



CITY of NOVI CITY COUNCIL

Agenda Item 2
May 19, 2008

SUBJECT: Discussion of a request from Northern Equities Group to consider the early acceptance of Cabot and MacKenzie Drives in Phase II of Haggerty Corridor Corporate Park by waiving the 90% build-out requirement of Ordinance Section 26.5-33. Cabot and MacKenzie Drives are to be constructed in summer 2008.

SUBMITTING DEPARTMENT: Engineering *RA*

CITY MANAGER APPROVAL: *[Signature]*

BACKGROUND INFORMATION:

Northern Equities Group has requested that Council entertain the idea of accepting Cabot (north of Thirteen Mile Road) and MacKenzie Drives upon their completion this summer (Matt Sosin's March 25, 2008 letter, attached). Specifically, Northern Equities is asking that the City waive the 90% build-out requirement called for in Section 26.5-33 and accept the streets as public assets once they have been properly constructed, inspected and documented.

As elaborated in the referenced letter, Equities' reasons for this request are:

1. The Phase I portion of Cabot Drive was accepted directly after it was constructed.
2. Cabot and MacKenzie would be collector streets, and as such they would provide a greater benefit to the public than local/minor streets.
3. Maintaining these streets would impose a hardship on Northern Equities.

Engineering staff have verified that the Phase I streets were accepted upon completion at Council's February 4, 2002 meeting; however, the minutes from that meeting do not provide a basis for their early acceptance. (Prior to adoption of Chapter 26.5 of the Ordinance in 2005, a development had to be 100% built-out in order for the streets to be dedicated to the City.) In addition, although Cabot and MacKenzie would be collectors, they will primarily serve tenant businesses in Phase II until the remainder of Cabot Drive is extended north to Fourteen Mile Road.

As indicated in Rob Hayes' April 23, 2008 memorandum (attached), Council may choose to require Northern Equities' compliance with the Ordinance, or accept the streets and require that a site restoration guarantee be posted if it is determined that a maintenance hardship would otherwise exist.

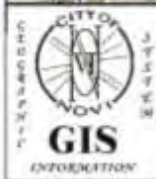
RECOMMENDED ACTION: Discussion of a request from Northern Equities Group to consider the early acceptance of Cabot and MacKenzie Drives in Phase II of Haggerty Corridor Corporate Park by waiving the 90% build-out requirement of Ordinance Section 26.5-33.

	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				

Haggerty Corridor Corporate Park

Status of Street Construction & Acceptance



CITY OF NOVI
ENGINEERING DEPARTMENT
NOV CITY HALL/CIVIC CENTER
45475 W TEN MILE ROAD
NOVI, MI 48375-3024
248 347-0152
WWW.CITYOFNOVI.ORG



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.



NORTHERN
EQUITIES
GROUP

39000 COUNTRY CLUB DRIVE
FARMINGTON HILLS, MI 48331
(248) 848-6400 FAX (248) 848-6700

March 25, 2008

Mr. Rob Hayes
City Engineer
45175 West 10 Mile Road
Novi, Michigan 48375

Re: Dedication of Cabot and McKenzie Drives

Dear Rob:

Thank you for meeting with me on March 11, 2008, regarding the dedication of Cabot and McKenzie Drives, both north of 13 Mile Road. As you know, we are nearing completion of these two new roads. They will open up the second phase of the Haggerty Corridor Corporate Park for development, bringing not only the same high level of tenants as in the first phase, but also property tax dollars to the City.

As we discussed, currently, Section 26.5 of the City's ordinances, requires that, among other things, in order for any road in the City to be dedicated, the frontage along the road must be 90% built-out or 4 years after the initial paving. It should be noted that for the first phase of the Park, it was opposite; we could not get building permits UNTIL we dedicated the road.

The ordinance does not differentiate between a road a developer installs to maximize the developable acreage (ie, a road with questionable public benefit), and, as in our case, a Major Collector Road. Cabot and McKenzie both have that designation. The City has already decided these two roads have a significant public benefit and therefore, they should be accepted once it is completed as site plan approved. Northern Equities Group is not equipped to maintain a road in the manner that a City does and it is therefore a significant hardship (not to mention a public safety issue) to require us to maintain the road once it is complete.

One of the concerns you raised at the meeting concerned construction traffic on the road while the Park is built out. I mentioned that the first phase of Cabot Drive, south of 13 Mile, was completed in 2000, over 8 years ago (twice as long as the 4 year requirement in the current ordinance). In that time, I am aware of no major (or even minor) road work that has been performed on the road and, in my opinion, does not look that much different than the day we paved. Furthermore, the first phase was constructed using a different road profile; the City at that time did not require a gravel base. It should also be noted that we are using the same paving contractor to perform the work this spring as in 2000. We, as

REAL ESTATE DEVELOPMENT,
CONSTRUCTION AND INVESTMENT

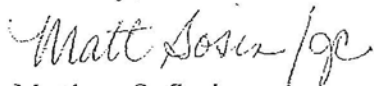
owners of just about every building in the Park, are constantly monitoring all of the construction, making sure curbs are protected, that the road is not abused. We have a commitment to our tenants that the Park will always be maintained in a first class manner. As such, we make sure that the infrastructure, while technically not owned by us, is treated as such by our contractors and employees.

As we discussed, I am sure that we can come up with a system to monitor the roads condition until the 90% or 4 years would have been achieved. As we all know, there is normal wear and tear to contend with, but I am sure we can come up with something. An annual spring inspection was one idea we discussed.

To summarize, the ordinance, because it does not address the different types of roads, unduly burdens Northern Equities Group by forcing it to perform public-type functions on a Major Collector Road. That very designation shows the importance placed upon the roads as a public benefit and as a public safety issue. I would like to start the process of dedication for Cabot and McKenzie this summer, upon completion of the paving. I believe we can arrive at a reasonable solution for both parties.

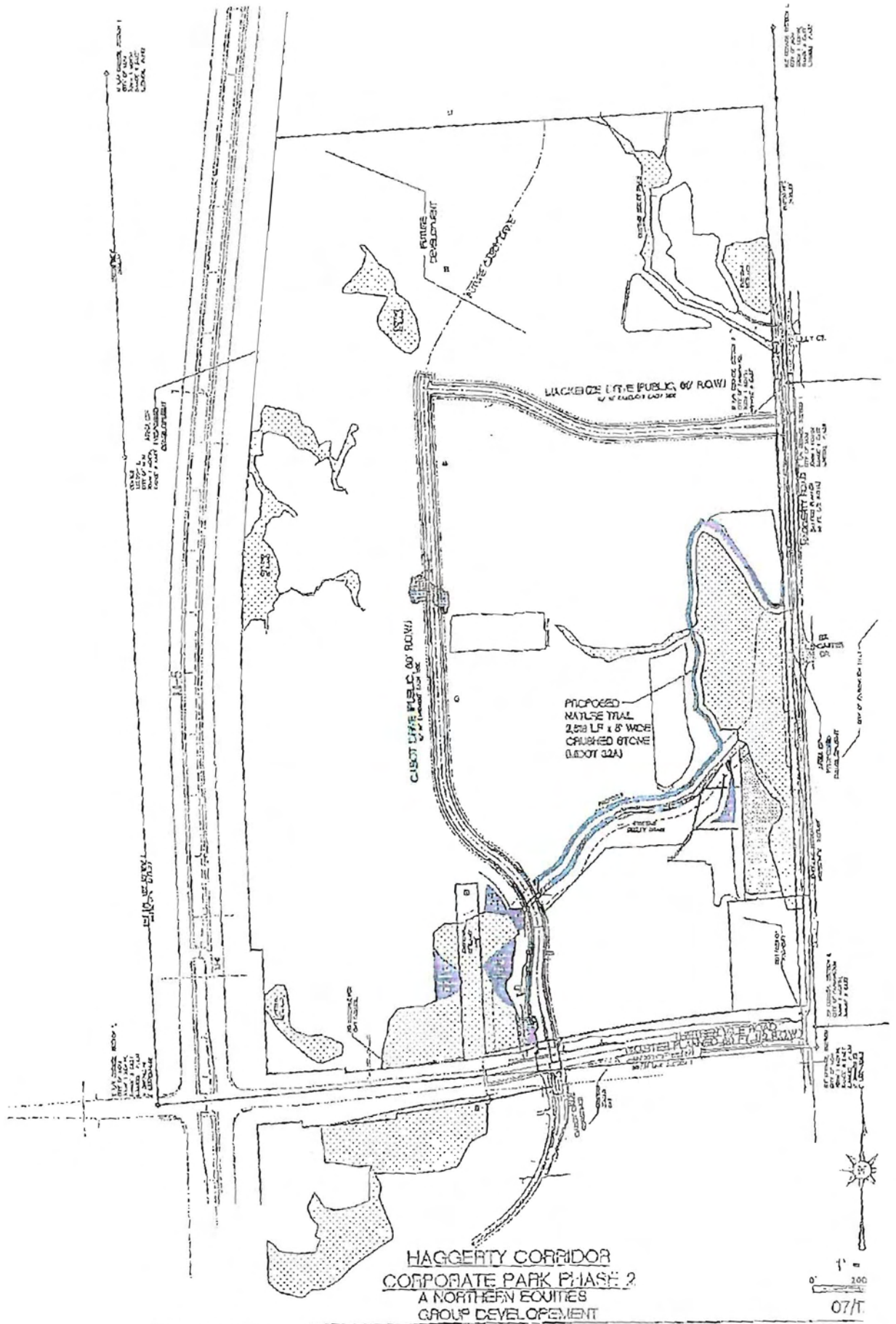
Please call me if you have any questions. Thanks again for your attention to this matter.

Sincerely,

A handwritten signature in cursive script that reads "Matt Sosin /gs".

Matthew S. Sosin
President

cc: Aaron Staup – Construction Engineering Coordinator



MEMORANDUM



TO: CLAY PEARSON, CITY MANAGER
FROM: ROB HAYES, CITY ENGINEER *RH*
SUBJECT: HAGGERTY CORRIDOR CORPORATE PARK II
CABOT AND MACKENZIE DRIVES
DATE: APRIL 23, 2008

4/24/08

To: Mayor and City Council Members

For future consideration.

CHP

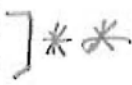
The developer of the Haggerty Corridor Corporate Park II site, Northern Equities Group, has requested that City Council consider accepting streets in the development once they are constructed this summer (Matt Sosin's March 25, 2008 letter, attached). The two streets in question will be paved with concrete, and include the extension of Cabot Drive north of Thirteen Mile and Mackenzie Drive as shown on the attached map. Specifically, Mr. Sosin would like Council to entertain the idea of accepting the streets this year by waiving the requirement in Chapter 26.5 of the Code of Ordinances that calls for the site to first be 90% built-out before considering acceptance. Section 26.5-33(2)d requires:

d Acceptance of the streets that are to be public shall be accomplished by resolution of city council as and when determined by the city, in its sole discretion, to be appropriate pursuant to the requirements and provisions of this chapter and other applicable provisions or sections of this Code, but not before ninety (90) percent of the building permits have been issued, or four (4) years after the initial paving has been installed, whichever occurs first; provided, however, that in unusual circumstances presenting a substantial hardship to the applicant (such as commencement of a development before the effective date of this provision), council may accept the streets before either such event has occurred, but in such case shall require a site restoration guarantee for the purposes set forth in section 26.5-34, and to guarantee the physical integrity of the roads to be accepted in light of continuing construction activity. The amount of the guarantee shall be established by the city engineer in an amount to be determined on the basis of the number of buildings remaining to be constructed, an estimate of time for completion and expected acceptance of the remaining site improvements, and other factors specific to the development at issue.

Mr. Sosin's main argument is that because Cabot and Mackenzie will be classified as collector streets, they would provide a greater public benefit than local or minor streets. Also, he correctly asserts that Cabot Drive and Lewis Drive in Phase I (south of Thirteen Mile) were accepted upon construction completion and before any Phase I building permits were issued. Finally, he claims that maintaining the new streets until the build-out threshold is reached would pose a hardship. X

While both Cabot and MacKenzie Drives will be non-residential collectors, it is important to note that until Cabot is eventually extended north to Fourteen Mile Road, Cabot and MacKenzie will primarily benefit the tenant businesses in Phase II. The rationale for imposing the 90% built-out requirement is to protect the structural integrity of the streets during the bulk of building site construction within the development; therefore, the developer would be responsible for maintaining the streets until they are dedicated to the City.

Council may choose to require Northern Equities to comply with the requirements of Chapter 26.5 or, if it deems that a substantial maintenance-related hardship would be imposed on the developer, Council may opt to consider early acceptance of the streets and require that a site restoration guarantee be posted to cover the cost of repairing any subsequent damage to the streets during build-out. You may recall that a similar course of action was selected for collector streets in Beck North Corporate Park II in April 2007 (see attached minutes).



Please contact me if you need any additional information on Mr. Sosin's request or the background information I have provided.

cc: Marina Neumaier, Finance Department
Benny McCusker, Public Works Director
Aaron Staup, Construction Engineering Coordinator

March 25, 2008

Mr. Rob Hayes
City Engineer
45175 West 10 Mile Road
Novi, Michigan 48375



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One of the concerns you raised at the meeting concerned construction traffic on the road while the Park is built out. I mentioned that the first phase of Cabot Drive, south of 13 Mile, was completed in 2000, over 8 years ago (twice as long as the 4 year requirement in the current ordinance). In that time, I am aware of no major (or even minor) road work that has been performed on the road and, in my opinion, does not look that much different than the day we paved. Furthermore, the first phase was constructed using a different road profile; the City at that time did not require a gravel base. It should also be noted that we are using the same paving contractor to perform the work this spring as in 2000. We, as

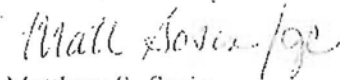
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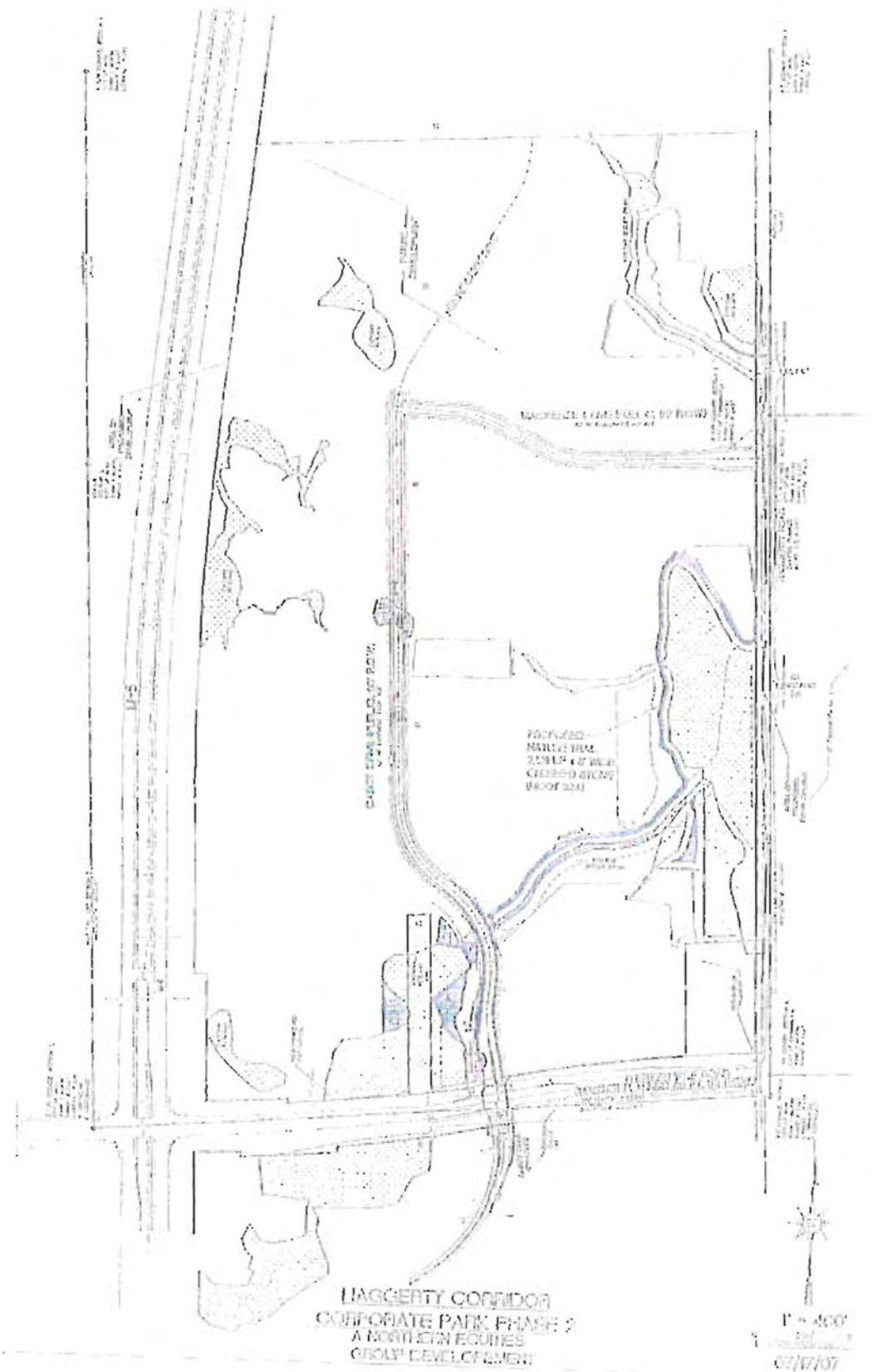
Please call me if you have any questions. Thanks again for your attention to this matter.

Sincerely,



Matthew S. Sosin
President

cc: Aaron Staup -- Construction Engineering Coordinator



LAGGERTY CORRIDOR
CORPORATE PARK PHASE 2
A NORTHWEST EQUINES
GROUP DEVELOPMENT

1" = 400'
 02/17/07

**REGULAR MEETING OF THE COUNCIL OF THE CITY OF NOVI
MONDAY, APRIL 16, 2007 AT 7:00 P.M.
COUNCIL CHAMBERS – NOVI CIVIC CENTER – 45175 W. TEN MILE ROAD**

7. Consideration of a request from Nadlan II, LLC to accept Beck North Corporate Park Phase II streets, and adoption of Act 51 New Street Resolution accepting Nadlan Court and the remaining portions of Cartier Drive and Hudson Drive as public, adding 3,199 linear feet or 0.61 miles of roadway to the City's street system.

Member Paul asked what portion of Nadlan Court and Cartier and Hudson Drives were public, and what portions were already accepted. Mr. Hayes said there was a portion of Cartier Drive and Hudson Drive that were both in Phase 1 of Beck North, and had already been accepted. He referred Council to the colored map in their packets and said the phase line for the development was approximately 1,200 ft. south of Nadlan where the shaded area was. He said Phase 2 was depicted in yellow, and south of the phase line would be Phase 1. He said Hudson Drive to the south would be in Phase 1. Member Paul asked if anymore traffic would be coming up through this area. Mr. Hayes said yes, the development was about 5% built out so there would be ongoing construction traffic as each lot was developed. Member Paul said when neighborhoods were done they would wait until a percentage was completed before accepting the roads. She asked why they wouldn't do something different when it would probably be heavier vehicles going to support an industrial site. Mr. Hayes said it was the same standard for this type of development. The ordinance required 90% of the lots to be built out before streets were accepted, and if that proposed a hardship on the developer then Council had the prerogative to require a site restoration bond to cover any future damages that might occur until the 90% threshold was met. Member Paul asked what their percentage was, and Mr. Hayes replied it was roughly 5%. She stated she was not in favor of accepting the roads as public with only 5% of the development completed. She said that was a lot more construction traffic on them, and once the City accepted them as public the City had to repair them. She said when looking at Beck Road and all the other neighborhood roads that were competing for the same dollars, she would not be in favor of supporting this.

Member Margolis said that was her question as she was reading the packet. It detailed out that the City didn't accept before 90% build out and this was 5% build out, but if this posed a hardship to the developer, Council had the prerogative to consider. She said what wasn't in the information to consider was what the hardship was that the developer was asking Council to consider. Mr. Hayes said Ryan Dembs was present representing Amson Dembs Development, Inc.

Mr. Schultz stated he wanted to clarify that it was 90% or four years, whichever occurred first.

Ryan Dembs said they had been the owner of Beck North for over four years. He said Mr. Hayes didn't mention that there was a phase of Beck North that was in Wixom and came in off of Beck Road. Then Phase 1 in Novi that came in off of West Road and both streets were dedicated up to that point so they actually own the middle of the park. He said there were two dedicated roads, and their strip that ran down the middle that was not dedicated, and which they were trying to dedicate tonight. Mr. Dembs said the

biggest and only hardship for them was that this was a business park where they planned on putting up buildings on a speculative basis as they had done in the City for the past 10 years. He noted that as hard as it was today to attract tenants to the parks having streets that weren't dedicated made it impossible. Mr. Dembs commented that he wasn't aware this ordinance was put in place but when they heard of it six months ago they started working with Mr. Hayes trying to figure out how to get this dedicated. He said they were not told of this ordinance through the process. He commented they placed the appropriate bonds, did the appropriate paperwork that took almost a year and a half, and it wasn't brought to their attention that this ordinance was in place. He said they were proceeding on like this would happen, they were checking with the City attorney, etc., and finally they came and said the streets would not be dedicated until the park was at 90% build out. Mr. Dembs said that would virtually kill the business park. He noted that companies like Toyota, Alcans and companies they were trying to attract to these business parks, would not even consider locating in a park that didn't have dedicated streets. He commented that they own and manage the buildings, and he could see situations where there could be a park and maybe a residential situation where by the time the builder was 90% done he was gone, and the City was stuck fixing the streets. He said that was not the case here as they owned and managed the buildings, they weren't going anywhere, had been building in Novi for 11 years, and they planned to be building here for a long time. He said they could not do business without dedicated streets. Mr. Dembs said they certify the park with the Michigan Business Park Association which sent them a questionnaire to attract a very high level tenant that was possibly considering their park, and one of the first questions asked was whether all the streets were dedicated. He said he had to be honest and say no, and he had not heard back yet from that particular business. He said that showed the importance of dedicated streets. They are locating in the City of Novi, which had a wonderful reputation, and businesses and prospects knew how the City took care of the City and the streets, and to be in the City but the streets weren't dedicated, threw them off. He said that would be the main hardship. Mr. Dembs said they had a bond in place and were willing to listen and try to come to an agreement that would make Council comfortable that they wouldn't leave with a street to fix up, and that they would stand by what they did.

Member Mutch asked how long the streets had been in place. Mr. Dembs said the streets were constructed about 2 ½ years ago. Since then his office and the City Engineers Office have had extensive structural testing done to the streets, which had all proven positive. The street was completely structurally sound and in very good shape. Mr. Dembs said they had hired Soil and Material Engineers, Inc. (SME) and their findings were that the roads were in very good shape. SME did core samples and everything they needed to do to get a very good engineering report as far as structure and condition of the roads, which had been done within the last 30 days.

Member Mutch asked Mr. Hayes, according to his clock, where were they in the four year time period. Mr. Hayes said 2 ½ to 3 years at the upper end. Member Mutch noted he read through all the reports in terms of structural issues because when City people went out and evaluated the streets for acceptance, the main issue was erosion on the surface of these concrete streets. He said that raised a red flag as to whether Council would be taking on a problem they had seen in other locations where the surface condition was indicative of problems below the surface. Member Mutch said everything he read that was provided seemed to indicate, and he said he was not an expert on concrete, but in the construction of the streets there was probably some lower grade or

lower quality cement or maybe it didn't set right on the surface. However, the street itself was structurally sound based on all the information provided.

Mr. Hayes agreed that based on what he had reviewed the streets appeared to be structurally sound. He thought it was more of a workability or construction issue. Mr. Hayes thought there was a problem with the curing and that was why the top 4 millimeters was showing some early signs of wear. Member Mutch asked if in terms of what he knew, there were no structural problems similar to what was seen in some of the residential subdivisions. Mr. Hayes said he was correct, and based on the corings they had seen and the microscopic analysis that showed there was a uniform mixture from top to bottom of concrete components. He felt comfortable that they were structurally sound. Member Mutch asked if the way the streets were constructed, were they consistent with the City's Design and Construction Standards for industrial streets. Mr. Hayes said they were. Member Mutch said there had been some numbers mentioned and he didn't know how they compared, taking the absence of any negative comments in Mr. Hayes' letters he assumed that was not an issue with the standards. He said he was not as familiar with the acceptance process and policy for streets like this so when talking about 90% or four year policy, did it mean when the four year time limit was reached it would be an automatic acceptance of the streets assuming everyone had signed off on it.

Mr. Schultz said the way the ordinance was set up the 90% and four years came in a couple of different ways. Initially, the first requirement was that 90% or four years, and the final lift had to be done and the road had to be completed. In terms of accepting the street, the ordinance said Council would accept it at the time appropriate and could consider it at 90% or four years, whichever occurred first. Mr. Schultz said neither of those had occurred here, and the property owner was saying the roads were in, they were public on either side of them, and his hardship was that he needed tenants. Mr. Schultz said that was permitted, and one of the discretionary factors listed in the ordinance, after some debate, was they start the project before the ordinance was passed. Mr. Schultz said clearly it was a discretionary determination on Council's part as to whether or not there was enough work done, and then the ordinance did require a final item. He said a site restoration bond had to be required in addition to the regular two year bond. So, the City Engineer had said he would like the same \$80,000 site restoration bond so Council would end up with both of those.

Member Mutch said if for whatever reason the core samples were not indicative of the road and repair was needed, what would that money cover in terms of repair or restoration.

Mr. Hayes said the \$80,000 being held now in a Maintenance Bond would cover approximately a half mile of discreet repairs but definitely not a reconstruct. He said because they had aesthetic type surface problems right now, he felt comfortable \$80,000 could address those should they become worse in the future. If it became a structural problem then the \$80,000 would just cover a fraction of what would be necessary.

Member Mutch said everyone on Council was cognizant of the reality of the economic times, and asked Mr. Dembs what the likelihood was that the park would be built out at 90% in the next year or so.

Mr. Dembs said he would love to know the answer to that question himself. He said as far as they were concerned they were building buildings and everything was on a speculative basis. He said he had a building up in the park now and had four more in for approvals they were planning on building this spring and summer. He said they kept coming in with site plan approvals and new buildings, and he was always planning on having three or four buildings going up at the same time. He said it was a big park and they had 75 acres to develop. Mr. Dembs said it would probably not be built out 90% in a year and a half, but they would be well on their way.

Member Mutch said realistically they would probably not be at 90% when the four year mark was hit, so at the point they would come back to Council to request the City to take those streets it was not likely they would be built out. His question now was do they take the streets now and get a certain amount of money through Act 51, or should Council make them wait for another year recognizing there would be wear and tear on the streets from construction traffic. Member Mutch said he was satisfied that the conditions with the street, from a scientific viewpoint, were fine and there was some surface wear that was not a structural issue based on the information provided. He commented he wanted to hear from fellow Council members whether they thought they should take this on now and take whatever money they would get from Act 51. Or, wait a year and come back and go through this routine again knowing the park would not be built out at 90% but would hit the four year mark, and decide whether to accept them at that point.

Member Nagy understood their dilemma that they wanted to attract people and wanted to have the streets dedicated. She had concerns about the surface of the concrete as the last time she saw this condition was in her own complex, and the concrete was too wet. She said Mr. Hayes said this was acceptable but this would wear in two years, and how would the situation be remedied when the street wore down. Mr. Hayes said based on the findings of the report it was unlikely that anything more than the top four millimeters, which was the depth of the pitting seen in the pictures, would wear away. He said if anything more than that wore away the \$80,000 Maintenance and Guarantee Bond, which was renewable if they had to draw from it, would do a great deal of sealing if needed to do an epoxy seal to prevent any further pitting. Member Nagy asked how long the epoxy seal would last. Mr. Hayes said sometimes it would hold up for a good five years, and in other stretches he had seen it in place for 10 years or more. Member Nagy wanted them to be able to attract business, and wondered if they could update the bond, or that the Surety would begin following Council's acceptance of the street.

Mr. Schultz said they made that notation just to make sure that Mr. Dembs and Surety were aware that when and if Council accepted the street the two years would begin then. There had been informal discussion, and they seemed to think the two years had already started but it started from the day of acceptance. Mr. Schultz said it was just because they wanted to make sure that was confirmed. Member Nagy said she was not comfortable with the 90% non-occupancy but at the same time she understood Mr. Dembs dilemma of wanting to attract business into their complex. She said if Council accepted this tonight the bond would start at the moment of acceptance.

Mr. Schultz said if Council decided they wanted to accept the streets and grant the variance, essentially their suggestion was one caveat in the motion, which was they had to confirm that Surety was aware that it would start as of the date of the acceptance. He said the other thing Council would have to do would be to take that second

recommendation from Mr. Hayes for a Site Restoration Bond for a separate \$80,000 and have that as an additional condition.

Member Nagy said the Site Restoration Bond would be \$80,191.25. She asked if this would be two motions or one. Mr. Schultz said it would be one motion and one bond would be the two year maintenance bond that Council always saw, and the other, because a variance would be granted, was a required Site Restoration Bond in the same \$80,000 as Mr. Hayes recommended. He said Council would end up with what they usually got plus a little extra because the ordinance said, if they took the street early to take some security with it.

CM-07-04-076 Moved by Nagy, seconded by Paul; CARRIED UNANIMOUSLY:

To approve request from Nadlan II, LLC to accept Beck North Corporate Park Phase II streets, and adoption of Act 51 New Street Resolution accepting Nadlan Court and the remaining portions of Cartier Drive and Hudson Drive as public, adding 3,199 linear feet or 0.61 miles of roadway to the City's street system. Also, to grant a variance because of the commencement of the development before the effective date of this provision, that Surety start April 16, 2007, and that a Site Restoration Bond be required in the amount of \$80,191.25.

Mayor Landry said he would assume that her motion proposed that a variance be granted because the project commenced before the effective date that by ordinance in and of itself was an unusual circumstance. Mr. Schultz agreed it should be defined. Member Nagy accepted the friendly amendment.

DISCUSSION

Member Paul asked if the 2% was the Site Restoration Bond overriding the amount of the true bond itself. Mr. Schultz said he wasn't sure the 2% literally found its way into the ordinance. He said what the ordinance said was that if it created this variance process, and if the variance was granted "Council shall", it was an obligation, set in Council's discretion at an amount recommended by the City Engineer whatever the amount was. He said Mr. Hayes was saying he would take roughly the same 25% value of the improvement and say that was a reasonable Site Restoration Bond. He said it was well above a 2% beyond a Maintenance and Guarantee Bond and Mr. Hayes would have to explain how he got the 25% value.

Mr. Hayes said it was based on the quantities that were taken off or estimated based on the proposed improvement, in this case, 3,300 ft. of concrete streets, 9 inches of concrete over 12 inches of stone. He said that estimate was done at site plan to assess fees for construction inspection. Then, per the ordinance, at the end of the project they apply the 25% figure to determine what would be held in the Maintenance and Guarantee Bond.

Member Paul said if they had to repave 3,199 linear feet or .61 miles of concrete roads with that base and that depth of concrete approximately what would the cost be. Mr. Hayes said it would be pretty close to the number they had given here. He said if you take four times the \$80,000, which was roughly \$320,000 or about \$100 a foot. He said that was a real competitive price but it could be done. Member Paul said Mr. Hayes was

comfortable with the number and if the whole road had to be replaced the majority of it would be with the bond plus the \$80,000 Mr. Hayes asked for. Mr. Hayes said in the unlikelihood that they had to replace the whole road, they would have to call that bond and apply it toward the reconstruction of the streets.

Member Paul asked what type of bond it was, and Mr. Hayes said it was referred to as a Site Restoration Bond. She said she understood that but was it a bank statement, etc. Mr. Hayes thought it would be a letter of credit. Mr. Schultz said for a bond it might be cash up to a certain point, letter of credit as Mr. Hayes said, and then at some point he thought the possibility of doing a bond as opposed to cash or letter of credit would kick in. He was not sure when that would happen.

Member Paul said it was Nadlan II, LLC, and her experience with limited liability corporations had not been great from development, because the developer was gone sometimes and there was no money to go after. She asked what happened if they were not in existence anymore and this would close; how would the City get the money. Mr. Schultz said cash or letter of credit would be something that could be drawn on right away regardless of the status of the person posting it. He said the point of the letter of credit was they had to prove it was on hand, and even if it were a performance bond, which he didn't think it would be, Surety would then be on the hook. So if the principal or the landowner went out of business or became insolvent it would essentially be the insurance company they would look to for the payment.

Member Paul said she was very hesitant to support this but with the amount of money they had set aside and the hardship, she wanted the business to come in also. However, she was really worried about the streets because she had been in a neighborhood where the LLC dissolved and the City was stuck with \$2 million worth of road repairs. She said with the reassurance of Mr. Hayes and the City Attorney she would support it.

Mayor Landry stated he would support the motion. He said the request was for a variance and a variance was provided for in statute specifically for unusual circumstances. Those unusual circumstances were specifically defined in the ordinance as "commencement of the development before the effective date of this provision." Mayor Landry said they had been informed that this development did commence before the date of the particular provision; so by definition they had met the unusual circumstances requirement. He said he was satisfied with Mr. Hayes' advice that the additional monies the City would have with the Site Restoration Bond would protect the City, and for that reason he would support the motion.

Roll call vote on CM-07-04-076 Yeas: Gatt, Margolis, Mutch, Nagy, Paul, Landry

Nays: None

Absent: Capello