



cityofnovi.org

CITY of NOVI CITY COUNCIL

Agenda Item H
May 12, 2008

SUBJECT: Consideration of final approval Zoning Map Amendment 18.673 with Planned Rezoning Overlay (PRO) SP 07-59 from the applicant, the Basilian Fathers of Milford, Michigan, to rezone property located north of Eleven Mile Road, west of Taft Road from R-1, One-Family Residential to RM-1, Low Density, Low-Rise Multiple Family Residential and consideration of the PRO Agreement and Concept Plan. The subject property is 4.15 acres.

SUBMITTING DEPARTMENT: Community Development Department - Planning

CITY MANAGER APPROVAL:

BACKGROUND INFORMATION: The petitioner is requesting consideration of a Planned Rezoning Overlay (PRO), in conjunction with rezoning request 18.673. The PRO acts as a zoning map amendment, creating a "floating district" with a conceptual plan attached to the rezoning of the parcel. As a part of the PRO, the underlying zoning is changed, in this case to RM-1 and the applicant enters into a PRO Agreement with the City, whereby the City and applicant agree to any deviations to the applicable ordinances and tentative approval of a conceptual plan for development for the site. After final approval of the PRO plan and agreement, the applicant will submit for Preliminary and Final Site Plan under the typical review procedures. The PRO runs with the land, so future owners, successors, or assignees are bound by the terms of the agreement, absent modification by the City of Novi. If the development has not begun within two years, the PRO concept plan expires and the agreement becomes void.

The parcel in question is vacant land located on the north side of Eleven Mile Road and west of Taft Road in Section 16 of the City of Novi. The property totals 4.15 acres. The current zoning of the property is R-1, One-Family Residential District and the applicant is seeking a rezoning with PRO to the RM-1, Low Density, Low-Rise Multiple Family Residential District.

The applicant's concept plan shows a proposed structure that is two stories tall on the western side of the building and one story tall on the eastern side of the building. This structure would contain 14 living units with common areas for the kitchen, parlor, dining area, chapel, offices and a community room. The building itself is surround by associated landscaping and parking on the northern, eastern and western sides. The applicant has included a carport to cover the proposed parking on the western side of the proposed building and a dumpster near the eastern side of the site. Twenty-two parking spaces are provided on site and a detention pond has been included on the far eastern side of the property adjacent to Taft Road. The proposed location of the detention pond could result in the loss of additional regulated trees.

Several public benefits are being offered as part of the PRO. The developer has proposed to extend the public sidewalk to the northwest corner of Eleven Mile Road and Taft Road and has indicated the additional right-of-way on Eleven Mile Road and Taft Road needed for future use by the City would be donated as a public benefit.

This matter was brought before the Planning Commission for a public hearing and their recommendation on January 23, 2008. At that time, the Planning Commission made a positive recommendation to rezone to the subject property to the RM-1 District for the Basilian Fathers Residence PRO in conjunction with Rezoning 18.673. The Planning Commission also suggested the applicant consider placing a conservation easement over any remaining woodlands on site and limiting the future uses of the property.

This matter was brought before City Council for tentative approval on February 4th, 2008. At that time, Council gave the rezoning tentative approval and directed the City's attorney to work with the applicant's attorney to draft the Planned Rezoning Overlay agreement. This evening, the Council is asked to consider the actual text of the Planned Rezoning Overlay Agreement and give final approval of the agreement and the subsequent rezoning. If the PRO agreement and rezoning are approved, the applicant would proceed to the Site Plan Review process.

RECOMMENDED ACTION: Final approval of Zoning Map Amendment 18.673 with Planned Rezoning Overlay (PRO) SP07-59 from the applicant, the Basilian Fathers of Milford, Michigan, to rezone property located north of Eleven Mile Road, west of Taft Road from R-1, One-Family Residential District to RM-1, Low Density, Low-Rise Multiple Family Residential District and consideration of the PRO Agreement and Concept Plan, subject to the conditions listed in the staff and consultant review letters for the reasons stated in the Planning Review Letter.

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

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

DRAFT PLANNED REZONING OVERLAY AGREEMENT

May 5, 2008

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Farmington Hills, MI 48333-3040
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www.secretwardle.com

Mayor Landry and City Council
City of Novi
45175 W. Ten Mile Road
Novi, MI 48375

Thomas R. Schultz
Direct: 248-539-2847
tschultz@secretwardle.com

Re: ***Planned Rezoning Overlay (PRO) Agreement—Basilian Fathers
Residence***
Our File No. 55142 NOV

Dear Mayor Landry and Councilmembers:

At the City Council's February 4, 2008, meeting, a motion was made to pursue rezoning the above-referenced property located on the north side of 11 Mile, west of Taft Road, under the Planned Rezoning Overlay (PRO) process. The property is currently zoned R-1 (one-family residential). The rezoning request is for RM-1 (multiple-family residential). The owner is proposing to build 14-unit residential home for a religious order known as the Basilian Fathers.

As the Council is aware from previous PRO projects, if the PRO Plan and PRO Agreement are approved by Council, the legislative act of rezoning will be accomplished. Various conditions (the PRO Conditions) will be placed on the property by virtue of the Agreement, which will be recorded at the Oakland County Register of Deeds. At that point, the development would proceed to the Planning Commission in the normal course for site plan review. Generally stated, the site plan must conform with the PRO conditions as stated in the PRO Plan and PRO Agreement, as well as the general R-1 classification standards, except for those items for which a variance or deviation is expressly granted in the PRO Plan and Agreement.

As a general proposition, the use is limited to 20,000 square foot, residential building for the religious order, including individual sleeping quarters for a maximum of 14 persons, with communal kitchen, dining and living areas and a chapel. The development must comply with all applicable laws, regulations, and ordinances, except for a 9-foot parking setback deviation, a 9-foot front yard accessory structure setback deviation, and a 20-foot side yard accessory structure setback deviation (no less than 15 feet). Significant conditions imposed on the development include the limitation of the residential use to this sort of communal living arrangement and the extension of a 5-foot sidewalk along 11 Mile Road and an 8-foot sidewalk along Taft Road. The owner will also dedicate the right-of-way along Taft Road and 11 Mile Road, and establish an appropriate conservation

Mayor Landry and City Council

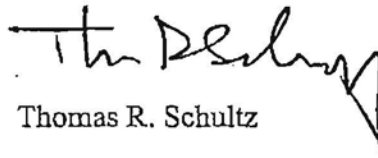
~~May 5, 2008~~

Page 2

easement over the undeveloped portions of the Land at the time of site plan approval.

We look forward to discussing the project with Council at its May 12, 2008 meeting.

Very truly yours,



Thomas R. Schultz

TRS/jes

cc: Clay Pearson, City Manager
Maryanne Cornelius, City Clerk
Steve Rumpel, Community Development Director
Barbara McBeth, Assistant Community Development Director

1070157

PLANNED REZONING OVERLAY (PRO) AGREEMENT
FOR THE BASILIAN FATHERS' RESIDENCE

AGREEMENT, by and among the Basilian Fathers of Milford, Michigan whose address is 28724 Five Mile Rd., Livonia, MI 48154 (referred to as "**Developer**"); and the City of Novi, 45175 West Ten Mile Road, Novi, MI 48375-3024 ("**City**").

RECITATIONS:

- I. Developer is the owner of all legal and equitable title to the "Land" described on **Exhibit A**, attached and incorporated herein, and is the developer of a proposed Planned Rezoning Overlay ("PRO") encompassing the Land known as the Basilian Fathers' Residence.
- II. Developer, for purposes of improving and using the Land for an approximately 20,000 square foot, residential building for the religious order known as the Basilian Fathers, including individual sleeping quarters for a maximum of 14 person, with communal kitchen, dining and living areas and a chapel, has petitioned the City for an amendment of the Zoning Ordinance, as amended, so as to reclassify the Land from R-1, One-Family Residential District, to RM-1, Low Density, Low Rise Multiple Family Residential District. The R-1 classification shall be referred to as the "**Existing Classification**" and RM-1 shall be referred to as the "**Proposed Classification.**"
- III. The Proposed Classification would provide the Developer with certain material development options not available under the Existing Classification, and would be a distinct and material benefit and advantage to the Developer.
- IV. At its meeting on January 23, 2008, the City Planning Commission reviewed and recommended approval to the City Council of the Developer's petition to amend the zoning district classification of the Land from the Existing Classification to the Proposed Classification under the terms of the Planned Rezoning Overlay (PRO) provisions of the City's Zoning Ordinance.
- IV. At its meeting on February 4, 2008, the Council granted tentative approval of the Rezoning with Planned Rezoning Overlay, finding that the proposed use as a

residence for a religious order was appropriate even though it was near single-family for the following reasons:

- A. The proposed use most closely resembles those uses permitted in the RM-1 District; in particular, independent and congregate elderly living facilities.
- B. The proposed residence would be compatible with the existing uses in the area and can be designed to incorporate both the residential elements of the nearby single-family homes and the institutional elements of the nearby church and schools.

Further, the proposed use is appropriate because it is proposed to be limited to a set number of permanent residents, with individual sleeping quarters but otherwise communal living areas. Further, Council has reviewed the Developer's proposed PRO Plan, attached hereto and incorporated herein as **Exhibit B** (the "PRO Plan"), which is a conceptual or illustrative plan for the potential development of the Land under the Proposed Classification, and not an approval to construct the proposed improvements as shown; subject to certain proposed PRO conditions offered or accepted by the Developer. City Council granted tentative approval of the Rezoning with Planning Rezoning Overlay, subject to certain conditions, as set forth in the official minutes of said meeting.

- V. In proposing the Proposed Classification to the City, Developer has expressed a firm and unalterable intent that Developer will develop and use the Land in conformance with the following undertakings by Developer, as well as the following forbearances by the Developer (each and every one of such undertakings and forbearances shall together be referred to as the "Undertakings"):
 - A. Developer shall develop and use the Land solely for an approximately 20,000 square foot residential building to be used as a residence for a religious order including 14 individual sleeping quarters with communal kitchen, dining and living areas, and a chapel for the Basilian Fathers (with appropriate parking and site improvements). In accordance with the PRO Plan, Developer shall forbear from developing and/or using the Land in any manner other than as authorized and/or limited by this Agreement.
 - B. Developer shall develop the Land in accordance with all applicable laws and regulations, and with all applicable ordinances, including all applicable height, area, and bulk requirements of the Zoning Ordinance as relates to the Proposed Classification, except as expressly authorized herein. The PRO Plan is acknowledged by both the City and Developer to be a conceptual plan for the purpose of depicting the general area contemplated for development. Certain minor deviations from the provisions of the City's ordinances, rules, or regulations that are depicted

in the PRO Plan are approved by virtue of this Agreement; however, except as to such specific deviations enumerated herein, the Developer's right to develop the residential building under the requirements of the Proposed Classification shall be subject to and in accordance with all applications, reviews, approvals, permits, and authorizations required under applicable laws, ordinances, and regulations, including, but not limited to, site plan approval, storm water management plan approval, woodlands and wetlands permits, façade approval, landscape approval, and engineering plan approval, except as expressly provided in this Agreement. The building layout shall be substantially similar (as determined by the City) to that submitted as part of the Developer's final approval request, as depicted in **Exhibit B**.

- C. In addition to any other ordinance requirements, Developer shall seek, obtain approval for, and use best management practices and efforts with respect to all storm water and soil erosion requirements and measures throughout the site during the design and construction phases, and subsequent use, of the development contemplated in the Proposed Classification.
- D. The following deviations from the standards of the zoning ordinance are hereby authorized pursuant to §3402.D.1.c of the City's zoning ordinance.
 - 1. A 9-foot parking setback deviation (75 feet required, 66 feet provided).
 - 2. A 9-foot deviation for front yard accessory structure setback (75 feet required, 66 feet provided).
 - 3. A 20-foot deviation for side yard accessory structure setback (75 feet required, 55 feet provided).
- E. The following PRO Conditions shall apply to the Land and/or be undertaken by Developer:
 - 1. The permitted use on the land shall be limited to a residential use for a religious order, for a maximum of 14 permanent residents, with individual sleeping quarters, and communal kitchen, dining and living areas, and a chapel in accordance with this Agreement and the PRO conditions offered by the Developer.
 - 2. Developer shall extend the 5-foot wide public sidewalk along Eleven Mile Road, and the 8-foot wide public sidewalk along Taft Road, as shown on the PRO plan.

3. Developer shall dedicate to the City of Novi road right-of-way along Eleven Mile Road (ten feet) and Taft Road (27 feet).
4. Developer will grant the City a Conservation Easement over certain undeveloped portions of the Land in an effort to preserve the mature tree stand, identified as the "Existing Wooded Area" on the attached **Exhibit B**.

VII. For the purpose of confirming the rights and obligations in connection with the improvements and other obligations to be undertaken in connection with the development of the Land, the parties have entered into this PRO Agreement.

NOW THEREFORE, as an integral part of the grant of rezoning of the Land, and as an integral part of the approval of the PRO, and inconsideration of the mutual covenants contained herein, IT IS HEREBY AGREED AS FOLLOWS:

1. The Land shall be developed only in accordance with: (i) this PRO Agreement, including a Conservation Easement over the Existing Wooded Area identified on the attached Exhibit B; (ii) the PRO Plan; (iii) the terms and conditions listed in the minutes of the January 23, 2008, Planning Commission meeting; (iv) the terms and conditions listed in the minutes of the February 4, 2008, City Council meeting; and (v) the terms and conditions listed in the minutes of the _____, 2008, City Council meeting. Furthermore, all development of the Land shall be subject to and in accordance with all applicable City ordinances and any City approvals of a final site plan for the Land, and unless expressly stated otherwise in this Agreement, shall also be subject to all other approvals and permits required under applicable City ordinances and State laws.
2. The permitted land use shall be as described on the PRO Plan, to wit, an approximately 20,000 square foot, residential building for housing 14 priests, including individual sleeping quarters, with communal kitchen, dining and living areas, and a chapel. In the event Developer attempts to or proceeds with actions to complete improvement of the Land in any manner other than as shown on **Exhibit B**, the City shall be authorized to revoke all outstanding building permits and certificates of occupancy issued for such building and use.
3. Upon the Proposed Classification becoming final following entry into this Agreement:
 - A. The Undertakings shall be carried out by Developer on and for the Land;
 - B. Developer shall act in conformance with the Undertakings;
 - C. The Developer shall forbear from acting in a manner inconsistent with the Undertakings; and

- D. The Developer shall commence and complete all actions necessary to carry out all of the PRO Conditions.
4. Developer acknowledges and agrees that the City has not required the Undertakings. The Undertakings have been voluntarily offered by Developer in order to provide an enhanced use and value of the Land, to protect the public safety and welfare, and to induce the City to rezone the Land to the Proposed Classification so as to provide material advantages and development options for the Developer.
 5. All of the Undertakings represent actions, improvements, and/or forbearances that are directly beneficial to the Land and/or to the development of and/or marketing of the office or retail building on the Land. The burden of the Undertakings on the Developer is roughly proportionate to the burdens being created by the development, and to the benefit which will accrue to the Land as a result of the requirements represented in the Undertakings.
 6. In addition to the provisions in Paragraph 2, above, in the event the Developer, or its respective successors, assigns, and/or transferees proceed with a proposal for, or other pursuit of, development of the Land in a manner which is in material violation of the Undertakings, the City shall, following notice and a reasonable opportunity to cure, have the right and option to take action using the procedure prescribed by law for the amendment of the Master Plan and Zoning Ordinance applicable to the Land to amend the Master Plan and zoning classifications of the Land to a reasonable classification determined appropriate by the City, and neither the Developer nor its respective successors, assigns, and/or transferees, shall have any vested rights in the Proposed Classification and/or use of the Land as permitted under the Proposed Classification, and Developer shall be estopped from objecting to the rezoning and reclassification to such reasonable classifications based upon the argument that such action represents a “downzoning” or based upon any other argument relating to the approval of the Proposed Classification and use of the Land; provided, this provision shall not preclude Developer from otherwise challenging the reasonableness of such rezoning as applied to the Land.
 7. By execution of this Agreement, Developer acknowledges that it has acted in consideration of the City approving the Proposed Classification on the Land, and Developer agrees to be bound by the provisions of this Agreement.
 8. After consulting with an attorney, the Developer understands and agrees that this Agreement is authorized by and consistent with all applicable state and federal laws and Constitutions, that the terms of this Agreement are reasonable, that it shall be estopped from taking a contrary position in the future, and, that the City shall be entitled to injunctive relief to prohibit any actions by the Developer inconsistent with the terms of this Agreement.

- 9. This Agreement shall be binding upon and inure to the benefit of the parties to this Agreement and their respective heirs, successors, assigns and transferees, and an affidavit providing notice of this Agreement may be recorded by either party with the office of the Oakland County Register of Deeds.
- 10. The Zoning Board of Appeals (ZBA) shall have no jurisdiction over the Property or the application of this Agreement until after site plan approval and construction of the development as approved therein.
- 10. No waiver of any breach of this Agreement shall be held to be a waiver of any other or subsequent breach. All remedies afforded in this Agreement shall be taken and construed as cumulative, that is, in addition to every other remedy provided by law.
- 11. This Agreement shall be governed by the laws of the State of Michigan, both as to interpretation and performance. Any and all suits for any and every breach of this Agreement may be instituted and maintained in any court of competent jurisdiction in the County of Oakland, State of Michigan.
- 12. This Agreement may be signed in counterparts.

WITNESSES:

OWNERS:

BASILIAN FATHERS OF
MILFORD, MICHIGAN

Print Name:

By:
Its:

Print Name:

STATE OF MICHIGAN)
) ss.
COUNTY OF OAKLAND)

On this ____ day of _____, 2008, before me appeared _____, on behalf of the Basilian Fathers of Milford, Michigan, who states that he has signed this document of his own free will duly authorized on behalf of the company.

_____, Notary Public
_____ County

DRAFT
5/8/2008

Acting in Oakland County
My Commission Expires: _____

WITNESSES:

CITY OF NOVI

Print Name:

By: _____
David B. Landry, Mayor

Print Name:

Print Name:

By: _____
Maryanne Cornelius, Clerk

Print Name:

STATE OF MICHIGAN)
) ss.
COUNTY OF OAKLAND)

On this ____ day of _____, 2008, before me appeared David B. Landry and Maryanne Cornelius, who stated that they had signed this document of her own free will on behalf of the City of Novi in their respective official capacities, as stated above.

_____, Notary Public
_____ County
Acting in Oakland County
My Commission Expires: _____

Drafted by:
Kristin Bricker Kolb
30903 Northwestern Highway
Farmington Hills, MI 48334

When recorded return to:

Maryanne Cornelius, Clerk
City of Novi
45175 West Ten Mile Road
Novi, MI 48375-3024

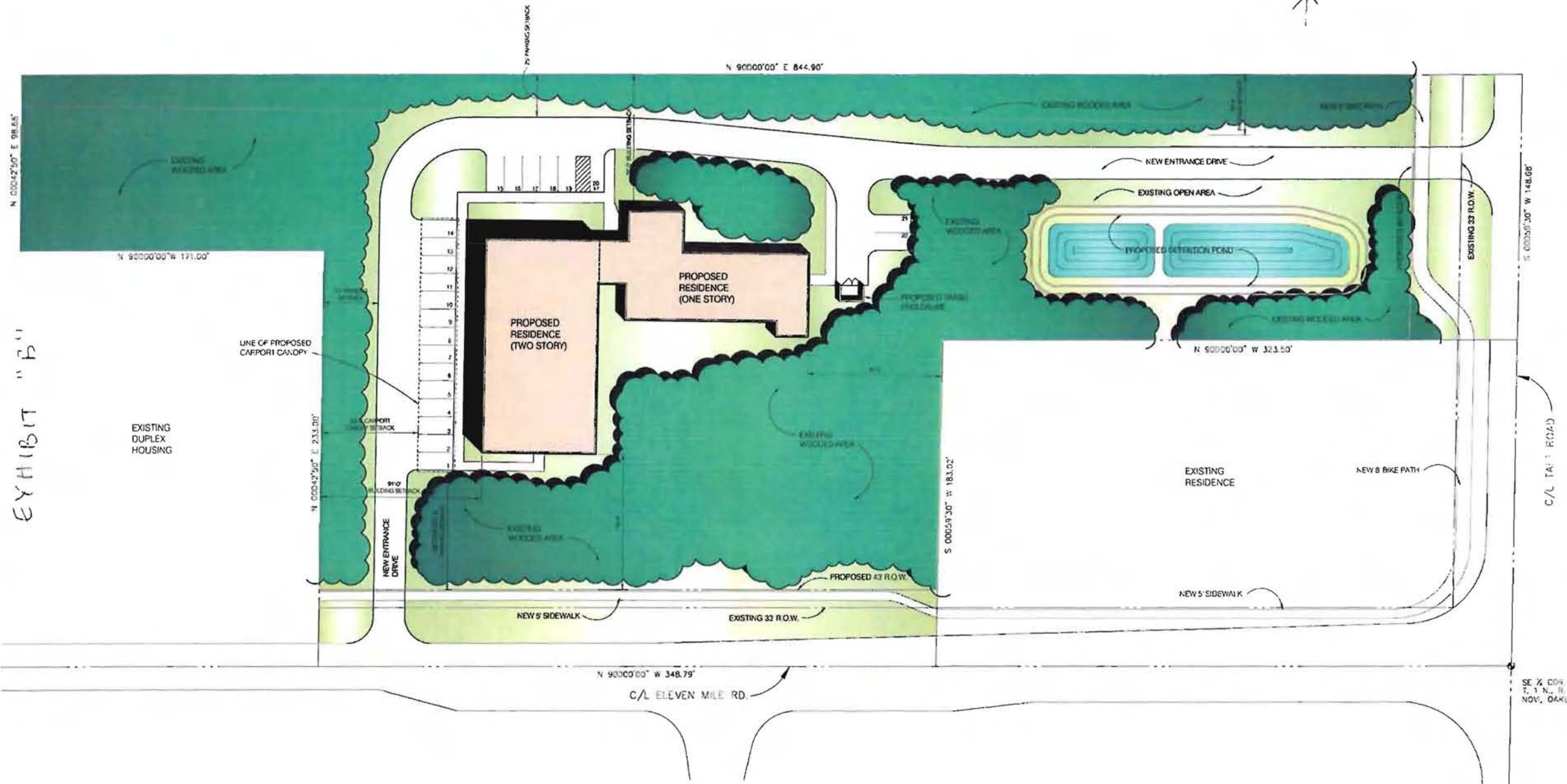
EXHIBIT "A"

New Legal Descriptions Parcel A

A parcel of land in the Southeast $\frac{1}{4}$ of Section 16, T. 1 N., R. 8 E., City of Novi, Oakland County, Michigan, described as:

Commencing at the Southeast corner of said Section 16; thence Due West 323.50 feet along the South line of said Section 16, said line also being the centerline of Eleven Mile Road (66 feet wide) to the POINT OF BEGINNING; thence continuing along said South line of Section 16 Due West 348.80 feet; thence N. $00^{\circ} 42' 50''$ E. 233.00 feet; thence Due West 171.00 feet; thence N. $00^{\circ} 42' 50''$ E. 98.65 feet; thence Due East 844.97 feet to a point on the East line of said Section 16; thence S. $01^{\circ} 00' 12''$ W. 148.68 feet along said East line of Section 16, said line also being the centerline of Taft Road (66 feet wide); thence Due West 323.50 feet; and thence S. $01^{\circ} 00' 12''$ W. 183.00 feet to the POINT OF BEGINNING. Containing 4.15 gross acres of land (3.78 net acres), more or less. Subject to the rights of the public over the South 33 feet for Eleven Mile Road (66 feet wide) and the East 33 feet for Taft Road (66 feet wide). Also subject to any and all easements or rights of way of record, if any.

EXHIBIT "B"



SE 1/4 COR. T. 1 N., R. 11 W., NOV. OAK