

MEMORANDUM



TO: MAYOR AND COUNCIL MEMBERS
FROM: VICTOR CARDENAS, CITY MANAGER
SUBJECT: SAKURA WAY – ABATEMENT EXTENSION
DATE: JULY 27, 2023

Attached are timelines and issues that the developers of Sakura have provided to the City as they continue to prepare the land for construction. They have been struggling with peat* in the soil, eventually filling the pond. The issues they have encountered have drastically set their timeline back. **They now request that the City Council consider adding two years to their Commercial Rehabilitation District (abatement via PA 210) to the maximum of 10 years.**

An issue that Tom has noted deals with the city's agreement with Sakura for the abatement that specifically says, "*There is no contemplation by the Parties that the eight (8) year period will be extended.*" That specific language relates to the language in the law that :

(3) If the number of years determined by the legislative body of the qualified local governmental unit for the period a certificate remains in force is less than 10 years, the review of the certificate for the purpose of determining an extension shall be based upon factors, criteria, and objectives that shall be placed in writing, determined and approved at the time the certificate is approved by resolution of the legislative body of the qualified local governmental unit and sent, by certified mail, to the applicant, the assessor of the local tax collecting unit in which the qualified facility is located, and the commission.

So the agreement didn't include the sorts of factors or criteria for an extension that the statute says it should include. It is probably still possible that there is an avenue to accomplish that; however, if the Council determines (with appropriate findings) that it wants to do so.

I foresee Sakura coming before City Council in August to make this request.

**Peat is the surface organic layer of a soil that consists of partially decomposed organic matter, derived mostly from plant material, which has accumulated under conditions of waterlogging, oxygen deficiency, high acidity and nutrient deficiency.*

Sakura Novi Approval Timeline

2020

4/1/20 - Submittal to EGLE for wetland permit

10/5/20 – Draft EGLE wetland permit received

2021

6/20/21 – **City of Novi** approval of Establishment of CRD District

7/6/21 – Application for CRD Certificate to **City of Novi**

7/26/21 – **City of Novi** Approval of CRD Certificate

7/26/21 – **City of Novi** Approval of Revised Brownfield Plan

8/20/21 – Purchase of Property from **City of Novi**/ECCO Tool

9/21/21 – Submission of CRD Certificate to State

11/9/21 – Completion of Act 381 Work Plan

12/14/21 – State approval of CRD Certificate

12/15/21 – Oakland County Approval of Brownfield Reimbursement Agreement

2022

3/7/22 – Preliminary Site Plan submitted

3/25/22 – Comments received on PSP

5/25/22 – revised PSP submitted

6/16/22 – Comments received on rPSP

7/13/22 – Public hearing on PSP, Planning Commission recommends approval

8/8/22 – City Council approves PSP, and 1st Addendum to PRO Agreement

8/31/22 – Final Revised Act 381 Work Plan (Modified due to multiple meetings w/ EGLE)

9/6/22 – Submission of Final Revised Act 381 Work Plan to EGLE

9/13/22 - Date of submission of LIP application

9/22/22 – EGLE wetland permit credits purchased (fewer credits purchased than specified in the PRO Agreement)

9/22/22 – EGLE Approval of Act 381 Work Plan
9/28/22 - Permit applied for LIP Soil Erosion
10/5/22 – Commencement of Demolition
10/19/22 - Date of 1st submission of final site/engineering plans
10/21/22 - Final EGLE wetland permit received
10/24/22 - Date of receipt of comments on LIP application (Engineering and Wetland denied due to missing information)
10/27/22 - LIP resubmission resubmitted (applicant did not provide the necessary information to address wetland comments from previous review)
11/14/22 – 2nd Addendum to PRO Agreement to City Council to allow applicant to buy fewer wetland credits than specified in the PRO Agreement
11/20/22 – Completion of Demolition
11/29/22 - SESC Approval (City of Novi)
11/30/22 - LIP comments received from City Staff
12/19/22- LIP resubmitted (Electronic plans – grading plans do not match SESC plans submitted) 12/21/22 - Date of receipt of 1st final site/engineering plan submission comments from City Staff

2023

1/31/23 - Oakland County Road Commission
1/11/23 – LIP comments received from City Staff
1/17/23 – LIP Stamping Sets submitted
1/26/23 – Commencement of Environmental Remediation
2/14/23 - Permit received for LIP Soil Erosion (Permit for remainder of site work - received comments on 6/26/23 and will be issued as part of full pre-con with payment of fees)
2/14/23 – NPDES Permit applied for LIP
2/7/23 – LIP approved by the City
2/15/23 – Special LIP pre-con held
2/23/23 - Final site/engineering plan resubmitted (Applicant did not include a response letter until 3/20/23, so the plans were not processed until that was received)
2/23/23 – NPDES Permit received for LIP (Permit for remainder of work to be issued prior to full pre-con)
2/26/23 – Completion of Environmental Remediation

2/27/23 – Issuance of Excavation Summary Report from ERG for remediation activities
3/1/23 - Submitted EGLE water main
3/1/23 – Submitted EGLE sanitary sewer
3/25/23 – Commencement of Clearing Site
4/12/23 - Final site/engineering plan comments sent by City staff
5/5/23 - Final site/engineering plan resubmitted (Applicant did not include an application – received 5/9)
5/10/23 – Completion of Clearing Site
5/15/23 – Oakland County Road Commission approved
6/2/23 - Final site/engineering plan comments received
6/8/23 – Commencement of Mass Grading Site
6/20/23 - Final site/engineering plan Electronic Stamping Set resubmitted (No architectural sheets included – received 6/27)
6/26/23 – EGLE sanitary sewer approved
7/17/23 - Final site/engineering plan comments received (Revisions required by Traffic, Landscape, Fire)
7/20/23 - EGLE water main approved

Sakura Novi



Darian Neubecker <dneubecker@robertsonhomes.com>

To Cardenas, Victor; McCready, Mike

Cc Tim Loughrin; Jim Clarke; Scott Aikens - Robert B. Aikens & Associates, LLC (gscott@rbaikens.com); Phil Kim [kisrg.com]

You replied to this message on 7/24/2023 11:33 AM.



Sakura Final Approvals Timeline.docx
17 KB



Sun 7/23/2023 8:18 AM

Victor attached is a timeline of activities essentially from our closing in August of 2021 until today. This is just a list of milestones as this project has a lot going on as we all know. There were more meetings that I could count with various stakeholders that occurred in the background and not listed here. Robertson has been hosting weekly development meetings for nearly two years now to keep this site on track best we can. In general:

- 1) Spent late fall/winter 2021 working through local/county reviews of brownfield/CRD
- 2) Once brownfield/CRD local/state approvals were in place we then went to state for approvals of CRD/Brownfield in Nov/Dec 2021
- 3) Received our CRD approval late in 2021 and then had numerous meetings with EGLE on brownfield starting in early 2022 and through mid 2022
- 4) Finally got thumbs up from State in August 2022 on Act 381 plan (state version of brownfield plan) and received formal approval in September 2022
- 5) Received our final EGLE approvals for Wetland Mitigation in September 2022 and purchased wetland credits
- 6) Commenced demolition in October 2022 and completed in November 2022
- 7) Commenced environmental remediation in late January 2023 and completed in late February 2023
- 8) Applied for LIP (land improvement permit) permit in late September 2022. Received three rounds of comments from Novi and resubmitted three times and approved in late February 2023
- 9) Applied for final site plan/engineering in late December 2022. Received three rounds of comments from Novi and resubmitted three times and should have our approvals this week
- 10) Commenced Clearing the site in late March 2023 and completed in early May 2023
- 11) Commenced Mass Grading the site in early June 2023 and are about 2 weeks away from completion and then will commence underground utilities with plans to be paving in late September/early October

The mixed-use nature of the site in combination with wetland mitigation/brownfield/CRD/demolition/environmental remediation makes this not a typical 9 to 12 months from land closing to paving development. We have tried to move quickly through the process but this site is complex and has many challenges. When we put this project together what made this viable was some lift from the CRD and we wanted 10 years but understood the concern the City had so we settled on 8 years and we thought that was a fair compromise from all parties. We would just ask in light of that and the scale of the peat mess we are dealing with now which will likely be in range of 700,000 to 1,000,000 when all said and done that we can get an actual 8 years of benefit from CRD.

I did speak with Eric Helzer (Advanced Redevelopment Solutions) and there is a straightforward process to address this situation if there is support. We would just ask for some help here if possible. Victor if you could call me to discuss next week that would be great. Thanks again Victor.

Darian



Darian L. Neubecker | Chief Operating Officer

Robertson Brothers Homes | [6905 Telegraph Road, Suite 200 | Bloomfield Hills, MI 48301](https://www.robertsonhomes.com)

Direct: 248.282.1430 | Cell: 989.400.0515 | Fax: 248.282.1431 | www.robertsonhomes.com

**AGREEMENT CONCERNING
ACT 210 COMMERCIAL REHABILITATION ABATEMENT
(SAKURA NOVI)**

The City of Novi ("City"), located at 45175 W. Ten Mile Road, Novi, MI 48375, and Sakura Novi Land Development, LLC, a Michigan Limited Liability Company ("Company"), located at 350 North Old Woodward Ave. Ste 300, Birmingham, MI 48009 ("the Parties"), agree as follows:

Recitals

- A. After due notice and deliberation, and taking into consideration the statements received by the City Council at a hearing held on June 21, 2021, the City Council adopted a Resolution creating a Commercial Rehabilitation District (the "District") pursuant to Act 210 of the Public Acts of 2005, as amended (the "Act 210"), for the property described on the Legal Description attached and made a part of this Agreement (the "Property"), located approximately at 42750 Grand River Avenue, Novi, Michigan.
- B. The Company submitted an application ("Application") for issuance of a Commercial Rehabilitation Exemption Certificate ("Certificate") for the Property, as provided for in Act 210. The Application was formally received by the City on June ___, 2021. The Application is incorporated as part of this Agreement by reference.
- C. The Company represented in its application that it will construct a mixed-use commercial and multiple-family residential development as approved by the City, and only as approved by the City, on the Property (the "Building Investment") and that (1) the Property is Commercial Property as defined in Act 210, and (2) the mixed-use commercial and multi-family residential development is a Qualified Facility as defined in Act 210.
- D. The City and the Company desire to enter into this Agreement for the purpose of setting forth the terms and conditions under which the Certificate shall be approved and issued by the State Tax Commission for the Property proposed to be exempt from *ad valorem* real property taxes.

NOW THEREFORE, in consideration of the foregoing, the Parties now enter into this Agreement.

Terms and Conditions

1. Subject to and in accordance with the Recitals set forth above, on July 26, 2021 the City Council adopted a Resolution approving the Company's Application for an abatement of real property taxes related to the Building Investment under Act 210 (the "Resolution") for a period not to exceed eight (8) years, subject to the Recitations in the approval Resolution and the provisions of this Agreement. A copy of the Resolution is attached and is incorporated into this Agreement. At the end of the eight (8) year abatement period the Property shall be subject to full *ad valorem* taxation. There is no contemplation by the Parties that the eight (8) year period will be extended.
2. In consideration of an eight (8) year abatement of real property taxes, for the 2022 through 2029 tax years (imposed based upon taxable values as of December 31, 2021 through December 31, 2028) (the "Abatement Period"), the Company represents and warrants that it will build and maintain the Building Investment for the entire Abatement Period, subject to the assignment provisions below. The Company further agrees as follows with respect to the Building Investment:
 - a. That the Building Investment shall be in accordance with and at all times in material compliance with the Planned Rezoning Overlay (PRO) Plan and Agreement conditionally approved by the City Council on May 24, 2021, subject to any amendments approved by the City Council, and with all other applicable City ordinance requirements.
 - b. That the cost of the construction of the Building Investment is estimated to be in the range of \$40,000,000 to \$50,000,000, and that the design elevations, materials, and quality of tenant/occupant will be and remain of such quality or greater and as proposed and depicted in the Company's application materials and more particularly the approved PRO Plan and PRO Agreement approved by the City; provided, however, that while such amount is the estimated minimum amount of investment in the mixed-use commercial and multi-family residential development, the Parties acknowledge that it will not be determinative of value for purposes of the commercial rehabilitation tax, which shall be established by applicable valuation methods as provided by law and subject to challenge by the Company in accordance with the law.
 - c. That property taxes for the Building Investment will be timely paid and that there will be no outstanding fines or liens by the Company with regard to the property at issue during the Abatement Period (subject to a reasonable notice and cure period).

- d. That the Building Investment and/or Property will bear its appropriate share, if any, for any existing or future payback or special assessments, as determined by the City.
- e. That the use of the Building Investment will not change during the Abatement Period.

Collectively, these representations (a) – (d) shall be referred to as the “Undertakings.”

- 3. At the end of each calendar year from December 31, 2022 through December 31, 2029, the City shall evaluate the Building Investment to determine whether the Company has materially defaulted on any obligations under Act 210 or under this Agreement, including any of the Undertakings set forth in Paragraph 2 above. The City Council retains all rights to revoke the Certificate by resolution as set forth in Section 12 of Act 210, if it finds that:
 - a. The Company continues to be in default, after a reasonable notice and cure period, of any provisions of this Agreement, including of the Undertakings set forth in Paragraph 2; or
 - b. The Company has not fully and completely complied with PRO Plan and/or PRO Agreement, including, but not limited to, the time periods therein relating to commencement and completion of the work and improvements described therein, and has failed to cure such default after reasonable notice and opportunity to cure.

If any such default is found by the City to exist, other than due to the enactment of laws, regulations, or ordinances by the City that materially impair the Company's ability to operate at the Property, then upon written demand the Company shall pay the City a sum equal to the amount of real property taxes abated for the entire period that the Certificate was in effect (i.e., from the effective date of the Certificate) and the City shall revoke the Certificate. Following receipt of such a written demand from the City, the Company may petition (“Petition”) the City Council to conduct a public hearing to determine if the Company should be excused from all or any default for such reasons as may be presented by the Company to the City and if revocation should not occur. The City Council shall conduct a public hearing within sixty (60) days from the date that the Petition is filed with the City Clerk. The Company's obligation to make any required payment shall be suspended until the City Council has conducted such public hearing regarding the Petition and decided whether to waive some or all of Company's default or the resulting payment obligation.

4. Any all modifications or amendments to this Agreement must be made in writing and approved by the City Council and the Company.
5. The covenants and provisions set forth herein shall bind the successors and assigns of the parties. This Agreement is assignable and transferable by either party, provided that such assignment and transfer by the Company shall be subject to the approval of the City, which shall not be unreasonably withheld. Assignment in whole or in part, to Sakura Novi LLC and/or Sakura Novi Residential LLC (the "Permitted Assignees") shall be considered to be approved by the City, without further action by either party.
6. The Agreement will be interpreted, construed, and enforced in all respects in accordance with the laws of the state of Michigan.
7. The Agreement constitutes the entire understanding of the Parties regarding the abatement of real property taxes in the District and supersedes any other prior writings, agreements, contracts, or understandings between the City and the Company regarding the abatement of real property taxes in the District.
8. The Parties acknowledge that each of them has consulted with attorneys and counselors regarding this Agreement and that the City and the Company have equally participated in the drafting of this Agreement. The Company acknowledge that the terms, conditions, requirements, and obligations of the Certificate and this Agreement are lawful and are reasonable in consideration for the benefits the Company has determined that it will achieve by issuance of the Certificate, and the Company agrees that it shall not be permitted to claim that the City is not authorized by law and/or equity to enforce any provision of this Agreement.
9. The Parties each represent that the undersigned individuals are authorized to execute this Agreement on behalf of the City and the Company.
10. In the event that any portion or provision of this Agreement is deemed to be unlawful or unenforceable, the unlawful or unenforceable provision shall be stricken and the remaining portions and provisions shall be fully enforced.
11. This Agreement shall become effective upon issuance by the Michigan State Tax Commission of a Certificate to the Company with respect to the Property and shall be null and void and of no force and effect whatsoever if no Certificate is issued by the Michigan State Tax Commission. A duly executed copy of this Agreement shall be filed with the Michigan Department of Treasurer. If not otherwise terminated, this Agreement shall expire on January 1, 2030.

12. The Company affirmatively states that it would not proceed with the construction of the Building Investment if this abatement were not granted. The Parties have executed this Agreement as of the date of the last signature below (the "Effective Date").

IN WITNESS WHEREOF, the parties hereto have executed this Agreement Regarding Act 210 Commercial Rehabilitation Abatement.

SAKURA NOVI LAND DEVELOPMENT, LLC,
a Michigan limited liability company

By: _____
Geoffrey Scott Aikens, Trustee of
the Geoffrey Scott Aikens Trust
u/a/d December 10, 2011

CITY OF NOVI, MICHIGAN,
a Michigan municipal corporation

By: _____
Robert J. Gatt, Mayor

By: _____
Courtney Hanson, City Clerk