



# PLANNING COMMISSION MINUTES

CITY OF NOVI

Regular Meeting

**January 26, 2022 7:00 PM**

Council Chambers | Novi Civic Center  
45175 W. Ten Mile (248) 347-0475

## CALL TO ORDER

The meeting was called to order at 7:00 PM.

## ROLL CALL

Present: Acting Chair Avdoulos, Member Becker, Member Lynch, Member Roney

Absent Excused: Member Dismondy, Chair Pehrson, Member Verma

Staff: Barbara McBeth, City Planner; Thomas Schultz, City Attorney; Lindsay Bell, Senior Planner; Christian Carroll, Planner; Rick Meader, Landscape Architect; Humna Anjum, Plan Review Engineer; Ben Peacock, Planning Assistant; Saumil Shah, Traffic Consultant

## PLEDGE OF ALLEGIANCE

Member Lynch led the meeting attendees in the recitation of the Pledge of Allegiance.

## APPROVAL OF AGENDA

Moved by Member Lynch and seconded by Member Roney

**VOICE VOTE TO AMEND THE JANUARY 26, 2022 PLANNING COMMISSION AGENDA, MOVING THE IXL LEARNING CENTER OF NOVI PUBLIC HEARING AFTER THE CARVANA EXPANSION LOT MATTER FOR CONSIDERATION MOVED BY MEMBER LYNCH AND SECONDED BY MEMBER RONEY.**

**Motion to amend the January 26, 2022 Planning Commission Agenda. Motion carried 4-0.**

## AUDIENCE PARTICIPATION

Acting Chair Avdoulos invited members of the audience who wished to address the Planning Commission during the first audience participation to come forward.

Maples of Novi resident Ross Barranco said I would like to discuss the Maples of Novi tennis courts project that was passed by the Planning Commission in December and by City Council on January 10<sup>th</sup>. The vast majority of the residents had no idea that this was before the Commission or that it would go before the Council. Nobody knew that the tennis courts were up for sale or were purchased to become a medical building. We were not given notification or the opportunity to make our voice heard. I just want to express my disappointment that us residents were not given any notice about something going on in our neighborhood.

## CORRESPONDENCE

There was not any Correspondence.

## **COMMITTEE REPORTS**

There were not any Committee Reports.

## **CITY PLANNER REPORT**

City Planner McBeth had nothing to report.

## **CONSENT AGENDA - REMOVALS AND APPROVALS**

### **1. OAK POINTE CHURCH ADDITION, JSP19-44**

Approval of the request of Oak Pointe Church Novi for the first one-year extension of the Preliminary Site Plan. The subject property is located on the north side of Ten Mile Road and west of Wixom Road in the RA, Residential Acreage Zoning District. The site plan proposes Phase 4a and Phase 4b of the project: a 16,596 square foot addition and 11,512 square foot addition on the east side of the building. Preliminary Site Plan approval was granted in June of 2020.

Member Lynch asked if this was the applicant's first request for a site plan extension.

Acting Chair Avdoulos confirmed that it was the first request by the applicant.

Motion made by Member Lynch and seconded by Member Roney

**ROLL CALL VOTE TO APPROVE THE ONE-YEAR PRELIMINARY SITE PLAN EXTENSION FOR JSP19-44 OAK POINTE CHURCH ADDITION MADE BY MEMBER AVDOULOS AND SECONDED BY MEMBER RONEY.**

***Motion to approve the 1-year Preliminary Site Plan extension for JSP19-44 Oak Pointe Church. Motion carried 4-0.***

## **MATTERS FOR CONSIDERATION**

### **1. CARVANA EXPANSION LOT, JZ21-39**

Consideration of the request of Carvana for Planning Commission's determination whether its proposed use for Unit 6 of the Adell Center is permitted in the TC District. The subject property is located at 26540 Adell Center Drive in Section 15, north of Grand River Avenue, west of Novi Road in the TC Town Center zoning district. The applicant would like to Amend a PRO Agreement in order to utilize Unit 6 of the Adell Center development for off-site parking/storage of vehicles for the Carvana car vending machine use on Unit 8. The Planning Department has determined that the use is not permitted in the TC District, and Carvana is challenging that determination.

Senior Planner Bell said the subject property is just over an acre and is Unit 6 of the Adell Center development, which is subject to a PRO Agreement and Concept Plan. The development is located on the west side of Novi Road and north of Grand River, south of I-96 in Section 15. The subject property is located near the entrance to the development, between the first bend in Adell Center Drive and the I-96 exit ramp. It is currently zoned Town Center with an associated Planned Rezoning Overlay. There are no regulated wetlands or woodlands on this property. The PRO Agreement and Plan designated Unit 6 for Restaurant use. The applicant, Carvana, is proposing a parking lot to be used for the storage or staging of vehicles before they are placed in the Vehicle Vending Machine on Unit 8 for pick up by customers. The site plan proposes approximately 47 parking spaces. Primary access is proposed off Adell Drive via the access easement shared with Texas Roadhouse.

Senior Planner Bell continued to say in reviewing the application, staff looked at several sections of the ordinance to determine whether the use proposed could be allowed in this location. The intent of the TC District clearly prohibits any kind of activity in connection with car sales. In part, it states "uses which have as their principal function the sale or servicing of motor vehicles, such as automobile serves establishments, car washes, or new and used motor vehicle sales or service establishments... have a disruptive effect on the intended pedestrian orientation of the districts." While the Town Center District does permit off-street parking lots, Section 5.2.8 prohibits the storage of merchandise, including motor vehicles for sale, in off-street parking lots. The TC District does not permit outdoor storage uses or outdoor space for sale of new or used automobiles. Because the PRO Ordinance does not permit deviations from the uses permitted in the underlying district, this proposed vehicle storage use in connection with the applicant's principal use on a separate parcel is not permitted under the Zoning Ordinance at this location. In fact, based upon staff's conversations with the applicant, it is our position that the described use would be classified as a new or used car lot, which in the City's Zoning Ordinance is more formally called "Outdoor space for exclusive sale of new or used automobiles, campers, recreation vehicles, mobile homes, or rental of trailers or automobiles." This use is permitted only in the B-3 General Business District. Alternatively, the use might fall under "Parking for sale of new, unlicensed motor vehicles and parking of licensed rental and loaner motor vehicles," which is a special land use in the P-1 Vehicular Parking District. Neither of those uses is allowed in the TC District. Even if the use was not for vehicle inventory parking, and was merely an off-premises parking lot, the location and access from the proposed lot to the Carvana building does not meet the requirement of the ordinance to be within 300 feet as measured along a sidewalk. As shown on the map that distance in green is over 700 feet.

Senior Planner Bell went on to say one might ask how Carvana was originally permitted to locate on Unit 8 of this development if used vehicle sales establishments are not permitted in the TC District. In 2018, Carvana applied for an Unlisted Use determination for the TC District with the justification that their unique business model was more like a retail facility that simply gave customers a novel way to pick up a used vehicle (from the Vending Machine Fulfillment Center) that they purchased via an online transaction. Part of the justification made was that they did not require parking for inventory vehicles, because the cars were purchased online and only brought to the site to be loaded into the glass tower for pick up. Carvana stated that they could operate fully on the small site "in large part because there are no vehicles on display for direct sale, all sales occur online." In a letter to the Planning Commission from August 2018, they stated "The 30 parking spaces that will be allocated during the site plan review process are sufficient to accommodate the parking needs of our employees, visitors, and cars that have been delivered to the site but have not yet been loaded into the vending machine." The Planning Commission and City Council accepted those representations made by the applicant in their decision to approve the Unlisted Use Determination for the Carvana facility, as well as the PRO Agreement and Site Plan for Unit 8.

Senior Planner Bell concluded by saying It is the opinion of staff that the applicant's request to Amend the Adell Center PRO Agreement cannot be approved by the Planning Commission or City Council because the proposed use is not permitted in the Town Center District. The applicant would like to pursue the amendment further as they believe a different conclusion may be reached by the Planning Commission and City Council. Tonight, the applicant is asking for Planning Commission's determination on the issue whether the use is permitted in the TC District. The applicant's attorney Dennis Cowan is here tonight to represent the request and can tell you more about their position. Staff will be glad to answer any questions you have.

Plunkett Cooney attorney Dennis Cowan, on behalf of Carvana, said I would like to send the regrets of Jo Ryan, the director of real estate. She planned to be here but unfortunately could not make due to travel issues. However, that does not diminish the interest Carvana has in this

request. On that note, Carvana wants to thank the Planning Commission for approving their business in 2018. That is why they are here tonight; their business has been a success. They are not looking to cut corners and save money; the opposite is true. They would like to make a further investment in Novi. The request is very simple. We would like to utilize unit six in the Adell center as a temporary parking area for vehicles that have already been sold and then take them to the vending machine on unit eight for customer delivery. The need for additional parking is due to customer attentiveness. Business has increased well beyond the 2018 projections. They are also looking for efficiency in operations and a shorter distance for employees to walk. It should also be noted that much of the Adell center landmass is parking. Looking at the layout, more than two times the building landmass in parking landmass, so this request will not significantly alter the use off street parking or the visual appearance of the Adell Center. Carvana also believes that their will not be any significant impact on their neighbors. In fact, they have had verbal discussions with Texas Roadhouse, and no objections were had with this proposal.

Mr. Cowan continued saying we are before you for a procedural request, but, like before, with an unlisted use. This request also does not fit neatly into any zoning definition for land use or parking. When Carvana sought the use at unit eight, we understood that the lot was originally planned to be a restaurant. Instead, an application made in the unlisted use under your Section 4.87 was granted. I might also add that in the original PRO agreement, what is now unit six used to be a larger piece of property and was originally scheduled to be parking. On the original plan, unit six and seven were combined, which is now the Texas Roadhouse lot. The leftover parcel, designated to be parking, is now known as unit six. Carvana is not utilizing the parking for sale of new, unlicensed vehicles, as in a P1 district. They only sell used vehicles that are temporarily licensed as required by law. There is no sale or servicing of motor vehicles. All vehicles are presold. There is no outside storage of any merchandise or equipment planned for unit 6. The vehicles will only be parked for a maximum of 48 hours. Obviously, the employee parking will turn over daily, but the sold vehicles are typically brought over at a rate of four per hour. They need to continue to fill the vending machine as customers come to accept delivery of their vehicle. Also, this is not an outdoor space for exclusive sale of new or used automobiles. There aren't any salespeople or structure to conduct business out of.

Mr. Cowan concluded by saying I also want to note that everything Carvana said in 2018 was true. There were no misrepresentations made and none were intended. The fact is that circumstances have changed due to the success of Carvana. The fundamentals of what was discussed in 2018 remain true. This still has, under any set of circumstances, a much smaller footprint than a traditional dealership. The vending machine will also stay operational which will save on parking spaces. Again, we are proposing an employee and temporary parking lot on unit six for up to days. In your definition of parking, it discusses limits of 24 or 48 hours. We wanted to let you know we are operating within this definition. The PRO agreement allows amendments, so we are requesting that we be allowed to use unit six under an unlisted use determination because our parking request does not fit neatly into a B-3 or p-1 definition. We were originally granted an unlisted use in 2018, so, this being a supportive use to that, we believe it would be rational to consider this an unlisted use under Section 4.87. I don't think that this is unreasonable. I also do not think it should be left up to a staff decision, with all due respect to the staff. I once was the Mayor of Royal Oak. I dealt with the staff there for many years and had great respect for them, but I didn't always agree with them. All Carvana is asking is for fundamental fairness in coming forward to make a case to you. You can then make the decision based upon your best judgment in consultation with those that advise you.

Acting Chair Avdoulos turned the floor over to the Planning Commission for discussion.

Member Lynch said I was on the Commission when this project and the entire Adell project were approved. We did many things that were typically outside of the ordinances. I remember this

project specifically, however. I remember having conversations with Carvana about where they would get all the cars and where they would store them. When the Adell center was in its first phases, I brought it up to Mr. Adell, the owner of the property, and I said you want to move it to the TC district to make this what I think would be a beautiful development. It would have high visibility and great amenities; I think at that time the parachuting place, some restaurants, and hotels had already been proposed in addition to Carvana. The issue of where all the cars would be stored was still prominent and we wanted to know how the cars would get into the vending machine. Carvana said that most people don't use the vending machines; we deliver most of the cars at home. I told them that they weren't going to be allowed to store cars in the TC district, and we had discussed how small the parking lot for the unit was; I remember all of this vividly. We were promised that if we approved this special use that it would only be the vending machine, and there would not be a bunch of cars stored throughout the property. I love the architecture of the vending machine and I am glad that Carvana is doing well. You certainly have the right to come back in and make your case. However, my position is we had the discussion about parking, and Carvana promised us one thing, and now they are asking for something different. I understand that circumstances have change and that business has grown, but at this point I am not willing to deviate from what has already been approved.

Member Becker asked staff if during the initial negotiations for the existing Carvana development in 2018, was there any record that if their business grew as planned, they might need to buy and develop additional land for their business within the TC area?

Senior Planner Bell said that she did not find any record of Member Becker's inquiry.

Member Becker said in the research documentation that the Planning Commission received for this agenda item, it appears that Carvana indicated that, fully staffed, they would have 6 employees working at the site that would need on-site parking. There was also some discussion as to if there would be enough parking, as Member Lynch mentioned. Is there any information in this current application that I maybe overlooked indicating any meaningful increase in the number of employees working there? Today, Carvana is stating that they need sixteen employee spots in this new off-site lot. Is there any indication of their employee growth to that effect?

Senior Planner Bell replied that the most recent response letter says, "Parking needed: 6-10 employee spaces, 2-4 customer parking spaces, and 27-54 vehicle inventory spaces". They break it down to show that 35 to 68 total spaces will be needed; they would have 77 spaces proposed with 47 on unit six and the 30 existing on unit eight.

Member Becker asked did they specifically say 16 of those 77 spaces would be for employees? I'm just trying to figure out where six employees need sixteen spots, but we'll go on. I did my usual reconnaissance trip to the applicant's property on Monday and this morning. I noticed the following: Carvana plated cars are parked in spots designated for handicap parking only. Such parking is required by law, and the applicant is breaking the law by parking their vehicles there. There are also Carvana plated vehicles on pavement that is not designated for parking, and this may be an issue for emergency vehicle access. At both times I visited, there were at least 10 or more open spots in the car vending machine tower, but a number of other Carvana plated vehicles remained outside of the tower. This morning, I noticed at least four vehicles that still had Monday's snow on them, and that is 48 hours later. This is outside of the promised delivery window from the parking lot to the vending machine. The applicant has revised their initial usage request so employee parking would be allowed in the subject property they are looking to acquire. This would require an employee to walk at least 300 to 400 feet to get from the subject property, going through the Texas Roadhouse parking lot, to the current Carvana facility. This is Michigan: it snows, gets cold, gets windy, and it rains. This notion to the proposition that any meaningful number employees would end up parking 300 to 700 feet away from where

they had to work is not logical.

Member Becker continued to say in the applicant's response letter dated December 1, 2021, the applicant stated, "the current site lacks an adequate number of on-site parking spaces," and, "Carvana's operations now demand additional off-site parking for employees and additional storage of pre-sold vehicles". However, the applicant has failed to tell us how many more employees they could have working at any given shift in addition to the six that were initially proposed. The same response letter says the applicant now needs 16 employees. This is about a 250 percent increase off what they originally anticipated, but there was no information indicating why they need such an increase. According to the letter from the applicant to this Planning Commission and the Novi City Council, dated August 17, 2018, Carvana stated, "there are a number of references to whether Carvana meets the city's parking requirements and whether 30 spaces are sufficient for Carvana's use. Carvana has withdrawn its earlier deviation request seeking additional parking and is confident that having 30 parking spaces on-site is sufficient for the proposed use, six of which will be for our employees. The 30 parking spaces that will be allocated during the site plan review process are sufficient to accommodate the parking needs of our employees, visitors, and cars that have been delivered." After one year of operation, the applicant claims they need an additional 47 parking spaces, which is a 167 percent increase.

Member Becker went on to say in 2018, the applicant said their experience at their other facilities indicated they would expect 6 to 15 customer pick-ups per business day. To turn their on-site inventory around within 48 hours, the applicant should only need 12 to 30 spaces for pre-sold merchandise, and their vending machine tower holds 28 vehicles. The applicant says the tower can only vend 4 vehicles per hour. If 16 of the requested 47 new parking spaces are dedicated solely for employees, then there remain 31 spaces in the proposed new lot. When added to the current 30 spaces, this provides 61 on-the-ground spaces for pre-sold vehicles. Without considering the amount of time it takes to put a vehicle in the tower, which cannot be done at the same time as taking one out, dispensing 61 vehicles from the tower would require a minimum of 15 hours. Today, if 6 spaces are used by employees, there could be as many as 24 pre-sold vehicles in outside parking spaces on the current property, plus 28 spots in the tower. It would seem to me that either the applicant meaningfully reduced their originally parking space request without any consideration for their business growth in just one year, or they did so with the awareness it would be insufficient but thought they would get relief or accommodation in the future. At the time the applicant was seeking approval of their operation, they committed to the city that all their vehicles are pre-sold, and their operation would mean that no vehicle would remain on their site for more than 48 hours. That is stated several times. The applicant maintains this is still the case. If this new application is approved, it would provide 77 total parking spaces, of which the applicant says 16 are needed for employees, leaving 61 on the ground and 28 in the tower – 89 spaces for their pre-sold vehicles. The applicant has not provided any evidence that they are currently meeting their requirement of every vehicle being driven off by their new owner within 48 hours of arrival at the site. The applicant has provided neither a track record of average daily vehicle deliveries nor projections showing an average inventory turn of 44 vehicles per day displaying their ability to turn over the 89 vehicles in the required 48 hours.

Member Becker concluded by saying finally, it was rather stunning to read the following in the same applicant response letter. These are the applicant's words: "Off street parking is permitted in the TC district, which use is intended to serve patrons of the building it is intended to serve. In this case, there will be no public access to the expansion lot. It will only be accessed by Carvana employees". The definition of 'patron' is a customer, a visitor, a buyer, a guest. With no public access to proposed expansion lot, no one parking there can possibly be a patron of Texas Roadhouse nor Carvana. Off-site parking, by the City's definition, is specifically for the use of patrons. Ergo, the proposed expansion lot cannot be considered off-site parking, and Carvana

cannot label the use as off-site parking to get the Commission to approve it. By definition, and in the applicant's own words, "pre-sold vehicles are not visitors. Carvana employees are not buyers". This is not off-site parking.

Member Roney said to me, it seems the issue is the language of the Town Center in the Ordinance does not permit this use. Given that this is clearly going to be a function of your sales, it just doesn't seem supported by the Ordinance. As you mentioned, there is a lot of parking there already. We really don't need more parking. What we need to do is build this area up for the Town Center.

Motion made by member Roney and seconded by Member Lynch.

**In the matter of Carvana Expansion Lot, JZ21-39, the Planning Commission finds the proposed use of the parcel is not permitted under the terms of the Zoning Ordinance in the Town Center District for the reasons detailed in the staff review letter, including:**

- 1. The intent of the TC District stated in Section 3.1.25 clearly discourages activity in connection with car sales.**
- 2. Section 5.2.8 of the Zoning Ordinance prohibits the storage of merchandise, including motor vehicles for sale, in off-street parking lots.**
- 3. The TC District does not permit outdoor storage uses or outdoor space for sale of new or used automobiles.**
- 4. The vehicles in inventory can reasonably be called merchandise involved in a sales transaction prior to being delivered to a buyer, and therefore not permitted in off-street parking lots.**
- 5. Under Section 7.13.B of the Zoning Ordinance, a Planned Rezoning Overlay (PRO) shall not authorize uses or development not permitted in the district proposed by the zoning. The proposed use, which would be allowed either in the B-3 District as a used car lot or in the P-1 District as a storage lot for new and used vehicles for sale, is not permitted in the TC District.**
- 6. The Unlisted Use Determination provisions of the Zoning ordinance, at Section 4.87, is not available for use by the applicant and the City on Unit 6, because the requested use is in fact provided for in the Zoning Ordinance, in the B-3 District as a used car lot or in the P-1 District as a storage lot for new and used vehicles for sale.**
- 7. Section 6.2.B of the Zoning Ordinance states the Planning Commission (or the City Council when designated as the reviewing body) shall consider the following factors in exercising its discretion over site plan approval:**
  - i. Whether the use proposed for the site is a use permitted in the district and complies with all the applicable requirements of the Novi Zoning Ordinance and/or any other code or ordinance regulating and controlling the use. It is staff's opinion that this use is not permitted in the TC District and does not comply with the requirements of the TC District.**

Chair Avdoulos said before we take the roll call vote, I think there were a lot of good points made by my fellow Commissioners. The biggest thing I had an issue with was the requested property for the parking is not next to the building it would be supporting. That makes this a difficult use to approve. I think perhaps if it was next to the existing Carvana lot, we could have had a better discussion. Also, the way we looked at this project when it originally came in was as a retail center rather than a used car business. That was one of the reasons it was attractive to this particular development, so I will also be supporting the motion.

**ROLL CALL VOTE TO DENY THE PROJECT JZ21-39 CARVANA EXPANSION LOT MADE BY MEMBER RONEY AND SECONDED BY MEMBER LYNCH.**

**Motion to deny the project JZ21-39 Carvana Expansion Lot. Motion carried 4-0.**

**PUBLIC HEARINGS**

**1. IXL LEARNING CENTER OF NOVI JSP21-03**

Public Hearing at the request of JMSS Novi, LLC for a request to amend the Planned Unit Development (PUD) Agreement & Area Plan for the Maples of Novi. The subject property contains 30.32 acres and is located in Section 2, on the south side of Fourteen Mile Road, east of Novi Road. The applicant is proposing to repurpose the entire clubhouse into an education center for children and will, at a minimum, maintain the existing golf course as open space. Improvements to the parking, visual screening, and an outdoor play area are also proposed with this development.

Before giving the floor to Planner Carroll, Acting Chair Avdoulos informed the public hearing attendees to feel free to make themselves comfortable in the atrium where chairs and a TV had been set up for anyone who felt too warm in the chambers.

Planner Carroll said before you tonight is the IXL Learning Center of Novi. The proposed site for a daycare center is located south of Fourteen Mile Road and east of Novi Road. It is zoned Residential Acreage with a Planned Unit Development. The subject of this request is the Clubhouse located on the eastern portion of the property, at the southwest corner of 14 Mile and Wakefield Drive. The property also contains a golf course that winds throughout, and it is outlined in red on the image displayed before you. The current access to and through the development is provided at two locations on 14 Mile Road, and one drive on Novi Road. Commerce Township is to the north with mostly residential neighborhoods on the north side of 14 Mile Road, including Walden Pond, which is directly across from the Wakefield Drive entrance. This image provides an overview of the different homeowners' associations in the area: Maple Pointe is shown in purple, Maple Greens is shown in green, Maple Hills is shown in orange, and Maple Heights is shown in blue. The land is zoned RA Residential Acreage throughout the development, and the Future Land Use map indicates Single-Family with a PUD for the entirety of the property. The surrounding area consists of mostly of residential with commercial at the corner of Novi Road and Fourteen Mile Road. The subject property does contain regulated wetlands and woodlands, but the proposed project is not proposing any impact any of the existing natural features. The applicant is before you this evening seeking to amend the PUD Agreement & Area Plan to allow for the use of a daycare center on this site. This request previously came before the Planning Commission on June 9, 2021, and it was tabled. The applicant was asked by the Planning Commission to meet with the residents of the Maples of Novi community and to submit a revised proposal that took into consideration concerns of the residents and clarified the use of the current golf course.

Planner Carroll went on to say in this revised request, there are a number of items that have been modified:

- The number of children at the daycare center has increased from 67 children with capacity for 200 children for special events, which was the number of children indicated in the previous submittal, to 125-175 children with capacity for 200 children.
- On the previous submittal, the golf course portion of the site was only indicated that it would be maintained as open space. The applicant has clarified on the revised submittal that the grass will be routinely cut and maintained and is willing to provide an agreement indicating that the site will be maintained properly. In addition, the current golf course will not be in operation and the current path will be turned into a walking trail that is for exclusive use of the Maples of Novi residents. The applicant has also indicated that if the community is interested in a disc golf course being placed on the site, they would be willing to install such facilities.
- All references to future development on the site plan have been removed. It is not the



- applicant's intent to develop any other portion of the site.
- On the landscape plan, site sections have been added to show the visual relationship between the playground area fence/screening and the nearby residences.
- The applicant has also met with a number of community members and the HOA Presidents since the last submittal.

Ultimately, the applicant is seeking to amend the PUD Agreement & Area Plan and staff is of the opinion that there are a number of items that need to be addressed. These items include:

- The revised submittal has indicated that 125-175 children will be on-site per day with the physical capacity to hold 200 children. Staff would like clarification to determine when and how often 200 children are expected.
- In addition, per Section 4.12.1.C of the Zoning Ordinance, Section 4.12.1.C only applies to "day care centers exceeding fifty (50) children, but not more than one-hundred and twenty (120) children." Therefore, this revised request is not an allowable use within the Residential Acreage (RA) Zoning District unless the number of children is reduced a maximum of 120 children per day.
- In the Traffic Review, the proposed increase in the number of children also triggered the requirement for the applicant to complete and submit a Traffic Impact Statement, and the report notes that this would need to be provided. If the capacity of the building were to be reduced to the maximum allowable number of 120 children, this zoning ordinance requirement for a Traffic Impact Statement will no longer be required.
- A Noise Impact Statement is required with the Preliminary Site Plan submittal as the proposed daycare use could potentially generate additional noise as compared to the current clubhouse use of the site. This was noted on previous reviews, but I wanted to bring it up again now to note it for the future.
- The applicant has offered to sign an agreement that will guarantee that the grass will be cut on a regular basis. A draft of this agreement should be provided with the next submittal and/or it shall be made a condition of the Planning Commission's recommendation to the City Council when the Planning Commission's motion is made.

In addition, there may still be items that the applicant would like to address separately with the homeowner's associations that are outside the purview of the Zoning Ordinance standards. The Planning Commission should note that the applicant provided a response letter to the staff and consultant's review letters that mostly addressed the concerns related to the concept plan. The applicant indicated that other items from the staff and consultants' review letters, such as whether the number of children being cared for the daycare center would be adjusted to be consistent with the maximum number as allowed by the ordinance, the traffic impact statement, and the noise impact statement will be addressed with a later submittal. The applicant will provide some clarification on these items during their presentation at tonight's meeting.

Planner Carroll concluded by saying although the PUD Ordinance was retracted many years ago, the ordinance remains in place for Novi's existing PUDs, and provides a process for requesting changes to the existing developments, which - from the City's standpoint - includes review by the Planning Commission with a public hearing. That is what is scheduled for this evening. To summarize, the staff report indicates the request should be considered a major change to the PUD Agreement & Area Plan as the project proposes a change in use, character, and concept of the development. The report also highlights that the revised submittal has increased the number of children from 67 that 125-175 children daily. Therefore, staff is of the opinion that at this time, the Planning Commission recommend denial to the City Council of the request due to the lack of compliance with the number of items just mentioned. The Planning Commission is asked tonight to hold the public hearing on this matter and consider making one of the two suggested motions as provided in the packet. There are several people representing the project here tonight, including Jennifer Moss, Applicant, and David Landry, Attorney for the Applicant. Staff is available for any questions you may have.

David Landry, Attorney on behalf of JMSS Novi, LLC and the IXL Learning Center, said I would like to begin with a matter of perspective. We are requesting an amendment to a PUD as an existing member of that PUD. The applicant has a property interest, and we have a contract to purchase the property. Therefore, we stand in the shoes of the golf course. Any member cannot just come before this body and request a rezoning in the area unless they have a property interest. We do. It is as if the golf course is standing before as a member of the Maples, requesting an amendment. However, we are not asking for a change to any other part than the part that we own. This PUD has existed for 30 years. Has anything changed in Novi in 30 years? Of course, it has. We've learned that we must keep up with the changes or cities will stagnate. The city administration originally reviewed our application last May. Planning recommended approval, engineering recommended approval, landscape recommended approval, traffic recommended approval, and the fire department recommended approval. On June 9, we had a public hearing, and several residents objected – which is certainly their right to do so. However, the role of the Planning Commission and, ultimately, the City Council is to analyze the objections to determine if they are substantiated. Is there evidence to back them up? This is a PUD, and the nature of PUDs stems from someone coming before the city, after an ordinance has already been implemented, and asks to develop property outside of those restrictions. The first the question the city will ask is: what benefit would the city receive from allowing you to create this PUD? That was the overriding principle in 1992 when the PUD was first passed, and it is the overriding principle in 2022 – what is in the best interest of the city for this PUD?

Mr. Landry continued to say when we appeared in June, we heard questions about the golf course and that the residents did not want to lose the golf course. We also heard that it will increase traffic and increase noise. Some were confused overall as to what an IXL Learning center was and asked question about that. There was also a complaint that we had not met with them. As a result, the Planning Commission tabled it and instructed us to meet with the members of the Maples. There are four or five Maples communities, including us, and then there is a General Board of Directors. We contacted the General Board and said that we would like to meet with the members; we will meet you at the Maples, so you don't have to go very far. We also provided a letter that responded to many of the issues raised, and we politely asked them to distribute it through email so residents would have some context before our meeting. They responded by saying they did not want a meeting because near 100 people could attend. Our response was that was the entire point of the meeting. We wanted to meet with their residents. Then they said they wanted to rewrite our letter and take certain parts out. Part of our letter said that we would give the golf course to the members of the Maples, but the board was adamant that we should not include that. Obviously, we cannot let them tell us what information to provide to the members. The General Board initially agreed to meet with us, but then they retracted that offer. Then, we contacted each individual Board of Directors for each community in the Maples. We asked them to send our letter out through their email system, and they refused to do that or organize a meeting. We did all we could do. We had a Zoom meeting in December, using social media, and we provided information and answered questions. We presented a PowerPoint where we restated some of the language, so the residents knew that we heard them and that we wanted to address their concerns. The major concern is the golf course. It is important to understand that regardless of the approval of this project, there will not be a golf course there next year. You have heard from the owner, and I believe you will hear it again tonight, there will not be a golf course. The golf course closed from 2011 to 2014. It was reopened, the restaurant closed a second time, and the current owner has said he is going to close the golf course in writing. There were also concerns about affected property values. With respect to the golf course, we are not going to change the clubhouse building; we are going to refurbish it. We are not going to change the topography of the course or affect the wetlands. We are not going to build any building on the golf course; it will remain as open space.

Mr. Landry went on to say an IXL Learning Center is an early childhood learning and development center. It is an established business, and it has been in business since 2004. Its owner, Jennifer Moss, has community ties with the City of Novi. She was raised in the Novi-Northville area, and she is married to a Novi firefighter. She is a member of this community wanting to open her business in this community. Probably the most ironic point of this whole issue is that a childcare center was one of the uses originally contemplated in the PUD. It wasn't contemplated in this precise location. Nevertheless, it was contemplated, so we are not asking for something that was not considered within the original PUD documents. The number of students was mentioned as an issue. We never indicated that there would only be 67 students; there must have been a lack of communication. The space would accommodate 208 students. There is an IXL learning center in Howell with the exact same square footage, and it has the capacity for 208 students. The maximum student count on the facility's busiest day is 128 students. Square footage allows maximums, but that is not actually the maximum that would occupy this Maples property. Intensity of the use was also brought up. This is actually a less-intense use than a golf course, a restaurant, or a bar. The IXL Learning Center is only open Monday through Friday, unlike a golf course. When the golf course closes, the restaurant and bar open and it is open until 2 in the morning. People are drinking, and they are coming and going. Our business is a 7am to 6pm business, it is not open on weekends, and it is closed on the holidays. Therefore, this is a less intense use than a restaurant, bar, and golf course.

Mr. Landry continued, saying with respect to noise, the administrative review from the City indicated that this use will not generate additional noise compared to the clubhouse use. We will also be required to submit a noise study to meet the City Ordinance. Noise, as a matter of evidence, is not going to be any greater than it was previously. There was also concern about how we would keep the children within the bounds of the playground. We will have a fence, a 6-foot arborvitae, 8-foot Serbian Spruce trees, and evergreen trees. We've shown sight lines where you will not be able to see into it. We've added that since the last time we were here. Regarding traffic concerns, the drop-off times are typically 7:00 am to 9:00 am and the pickup times are 3:30 pm to 6:00 pm. In fact, displayed before you is a hypothetical scenario where each dot shows a car. That is about how many cars will come in the drop off and pick up times. There will not be 100 to 200 cars showing up at any time. With respect to the golf course property, we have indicated that it will be kept as open space. We will only allow the member of the Maples to use it. Right now, it is a public golf course that anyone can use. We will guarantee that we will mow the grass every week by entering agreements with the City and with the Maples that we will take care of and preserve the property. We would open it up for activities such as trail hiking, disc golf, foot golf, snow shoeing, and cross-country skiing. One or two residents asked if the city could own the golf course, but they cannot because they specifically prohibit the city ownership of a golf course. We heard some people ask if the Maples could own the golf course. They stated that if the golf course were a competent business, then it should make money. We will give it to the residents if they want it, or we can maintain it. It costs approximately 500 dollars per week to maintain; we'd also give them the commercial lawnmower if they would like it. We are willing to give it to them. This is a photograph of Independence Green in Farmington Hills, which is a former par 3 golf course. This is how it's maintained today with disc golf: it's cut weekly, it's manicured, and it's exactly what we would do with the Maples property. Some were concerned that their property value would decrease since they bought into a golfing community and now the golf course will be gone. We did some research; the golf course was closed from 2011 to 2014, and the market value of the houses went up. We have market evidence that property values will not decrease. Currently, you have a golf course that has twice failed on this property, a restaurant and lounge that has twice failed, and there will be either a vacant golf course or a less intense use on this property.

Mr. Landry went on, saying I would also like to address the two identical letters from the same lawyer sent to the city raising a legal issue. This lawyer claims that any attempt to change this PUD would require approval of every single owner in the Maples. The claim is that the PUD is a

contract and cannot be changed without the approval of everybody. In the letters, the lawyer says, "Any amendment without approval of all property owners within the Maples of Novi is invalid and unenforceable". Think about this statement for a moment; let's say part of the property in this PUD becomes unmarketable, nobody wants to live there, and it becomes unkept and unsafe. Does that mean that the city can not ever alter any part of this PUD without every single homeowner's approval? That just simply is not the law. This isn't just a general contract between two people. This is a PUD, which is somewhat like a contract, but it is authorized by the Michigan Zoning and Enabling Act. The Act ordains that the power to control the growth and development through zoning is a municipal police power. The best example of why the permission of every member is not needed to change it is right here in Novi. There was a lawsuit a few years ago called Sandstone vs the City of Novi. In Sandstone, the original developer came to the city for a PUD with several areas: single family in one area, duplexes in another area, and apartments in another area. Eventually, the original developer sold three of these areas: one to a company called Brownstone, one to a company called Toll Gate, and one to a company called Manchester.

Mr. Landry detailed the court case and related it back to the Maples PUD situation. Overall, the ruling in the court case signified that an expectation by the PUD members is not the equivalent to a right. The court emphasized that it is unrealistic to expect that the use or rezoning of a property would never change.

Mr. Landry concluded by saying the city received a letter, and it essentially said if you approve this you will be sued. Realistically, this is a piece of property that two businesses have failed on, and there is an argument that there is no viable use as zoned. If there is any lawsuit, it will not be by the Maples. I'm not threatening to sue anybody, but anybody can claim they are going to file a lawsuit. This is a piece of property that is no longer viable as is. We are simply asking to change our portion of the PUD to make it viable, and the crazy thing is, we aren't going to change any of it other than the clubhouse portion. We will stand by for any questions.

Acting Chair Avdoulos reminded the public hearing participants of the rules and time constraints for the public hearing before inviting those members of the audience to approach the podium.

Mike Wood, 41311 Cornell Drive, said asked who are the current owners of the 30 acres? That is my only question.

Acting Chair Avdoulos reminded the audience that the public hearing is not a back-and forth discourse, and that the Planning Commission hears all the comments and addresses them after everyone has spoken.

Laura Miller, 41940 Canterbury Drive, said I am happy that there is green space and that there will not be development in the open spaces. My children attended a childcare service such as this and I currently provide special education services in another city. We had two entrances into the parking lot. If you have 14 rooms, most times you will have two adults and administrative staff. This could be up to 20 adults, so 20 of the parking spots will be for staff. My main issue is that this center only has one entrance, and it is on our entrance road rather than on the main road. This could cause traffic back-ups and safety issues. We already see the congestion on Novi Road with the traffic from the elementary school across the road. It is almost impossible to make a left turn out of our property. I do not know how you did a traffic stud because that road has been torn up for two years. Sometimes you can wait for 5 minutes holding up traffic trying to turn left into the neighborhood from 12 Mile because it only has two lanes. I hope that the Commission can reconsider the traffic study.

Teresa Renaud, 30857 Centennial Drive, said I want to thank you for your consideration. I know this has been a long-haul going on for about a year now, so I appreciate it. I know that one of

the top priorities for Planning Commissions to reconsider a PUD is need. I did a study, and I'm not sure if this has been done, but in Novi's three zip code areas we have 25 daycares and childcares already. The total capacity of these facilities is 2,969 with 85 percent capacity left open. I'm not sure there is need for another daycare center in our community. Also, looking at the demographics of our neighborhood, we are an aging population where childcare is not in high demand. We also do not have an increase in childbirths in our area. My request tonight is to consider the need of not just the entire Novi community, but our part of that community. I know that we are somewhat on the northeastern border of the city with Walled Lake and Commerce Township, but as our representative, please consider this.

Ross Barranco, 31247 Barrington Drive, said my property is 'Site A' on your site plan map. I want to let you know that the scale on the horizontal depiction is off. It shows that the footpath is going to be 40 feet wide when it is only going to be 10 feet wide. It shows the distance between my home and the shrubbery will be 80 feet, but it will only be 20 feet at the most. I will be able to see over the screen when I am standing on my back porch. On the site plan, it shows an area to southeast – that is playground. IXL is proposing to double the size of the maximum size of the allowed playground. The lawyer just mentioned that they will keep the topography the same. However, there is currently a putting green in the area where the playground will be and a mound behind it. I assume that they plan to bulldoze that mound and level to grade. They're going to destroy the putting green and half of the golf path. There is sufficient room to the north and south of the golf path for the playground. There is no need to be on the other side of the path from where it is today. If the current entrance on Wakefield were blocked off and a new entrance on 14 Mile just east of the garbage bin was put in, you would shift the traffic congestion away from the area. Otherwise, the Waldon Pond neighborhood will be trapped either in or out of their neighborhood due to traffic. The pickup times for the center line up directly with rush hour, the busiest times for cars to be exiting the nearby neighborhoods. It does not seem that many people would be rushing to and from a golf course at rush hour.

Todd Skowronski, attorney representing Maple Hills and Maple Pointe associations, said I am the attorney that was reference earlier. I am raising the same objection again. It may not surprise you that attorneys disagree amongst themselves to advance their clients causes. It is our position that, under Novi Zoning Ordinance and PUD ordinance, a developer has the right to amend a PUD. IXL is one of multiple stakeholders that are successors to the developer. They don't have the right to come in unilaterally advancing this amendment without the approval of all the other stakeholders approving. I did not write the PUD ordinance, but that is what it says. While IXL may not like the way the ordinance was structured, that is the law we must live with. In my prior objection, I also noted that this would violate the Zoning Ordinance aside from the PUD issues. The proposed usage is for 125 to 175 students, and, as staff pointed out, the local ordinance does not allow daycare centers over 120 students. Even so, when there are between 50 and 120 students, the center can not abut an RA zone, which it would in this case. I will leave the rest to my written submission.

Greg Fiorido, attorney representing the Maple Greens association, said I am here tonight to state the Board of Directors' strong objection to the change in the PUD, as well as the objection of many members of the association. I would like to mention a few legal points. This is a major change in the use or character in this community. This is a community with many elderly people who bought into this project on the reliance that the community would remain similar, and the golf course would still be there. I don't think there is any question whether it is a major change. As brother counsel, Mr. Skowronski, mentioned, the revised submittal does not comply with the Residential Acreage zoning limit of 120 children. I also want to remind everybody that the burden is on the applicant to prove a change in circumstance, economy, or consumer demand. It is not on the surrounding communities to prove the opposite. The applicant will have to meet that burden, and I would suggest that should be a very high burden given the significant change this will bring to the community. This is a golf course community, and there is

no question that was the intent. Even if the land is used for open space, it is still a major change to where the residents thought they would be living. Mr. Landry, with respect, somewhat pushed away the idea that you may need more if not all community members to consent. However, this is a legitimate legal question. I'm looking at the old ordinance, and I cannot find anything in there that justifies the request that has been made. In Section 27, it states that you must own all the property if you would like to apply for a PUD. Why would that not be the same requirement for someone who wants to amend the PUD? Maybe it is in the ordinance somewhere in a different section, and I missed it. I was looking at section 27 of the 1997 ordinance, but I did not see anything. At the very least, I think it is a legitimate question that should be answered from a legal perspective. I think the residents at least deserve to understand the mechanism because it can be confusing even for attorneys. There was a 1997 ordinance, now there is a new ordinance, but we still must follow the rules of the old ordinance – they might be confused with what the process is overall. I think many of the residents are confused and feel disenfranchised because of that confusion. Why should one member of the five be able to request a unilateral change? The offer to cut the grass seems underwhelming to me; with such a major change as this, we would need more information as to what that entails. To sum everything up, putting a daycare center in the middle of communities that have many elderly residents does not make much sense to me. It is going to change the type of people that want to buy into the community because it has a daycare and not a golf course.

Janine McKay, 30742 Tanglewood Drive, said I am also speaking on behalf of Tony Cippichio who is not here today – he is on our board, but he is out of town. His lives at 31138 Seneca Lane, and I will try to combine both of our comments into the time allowed. Tony had said that IXL states that there will be less than 120 students, so will the traffic study still be necessary? Does that include the 45 potential employees? How is the city going to monitor that and the overall population of the center? Mr. Cippichio also states that on page 23 of the document that was sent to everyone, it states that the city's goal is to provide residential development that provides healthy lifestyles. Looking at the audience members: this is the demographic of this community – we don't have children; we may have grandchildren that occasionally visit us. On page 43, landscaping states that noise from a swimming pool is greater than the noise from the daycare. Tony is asking what is this study based on and who assumed this to be the case? It is probably a false assumption. On page 46, the AECOM traffic study does not make any sense. It does not factor in the employees, the contractors, the residents, or residents on the other side of 14 Mile Road. There was no reply to the legal challenge that was sent to the city. Mr. Landry did address that tonight, but nothing was included in any of the documents discussing this.

Ms. McKay continued by saying within the original PUD on page 174 of the document sent to us, number 5G, states the applicant "demonstrates the proposed PUD represents a recognizable and substantial benefit to the users of the PUD". If IXL is to amend this PUD, they must tell us how their presence will be a recognizable and substantial benefit to the users in the area. What they state on page 23 of the documents the change provides the surrounding residents with a resource for education nearby. Again, this does not appeal to the demographic that resides within the Maples. Also, there is a 11,000 square foot Goddard center being developed within a mile away. There are already at least 41 daycare centers in the Novi area.

Denise Fekaris, 30923 Copper Lane, said I was able to look up other IXL centers in Michigan, and five came up. They all already closed. None of these centers were in a residential area, and they do not have a very high success rate. Additionally, I am concerned that the building is not safe for children. The roof has been leaking for a long time, and we know there is asbestos there. There are probably animal droppings there since the roof was not kept up for so long. I'm concerned about proximity of wildlife because of the wetlands that are there. I'm concerned about the stagnant water where we can't spray for mosquitos because they're regulated wetlands. I don't think this a good place for kids to be. This is a sick building. I am a mom and a grandmother, and when I walk past that building, I think that I wouldn't even put criminals in

there.

President of the Maple Hills Association, Don Jorgenson, 41396 Belden Circle, said the Maples Hills consists of four condo associations which have a total of about 750 residential units. Honestly, I think we all would like a business in that place. Unfortunately, I don't think we should accept the first and only business to come forward so far by trying to fit a square peg in a round hole. The city did send out voting documents to all residents within the 300-foot radius, and I have been tracking most of them for my condo association. According to the city notes as of a few days ago, and I know it went up from there, there were an overall 132 responses. There were 5 that voted they approved, but I do not think two of them should be counted because no address information was given. According to my associations vote count, 130 said no. Those are the people out here today that want their voice heard. Regarding the Zoom meeting on December 9, it consisted of around 80 people. However, all the cameras except those of the applicant were blacked out and we were muted. We were able to voice concerns and ask questions only through the chat. At the end of the meeting, my belief was they cherry picked a couple responses, and that was all. According to the notes they provided to the Commission, they said there was an overall positive response. We are contesting that. Regarding parking, there are 85 spots in that lot. Originally, they said 65 kids would be coming, but now they are saying 175. That is about a 300 percent increase. This is not enough space considering most children come in individual cars and the time it takes to drop a child off is not fast enough for the spots to turn over efficiently. That is also a lot of cars coming and going on a private road. Since the traffic will be so heavy, I am sure that it will not be long before people realize that they can cut through the Maples neighborhoods from Novi Road to avoid that traffic and get to the front of the line.

Shirley Kest, 31004 Tanglewood Drive, my only direct access to my home's street is Wakefield, which is a private drive. We maintain those roads, and we create the curbs on those roads. I want to point out that in the January 10<sup>th</sup> City Council Minutes, the zoning ordinance is discussed. In number 4a.1 it says the applicant shall present all ownership of land in a PUD. The residents are the majority owners of the land in the PUD. The clubhouse building is a minor portion of it. Regarding home market values, the house directly across from the Birmingham IXL business, which is in an old church, took 2 years to sell their house. They had to come down 10.6 percent in their asking price to get the house sold. I do think the homes immediately adjacent to the playground will be affected by that. In the Maples, there are over 700 residences. If there are at least two people in each home, that is a voting base of around 1,400 people who pay their taxes to the City of Novi. That does not include our neighbors across 14 Mile Road in Waldon Pond. If they would like to be a good neighbor and coexist in a residential community, then they need an exclusive access directly into your parking lot.

Corey Byron, Owner of the Maples Golf Club, said I know IXL learning centers across the state are still open; whoever printed those sheets off probably did so when they were closed for business hours after 6pm. Our building is completely safe; I spend 300 days per year there, and it works very well. I would like to discuss the responses that were submitted about traffic and noise. During the summer, we have 5 camps for children on Thursday mornings. There are 32 kids, 7 coaches, and typically 5 parents that stay around. That's about 45 people on a putting green, and we have never once had a noise complaint. I believe that when IXL takes kids outside, there might be 30 kids max out at once. Thursday night is our busiest night. We have 40 cars come in from 4:45pm to 5:20pm, and the kids camp ends at 4pm. That is 80 cars overall – we never received a traffic complaint. Now I'd like to discuss real estate, which I do know a good deal about. The best thing is, there is a lot of demand and no supply. Values aren't going down; they continue to go up. When I close this golf course, and I maintain the grass to whatever is required by Novi, what damage does that do to a property value compared to all the open space renovations IXL plans to do? What would you rather have: a beautiful park in your backyard, or possibly 8 inches of grass growing with mosquitos? Most significantly, when

the PUD formed, as stated on page 284 of the packet received this evening, it states the clubhouse will only serve the Golf Villas, which is Maple Greens and the golf course. Maple Greens residents were originally paying dues. When the Maples filed for bankruptcy around 10 to 13 years or so ago, they severed that relationship with the clubhouse and golf course. When they severed that agreement, there was no longer any correlation between the golf course clubhouse and any condo association in that complex. If it is true that you can't amend the PUD without consent of all members, then the residents of Maple Greens owe a lot of money to a lot of business owners over the last 13 years. I have met with John and Scott, and they are legitimate in what they say they will do. They have done everything they said they were going to do.

Mary Kramer, 30919 Savannah Court, said I haven't picked apart the ordinance and the PUD, but I left my home of 45 years and gambled on Novi. I just bought recently, but I worked for the city I used to live in. I imagine that 30 years ago, Novi's City Council and Planning Commission were very excited about the project. Someone of the residents have been here since it was created. Perhaps the golf course is failing, but this should not only be looked at as one building on 14 Mile; it is a large property weaving in between our neighborhood. Once that sells, what happens if that business closes? What happens to that property overall? You should be loyal to what the development was unless it was really failing, and it is not. The community is beautiful. The development was intended for the people who lived there and to attract people to Novi. Why is Novi entertaining anything different now?

An unidentified resident of the Maples said the current owner of the clubhouse and the golf course has complained that the property had not been supported by the associations. We no longer had a clubhouse when this current owner bought the property. The restaurant that we'd walk to has been taken away from us. It is very difficult to hear the current owner say we did not support him because he did not meet our needs either. Also, there is a wonderful building on 10 Mile just down the road from here that would be perfect for this business.

Karen Smith, 41779 Independence Drive, said I have been a resident in the Maples since it opened. When it first opened, the golf course was part of the community. We paid a one-time fee of about 5,000 dollars to be a part of that golf community, and we never received a reimbursement for that. My major concern is the traffic. Our roads are private roads. They are narrow and do not have the capacity for that level of traffic. I am concerned that people will be coming in and out of our community using our roads – are they going to pay for a part of them? If this business is to be allowed, I think they should be required to have a separate access drive and not allow them to have any access to our private community roads. 120 children is a high number, and it would require a lot of employees. Therefore, there may be up to 20 employees. We do not want to have the liability of property destruction around our community.

Jane Taylor-Liston, 41772 Independence Drive, said I echo many others' concerns about traffic, the putting green, and the tennis courts. I do have to comment on property values because I am new; I only moved in about a year ago. I was told I paid a higher price for my condo because it is on a golf course. I realize the golf course is going away, and that is not an issue. However, this is what I was told at the time of purchase. The property values that were discussed by IXL were from 2011 to 2015. I sold my house in Plymouth in 2013 to move out of state, and I guarantee that the property values at that time all over metro Detroit were going up no matter what. Just because the property values of the Maples were going up at that time does not mean it was caused by the golf course or the lack thereof.

Acting Chair Avdoulos said I wanted to indicate that we did receive many public hearing responses. In total, there were 377 responses: 357 objected, 17 were in support, and 3 were undecided. All the comments written here have been included in the public record. Seeing



that nobody else wished to participate in the public hearing, Acting Chair Avdoulos closed the public hearing. Acting Chair Avdoulos turned it over to the Planning Commission for discussion.

Member Becker said I'd like to muse on a couple things that the IXL attorney brought up at the beginning of the hearing. I found it interesting that the traffic issue was presented by studying the Northville IXL facility, which is about half the size of the one proposed for Novi. I am also interested as to why they did not do a similar study on the Howell facility that is almost exactly the same size as the one proposed for Novi. It was also mentioned that the applicant would give the golf course to the residents but without a club house. The other remark was, with or without this PUD, there is not going to be a golf course. To me, the issue isn't whether the PUD can be changed – it is whether this is the right project to change it. I read many of the concerns expressed by the citizens. To me, there is one issue that rises above all the others, and it needs our careful consideration. In the interest of time, I will forgo my opinions about the other concerns express. My concern is about the one issue I believe to be unavoidable, and that is traffic and public safety. As a parent a grandparent, I have some experience with what occurs at a childcare facility during their peak drop off and pick up times. The process usually consists of unloading 1 to 2 children, sometimes from both sides of the vehicle. This process also will sometimes require setting up a stroller to get the younger children into the building. In short, this process is neither quick nor very safe. What I noticed on the traffic map is that the applicant provided a measurement from the entrance to the property off Wakefield to 14 Mile is about 140 feet. However, that is from the center of 14 Mile. If you measure from the cut in that starts to allow a right turn onto southbound Wakefield Drive, then it is more like 100 feet to the parking lot. Please note that the applicant designed 11 parking spaces for drop off and pick up, and they are immediately inside the only entrance into the property, directly in front of oncoming traffic. This will mostly block the path of incoming and outgoing vehicles, and it will block up traffic onto Wakefield, and eventually onto 14 Mile. For parents leaving the parking lot and turning west onto 14 Mile, it will be problematic at the least. The residents of the area surrounding this facility would have to deal with this congestion twice a day, 5 days a week, 52 weeks a year. The traffic flow study done by the City's consultant indicates peak hour vehicle traffic for the facility is between 71 and 83, per a manual listing rule of thumb. I cannot determine if 14 Mile Road will have more than one lane in each direction by the time the work on the road is finished. Even so, it would not alleviate the back up of traffic on Wakefield or 14 Mile, but it would still make it more hazardous for people trying to turn left from the north or south of 14 Mile. Looking at the proposed parking lot design, it does not maximize the safety of parents and children and it greatly increases the risk of traffic accidents. I found no comfort in limiting the applicant's customer base to 120 children. When the property was a golf course, most customers did not show up or leave in the same 90-minute window. In Michigan, golf courses do not operate year-round, but childcare centers do. I think that a use without the many traffic concerns that are seen here would be perfect to the proposed building use. In my Commission tenure, I rarely descended to well though out applicants. In my humble opinion, this use for the subject property is a really bad idea due to one major issue: traffic and public safety. I urge the property owner to seek out other potential buyers, and we will have a use for the property that is much more suitable than the one proposed.

Member Lynch said the neighborhood is a beautiful area, and it is a shame that the golf course closed. Looking at what was presented to me on Friday, there were four signatories on this PUD agreement: the city, Maple Group, Classic Construction, and Manufacturers National Bank. However, there still seems to be confusion. Until the issue of who has a right to this PUD is resolved, I am not sure what right we have to make a recommendation. I can give my opinion and recommendation to the City Council, but I don't see this getting any further until that issue is resolved.

City Attorney Schultz said it is the Commission's prerogative to make the decisions on items such as these. If it comes before the Commission, then the Commission is poised to make a decision

on that item.

Member Lynch said I agree with my fellow Commissioner that the traffic situation is not great. The PUD, from the city's perspective, is typically used to preserve natural resources. They wanted to use the golf course as a method of protecting these resources. If I am looking for a house, and look in the Maples, I would see that development must comply with the area plan for the PUD. The other purpose of the golf course was to provide a visual amenity to the residents. My concern is, if the golf course is not going to be there, we need to protect the integrity of what the PUD was originally intended for: preservation of visual amenities and natural resources. My recommendation to Council is to return that area to its natural state. I believe that this is a major change to the PUD. We can't force someone to run a business that isn't viable, but we can protect the intent of the PUD. My recommendation, and Council does not need to heed this, but my recommendation is to return the environment to the natural state. That could be achieved within 3 years at a reasonable cost. The clubhouse use is outside the ordinance, and to be honest, I am not willing to consider another use on this site until we figure out what to do with the golf course portion of the property. The city attorney will need to advise me, but I believe that the city, as a signatory, has the right to request that the course be returned to a natural state since the golf course business shut down. I don't think an unkept or lightly mowed open area meets the intent of the original PUD to provide visual amenities to the same degree. Therefore, I cannot support this proposed use.

City Attorney Schultz clarified by saying a PUD is essentially the same as a PRO. We do not have the ability to require that golf course to operate. We can't require much besides minimal things, such as cutting the grass. We don't have the ability to direct the owner of the golf course to return the area to its natural state or into a prairie mix or anything of that sort. You do have the ability to treat the PUD as a PRO and provide some reasonable conditions they must meet under the city's ordinance and the Zoning Enabling Act. We have no interest in having an unfixable piece of land because it is part of a PUD or PRO. Therefore, the Commission would have to come up with a set of reasonable conditions for the property owner to adhere to.

Member Roney said in my mind, there are three parts: the golf course, the clubhouse, and the 700 residents that live in the community. It sounds like the golf course is not going to be there, and I have no idea what it will or should become. I'm not sure I agree with making it into a prairie state. One thing I thought of was my neighborhood where we have a common space with a park; something like that could work here. Then, there's the question of the clubhouse: is this a viable use? The applicant is asking to have more children in the building than we can accommodate per the ordinance. Overall, this is clearly a major change to the use and the character of this community. It is the only golf community in Novi that I'm aware of, so it is a shame the golf course is closing. At this point, I am not prepared to vote in favor of anything. I would like to hear about more options and see what other alternatives are.

Acting Chair Avdoulos I know most of you have a vested interest in this, so appreciate you all coming forward tonight. While we appreciate and consider all the comments brought before us, but we also have the zoning ordinance and PUDs and PROs we must look at; everything follows a process. One question that continues to come up with some of these developments is: why is the city contemplating this project? We don't pick the projects; they come to us. Then, we go through a process to evaluate whether they're appropriate and whether they will work. For me, I have no issues with the IXL Learning Center for what it is. It is interesting that childcare was a contemplated use when the PUD was originally drafted, but it turned out to be a clubhouse and golf course. This changes the way the building and the community is designed. The way that the clubhouse is nestled in on a side road off 14 Mile will cause safety issues. It also does not meet the requirements for the RA zoning district. Therefore, I cannot support this proposal.

Jennifer Moss, applicant for the project, said I am sorry that I have uprooted your lives so much. I just want to clarify a few things. Mr. Becker mentioned that the traffic study from the Northville location provided was not relevant to this lot because of the size differential. I did have another slide showing a larger location as well, but Mr. Landry passed over it. I just want to clear that up, so you don't think I cherry picked the information. Also, in the respect of safety and dropping off, I have been in the business for a long time. I understand how these things work, and I plan for that for parking and pickup and drop off times – I understand how my business works. This is the process, and I am not the villain that many people have made me out to be. If the Commission decides to not approve this proposal, then I am fine with that. It is the cost of doing business.

Motion made by member Roney and seconded by Member Lynch.

**In the matter of IXL Learning Center of Novi, JSP21-03, motion to recommend to City Council denial of the request to amend the Maples of Novi Planned Unit Development Agreement and Area Plan as follows:**

- a. **The requested amendment constitutes a major change to the PUD Agreement & Area Plan because the modification proposed includes a change in use and character of the development as indicated by Article 27, Section 9, Subheading C, specifically, as a**
  - i. **Change in the concept of the development, since the applicant is changing the use from a golf course and clubhouse to open space and a learning center facility, and**
  - ii. **Change in use and character of the development since the applicant is proposing a change in use from a golf course and clubhouse to open space and a learning center facility.**
- b. **The application does not constitute a minor change as described in the ordinance to the PUD Agreement and Area plan since it does not meet the following criteria: Modifications to be considered minor changes, for which approved plans may be revised rather than amended, shall include, among other similar modifications, the following:**
  - i. **A change in residential floor area;**
  - ii. **A change in nonresidential floor area of five (5) percent or less;**
  - iii. **Minor variations in layout which do not constitute major changes; and or**
  - iv. **A change in lot coverage and FAR of the entire PUD of one (1) percent or less**
- c. **The Planning Commission recommends denial of the amendment to the PUD Agreement and Area Plan for the following reasons:**
  - i. **The proposed daycare center use exceeds more than 120 children on a daily basis, which is not an allowable use within the Residential Acreage (RA) Zoning District.**
  - ii. **A Traffic Impact Statement has not been provided, which is currently required for the number of children indicated on the latest submittal (200).**
  - iii. **The request for amendment does not clearly state the reasons or conditions for the requested change, such as the following: changing social or economic conditions, potential improvements in layout or design features, unforeseen difficulties, or reasons mutually affecting the interests of the City and developer, such as technical causes, site conditions, state or Federal projects and installations, and statutory revisions.**
  - iv. **The Planning Commission is not able to make a finding such that the submitted reasons and requests are reasonable and valid.**
  - v. **The Applicant has not established that the change in use will not adversely affect adjacent property owners, given the increase in traffic and noise attendant to the proposed new use and the change in the nature of the overall use of the site as a whole.**

**ROLL CALL VOTE TO RECOMMEND DENIAL OF THE REQUEST TO AMEND THE MAPLES OF NOVI PUD AGREEMENT AND AREA PLAN TO CITY COUNCIL MADE BY MEMBER RONEY AND SECONDED BY MEMBER LYNCH.**

**Motion to recommend denial of the amendment of the Maples of Novi PUD agreement and area plan. *Motion carried 4-0.***

**MATTERS FOR CONSIDERATION**

**1. APPROVAL OF THE JANUARY 12, 2022 PLANNING COMMISSION MINUTES**

Motion made by member Lynch and seconded by Member Roney.

**ROLL CALL VOTE TO APPROVE THE JANUARY 12, 2022 PLANNING COMMISSION MINUTES MADE BY MEMBER LYNCH AND SECONDED BY MEMBER RONEY.**

**Motion to approve the January 12, 2022 Planning Commission Meeting Minutes. *Motion carried 4-0.***

**CONSENT AGENDA REMOVALS FOR COMMISSION ACTION**

**SUPPLEMENTAL ISSUES/TRAINING UPDATES**

City Planner McBeth said I believe I received a document that has some additional training opportunities. I will send that out. I think I also mentioned at the last meeting that we are planning a training opportunity with our City Attorneys office in the beginning of March. It will be held in a joint session with the Zoning Board of Appeals.

**AUDIENCE PARTICIPATION**

Seeing that nobody in the audience wanted to speak, Acting Chair Avdoulos closed the second audience participation.

Member Lynch asked where the letters from the Maples associations' attorney were located at in the packet.

City Planner McBeth informed him that they are in the back of the public hearing response document that the Planning Assistant put together. We would be happy to share that individually with you.

**ADJOURNMENT**

Motion made by member Lynch.

**VOICE VOTE TO ADJOURN THE JANUARY 26, 2022 PLANNING COMMISSION MEETING MOVED BY MEMBER LYNCH.**

**Motion to adjourn the January 26, 2022 Planning Commission meeting. *Motion carried 4-0.***

The meeting adjourned at 9:21 PM.