



## CITY of NOVI CITY COUNCIL

Agenda Item C  
June 27, 2016

**SUBJECT:** Approval of a request by Mirabella Estates Condominium Association to waive the Maintenance and Guarantee Bond required under Section 26.5-33(2)(c)(3) of the ordinance for streets installed in Mirabella Estates located west of Meadowbrook Road and north of Eight Mile Road in Section 35.

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

**CITY MANAGER APPROVAL:** 

### BACKGROUND INFORMATION:

Mirabella Estates Condominium Association has requested that the City waive the two-year Maintenance and Guarantee Bond requirement under Ordinance Section 26.5-33(2)(c)(3) for this project due to financial hardship because the homeowners worked together to finish the development rather than the original developer. The letter requesting the waiver is attached.

The Ordinance requires a Maintenance and Guarantee Bond for all newly installed streets that will ultimately be dedicated as public for a two-year term in the amount of twenty-five percent (25%) of the cost of construction of the paving to be accepted. The Street Maintenance and Guarantee Bond required for Mirabella Estates is \$39,852. The bond ensures quality of the improvements constructed by repairing any defect, whether due to improper or defective materials, equipment, labor, workmanship, or otherwise without expense to the City.

This development was abandoned by the developer prior to the acceptance of the streets several years ago. The Homeowners Association hired paving contractors, T&M Asphalt Paving, Inc., last year to complete the construction in accordance with the City's standards in order to dedicate the streets. Funding was partially through the remaining financial guarantees and partially at the homeowners' expense. The construction of the streets was observed by the City's private development engineering consultant, Spalding DeDecker Associates.

The two-year bond term would normally coincide with the issuance of street acceptance and 90% completion of the home construction on-site. In this circumstance, all homes are complete and occupied and therefore little to no construction equipment is expected. T&M's standard warranty for workmanship and materials for one (1) year after completion expires on October 8, 2016. The City will complete an inspection prior to the expiration of the standard warranty and work with the contractor and the association to resolve any pavement issues.

The circumstances are unique for this project that a developer is not pursuing street acceptance and that home and site construction is complete. There is a risk that the street improvements will need substantial repair over the next two years, but in this case staff is recommending approval because it would be difficult for the association to obtain a maintenance bond at a reasonable price as a contractor or developer could.

The waiver request has been reviewed by the City Attorney (Beth Saarela's letter, attached).

**RECOMMENDED ACTIONS:**

**Approval** of a request from Mirabella Estates Condominium Association for a variance from Section 26.5-33(2)(c)(3) of the ordinance, which requires a Maintenance and Guarantee Bond for all newly installed streets that will ultimately be dedicated as public for a two-year term in the amount of twenty-five percent (25%) of the cost of construction of the paving to be accepted because City Council finds that the applicant has demonstrated:

- The application of the ordinance standard on this site is infeasible or otherwise presents an exceptional difficulty and the applicant has demonstrated that enforcement of the ordinance on this site would be more difficult or impractical than it would be on any other site where the ordinance has been applied because the work was completed by the homeowners' contractor.
- The alternative proposed by the applicant to waive the requirement in this case is adequate for the intended use and does not substantially deviate from the performance that would be obtained by strict enforcement of the standards because the work was completed and funded by the homeowners.
- The granting of the variance would not be detrimental to the public health and welfare.

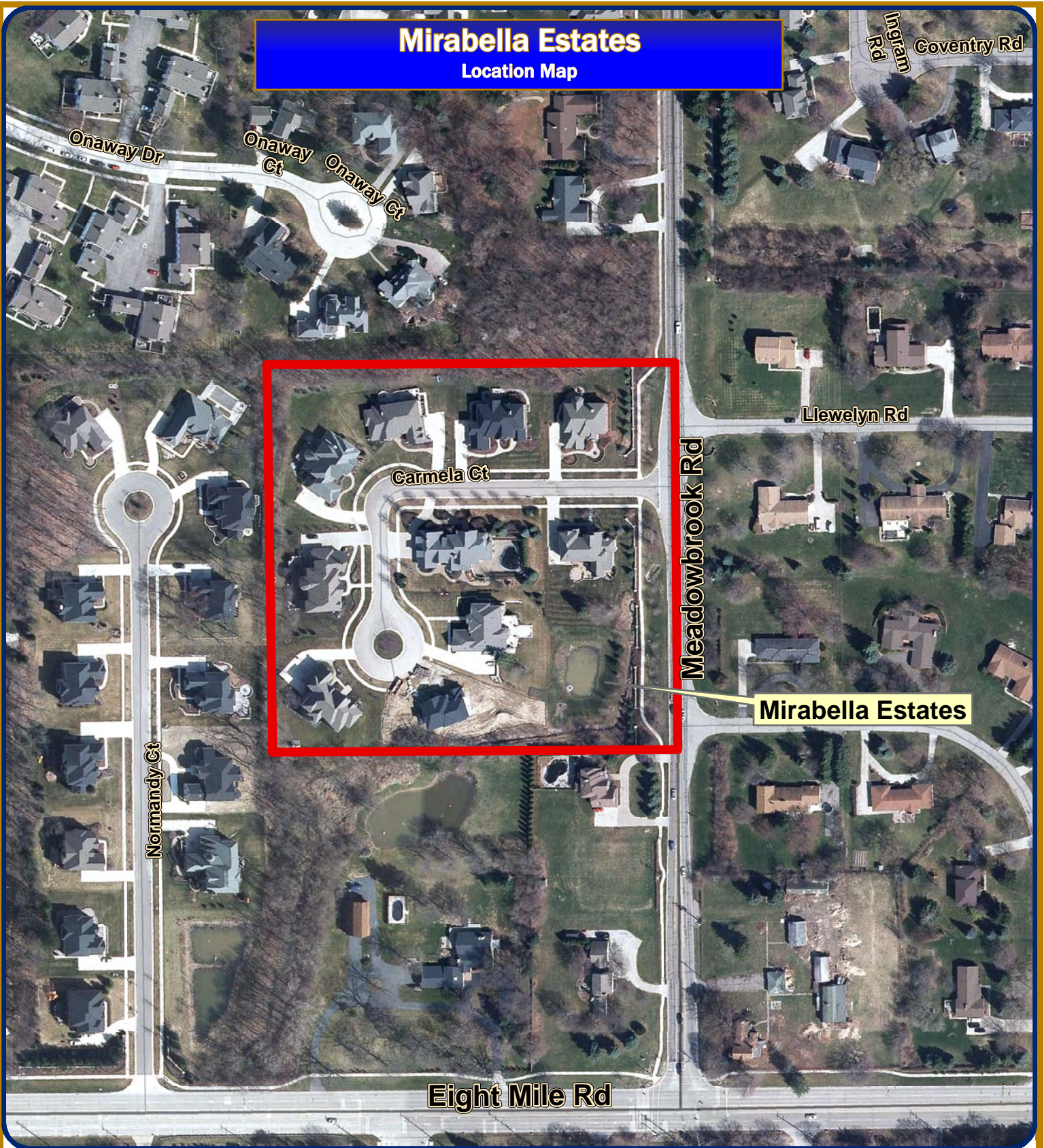
	1	2	Y	N
<b>Mayor Gatt</b>				
<b>Mayor Pro Tem Staudt</b>				
<b>Council Member Burke</b>				
<b>Council Member Casey</b>				

	1	2	Y	N
<b>Council Member Markham</b>				
<b>Council Member Mutch</b>				
<b>Council Member Wrobel</b>				



# Mirabella Estates

## Location Map



Map Author: Rasha Majzoub  
Date: June 7, 2016  
Project:  
Version #:

Amended By:  
Date:  
Department:

### 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 432 of 1970 as amended. Please contact the City GIS Manager to confirm source and accuracy information related to this map.



## City of Novi

Engineering Division  
Department of Public Services  
26300 Lee BeGole Drive  
Novi, MI 48375  
cityofnovi.org

Feet  
0 40 80 160 240

1 inch = 194 feet





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May 31, 2016

Theresa C. Bridges, P.E.  
Novi Department of Public Services  
Field Services Complex  
26300 Lee BeGole Drive  
Novi, Michigan 48375

**Via Email and US Mail**

RE: JSP05-0033  
Mirabella Estates Condominium  
Road and Utility Dedication  
Request for Waiver of Maintenance and Guarantee Bonds

Dear Theresa:

As you know, Novi Code of Ordinances Section 26.5-33(1)d.12, with respect to public utilities, and Section 26.5-33(2)c.3, with respect to streets, require the applicant to submit a maintenance bond equal to 25% of the cost of construction of these improvements to be held by the City for two (2) years after acceptance. As you also know, the "applicant" for the Mirabella Estates project is not the original Developer of the condominium, nor a successor developer as defined in the Michigan Condominium Act, or even a residential builder. Instead, by operation of law, it is the Mirabella Estates Condominium Association (the "Association") and its ten (10) family Members.

The purpose of this letter is to request, as Counsel for and on behalf of the Association, an administrative waiver of the requirement to post these maintenance bonds in connection with the on-going dedication and turnover of the public utilities and streets in Mirabella Estates to the City of Novi.

As a brief history and in support of the request, let me remind you that the public utilities and streets for this project were constructed by the original Developer in approximately 2005. However, even though the public utilities were completely installed and all of the streets (other than the final wearing course) were installed, the original Developer never completed the turnover and dedication process. As a result, when the Association asked the City what could be done with their failing streets some ten (10) years later, the answer was essentially fix/replace them yourselves.

So, with some negotiations from the original Developer to have cash guarantees released to the Association, and going into their own pockets for another over \$40,000, the Association had the streets completely replaced to the City's current standards and the curb/gutter restored to acceptable

condition. All of such installation was done under the watchful eye of Spalding DeDecker.

No additional improvements or repairs were needed for the public utilities as those improvements have been in operation for over ten (10) years without interruption.

Accordingly, based on the foregoing, and further based on the fact that the "applicant" is the non-profit Association and not a for-profit developer/builder; as well as the fact the Association lacks the banking wherewithal and financial capacity to post the requisite maintenance bonds, the Association requests a waiver from Novi Code of Ordinances Section 26.5-33(1)d.12, with respect to public utilities, and Section 26.5-33(2)c.3, with respect to streets, of the requirement to post maintenance bonds equal to 25% of the cost of construction.

If you need additional information from the Association, please let me know.

Best regards and thank you,

A handwritten signature in black ink, appearing to read "David A. Goldberg", with a stylized flourish at the end.

David A. Goldberg

Cc: Mirabella Estates Condominium Association



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June 9, 2016

Rob Hayes, Public Services Director  
CITY OF NOVI  
45175 Ten Mile Road  
Novi, Michigan 48375

**Re: Mirabella Estates (fka Meadowbrook 8) JSP05-0033  
Review for Acceptance – Utilities and Right-of-Way**

Dear Mr. Hayes:

We have received and reviewed, and enclosed please find, the following documents for the Mirabella Estates Site Condominium Development:

- Sanitary Sewer System Easement
- Water System Easement
- Title Commitment
- Bill of Sale for utilities
- Maintenance and Guarantee Bond (Paving)
- Warranty Deed (Meadowbrook Road)
- Warranty Deed (interior Roads)
- Bill of Sale (Paving)

We have the following comments relating to the above-named documents:

**Water System and Sanitary Sewer System Easements**

The Mirabella Estates Condominium Association seeks to convey the water and sanitary sewer system facilities serving Mirabella Estates Site Condominium Development. We have reviewed and approve the format and language of the above Water and Sanitary Sewer System Easements and corresponding Bill of Sale. The exhibits have been reviewed and approved by the City's Engineering Division.

### **Warranty Deeds**

The Warranty Deeds for 60-foot Right-of-Way along Meadowbrook Road and the internal condominium roads is in the City's standard format. There is no existing mortgage on the property therefore no discharge is required. The legal descriptions have been reviewed and approved by the City's Engineering Division.

### **Maintenance Bond Waivers**

The Mirabella Estates Condominium Association has requested waivers of the Maintenance and Guarantee Bonds for both streets and utilities pursuant to the enclosed letter from the Association's counsel, on the basis that (1) the utilities have been working without interruption for ten (10) years; and, (2) the Association fully restored the roads and a continuing bond would constitute a financial hardship on the homeowners.

As you know, Chapter 26.5 of the City of Novi Code, Section 265.-33 (12) has been recently amended to allow the City Engineer to waive Maintenance Bond requirements regarding utilities if the utilities have been installed and functioning properly for at least two (2) years. On that basis, it is our understanding the City Engineer is considering this waiver since the water and sanitary sewer serving the condominium have been functioning for the past ten (10) years.

However, City Council must still consider any requests for a waiver of the Maintenance and Guarantee Bond requirements for streets. Section 1-12 of the City of Novi Code provides for City Council to consider a waiver of ordinance requirements provided that the applicant can show all of the following:

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Sec. 1-12. - General appeal.

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(c) A variance may be granted by the city council from regulatory provisions of this Code when all of the following conditions are satisfied:

- (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.

Rob Hayes, Public Services Director  
June 9, 2016  
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The basis of the request is that (1) the Association recently completed reconstruction of the roads using bond money and co-owners funds; and, (2) requiring the co-owners to post additional funds related to the roads would result in a financial hardship to the co-owners. In the event the City Council determines that the reasons provided meet with the standards set forth in Section 1-12 above, a waiver of the Maintenance Bond for streets may be granted.

Subject to the grant of a waiver pursuant to Section 1-12 of the City of Novi Code (or alternatively posting of a Maintenance and Guarantee if the waiver is not approved) the Warranty Deeds for internal roads, as well as the Warranty Deed for the adjacent Meadowbrook Road right-of-way, should be placed on an upcoming City Council Agenda for acceptance. Once accepted, both original deeds should be forwarded to the Oakland County Register of Deeds for recording.

Subject to approval of the administrative waiver of the Maintenance and Guarantee Bond for utilities, the Water System and Sanitary Sewer System Easements may be accepted by Affidavit of the City Engineer. The Bills of Sale and Title Insurance Policy should remain in the City's file.

Please feel free to contact me with any questions or concerns in regard to this matter.

Very truly yours,

JOHNSON, ROSATI, SCHULTZ & JOPPICH, P.C.



ELIZABETH KUDLA SAARELA

EMK  
Enclosures

C: Maryanne Cornelius, Clerk (w/Original Enclosures)  
Charles Boulard, Community Development Director (w/Enclosures)  
Barb McBeth, City Planner (w/Enclosures)  
Sheila Weber, Treasurer's Office (w/Enclosures)  
Kristin Pace, Treasurer's Office (w/Enclosures)  
Aaron Staup, Construction Engineering Coordinator (w/Enclosures)  
Theresa Bridges, Construction Engineer (w/Enclosures)  
Sarah Marchioni, Building Permit Coordinator (w/Enclosures)  
Sue Troutman, City Clerk's Office (w/Enclosures)  
David Goldberg, Esquire (w/Enclosures)  
Thomas R. Schultz, Esquire (w/Enclosures)