



CITY of NOVI CITY COUNCIL

Agenda Item J
November 24, 2014

SUBJECT: Approval of Resolution Concerning Acquisition and Approving Declaration of Necessity and Taking and authorization of Offer to Purchase in the total amount of \$500 for the acquisition of Lot 34, Shore Acres Subdivision (parcel 22-02-176-018) for the purpose of constructing the NC-1 pathway connection between East Lake Drive and Novi Road.

SUBMITTING DEPARTMENT: Department of Public Services, Engineering Division ^{BJ} *BJC*

CITY MANAGER APPROVAL: *VK* *AA*

EXPENDITURE REQUIRED	\$ 500
AMOUNT BUDGETED	\$ 32,296
LINE ITEM NUMBER	204-204.00-974.432

BACKGROUND INFORMATION:

The 2011 Non-Motorized Master Plan identified several cross-country pathways to provide non-motorized connections between neighborhoods. This pathway, identified in the master plan as Neighborhood Connector #1 (NC-1), was planned to connect East Lake Drive to Novi Road through Hickory Woods Elementary School. A map of the area is attached for reference. The design of this pathway was originally awarded to Orchard, Hiltz & McCliment (OHM) by City Council on November 26, 2012. Since then, staff has worked with Walled Lake Consolidated School District (WLCSD) personnel to establish a route through the Hickory Woods Elementary property, and has acquired a permanent pathway easement on the school property for the pathway.

While the majority of the pathway's route has been established, the route for the western portion where it terminates at East Lake Drive has not been resolved due to a land ownership issue. Although the western portion of private New Court, also identified as Lot 34 of the Shores Acre Subdivision, acts solely as a road, records still list Paul Wagner as the owner of record (see attached November 17, 2014 letter from the City Attorney for additional information). Apparently, following the establishment of New Court as a roadway, the ownership of Lot 34 was never properly resolved and recorded with the county. Staff has been in contact with Mr. Wagner multiple times since March 2014, and he initially claimed no interest in the parcel and that he would cooperate with the City. However, recently Mr. Wagner has indicated that he is looking for compensation for the property. Per the City's Attorney's letter, although the property in question is valued at \$0, an offer of \$500 is being proposed in an attempt to help the process move forward.

With Lot 34 acquired, the pathway could easily transition from the Hickory Woods Elementary property directly west to East Lake Drive, as shown in yellow on the attached map. Additionally, some road and drainage improvements could be completed in this area. If Lot 34 is not acquired, the pathway will have to abruptly bend south toward the abutting City-owned parcel to the south, and then continue to South Lake Drive, as shown in blue on the attached map.

The City Attorney has prepared an *Agreement of Sale and Offer to Purchase Real Property* for the parcel for City Council consideration. The City Attorney has also prepared a *Resolution Concerning the Acquisition of Property and Approving Declaration of Necessity and Taking* and a *Declaration of Taking* to allow the City to begin proceedings to acquire the easements through eminent domain in case the City is unable to acquire the easements for the amount stated in the offer.

The construction of this project is anticipated to occur in 2015.

RECOMMENDED ACTION: Approval of Resolution Concerning Acquisition and Approving Declaration of Necessity and Taking and authorization of Offer to Purchase in the total amount of \$500 for the acquisition of Lot 34, Shore Acres Subdivision (parcel 22-02-176-018) for the purpose of constructing the NC-1 pathway connection between East Lake Drive and Novi Road.

	1	2	Y	N
Mayor Gatt				
Mayor Pro Tem Staudt				
Council Member Casey				
Council Member Markham				

	1	2	Y	N
Council Member Mutch				
Council Member Poupard				
Council Member Wrobel				

Location Map

Neighborhood Connector--East Lake Drive to Novi Road



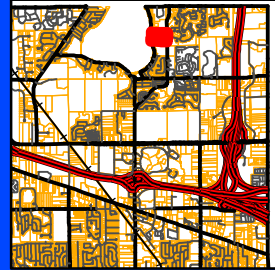
Map Author: Coburn
 Date: 11/18/14
 Project: NC-1
 Version #: 4.0

Amended By:
 Date:
 Department:

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

Map Legend

- Preferred Alternative
- Alternative 2
- Alignment approved by WLCSD
- Lot 34



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



1 inch = 130 feet



JOHNSON ROSATI SCHULTZ JOPPICH PC

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Phone: 248.489.4100 | Fax: 248.489.1726

Elizabeth Kudla Saarela
esaarela@jrsjlaw.com

www.johnsonrosati.com

November 17, 2014

Benjamin Croy, Civil Engineer
City of Novi
Public Services
Field Services Complex
26300 Lee BeGole Drive
Novi, MI 48375

Re: **New Court Pathway and Stub Street**
Parcel 50-22-02-176-018

Dear Mr. Croy:

In connection with the City's plan to make improvements, including but not limited to a pathway, to the existing New Court private road right-of-way and to maintain it as a stub street, enclosed please find the following documents relating to Lot 34 of the Shores Acres Subdivision:

1. Resolution Concerning the Acquisition of Property and Approving Declaration of Necessity and Taking
2. Declaration of Taking
3. Offer and Agreement to Purchase

Pursuant to your confirmation that Paul Wagner, the owner of record, does not wish to donate the property, which is used as an unimproved private road serving five existing residences, we have prepared the enclosed documents in anticipation of sending Mr. Wagner a good faith offer in the amount of Five Hundred (\$500) dollars for fee simple title to the entire lot. The property is valued at \$0 by the City's Assessor given that it is used as a road and the residences have permanent access easements for its use. On this basis, it cannot be developed for any other purpose without providing alternative access to the exiting residences. The \$500 is proposed as a resolution to resolve the matter and is not intended to reflect any value of the property.

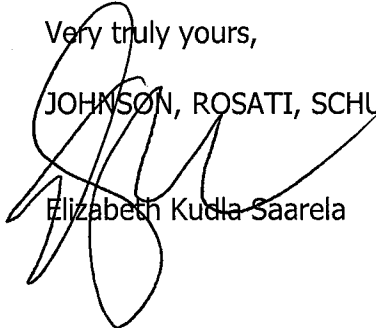
Please note that we will include the owners of the five residences along New Court on the good faith offer, in accordance with the Declaration of Taking, based on their ownership interest in an easement over the road. This may require the \$500 to be divided between all parties in interest.

In the event that all parties agree to accept or waive the good faith offer amount, we will prepare the appropriate form of deed required to convey all interests to the City.

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

Very truly yours,

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

A handwritten signature in black ink, appearing to read 'Elizabeth Kudla Saarela', is written over the typed name. The signature is fluid and cursive, with a large initial 'E' and 'S'.

Elizabeth Kudla Saarela

EKS

Maryanne Cornelius, Clerk

Sue Troutman, Clerk's Office

Brian Coburn, Engineering Manager

Rob Hayes, Public Services Director

Thomas R. Schultz, Esq.

**RESOLUTION CONCERNING THE ACQUISITION
OF PROPERTY AND APPROVING DECLARATION OF NECESSITY AND TAKING**

City of Novi
County of Oakland, Michigan

Minutes of a _____ Meeting of the City Council of the City of Novi,
County of Oakland, Michigan, held in the City Hall in said City on October __, 2014, at 7:00
o'clock P.M. Prevailing Eastern Time.

PRESENT: Councilmembers _____

ABSENT: Councilmembers _____

The following preamble and Resolution were offered by Councilmember _____
_____ and supported by Councilmember _____.

WHEREAS, present conditions in the City of Novi, Oakland County, Michigan,
necessitate the construction of improvements to existing stub road and a non-motorized
pathway/sidewalk on Ten Mile Road in, over, upon and through a portion of the following
described premises situated in the City of Novi, Oakland County, State of Michigan, to-wit:

PARCEL DESCRIPTION (50-22-02-176-018):

**Lot 34, Shore Acres Subdivision, according to the Plat thereof as recorded in Liber 20,
Page 2 of Plats, Oakland County Records**

WHEREAS, proposed plans are being prepared and will be on file with the City Clerk's
Office; and

WHEREAS, it has been determined that said improvements are necessary for the use and benefit of the public; and

WHEREAS, in order to construct said improvements, it is necessary that the City acquire a fee simple title to the above-described real estate.

WHEREAS, the City has caused a valuation of the subject property to be prepared by its City Assessor or the basis of assessment records and related information;

WHEREAS, valuation of the subject property is \$0 based on its use as a private stub road serving five (5) existing residential lots.

WHEREAS, the City has determined that it is in the best interests of the City to offer to purchase the subject property from the owners of such property, and to take such other actions as are deemed necessary to acquire the subject property for the purposes of constructing the improvements;

WHEREAS, in an effort to acquire the property short of litigation, the City has determined that it is in the best interests of the City to offer \$500 as compensation for the subject property.

NOW, THEREFORE, BE IT RESOLVED, by the authority vested in the City of Novi by law, that it is hereby declared and determined that it is necessary to improve the existing stub street and construct a non-motorized pathway/sidewalk along New Court in, over, upon, and through the above-described property within the City of Novi in accordance with the plans prepared by the City, and that said improvements are necessary for the use and benefit of the public; and

BE IT FURTHER RESOLVED, that the Mayor of the City is hereby authorized to execute, on behalf of the City, a good faith Offer to Purchase, a copy of which is attached hereto

as Exhibit A, calling for the payment of Five Hundred (\$500.00) Dollars for fee simple interest in the subject property. The above amounts have been established as just compensation for the acquisition of the property, based upon a valuation of the property and the desire to complete the sale short of litigation.

BE IT FURTHER RESOLVED, that after the execution of the good faith Offer to Purchase by the Mayor, the good faith Offer to Purchase shall be submitted to the owners of the property;

BE IT FURTHER RESOLVED, that in the event the Sellers fail to accept the good faith Offer to Purchase within fourteen (14) days of the date of delivery, the City Manager is hereby authorized to execute the Declaration of Taking, which is attached hereto;

BE IT FURTHER RESOLVED, that in the event the offer is not accepted as set forth above, the Mayor, City Clerk, and City Attorney are authorized to take all actions required to obtain a permanent Sidewalk Easement and Temporary Grading Permit in the subject property by eminent domain.

BE IT FURTHER RESOLVED, that in the event the offer is not accepted as set forth above, and the Declaration is executed, the City finance officer is authorized and directed to place an amount equal to the amount contained in the good faith offer that was made to the property owners (\$500.00) into a separate account and to hold such money on deposit as the estimated amount of just compensation to be paid in connection with the eminent domain proceedings.

BE IT FURTHER RESOLVED, that all resolutions and part of resolutions insofar as they conflict with the provisions of this Resolution be and the same hereby are rescinded.

AYES: Councilmembers _____

NAYES: Councilmembers _____

RESOLUTION DECLARED ADOPTED.

MARYANNE CORNELIUS, CITY CLERK

CERTIFICATION

I hereby certify that the foregoing is a true and complete copy of a Resolution adopted by the City Council of the City of Novi at _____ meeting held this _____ day of _____, 2014.

MARYANNE CORNELIUS, CITY CLERK

DECLARATION OF TAKING

A Resolution of Necessity having been adopted by the City of Novi setting forth that present conditions necessitate the construction of stub street improvements and a non-motorized pathway/sidewalk along New Court (the “Improvements”) in the City of Novi, Oakland County, Michigan, in the interest of the public health, safety, and welfare, and that it is necessary to acquire fee simple title in property within the City of Novi for said Improvements, and that a good faith written offer to purchase said property has heretofore been made.

NOW, THEREFORE, by virtue of the authority vested in the City of Novi, by Act 279 of the Public Acts of 1909, as amended, and/or Act 149 of the Public Acts of 1911, as amended, or other applicable statutes, and in accordance with the provisions of Act 87 of Public Acts of 1980, as amended, it is now declared and determined that the real property hereinafter described shall be taken for the purpose of improving and existing stub street and constructing a non-motorized pathway/sidewalk over the Property along New Court, in accordance with prepared plans showing said Improvements which are on file with the City Clerk’s Office.

A statement of the estate of interest in the property being taken; a description of the property to be acquired, sufficient for its identification; the name of each known owner of said property; the name of each known person, other than the owner, having an interest in said property; a statement of the sum of money estimated by the City of Novi as just compensation for the property being acquired; and a statement whether the City of Novi reserves or waives its

rights to bring federal or state cost recovery actions against the present owner of the property are as follows:

1. Statement of the Estate of Interest Being Taken and Description of the Property.
FEE SIMPLE TITLE TO PARCEL DESCRIPTION (50-22-02-176-018):
Lot 34, Shore Acres Subdivision, according to the Plat thereof as recorded in Liber 20, Page 2 of Plats, Oakland County Records
2. Names of Property Owner: Paul Wagner at to an undivided 1/2 interest Chamberlain Real Estate Employee Deferred Profit Sharing Trust aka Care Trust, as to an undivided 1/2 interest
3. Names of each person, other than the Owners, having a potential interest in the property: Consumers Power, Kathy L. North, Raffaella Hainbuchner, Kevin C. Watson, Mandy Smith, Nick Palise II
4. Value of Property based on Assessing Records: \$ 0.00
5. Just Compensation for Proposed Settlement: \$ 500.00
6. The City of Novi reserves it rights to bring Federal or State cost recovery actions against the present owner of the property.

CITY OF NOVI

BY: _____

City Manager

Dated: _____, 2014

The foregoing Declaration of Taking was acknowledged before me this ____ day of _____, 2014, by _____, as the City Manager, on behalf of the City of Novi.

Notary Public
_____ County, Michigan
My Commission Expires: _____

Prepared by and when recorded return to:
Elizabeth K. Saarela (P 60265)
27555 Executive Drive Suite 250
Farmington Hills, Michigan 48331
Phone: (248) 489-4100
Tax Identification No. 50-22-02-176-018

AGREEMENT OF SALE
OFFER TO PURCHASE REAL PROPERTY

1. The City of Novi, a Michigan municipal corporation (hereinafter “City”), hereby offers and agrees to purchase fee simple title to real property within the City of Novi, described as:

PARCEL DESCRIPTION (50-22-02-176-018):

Lot 34, Shore Acres Subdivision, according to the Plat thereof as recorded in Liber 20, Page 2 of Plats, Oakland County Records

Fee simple in certain real estate described as follows:

Lot 34, Shore Acres Subdivision, according to the Plat thereof as recorded in Liber 20, Page 2 of Plats, Oakland County Records

and to pay therefore the sum of Five Hundred (\$500.00) Dollars, subject to the existing building and use restrictions, easements, and zoning ordinances, if any, upon the following conditions:

- (i) Delivery of the Warranty Deed described above

2. Upon Seller’s acceptance of this Offer to Purchase, as evidence of title, the City agrees to obtain a commitment for the title insurance with policy pursuant thereto to be issued insuring the City. The City will pay the cost of the title insurance policy premium.

3. If this offer is accepted by the Seller and if title can be conveyed in the condition required hereunder, the City agrees to complete the sale within fifteen (15) days after the receipt of the commitment for title insurance.

4. If objection to the title is made, based on a written opinion of the City Attorney that the title is not in the condition required for the performance hereunder, the Sellers shall have thirty (30) days from the date they are notified in writing of the particular defects claimed, to fulfill the requirements in the commitment for title insurance or to remedy the title defects set forth in the City Attorney's opinion. If the Seller is able to comply with such requirements or remedy such defects within the time specified, as evidenced by written notification, revised commitment or endorsement to commitment, the City agrees to complete the sale within twenty (20) days of receipt thereof. If the Seller is unable to furnish satisfactory title within the time specified, the City will commence condemnation proceedings to acquire the Property.

5. The Seller shall deliver and the City shall accept possession of said Property upon the date of closing.

6. It is understood that the Property is being acquired in connection with the NC-1 Pathway Project to make improvements to the stub street on the Property and construct a non-motorized pathway over, across, upon and through the above-described premises on New Court in the City of Novi, Michigan.

7. The City shall pay the cost of recording the Warranty Deed and the cost of all Michigan Real Estate Transfer Tax.

8. The City reserves its right to bring Federal or State cost recovery actions against the present owners of the Property arising out of a release of hazardous substances at the Property.

9. The covenants herein shall bind and inure to the benefit of the executors, administrators, successors, and assigns of the respective parties.

10. If this Offer to Purchase is not accepted by Seller within Fourteen (14) days from the date of its mailing to Seller, this Offer to Purchase shall be considered withdrawn and of no further force and effect.

11. This Offer to Purchase may be executed in one or more counterparts as one Agreement and shall be binding upon the City and the hereafter named Seller when executed by the City of Novi and all of the hereafter named Seller.

The closing of this sale shall take place at the City of Novi offices located at 45175 West Ten Mile Road, Novi, Michigan.

WITNESSES:

PURCHASER:

CITY OF NOVI, a Michigan
municipal corporation

By: ROBERT J. GATT
Its: Mayor

By: MARYANNE CORNELIUS
Its: City Clerk

Dated: _____, 2014

To the Above Named Purchaser:

The foregoing offer is hereby accepted and the Seller agrees to sell the Property upon the terms stated:

By the execution of this instrument, the Seller acknowledges the receipt of a copy of this Agreement.

IN THE PRESENCE OF:

SELLER:

By: _____
Paul Wagner, a _____ man

Chamberlin Real Estate Employee Deferred
Profit Sharing Trust a/k/a Care Trust

By: _____

By: _____

PURCHASER'S RECEIPT OF ACCEPTED OFFER

The Purchaser hereby acknowledges receipt of the Seller's signed acceptance of the foregoing Offer to Purchase.

CITY OF NOVI, a Michigan
municipal corporation, Purchaser

BY: _____

Its: _____

Dated: _____, 2014