CITY COUNCIL ACTION REPORT

November 3, 2006

TO: Phillip L. Nelson, City Manager

FROM: Brian P. Murphy, Assistant City Manager/Economic Development Services
Mark F. Miller, Planning Director

SUBJECT: Public Hearing – Street Vacation (File Number: SV 148-C) – Portions of Daley Street abutting Lots 28 and 33 of Supervisors Plat No. 11 Subdivision, South of Big Beaver, North of I-75, Section 26

Background:

- A public hearing is scheduled for the November 13, 2006 City Council meeting.
- The Daley Street public street easement is 50 feet wide. The portion proposed to be vacated is approximately 135 feet in length.
- The Planning Commission held a public hearing on this item on October 10, 2006, and recommended approval of the proposed street vacation.

Financial Considerations:

- There are no financial considerations associated with this item.

Legal Considerations:

- City Council has the authority to approve the street vacation request.

Policy Considerations:

- The street vacation would not eliminate public street frontage for any buildings along Daley; however, it appears that large trucks will be unable to back up onto the property unless they utilize a portion of the vacated street.

- The item is consistent with City Council Goal II (Retain and attract investment while encouraging redevelopment) and Goal VI (Protect life and property).

Options:

- City Council may approve or deny the street vacation request.
- City Management and the Planning Commission recommend approval of the proposed street vacation, with the following conditions:

    1. Retention of all public and private utility easements.
    2. Retention of a public turnaround easement.
    3. Roadway will be kept clear of parked vehicles at all times.

Approved as to form and legality: _____

Lori Grigg Bluhm, City Attorney

Attachments:

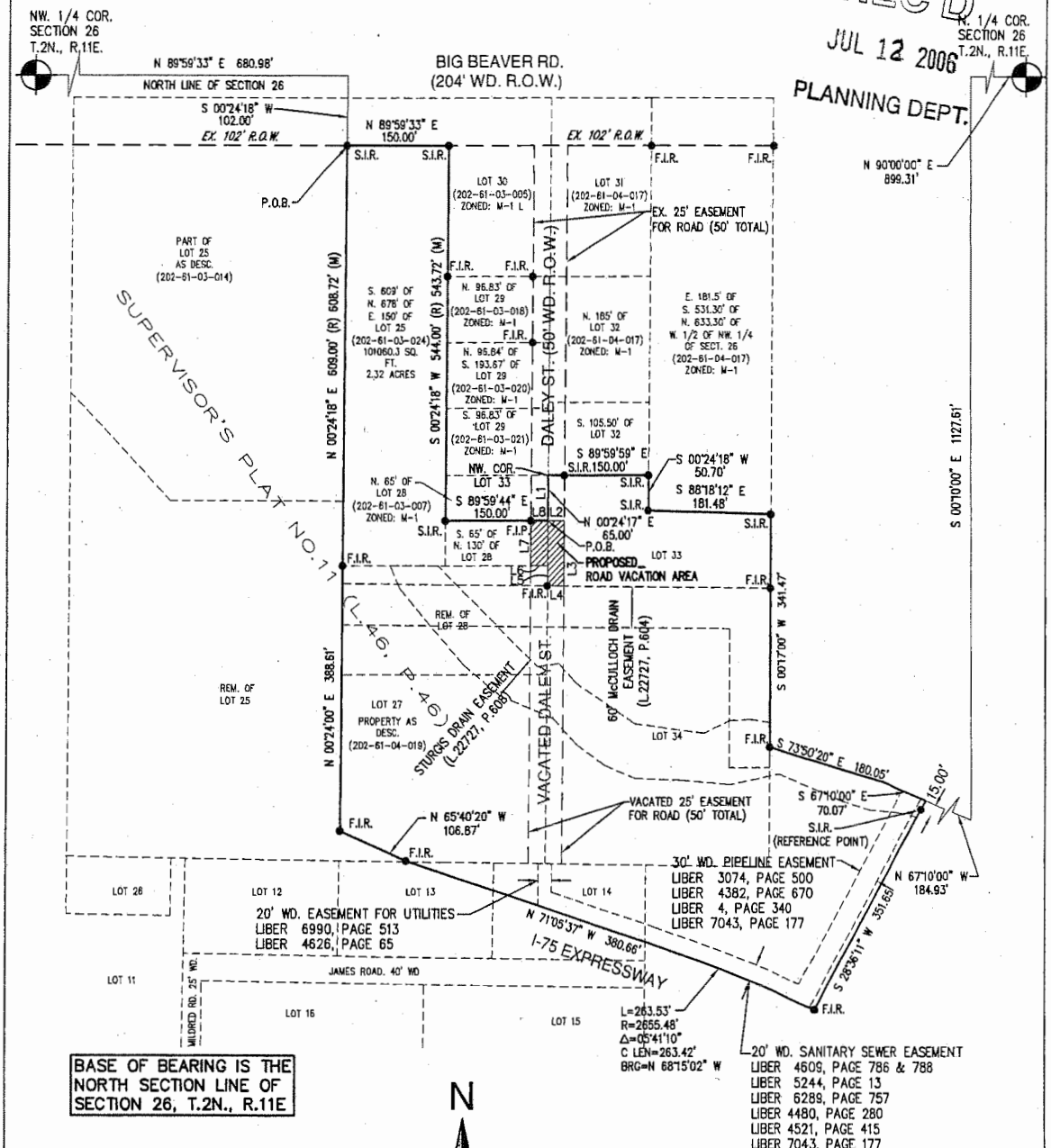
1. Maps

Prepared by RBS/MFM

G:\STREET VACATION\SV 148-C Daley Street Sec 26\CC Public Hearing 11 13 06.doc

ROAD VACATION

REC'D
JUL 12 2006
PLANNING DEPT.



LINE	BEARING	DISTANCE
L1	S 00°24'17" W	65.00'
L2	S 89°59'44" E	25.00'
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ISSUED FOR:	REV'D BY:	ISSUED FOR:	REV'D BY:
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STATE OF MICHIGAN
THOMAS M. SMITH
LAND SURVEYOR
NO. 31606
LICENSED LAND SURVEYOR

SURVEYOR'S SEAL

MICKALICH and ASSOCIATES, INC.
CIVIL ENGINEERING SURVEYING PLANNING
2359 AVON INDUSTRIAL DR, ROCHESTER HILLS, MI. 48309
INTERNET:WWW.MICKALICH.COM PHONE: (248) 852-1900 FAX: (248) 852-1070

DRAWN BY MLB JOB No. 06023

DATE 5-17-06 SHEET No. 1 of 2 SCALE 1"=200'

DESCRIPTION
BEHR BUILDING & PARKING
ROAD VACATION

LEGAL DESCRIPTION

LEGAL DESCRIPTION:

Part of Lots 25, 28 and all of Lot 33, Supervisor's Plat No. 11, A subdivision of Part of the Southwest 1/4 of the Southwest 1/4 of Section 23 and Part of the Northwest 1/4 of the Northwest 1/4 of Section 26, T.2N., R.11E., City of Troy, Oakland County Michigan, as recorded in (L.46, P.46). Also part of Lot 12, 13 and 14 and part of vacated Jasper Avenue of "Supervisor's Plat No. 10" a subdivision of part of the Northeast 1/4 of Section 27 and part of Northwest 1/4 of Section 26, T.2 N., R.11 E., City of Troy, Oakland County, Michigan (L.46, P.42) also part of the Northwest 1/4 of Section 26 also the east 150.00 feet of Lot 25 except the North 678.00 feet and except that part of 1–75 Highway, also Lot 27 and 28 except the North 130.00 feet and Lot 34 of "Supervisor's Plat No. 11" a subdivision of part of Southwest 1/4 of Southwest 1/4 of Section 23 and part of Northwest 1/4 of Northwest 1/4 of Section 26, T.2 N., R.11 E., City of Troy, Oakland County, Michigan (L.46, P.46), more particularly described as:

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Parcel Contains: 511,561.37 sq. ft., 11.7 acres.

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STATE OF MICHIGAN
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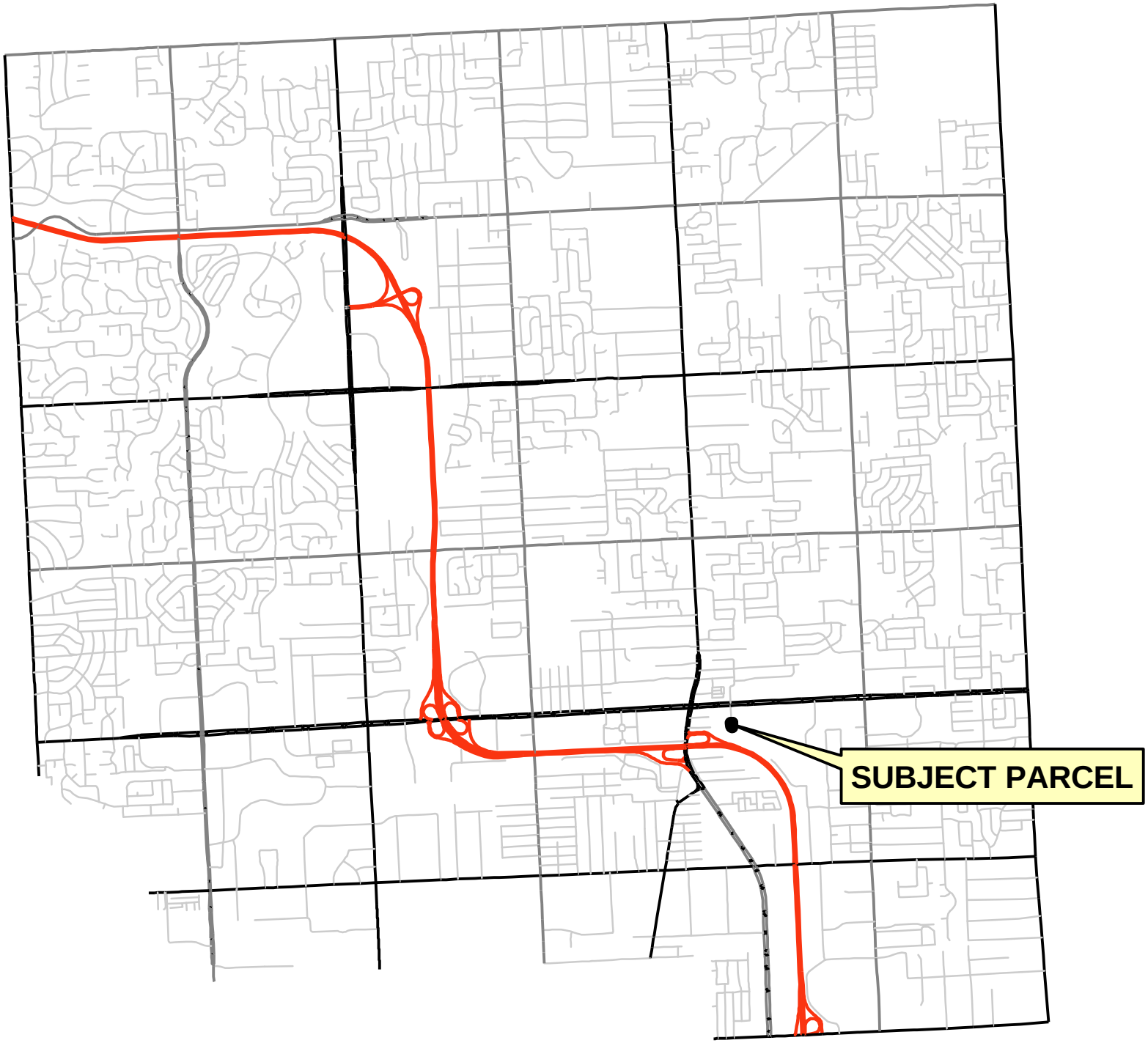

PREPARED BY CITY OF TROY PLANNING DEPT.

STREET VACATION REQUEST
DALEY STREET
S OF BIG BEAVER, E OF ROCHESTER RD.
ZONED M-1 SEC. 26 (SV-148 C)
2877
1178
2868
2873
DALEY
2850
2835
PROPOSED VACATION AREA
2852
Feet
0
25
50
100

3

Robert W. Easterly
Attorney and Counselor
189 EAST BIG BEAVER, SUITE 104
TROY, MICHIGAN 48083-1201
(248) 528-2770 Fax:(248) 528-6644
RWElaw@aol.com

REC'D
JUL 06 2006
PLANNING DEPT.

July 6, 2006

Troy Planning Commission
City of Troy
500 W. Big Beaver
Troy, Michigan 48084

Re: Our Client: Protofab Corp.
2835 Daley Street
Troy, Mich. 48083

OBJECTIONS TO PROPOSED VACATING OF DALEY STREET ON BEHALF OF BEHR AMERICA and 7-11-06 PUBLIC HEARING

Dear Planning Commission:

This office represents Protofab Corp., a longstanding "resident", taxpayer and member of the business community in Troy for more than 40 years now. On or about June 20, 2006, our Client received it's first Notice of the proposed vacating of portions of Daley Street directly in front and to the south of it's business location and facilities. Notice is hereby given that my Client will strenuously object to any such action by the City. These objections include, but are not limited to the following:

1. **Delivery of Steel – 50 ft Semi-Trailer needs turning radius**. The proposed closing of the Street is directly in front of my Client's facility, and would effectively render the building and facility unusable for its present purposes. On a regular basis, Protofab needs large deliveries of metal and other raw materials, which can only be delivered in large 50 foot semi-trailers. Currently, these trucks need every inch of the existing road in order to maneuver into the Protofab driveway. If any portion of the roadway is taken or "vacated", the deliveries of necessary raw materials would be impossible.

2. **Recent Impingements of Rights**. The entire situation referred to in paragraph 1 is exasperated by the fact that Behr America recently purchased (or is leasing) the land directly to the south of my Client's building where the Protofab employees have parked their vehicles for the last 40 years. Behr America is now insisting on allowing it's employees to park there, so what precious little room remains to the front and north side of my Client's building needs to be fully protected and accessible.

3. **Interference with Fire Hydrants**. Currently, the closest fire hydrant to the Protofab building is directly across the street, on the other side of Daley. If the Behr America proposal were granted, this hydrant would then be on the private property of Behr, who wishes to use most of this area for the private parking of it's employees. This and other safety issues and requirements haven't yet been addressed, but are of much concern to my Client, Protofab. It is my understanding that there should also be a fire lane to the south of my Client's building (which would be blocked by the proposal), and that the

vacating of the street may prohibit the required maneuvering of fire trucks down this Street (which would also be a violation of City Ordinance).

4. **The Behr proposal shows an unconscionable amount of parking to the immediate south of Protofab.** The proposal of Behr shows proposed parking up to the south side of my Client's building and also permanent parking directly on what is currently Daley Street, to the immediate south of my Client's lot. As mentioned in paragraphs 1 and 2 above, my Client urgently needs these areas for its operations and deliveries. It is believed that the parking on the current street area, thereby blocking the road, would violate the local ordinances, and the proposal even has permanent curbs jutting out into what is now the through street. This should not be allowed.

5. **Recently paid for street improvements**. In the fairly recent past, my Client and it's neighbors to the north were required to help pay for improvements to Daley Street. Our Client did not do this just so Behr could then take over the Street via "vacating" it. It is not believed that the City is in the business of selling it's streets. If it is, then my Client would also like to have the possibility of having the street vacated and purchased by them, since Protofab Corp. has been there more than 40 years and is not a new-comer to the area.

6. **Future problems inevitable.** Based upon reliable information, this proposal by Behr America to vacate Daley Street is only the first of a long series of plans to interfere with my client's property rights. A study recently obtained from the Michigan Department of Environmental Quality shows that Behr next wants to alter the flood plain in the area, so that it backs up into and onto my Client's parking lot. This would effectively render it a swamp and cause other problems. None of this is necessary, and we propose that the entire matter be stopped now.

7. **Other Objections**. To be addressed at the 7-11-06 Hearing. We plan on attending.

In closing, my Client Protofab requests that it's business not be ruined by the granting of this proposal. It is hoped that the City will recognize this and will protect the property rights of it's taxpayers and citizens. In connection with this, my Client has requested that I take whatever steps are necessary to protect it's rights. Hopefully, this matter will conclude without further action being necessary. Thank you very much for your time and consideration.

Sincerely yours,

Robert W. Easterly

Robert W. Easterly

RWE/mc

Protofab

07/06/2006

07/06/2006

BEHR
07/06/2006
ProTotab

can barley
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#6

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RECD
SEP 11 2006
PLANNING DEPT.

September 11, 2006

Troy Planning Commission
500 West Big Beaver Road
Troy, MI 48084

VIA HAND DELIVERY

RE: Application for Vacation of Portion of Daley Drive Easement
Reply to Objections Filed By Protofab
Public Hearing: September 12, 2006, at 7:30 p.m.

Dear Planning Commission:

This law firm represents Behr America, Inc. ("Behr"), applicant for the vacation of a portion of the road easement for Daley Drive. This letter is Behr's reply to the letter of objections ("Objections") dated July 6, 2006, filed by Protofab, whose address is 2835 Daley Drive, Troy, Michigan. As set forth below in detail, the Objections filed by Protofab have been made with reckless disregard for the truth. Protofab's Objections are merely a desperate attempt by Protofab to extract funds from Behr by intentionally interfering with Behr's beneficial use of its property and its construction of improvements in accordance with the recent site plan approved by the Planning Commission on May 9, 2006.

Below is Behr's detailed reply to each of the consecutively numbered Objections filed by Protofab in its letter of July 6, 2006:

1. **The proposed vacation does not in any way interfere with Protofab's use of its property**. Protofab simply misstates the truth in alleging that the proposed vacation is directly in front of Protofab's property. First, the proposed vacation of a portion of the easement is directly to the east of Behr's property, and covers that part of Daley Drive that abuts only Behr's property. Protofab alleges that it is the record title owner to the North 65 feet of Lot 28 of Supervisor's Plat No. 11. Behr, in contrast, is the record title owner to many of the lots in Supervisor's Plat No. 11, including, without limitation, the south 65 feet of the north 130 feet of Lot 28. The proposed vacation abuts the south 65 feet of the north 130 feet of Lot 28, and does not at all abut or front the property to the north that Protofab claims it owns. This fact is evident on the Road Vacation Survey prepared by Michalich and Associates attached as **Exhibit A**. Second, Behr is not proposing to close down any portion of Daley Drive, so Protofab's semi-trailers will have the same access to the roadway that it has had in the past. Deliveries to Protofab would not be affected in any manner whatsoever.

2. **Behr has not in any way impinged upon rights of Protofab.** First, as set forth above, Behr is the record title owner to the property directly to the south of Protofab, described as the South 65 feet of the North 130 feet of Lot 28. As such, Behr enjoys the sole right to freely use, occupy, possess and control its property. Protofab has no legal right to park on or use Behr's property, or to prohibit Behr from allowing its employees to park on its own property. Second, the issue whether or not Protofab's employees have parked on Behr's property in the past has nothing to do with the proposed vacation. Behr has used its subject property for its own parking since occupying and owning the property, and simply desires to further improve its property and maximize additional parking on the South 65 feet of the North 130 feet of Lot 28. Third, Protofab's representation that it has parked on Behr's property for the last 40 years is simply preposterous and false. Behr acquired the subject property by warranty deed on or about April 13, 2006, but also occupied that property as the sole tenant for approximately four (4) years prior to that date. During these years, Protofab employees did not park on Behr's portion of Lot 28. In fact, Protofab employs just a few people, and they all park their vehicles on the north and west sides of Protofab's building, not on Behr's property to the South.
3. **Behr's proposed vacation in no way interferes with fire hydrants or public safety.** The existing fire hydrant located directly across from Protofab's property, to the east, is depicted on the Survey excerpt attached as **Exhibit B**. This fire hydrant is neither located on Protofab's property nor Behr's property. Further, this fire hydrant is not at all within the proposed area of the easement to be vacated. The fire hydrant's location will not change, and it remains fully accessible to all. In fact, the Troy Fire Department even signed off on Behr's proposed vacation of part of the road easement. In no way will access to the fire hydrant be blocked by any of Behr's parked vehicles. Behr's vehicles will be parked on its own property approximately 65 feet to the south and 50 feet to the west of the hydrant. With regard to the fire lane issue raised by Protofab, this is simply erroneous. There is and has never been a fire lane within the roadway easement for Daley Drive. Ironically, Behr has learned that Protofab unilaterally purchased and installed two (2) "NO PARKING, FIRE LANE" signs on its own lot, just north of its shared boundary line with Behr, to keep vehicles from parking on the south side of Protofab's building, but then parks its own vehicles from time to time between its building and the shared boundary line with Behr. Nevertheless, there is and has been no fire lane for use by public safety vehicles.

4. **Protofab's parking objection has no relevance to the proposed vacation of the easement.** First, the proposed parking spaces on Behr's portion of Lot 28 are detailed on its Site Plan, not on its survey of the proposed vacation of the easement. Behr's Site Plan, which contains new parking spaces on the South 65 feet of the North 130 feet of Lot 28, already received site plan approval on May 9, 2006. Copies of the Site Plan and site plan approval letter from the City of Troy (dated May 24, 2006) are attached for your reference as **Exhibit C**. Any objection to the proposed vacation of the easement that is premised upon the number or location of parking spaces is misplaced. The proposed parking spaces have already been approved per Behr's Site Plan. Second, contrary to Protofab's false assertion, Behr's Site Plan does not depict any parking spaces inside the confines of Daley Drive. The

vacation of that portion of the easement for Daley Drive requested by Behr would allow Behr to design parking without application of difficult (50 feet) setback requirements, so that parking could be established in greater volume and closer to the paved roadway. But in no instance will the parking spaces fall within the paved roadway. Attached as **Exhibit D** is an excerpt from Behr's Site Plan showing the location of all future parking spaces in relation to the roadway. No parking spaces fall within the paved roadway whatsoever. Third, Protofab's delivery trucks will continue to have full use of the current paved roadway, for maneuvering trucks, since Behr is not proposing to alter or detrimentally affect the existing paved roadway in any manner whatsoever. Fourth, since no parking spaces will be located within the actual paved roadway, there would be no Ordinance violation for blocking the roadway, as erroneously asserted by Protofab.

5. **Behr's improvements to its property benefit the public, and its development is not an attempt to acquire public land.** First, by vacating that small portion of the easement for the roadway requested by Behr, the City of Troy is neither selling nor conveying any real property to Behr. Simply put, Behr is not acquiring or taking over any portion of public land. On the contrary, Behr is simply requesting the City to vacate a portion of the easement for Daley Drive that is located on Behr's own property. Protofab's statement that the City is selling its street to Behr is nonsense and does not merit further comment.

6. **Behr's proposed vacation of a portion of Daley Drive is genuine and necessary for the development of Behr's property and the construction of improvements in accordance with its approved Site Plan.** Protofab's stated belief that the proposed vacation is merely Behr's first of many instances to carry out a long-term plan of interfering with Protofab's property rights is preposterous. There is no basis in fact for this false belief. Protofab's reference to a study of the Michigan Department of Environmental Quality and the detrimental alteration of a flood plain is a red herring. This has nothing to do with the proposed vacation. More importantly, Behr's approved MDEQ plan (to the extent it is even relevant here), actually benefits Protofab and seeks to prevent the very flooding that Protofab alleges concern over. Behr's property development and improvements do not at all affect Protofab's title to its own real property, and do not at all affect Protofab's use of Daley Drive. Even further, if any party is attempting to interfere with property rights of the other, it is Protofab. Its reckless and false statements contained within its Objections could lead a reasonable person to conclude that it is Protofab who is interfering with Behr's use and enjoyment of its property.

7. **Behr has not received any notice of further objections from Protofab.** In the event that Protofab makes any further objections to Behr's proposed vacation of a portion of the roadway easement for Daley Drive, they will be addressed and rebutted at the public hearing. However, Behr is not aware of any additional objections filed by Protofab to date, other than the Objections referenced above.

We look forward to answering any questions that you might have, and providing you with any additional information that you might require, at the upcoming public hearing of the Planning Commission on Tuesday, September 12, 2006.

Very truly yours,
ASKER, CLOS & PERLMUTER, P.C.

Gary E. Perlmuter

GEP/cml
cc: Katja Knupfer, Esq. (w/o enclosures)
Mr. Phil Tocco (w/o enclosures)
Mr. Olaf Maly (w/o enclosures)
Paul P. Asker, Esq. (w/o enclosures)

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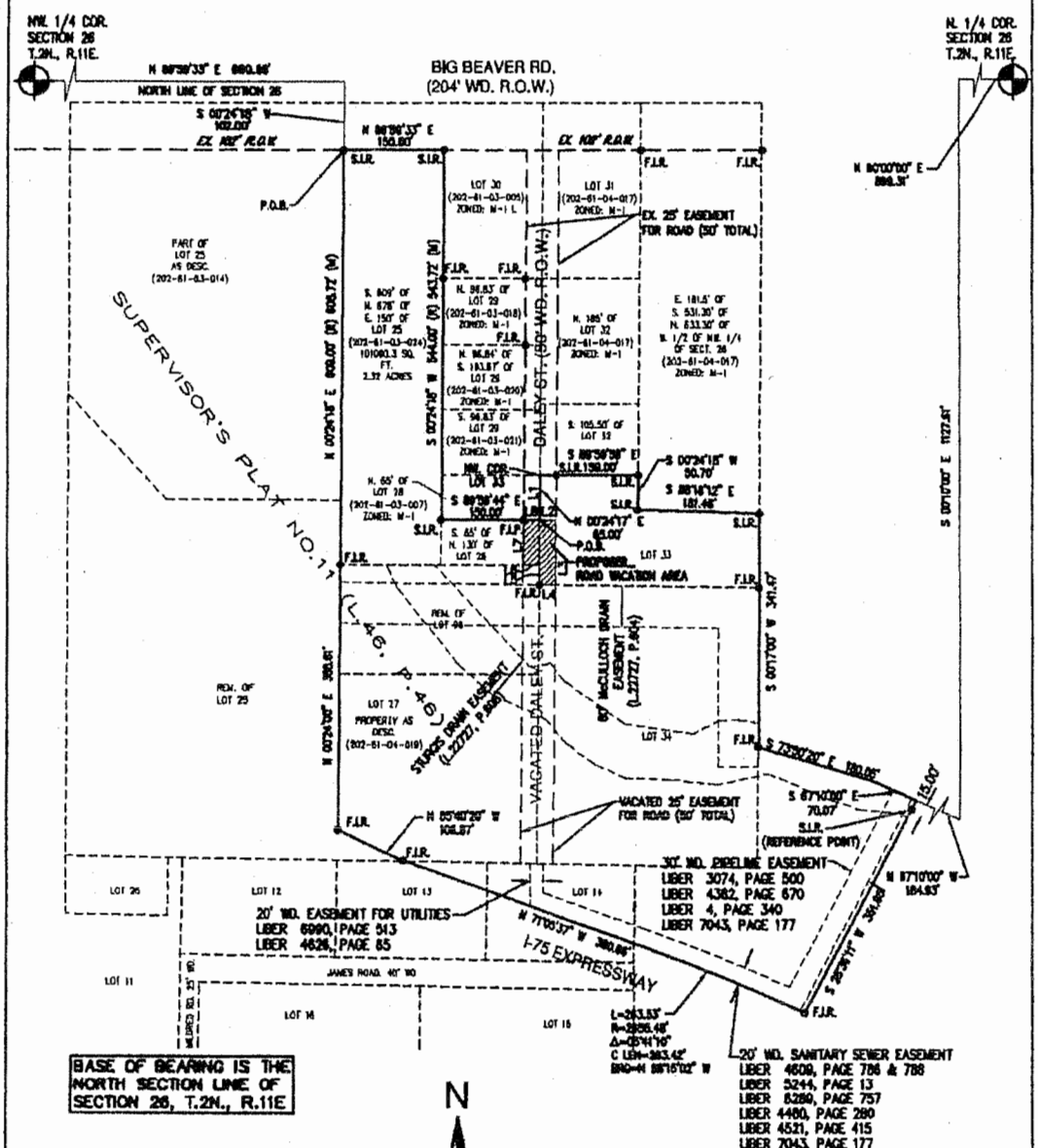

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ORIGINAL SIGNATURE IN BLUE

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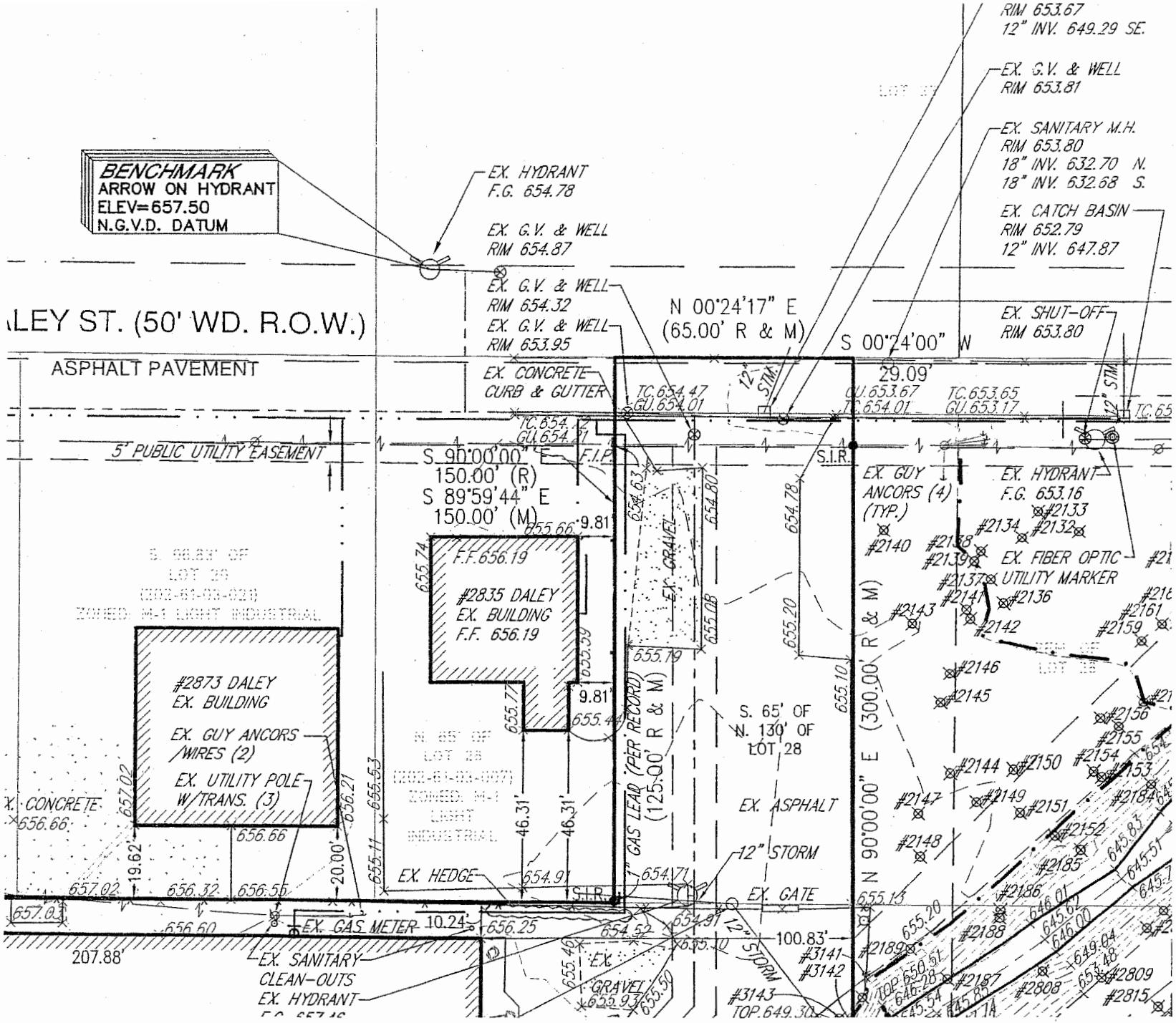
CIVIL ENGINEERING SURVEYING PLANNING
2959 AVON INDUSTRIAL DR, ROCHESTER HILLS, MI. 48309
INTERNET:WWW.MICKALICH.COM PHONE: (248) 852-1900 FAX: (248) 852-1070

DRAWN BY MLB JOB No. 06023

DATE 5-17-06 SHEET No. 2 of 2 SCALE 1"=200'

DESCRIPTION
BEHR BUILDING & PARKING
ROAD VACATION


BENCHMARK
ARROW ON HYDRANT
ELEV=657.50
N.G.V.D. DATUM
EX. HYDRANT
F.G. 654.78
EX. G.V. & WELL
RIM 654.87
EX. G.V. & WELL
RIM 654.32
EX. G.V. & WELL
RIM 653.95
EX. CONCRETE
CURB & GUTTER
LEY ST. (50' WD. R.O.W.)
ASPHALT PAVEMENT
5' PUBLIC UTILITY EASEMENT
N 00°24'17" E
(65.00' R & M)
S 00°24'00" W
29.09'
RIM 653.67
12" INV. 649.29 SE.
EX. G.V. & WELL
RIM 653.81
EX. SANITARY M.H.
RIM 653.80
18" INV. 632.70 N.
18" INV. 632.68 S.
EX. CATCH BASIN
RIM 652.79
12" INV. 647.87
EX. SHUT-OFF
RIM 653.80
S 90°00'00" E
150.00' (R)
S 89°59'44" E
150.00' (M)
F.F.656.19
#2835 DALEY
EX. BUILDING
F.F. 656.19
#2873 DALEY
EX. BUILDING
EX. GUY ANCORS
/WIRES (2)
EX. UTILITY POLE
W/TRANS. (3)
EX. HEDGE
EX. GAS METER
EX. SANITARY
CLEAN-OUTS
EX. HYDRANT
207.88'
7" GAS LEAD (PER RECORD)
(125.00' R & M)
EX. GRAVEL
S. 65' OF
N. 130' OF
LOT 28
EX. ASPHALT
12" STORM
EX. GATE
100.83'
#3141
#3142
#3143
TOP. 649.30
N 90°00'00" E (300.00' R & M)
EX. GUY
ANCORS (4)
(TYP.)
EX. HYDRANT
F.G. 653.16
EX. FIBER OPTIC
UTILITY MARKER

City of Troy

500 West Big Beaver
Troy, Michigan 48084
Fax: (248) 524-0851
www.ci.troy.mi.us

Area code (248)

Assessing
524-3311

Bldg. Inspections
524-3344

Bldg. Maintenance
524-3368

City Clerk
524-3316

City Manager
524-3330

Community Affairs
524-1147

Engineering
524-3383

Finance
524-3411

Fire-Administration
524-3419

Human Resources
524-3339

Information Services
619-7279

Law
524-3320

Library
524-3545

Parks & Recreation
524-3484

Planning
524-3364

Police-Administration
524-3443

Public Works
524-3370

Purchasing
524-3338

Real Estate & Development
524-3498

Treasurer
524-3334

General Information
524-3300

May 24, 2006

Philip Tocco
2700 Daley Drive
Troy, MI 48083

Subject: **PRELIMINARY SITE PLAN APPROVAL (SP 689-B) - Addition to Behr America, South of Big Beaver, East and West sides of Daley (2700-2852 Daley), Section 26, M-1 (Light Industrial) District**

Dear Mr. Tocco:

At their Regular Meeting of May 9, 2006, the Planning Commission acted upon your request for Preliminary Site Plan Approval of the addition to Behr America located south of Big Beaver, east and west sides of Daley, Section 26, M-1 zoning district, in the following manner:

Resolution # PC-2006-05-084
Moved by: Schultz
Seconded by: Littman

RESOLVED, That Preliminary Site Plan Approval, as requested for the Proposed Addition to Behr America, located south of Big Beaver, on the east and west sides of Daley, located in Section 26, on approximately 11.7 acres, within the M-1 zoning district, is hereby granted.

Yes: All present (8)
No: None
Absent: Wright

MOTION CARRIED

This Preliminary Approval is valid for a period of one (1) year from date of Preliminary Approval. The Preliminary Approval may continue to be valid after this date if the applicant can show reasonable progress toward completion of the Final Site Plan Approval checklist.

The enclosed checklist indicates the items that shall be provided or actions that shall be taken for Final Site Plan Approval. Additional items may be added to this list in the course of Building and Engineering Plan Review. Please feel free to contact the undersigned if you should have any further questions or comments regarding this matter.

Very truly yours,

Mark F. Miller, AICP/PCP
Planning Director

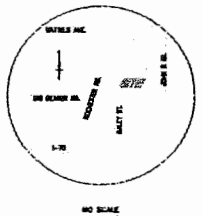
Enclosure

cc: Building Department
Engineering Department
Fire Department
File/ SP 689-B
File/ Correspondence

G:\SITE PLANS\SP 689-B Behr America Addition Sec 26\Applicant Letter_PC Resolution.doc

EX. GRADE
EX. CONTOUR
EX. WATER MAIN
EX. STORM SEWER
EX. SANITARY SEWER
EX. OVERHEAD
EX. FENCE
EX. GAS
EX. UNDERGROUND UTILITY
EX. HYDRANT
EX. CATCH BASIN
EX. MANHOLE
EX. SIGN
EX. GATE VALVE
EX. LIGHT POLE
EX. UTILITY POLE
EX. FLOODPLAIN
PR. GRADE
PR. CONTOUR
PR. WATER MAIN
PR. STORM SWR.
PR. SANITARY SWR.
PR. HYDRANT
PR. GATE VALVE
PR. CATCH BASIN
PR. MANHOLE
PR. B.T.C.B.
PR. REVERSE CURB
PR. SILT FENCE
PR. ASPHALT
PR. DEEP STRENGTH ASPHALT
PR. CONCRETE
PR. SILT SACK/INLET FILTER

DRAINAGE ARROW	
VERIFY IN FIELD	V.I.F.
TOP OF CURB ELEV.	TC.000.00
GUTTER PAN ELEV.	GU.000.00
TOP OF WALK ELEV.	TW.000.00
GROUND ELEVATION AT WALL	GW.000.00
EDGE OF SHOULDER ELEV.	ES.000.00
EDGE OF ROAD ELEV.	EM.000.00



NO SCALE
40' 0' 40' 80'

N

SITE AREA = 2.32 ACRES
(0.35 ACRES PER ADDITIONAL PARKING S.R. OF PROPERTY)
Cw CALCULATIONS:
HARD SURFACE = 1.91 ACRES
GRASS AREA = 0.44 ACRES
$C_w = \frac{(1.91 \times 0.90) + (0.44 \times 0.15)}{2.35} = 0.79$
REQUIRED DETENTION: 100 YEAR STORM:
SITE AREA = 2.32 ACRES
ALLOWABLE = 0.20 CFS/ ACRE
$C_w = \frac{0.20 \times 2.32}{0.79 \times 2.32} = 0.25$
$T = -25 + \sqrt{\frac{10,101 \times 0.25}{0.25}} = 174$ MIN.
$V_t = \frac{10,500 \times 174}{174 + 25} = 14,427$
$V_a = 40 \times C_w \times T = 40 \times (74 \times 0.25 = 1,810$
$V_s = 14,427 - 1,810 = 12,817$ CFT/AC.
$V_{s(A)} = 12,817 \times 2.32 \times 0.77 = 22,540$ CFT (REQUIRED)

48" DIA. PIPE CROSS SECTIONAL AREA = 12.57 SFT.
USING 16 ROWS OF 48" PIPE, EACH 115 LF.

10' GREENBELT ALONG ANY PUBLIC STREET, WITH
ONE TREE FOR EVERY 30 LINEAL FEET OF FRONTAGE
10% OF SITE AREA LANDSCAPED- FRONT AND SIDE YARDS ONLY
= 0.1 x 2.32 = 0.23 AC REQUIRED (0.44 AC. PROVIDED)

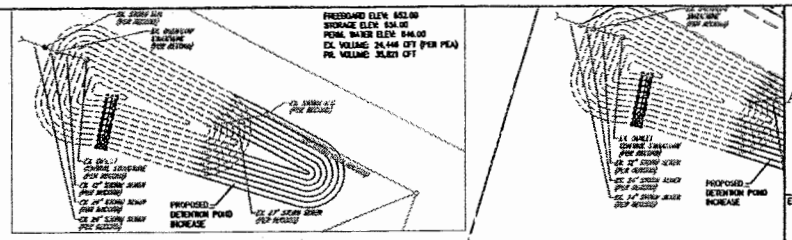
NO MORE THAN 25% OF THE REQUIRED LANDSCAPE AREA WILL BE COVERED WITH NON-LIVING MATERIAL, I.E. WOODCHIPS, STONE, ETC.

SITE AREA = 0.76 ACRES (PROP. BUILDING & PARKING)
Cw CALCULATIONS:
HARD SURFACE = 0.76 ACRES
C = 0.90
REQUIRED DETENTION: 100 YEAR STORM:
SITE AREA = 0.76 ACRES
ALLOWABLE = 0.20 CFS/ ACRE
$C_w = \frac{0.20 \times 0.76}{0.90 \times 0.76} = 0.22$
$T = -25 + \sqrt{\frac{10,101 \times 0.22}{0.22}} = 191.5$ MIN.
$V_t = \frac{10,500 \times 191.5}{191.5 + 25} = 14,365$
$V_a = 40 \times C_w \times T = 40 \times 191.5 \times 0.22 = 1,685$
$V_s = 14,365 - 1,685 = 12,810$ CFT/AC.
$V_{s(A)} = 12,810 \times 0.76 \times 0.90 = 8,830$ CFT (REQUIRED)

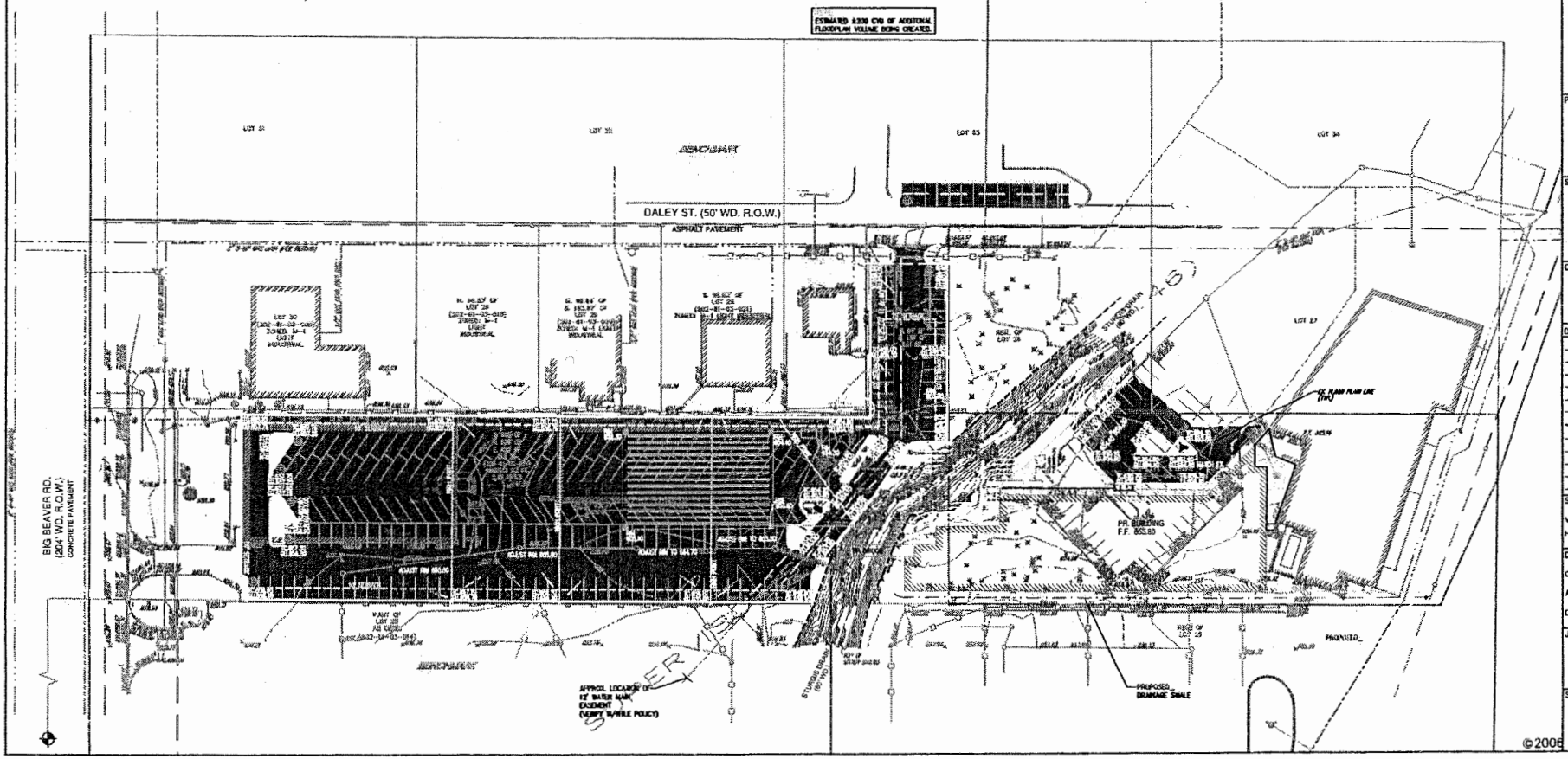
EX. SOUTH DETENTION POND VOLUME (PER PEA) = 34,446 CFT
CURRENT VOLUME REQUIRED (PER PEA) = 22,146 CFT
AVAILABLE SURPLUS VOLUME: 34,446 - 22,146 = 12,300 CFT
ADDITIONAL STORAGE REQUIRED: 8,830 - 1,277 = 7,553 CFT

MAX. SIDE SLOPE = 1 on 6
FREE BOARD ELEVATION = 852.00
STORAGE ELEVATION = 851.00
PERMANENT WATER ELEV. = 846.00

851	11,300	>	- 10,505
850	8,620	>	- 8,764
848	7,907	>	- 7,135
846	6,362	>	- 5,135
847	4,804	>	- 3,134
846	3,103	>	- 2,044



ESTIMATED 8,330 CYD OF ADDITIONAL FLOODPLAIN VOLUME BEING CREATED.



©2006

MICKALICH and ASSOCIATES, INC.
CIVIL ENGINEERING, SURVEYING, PLANNING
2350 Avon Industrial Drive
Rochester Hills, Michigan 48
PHONE: (248) 852-1900
FAX: (248) 852-1070
HTTP://WWW.MICKALICH.COM

Engineer's Seal
ORIGINAL SIGNATURE IN BLUE

Project Title
BEHR BUILDING AND PARKING

Sheet Title
SITE PLAN

Client
BEHR AMERICA, INC.

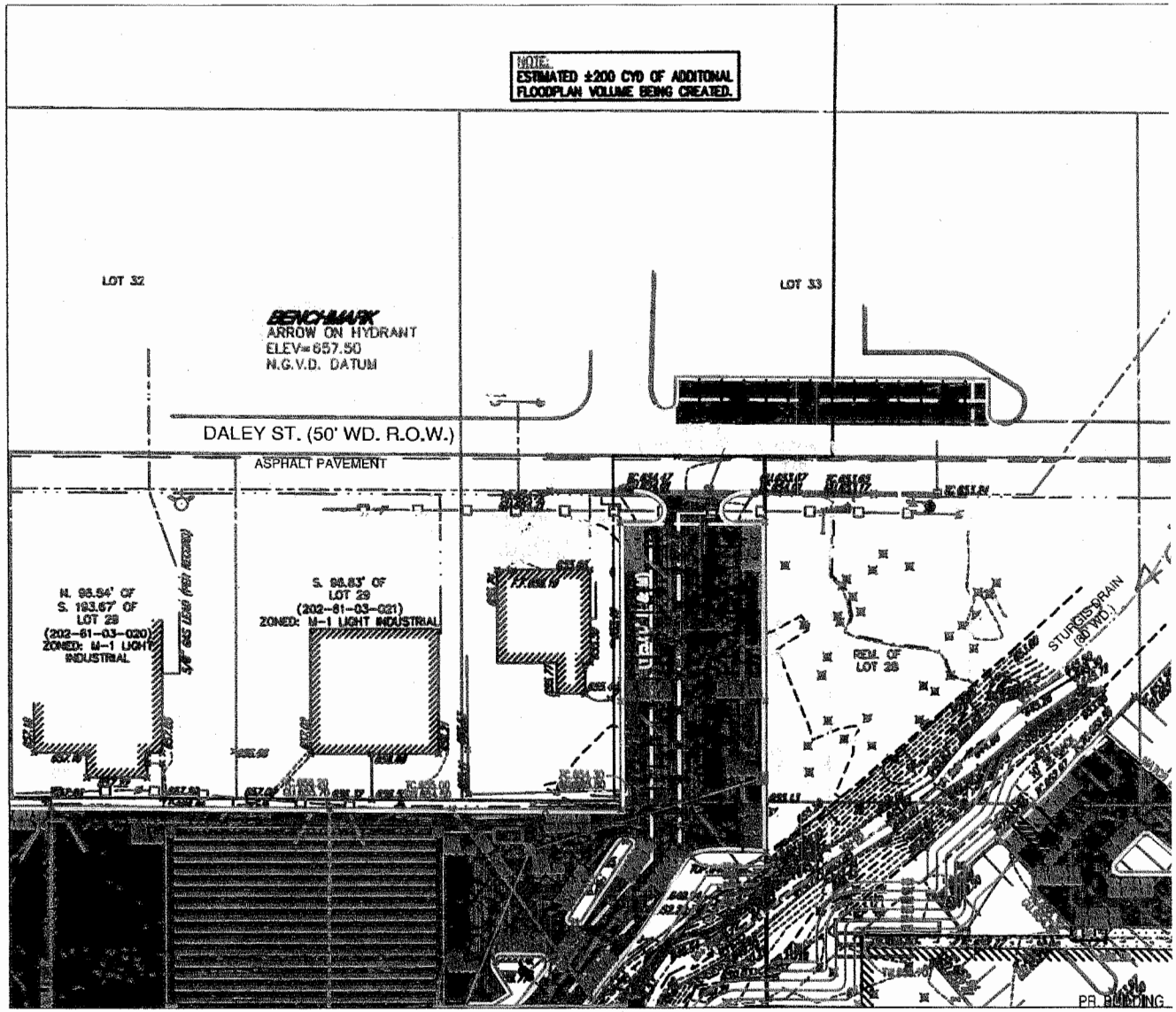
Date	Issued for	By

Scale
Vertical: N/A
Horizontal: 1"=40'

Drawn M.L.B.
Checked T.C.S.
Approved A.P.M.
Date 03/30/06

Job. no.
06-023

Sheet no.
2


NOTE:
ESTIMATED ±200 CYD OF ADDITONAL FLOODPLAN VOLUME BEING CREATED.
LOT 32
LOT 33
BENCHMARK
ARROW ON HYDRANT
ELEV=657.50
N.G.V.D. DATUM
DALEY ST. (50' WD. R.O.W.)
ASPHALT PAVEMENT
N. 96.54' OF
S. 193.67' OF
LOT 29
(202-61-03-020)
ZONED: M-1 LIGHT INDUSTRIAL
S. 96.83' OF
LOT 29
(202-61-03-021)
ZONED: M-1 LIGHT INDUSTRIAL
REM. OF
LOT 28
STURGIS DRAIN
(80' WD.)
PR. BUILDING

SV 198-C
#6

Robert W. Easterly

Attorney and Counselor

189 EAST BIG BEAVER, SUITE 104
TROY, MICHIGAN 48083-1201
(248) 528-2770 Fax:(248) 528-6644
RWElaw@aol.com

REC'D
SEP 12 2006
PLANNING DEPT.
2:15 pm

September 11, 2006

Troy Planning Commission
City of Troy
500 W. Big Beaver
Troy, Michigan 48084

Re: Our Client: Protofab Corp.
2835 Daley Street
Troy, Mich. 48083

ADDITIONAL OBJECTIONS TO PROPOSED VACATING OF DALEY STREET FOR BEHR AMERICA and 9-12-06 PUBLIC HEARING

Dear Planning Commission:

As you know, this office represents Protofab Corp., who acknowledges the new downscaled version of the Behr America request to vacate portions of Daley Street, next to and adjacent to my Client's property. However, the entire request of Behr America is still strenuously objected to and currently under litigation by my Client.

Firstly, my Client hereby reasserts as if set forth fully herein, the first 7 Objections to the Street Vacating which were set forth in our July 6, 2006 letter to the Planning Commission, together with all of the Exhibits attached thereto.

Protofab however also asserts the following additional points:

8. **Need vs. Convenience** (+ potential unlawful "taking" issue). As mentioned in the earlier paragraph 1 of the 7-6-06 letter, Protofab needs the Street in it's current condition, and receives large deliveries of metal and other raw materials, which can only be delivered in large 50 foot semi-trailers. Protofab has used the Street for over 40 years, and had every reason to believe that it would not just be "taken away" because a larger company wanted the space for additional parking, etc. The entire request by Behr America under the circumstances of this case is strictly for their convenience, so they can have some additional room for parking and related type issues, because of their over-expansion for the area that they bought. Protofab submits that if Behr wants additional space for their convenience, then they should do what everyone else has to do and buy additional land, and not attempt to take away the Street area that Protofab had every right to believe would continue to exist.

9. **Land Ownership dispute**. It is imperative to note that even on the new revised proposal from Behr America, the entire top (or north) 65 feet of the "Street Vacating" request involves land that is claimed as being owned by Protofab, who has filed Suit in the Oakland County Circuit Court to have the Court resolve this. Specifically, Protofab claims full ownership to the north 21 feet of the proposed "Vacation Area", and full rights under an easement by prescription to the next 44 feet of the proposed "Vacation

Area". Given these facts, there is no way the City should even consider the request of Behr to Vacate land which they don't own and which doesn't even abut their own property. At a minimum, the Circuit Court Lawsuit which is before Judge Gene Schnelz, should be decided first before any decision is made by the City on any of these issues.

In connection with the foregoing paragraph, I am attaching the following documents:

1. Verified Claim of Interest which has been filed with the Oakland County Register of Deeds (2 pages);
2. Copy of the Lawsuit which has been filed with the Oakland County Circuit Court (7 pages); and
3. Copy of recent letter dated September 8, 2006 to the Corporate Attorney for Behr America (2 pages).

Further, Protofab has (or is contemporaneous herewith) filing for a Preliminary Injunction against Behr America to maintain the current Status quo, which should be heard by Judge Schnelz in the next few weeks. This gives an additional reason for both the City and Behr to not continue to proceed with this matter until a decision has been reached on the underlying issues.

In closing, my Client Protofab requests that the demand of Behr America to Vacate the Street be denied, or at an absolute minimum, not decided until the conclusion of the Circuit Court matter. It is hoped that the City would honor this request and would protect the property rights of it's taxpayers and citizens.

Thank you very much for your time and consideration.

Sincerely yours,

Robert W. Easterly

Robert W. Easterly

RWE/mc
Enclos.

COPY
RECEIVED
AUG 25 2006
Ruth Johnson Register of Deeds
Oakland County, MI

211887
LIBER 38032 PAGE 45
$13.00 MISC RECORDING
$4.00 REMONUMENTATION
08/25/2006 02:25:45 P.M. RECEIPT# 96050
PAID RECORDED - OAKLAND COUNTY
RUTH JOHNSON, CLERK/REGISTER OF DEEDS

AFFIDAVIT OF CLAIM OF INTEREST UNDER PUBLIC ACT 200 OF 1945

State of Michigan)
) ss
County of Oakland)

William H. Hart, IV, being first duly sworn, deposes and says:

1. I am an Officer of PROTOFAB CORPORATION, a Michigan corporation, and make this Affidavit on behalf of said Corporation.

2. Protofab Corporation owns and occupies the premises commonly known as 2835 Daley, Troy, Michigan 48083, by virtue of a Warranty Deed dated December 1, 1987 and recorded December 2, 1987 at Liber 10217, Page 255, Oakland County Records.

3. The Grantor in said Warranty Deed was William H. Hart, and Dorothy Hart, his wife, respectively my father and mother, who owned the title to the property at 2835 Daley for many years prior to the execution and delivery of said Warranty Deed in favor of Protofab Corporation.

4. Protofab Corporation has acquired title to and has exclusively occupied certain real property laying adjacent to 2835 Daley, located in the City of Troy, Oakland County, Michigan, legally described as:

   the north 21 feet of the south 65 feet of the north 130 feet of Lot 28, Supervisors Plat No. 11, as recorded in Liber 46 of Plats, Page 46, Oakland County Records (the "Title Parcel"). pt 20-26-103-024

5. The occupation by Protofab Corporation and its predecessor in title, William H. Hart and Dorothy Hart, has been actual, visible, open, notorious, exclusive, hostile, under cover of claim of right and continuous and uninterrupted for over 15 years.

6. In addition, Protofab Corporation has acquired an easement by prescription over the parcel following adjacent to 2835 Daley, located in the City of Troy, Oakland County, Michigan, legally described as:

the south 44 feet of the south 65 feet of the north 130 feet of Lot 28, Supervisors Plat No. 11, as recorded in Liber 46 of Plats, Page 46, Oakland County Records (the "Easement Parcel")

by non-exclusive use which use has been actual, visible, open, notorious, under cover of claim of right, and continuous and uninterrupted for over 15 years.

7. Both the Title Parcel and the Easement Parcel are part of Parcel No.: 20-26-103-024, commonly known as 1176 – 1178 E. Big Beaver Road.
pt of

8. A Warranty Deed allegedly granting title to both the Title Parcel and the Easement Parcel, in addition to other land, was dated April 13, 2006 and recorded April 27, 2006 in Liber 37475, Page 372, Oakland County Records.

9. During the time Protofab Corporation has occupied the Title Parcel and used the Easement Parcel, no other person or persons, either pursuant to a deed or otherwise, has exercised ownership rights over the Title Parcel, and no other person has forbidden the use of the Easement Parcel by Protofab Corporation.

FURTHER DEPONENT SAYETH NOT.

William H. Hart, IV

State of Michigan)
) ss
County of Oakland)

The foregoing Affidavit was signed, acknowledged and sworn to before me by William H. Hart, IV, known to me to be the person named in and who executed the foregoing Affidavit on the 17th day of August, 2006.

Sharon Rubino, Notary Public
State of Michigan, County of Oakland
Acting in the County of Oakland
My commission expires: 04-09-2011

SHARON RUBINO
Notary Public, State of Michigan
County of Oakland
My Commission Expires Apr. 9, 2011
Acting in the County of Oakland

Drafted by and when
recorded return to:

John Sharp, Esq.
Strobl & Sharp, P.C.
300 E. Long Lake Road, Suite 200
Bloomfield Hills, MI 48304

Approved, SCAO

Original - Court
1st copy - Defendant

06-076958-CH

JUDGE GENE SCHNELZ
PROTOFAB CORP V BEHR AMERICA

STATE OF MICHIGAN ~~JUDICIAL DISTRICT~~ 6TH JUDICIAL CIRCUIT ~~COUNTY PROBATE~~	SUMMONS AND COMPLAINT

Court address
1200 N. Telegraph Road, Dept. 404, Pontiac, Michigan 48341-0404

Court telephone no.
(248) 858-1000

Plaintiff name(s), address(es), and telephone no(s).	v	Defendant name(s), address(es), and telephone no(s).
PROTOFAB CORPORATION, a Michigan corporation, 2835 Daley Drive, Troy, MI 48083		BEHR AMERICA, INC. a Delaware corporation 2700 Daley Drive, Troy, MI 48083
Plaintiff attorney, bar no., address, and telephone no. John Sharp (P29042) and Robert W. Easterly (P26367) Attorneys for Plaintiff 189 E. Big Beaver, Suite 104 Troy, Michigan 48083-1201 (248) 258-2770		

SUMMONS **NOTICE TO THE DEFENDANT**: In the name of the people of the State of Michigan you are notified:

1. You are being sued.
2. **YOU HAVE 21 DAYS** after receiving this summons to **file a written answer with the court** and serve a copy on the other party **or take other lawful action with the court** (28 days if you were served by mail or you were served outside this state). MCR 2.111(C)
3. If you do not answer or take other action within the time allowed, judgment may be entered against you for the relief demanded in the complaint.

Issued	This summons expires	Court clerk
AUG 25 2006	NOV 27 2006	RUTH JOHNSON

*This summons is invalid unless served on or before its expiration date.

This document must be sealed by the seal of the court.

COMPLAINT ***Instruction: The following is information that is required to be in the caption of every complaint and is to be completed by the plaintiff. Actual allegations and the claim for relief must be stated on additional complaint pages and attached to this form.***

Family Division Cases

☐ There is no other pending or resolved action within the jurisdiction of the family division of circuit court involving the family or family members of the parties.

☐ An action within the jurisdiction of the family division of the circuit court involving the family or family members of the parties has been previously filed in _____ Court.

The action ☐ remains ☐ is no longer pending. The docket number and the judge assigned to the action are:

Docket no.	Judge	Bar no.

General Civil Cases

☑ There is no other pending or resolved civil action arising out of the same transaction or occurrence as alleged in the complaint.

☐ A civil action between these parties or other parties arising out of the transaction or occurrence alleged in the complaint has been previously filed in _____ Court.

The action ☐ remains ☐ is no longer pending. The docket number and the judge assigned to the action are:

Docket no.	Judge	Bar no.

VENUE

Plaintiff(s) residence (include city, township, or village)	Defendant(s) residence (include city, township, or village)
Troy, Michigan	Troy, Michigan

Place where action arose or business conducted
Oakland County, Troy, Michigan

08/21/2006
Date

Signature of attorney/~~plaintiff~~ Robert W. Easterly

If you require special accommodations to use the court because of a disability or if you require a foreign language interpreter to help you to fully participate in court proceedings, please contact the court immediately to make arrangements.

06-076958-CH

OAKLAND COUNTY JUDGE GENE SCHNELZ
PROTOFAB CORP V BEHR AMERICA

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

RECEIVED FOR FILING
OAKLAND COUNTY CLERK

PROTOFAB CORPORATION,
a Michigan corporation,

'06 AUG 25 P2:31

Plaintiff,

Case No. 06- 06-076958-CH

-vs.-

Honorable:__

DEPUTY COUNTY CLERK

OAKLAND COUNTY JUDGE GENE SCHNELZ
PROTOFAB CORP V BEHR AMERICA

BEHR AMERICA, INC.,
a Delaware corporation,

Defendant.
_____/

John Sharp (P29042)
STROBL & SHARP, P.C.
Attorneys for Plaintiff
300 East Long Lake Road, Suite 200
Bloomfield Hills, MI 48304-2376
(248) 540-2300

Robert W. Easterly (P26367)
Co-Counsel for Plaintiff
189 E. Big Beaver Road, Suite 104
Troy, MI 48083
(248) 528-2770

VERIFIED COMPLAINT

There is no other pending or unresolved civil action arising out of the same transaction or occurrence as alleged in this complaint. [M.C.R. 2.113(C)(2)(a).]

NOW COMES PROTOFAB CORPORATION, a Michigan corporation ("Protofab"), by its undersigned counsel, and for its Verified Complaint, states as follows:

1. Plaintiff is a Michigan corporation with its primary place of business at 2835 Daley, Troy, Michigan 48083.

2. Defendant is a Delaware corporation with a place of business at 2700 Daley Drive, Troy, Michigan 48083.

3. By this action, Plaintiff seeks an order of the Court vesting legal title to certain real property in Plaintiff and further vesting in Plaintiff an easement by prescription in certain other property.

4. The real property at issue for vesting legal title is described as the north 21 feet of the south 65 feet of the north 130 feet of Lot 28, Supervisors Plat No. 11, according to the Plat thereof recorded in Liber 46 of Plats, Page 46, Oakland County Records (the "Title Parcel").

5. The parcel at issue as to the easement by prescription is the south 44 feet of the south 65 feet of the north 130 feet of Lot 28 of Supervisors Plat No. 11, according to the Plat thereof recorded in Liber 46 of Plats, Page 46, Oakland County Records (the "Easement Parcel").

6. Both the Title Parcel and the Easement Parcel are part of tax parcel no. 20-26-103-024, commonly known as 1176 – 1178 East Big Beaver Road, Troy, Michigan 48083, which also includes other land.

7. Plaintiff is the owner in fee simple of real property immediately to the north of the property at issue.

8. Plaintiff's property is legally described as the north 65 feet of Lot 28, Supervisors Plat No. 11, as recorded in Liber 46 of Plats, Page 46, Oakland County Records and is tax parcel no. 20-26-103-007, commonly known as 2835 Daley.

9. Plaintiff Protofab acquired the property commonly known as 2835 Daley by warranty deed from William H. Hart and Dorothy Hart, his wife, who are shareholders of Protofab, under a deed dated December 1, 1987 and recorded December 2, 1987, in Liber 10217, Page 255, Oakland County Records.

10. Plaintiff Protofab and Protofab's predecessors in title, the Harts, are related parties in that the Harts are shareholders and officers of Protofab, and Protofab is entitled to "tack" its interest to that of the Harts.

11. Defendant is the record title owner to both the Title Parcel and the Easement Parcel by virtue of a Warranty Deed dated April 13, 2006 and recorded April 27, 2006 in Liber 37475, Page 372, Oakland County Records.

12. Plaintiff and its predecessor, the Harts, have for many years exercised actual, visible, open, notorious, exclusive, continuous and uninterrupted control over the Title Parcel.

13. Plaintiff and its predecessor, the Harts, have excluded others from the use of the Title Parcel and Plaintiff holds it under a claim of right.

14. Plaintiff's and its predecessor, the Harts, use and control of the Title Parcel has extended far in excess of 15 years.

15. In addition, Plaintiff has exercised use of the Easement Parcel for well in excess of 15 years to make deliveries to its plant, and such use has been actual, visible, open, notorious, continuous and uninterrupted. Such use has been shared in common with Defendant's predecessor in title via a common driveway serving both Plaintiff's plant and the plant of the Defendant's predecessor in title.

16. In the year 2006, Defendant attempted to install certain stakes and strings on the Title Parcel, but Plaintiff has continued to possess the property to the edge of the drive on the Easement Parcel.

Wherefore, Plaintiff requests that this Court enter judgment in its favor:

(a) Declaring that Plaintiff is the lawful owner of the Title Parcel, to-wit:

> The north 21 feet of the south 65 feet of the north 130 feet of Lot 28, Supervisors Plat No. 11, according to the Plat thereof recorded in Liber 46 of Plats, Page 46, Oakland County Records.

(b) Declaring that Plaintiff has acquired an easement by prescription over the Easement Parcel for driveway use and delivery to Plaintiff's plant, the Easement Parcel being described as:

> The south 44 feet of the south 65 feet of the north 130 feet of Lot 28, Supervisors Plat No. 11, according to the Plat thereof recorded in Liber 46 of Plats, Page 46, Oakland County Records.

(c) Awarding Plaintiff such other and further relief as to this Court shall seem just and equitable.

Respectfully submitted,

STROBL & SHARP, P.C.

By: _____
John Sharp (P29042)
Attorneys for Plaintiff
300 East Long Lake Road, Suite 200
Bloomfield Hills, MI 48304-2376
(248) 540-2300

Dated: August 17th, 2006

LAW OFFICES OF ROBERT W. EASTERLY

By: _____
Robert W. Easterly (P26367)
Co-Counsel for Plaintiff
189 E. Big Beaver Road, Suite 104
Troy, MI 48083
(248) 528-2770

Dated:August 17th, 2006

VERIFICATION

WILLIAM H. HART,IV, being first duly sworn, does state that he is authorized to sign this Verification as an Officer of PROTOFAB CORPORATION, a Michigan corporation, and that he has read the Verified Complaint set forth above and is familiar with the facts stated therein and that they are true and correct to the best of his information, knowledge and belief, and that he would be competent to testify thereto if called as a witness in the within matter.

_____
WILLIAM H. HART, IV

STATE OF MICHIGAN)
)Ss
COUNTY OF OAKLAND)

On this 17th day of August, 2006, William H. Hart, IV, acknowledged that he signed the above Verification on behalf of the Plaintiff with full authority to do so.

Sharon Rubino
Notary Public
Oakland County, Michigan
Acting in Oakland County

My commission expires: 04-09-2011

SHARON RUBINO
Notary Public, State of Michigan
County of Oakland
My Commission Expires Apr. 9, 2011
Acting in the County of Oakland

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STROBL & SHARP
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John Sharp
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September 11, 2006

Via Facsimile 248.743.3801
and First Class Mail

Behr America, Inc.
2700 Daley Road
Troy, MI 48083
Attn: Katja Knupfer

Re: Your letter of August 29, 2006 addressed to Protofab Corporation

Dear Ms. Knupfer:

Please be advised that the undersigned along with Robert W. Easterly represent Protofab Corporation. I am responding to your letter dated August 29, 2006 addressed to William H. Hart, IV of Protofab Corporation.

As you are no doubt aware by now, Protofab Corporation claims ownership of the north 21 feet of the south 65 feet of the north 130 feet of Lot 28, and therefore denies that your letter properly refers to property owned by Behr America, Inc. Protofab Corporation recorded an Affidavit of Claim of Interest in Liber 38032, Page 045 and 046, Oakland County Records on August 25, 2006, a copy of which is enclosed in this letter. Further, Protofab Corporation has instituted legal action against Behr America, Inc. in the Oakland County Circuit Court, also on August 25, 2006, which has now been served upon Behr America, Inc.

Your letter is a belated attempt to reconstruct the history of this action. It is not only days late, but years and decades late.

Since you are now aware that my client asserts ownership of the parcel, Behr America, Inc. is cautioned that it proceeds at its peril.

STROBL & SHARP
PROFESSIONAL CORPORATION

300 East Long Lake Road Suite 200
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www.stroblpc.com

Finally, since you are now aware that Protofab Corporation is represented by counsel all future contact should be through this office or the office of Mr. Easterly.

Sincerely,

John Sharp

JS/mdt
Enclosure
cc: Robert W. Easterly
William Hart

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CHARLES E. CLOS
PAUL P. ASKER[1]
GARY E. PERLMUTER
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November 8, 2006

Troy City Council
c/o Mr. Mark Miller
Planning Director
500 West Big Beaver Road
Troy, MI 48084

VIA E-mail: MillerMF@ci.troy.mi.us
ORIGINAL VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED
No. 7005 0390 0000 5572 4863

RE: Daley Drive Vacation
Our File No. 03241-CP

Dear Mr. Miller:

We represent Behr America, Inc. and its affiliated entities ("Behr").

I. Background

A. Prior Vacation Grant

In 2000, the City of Troy vacated a portion of Daley Drive after Behr acquired the property on both sides of the right-of-way in order to construct a multi-million dollar complex of research and development and administration buildings. Behr built these award-winning buildings as promised and has been a model corporate citizen for the last six (6) years, creating hundreds of top management, engineering and research and development jobs in Troy.

B. Current Vacation Request

In 2005, Behr decided to expand its operations by making Troy its North American headquarters and constructing additional buildings and facilities which would comprise an unrivaled research and development campus. This campus will employ more than 500 engineering, financial, management and research and development employees in Troy. Behr submitted its plans to the Troy Planning Commission and received approval conditioned solely upon receiving two (2) small variances from the Zoning Board of Appeals. These variances were obtained in April of this year and Behr purchased the surrounding property necessary for development of the campus approved by Troy.

1. Additional Property Acquisition

The acquisition of this additional property created the same situation as existed when Troy originally vacated a portion of Daley Drive in 2000. Behr now owns the property on both sides of the southern most 65' of Daley Drive. At this point, Troy told Behr that the current vacation request was needed. Behr was told, and reasonably expected, this small vacation request to be a quick, non-controversial process. There is no need for Troy to spend public dollars maintaining a portion of

a right-of-way that no longer has any public purpose.

2. Belated and Meritless Claims by a Single Objector

On October 10, 2006, the Troy Planning Commission recommended that the City Council approve the requested vacation. The sole complication to obtaining that approval have been the meritless, ever-changing objections from a single adjoining property owner.

In fact, many months after Behr purchased the property to construct its campus headquarters approved by Troy, this objector filed a meritless lawsuit concerning a very small portion of Behr's newly-acquired property. Although our judicial system, for better or worse, is extremely permissive in allowing the filing of lawsuits, a mere filing of the claim has no affect on the current vacation request.

Behr is extremely confident that it will ultimately prevail in the litigation filed by the objector. In fact, although the objector's adverse possession lawsuit was only recently filed, Behr has already filed a Motion to Dismiss the lawsuit due to its numerous procedural defects in failing to even allege the facts necessary to succeed on the claim. However, rather than litigating these meritless claims in this forum through recitation of the numerous fatal defects in the objector's claims, Behr feels it is important that the Council be aware of the general nature of the legal claims made.

II. Objector's Claims

A. Objector Asserts Squatters' Rights

Objector's lawsuit asserts "adverse possession" over a small portion of the 65' of property Behr recently purchased that abuts the vacation area. An adverse possession claim is merely legalese for assertion of what is more commonly known as a squatter's rights claim. As such, adverse possession claims, especially those against *bonafide* purchasers, such as Behr, are inherently weak and extremely difficult to prove.

1. Behr is Heavily Presumed to be Owner of Disputed Property

Voluminous, uncontested Michigan law holds that a record title holder, such as Behr, is presumed to own property purchased through a valid warranty deed that is recorded. See, e.g. MCL 600.2109, Rozmarek v Plamondon, 419 Mich 287 at 292, 351 NW2d 558 (1984), King v Carpenter, 37 Mich 363 at 367 (1877), The State of Wyolene Sperrett v Watson, 204 MichApp Lexis 90 at 5-6 (2004).

2. Heightened Burden of Proof

In addition to overcoming these strong presumptions in favor of Behr, an adverse possession claimant has a burden of proof much greater than that required in other civil actions. The normal burden of proof in a civil action is that a plaintiff must prove the case by a preponderance of the evidence. However, with an adverse possession claim, the burden of proof is heightened to "clear and cogent" evidence. Michigan Courts have held that the clear and cogent standard is much higher than the preponderance standard and requires that "there must be little doubt left in the mind of the [Judge or jury]" that the plaintiff has proved every element of its case. This heightened standard requires a showing "approaching the level of proof beyond a reasonable doubt" - which is the highest standard of proof reserved solely for criminal, as opposed to civil, cases.[1]

3. Objector Must Prove Nine Onerous and Independent Elements to Prevail

Under Michigan law, an adverse possession claimant must overcome the heavy presumption in favor of the record title holder. Furthermore, the claimant must show by "clear and cogent" evidence that for a period of fifteen (15) years it has possessed the property it seeks and all of the following are demonstrably true:

1) The possession was **actual physical** possession;
2) That the possession was **visible to the record title holder**;
3) That the possession was **open to the notice of the public generally**;
4) That the possession was **notorious**;
5) That the possession was **exclusive** whereby the plaintiff prohibited the use, occupancy or possession of the property by the record title holder or any other member of the public;
6) That the possession was openly **hostile to** the legal rights of the record title holder;
7) That the possession was **under claim of right** in that the possessor acted in order to ultimately obtain legal title at the end of the fifteen (15) years;
8) That the possession was **continuous** for the entire fifteen (15) years, and
9) That the possession was **not interrupted at any point** during the fifteen (15) years, by an absence of the possessor or a use, occupation or possession of the property by others.[2]

Michigan Courts have universally held that these nine (9) onerous elements are strictly construed against the adverse possession claimant. Furthermore, Michigan Courts universally hold that all

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[1] See, e.g. McQueen v Black, 168 MichApp 641 at 645, 425 NW2d 203 (1988), and Walters v Snyder, 225 MichApp 219 at 223, 570 NW2d 301 (1997).

[2] See, e.g. Thomas v Rex A. Wilcox Trust, 185 MichApp 733 at 736-7, 463 NW2d 190 (1990); Rozmarek, *Supra* at 294, and West Michigan Dock v Lakeland Investments, 210 MichApp 505 at 511, 534 NW2d 212 (1995).

nine (9) elements must be accomplished in a manner whereby both the record title holders (i.e., Behr and its seller) and the public were put on notice for the entire fifteen (15) years that the claimant was attempting to establish an adverse possession claim

B. Preliminary Undisputed Facts Show Adverse Possession Unsustainable

Although there are many facts and voluminous documentation which definitively undermine the objector's adverse possession claim, Behr will reserve comment on them for the Court proceedings. Instead, we will limit our current assessment of the objector's adverse possession claims to the undisputed facts. These facts demonstrate that the inherently weak adverse possession claim improperly asserted by the objector is unsustainable.

1. Behr Leased Disputed Parcel for Parking During Fifteen (15) Year Period

Photographic and documentary evidence clearly show that since Behr's move to Troy, it has used the entire disputed parcel for parking. This use is shown in aerial photographs and is demonstrated by a Lease between Behr and the party from which Behr ultimately purchased the property in April of 2006. Since Behr leased, paid for, and used the disputed parcel for parking during the fifteen (15) year period in which the objector must show exclusive, continuous, and uninterrupted possession, the objector's claims must ultimately fail.

2. Behr and Its Seller Paid Taxes on Disputed Parcel

Even a quick review of the Troy tax records unequivocally demonstrates that Behr and its seller paid the taxes on the disputed parcel. The objector never paid any portion of the taxes on the disputed parcel. Since the objector failed to pay the taxes continuously and uninterrupted for the fifteen (15) year period required, it cannot demonstrate that it possessed the property under a "claim of right." One who claims a legal right in property must pay the taxes associated with the property it claims to own.

3. Objector's Claim Only Small Portion of Property Abutting Vacation Area

The property the objector claims to own in its meritless lawsuit abuts the vacated property to the West. The length of the western boundary of the vacation area is 65'. However, a careful reading of the objector's complaint reveals that it is only claiming ownership of 21' of this 65' area. Thus, the objector's claim impacts only a small fraction of the requested vacation area.

4. Objector's Lawsuit Subject to Immediate Dismissal

The objector's claims are so tenuous and dubious that it was unable to even assert a proper claim when filing the complaint. In particular, plaintiff's complaint does not even allege the possession necessary for the assertion of an adverse possession claim. More importantly, the allegations that are made affirmatively undermine an adverse possession claim. In particular, the Complaint alleges that the property in dispute was used in concert with, and with the consent of, Behr and its seller. Therefore, even if use were sufficient to maintain an adverse possession claim,

such use was not, exclusive, hostile, uninterrupted or under a claim of right. Instead, the use was joint, permissive, interrupted daily and pursuant to neighborly agreement by objector's own admission.

Behr has filed a Motion to Dismiss this meritless lawsuit and for attorney fees incurred by Behr in being forced to respond to the suit which will be heard by the Court at the end of November.

III. Conclusion

Behr encourages the City Council to perform its governmental function by approving the requested vacation. This approval is wholly independent and unrelated to the meritless litigation filed by a single objector to Behr's modest vacation request. Behr is addressing the legal claims made by the objector in the legal forum, the Oakland County Circuit Court. Behr is confident that it will ultimately prevail in the litigation for the reasons outlined above and many many more not addressed. In fact, it is possible that the objector's own allegations made to the Court in its initial filing of the complaint will form the basis for a dismissal of the meritless litigation in the very near future.

The City Council should not exacerbate the economic detriments inflicted upon Behr by our permissive litigation system by delaying action on the current vacation request. To delay would only visit Behr's problems on the citizens of Troy by delaying, if not eliminating, the employment of hundreds of desirable engineering, financial, management and administrative employees who will work at Behr's Research and Development Campus. The City of Troy has expressly approved the project on at least two (2) prior occasions after public hearings. The time has come for Troy to remove this last obstacle to Behr's desire to expand its facilities and make Troy its permanent North American headquarters.

Very truly yours,
ASKER, CLOS & PERLMUTER, P.C.

Paul P. Asker

PPA/cml
cc: Behr America, Inc.

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