2006. Amended by P.A.2008, No. 12, Imd. Eff. Feb. 29, 2008.

¹ M.C.L.A. § 125.3103.

Historical and Statutory Notes

2008 Legislation

P.A.2008, No. 12, in subsec. (1), in the first sentence substituted "this" for "the" preceding "state", and inserted "the" preceding "local unit"; in subsec. (2), in the first sentence deleted "shall be" preceding "prescribed", "the" preceding "filing", and "of" preceding "a notice", and inserted "body or"; rewrote subsec. (3); in subsec. (4), deleted "concerning a request" following "written request"; rewrote subsec. (5); in subsec. (6), in the first sentence substituted "a" for "the" preceding "hearing" and "personally" for "in person", and inserted "under subsection (5)"; and, in subsec. (11), substituted "does not" for "shall not be construed to". Prior to the amendment, subsecs. (3) and (5) read:

"(3) An appeal to the zoning board of appeals stays all proceedings in furtherance of the action appealed from unless the body or officer from whom the appeal is taken certifies to the zoning board of appeals after the notice of appeal is filed that, by reason of facts stated in the certificate, a stay would in the opinion of the body or officer cause imminent peril to life or property, in which

case proceedings may be stayed by a restraining order issued by the zoning board of appeals or a circuit court."

"(5) Upon receipt of a written request seeking an interpretation of the zoning ordinance or an appeal of an administrative decision, a notice stating the time, date, and place of the public hearing shall be published in a newspaper of general circulation within the township and shall be sent to the person requesting the interpretation not less than 15 days before the public hearing. In addition, if the request for an interpretation or appeal of an administrative decision involves a specific parcel, written notice stating the nature of the interpretation request and the time, date, and place of the public hearing on the interpretation request shall be sent by first-class mail or personal delivery to all persons to whom real property is assessed within 300 feet of the boundary of the property in question and to the occupants of all structures within 300 feet of the boundary of the property in question. If a tenant's name is not known, the term 'occupant' may be used."

Law Review and Journal Commentaries

The "finality rule" of *Paragon v. City of Novi*: The achievement of fairness in land use jurispru-

dence. Gerald A. Fisher, Mich. Pub Corp LQ 1 (Winter 2010).

Research References

Encyclopedias
Mich. Civ. Jur.—Zoning § 37, Variances, Exceptions, and Special Uses.
Mich. Civ. Jur.—Zoning § 43, Zoning Board of Appeals—Statutory Powers and Duties.

Michigan Civil Practice Forms § 196:11, for Injunction—Against Gun Club.
Michigan Legal Forms § 38:11.10, Michigan Zoning Enabling Act.

213.54. Acquisition of just compensation for whole parcel; nonconformance with zoning ordinance; entry upon property, purposes, obstruction or denial of entry, lawful possession; definitions

Sec. 4. (1) If the acquisition of a portion of a parcel of property actually needed by an agency would destroy the practical value or utility of the remainder of that parcel, the agency shall pay just compensation for the whole parcel. The agency may elect whether to receive title and possession of the remainder of the parcel. The question as to whether the practical value or utility of the remainder of the parcel of property is in fact destroyed shall be determined by the court or jury and incorporated in its verdict.

(2) If the acquisition of a portion of a parcel of property actually needed by an agency would leave the remainder of the parcel in nonconformity with a zoning ordinance, the agency, before or after acquisition, may apply for a zoning variance for the remainder of the parcel. In determining whether to grant the zoning variance, the governmental entity having jurisdiction to grant the variance shall consider the potential benefits of the public use for which the property would be acquired, in addition to those criteria applicable under the relevant zoning statute, ordinance, or regulation. The agency must actually acquire the portion of the parcel of property for the proposed public use for the zoning variance to become effective for the remainder. If a variance is granted under this subsection, the property shall be considered by the governmental entity to be in conformity with the zoning ordinance for all future uses with respect to the nonconformity for which that variance was granted. However, if the property was also nonconforming for other reasons, the grant of that variance has no effect on the status of those other preexisting nonconformities. An owner shall not increase the nonconformity for which a variance is granted under this section without the consent of the governmental entity. An agency has the same right to appeal action on a zoning variance as would a property owner seeking a zoning variance. This section does not deprive a governmental entity of its discretion to grant or deny a variance.

(3) An agency or an agent or employee of an agency may enter upon property before filing an action for the purpose of making surveys, measurements, examinations, tests, soundings, and borings; taking photographs or samplings; appraising the property; conducting an environmental inspection; conducting archaeological studies pursuant to section 106 of title I of the national historic preservation act, public law 89-665, 16 U.S.C. 470f; or determining whether the property is suitable to take for public purposes. The entry may be made upon reasonable notice to the owner and at reasonable hours. An entry made pursuant to this subsection shall not be construed as a taking. The owner or his or her representative shall be given a reasonable opportunity to accompany the agency's agent or employee during the entry upon the property. The agency shall make restitution for actual damage resulting from the entry, which may be recovered by special motion before the court or by separate action if an action for condemnation has not been filed. The term "actual damage" as used in this subsection does not include, and an agency shall not make restitution



Michigan CAT

Engine Division

ENTRANCE ▶



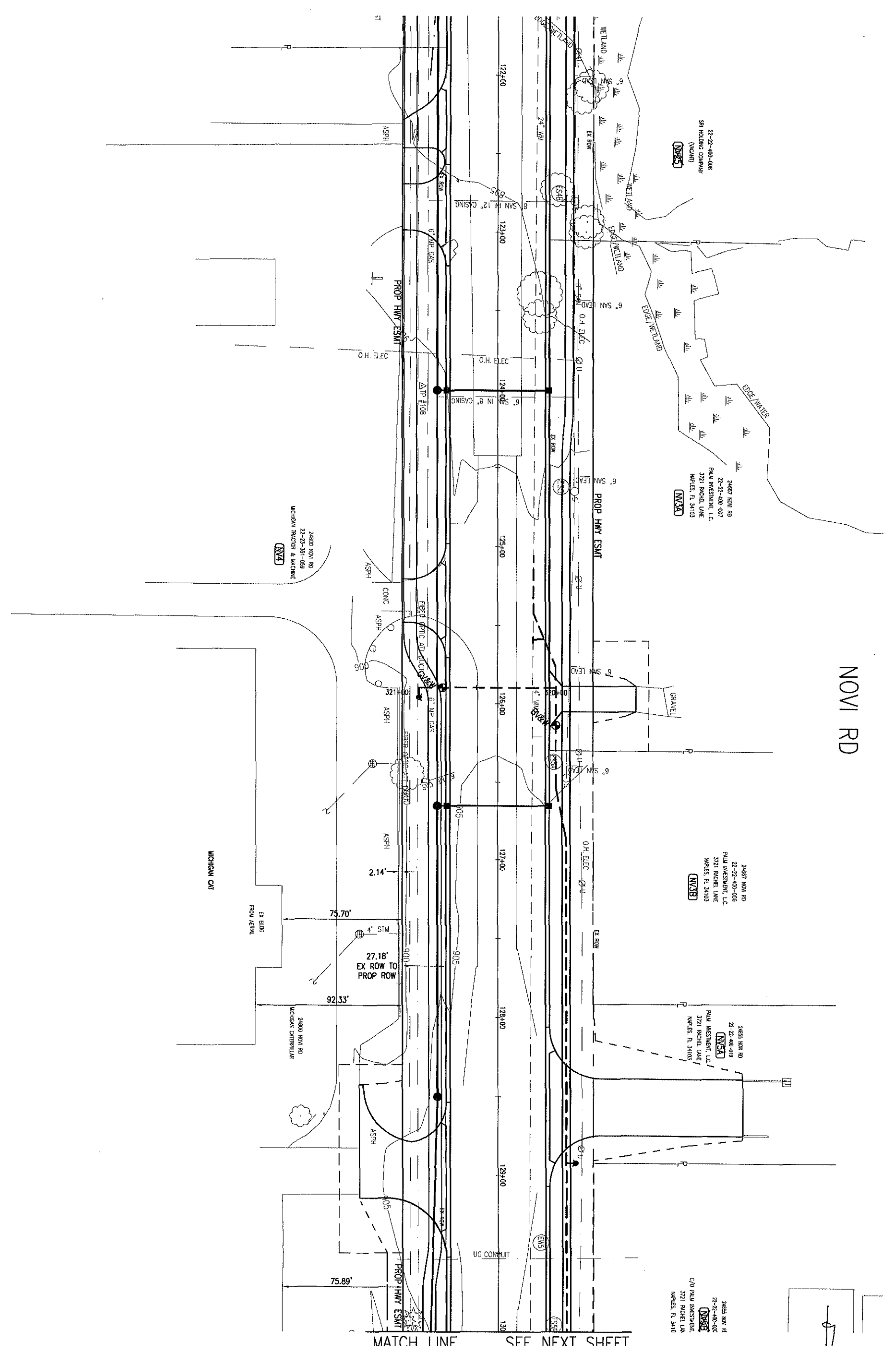
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Michigan CAT

Engine Division

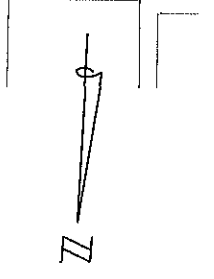
ENTRANCE ▶

SKYLINE



NOVI RD

MATCH LINE SEE NEXT SHEET



NOVI ROAD
NORTH OF TEN MILE RD TO MAIN ST
NV4
REVISED PARKING LOT PLAN

DATE	BID DATE	CADD	ENGINEER	PROJ MGR	SECTION	TOWN	RANGE	COUNTY	CITY/VILLAGE/TOWNSHIP	SCALE	HORIZ DATUM	VERT DATUM
04/27/16		JM	JVCN	CD	2223	1N	8E	OAKLAND	CITY OF NOVI	H: 1"=30'	V: N/A	SP MI-SOUTH U.S.G.S
CLIENT: ROAD COMMISSION FOR OAKLAND COUNTY									JOB # RCOC: 41531 OHM: 0476-00-0140			
REVISIONS:			DATE:	REVISIONS:			DATE:	REVISIONS:			DATE:	
34000 Plymouth Road Livonia, MI 48150 P (734) 522-6711 F (734) 522-6427 WWW.OHM-ADVISORS.COM												
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