



CITY of NOVI CITY COUNCIL

Agenda Item J
June 7, 2010

SUBJECT: Approval of a variance from Section 26.5-10, requiring a Maintenance and Guarantee Bond from Fallone Brothers, LLC for the water and sanitary sewer improvements for the Fallone Brothers Building, located at 46570 Humboldt within the Beck West Corporate Park (parcels 22-09-176-011 and 22-09-176-012) in Section 9.

SUBMITTING DEPARTMENT: Department of Public Services, Engineering Division *BTC*

CITY MANAGER APPROVAL: *[Signature]* *174*

BACKGROUND INFORMATION:

The attorneys for Fallone Brothers, LLC, Kucyk, Soave & Fernandes, PLLC, seek a variance from Section 26.5-10 of the Novi Code of Ordinances regarding maintenance and defect guarantees, as presented in the attached May 20, 2010 letter. The applicant is preparing to request acceptance of utilities for the site. The acceptance of utilities is an administrative process, however a variance from the ordinance requires City Council action.

Section 1-12 of the Ordinance permits City Council to grant a variance from provisions of the ordinance, including Section 26.5-10 regarding maintenance and defect guarantees for site improvements as well as the previous maintenance and guarantee bond requirements in effect prior to the adoption of Chapter 26.5, when the property owner shows all of the following:

- 1) A literal application of the substantive requirement would result in exceptional, practical difficulty to the applicant;
- 2) The alternative proposed by the applicant will be adequate for the intended use and shall not substantially deviate from the performance that would be obtained by strict enforcement of the standards, and;
- 3) The granting of the variance will not be detrimental to the public health, safety or welfare, nor injurious to adjoining or neighboring property, nor contrary to the overall purpose and goals of the chapter or article containing the regulation in question.

The water main and sanitary sewer for this site were constructed, tested and placed in service more than seven years ago; while the intended warranty period under the ordinance is two years. For this reason, the developer is requesting a variance of the ordinance to waive the required Maintenance and Guarantee Bond in this case.

Staff recommends approval of the variance because the amount of time since the infrastructure was placed in service exceeds the required warranty period and the City has not experienced any problems associated with the water main and sanitary sewer systems during the past seven years. The City Attorney has reviewed the variance request and finds no legal impediment to granting the variance.

RECOMMENDED ACTION: Approval of a variance from Section 26.5-10, requiring a Maintenance and Guarantee Bond from Fallon Brothers, LLC for the water and sanitary sewer improvements for the Fallon Brothers Building, located at 46570 Humboldt within the Beck West Corporate Park (parcels 22-09-176-011 and 22-09-176-012) in Section 9.

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

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

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William Kucyk
Enrico Soave

Americo Fernandes

Thursday, May 20, 2010

City of Novi
Office of the Council
45175 W. 10 Mile Road
Novi, MI 48375

Re: Request for Waiver of Maintenance & Guarantee Bond for property
located at 46570 Humbolt, Novi.


Dear Honorable Council Members:

Our firm represents Fallone Bros., LLC, and the purpose of this correspondence is to respectfully request a Waiver of the Maintenance and Guarantee Bond for the above-mentioned address. We ask that this matter be placed on the Council's next regularly scheduled meeting set for Monday, June 7, 2010.

The waiver is appropriate since the project was finished in 2003 and the improvements on the property have been inspected and approved since that date and continue to be in good functioning order without incident. Furthermore, if such surety bond would have been issued it would have been for a two (2) year period which has long since expired.

Thank you in advance for your anticipated cooperation.

Truly yours,
KUCYK, SOAVE & FERNANDES, PLLC



Enrico E. Soave, Esq.
For the Firm

cc: Aaron Staup, Construction Engineering Coordinator;
Fallone Bros, LLC.

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.

City Of Novi



0 75 150 300 450 600
Feet

Location Map - Fallon Brothers

