



TO: Members of Troy City Council
FROM: Phillip L. Nelson, City Manager
Lori Grigg Bluhm, City Attorney *LG B RW*
DATE: July 3, 2007
SUBJECT: Refutation to Letter Challenging the Approval of Starbucks

In a letter dated April 19, 2007 (but just recently received), Joseph S. Novitsky, AIA accuses members of the Troy City Administration of alleged unethical and immoral behavior. He does not specifically detail the alleged "unethical and immoral behavior" in his letter. However, upon information and belief, Mr. Novitsky has recently submitted this written correspondence to all of the City Council members, and has also forwarded this document to other individuals. In addition to his unsubstantiated allegations of unethical and immoral behavior, he also has included some erroneous and incorrect factual information in his letter. Since the letter is now in the public domain, this memo addresses at least some of the inaccurate information contained therein.

Mr. Novitsky was the initial architect that was hired by Mr. Saif Jameel to design the proposed Starbucks at Crooks and Big Beaver Road. As Council is aware, this proposed Starbucks was possible only because there was a 1982 Consent Judgment governing the property that allowed for some flexibility outside of the current City of Troy ordinances. There was extensive negotiation between the property owners, Mr. Jameel, and members of City Administration concerning the proposed new development. Some of this negotiation was caused by the initial inclusion of a drive thru window on a very small parcel in a high traffic area. After hearing some of the drive thru concerns from City Administration and the Planning Commission, Mr. Jameel eliminated the drive thru in his subsequent proposals. Another complication in this proposed development was caused by the combination of different parcels of property that were under different ownership and different zoning regulations. In addition, City Administration strongly encouraged a development that was consistent with the recently approved Big Beaver Corridor study for this pivotal location. All of this negotiation resulted in a preliminary site plan and consent judgment amendment that was approved by the Troy City Council at the May 17, 2007 City Council meeting. Although City Administration was not privy to the reasons for the change (or to the contract relationship between the architect and the developer), there was another project architect that submitted the approved preliminary site plan, which was incorporated into the consent judgment amendment. Mr. Novitski was not involved with the project at that time.

The Starbucks proposal was an extremely difficult, but important step in creating a Big Beaver streetscape, with character and a sense of place. The flexibility offered through a consent judgment amendment allowed the City to legally approve this project, even though the City's ordinances have not yet been amended to incorporate the Big Beaver Corridor Study. This project was accomplished only through the efforts of Mr. Jameel and his final project team, who recognized and helped to implement the Big Beaver Corridor Study within the bounds of the law.

If you have any questions concerning the above, please let us know.

Date: July 2, 2007

To: Phillip L. Nelson, City Manager

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

Subject: Response to Joseph S. Novitsky, AIA Correspondence

Mr. Joseph S. Novitsky, AIA produced a letter of correspondence, dated April 19, 2007. However, this correspondence became public in June of 2007. This memorandum is not intended to provide a point-by-point rebuttal to that letter dated April 19, 2007. However, there are a number of false statements and implications that necessitate a response.

The subject parcel has been controlled by a consent judgment since February 24, 1982, and therefore controlled by the Circuit Court. This original consent judgment did not permit a restaurant use on the property, therefore, the document needed to be amended to permit the proposed Starbucks. All proposed development in Troy located on parcels that are controlled by a consent judgment go through the same process, the Starbucks application was no exception.

It was written in Mr. Novitsky's letter that Mark F. Miller, Planning Director, acted "*unethically and immorally*". Mr. Novitsky further implies that in the process of developing a site plan, "*nothing but Mr. Miller's opinion counts*". This is clearly an inaccurate representation of the development approval process. Consent judgments are negotiated between City and the other party and are not amended until both parties agree to all conditions of the proposed amendment, including the preliminary site plan. The subject consent judgment was approved by City Council on May 17, 2007, which included a preliminary site plan. Mr. Novitsky was not the architect when the Starbucks was approved.

The initial Starbucks preliminary site plan prepared by Mr. Novitsky and submitted for review included a drive-through window. The applicant and his consultants were unable to produce a site plan design including a drive-thru window that provided safe traffic movement throughout the site. There were too many conflicting traffic movements throughout the 0.51-acre parcel for automobiles to safely maneuver. Additionally, it was the professional opinion of the City Traffic Engineer that an access/egress drive on Crooks created a potentially dangerous situation for drivers exiting the site onto Crooks, particularly for traffic attempting to go south on Crooks. This was prior to the adoption of the key concepts of the Big Beaver Corridor Study.

The City sent a clear message to the developer, Mr. Jameel, that the parcel was too small to safely include a drive-through window. There was considerable delay in the re-submittal of the Starbucks without a drive-through window. During this petitioner delay, City Council, the Planning Commission and the Downtown Development Authority

adopted the key concepts of the Big Beaver Corridor Study. In fact the Big Beaver Corridor Study consultant maintained an information webpage throughout the planning process. The Study was available on the City's website since July 2006. The Planning Department provides hard copies of the study to any developer with an interest in developing on Big Beaver. The Planning Department staff recalls offering a copy of the Study to Mr. Novitsky, but he declined, stating he had a copy. The Planning Commission considers the key concepts during the approval process for all development projects along Big Beaver.

It was explained to Mr. Novitsky on numerous occasions that the consent judgment process provides opportunities to be flexible with setback requirements to meet the key concepts of the Big Beaver Corridor Study. Mr. Novitsky was asked to consider a site plan design with the restaurant located closer to Big Beaver, thus attempting to implement the Big Beaver Corridor Study, and he indicated it could not be done.

It appears Mr. Novitsky disagrees with the direction of the Big Beaver Corridor Study and is entitled to his opinion. City Management disagrees with Mr. Novitsky, when he writes that the key concepts will not be implemented. It appears that Mr. Novitsky inserted a quote in his April 19, 2007 letter, although we do not recognize it and no source was provided. It reminds me of another quote from the legendary architect/city planner Daniel Burnham:

"Make no little plans; they have no magic to stir men's blood and probably will themselves not be realized. Make big plans; aim high in hope and work, remembering that a noble, logical diagram once recorded will not die."

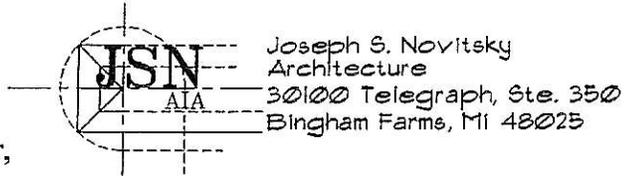
The Starbucks site was an extremely difficult important step in creating a Big Beaver streetscape with character and sense of place. City Management commends Mr. Jameel, the developer, in his efforts to recognize and help implement the Big Beaver Corridor Study.

Attachment

Prepared by mfm

G:\SITE PLANS\SP 909 Starbucks\Response to architect 07-02-07.doc

April 19, 2006



Dear City of Troy Council Member,

I have a story to tell, and I hope you have the time to spare to take into account my perspective on what is happening in your City – unethically and immorally.

I am an Architect who has been attempting to help an existing Troy business owner open another business in the City: specifically the Starbucks at 16 and Crooks.

I've been practicing architecture for over 25 years, have been the Architect for all of your Fire Stations, and other City structures and projects, and have enjoyed the experience and opportunities. Over the years you have had an extraordinary group. Lately, things have changed - and not for the better. I've also been a local Planning Commissioner for over ten years now, helping reconfigure our Ordinance and producing a new Master Plan. The experiences and knowledge I've accumulated have given me the strength and conviction to proceed with this letter.

Two and one half years, and seven public meetings have passed attempting to garner Site Plan Approval on this ½ acre site, correctly Zoned at 16 mile and Crooks. Much time was spent debating the Ordinance's demands – we hoped for a variance. Both the City Zoning Board and Commission insisted on compliance – We complied and received Preliminary Site Plan Approval, with no variances or special consideration. We agreed to continue to study and deal with the differing traffic engineer's perspective and detail of the entrance and egress on Crooks. (Both your City Planner, Mr. Miller and some Planning Commissioners, didn't agree with the "science" of our Traffic engineering study ordered by the City but also rejected by the same folks – that didn't agree with the results...?)

However, after your Planning Commission granted us Preliminary Site Plan Approval on the site that has a Consent Judgement overlay, some very strange things happened.

A few additional very expensive months have gone by and no scheduled Council meetings were set. I started asking questions. You see, I don't get paid in full until the site plan is "approved". Your vote determines my pay...Unfortunate as that may seem, in today's fickle public arena, I typically agree to that for I don't get involved in projects that I don't believe will benefit the City...so it's a risk I typically am willing to take.

I'm told a meeting took place in the recent past with your Assistant City Manager, Brian Murphy, Mark Miller from the Planning Department, and Lori Bluhm, City Attorney. The owner of the project was there and the message was clear...if you move the building forward, (completely ignoring Ordinance demands), as Mark wants, the City Attorney will draft the Consent language to accommodate that, submit a new plan that reflects all this and we'll get it completed.- no Planning Commission meetings, no ZBA variances required...in fact nothing but Mr. Miller's opinion counts...

Surely you understand there is an “overlay district” study that has been prepared by someone who believes you can change your Golden Corridor to a Walkable Downtown strip in less than 50 years..”we have to start somewhere, sometime” is the pat response...

This overlay district / study has NOT been adopted to date, is NOT law and in my opinion simply wrong, incorrect and misguided. Mr. Miller has insisted – unethically and immorally if not flat out right illegally, that this is not the case, and his will, opinion, and desires supercede due process, law, and common sense within the collective design community. I am incensed with his total disregard for due process and others....

We have never been offered a copy of the Overlay District Study to date (after these years on this site) – simply because it is not official yet I assume, and yet it is being forced on this owner...**now through another design professional...**

Now, I as a practitioner, and human being am probably the “greenest” Architect you’ll find having and employing the University of Oregon’s education throughout my career. We believe in everything the study is suggesting – with one major difference...

One cannot superficially design a City fabric and texture that that takes a hundred or so years to develop through market influence, societal influence and desire, and topography. It is an organic process that must be respected.

The overlay district will not become what you wish it to be... You have something very different here... wonderful in it’s own right and to be celebrated on it’s own merits.

By attempting to force this issue you will ruin the special quality that you already have, slipping into a nebulous texture for generations to come...undecided, unresolved and certainly confused.

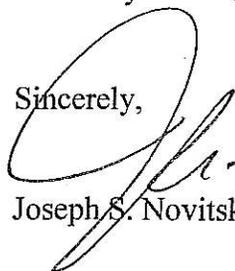
Personally, the most glaring issue for me is that I now don’t get paid, because of the back room meddling efforts by your in house “dream team”...My attorney says that’s enough cause to bring this to light. I’m not going to waste any more of my time or business on this or any other process in Troy until the adopted Laws are respected.

On a regional note – do we need any of **this** in Michigan now or ever????

I’ve said my peace, you have my thoughts, good luck with your efforts.

Thank you for your time.

Sincerely,



Joseph S. Novitsky, AIA

Cc: Council Members. M. Miller ,L. Bluhm
B.Murphy,R. Dumke, AIA