

**Nixon Project: July 20 - November 16, 2015 Council Agenda Questions and Staff Responses**

**COUNCIL DATE: 7/20/15**

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**B-5 – An Ordinance to Amend Chapter 55 (Zoning), Rezoning of 53.61 Acres from TWP (Township District) to R4A (Multiple-Family Dwelling District), Woodbury Club Apartments, Southeast corner of Nixon Road and M-14 (CPC Recommendation: Approval – 9 Yeas and 0 Nays) (Ordinance No. ORD-15-13)**

**Question:** In response to my question on June 15<sup>th</sup> regarding the City's potential purchase of 25 acres of parkland, the response indicated that "city staff are awaiting a response from the developer on the City's most recent offer." Can you please provide an update on the current status? (Councilmember Lumm)

**Response:** There is no change in the status. Negotiations are continuing.

**Question:** Also in response to a question June 15<sup>th</sup> on traffic in the area, staff indicated that while the Nixon/Green/Dhu Varren intersection was identified as a problem, "neither study identified other areas in the vicinity as being in need of modification." Can you please provide the data from the two traffic studies that support that conclusion? (Councilmember Lumm)

**Response:** The Woodbury traffic impact study modeled impacts of the new development on four intersections along Nixon Road: Dhu Varren, Green, Bluett and Huron Parkway. The results of the modeling are discussed on Pages 7-13 of the attached traffic impact study.

The Nixon Farm (North and South) traffic impact study modeled impacts of the new developments on Huron Parkway/Plymouth intersections and seven intersections along Nixon Road: Barclay Way, Dhu Varren, Green, Haverhill, Meade/Bluett, Huron Parkway and Plymouth. The results of the modeling are discussed on starting on Page 33 of the attached traffic impact study.

**C-1 – An Ordinance to Amend Chapter 55 (Zoning), Zoning of 69 Acres from TWP (Township District) to R4A (Multiple-Family Dwelling District), Nixon Farm North Zoning, 3381 Nixon Road (CPC Recommendation: Approval – 7 Yeas and 0 Nays)**

**Question:** It is stated that "The Ann Arbor City Planning Commission hereby authorizes activity in the natural features open space for the Nixon Farm North development. Why is that? (Councilmember Kailasapathy)

**Response:** The Zoning Ordinance requires a 25-foot open space surrounding wetlands and water courses for optimal protection for these two particular types of natural features. Any encroachment into that 25-foot open space is defined as an "activity" by code and requires specific authorization by the Planning Commission. The criteria

applied seek to balance the detrimental effects from the disturbance activity and the beneficial effects from the entire development. The Nixon Farm North site plan includes nine areas of activity for grading work related to construction of the dwelling units (no building is within the natural feature open space), retaining walls or detention ponds, the driveway crossing of the Traver Creek tributary, and a wetland mitigation area immediately adjacent to the existing wetland on the south side of the site.

**Question:** I also see that staff wants the zoning postponed until site plan it ready. When will that be? (Councilmember Kailasapathy)

**Response:** At this time, staff is recommending that first reading of the zoning for both Nixon Farm North and South be acted on this evening. Discussions with the Woodbury Club and Nixon Farm petitioners regarding the Nixon/Green/Dhu Varren intersection are progressing, but are ongoing. We anticipate that the issue will be settled prior to second reading of the zoning for Nixon Farm North and South.

**Question:** In the cover memo for North indicates “208 or more single-family attached dwellings in 51 or more buildings.” For the South (C-2), the “or more” phrase does not appear. Can you please clarify the difference – is there discussion about making the North project larger? (Councilmember Lumm)

**Response:** Subsequent to Planning Commission action, the petitioner explored potential changes to the unit mix on the North site in response to a comment from a commissioner that the North site should include “carriage house” unit types in addition to townhouse dwelling unit types. These changes would result in a revised unit count. At the time the zoning transmittal was written, Planning staff had not received revised plans, but included the “or more” in case this changed between the writing of the transmittal and the final site plan action.

### **C-2 – An Ordinance to Amend Chapter 55 (Zoning), Zoning of 41 Acres from TWP (Township District) to R4A (Multiple-Family Dwelling District), Nixon Farm South Zoning, 2999 Nixon Road (CPC Recommendation: Approval – 7 Yeas and 0 Nays)**

**Question:** For the Nixon Farms South project, neighbors have expressed concerns about the front setback of 30 feet. Have there been any further discussions with the developer or consideration to increasing that front setback for the South project? Neighbors have also expressed concerns about the balance of the higher and lower density units North and South of Dhu Varren Road and the higher density, South project’s “wall of buildings” along Nixon Road – have further discussions with the developer explored alternative designs for the units fronting Nixon Road South of Dhu Varren? (Councilmember Lumm)

**Response:** After the initial Planning Commission public hearing on Nixon Farm South, Planning staff discussed with the developer neighborhood concerns about the building frontage along Nixon. However, increasing the front setback for buildings facing Nixon Road would result in shifting the entire development the same number of feet into the natural areas on the west side of the site. The developer did not want to further

encroach into the natural areas and opted not to change the layout. For comparison, Planning staff looked at existing developments in the area and found that the proposed setback of 30 feet and building length of 130 feet was similar to other nearby residential developments. To staff's knowledge, there have been no further discussions about alternative designs.

**Question:** If these zoning actions pass first reading tonight, when do you anticipate the second reading, site plan and public hearings would occur? (Councilmember Lumm)

**Response:** Second reading of the zoning would be scheduled for the August 17, 2015 City Council meeting. Action on the Nixon Farm North and South site plans would tentatively be scheduled for the August 17<sup>th</sup> meeting, unless details regarding the Nixon/Dhu Varren/Green intersection have not been worked out.

**COUNCIL DATE: 8/17/15**

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**B-2 – An Ordinance to Amend Chapter 55 (Zoning), Zoning of 69 Acres from TWP (Township District) to R4A (Multiple-Family Dwelling District), Nixon Farm North Zoning, 3381 Nixon Road (CPC Recommendation: Approval – 7 Yeas and 0 Nays) (Ordinance No. ORD-15-15) (8 Votes Required)**

**B-3 – An Ordinance to Amend Chapter 55 (Zoning), Zoning of 41 Acres from TWP (Township District) to R4A (Multiple-Family Dwelling District), Nixon Farm South Zoning, 2999 Nixon Road (CPC Recommendation: Approval – 7 Yeas and 0 Nays) (Ordinance No. ORD-15-16) (8 Votes Required)**

**DB – 5 – Resolution to Approve Nixon Farm North Site Plan and Development Agreement, with Modifications to Chapter 62 Landscaping and Screening, and Wetland Use Permit, 3381 Nixon Road (CPC Site Plan Recommendation: Denial – 5 Yeas and 2 Nays) (CPC Modifications and Wetland Use Permit Recommendation: Approval – 7 Yeas and 0 Nays)**

**DB- 6 – Resolution to Approve Nixon Farm South Site Plan and Development Agreement, with Modifications to Chapter 62 Landscaping and Screening, and Wetland Use Permit, 2999 Nixon Road (CPC Recommendation: Approval – 7 Yeas and 0 Nays)**

**Question:** Are there provisions for public access to the land contributed as part of the park land contribution? (Councilmember Warpehoski)

**Response:** Yes, in the Nixon Farm North development, the path leads to the parkland dedication area, connecting it to Dhu Varren Road at the south, a road within the development to the north, and Hickory Point Drive on the west. The site plan also shows sidewalks within the development that would connect to the trailhead.

**Question:** Will there be pedestrian access through the site to the parkland? If so, how will it be maintained and does such maintenance include seasonal maintenance? (Councilmember Warpehoski)

**Response:** For Nixon Farm North, a public access easement will be provided along the internal sidewalks to the parkland. Details of the park entrance and connection points are pending the outcome of any additional parkland acquisition. Maintenance of the privately owned portion, including the public access easement, will be the responsibility of the condominium association. Seasonal maintenance of the hardscape on the private portion, such as snow removal, is required. Parkland owned by the City will become the responsibility of Natural Area Preservation.

**Question:** I don't see a number of footing drains to disconnect in p-22 of the agreement. (Councilmember Warpehoski)

**Response:** The number of footing drains is included in the most recent version of the site development agreement – 56 for Nixon Farm North, 71 for Nixon Farm South.

**Question:** If developed, how would the addition of housing on this site affect the PAC goals for playground access for residential areas? (Councilmember Warpehoski)

**Response:** A goal of the park system as it relates to playground access is to have neighborhood playgrounds within a ¼ mile of every residence. Foxfire North and Placid Way Parks are approximately a ¼ mile from the proposed development and both have playgrounds, but could require crossing Dhu Varren Road to access. Nixon Farms South is also providing a playground for the proposed development that will be owned and maintained by the condominium association.

**Question:** Are there plans to create/improve upon the safe movements for pedestrians and cyclists in and around the proposed roundabout? (Councilmember Lumm)

**Response:** Modern roundabouts are a Federal Highway Administration proven safety countermeasure. This intersection design is valued for its ability to reduce the speed of vehicles entering an intersection. Reduced vehicular speeds increase safety for all modes of transportation. Modern roundabout design provides pedestrians with crossings that experience fewer conflict points and shorter distances exposed to vehicular traffic. The pedestrian refuges, located within the splitter islands, are also a proven safety countermeasure for urban environments. Single lane roundabouts (such as the one proposed here) are designed to have very low speeds in the circulating roadway. Bicyclists can easily travel at the same speeds as motorists, or have the option to easily exit the roadway and cross the intersection as a pedestrian. As this project moves forward, it will be designed to accommodate all modes of transportation safely.

**Question:** Regarding the “conditional zoning” approach (new to me). Can the zoning be “conditioned” by adding requirements for, e.g., contributing to the roundabout,

committing to a firm # of units (i.e., remove the “or more” language), addressing other site plan concerns, etc.? (Councilmember Lumm)

**Response:** Per state law, a developer may offer conditions to a proposed zoning designation.

**Question:** The letter from Toll Brothers requesting conditional zoning for Nixon Farms North and South indicates that Toll Brothers will pay \$1,025,460 for the Nixon/Green/DhuVarren intersection improvements and that amount represents 50% of the cost. Previously it was indicated the estimated cost is \$2.1M, but can you please confirm that remains the latest best estimate? (Councilmember Lumm)

**Response:** \$2.1M is still the most current cost estimate. The portion of the project not funded by the developer is to be funded by the Street Millage. Improvements to this intersection have been identified as a need in the Capital Improvements Plan, and the Street Millage was identified as the appropriate funding source to make such improvements.

**Question:** The conditional zoning request letter grants the City an easement that’s necessary for construction of the re-configured intersection. How large is that easement, and can you please confirm that the City is not paying anything for the easement/use of the land for the new intersection? (Councilmember Lumm)

**Response:** The easement is 0.75 acre, more or less, based on the final design. Yes, the developer is donating the easement to the city at no cost.

**Question:** In terms of “conditional zoning” overall, it seems to be advantageous to the City to have the four specific conditions clearly identified. What downside (if any) is there to a conditional zoning? (Councilmember Lumm)

**Response:** Conditional zoning is similar to a Planned Unit Development in that it creates a unique sense of regulations for the property. Like PUD’s, conditional zoning is meant to be proscriptive, so it provides limited flexibility. If site conditions arise during construction that do not fall within the zoning conditions, it would require the developer and/or City to go through the rezoning process to revise the conditions.

**Question:** While reconfiguring the intersection is certainly a major, positive improvement, traffic congestion along the Nixon corridor is also a significant issue. The development agreements for Nixon Farms and Woodbury include clauses committing the developers to be included in any future special assessment districts. Would that include actions to improve traffic flow on the corridor – studies of potential actions as well as the physical improvements? Also, the CIP includes a 2018 item “Nixon Corridor Traffic Study” for \$200,000. Assuming the purpose of the study is to identify how to improve traffic flow, it would seem to make more sense to do that now, not later, and to have a comprehensive traffic flow plan. What would it take to pull that study ahead to the current fiscal year? (Councilmember Lumm)

**Response:** The Nixon Road Corridor Traffic Study” was added to the CIP by Planning Commission. The identified scope is stated as: “to examine transit, traffic operations and non-motorized facilities”. To make any improvements to traffic congestion along the corridor, those improvements would need to be identified after study of the corridor and the existing traffic. Any improvements that are implemented which are first time improvements would likely be assessed to the neighboring benefitting properties, including the development sites. To advance this study project into the current fiscal year, it would require the City Council to amend the budget to allocate General Fund funding, but more importantly staff workload and assignments have already been established which would required deferring other projects in order to advance this project into the current fiscal year.

**COUNCIL DATE: 9/8/15**

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#### **DC-4 – Resolution Regarding Nixon Corridor Traffic Study**

**Question:** Taking funds from a FY2018 budget that has not been approved seems a little unorthodox. Where would the money come from to fund this study? Does staff have the capacity to conduct this study or would we hire consultants? If funding were approved, what project(s) would the Nixon corridor study replace this fiscal year? (Councilmember Grand)

**Response:** The resolution as written would not reappropriate any funds. Rather, it directs staff to determine potential funding sources for the project, should it be advanced in FY15/16, and report back to Council. Staff does not currently have the capacity to perform the corridor study internally, and would likely hire a consultant to perform the study. This will still require some staff time to oversee, however it would be a more manageable time commitment.

**Question:** Do I recall that the Nixon Corridor traffic study was previously identified as a high priority and budgeted for but removed from the budget by a previous council? Is it still identified as a high priority? Please describe what a study to completion timeline would look like potentially. (Councilmember Westphal)

**Response:** Staff has not yet had the opportunity to prepare a timeline for this study. Staff will be able to prepare a complete timeline within the 30-day window required by the resolution.

**Question:** What difference in implementation timing would there be, if any, if we were to pursue grants for the study, and what is the likelihood of receiving such grants? (Councilmember Westphal)

**Response:** The City could apply for Congestion Mitigation Air Quality (CMAQ) funding to conduct the study. The next call for funding applications would occur in the spring of 2016, and funding would not be available until 2018 at the earliest. This grant process is

also a competitive process, and there is no guarantee that such a project would be awarded funding, or for what year it would be awarded funding. The City would likely also have to provide a local match for any funds received through CMAQ.

**COUNCIL DATE: 10/19/15**

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**C-2 - An Ordinance to Amend Chapter 55 (Zoning), Zoning of 69 Acres from TWP (Township District) to R4A (Multiple-Family Dwelling District), Nixon Farm North Zoning, 3381 Nixon Road (CPC Recommendation: Approval – 7 Yeas and 0 Nays) (Ordinance No. ORD-15-15)**

**C-3 – An Ordinance to Amend Chapter 55 (Zoning), Zoning of 41 Acres from TWP (Township District) to R4A (Multiple-Family Dwelling District), Nixon Farm South Zoning, 2999 Nixon Road (CPC Recommendation: Approval – 7 Yeas and 0 Nays) (Ordinance No. ORD-15-16)**

**Question:** Toll Brothers told some neighborhood representatives that they would collect all the concerns from the neighborhoods. They also said they would compile and provide this information to the City. Has this been done? If so, could you please provide that information? (Councilmember Kailasapathy)

**Response:** Staff referred this and a similar question below, to the developer. They responded:

*“We have met with the Foxfire, Foxridge, Ashford, Orchard and Bromley Communities and have extended an invitation out to Arbor Hills and Chapel Hill Communities.*

*The meetings were mostly focused on the traffic and intersection issues. Other notable topics were:*

- 1) Nixon corridor traffic study (if we supported it).*
- 2) Average sales prices of each product.*
- 3) Density.*
- 4) How will the HOA be managed and how the common area will be maintained.*
- 5) What happens if the City doesn't build the intersection?*
- 6) What is the impact of the water run-off?*
- 7) What will the lighting plan entail within the community?*
- 8) Can anything be done with the street view on Nixon Road (townhomes)?*
- 9) Can there be a more dense buffer between Fox Ridge and Nixon South?*

*We have responded to all of these questions during the various meetings and have also made some significant contributions (intersection funding) and changes (Nixon South at Nixon Road- sidewalk and street elevation/open space changes).”*

**Question:** The Nixon North zoning that went to Planning commission stated that 16 acres of wooded land was going to be dedicated as park land. The conditional zoning statement says nothing about the park land dedication. Why? Should this then be

going back to Planning commission as this is a substantial change in the plans?  
(Councilmember Kailasapathy)

**Response:** At the time the Planning Commission considered the Nixon Farm North zoning and site plan petitions, the parkland discussion focused on fulfilling the recommendations set forth in the Parks, Recreation and Open Space Plan. Since then, the discussion has expanded to include an application to the Land Acquisition Committee for approximately 10 acres in addition to a donation of 5.9 acres of land. This is not a substantial change in plans that must be referred back to the Planning Commission.

**Question:** The conditional offer states that the developer will donate around a million dollars towards the construction of the roundabout. When would this be paid – at the beginning, end? Or on a particular time? Shouldn't this be enumerated in the conditional offer. (Councilmember Kailasapathy)

**Response:** No. The zoning provides general conditions that will be tied to the zoning of the land. Specific details on payment and procedure are detailed in the Traffic Mitigation Agreement for each site which will be approved along with the site plan. The Traffic Mitigation Agreement provides that payment will be deposited within five days of approval of the site plan and will be final upon the developer closing on the property.

**Question:** The City would have to find the additional million dollars to complete the roundabout. Which fund are we planning to utilize for this purpose? Is it part of our CIP? How can we make sure that this money is earmarked for this project?  
(Councilmember Kailasapathy)

**Response:** The City's funding for any portion of this project will be from the Street Millage Fund. This funding source for this project is included in the FY2016-2021 Capital Improvements Plan (CIP) for FY18. Adjustments are being made to the CIP for FY16 and FY17 in advance of the presentation of the FY17 Capital Budget to Council in the spring of 2016; any modifications needed for this project will be incorporated as able prior to presentation to the City Planning Commission.

**Question:** The conditional offer states that the site plan cannot be changed and the intersection has to adjust to the site plan. What if the corridor study comes up with a recommendation that requires changes in the site plan? At that point what steps would we have to take in order to get the site plans changed? Do we even have that option under a conditional offer zoning agreement? (Councilmember Kailasapathy)

**Response:** The developer was provided with an electronic copy of the conceptual sketch of the roundabout design. The developer prepared a site plan to accommodate this intersection design. The corridor study will not reevaluate the intersection with Nixon Road and Dhu Varren Road for design alternatives. The corridor study will evaluate the need for design elements such as center left turn lanes that the traffic impact study recommended at the drive approaches on Nixon Road. The site plan currently provides sufficient right-of-way along the



Nixon Road corridor to implement recommendations (such as widening) that may come out of the corridor study.

**Question:** Conditional offer states that the developer will give easement for the construction of the intersection. Who is going to be the owner of that part of the street? It is my understanding that when one conveys an easement they are still the owners of the property. So would that part of the intersection be privately owned by the Toll Brothers or eventually the condominium association? (Councilmember Kailasapathy)

**Response:** The land will continue to be owned in fee by the developer or condominium association. The City will be granted an easement that gives the City all necessary rights to build, operate and maintain the intersection. The granting of a roadway easement is the typical legal instrument utilized by the City for this type of improvement.

**Question:** The developer is providing easement for wetland mitigation and utilities. Does the City have a rough idea as to how much these will cost and have funding allocated for these purposes? (Councilmember Kailasapathy)

**Response:** Estimates for this work are included in the conceptual cost estimates in the Opus study.

**Question:** Several residents have pointed out that when there is heavy rain fall Dhu Varren gets flooded and water stands on the streets for a few days. Is this going to be addressed along with the Nixon Farms development? Is so should it not be part of the conditional offer? If not, do we have the funds to address this issue? (Councilmember Kailasapathy)

**Response:** The detailed design of the Dhu Varren/Nixon/Green Road intersection improvements will address drainage at this location.

**Question:** Toll Brothers site plan assumes that the Opus study results will be adopted. But as the conditional offer itself acknowledges it is a conceptual study. Without the actual engineering drawings of the roundabout how can we agree to a site plan that may have to be changed once the actual engineering drawings are completed for the roundabout (that is assuming that the corridor study does not recommend another solution for the Nixon-Dhu Varren intersection). (Councilmember Kailasapathy)

**Response:** The Opus study established the operational requirements of the roundabout, and this has been selected as the preferred alternative for the intersection. Detailed engineering design of the roundabout will not affect the site plan, as the site plan has been designed with ample right-of-way for the proposed intersection design. The corridor study will be performed with the assumption that a roundabout will be constructed at the intersection.

**Question:** The State Enabling Act allows for conditional zoning. But we do not have ordinances for conditional zoning. So how to we go about enforcing them? (Councilmember Kailasapathy)

**Response:** There is no legal requirement that the City enact an ordinance to allow conditional zoning. The State Zoning Enabling Act allows for the City to accept conditions offered by a developer as part of a zoning or rezoning. The City can adopt restrictions and procedures if desired. Even without specific restrictions and procedures, we will enforce the zoning regulations and conditions the same as any other zoning violation.

**Question:** The Consent of owner section states the following: “For avoidance of doubt, the Co-Owners, while authorizing the Developer to commit to and fulfill the obligations and conditions contained in the Statement of Conditions, do not by this authorization and consent commit or obligate themselves to fulfill any of the obligations and conditions stated in Section 3 of the Statement of Conditions (including, without limitation, the commitment to make the payment prescribed in Section 3(ii) of the Statement of Conditions) and the Co-Owners acknowledge that if the Developer does not fulfill the obligations and conditions stated in Section 3 of the Statement of Conditions the zoning of the Property will revert as provided in Section 4 of the Statement of Conditions.” Who will be liable for any potential liabilities in the event that Toll Brothers cannot fulfill their obligations? (Councilmember Kailasapathy)

**Response:** See response provided above. In the section from the Consent excerpted above, the owner is confirming that they do not have any intention of constructing the site plan, or committing to any payments, if the developer does not do so.

**Question:** Do the pedestrian walkways and sidewalks fall under the City, or the developer and future condo association with this conditional zoning agreement? (Councilmember Kailasapathy)

**Response:** The sidewalks within the Dhu Varren and Nixon Road rights-of-way will fall under the requirements of City Code for sidewalks. The pedestrian walkways and sidewalks within the development site will be the full responsibility of the property owner(s).

**Question:** Is the developer the appropriate party to make an offer of conditions under MCL 125.3405? (Councilmember Eaton)

**Response:** The developer has been given the general authority to zone and site plan the property by the property owner. Since the statute specifically asks for the conditions to be made by the owner, the City is requiring that the owner sign a Consent to specify that the owner agrees and consents that the conditions are part of the zoning and that the conditions will run with the land. That Consent is on page 6 of the Conditional Zoning Statement of Conditions for each site.

**Question:** If the conditions are approved, do they bind both the developer and the land owner? (Councilmember Eaton)

**Response:** Yes, both are bound by the conditions, but the owner of the property has made it clear that she will not pursue the site plan absent the developer, and therefore, will not be obligated to pay the contribution for the intersection.

**Question:** What recourse would the City have if the City accepts the developer's conditional zoning offer but subsequently withdraws from the project? For example, if the City accepts the developer's offer to contribute to the cost of the traffic circle but thereafter fails to build the development and fails to contribute to the traffic circle, could the City seek payment from the property owner? (Councilmember Eaton)

**Response:** No. The conditions contained in the conditional zoning are general, but specific details of when payments will be made are contained in the Traffic Mitigation Agreement, which will be considered as part of the site plan. In this Agreement, Toll Brothers has agreed to deposit into escrow the full amount of the intersection contribution within five days of approval of the site plan. The payment would be final when the developer closes on the property on or before April 30, 2016. If the developer does not close then the conditional zoning would remain in place, but the City could not seek payment from the property owner as the payment is only to be made as a condition of completing the site plan. The recourse of the City would be to rezone the property.

**Question:** In requesting postponement until tonight's meeting, the developer indicated they would be setting up meetings with neighborhood associations. Can you please provide a status update on those meetings – notes/minutes on discussion items/neighborhood input for any meetings that have been held, and the times/locations for meetings scheduled? (Councilmember Lumm)

**Response:** Staff referred this to the developer. Their response to the related question above from Councilmember Kailasapathy outlines the various meetings already held. In addition, they state:

*"We have, as indicated above, met with Fox Ridge and Fox Fire since our last City Council Meeting. The other meetings were prior to our last meeting. We have extended an invitation to meet with the Arbor Hills community as well as Chapel Hill and are still waiting for a response. A notable meeting request that has gone unanswered is to Mr. James D'Amour of the Sierra Club-Huron Valley Group in response to his comments during our annexation council meeting."*

**Question:** In requesting postponement, the developer also indicated there may be changes to the site plan proposal. Can you please provide the latest site plan proposal and what changes have been made? (Councilmember Lumm)

**Response:** Yes. See attached. The Nixon Farm South site plan has been revised so that the building placement provides increased variety. No other changes have been made.

**Question:** In the conditional zoning documents, section 3 ii references the \$1,025,460 Toll Brothers contribution to the cost of the reconfiguration of the intersection. Is Toll Brothers still requesting that that amount be reduced for any contribution from Woodbury Club Apartments or other developers? Is the contribution amount from Woodbury Club still proposed at \$200K? (Councilmember Lumm)

**Response:** The Nixon Farm Traffic Mitigation Agreement (which will be considered along with the site plans) requires that the City credit and pay any amount back to the developer that the City receives from additional private contributions for the intersection improvements, such as from Woodbury Club. The Woodbury Club developer still proposes to contribute \$200,000 for the construction of the intersection.

**Question:** Have we discussed with Nixon Farms or Woodbury Club a contribution to the cost of a Nixon Corridor Traffic Study (should Council approve going forward with that \$200K study tonight)? (Councilmember Lumm)

**Response:** No. Both developers have provided the traffic study required by the City's Land Development Regulations.

**Question:** The conditional zoning statement of conditions included in our packet indicates that it was revised 10/16/15. In comparing the two, it appears that all of the key conditions are the same, but I may have missed something. Can you please identify what the substantive changes are in the revised version? (Councilmember Lumm)

**Response:** All of the key conditions are the same. The revisions to each Conditional Zoning Statement of Conditions include the following:

- The Whereas clause in Paragraph D (Page 1) was corrected to indicate that the Planning Commission recommended approval of the zoning.
- Paragraph 4 (Page 3) was revised to further clarify that City Council may take action to rezone the property to another district if the conditions are not satisfied.
- The Consent of Owner section was added (page 6) to verify that the property owner has specifically authorized, consented to, and agreed to the conditions being incorporated into the zoning.
- Exhibit B showing the conceptual plan for reconfiguration of the intersection has been attached, and it has been clarified that Exhibit C will only include select pages from the approved site plan.

**COUNCIL DATE: 11/16/15**

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**B-1 – An Ordinance to Amend Chapter 55 Zoning), Zoning of 69 Acres from TWP (Township District) to R4A (Multiple-Family Dwelling District) WITH CONDITIONS, Nixon Farm North Zoning, 3381 Nixon Road (CPC Recommendation: Approval – 7 Yeas and 0 Nays) (Ordinance No. ORD-15-15) (8 Votes Required)**

**B-2- An Ordinance to Amend Chapter 55 Zoning), Zoning of 41 Acres from TWP (Township District) to R4A (Multiple-Family Dwelling District) WITH CONDITIONS, Nixon Farm South Zoning, 2999 Nixon Road (CPC Recommendation: Approval – 7 Yeas and 0 Nays) (Ordinance No. ORD-15-16) (8 Votes Required)**

**Question:** The developer has offered an easement for a reconfigured intersection. After consulting the schematic drawing of the round-a-bout plan, I have two questions.

- a. Is an easement – rather than ownership – of a public street common? What repercussions, if any, could be experienced by users of a public street over an easement versus a public street over public land?
- b. The reconfigured intersections vacates some land that is currently a public street. What happens to the ownership of this land?  
(Councilmember Briere)

**Response:**

6a. The granting of a roadway easement is the typical legal instrument utilized by the City for this type of improvement. There are no repercussions that could be experienced by users of a public street within a roadway easement granted to the City compared to a public street within publicly owned land.

6b: The reconfigured intersection does not vacate any land. The current pavement for Dhu Varren Road will be removed but the right-of-way will not change. After the additional right-of-way easement is acquired on the south side of Dhu Varren Road for the realignment, the total right-of-way will be unusually large.

**Question:** In the event the cost of redesigning and reconstructing the Dhu Varren/Nixon/Green intersection exceeds the amount currently projected, does the developer's share of the cost increase? (Councilmember Briere)

**Response:** No. In the event that the cost of the intersection exceeds the amount projected, the developer is not responsible for the cost increase. The developer will contribute 50% of the project cost up to \$1,025,460.00.

**Question:** In the event that the intersection is constructed prior to any other developer's project being approved by Council, will subsequent developers have to pay for improvement charges (the intersection) and – if they do – will any of those payments be returned to Toll Brothers? (Councilmember Briere)

**Response:** No. Upon completion of the intersection, the city will not seek contribution for the project from other developers as any necessary improvements will already be constructed.

**Question:** At what point is the developer prevented from making changes in the site plan? Could the developer make such changes on a Sunday and – if the changes did not impact the wetlands, trees, storm water systems, fire and police access, and other

considerations – have that revised site plan presented for approval on a Monday.  
(Councilmember Briere)

**Response:** Developers can propose changes anytime during the review and approval process. Once approved, Chapter 57 (Subdivision and Land Use Control) regulates how changes are approved, and the Conditional Zoning Statement of Conditions limits the developer to administrative amendments without the addition of dwelling units. The developer would need to formally submit an administrative amendment petition which typically take 1 to 2 months to review and approve.

**Question:** The conditional zoning document states, "the City shall return to Toll Brothers any difference between the actual and the projected cost." If the project costs for the intersection re-alignment come in under budget, will the developer be reimbursed at 100% of the savings or 50%? That is, if the project is \$50,000 under budget, would Toll Brothers receive all of that \$50,000 or would their contribution stat at 50%?  
(Councilmember Warpehoski)

**Response:** The developer will be reimbursed at 50%. Yes, Toll Brothers will receive a refund in the amount of the other developer's contribution.

**Question:** What happens if other developers contribute? Would Toll Brothers receive a refund then in the amount of the other developer contribution? (Councilmember Warpehoski)

**Response:** The developer will be reimbursed at 50%. Yes, Toll Brothers will receive a refund in the amount of the other developer's contribution.

**Question:** The State conditional zoning statute, MCL 125.3405, provides that "if the conditions are not satisfied within the time specified under this subsection, the land shall revert to its former zoning classification." If the time limit in the conditional zoning for the Nixon Farm projects expired, what zoning would the property revert to? It seems that it cannot revert to township agricultural zoning status, because the property has been annexed into the City and township zoning would be inapplicable. It also seems that the property could not revert to City agricultural, because the property has never had that zoning designation. (Councilmember Eaton)

**Response:** The term revert is used in the Enabling Legislation, which doesn't necessarily contemplate annexation. In this case, the zoning classification will not actually revert because it has never been zoned by the city. However, as set forth in the Statement of Conditions, a default on the zoning conditions will allow the City to "zone" the property," to AG (Agriculture-Open Space) district in the short term. In the long term, the City has the authority to again rezone the sites consistent with the Master Plan or most consistent with the surrounding properties, or rezone based on another petition.

**Question:** Residents have said that there is low water pressure issues in Barclay Park, parts of Arbor Hills, potentially Nixon Farms North. Can staff provide any additional information on this issue? Past measurement, ideal versus current readings, etc? (Councilmember Kailasapathy)

**Response:** In 2001, the water tower on Plymouth Road was raised to improve the water pressures in the northeast part of the City. Based on the pressure records the City has on file, the raising of the tank increased the water pressure approximately 25 psi in this area. Recent pressure tests performed on fire hydrants within Barclay Park and Arbor Hills indicate pressures ranging from 55-60 psi, which is within the targeted operating range for the water system of 40-100 psi.

**Question:** What will happen to the current configuration of the Nixon-Dhu Varren round about if the Nixon corridor study comes out with a recommendation that the round about wait times are too long. For example, currently it could take you about 12 minutes to get through that intersections in the evening commute times going North on Nixon. What if this increases to 20 minutes? How can we go ahead and plan to build the roundabout without considering the conclusions of the Nixon corridor study? (Councilmember Kailasapathy)

**Response:** The intersection study performed by Opus already addressed capacity at the intersection. Regardless of the results of the Nixon Road Corridor study, the volume of traffic at this location does not require a larger (i.e. multi-lane) roundabout.

**Question:** If the Nixon-Dhu Varren corridor study suggests that we make the roundabout larger, is there enough space under the easement agreement to provide that land to the city to build a larger round about (maybe even with two lanes)? (Councilmember Kailasapathy)

**Response:** As noted in the response above, the roundabout will not be required to be larger as a result of the Nixon Road Corridor Study, so there is adequate space under the easement agreement for the roundabout.

**Question:** Are there financial risks to the city of accepting the conditional zoning terms? When is the petitioner's roundabout contribution going to be deposited in escrow? Is there any circumstance, aside from the project not being started, where the city would be on the hook for more than half of the roundabout cost? Is the roundabout construction cost a conservative estimate? (Councilmember Westphal)

**Question:** Are there financial risks to the city of accepting the conditional zoning terms? When is the petitioner's roundabout contribution going to be deposited in escrow? Is there any circumstance, aside from the project not being started, where the city would be on the hook for more than half of the roundabout cost? Is the roundabout construction cost a conservative estimate? (Westphal)

**Response:** We are not aware of any financial risks as the City will only construct the intersection in association with these developments if the developer moves forward with

construction. The Traffic Mitigation Agreement requires that the developer deposit their contribution for the intersection improvements into escrow within five business days of the City approving the site plan. If the developer does not close on the property, the City will not begin construction of the intersection, so there is not a circumstance where the City will be responsible for more than half of the roundabout cost. Staff believes the current estimated cost for the roundabout to be a conservative one.

**Question:** What is the approximate difference in the share of the city's anticipated cost of improving the intersection with the Toll development scenario vs. the project not happening and our needing to complete the roundabout in the future ourselves (e.g., needing to purchase/condemn land to complete the roundabout), assuming we can secure federal grants to cover half the construction cost in the future? (Councilmember Westphal)

**Response:** Assuming that a Congestion Mitigation – Air Quality (CMAQ) grant could be obtained for the project in the future, the City's cost to do the project would remain approximately the same, with the exception of the additional cost, both in time and money, of obtaining the right-of-way.

**Question:** The "List of Conditions" contains the sentence, "The City and developer agree that the reconfiguration of the intersection of Nixon Road, Dhu Varren Road, and Green Road at the SE corner of the property is necessary for use and development of the land to provide for safe and efficient traffic flow, and to accommodate additional traffic from the development of the property." What is the purpose of this sentence and what is its legal significance? Also, if the reconfiguration of the intersection is "necessary for development of the land to provide safe, efficient traffic flow and accommodate the additional traffic," why wouldn't the developer(s) bear all of the cost for the improvement? (Councilmember Lumm)

**Response:** This sentence acknowledges that the City and developer agree that the intersection improvements are necessary for the project, consistent with the stated conditions. It is an introductory sentence to the conditions themselves. Although the intersection improvements are necessary for these developments to meet the City's required level of service for intersections, existing traffic from other sources remains a significant contributing factor to the level of service at this intersection.

**Question:** The list of conditions (i) speaks to granting of easements. It states that the intersection "shall be consistent with the Site Plan as approved by City Council and may change from the conceptual plan." Can you please clarify what "shall be consistent with ... but may change" actually means? What degree of flexibility does that give the City to change the design and still require that Toll Brothers provide the easements? (Councilmember Lumm)

**Response:** The intersection has only been examined to a conceptual design level of detail. The detailed design for the intersection improvements has not been completed. The City has flexibility to finalize the engineering details as part of the final design.



**Question:** The list of conditions (ii) states that the Toll Brothers contribution of \$1,025,460 is a “maximum payment”, but the City “shall return to Toll Brothers any difference between the actual and projected cost.” Although it does not say it, I’m assuming that means 50% of the difference not “any” difference – please confirm. Also, if the City and developer share proportionally in any cost underruns, why would we also not share in cost overruns? (Councilmember Lumm)

**Response:** Toll Brothers will only be returned 50% of the difference. The City provided a conservative estimate which included a significant contingency as the developer requested that the City agree to a maximum contribution.

**Question:** The list of conditions (iii) states that the developer shall only construct what is approved by council plus any administrative amendments to the site plan. It goes on to say that no administrative amendment may contain more dwelling units. What can be approved administratively with regard to reconfiguration or relocation of buildings, landscaping, natural features, sidewalks, stormwater mitigation? (Councilmember Lumm)

**Response:** Buildings can be moved up to 10 feet, plant species can be substituted on the landscape plan, planting locations may be adjusted, up to 250 square feet of area(s) to be preserved on a natural features protection plan may be substituted within set limitations, sidewalks may be relocated (but not eliminated), and up to half of the capacity of the stormwater management system may be relocated through the administrative amendment process.

**Question:** The list of conditions (iv) limits the occupancy up until Oct. 30, 2017. What happens if the intersection improvement is not completed at that time? Why wouldn’t that possibility be addressed specifically and the occupancy be directly linked to completing the intersection? (Councilmember Lumm)

**Response:** The City plans to build the intersection in the 2017 construction season, and October 30, 2017 is at the end of the construction season. The City is only obligated to complete construction of the intersection by January 1, 2018, which gives the City flexibility in completing the work. It is anticipated that the work will be completed by October 30, 2017.

**Question:** On the intersection, what is the specific timeline for the project, including getting into the CIP, council approval, design (RFP and completing the design work), construction (RFP and completing the construction)? (Councilmember Lumm)

**Response:** The Project Management Services Unit has issued an RFP for design services for this project. Should the Nixon Farms site plans be approved, the schedule provides for design work to occur in 2016, with construction beginning in the spring of 2017, which will allow for ample time to complete the project before the end of the 2017 construction season. The intersection improvement is currently included in the CIP for 2018. If the site plans are approved requiring the adjusted timeline, the CIP will be adjusted as part of the current update being considered by the Planning Commission.

**Question:** Am I correct that these “conditions” exist in perpetuity with the zoning while the other documents (site plan, traffic mitigation agreement, land development agreement) relate only to the current proposal. If so, why wouldn’t these “conditions” specifically include the 16 acres of parkland, the completion of the intersection improvements, other commitments related to natural features/wetland use as well as agreement to participate in further traffic improvement assessments? (In response to a Q I had back in August, the response indicated that, “Any improvements (to traffic congestion along the corridor) that are implemented which are first-time improvements would likely be assessed to the neighborhood benefitting properties, including the development sites.”) (Councilmember Lumm)

**Response:** The conditions contained in the Conditional Zoning Statement of Conditions are perpetual. State law allows a developer to make conditions to zoning, and the City to accept them. The developer has not offered any other conditions. However, the conditional zoning only allows these particular site plans to be constructed, and if they are constructed, then all of the other proposed site plan requirements will be required to be completed.

**DB-1 - Resolution to Approve Nixon Farm North Site Plan and Development Agreement with Modifications to Chapter 62 Landscaping and Screening, and Wetland Use Permit, 3381 Nixon Road (CPC Site Plan Recommendation: Denial – 5 Yeas and 2 Nays) (CPC Modifications and Wetland Use Permit Recommendation: Approval – 7 Yeas and 0 Nays)**

**DB – 2- Resolution to Approve Nixon Farm South Site Plan and Development Agreement, with Modifications to Chapter 62 Landscaping and Screening, and Wetland Use Permit, 2999 Nixon Road (CPC Recommendation: Approval - & yeas and 0 Nays)**

**Question:** When in the development process does MDEQ issue a wetland permit? Is it before a project is approved, or after the Council gives its approval? If there are differing approval timelines, please explain why those differences exist, and what effects on wetlands might be represented in those differences. (Councilmember Briere)

**Response:** MDEQ permits are issued after site plan approval by the City. To date, MDEQ has reviewed and approved the wetland permit but it has not been issued, pending City approval of the site plan and the developer providing financial assurances (i.e. posting a bond for the work).

**Question:** Within the development agreement form, it is possible to require a maximum number of residential units be constructed each year for a set number of years? For instance, the conditional zoning [conditions] establish that the developer will be permitted to receive a very limited number of certificate of occupancy permits for residential units prior to the completion of the intersection improvements. Would it be possible to establish a ceiling for new certificates of occupancy, limiting that to 100 units per year? Residents are concerned that, although the developer described the

mechanism for pre-selling units and building only those units that are sold, too many units would come on line at once, and negatively impact the already existing traffic issues. (Councilmember Briere)

**Response:** It is possible to include such a provision in the development agreement, however, the developer must also agree to such a provision. The current limited number of certificates of occupancy to be issued set forth in the Development Agreement and the Traffic Mitigation Agreement for each development are intended to ensure that the intersection is improved before the vast majority of the Nixon Farm North and Nixon Farm South dwelling units are occupied. Once the intersection is improved, it will have full and immediate capacity for all existing and proposed traffic volumes.

**Question:** What effect on water pressure is anticipated for the surrounding area upon project buildout? Have there been complaints of low water pressure in the area recently, and if so, what were the results of those investigations? Have unexpected drops in pressure been seen in similar situations and what was the remedy? What happens if water pressure becomes unacceptable for the surrounding area following construction? (Councilmember Westphal)

**Response:** Water pressure in this area is regulated by the height of the water tower on Plymouth Road and will not be effected with the proposed development project. The proposed developments will not stress the system as they are proposing to connect to large transmission mains (pipes) which are located in Dhu Varren and Nixon Road.

In 2001, the water tower on Plymouth Road was raised to improve the water pressures in the northeast part of the City. Based on the pressure records the City has on file, the raising of the tank increased the water pressure approximately 25 psi in this area. Recent pressure tests performed on fire hydrants within Barclay Park and Arbor Hills indicate pressures ranging from 55-60 psi, which is within the targeted operating range for the water system of 40-100 psi.

**Question:** Is the city contractually obligated to build the roundabout/intersection if the development moves forward? How many units may be occupied before the roundabout is complete? What is the current peak wait time at the intersection now vs. at the proposed roundabout with Nixon North and South completed? (Councilmember Westphal)

**Response:** The City has agreed to construct the intersection by April 1, 2018. This term is in the Traffic Mitigation Agreement for each development.

As to the peak wait time, or Peak Hour Delay, which is an average of all vehicles on that particular approach, the following is from the Nixon/Dhu Varren/Green Road Intersection Study performed for the City by Opus, which included the traffic from the Nixon Farms developments:

Condition	Approach	AM Peak	PM Peak
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		<b>Delay (seconds)</b>	<b>Delay (seconds)</b>
Existing Condition			
	Eastbound (Dhu Varren)	61.3	7.7
	Westbound (Green Road)	32.2	23.7
	Northbound (Nixon Road)	41.2	161.0
	Southbound (Nixon Road)	193.2	12.7
	<b>Overall</b>	<b>98.3</b>	<b>74.7</b>
Roundabout (in 2035)			
	Eastbound (Dhu Varren)	15.5	6.3
	Westbound (Green Road)	7.7	34.1
	Northbound (Nixon Road)	12.1	25.9
	Southbound (Nixon Road)	24.3	10.0
	<b>Overall</b>	<b>17.0</b>	<b>22.1</b>

**Question:** How are we assured that the privately-managed stormwater systems will be maintained in the long term? Is there an inspection schedule and remedy for non-compliance? (Councilmember Westphal)

**Response:** Per Chapter 63, Section 5:655(1) this development is required to follow the Rules of the Washtenaw County Water Resources Commissioner (WCWRC) for stormwater management. The Rules of the WCWRC require a stormwater facility maintenance plan to be included on the site plan. There is a “Maintenance Task and Schedule” on page 29 of the proposed site plan. The maintenance plan includes a note that the Condominium Association will assess its members to pay for all maintenance activity on an annual basis. The development will also be set up as a County Drainage District so that the County WCWRC will be the back up to the Condominium Association for stormwater maintenance.

**Question:** There are some doubts about the traffic generation numbers. Have these numbers been verified by a third party or checked by staff? Can you please give some rationale for why the peak traffic numbers do not match expectations for a typical home? (Councilmember Westphal)

**Response:** The traffic impact analysis for Nixon Farms North & South was reviewed by City Traffic Engineers. The trip generation for the traffic impact study was completed in compliance with the Institute of Transportation Engineer’s (ITE’s) Trip Generation methodology. No trip reductions were made for non-motorized or mass transit mode shares. The trip generation can be considered conservative for the land use. The land use selected for this project from the ITE Trip Generation Manual was LUC 233: Luxury Condominium/Townhouse. This land use selection is reasonable due to the amenities, such as attached garages, that the townhouses will have. It is assumed that the term “typical home” in the question is referring to a single-family, detached housing unit. Single-family detached units are known to produce more trips per day, on average, than

apartments units, condominiums, and townhouses as documented in the ITE Trip Generation Manual.

**Question:** Can you please clarify the anticipated difference in intersection delay at peak times currently vs. with the roundabout at full project build out? (Councilmember Westphal)

**Response:** From the table provided in the response above, northbound motorists in the PM peak (rush) hour currently experience an average delay of nearly 3 minutes (161.0 sec., calculated) during the peak 60 minute time period (peak hour).

Under the full build-out scenario for year 2035, motorists traveling northbound through the roundabout intersection will experience less than one-half of a minute (25.9 sec.) of delay on average during the peak hour.

**Question:** With the current roundabout budget, will there be a possibility of installing pedestrian warning lights in the roundabout so that children and others get that assistance when heading to school? (Councilmember Westphal)

**Response:** The current budget does not anticipate installing pedestrian signals or Rectangular Rapid Flashing Beacons (RRFBs). City traffic engineers do not believe the RRFBs will be warranted at this location based on casual observation of motorists yielding to pedestrians at the nearby single lane roundabout intersection between Nixon Road and Huron Parkway. Staff intends to further review yielding patterns at the existing roundabout and the need for any enhanced pedestrian treatments on the corridor through the corridor transportation study.

**Question:** Have any conversations happened with the elementary school so that a collaborative walking path connection can happen? (Councilmember Westphal)

**Response:** As with all proposed developments, Ann Arbor Public Schools administration was informed that site plans were submitted and those plans were made available for AAPS review. No comments were returned.

**Question:** Please outline when engineering drawings will be completed, and what data they will use to determine the flow of water through the site. If some shifting of infrastructure is needed to comply with water issues, does this invalidate the conditional zoning? (Councilmember Westphal)

**Response:** Engineering drawings for the site will be prepared and submitted by the developer, staff cannot comment on their timeline. The stormwater management system has been designed to the Water Resources Commissioner's rules. All testing and data necessary to design the system has already been completed. Relocation of infrastructure can be approved as part of the engineering drawings if the relocated mains do not impact any other aspect of the site plan, such as required landscape plantings. If a relocation does impact an aspect of the site plan, revisions to the plan will be handled as set forth in Chapter 57 (Subdivision and Land Use Control). The

conditional zoning will only be invalidated if the four conditions outlined in the Conditional Zoning Statement of Conditions is not satisfied.

**Question:** Is there any scenario where the Nixon Corridor Study will recommend a road widening that cannot be accommodated by the site plan as proposed? (Councilmember Westphal)

**Response:** Between the easements being granted by the developer and the existing right-of-way along Nixon Road, there is enough room to implement any reasonable measures that staff would anticipate coming out of the Nixon Road Corridor Study.

**Question:** Unanticipated wet weather problems are occurring in neighboring subdivisions. What mechanisms are in place to assure current neighbors and future residents that storm water facilities will be able to handle the increasingly wet weather? Have standards for water conveyance changed in the past several years? Neighbors have asked about the capacity of an under-road culvert in the northern section of the North site plan. (Councilmember Westphal)

**Response:** The proposed stormwater management facilities are designed in accordance with the updated Washtenaw County Water Resource Commissioner (WCWRC) stormwater standards. The WCWRC standards were recently revised to adopt the newer rainfall volume standards from NOAA Rainfall Atlas 14. The proposed culvert was designed by the developer's engineer and is reviewed/permitted by the MDEQ through an Inland Lakes and Streams permit application. This submittal was included in the draft wetland permit mentioned in a previous caucus question response above.

**Question:** Some have questioned the use of easements rather than land donation for parts of the anticipated roundabout. Is the city still liable for road maintenance, the quality of roundabout construction, and any legal issues that may arise from what is placed in the easement area? (Councilmember Westphal)

**Response:** The City will be granted an easement that gives the City all necessary rights to build, operate and maintain the intersection. The granting of a roadway easement is the typical legal instrument utilized by the City for this type of improvement.

**Question:** Has a watershed study ever been completed for this region? If not, is one anticipated? If so, do the site plans comport with its advice? (Councilmember Westphal)

**Response:** A traditional watershed study has not been performed for Traver Creek, which is the watershed that includes the Nixon Farms sites. However, as part of the City's recent Stormwater Model Calibration and Analysis project, a citywide hydraulic model was developed and analysis of the city's stormwater system was performed. The only recommendation from this study within the Traver Creek watershed was for conveyance improvements located near the intersection of Traver Road and Barton Drive.

**Question:** During construction, does the petitioner have a track record of handling neighborhood complaints adequately for their other projects? Or, if the project is constructed, will neighbors need to seek remedies from the city if there are complaints? (Councilmember Westphal)

**Response:** Complaints related to noise and construction hours are handled by the Police Department. Complaints related to grading, soil erosion control, and drainage are handled by the Land Development Coordinator. Other types of complaints are handled according to the specific type of complaint and the what chapter of code is involved. Toll Brothers has never developed a site in the City. Staff will ask the developer to be ready to address their own procedures for complaints.

**Question:** The draft DEQ wetland permit application on eTrakit is dated June 2015 and is 64 pages – is this the correct/most up-to-date permit? (Councilmember Lumm)

**Response:** Yes. The MDEQ has reviewed and approved the developer's wetland permit but it will not be issued until the site plan is approved by the City and the developer provides the required financial assurances (i.e. posts a bond).

**Question:** Has a final wetland permit been issued by MDEQ? Residents have asked if the DEQ scheduled/conducted a public hearing and if notifications were provided the City of the wetland permit public hearing. With regard to the DEQ permit, what assurance measures or planning requirements were established with regard to the road and structure over the tributary (Nixon Farm North site plan) to ensure that there are not negative impacts on water flow and the function of the wetlands? (Councilmember Lumm)

**Response:** MDEQ has reviewed and approved the draft wetland permit but it has not been issued, pending City approval of the site plan and the developer providing financial assurances (i.e. posting a bond for the work). The MDEQ issued a public notice regarding the wetland and inland lakes & streams permit application on March 31, 2015. As the sites had not yet been annexed into the City, the notice was sent to the Ann Arbor Township Clerk and not to the City of Ann Arbor. Since the MDEQ did not receive any substantive technical comments regarding the permit application, the MDEQ did not schedule or hold a public hearing regarding this permit. The 13'x 4' box culvert under the private road in Nixon Farms for the creek crossing was designed by the developer's engineer, which is required to be reviewed by the MDEQ. As part of this design process, the developer's engineer estimates the amount of flow in the creek and submits that for review by the MDEQ as part of their Inland Lakes and Streams permit application. This culvert has already been reviewed by the MDEQ and is specifically called out in the MDEQ Draft Permit #14-81-0040-P mentioned in other caucus questions.

**Question:** Many concerns have been raised about the Nixon Road frontage and the adequacy of the site plan to accommodate sufficient Nixon Rd. ROW to implement Nixon Rd. corridor study recommendations and the possibility of widening Nixon Road.

The site plan does show the 60' ROW line, but it is difficult to assess how this will impact both the Nixon Farm South landscape and sidewalk proposed along Nixon Road – it's just a line on a site plan drawing. This is a significant aesthetic concern, and it would be helpful if a streetscape view of the Nixon Farm South Nixon Road frontage with the 60 foot ROW incorporated as a built out road could be provided. Does one exist, and is it possible to provide? (Councilmember Lumm)

**Response:** The described streetscape view drawing does not exist.

### **B-1 & B-2 and DB-1 & DB-2**

**Question:** What guarantees, if any, are there that the City will improve the intersection by January, 2018? (Councilmember Briere)

**Response:** The Project Management Services Unit has issued an RFP for design services for this project. Should the Nixon Farms site plans be approved, the schedule provides for design work to occur in 2016, with construction beginning in the spring of 2017, which will allow for ample time to complete the project before the end of the 2017 construction season.

**Question:** What is the timeline anticipated for the property to be transferred to the developer? The developer states that they must close on the property by April. If this project were approved at the November 16 meeting, what would be the next steps that the developer and the City would take prior to property closing? (Councilmember Briere)

1. Would a complete set of engineering drawings need to be completed and approved? If so, how long ought that process take?
2. Would any permits need to be applied for an issued prior to closing? If so, how long ought that process to take?
3. If any of these or other requirements not be completed prior to closing, what impact would that have?
4. If any of these or other requirements could be expedited by the City in order for the developer to meet the requirements prior to closing, would the City have the capacity to expedite? And by how much?

**Response:** These questions should be directed to the developer as the City will not be actively involved in the closing for the property. We cannot comment regarding expediting closing requirements, as we are not aware of the specific need.

**Question:** Residents have questioned whether there would be an opportunity to amend the site plan by reducing the number of units and relocating units. Residents have asked for a further opportunity to work with the developer toward this end. Is it within the council's purview to postpone these items without the request originating from the developer? Are there any limits to such postponements, and may the Council place restrictions on the postponement? (Councilmember Briere)



**Response:** Answer to be provided by the City Attorney's Office.