



CITY of NOVI CITY COUNCIL

www.cityofnovi.org

Agenda Item 6  
February 12, 2007

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

*Burch*  
**SUBMITTING DEPARTMENT:** Planning

**CITY MANAGER APPROVAL:** *Ch*

**BACKGROUND INFORMATION:**

In 2004, the City Council vacated a portion of Orchard Avenue, commonly known as Paul Bunyan Drive or Sixth Gate, which was located with a recorded condominium covering the original Main Street development. The road was requested for vacation in order to clear title for the banks that had foreclosed on the project. City Council approved the request, subject to cross access easements for public traffic being provided over the vacated portion of the roadway. The new developer of Main Street Novi, Triangle Development, is requesting vacation of a second portion of the road, from Novi Road 554 feet to the east.

The Planning Department and the Engineering Division have no objection to the vacation of the right of way, as long as the city retains an easement across the property for any public utilities and for cross access. These easements are to be submitted and reviewed with the Final Site Plan for the first phase of the project. The City Attorney has reviewed the request and provided comments and a proposed resolution to vacate the road section. The Building Department, Fire Department and Department of Public Works have all reviewed the request and have no comment or concerns.

Since the public hearing notices have been sent, the City Clerk's office has received several calls about the proposal and have been able to answer any questions that have arisen. The Planning Department has been in discussions with two neighboring property owners regarding the proposal as well. Neither property owner expressed any concerns after further discussion of the plans.

**RECOMMENDED ACTION:** Approval of resolution to vacate a portion of Orchard Avenue/Paul Bunyan/Sixth Gate Right of Way adjacent to the Main Street Novi development, east of Novi Road

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

	1	2	Y	N
Council Member Mutch				
Council Member Nagy				
Council Member Paul				

2

**LETTER FROM APPLICANT  
REQUESTING VACATION OF STREET**

October 10, 2006

City Council  
City of Novi  
c/o Tim Schmitt  
45175 W. Ten Mile Road  
Novi, MI 48375

**Subject: Right-of-Way Vacation**

Dear Council Members:

We are requesting the City vacate a .74 acre portion of the Paul Bunyon right-of-way. The section of right-of-way extends 533 feet east beginning at Novi Road with a 60 foot width (please see attached survey and legal description). We are requesting the vacation in conjunction with the Main Street Novi project. Currently Triangle Main Street LLC owns the remaining portion of the road which extends approximately 400 feet further east. If the City vacates the entire length of the road it will ease the burden of snow removal and maintenance. In addition, besides Main Street all other roads within the development are private.

There is one property owner who owns two parcels to the north that have exclusive access to the property from this right-of-way. We have met with that property owner and will provide an easement to that property for perpetual unlimited access.

Respectfully submitted,

**McKENNA ASSOCIATES, INCORPORATED**



Alicia Heideman  
Associate Planner

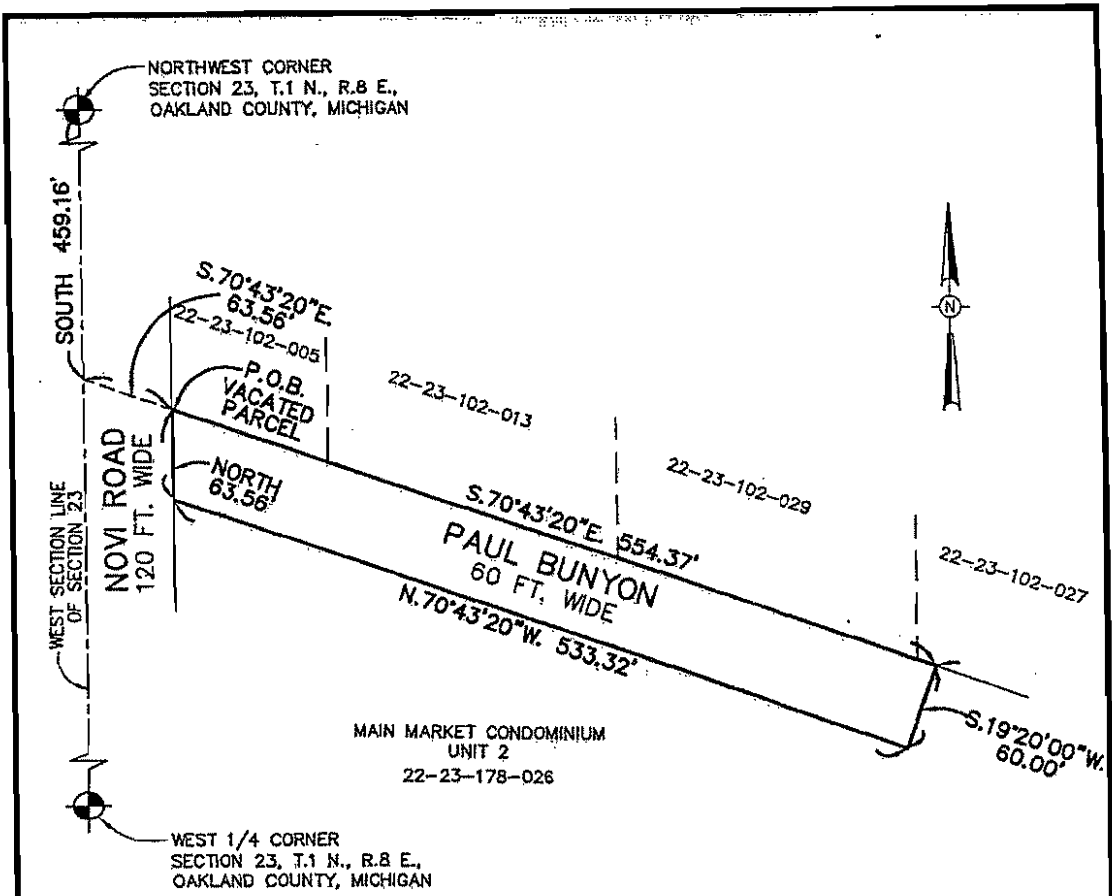
235 East Main Street  
Suite 105  
Northville, MI 48167  
TEL 248-596-0920  
FAX 248-596-0930

151 South Rose Street  
Suite 920  
Kalamazoo, MI 49007  
TEL 269-382-4443  
FAX 269-382-4540

30 East Mulberry Street  
Suite A  
Lebanon, OH 45036  
TEL 513-934-2345  
FAX 513-934-2809

10 West Streetsboro Street  
Suite 204  
Hudson, OH 44236  
TEL 330-528-3342  
FAX 330-342-5699

TOLLFREE 888-226-4326  
WEB [www.mcka.com](http://www.mcka.com)



**VACATED PORTION OF  
PAUL BUNYON STREET DESCRIPTION:**

PART OF THE NORTHWEST 1/4, SECTION 23, T.1N., R.8E., CITY OF NOVI,  
OAKLAND COUNTY, MICHIGAN MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF SAID SECTION THENCE DUE  
SOUTH ALONG THE WEST SECTION LINE ALSO BEING THE CENTERLINE OF  
NOVI ROAD 459.16'; THENCE S.70°43'20"E, 63.56' TO THE EAST LINE OF  
NOVI ROAD ALSO BEING THE POINT OF BEGINNING; THENCE S.70°43'20"E,  
554.37'; THENCE S.19°20'00"W, 60.00'; THENCE N.70°43'20"W, 533.32';  
THENCE DUE NORTH 63.56' TO THE POINT OF BEGINNING. PARCEL  
CONTAINING 0.7491 ACRES.

<b>PREPARED FOR:</b>  TRIANGLE MAINSTREET L.L.C. 30403 THIRTEEN MILE ROAD FARMINGTON HILLS, MI. 48334 PHONE: (248)-932-9333	JOB NO. 0604	PAUL BUNYON STREET VACATION
	SCALE 1"=100'	<b>SUMMA ENGINEERING &amp; ASSOCIATES</b> 30085 NORTHWESTERN HIGHWAY SUITE 30A FARMINGTON HILLS, MICHIGAN 48834 PHONE: 248-932-4860
	DATE 10/10/06	
	REVISION	
	SHEET 1 OF 1	

**RESOLUTION TO VACATE A PORTION OF  
ORCHARD AVENUE/PAUL BUNYA/SIXTH GATE**

CITY OF NOVI

OAKLAND COUNTY, MICHIGAN

**RESOLUTION VACATING A PORTION OF A PLATTED STREET**  
**KNOWN AS PAUL BUNYAN DRIVE**  
**IN THE NOVI MANOR SUBDIVISION**  
**IN THE CITY OF NOVI**

At a meeting of the City Council of the City of Novi, Oakland County, Michigan, held on \_\_\_\_\_, 200\_, at the City Hall, 45175 Ten Mile Road, Novi, Michigan 48375.

**WHEREAS**, the Novi City Council held a public hearing on \_\_\_\_\_, 200\_, to consider and hear objections to the proposed vacation of that portion of a platted road known as Paul Bunyan Drive (and also sometimes referred to as Sixth Gate Road and/or Garden Street) east of Novi Road and south of Grand River Avenue, a part of the Novi Gardens Subdivision and adjacent to the Novi Manor Subdivision, within the City of Novi, County of Oakland, State of Michigan, and legally described as:

Part of the Northwest  $\frac{1}{4}$ , Section 23, Township 1 North, Range 8 East, City of Novi, Oakland County, Michigan, more particularly described as follows;

Commencing at the Northwest corner of said section thence due South along the West section line also being the centerline of Novi Road 459.16'; thence South  $70^{\circ} 43' 20''$  East 63.56' to the East line of Novi Road also being the point of beginning; thence South  $70^{\circ} 43' 20''$  East 554.37'; thence South  $19^{\circ} 20' 00''$  West 60.00'; thence North  $70^{\circ} 43' 20''$  West 533.32'; thence due North 63.56' to the point of beginning. Parcel containing 0.7491 acres.

**WHEREAS**, the City Council has jurisdiction to vacate the portion of the road in question, no part of which is within 25 meters of a lake or in the general course of a stream; and

**WHEREAS**, the Novi City Council is satisfied that the described portion of such platted road may be vacated without any adverse effects on the public health, safety, and/or welfare, but that an easement for public utilities and for public ingress to and egress from adjacent parcels should be reserved over the parcel as described herein.

**NOW, THEREFORE, IT IS HEREBY RESOLVED** by the Novi City Council that:

1. The portion of that platted road located in the City of Novi, County of Oakland, State of Michigan, and legally described as follows:

Part of the Northwest  $\frac{1}{4}$ , Section 23, Township 1 North, Range 8 East, City of Novi, Oakland County, Michigan, more particularly described as follows;

Commencing at the Northwest corner of said section thence due South along the West section line also being the centerline of Novi Road 459.16'; thence South  $70^{\circ} 43' 20''$  East 63.56' to the East line of Novi Road also being the point of beginning; thence South  $70^{\circ} 43' 20''$  East 554.37'; thence South  $19^{\circ} 20' 00''$  West 60.00'; thence North  $70^{\circ} 43' 20''$  West 533.32'; thence due North 63.56' to the point of beginning. Parcel containing 0.7491 acres.

shall be and hereby is vacated. An easement for public utilities and for public vehicular ingress and egress between Novi Road and the previously vacated portion of Paul Bunyan (a/k/a Orchard or Sixth Gate) shall be and is hereby reserved over the entire parcel as described herein. This action is taken pursuant to Sections 2526 and 2527 of Act 288 of the Public Acts of 1967, as amended, being MCL 560.256 and MCL 560.257, respectively.

2. Within 30 days after the effective date of City Council's approval of this Resolution, the City Clerk shall record a certified copy of this Resolution with the Oakland County Register of Deeds, and shall file a copy of this Resolution with the office of the Michigan State Treasurer.
3. The vacation of the portion of such portion of the platted road shall be effective on the date this Resolution is recorded with the Oakland County Register of Deeds, and upon the vacation of the portion of such platted road becoming effective, the portion of such platted road shall be removed from the street plan and any other official maps or street plans for the City of Novi.

STATE OF MICHIGAN     )  
  ) ss.  
COUNTY OF OAKLAND    )

I, MARYANNE CORNELIUS, the duly-qualified Clerk of the City of Novi, Oakland County, Michigan, do hereby certify that the foregoing is an amended copy of the Resolution adopted by the City Council of the City of Novi with at least five (5) affirmative votes, at a duly-called meeting held on \_\_\_\_\_, 2006, a copy of which is on file in my office.

\_\_\_\_\_  
MARYANNE CORNELIUS  
Clerk, City of Novi

This Resolution was signed and acknowledged before me on \_\_\_\_\_, 2006, by MARYANNE CORNELIUS, the duly-authorized Clerk for the City of Novi, a Michigan municipal corporation.

\_\_\_\_\_  
Notary Public, Oakland County, Michigan  
My Commission Expires: \_\_\_\_\_

Recording Fee:         \$17.00

Not Subject to Transfer Taxes:         MCL 207.502 and MCL 207.523

PREPARED BY AND UPON RECORDING RETURN TO:  
ELIZABETH M. KUDLA (P42111)  
SECRET WARDLE  
30903 NORTHWESTERN HIGHWAY  
NOVI HILLS, MI 48334

C:\NrPortbl\manage\BKUDLA\888705\_1.DOC



**RESOLUTION TO SET A PUBLIC HEARING FOR THE  
PROPOSED VACATION OF A PORTION OF  
ORCHARD AVENUE/PAUL BUNYA/SIXTH GATE  
(APPROVED AT 2/7/07 CITY COUNCIL MEETING)**

CITY OF NOVI

OAKLAND COUNTY, MICHIGAN

**RESOLUTION TO SET PUBLIC HEARING TO CONSIDER  
VACATING PAUL BUNYAN DRIVE IN THE CITY OF NOVI**

At a meeting of the City Council of the City of Novi, Oakland County, Michigan, held on the 5th day of February, ~~2006~~, at the City Hall, 45175 West Ten Mile Road, Novi, Michigan 48375. 2007

The following resolution was offered by Member Gatt and supported by Member Margolis.

**WHEREAS**, a request has been received by the City Council seeking the vacation, discontinuance, or abolition of a public road within the City of Novi, lying east of Novi Road and south of Grand River Avenue, known as Paul Bunyan Drive (aka Sixth Gate, aka Garden Street) legally described as:

Part of the Northwest ¼, Section 23, Township 1 North, Range 8 East, City of Novi, Oakland County, Michigan, more particularly described as follows;

Commencing at the Northwest corner of said section thence due South along the West section line also being the centerline of Novi Road 459.16'; thence South 70° 43' 20" East 63.56' to the East line of Novi Road also being the point of beginning; thence South 70° 43' 20" East 554.37'; thence South 19° 20' 00" West 60.00'; thence North 70° 43' 20" West 533.32'; thence due North 63.56' to the point of beginning. Parcel containing 0.7491 acres.

**WHEREAS**, the request for vacation asserts that road may be vacated without any adverse effects on the public health, safety, and/or welfare;

**WHEREAS**, the City Council has considered such request and has determined to proceed to further consideration of such action in accordance with the requirements of the applicable statutory, charter, and ordinance provisions, and pursuant to the terms of the attached proposed resolution;



**STAFF AND CONSULTANT REVIEW LETTERS  
REGARDING PROPOSED VACATION**



**CITY OF NOVI**  
**Engineering Division**

**MEMORANDUM**

TO: Tim Schmitt, AICP

FROM: Rob Hayes, PE *RH*  
City Engineer

DATE: December 6, 2006

SUBJECT: Request for Street Vacation for  
Paul Bunyan Drive (aka Sixth Gate, aka Garden Street)

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The Engineering Division has reviewed the request by McKenna Associates to vacate a 0.74-acre segment of Paul Bunyan Drive extending east from Novi Road. We have no objection to the vacation as long as the following two conditions are met: 1) utility easements shall be provided over all existing utilities within the right-of-way to be vacated (our records show an 8-inch sanitary sewer exists within the current right-of-way) prior to or concurrent with the street vacation, and 2) an access easement allowing perpetual unlimited access shall be provided granting access to the two parcels to the north along the abutting portion of the right-of-way to be vacated.



**CITY OF NOVI**  
**Engineering Division**

**MEMORANDUM**

**To:** Don Saven, Building  
Barbara McBeth, Planning  
Tom Schultz, Attorney  
Jeff Johnson, Fire Department  
Benny McCusker, DPW

**From:** Timothy R. Schmitt, AICP  
Plan Review Center

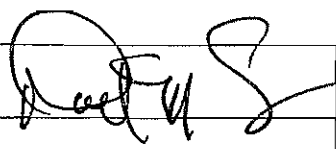
**Date:** November 30, 2006

**Re:** Request for a Street Vacation for  
Paul Bunyan Drive (aka Sixth Gate, aka Garden Street)

Attached is a request for a Street Vacation. This request is to vacate and abandon the section of Paul Bunyan Drive at the Novi Road intersection. This is to the west of the previously vacated section of Sixth Gate, leaving the portion from the Main Street property north to Grand River as a public road. This section of the road is now within the Novi Main Street Development (see attached map). Please review for future City Council Agenda, sign below and return to my attention by **Wednesday, December 13.** Attach any comments as necessary.

Thank you.


**ROUTING**

Delivered To	Date Delivered	Returned On	Approval (sign)
Ben Croy (Engineering)	November 30, 2006		
Don Saven (Building)	November 30, 2006	12/1/06	
Barb McBeth (Planning)	November 30, 2006		
Tom Schultz (City Attorney)	November 30, 2006		
Jeff Johnson (Fire Department)	November 30, 2006		
Benny McCusker (DPW)	November 30, 2006		



## MEMORANDUM

TO: Barbara McBeth, *AICP*, Planning Director

FROM: Timothy R. Schmitt, *AICP*, Planner 

DATE: January 16, 2007

SUBJECT: **Paul Bunyan Drive (aka Sixth Gate) Street Vacation –  
Main Street Novi Development**

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The Planning Department has reviewed the request from Triangle Development to vacate a portion of Paul Bunyan Drive (aka Sixth Gate, Garden Street) in order to allow a portion of the proposed Main Street Novi development to move forward. This stretch of roadway, approximately 554 feet long, is one of two remainder pieces of Paul Bunyan Drive from a previous City Council action that vacated the middle portion of the road. It runs from Novi Road, eastward along the northern edge of the Main Street Novi project.

The applicant is proposing to build parking, sidewalk, and plant landscaping in the area currently being utilized for the 60-foot right-of-way for Paul Bunyan Drive. This causes several setback issues related to the roadway and adjacent parking and buildings. The Planning Department pointed out this issue at the time of Preliminary Site Plan review, indicating the following options for resolution of this issue:

1. The applicant can request the City Council vacate the westernmost portion of the remainder of Sixth Gate Road. This would place future maintenance on the applicant and would allow the City to require a curb cut. This would also eliminate setback issues along the right-of-way.
2. The applicant could enter into a maintenance agreement with the City regarding the road, which would resolve that issue, but would not have an effect on the setbacks or curb cut situation.
3. The applicant could dedicate additional right-of-way in the area, to accommodate the parking on both sides of the road. This would likely resolve some setback concerns, but the City would still request curb cuts and maintenance concerns would still exist.
4. The applicant could ask the Planning Commission and City Council to accept the situation as-is.

After receiving the review letters for the project, the applicant indicated that they would request a street vacation from the City Council, should the Preliminary Site Plan be

approved. The City Council has reviewed the plans and did not register a strong negative reaction to the proposal, so the applicant has moved forward with a formal request to vacate the street.

The Planning Department **can support the requested street vacation, subject to cross access easements being provided and the provision for a future curb cut to the north being provided.** Vacating the roadway will allow for future maintenance to be completed by the applicant, with the City not being responsible. It will also allow for the applicant to move forward with the previously approved plans without a substantial number of additional waivers and variances.

The curb cut to the north will allow for future access to a lot that would be rendered land locked by the proposed vacation. The applicant has spoken to the owner and has agreed to provide this access. This curb cut is expected to be shown on the Final Site Plan submittal for the project and would be installed at the time of construction for the adjacent phase of the project. The cross access easement will be similar to what the City required with the vacation for the other segment of Paul Bunyan Drive. That will allow the public to continue to travel over that portion of the roadway which will be a parking lot drive aisle.



December 29, 2006

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: 248-539-2846  
bkudla@secretwardle.com

Tim Schmitt, Planner  
City of Novi  
45175 W. Ten Mile Road  
Novi, MI 48375

RE: *Potential Vacation of Paul Bunyan Drive*  
Our File No. 55142 NOV

Dear Mr. Schmitt:

We have received and reviewed the materials provided with respect to Triangle Main Street's request that the City vacate the remaining public portion of Paul Bunyan Drive, which is a platted street located east of Novi Road and west of the previously vacated portion of Paul Bunyan Drive (aka Orchard, Sixth Gate). The remaining public portion of Paul Bunyan Drive is located within the Novi Gardens Subdivision.

If vacated, as far as the City's records are concerned, the road area will revert to the abutting property owner of the Novi Gardens Subdivision. The common-law rule in Michigan is that in a platted subdivision, a vacated street or alley reverts to the abutting landowners. See *Thompson-McCully Quarry Co v Berlin Charter Township*, 259 Mich App 483 (2003); *Township of Dalton v Muskegon Co Board of Co Road Commissioners*, 223 Mich App 53 (1997); *Valoppi v Detroit Engineering & Machine Co*, 339 Mich 674 (1954), MCL 560.221 *et seq.*

Some attorneys and title insurance companies have questioned whether a simple resolution to vacate a street by the City is sufficient to *vest title* to the vacated street in the adjacent owners, or whether a circuit court action is required to transfer title. We have generally read the applicable law (the Land Division Act) to allow vacation by resolution duly recorded at the Register of Deeds. We assume for purposes of this letter that the City does not intend to commence a circuit court vacation action (which would be required if the road were within 25 meters of a lake or watercourse). We further assume that the party requesting the vacation, Triangle Main Street, LLC, has made whatever inquiries it feels necessary with its title insurer to conclude that, upon a vacation resolution by the City (if approved), Triangle will have (or be able to acquire) title to the area, since it intends to make use of the area in its development.

In considering whether to vacate Paul Bunyan Drive, the City should consider the public benefit of the vacation rather than the private benefit to the abutting property owner. The determination to vacate a public roadway must be made in the public interest and on the basis of appropriate considerations of public benefit. The applicant indicates that one public benefit would be that the City would give up the burden of maintaining and repairing the road.

In considering the issue of vacation, the Planning and Engineering Departments should consider whether it is necessary for the City to maintain any easement over the roadway area. It is our understanding that property owners along Main Street currently use the public portion of Paul Bunyan Drive to access the rear of their property. In that regard, the City should require Triangle Main Street to enter into a Shared Access Easement or Easements with the Main Street property owners to continue access between the properties. It also appears that the Fire Department may use that portion of Paul Bunyan Drive for ingress and egress to the Fire Station. Members of the public may also use it to access the Main Street businesses. A public hearing on the manner may identify those and/or additional or different public uses of the road which may need to be addressed by reserving appropriate easements over the subject roadway. The City Engineer should consider whether an easement to access, maintain and repair existing utility facilities may also be necessary.

Section 7.6 of the City Charter provides that the issue of right-of-way vacation must be set for a public hearing. Notice of the public hearing must be provided one week in advance in the City's usual manner. We have prepared an enclosed a Resolution the City may use for setting a public hearing. Please note that the Resolution contains a requirement for notice to be mailed directly to adjacent parcels. This is not a requirement of the Charter or a statute but is common practice for this type of issue.

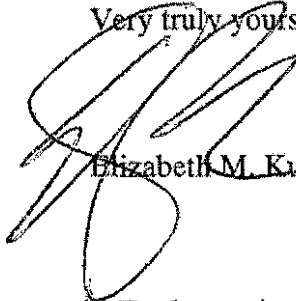
If City Council determines to proceed with the vacation after the public hearing, we have also drafted, and enclosed a second Resolution accomplishing the vacation for consideration at a separate City Council meeting. The Resolution vacating the right-of-way must be approved by five (5) members of City Council.

Subject to Planning, Engineering and the Fire Department's recommendations, and the requirement to reserve all necessary easements, this matter be placed on an upcoming City Council agenda for public hearing and consideration of vacation.

Tim Schmitt, Planner  
December 29, 2006  
Page 3

If you have any questions regarding the above, please do not hesitate to contact me.

Very truly yours,



Elizabeth M. Kudla

EMK  
Enclosures

cc: Clay Pearson, City Manager (w/Enclosures)  
Maryanne Cornelius, City Clerk (w/Enclosures)  
Barb McBeth, Planning Director (w/Enclosures)  
Benny McCusker, DPW Director (w/Enclosures)  
Kathy Smith-Roy, Finance Director (w/Enclosures)  
Don Saven, Building Official (w/Enclosures)  
Benjamin Croy, Civil Engineer (w/Enclosures)  
Jeff Johnson, Fire Department (w/Enclosures)  
Thomas R. Schultz, Esquire (w/Enclosures)

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# City of Novi

## FIRE DEPARTMENT

December 13, 2006

TO: Timothy Schmitt – Staff Planner  
Plan Review Center

FROM: Fire Marshal Evans

RE: Paul Bunyan Dr. Street Vacation

I have reviewed the request to vacate the westerly portion of Paul Bunyan Dr. (a.k.a. Sixth Gate) from Novi Rd. to approximately 530' to the east. The only concern I have with this street vacation is that the former Novi Municipal building that is now vacant is accessed via this drive. I understand that this building will be demolished as part of the Main Street Development.

I do not object to this request as long as access to this building is maintained until it is demolished.



**CITY OF NOVI**  
**Engineering Division**

**MEMORANDUM**

**To:** Don Saven, Building  
Barbara McBeth, Planning  
Tom Schultz, Attorney  
Jeff Johnson, Fire Department  
Benny McCusker, DPW

**From:** Timothy R. Schmitt, AICP  
Plan Review Center

**Date:** November 30, 2006

**Re:** Request for a Street Vacation for  
Paul Bunyan Drive (aka Sixth Gate, aka Garden Street)

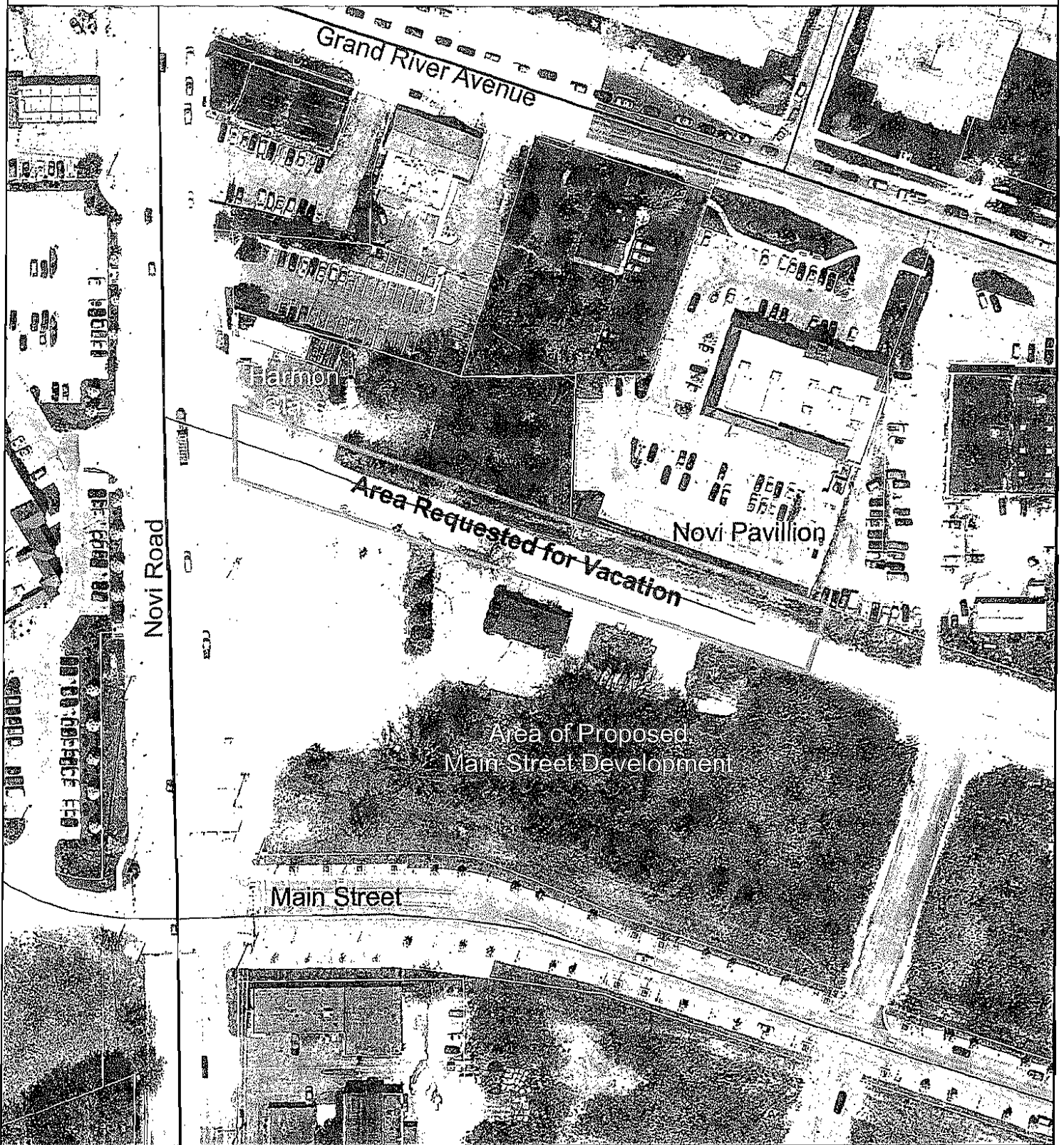
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Thank you.

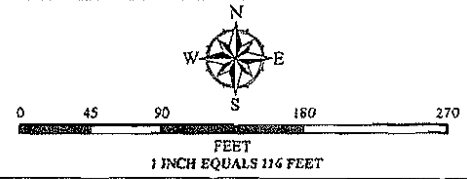
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Benny McCusker (DPW)	November 30, 2006	12-6-06	

Paul Bunyan/Orchard Avenue/Sixth Gate Proposed Vacation of Public Right-of-Way  
 Aerial Photo of Subject Property



**CITY OF NOVI**  
 PLAN REVIEW CENTER  
 Timothy R. Schmitt, AICP  
 NOVI CITY HALL/CIVIC CENTER  
 45175 W. TEN MILE ROAD  
 NOVI, MI 48375-3024  
 (248) 347-3279  
 WWW.CI.NOVI.MI.US



**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.