



**City of New Buffalo**  
**SPECIAL CITY COUNCIL MEETING AGENDA**  
**FEBRUARY 6, 2023 AT 5:00 PM**

1. Call to Order
2. Pledge of Allegiance
3. Roll Call
4. Approval of Agenda
5. Public Comment
6. Closed Session
  - a. Settlement strategy for Moskovic/Nofziger Case
7. New Business
  - a. Right-of-Way Vacation (S. Clinton between W. Detroit and the City Limits)
  - b. Right-of-Way Vacation (S. Kenzie between E. Detroit and E. Clay)
8. Council Comments
9. Adjournment



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**TO:** Mayor Humphrey and the New Buffalo City Council

**FROM:** Darwin Watson, City Manager

**DATE:** February 6, 2023

**RE:** Partial Right-of-Way Vacation Request – South Clinton

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**ITEM BEFORE THE COUNCIL:**

Approval of vacation request of a portion of the South Clinton right-of-way between W. Detroit and the City Limits

**DISCUSSION:**

The city received a request from Kimberly Landess and Mary Robertson, trustees for the James O. Motycka Living Trust, who own 315 South Clinton. The request is to vacate a portion of the South Clinton right-of-way, from West Detroit to the City Limits.

The petitioners wish to sell the property; however, the property is land locked, with no water and sewer access. The request is that the city vacate the eastern 15 feet of the right-of-way to allow for utilities to be installed to the property. If the request is granted, a portion of the vacated right of way will be conveyed to both 1119 West Detroit and 315 South Clinton. This will allow the property owners to work out the details of the necessary easements to allow for the utilities to be supplied to 315 South Clinton.

Section 7.6 of the City Charter states that City Council action to vacate, discontinue or abolish any highway, street, lane, alley or other public place or part thereof shall be by resolution. After the introduction of such resolution and before its final adoption, the Council shall appoint a time when it shall meet and hear objections thereto; and notice of the time, place and purpose of such meeting shall be published either separately or as a part of the proceedings of the Council.

The public hearing for this vacation request is scheduled for the February 21, 2023 City Council meeting at 6:30 PM. This has been properly noticed and the affected properties have been notified in compliance with the prescribed procedure.

**RECOMMENDATION:**

That the New Buffalo City Council approves the vacating of a portion of the South Clinton right-of-way W. Detroit to the city limits and convey the land to 1119 West Detroit and 315 South Clinton. Additionally, city staff is authorized to execute the necessary documentation and to facilitate the request.

**CITY COUNCIL  
CITY OF NEW BUFFALO  
Berrien County, Michigan**

Council member \_\_\_\_\_, supported by Council member \_\_\_\_\_, moved the adoption of the following resolution:

**RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION TO VACATE A PORTION OF THE CLINTON STREET RIGHT-OF-WAY  
BETWEEN DETROIT STREET AND CITY LIMITS**

WHEREAS, the City of New Buffalo received a request from Kimberly Landess and Mary Robertson, trustees for the James O. Motycka Living Trust, which owns certain property located at 315 South Clinton, that the City vacate a certain portion of undeveloped right-of-way to enable private development of water and sewer utilities;

WHEREAS, the adjacent property owners, whose mailing addresses and parcel numbers are attached as Exhibit A to this Resolution, have been notified of the request and have been afforded an opportunity to comment and to be heard relative to such request;

WHEREAS, pursuant to Charter Section 7.6, after introducing this Resolution at its meeting on February 6, 2023, and conducting a public hearing on the matter on February 21, 2023, the City Council has determined it is in the best interests of the public health, safety, and welfare to vacate the undeveloped portion of the Clinton Street right-of-way described below.

NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS:

1. The City hereby vacates, relinquishes jurisdiction over, abandons, and allows its interest in the right-of-way described below to revert or be transferred to adjacent property owners in accordance with the terms of this Resolution:

The northeasterly 20 feet of Clinton Street lying adjacent to the southwesterly line of Block 348, Virginia Addition to the Village (now City) of New Buffalo, Berrien County, Michigan, according to the plat thereof as recorded on March 20, 1837 in Liber E of Deeds, Page 291 Berrien County Records.

(the "Vacated Street Segment").

2. The Vacated Street Segment as vacated shall revert to the ownership of the adjacent property owners, each of whom shall take ownership of the Vacated Street Segment, as provided by law, which is adjacent to their property.

3. The City Clerk is authorized and directed to provide a copy of this completed and executed Resolution to the adjacent property owners to the Vacated Street Segment.

4. The City Clerk is authorized and directed to record this Resolution within 30 days with the Berrien County Register of Deeds and to file a copy of this Resolution with the Michigan Department of Licensing and Regulatory Affairs.

5. All resolutions and parts of resolutions, insofar as they conflict with the provisions of this resolution, are rescinded.

YEAS: \_\_\_\_\_

NAYS: \_\_\_\_\_

ABSENT: \_\_\_\_\_

ABSTAIN: \_\_\_\_\_

**RESOLUTION DECLARED ADOPTED.**

**CERTIFICATION**

As the duly appointed and acting City Clerk, I certify that this is a true and complete copy of a resolution adopted by the City Council of the City of New Buffalo, Berrien County, Michigan, at a regular meeting held on February 21, 2023, and that public notice of said meeting was given pursuant to, and in compliance with, Act 267 of the Public Acts of Michigan of 1976, as amended.

\_\_\_\_\_  
Ann M. Fidler, City Clerk

**EXHIBIT A**

<b>Name of Property Owner</b>	<b>Street Address, Mailing Address, Parcel Number</b>
<b>Sharon S. Motcyka</b>	Street and Mailing Address: 1119 W. Detroit Street, New Buffalo, MI, 49117  Parcel Number: 62-8200-0348-01-8
<b>James O. Motycka Living Trust</b>	Street Address: 315 S. Clinton Street, New Buffalo, MI, 49117  Mailing Address: 300 S. Marshall St., New Buffalo, MI 49117  Parcel Number: 62-8200-0348-13-1



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**TO:** Mayor Humphrey and the New Buffalo City Council

**FROM:** Darwin Watson, City Manager

**DATE:** February 6, 2023

**RE:** Right-of-Way Vacation Request – New Buffalo Area Recreation Authority

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**ITEM BEFORE THE COUNCIL:**

Approval of vacation request of the S. Kenzie right-of-way between E. Detroit and E. Clay from the New Buffalo Area Recreation Authority

**DISCUSSION:**

Currently, the City of New Buffalo has an undeveloped right-of-way exists that is to the west of the New Buffalo Area Schools' track and football stadium (between E. Detroit and E. Clay). It appears that the track abuts or potentially resides in the right-of-way.

Recently, the New Buffalo Area Recreation Authority (NBARA) discussed the existing trees in the right-of-way and the threat they posed. More specifically, the threat to persons utilizing the track or sporting events on the track.

The culmination of the discussion resulted in ultimately asking the city to vacate the right-of-way. In the interim, there were two (2) temporary solutions offered:

- Allowance of the school district to evaluate the portion of the right-of-way given to it for careful tree removal to protect the facility and its users, and
- Examining the potential of developing a connector path between the new recreational amenities being constructed by the school (along Clay Street) to the Oselka Park. Also, the feasibility of additional recreational amenities would be studied for this area.

The investigation into the recreational amenities would be undertaken by the NBARA. This would include the input of the residential property owners adjacent to the right-of-way.

Section 7.6 of the City Charter states that City Council action to vacate, discontinue or abolish any highway, street, lane, alley or other public place or part thereof shall be by resolution. After the introduction of such resolution and before its final adoption, the Council shall appoint a time when it shall meet and hear objections thereto; and notice of the time, place and purpose of such meeting shall be published either separately or as a part of the proceedings of the Council.

The public hearing for this vacation request is scheduled for the February 21, 2023 City Council meeting at 6:30 PM. This has been properly noticed and the affected properties have been notified in compliance with the prescribed procedure.



**RECOMMENDATION:**

That the New Buffalo City Council approves the vacating of the undeveloped right-of-way between E. Detroit and E. Clay. Additionally, city staff is authorized to execute the necessary documentation and to facilitate the request.

**CITY COUNCIL  
CITY OF NEW BUFFALO  
Berrien County, Michigan**

Council member \_\_\_\_\_, supported by Council member \_\_\_\_\_, moved the adoption of the following resolution:

**RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION TO VACATE A PORTION OF THE KENZIE STREET RIGHT-OF-WAY  
BETWEEN CLAY STREET AND DETROIT STREET**

WHEREAS, a portion of the track that surrounds the New Buffalo High School football field appears to encroach upon the undeveloped City right-of-way known as Kenzie Street;

WHEREAS, representatives from New Buffalo Area Recreational Authority have requested that the City vacate the portion of the undeveloped right-of-way adjacent to the football field in order to remedy the encroachment issue and allow the future development of a walking path;

WHEREAS, the adjacent property owners, whose mailing addresses and parcel numbers are attached as Exhibit A to this Resolution, have been notified of the request and have been afforded an opportunity to comment and to be heard relative to such request;

WHEREAS, pursuant to Charter Section 7.6, after introducing this Resolution at its meeting on February 6, 2023, and conducting a public hearing on the matter on February 21, 2023, the City Council has determined it is in the best interests of the public health, safety, and welfare to vacate the undeveloped portion of the Kenzie Street right-of-way described below.

NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS:

1. The City hereby vacates, relinquishes jurisdiction over, abandons, and allows its interest in the right-of-way described below to revert or be transferred to adjacent property owners in accordance with the terms of this Resolution:

THAT PART OF KENZIE STREET ACCORDING TO ANNEXED PLAT STYLED THE VIRGINIA ADDITION TO THE TOWN OF NEW BUFFALO AT THE MOUTH OF THE GALIEN RIVER IN THE TERRITORY OF MICHIGAN, CITY OF NEW BUFFALO, BERRIEN COUNTY, MICHIGAN, AS RECORDED IN BOOK E OF DEEDS, PAGE 291, BERRIEN COUNTY RECORDS, DESCRIBED AS BEGINNING AT THE SOUTHEASTERLY CORNER OF BLOCK 107, SAID PLAT, THENCE NORTH 27° 38' 10" WEST ON THE NORTHEASTERLY LINE OF SAID BLOCK, A DISTANCE OF 395.94 FEET TO THE NORTHEASTERLY CORNER OF SAID BLOCK; THENCE NORTH 62° 18' 23" EAST ON THE NORTHEASTERLY EXTENSION OF THE SOUTHEASTERLY LINE OF DETROIT STREET, SAID PLAT, 66.00 FEET TO THE SOUTHWESTERLY LINE OF LOT 1, BLOCK 395, AMENDED PLAT OF BLOCKS 98 THROUGH 102 AND BLOCKS 108 THROUGH 110 AND THE VACATED PORTIONS OF KENZIE STREET, GRIFFITH STREET,



FRANKLIN AVENUE, FARMER STREET, VIRGINIA STREET AND A VACATED PORTION OF DETROIT STREET, ANNEXED PLAT STYLED THE VIRGINIA ADDITION TO THE TOWN OF NEW BUFFALO AT THE MOUTH OF THE GALIEN RIVER IN THE TERRITORY OF MICHIGAN, AS RECORDED IN LIBER 27 OF PLATS, PAGE 31, BERRIEN COUNTY RECORDS; THENCE SOUTH 27° 38' 10" EAST ON SAID SOUTHWESTERLY LINE, 396.01 FEET TO THE SOUTHWESTERLY CORNER OF SAID LOT 1, BLOCK 395; THENCE SOUTH 62° 21' 49" WEST, 66.00 FEET TO THE POINT OF BEGINNING.

(the "Vacated Street Segment").

2. The City reserves, for itself and for its successors and assigns, a permanent utility easement on, over, across and under the Vacated Street Segment, for the purpose of constructing, installing, replacing, repairing, maintaining, and improving utilities, including, without limitation, communication lines, sanitary sewers, storm sewers and watermains, along with related appurtenances, together with the right of ingress and egress for the purposes above described.
3. The Vacated Street Segment as vacated shall revert to the ownership of the adjacent property owners, each of whom shall take ownership of the Vacated Street Segment, as provided by law, which adjacent to their property to the centerline of the Vacated Street Segment.
4. The City Clerk is authorized and directed to provide a copy of this completed and executed Resolution to the adjacent property owners to the Vacated Street Segment.
5. The City Clerk is authorized and directed to record this Resolution within 30 days with the Berrien County Register of Deeds and to file a copy of this Resolution with the Michigan Department of Licensing and Regulatory Affairs.
6. All resolutions and parts of resolutions, insofar as they conflict with the provisions of this resolution, are rescinded.

YEAS: \_\_\_\_\_

NAYS: \_\_\_\_\_

ABSENT: \_\_\_\_\_

ABSTAIN: \_\_\_\_\_

**RESOLUTION DECLARED ADOPTED.**

**CERTIFICATION**

As the duly appointed and acting City Clerk, I certify that this is a true and complete copy of a resolution adopted by the City Council of the City of New Buffalo, Berrien County, Michigan, at a regular meeting held on \_\_\_\_\_, 2023, and that public notice of said meeting was given pursuant to, and in compliance with, Act 267 of the Public Acts of Michigan of 1976, as amended.

\_\_\_\_\_  
Ann M. Fidler, City Clerk

**EXHIBIT A**

<b>Name of Property Owner</b>	<b>Street Address, Mailing Address, Parcel Number</b>
<b>New Buffalo Consolidated School District</b>	Street and Mailing Address: P.O. Box 280, 1112 East Clay Street, New Buffalo, MI 49117  Parcel Number: 11-62-8204-0395-00-0
<b>Robert V. Gino, Sr. &amp; Nancy L. Gino</b>	Street Address: 603 E. Detroit St., New Buffalo, MI 49117  Mailing Address: 9472 Union Pier Rd., P.O. Box 513, Union Pier, MI 49129  Parcel Number: 11-62-8200-0107-01-1
<b>Robert V. Gino, Sr. &amp; Nancy L. Gino</b>	Street Address: 316 S. Kenzie St., New Buffalo, MI 49117  Mailing Address: 9472 Union Pier Rd., P.O. Box 513, Union Pier, MI 49129  Parcel Number: 11-62-8200-0107-02-9
<b>Robert V. Gino Sr. &amp; Nancy L. Gino</b>	Street Address: 608 E. Clay St., New Buffalo, MI 49117  Mailing Address: 9472 Union Pier Rd., P.O. Box 513, Union Pier, MI 49129  Parcel Number: 11-62-8200-0107-04-5

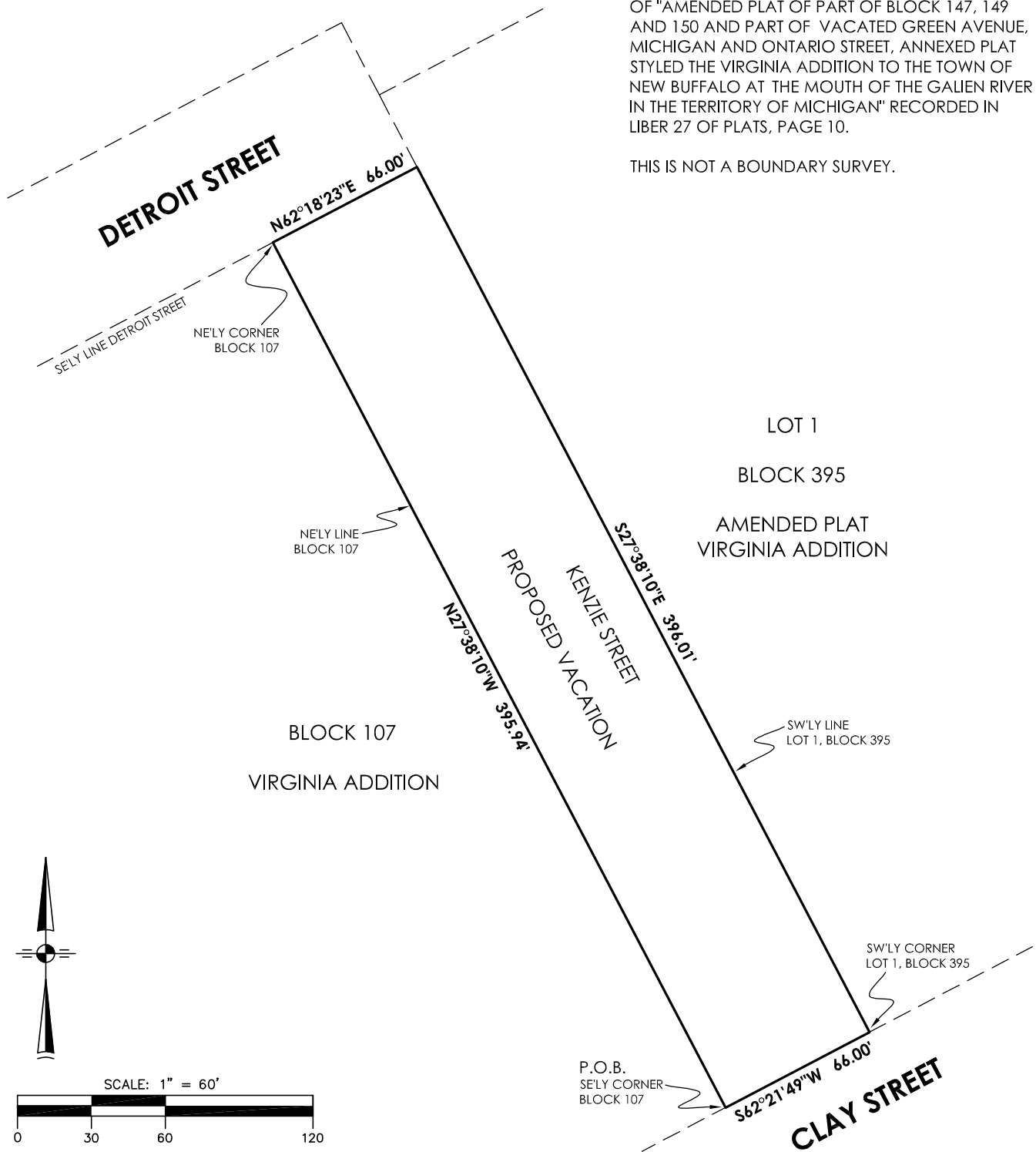
## SKETCH OF DESCRIPTION

THAT PART OF KENZIE STREET ACCORDING TO ANNEXED PLAT STYLED THE VIRGINIA ADDITION TO THE TOWN OF NEW BUFFALO AT THE MOUTH OF THE GALIEN RIVER IN THE TERRITORY OF MICHIGAN, CITY OF NEW BUFFALO, BERRIEN COUNTY, MICHIGAN, AS RECORDED IN BOOK E OF DEEDS, PAGE 291, BERRIEN COUNTY RECORDS, DESCRIBED AS BEGINNING AT THE SOUTHEASTERLY CORNER OF BLOCK 107, SAID PLAT, THENCE NORTH 27° 38' 10" WEST ON THE NORTHEASTERLY LINE OF SAID BLOCK, A DISTANCE OF 395.94 FEET TO THE NORTHEASTERLY CORNER OF SAID BLOCK; THENCE NORTH 62° 18' 23" EAST ON THE NORTHEASTERLY EXTENSION OF THE SOUTHEASTERLY LINE OF DETROIT STREET, SAID PLAT, 66.00 FEET TO THE SOUTHWESTERLY LINE OF LOT 1, BLOCK 395, AMENDED PLAT OF BLOCKS 98 THROUGH 102 AND BLOCKS 108 THROUGH 110 AND THE VACATED PORTIONS OF KENZIE STREET, GRIFFITH STREET, FRANKLIN AVENUE, FARMER STREET, VIRGINIA STREET AND A VACATED PORTION OF DETROIT STREET, ANNEXED PLAT STYLED THE VIRGINIA ADDITION TO THE TOWN OF NEW BUFFALO AT THE MOUTH OF THE GALIEN RIVER IN THE TERRITORY OF MICHIGAN, AS RECORDED IN LIBER 27 OF PLATS, PAGE 31, BERRIEN COUNTY RECORDS; THENCE SOUTH 27° 38' 10" EAST ON SAID SOUTHWESTERLY LINE, 396.01 FEET TO THE SOUTHWESTERLY CORNER OF SAID LOT 1, BLOCK 395; THENCE SOUTH 62° 21' 49" WEST, 66.00 FEET TO THE POINT OF BEGINNING.

SUBJECT TO ALL EASEMENTS AND RESTRICTIONS OF RECORD OR OTHERWISE.

BEARINGS ARE RELATED TO THE RECORDED PLAT OF "AMENDED PLAT OF PART OF BLOCK 147, 149 AND 150 AND PART OF VACATED GREEN AVENUE, MICHIGAN AND ONTARIO STREET, ANNEXED PLAT STYLED THE VIRGINIA ADDITION TO THE TOWN OF NEW BUFFALO AT THE MOUTH OF THE GALIEN RIVER IN THE TERRITORY OF MICHIGAN" RECORDED IN LIBER 27 OF PLATS, PAGE 10.

THIS IS NOT A BOUNDARY SURVEY.



PREPARED FOR:

**CITY OF NEW BUFFALO**

DRAWN BY: MGR

APPROVED BY: MAF

DATE: 1/24/2023

SCALE: 1" = 60'

KENZIE STREET VACATION

VIRGINIA ADDITION

CITY OF NEW BUFFALO

SHEET 1 OF 1