



**CITY OF NOVI CITY COUNCIL
DECEMBER 16, 2024**

SUBJECT: Consideration of an appeal by Barima Opong-Owusu of the financial guarantee requirements associated with a Woodland Use Permit.

SUBMITTING DEPARTMENT: Community Development

KEY HIGHLIGHTS:

- A Woodland Use Permit was authorized by the Planning Commission on April 5, 2023 for the development of a single-family home that has now been constructed at 21111 Meadowbrook Road; the permit allowed the removal of certain protected trees.
- During the course of construction, additional impacts to 21 of the remaining protected trees were identified by the City's Landscape Architect.
- Under the City's Woodland Ordinance, if you impact protected trees you have to plant replacements or pay into the Tree Fund as though you removed them.
- The applicant opposes that obligation, but on October 16, 2024, returned to the Planning Commission for a Woodland Use Permit for the 21 trees (31 tree credits) impacted during construction.
- The applicant is now seeking an appeal by the City Council of the required payment of fees and financial guarantee of the City Code.

BACKGROUND INFORMATION:

The applicant, Barima Opong-Owusu, sought and received a Woodland Use Permit from the Planning Commission for the removal of 36 trees for 62 replacement credits trees in order to construct a single-family home at 21111 Meadowbrook Road at the meeting held on April 5, 2023. The property is located west of Meadowbrook Road, and north of Eight Mile Road in Section 35 of the City. Remaining woodland trees on the lot were to be preserved, with tree protection fencing in place to help to maintain the health of the remaining trees and the critical root zones of those trees.

During the course of construction of the home, the applicant or his contractors further impacted woodland trees beyond what was indicated in the approved Woodland Permit. Inspections made during construction by the City's Landscape Architect revealed

encroachment on the critical-root-zone of 21 regulated woodland trees within an area mapped as city-regulated woodland. Replacement calculations require 31 replacement credits. The City's Landscape Architect created a spreadsheet, which is attached, that provides a detailed count and explanation of the required replacements.

Based on the plans provided, a post-inspection review conducted by the City's Landscape, and an inspection by the City's Woodland Consultant requested by the resident (see the attached review letter dated July 22, 2024), the applicant is requesting relief from the standards of Section 37-9 (c) that requires replacement of trees with Critical Root Zone impacts that are considered by City personnel or designees to be serious enough that the trees won't survive the impacts.

Sec. 37-9. - Tree protection during construction.

The parks and forestry operations manager, community development director, or his or her designee shall make a determination as to those trees which can reasonably be expected to survive the permitted activity. Particular consideration shall be given to the impact of changes in grade, deposition of storm water, duration of storm water encroachment, oil leaks, species of the impacted trees, soil types, soil compaction, the distance of earth moving activities from individual trees, and other construction or developmental activities which impact the area around the trees, irrespective of whether the activity is in the immediate vicinity of the affected trees. Trees which cannot be reasonably expected to survive shall be removed. Those trees which are removed pursuant to this section shall be considered in the calculation of replacement trees under section 37-8.

New Woodland Permit

The Planning Commission considered a new Woodland Use Permit PWD24-0024 at the October 30, 2024 meeting to address the further impacts to the 21 regulated woodland trees remaining onsite that were impacted in the process of the construction of the new single-family home. The Planning Commission made a motion as follows:

Motion to approve a Woodland Use Permit, PWD24-0024, for 21 regulated woodland trees that were impacted in the process of building a single-family home located at 21111 Meadowbrook Road, subject to the payment of all associated fees and bonds as required by the City's ordinances.

The Planning Commission is not authorized to allow waivers or variances from the terms of the Woodland Protection Ordinance, hence the motion noted that the approval is subject to the payment of all associated fees and bonds as required by the City's ordinances.

City staff's correspondence with the applicant indicated that, according to the ordinance, the impact by construction (at least 50% impact on the critical root zone, through grading or stockpiling in those areas), of 21 trees was significant enough to require replacement of 31 credits. The City had required a financial guarantee with the original Woodland Permit. While it has returned some of that guarantee, it has retained \$12,400 of it (31 x \$400/credit) relating to these additionally-impacted trees. As noted above, Section 37-9 requires that replacements be provided for those credits, either with plantings on-site or through a contribution to the city's tree fund.

Applicant's Appeal of the terms of the Approved Woodland Permit

The applicant has made a timely request for an appeal to the City Council of the Planning Commission's motion regarding the terms of the ordinance that the payment of all associated fees and bonds will be required per the City's Ordinance. See attached request from the applicant, and copied below.

Sec. 37-31. - Appeal from granting or denial.

A permit approved by the Planning Commission shall not be issued until ten (10) calendar days following the date of the approval. Any interested person who is aggrieved by the granting or denying of a use permit required by this article or other decision hereunder may request an appeal of the decision to the Council. A request for appeal must be filed within ten (10) calendar days following the grant or denial. If an appeal is requested during such ten-day period, the issuance of any permit shall be suspended pending the outcome of the appeal. The Council, upon review, may reverse, affirm or modify the determination and/or permit issued by the planning commission.

The applicant's appeal proposes two alternatives:

- A) *For the city to return the additional tree bond (financial guarantee) of \$12,400 given the health of these trees on visual inspection and as stated during the review by Merjent the city's own environmental consultant.*
- B) *To apply the same formula as with replacement credits where 75% of the bond (financial guarantee) would be returned now and in 2 years when the health of my replacement trees are assessed the encroached trees can be assessed and if they are still surviving and thriving then the remaining 25% will be released.*

As noted above the ordinance requires replacements be provided for those credits, either with plantings on-site or through a contribution to the city's tree fund.

Staff's Review

The City's Woodland consultant and Landscape Architect cannot completely predict the severity of the impact on trees immediately, but their best judgment indicates that the impacts to the remaining woodland trees were severe. Based on their experience, this type of encroachment to the root zone is likely to negatively impact the health of the trees, and it sometimes takes years for the trees to show signs of damage. As noted above, there is currently no section in the ordinance that would allow either of the applicant's proposed options and any permanent impacts on the trees may not be evident after two years.

Section 39.c of the Woodland Protection Ordinance allows these determinations to be made by the appropriate staff:

The parks and forestry operations manager, community development department director, or his or her designee shall make a determination as to those trees which can reasonably be expected to survive the permitted activity.

Staff's determination is that the impacts to the remaining woodland trees were severe, and that the standards of the City Code should be upheld.

Relevant Code Section

Sec. 26.5-37. - Woodlands and fence maintenance guarantees.

(a) *The performance guarantee required under sections 26.5-5 and 26.5-7 of this chapter shall include guarantee amounts to secure the planting of required woodland trees, at a rate of four hundred dollars (\$400.00) per tree, and a fence maintenance guarantee in an amount as determined by policy of the community development director or his or her designee. The rate of four hundred dollars (\$400.00) per tree shall not be subject to the one hundred twenty (120) percent and one hundred fifty (150) percent multipliers described above.*

(b) *Where tree relocation or replacement is not feasible within the woodland area, or on the property where the activity is to be conducted, or on other property within the city approved by the parks/forestry operations manager the permit grantee shall pay into the city tree fund monies for tree replacement in a per tree amount representing the current market value for the tree replacement that would otherwise be required to be determined by the parks/forestry operations manager. The city tree account shall be used for all forestry related items including but not limited to the planting of trees within the city.*

(c) *The applicant shall guarantee trees for two (2) growing seasons after the applicant's installation and the city's acceptance. A two-year maintenance bond in the amount of twenty-five (25) percent of the value of the trees, but in no case less than one thousand dollars (\$1,000.00), shall be required to ensure the continued health of the trees following acceptance.*

City Council's Evaluation of the Appeal

Per Chapter 1 of the City Code, 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.

RECOMMENDED ACTION:

Select one of the two options, below:

Denial of an appeal by Barima Opong-Owusu of the release of the financial guarantee associated with a Woodland Use Permit PWD24-0024 *for the following reasons:*

- (1) A literal application of the substantive requirement **does not** result in exceptional, practical difficulty to the applicant, because the applicant did in fact impact the critical root zone of these trees, which the City expects to eventually adversely affect those trees. While the applicant does not believe that his actions harmed the trees, his proposed solution of

the City holding minimal funds for a period of years in fact presents a practical difficulty to the City, as the City lacks a mechanism or process to do that for either the applicant or others similarly situated who could be expected to ask for similar relief.

- (2) The alternative proposed by the applicant **is not** adequate for the intended use and **does** substantially deviate from the performance that would be obtained by strict enforcement of the standards, again because the City lacks a mechanism or process to do that for either the applicant or others similarly situated who could be expected to ask for similar relief, which is why the ordinance requires replacements immediately, either by planting or deposit to the tree fund.
- (3) The granting of the variance **will be** contrary to the overall purpose and goals of the chapter or article containing the regulation in question, *as the proposed alternative does not meet the intent of Section 26.5 which is to establish the authority and procedures for requiring, accepting, and enforcing performance guarantees, in order to assure that development projects are completed and maintained in accordance with city standards, requirements, and approval conditions.*

OR

Approval of an appeal by Barima Opong-Owusu of the financial guarantee associated with a Woodland Use Permit PWD24-0024 to apply the same formula as with replacement credits where 75% of the bond (financial guarantee) would be returned now and in 2 years when the health of the replacement trees are assessed the encroached trees can be assessed and if they are still surviving and thriving, in the sole opinion of the City staff and consultants then the remaining 25% will be released.

This motion for approval is made because it involves the construction of a home by the homeowner and under that limited circumstance the City may be able to accommodate the tracking request.

This motion is subject to the following: If at any time during the 2-year period the City staff and/or consultants determine that the trees (or any of them) are not thriving or are compromised then the City will take the funds it has retained and deposit them in the tree fund and will invoice the applicant for the remaining amount. The applicant shall pay the invoiced amount within 30 days, and upon failure to do so, will consent to a court judgement for such amount in the City's favor.

**APPEAL OF
PLANNING COMMISSION DECISION**

Appeal of Planning Commission Decision for 21111 Meadowbrook Rd

I would like to appeal the planning commissions decision to approve the woodland ordinance as it is written. My appeal is specific to **Woodland ordinance Chapter 37-8 Relocation or replacement of trees**. Although they all agreed with my common-sense approach to adjusting the woodland ordinance, it was outside of their scope to make those changes or that determination. I understand that the woodland ordinance was written blanketly to apply primary to developers. As an owner builder, I believe there should be some latitude in the ordinance as it relates to replacements for encroached trees.

The trees in question are primarily 50ft black locust trees which I was informed are nuisance trees and undesirable by the city landscape architect. That being said, my proposal is A) for the city to return the additional tree bond of \$12,400 given the health of these trees on visual inspection and as stated during the review by Merjent the city's own environmental consultant.

The other option B) would be to apply the same formula as with replacement credits where 75% of the bond would be returned now and in 2 years when the health of my replacement trees are assessed the encroached trees can be assessed and if they are still surviving and thriving then the remaining 25% will be released.

I feel that either approach is fair given that I bought and developed the land for myself and my family. This was not developed with the intent to sell or turn a profit. Lastly, if you look at the pictures, we worked very hard to maintain the woodland feel and natural beauty to our lot by maintaining several trees and adding over 44 tree credits throughout the lot ranging from oaks, maples, birch and other large native species.

From the city:

After reviewing all the information regarding the woodland replacements on you lot located at 21111 Meadowbrook Road, the Community Development Department has made the decision to treat your original woodland permit separately from the additional tree credits that were impacted during construction. This way you will get your initial financial guarantee back (minus the 25% maintenance bond) for the tree credits you have planted on site, and we will have you go back to Planning Commission for the trees that had their critical root zones impacted during construction. Thus, accommodating a potential request for a variance.

The breakdown of original woodland permit:

- *66 woodland credits to be removed from the site, for the construction of new Single-Family home.*
- *4 woodland credits waived from original count per Keith Salowich*

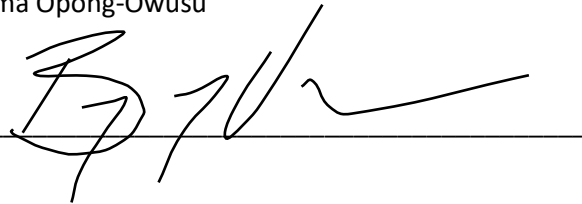
- *Final number of woodland credits due 62.*
- *Financial guarantee of \$24,800.00 collected for 62 woodland credits*
- *44.15 tree replacement credits were planted on site*
- *17.85 tree replacement credits remaining to be paid into the non-refundable tree fund in the amount of \$7,140.00 – please send a letter authorizing this.*
- *City of Novi will be retaining the 25% 2-year maintenance guarantee in the amount of \$4,415.00.*
- *\$13,245.00 to be returned to you, Barima Opong-Owusu.*

As for the 31 tree credits that were deemed to have 50% impact on the root zone, through grading or soil stockpiling, to be significant enough to require replacement; we are holding a financial guarantee of \$12,400.00. We are going to have you go back to the Planning Commission to apply for a new woodland permit to impact the trees in question during construction. After Planning Commission has given their approval or denial you will have ten (10) days to appeal their decision to City Council per Chapter 37.31 of the City of Novi Code of Ordinances.

Date: 11/4/24

Name Barima Opong-Owusu

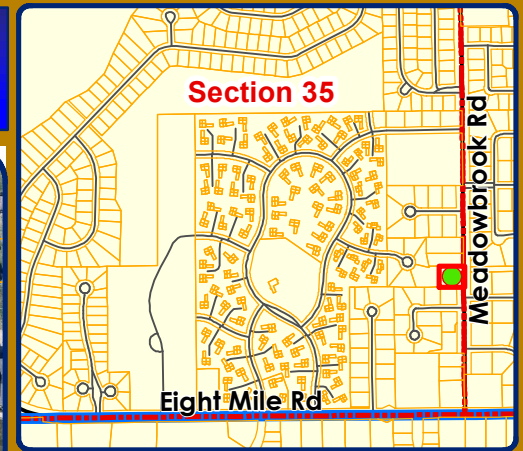
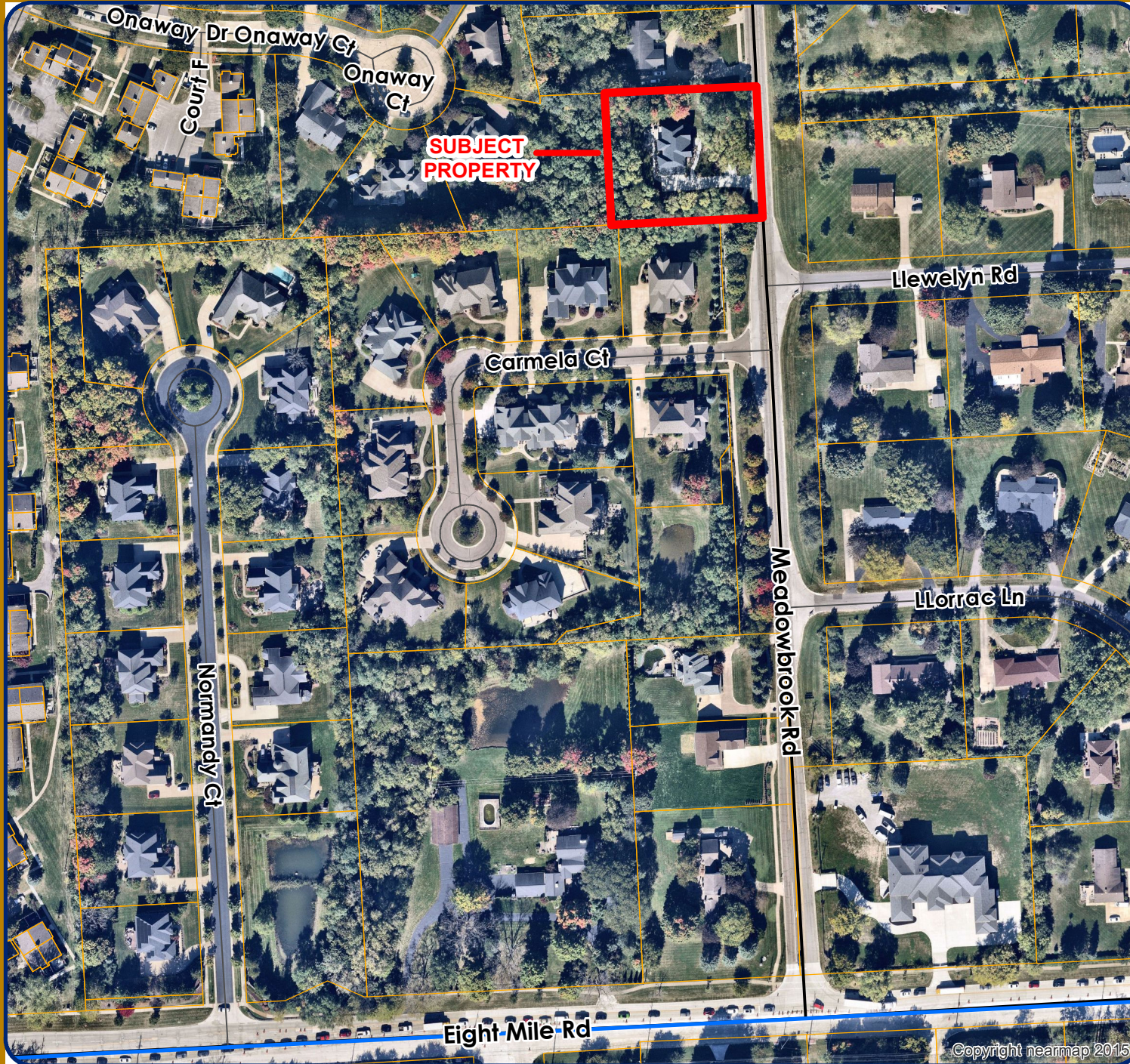
Signature: _____

A handwritten signature in black ink, appearing to be 'B Opong-Owusu', written over a horizontal line.

MAPS
Location
Zoning
Future Land Use
Natural Features

21111 MEADOWBROOK ROAD WOODLAND PERMIT

LOCATION



Legend

 Subject Area



City of Novi

Dept. of Community Development
City Hall / Civic Center
45175 W Ten Mile Rd
Novi, MI 48375
cityofnovi.org

Map Author: Dan Commer
Date: 10/18/24
Project: 21111 Meadowbrook Road Woodland Permit
Version #: 1

0 40 80 160 240
Feet

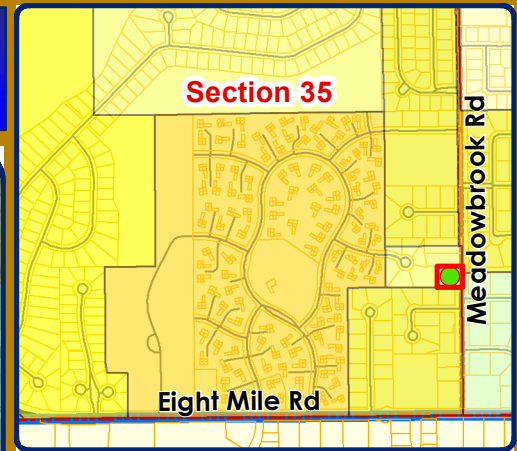
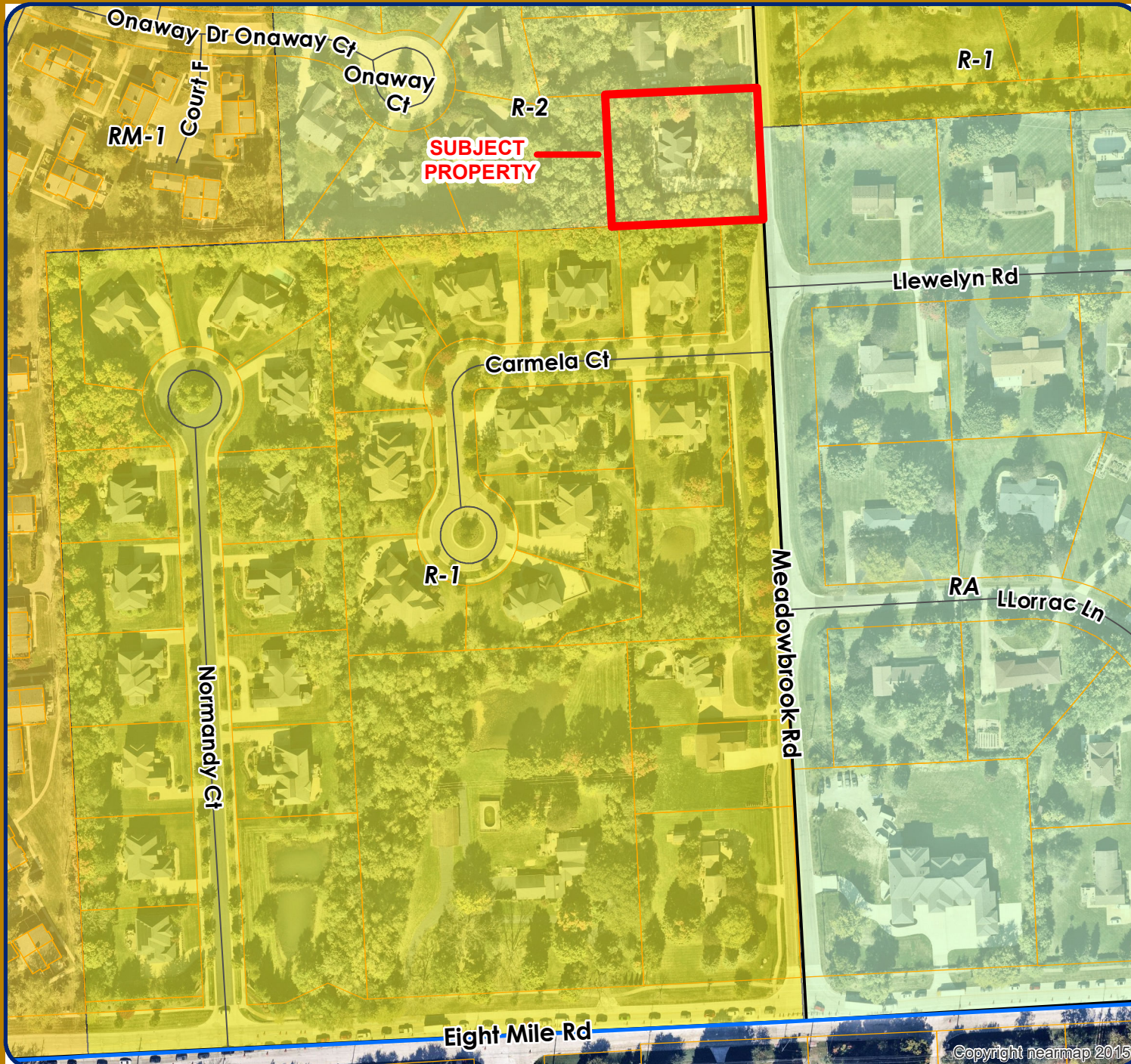
1 inch = 201 feet



MAP INTERPRETATION NOTICE

Map information depicted is not intended to replace or substitute for any official or primary source. This map was intended to meet National Map Accuracy Standards and use the most recent, accurate sources available to the people of the City of Novi. Boundary measurements and area calculations are approximate and should not be construed as survey measurements performed by a licensed Michigan Surveyor as defined in Michigan Public Act 132 of 1970 as amended. Please contact the City GIS Manager to confirm source and accuracy information related to this map.

21111 MEADOWBROOK ROAD WOODLAND PERMIT ZONING



Legend

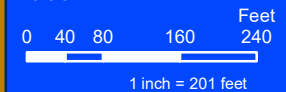
- R-A: Residential Acreage
- R-1: One-Family Residential District
- R-2: One-Family Residential District
- R-3: One-Family Residential District
- R-4: One-Family Residential District
- RM-1: Low-Density Multiple Family
- Subject Area



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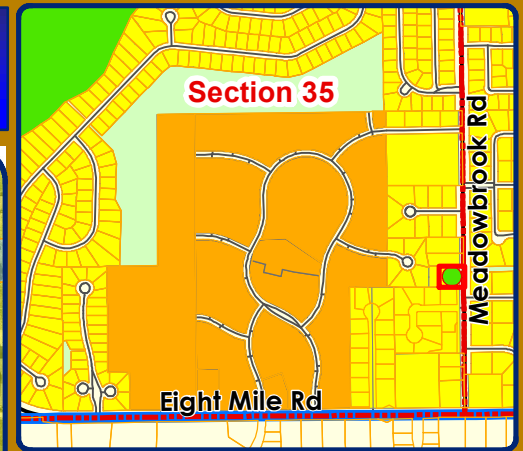


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21111 MEADOWBROOK ROAD WOODLAND PERMIT

FUTURE LAND USE



Legend

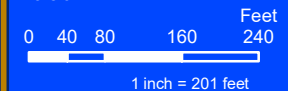
- Single Family
- Multiple-Family Residential
- Public Park
- Private Park
- Subject Area



City of Novi

Dept. of Community Development
City Hall / Civic Center
45175 W Ten Mile Rd
Novi, MI 48375
cityofnovi.org

Map Author: Dan Commer
Date: 10/18/24
Project: 21111 Meadowbrook Road Woodland Permit
Version #: 1

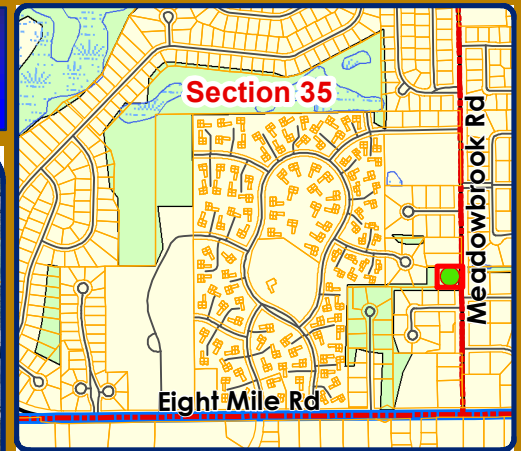


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21111 MEADOWBROOK ROAD WOODLAND PERMIT

NATURAL FEATURES



Legend

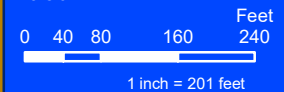
-  WETLANDS
-  WOODLANDS
-  Subject Area



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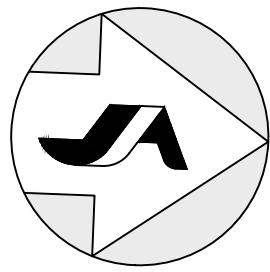
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PLOT PLAN



Know what's below.
Call before you dig.

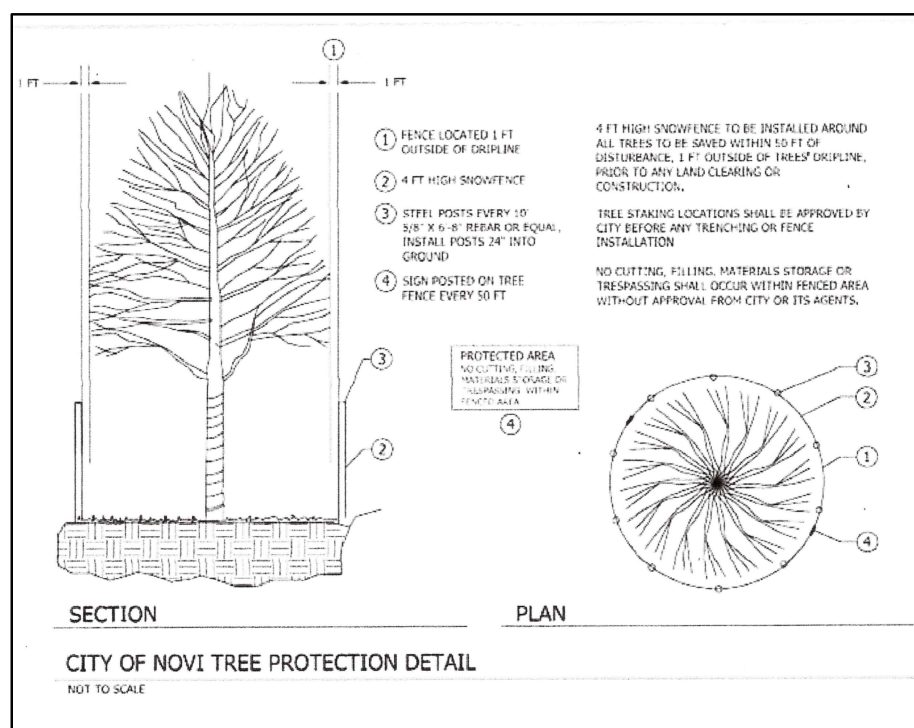


confirm minimum setbacks
with municipality

Zoning:
R-2 One-Family Residential

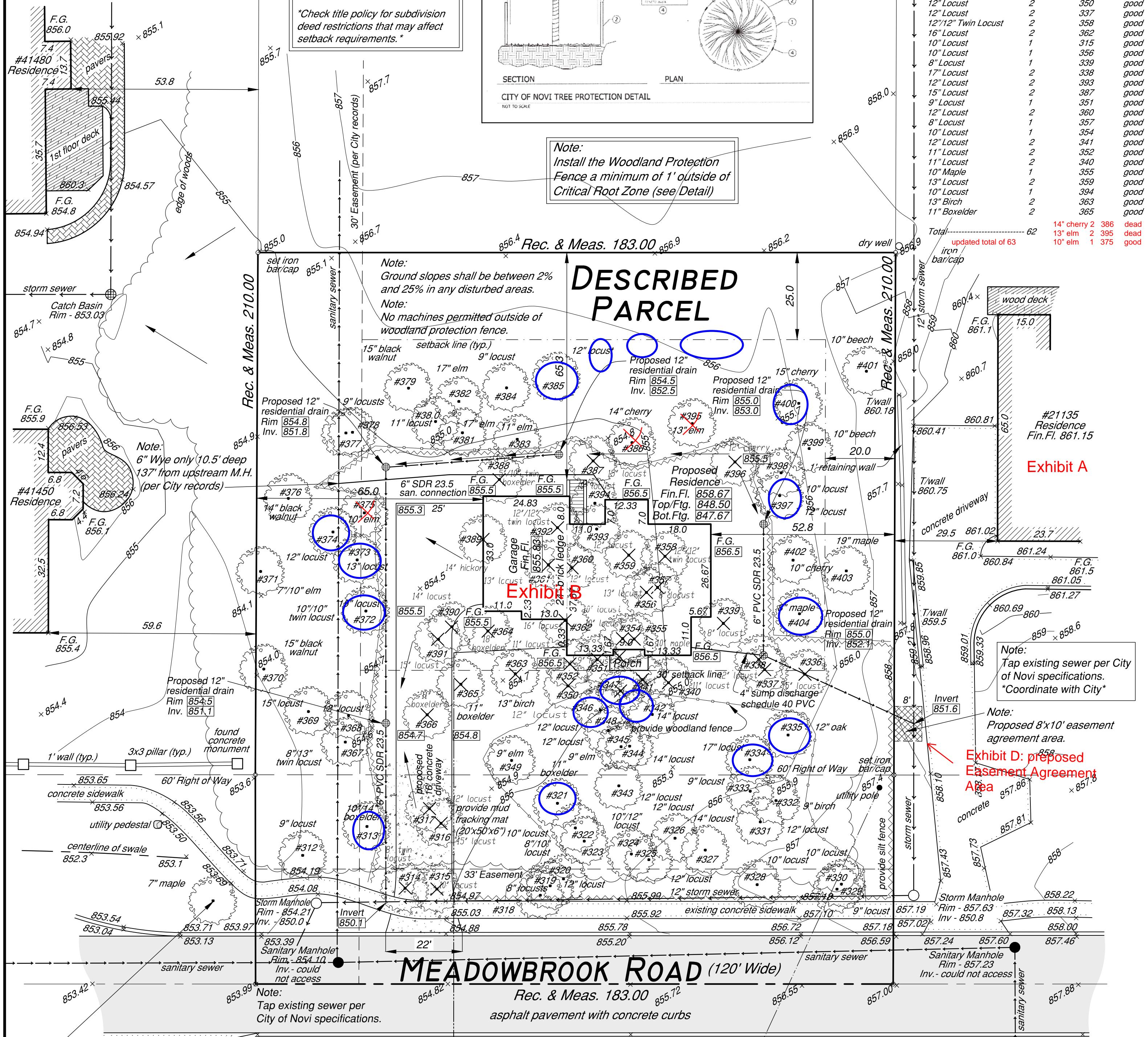
Setbacks:
Front - 30'
Side - 15'
Side total - 40'
Rear - 25'

*Check title policy for subdivision
deed restrictions that may affect
setback requirements.*



Note:
Install the Woodland Protection
Fence a minimum of 1' outside of
Critical Root Zone (see Detail)

Tree List	Replacements	Tag #	Condition
8" Twin Locust	2	314	good
10" Locust	2	347	good
15" Locust	2	391	good
12" Locust	2	317	good
11" Boxelder	2	366	good
18" Boxelder	2	364	good
14" Locust	2	390	good
15" Locust	2	316	good
14" Hickory	2	389	good
5'10" Twin Boxelder	2	388	good
12" Locust	2	336	good
12" Cherry	2	396	good
12'12" Twin Locust	2	392	good
13" Locust	2	361	good
12" Locust	2	350	good
12" Locust	2	337	good
12'12" Twin Locust	2	358	good
16" Locust	2	362	good
10" Locust	1	315	good
10" Locust	1	356	good
8" Locust	1	339	good
17" Locust	2	338	good
12" Locust	2	393	good
15" Locust	2	387	good
9" Locust	1	351	good
12" Locust	2	360	good
8" Locust	1	357	good
10" Locust	1	354	good
12" Locust	2	341	good
11" Locust	2	352	good
11" Locust	2	340	good
10" Maple	1	355	good
13" Locust	2	359	good
10" Locust	1	394	good
13" Birch	2	363	good
11" Boxelder	2	365	good
Total			62
updated total of 63			
14" cherry	2	386	dead
13" elm	2	395	dead
10" elm	1	375	good

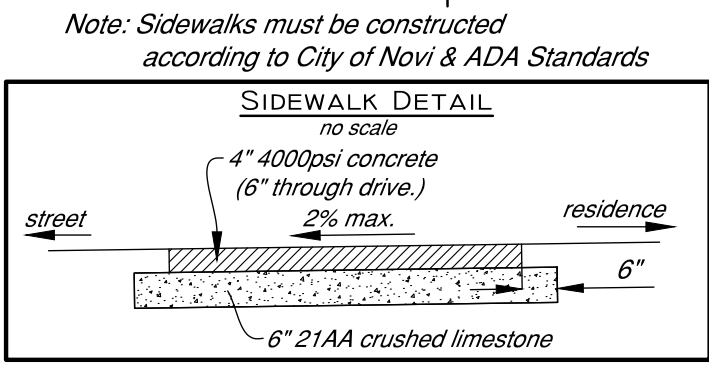


CITY OF NOVI DATUM
NAIL IN WEST FACE
OF 7" MAPLE
ELEVATION = 855.02
REFERENCE BENCHMARK
ID# 3633

Note:
The Builder is responsible for resolving any
drainage problems on adjacent properties
that are the result of construction activities.

LEGEND

- 000.00 = Existing elevation
- 000.00 = Proposed elevation
- = Drainage course
- - - = Silt fence
- - - = Woodland fence
- F.G. = Finish Grade
- - - = Existing contour
- Tree X = To Be Removed



LEGAL DESCRIPTION
PART OF THE SOUTHEAST 1/4 OF SECTION 35, TOWN 1 NORTH, RANGE 8 EAST, CITY OF NOVI, OAKLAND COUNTY, MICHIGAN, DESCRIBED AS:
COMMENCING AT THE EAST 1/4 CORNER OF SECTION 35; THENCE ALONG THE EAST LINE OF SECTION 35 SOUTH 02°14'28" EAST, 1349.66 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING ALONG THE EAST LINE OF SECTION 35 SOUTH 02°14'28" EAST 183.00 FEET; THENCE SOUTH 87°57'04" WEST 210.00 FEET; THENCE NORTH 02°14'28" EAST 182.92 FEET; THENCE NORTH 87°55'42" EAST, 210.00 FEET TO THE POINT OF BEGINNING. CONTAINING 38,421 SQUARE FEET GROSS AND 27,442 SQUARE FEET NET. SUBJECT TO THE RIGHTS OF THE PUBLIC OVER MEADOWBROOK ROAD. SUBJECT TO EASEMENTS AND RESTRICTIONS OF RECORD.

Revised 13 Feb 23 (per City)



GRADING PLAN

Prepared For: Barima Opong-Owusu
51248 E. Bourne Terrace
Novi, MI 48374
(248)943-6101

Jekabson & Associates, P.C.
Professional Land Surveyors
1320 Goldsmith, Plymouth, MI 48170
(734) 414-7200 (734) 455-8000

by: *[Signature]*

Date	20 Nov 2022
Job no.	22-07-008
Scale	1" = 20'
Drawn	AAH
Checked	JGE
Sheet	1 OF 1

Revisions
19 JAN 2023

LANDSCAPE REVIEW

21111 Meadowbrook

Tree #	Size (dbh)	Description	ORIGINAL REPLACEMENTS		ADDITIONAL REPLACEMENTS		Notes	
			Replacements required	Original List	Allowed removal per Keith Salowich	Encroachment - 11/30		
313	24	boxelder	3			x	3	10"/14" twin
314	16	locust	2	x	2			8" twin
315	10	locust	1	x	1			
316	15	locust	2	x	2			
317	12	locust	2	x	2			
321	11	boxelder	1			x	1	
334	17	locust	2			x	2	
335	12	oak	2			x	2	
336	15	locust	2	x	2			
337	12	locust	2	x	2			
338	17	locust	2	x	2			
339	8	locust	1	x	1			
340	11	locust	1	x	1			
341	12	locust	2	x	2			Not removed, okay
342	14	locust	2			x	2	
346	12	locust	2			x	2	
347	10	locust	1	x	1			
348	12	locust	2			x		
349	9	elm	1			x	1	
350	12	locust	2	x	2			
351	9	locust	1	x	1			
352	11	locust	1	x	1			
354	10	locust	1	x	1			
355	10	maple	1	x	1			
356	10	locust	1	x	1			
357	8	locust	1	x	1			
358	24	locust	3	x	3			12"/12" twin
359	13	locust	2	x	2			
360	12	locust	2	x	2			
361	13	locust	2	x	2			
362	16	locust	2	x	2			
363	13	birch	2	x	2			
364	18	locust	2	x	2			
365	11	boxelder	1	x	1			
366	11	locust	2	x	2			
372	15	locust	2			x	2	
373	13	locust	2			x	2	
374	12	locust	2			x	2	
375	10	elm	1			x	1	
381	17	elm	2			x		
383	11	elm	1			x		
385	12	locust	2			x	2	
386	14	cherry	2			x	2	
387	15	locust	2	x	2			
388	15	boxelder	2	x	2			5"/10" twin
389	14	hickory	2	x	2			
390	14	locust	2	x	2			
391	15	locust	2	x	2			
392	24	locust	3	x	3			12"/12" twin
393	12	locust	2	x	2			
394	10	locust	1	x	1			
396	12	cherry	2	x	2			
397	12	locust	2			x	2	
404	8	maple	1			x	1	
New #1	10	locust	1			x	1	
New #2	10	locust	1			x	1	
New #3	8	locust	1			x	1	
New #4	8	maple	1			x	1	
TOTAL					62		31	
					\$ 24,800.00		\$ 12,400.00	

WOODLAND REVIEW



July 22, 2024

Nina Schaffrath
Account Clerk – Community Development
City of Novi
45175 Ten Mile Road
Novi, MI 48375

Submitted electronically to nschaffrath@cityofnovi.org

Re: 21111 Meadowbrook Road – Woodland Review (PBR22-0569)

Dear Nina,

Merjent, Inc. (Merjent) has conducted a post-inspection review of the single-family residential plot plan for 21111 Meadowbrook Road (site; dated 1/19/2023 and February 14, 2023) prepared by Jakobson and Associates, P.C. Merjent reviewed the plan for conformance with the City of Novi's (City) Woodland Protection Ordinance, Chapter 37. The site (parcel 50-22-35-400-071) contains City-regulated woodlands (Figure 1). The applicant removed trees prior to Merjent's site visit on July 12, 2024. Merjent conducted an additional review at the request of the City and the applicant for conformance with Section 37-9 of the City's Woodland Protection Ordinance. In conducting this review, Merjent reviewed additional correspondence between the City's Landscape Architect, Rick Meader, and the applicant as well as previous reviews conducted by the Davey Resource Group (DRG). DRG conducted three reviews prior to recommending approval of the plot plan on February 17, 2023.

Woodlands

Merjent understands that the City's Landscape Architect conducted an on-site inspection of the approved tree removal on April 10, 2023. Photographs were provided to Merjent that showed multiple trees containing fill (soil) stockpiled and construction equipment stored and working within the critical root zone. These trees were identified in the plot plan as being protected (not impacted) from proposed construction activities. Section 37-2 of the ordinance defines a critical root zone as a circular area around a tree with a radius measured to the tree's longest dripline radius plus one foot. As stated in Section 37-9, impacts to critical root zones, or areas where critical root zones cannot be protected, should be considered as tree replacements and paid to into the City of Novi Tree Fund.

Pursuant to Section 37-9 (b), Merjent's professional opinion is the City Landscape Architect conducted an accurate review based on the conditions on-site during the construction. Section 37-9 (b) states that it shall be unlawful for any person to conduct any activity within the critical root zone of any tree including placement of soil or construction machinery (among others). Although no active leaf growth was present during the April 2023 review, it could still be determined the actively alive and dead trees during the inspection.

The following comments summarize Merjent's on-site review:

1. Merjent met with the land owner, Barima Opong-Owusu, to review the noted additional encroachment areas throughout the property.

-
2. Trees on the south side of the property, for example Trees 313, 372, and 373, were found to have their northern critical root zones within the newly constructed driveway. Photos provided show the trees dripline being located directly above the newly constructed driveway.
 3. Trees on the north, west, and east side of property were shown to be free of soil stockpiling and construction equipment now that construction has ceased.
 4. Multiple tree diameter at breast height (DBH) measurements were collected and compared to the previous tree survey.

While Merjent understands that Section 37-9 (c) states that a determination shall be made as to trees which can reasonably be expected to survive the permitted activity, Merjent concurs with the City Landscape Architect's assessment. Merjent reviewed the International Society of Arboriculture's *A Review of the Effects of Soil Compaction and Amelioration Treatments on Landscape Trees* by Susan Day and Nina Bassuk (1994) and Michigan State University Extension's 2016 guidance on *Protect[ing] Tree Roots from Soil Compaction*. Because impacts to critical root zones can be hard to measure visually, above-ground, typically a conservative approach is taken when estimating critical root zone impacts. Additionally, impacts to critical root zones may not present themselves visually in tree growth and can only be measured using more advanced instruments not typically used in construction reviews. In Bassuk and Day's 1994 Article, they state that areas that are landscaped near new residential construction were typically found to be compacted to a soil bulk density that typically restricts root growth for many woody species.

During Merjent's on-site review, it was found that the remaining black locust (*Robinia pseudoacacia*) trees not associated with the driveway construction appeared to be growing normally. However, tree uptake of water (impacted by compaction), root growth, and overall oxygen availability to the tree cannot be measured visually. This may not directly kill a tree, but it may result in overall reduced efficiency of sequestering carbon dioxide into woody growth, among other primary functions of trees. Merjent understands the conservative approach to considering the impacts that these additional construction impacts may have had on the trees noted for encroachment.

Should you have any questions or concerns with this review, please contact me via email at jason.demoss@merjent.com or via phone at (619) 944-3835.

Sincerely,

Merjent, Inc.



Jason DeMoss, PWS
Environmental Consultant

Enclosures:

Figure 1 – City of Novi Woodlands Map
Attachment A – Site Visit Photos

CC:
Barb McBeth, City of Novi, bmcbeth@cityofnovi.org
Rick Meader, City of Novi, rmeader@cityofnovi.org



Robb Roos, Merjent, robb.roos@merjent.com
Charles Boulard, City of Novi, cboulard@cityofnovi.org



Figure 1. City of Novi Regulated Woodlands Map
 Approximate site boundary is shown in Red.
 Approximate Regulated Woodland areas are shown in Green.

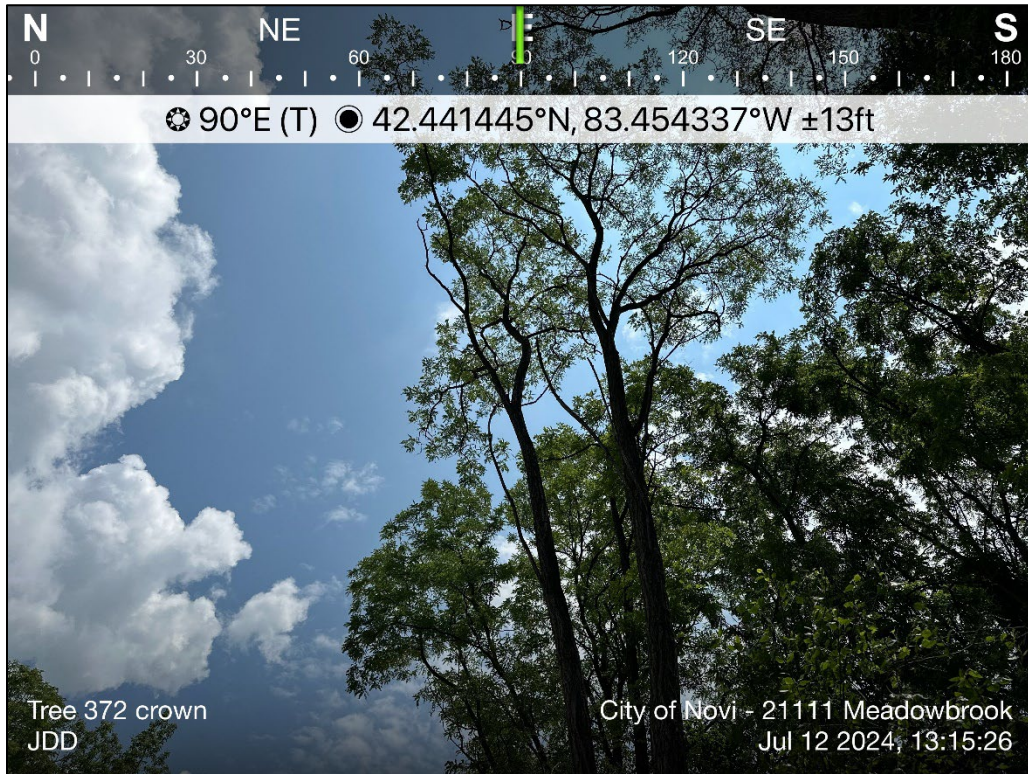
Attachment A
Site Visit Photos



Southern driveway encroachment area. The dripline of the black locust trees can be seen almost directly above the constructed driveway.



Tree 313 with a measured DBH of ~14.55 inches.



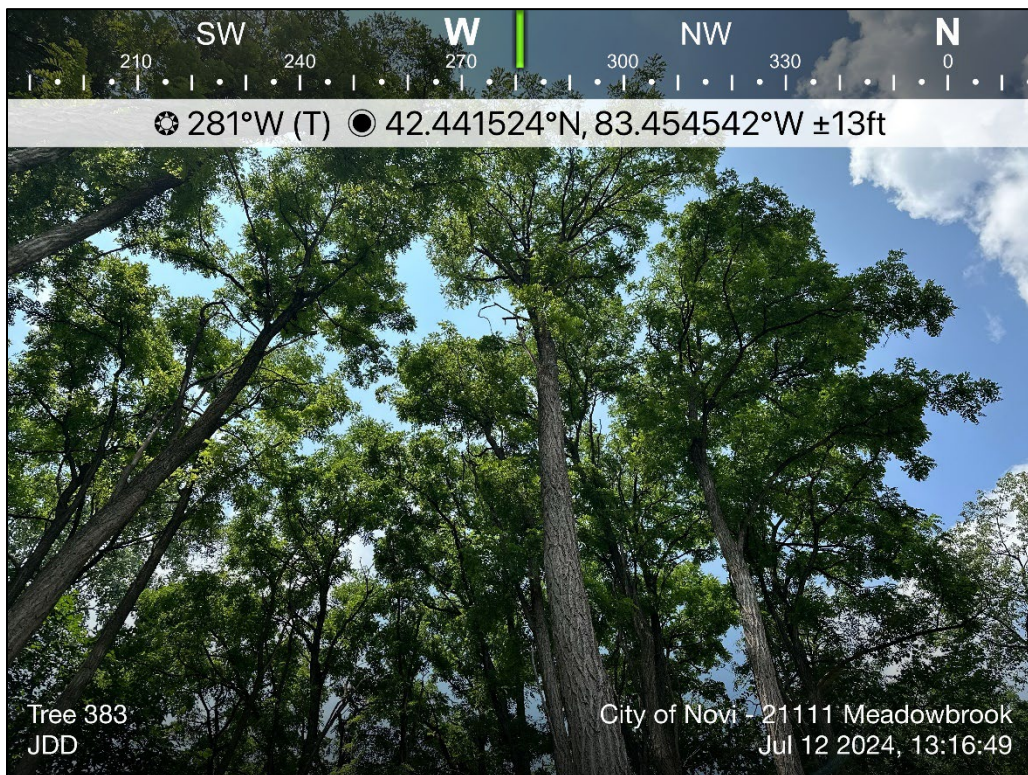
Overview of the crown of Tree 372.



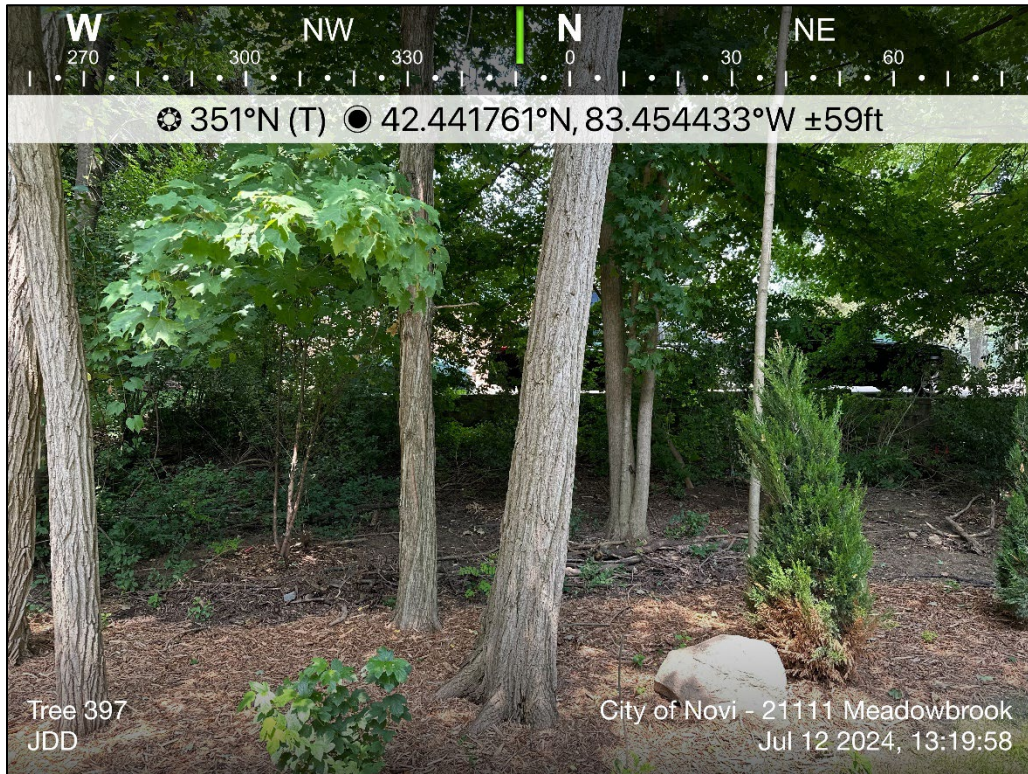
Tree 372 with a measured DBH of ~17.65 inches.



Western encroachment area showing Tree 383 with no machinery/soil present.



Crown of Tree 383.



Overview of Tree 397.



Overview of the crown of Tree 397.



Overview of Tree 397 with a measured DBH of ~13.6 inches.



General overview of the western trees of the property.

**PLANNING COMMISSION
EXCERPT FROM THE
DRAFT MINUTES
10-30-24**

Motion to approve the JSP23-33 Sheetz Stormwater Management Plan made by Member Lynch and seconded by Member Roney.

In the matter of Sheetz JSP23-33, motion to approve the Stormwater Management Plan, based on and subject to the findings of compliance with Ordinance standards in the staff and consultant review letters, and the conditions and items listed in those letters being addressed on the Final Site Plan. This motion is made because it is otherwise in compliance with Chapter 11 of the Code of Ordinances and all other applicable provisions of the Ordinance.

ROLL CALL VOTE ON MOTION TO APPROVE THE JSP23-33 SHEETZ STORMWATER MANAGEMENT PLAN MOVED BY MEMBER LYNCH AND SECONDED BY MEMBER RONEY. Motion carried 5-0.

4. 21111 MEADOWBROOK ROAD WOODLAND PERMIT PWD24-0024

Public hearing at the request of Barima Opong-Owusu, for a Woodland Use Permit for 21111 Meadowbrook Road. The site is located west of Meadowbrook Road, and north of Eight Mile Road in Section 35 of the city. The applicant is asking for a delay in the implementation of the standards of Woodland Section 37-9 which calls for immediate woodland replacement or payment into the tree fund for trees that were negatively impacted by the encroachments into the critical root zones of the woodland trees.

Planner Dan Commer spoke on the proposed woodland use permit as requested by the applicant for 21 regulated woodland trees that were impacted in the process of building a single-family home located at 21111 Meadowbrook Road. The site is located west of Meadowbrook Road, and north of Eight Mile Road, is zoned R-2, and has a single-family future land use.

The City's Woodland Consultant reviewed the request and prepared a review letter dated July 22, 2024. Based on the plans provided, and a post-inspection review conducted by the City's Landscape Architect, the applicant is requesting relief from the standards of Section 37-9 (b) that prohibits work within the critical-root-zone of any tree, including placement of soil or construction material in those areas. Inspections revealed encroachment on the critical-root-zone of 21 regulated woodland trees within an area mapped as city-regulated woodland. Replacement calculations require 31 replacement credits.

The applicant is asking for a delay in the implementation of the standards of Woodland Section 37-9 which calls for immediate woodland replacement or payment into the tree fund for trees that were negatively impacted by the encroachments into the critical root zones of the woodland trees. The City's Woodland consultant and Landscape Architect are unable to predict the severity of the impact on trees immediately, but their best judgment indicates that the impacts to the remaining woodland trees were severe. This type of encroachment to the root zone is likely to negatively impact the health of the trees, and it sometimes takes years for the trees to show signs of damage.

Previously, the applicant suggested that it was his desire to place a financial guarantee with the City for the impacted trees until the impacts could truly be determined, instead of paying into the tree fund or replacing the trees immediately. The applicant's proposed solution is for the City to release 75% of the existing bond and hold 25% until a subsequent inspection is conducted in 2 years. The ordinance does not currently allow that change.

Staff is recommending that the Planning Commission approve the Woodland Use Permit, subject to the applicant paying all associated fees and bonds as required by the City's ordinance. A suggested motion is provided in the memo. The applicant is here to tonight and is available to answer any questions. Staff and the City's is available to answer any questions.

Chair Pehrson invited the applicant to address the Planning Commission.

Barima Opong-Owusu stated that starting off, they had 66 credits for what we took down to build the house. So, in total we replaced 44 of those credits and paid the rest into the City Tree fund. The additional 31 credits were added around the perimeter. Mr. Opong-Owusu shared some pictures of the property.

The applicant explained that he talked to Landscape Architect Rick Meader and throughout his inspection Rick mentioned that the staff is bound by the requirements of the ordinance. The majority of the trees, as Rick stated, were black locust trees which were deemed undesirable trees. Also, the consultant had a second opinion after Rick's review. Merjent's representative stated that the remaining trees, black locust trees, not associated with the driveway construction, appeared to be growing normally. That's why the applicant is hoping to get a waiver.

Attorney Saarela clarified that the only approval the Planning Commission can make is to grant or deny the woodland permit for the additional trees impacted during construction. Any Ordinance deviation for payment of the bonds, if the permit was granted here, would need to be requested from City Council.

Chair Pehrson stated that this is a public hearing and invited members of the audience who wished to address the Planning Commission to come forward.

Liz Vertin of 41449 Mission Lane came forward and stated that the new house is gorgeous. It was landscaped quickly, and there are lots of original trees. She lives very close by, and she and several of the neighbors have the exact same feeling about several other homes that are in great contrast to this home. The house at 41380 Eight Mile Road, on the corner of Meadowbrook, has been under construction for years. It's gorgeous, but it's had a cyclone fence, and there has been a black tarp and porta potty on site for years. The home at 20785 Meadowbrook, for years was not landscaped. She said that she did not care that much, but pointed out that it was finally landscaped.

Ms. Verlin continued, by saying that the home at 21157 did not contact the city and completely cleared the front yard of all vegetation. There were probably at least 20 trees that should have been tagged. The front yard remains as dirt today, looking horribly, and she has no idea what's going to be done. Ms. Verlin stated, that if it wasn't for this issue, she wouldn't have said anything about those other three homes. Ms. Vertin stated that she is perplexed by all of this. Ms. Vertin stated that she thinks the homeowner who removed the trees is not paying for those removals. The aerial views show that this property had trees. So, if you don't contact the city, you don't have to pay anything. If you try and follow the rules you get fined. Ms. Vertin hopes that the other properties will be addressed as equally vigilantly as this request.

Seeing no one else, and confirming there was no correspondence received, Chair Pehrson closed the public hearing and turned the matter over to the Planning Commission for consideration.

Member Lynch stated he has no issue with the applicant's request for deviation from bond payment and feels it is reasonable; however he does not have the authority to waive that section of the Ordinance. That request has to go to City Council.

Member Becker stated he loved watching this property being developed. It does stand out and he agrees with the comments made by the previous resident who spoke. As Member Lynch stated, Mr. Opong-Owusu has a legitimate request and reason to go to City Council.

Member Dismondy stated he would hope common sense prevails for the applicant in their next step.

Member Roney had no further comment.

Motion to approve Woodland Use Permit PWD24-0024 made by Member Lynch and seconded by

Member Becker.

Motion to approve a Woodland Use Permit, PWD24-0024, for 21 regulated woodland trees that were impacted in the process of building a single-family home located at 21111 Meadowbrook Road, subject to the payment of all associated fees and bonds as required by the City's ordinances.

ROLL CALL VOTE ON MOTION TO APPROVE WOODLAND USE PERMIT PWD24-0024 MOVED BY MEMBER LYNCH AND SECONDED BY MEMBER BECKER. Motion carried 5-0.

MATTERS FOR CONSIDERATION

1. JSP24-07 GREAT OAKS LANDSCAPE BUILDING ADDITION

Consideration at the request of Great Oaks Landscape for Preliminary Site Plan approval. The subject property, 28025 Samuel Linden Court, is located north of Twelve Mile Road and west of West Park Drive on a 19.12 acre parcel within the I-2 General Industrial Zoning District. The applicant is proposing to construct a 1,700 square foot addition onto the existing 3,000 square foot office building.

Planner Dan Commer stated a Preliminary Site Plan and Section 9 Façade Waiver were submitted to the City's Plan and Review Center by Great Oaks Landscape to build a 1,700 square foot addition to an existing 3,000 square foot building at 28025 Samuel Linden Court. The subject property is located north of Twelve Mile Road and west of West Park Drive. Great Oaks Landscape was founded in 1981 and is a fully integrated landscape design-build company dedicated to providing complete design, installation, nursery, and maintenance services.

The current zoning of the site is I-2 General Industrial District. The I-2 General Industrial District is designed primarily for manufacturing, assembling, and fabrication activities including large scale or specialized industrial operations, whose external physical effects will be felt to some degree by surrounding districts. In this case, the site abuts additional I-2 parcels to the north and west, I-1 Light Industrial to the south, and OST–Office, Service Technology to the east, notably Toyota Boshoku America and Emerson Numatics Corporate Campuses. The Future Land Use shows Heavy Industrial for the properties to the north and west, Industrial, Research, Development, and Technology to the south, and Office, Research, Development, and Technology to the east.

The applicant is requesting a Section 9 Façade Waiver from the Planning Commission for an overage of exposed aggregate precast (24-27% precast proposed, 0% permitted), and an overage in standing seam roof (0-60% proposed, 25% permitted). Both deviations are currently supported by staff as the exposed aggregate precast is an existing material and the standing seam roof enhances the overall design. The Planning Commission is asked to consider approval or denial of the Preliminary Site Plan and Section 9 Façade Waiver. Representatives for the applicant are present to discuss the project and answer any questions. Staff is also available for questions.

Chair Pehrson invited the applicant to address the Planning Commission.

Richard Tuttle, Vice President of Great Oaks Landscape, stated he is with Gary Roberts, the owner and President of Great Oaks, Dan Roberts, Vice President of Great Oaks, and Jerry Pesik, attorney representing Great Oaks. Mr. Tuttle stated Great Oaks currently occupies about 3,000 square feet of their office, and they are requesting site plan approval to add 1,700 square feet to the rear of the building.

Gary Roberts gave background on the company. For approximately 30 years they have been evolving and growing and have enhanced many sites of within Novi. They have had some landmark projects and have helped establish a good reputation for Novi. Their current office is at maximum space for comfort and storage of products and materials. He respectfully requested approval of the application.