# CITY COUNCIL AGENDA ITEM

Date: August 21, 2012

To: Michael Culpepper, Interim City Manager

From: Mark F. Miller, Director of Economic & Community Development
R. Brent Savidant, Planning Director

Subject: PUBLIC HEARING – CONDITIONAL REZONING APPLICATION (File Number CR-007) – Proposed Charter One Bank Branch, Northwest corner of Stephenson Highway and 14 Mile Road, Section 35, From O (Office) District to IB (Integrated Industrial and Business) District

## Background

The applicant, Lormax Stern Development Company, seeks a conditional rezoning of the subject parcel from O (Office) to IB (Integrated Industrial and Business) District. The parcel is approximately 7 acres in area. The applicant voluntarily provided a list of conditions, including prohibited uses for the site. The applicant also proposes maintaining a permanent 30-foot wide greenbelt open space along the western property line and a portion of the northern property line. Both property lines separate the subject property from residential neighborhoods. The terms offered by the applicant are described in the attached Conditional Rezoning Agreement.

The Master Plan classifies this area as 21st Century Industrial. The application to rezone to IB is consistent with this classification, a description of which is attached.

The Planning Commission held a public hearing on this item on June 12, 2012. The item was also studied by the Planning Commission on June 26, 2012, July 10, 2012 and July 24, 2012.

The attached report prepared by Carlisle/Wortman Associates, Inc. (CWA), the City's Planning Consultant, summarizes the rezoning request.

## Recommendation

City Management recommends approval of the conditional rezoning application.

_____ _____
City Attorney's Review as to Form and Legality Date

Attachments:
1. Maps
2. Conditional Rezoning Agreement
3. City of Troy Master Plan (excerpt)
4. Report prepared by Carlisle/Wortman Associates, Inc.
5. Minutes from Planning Commission meetings (4)

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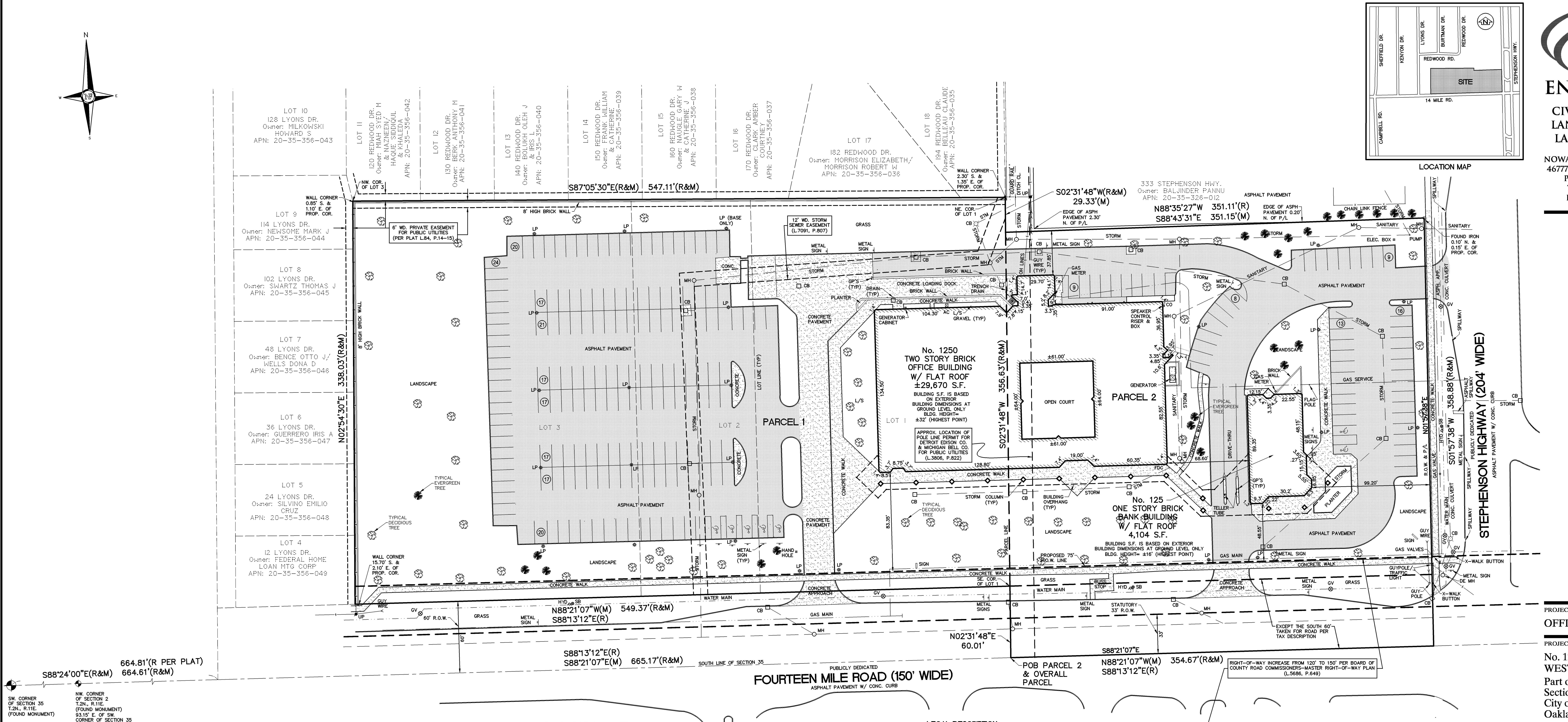


# NF ENGINEERS

CIVIL ENGINEERS
LAND SURVEYORS
LAND PLANNERS

NOWAK & FRAUS ENGINEERS
46777 WOODWARD AVENUE
PONTIAC, MI 48342
TEL. (248) 332-7931
FAX. (248) 332-8257

## SITE DATA

Gross Land Area: 308,231 Square Feet or 7.076 Acres.
Zoned: O (Office District)
Building Setbacks:
Front= 10'
Sides= 20' (least); 40' (total)
Rear= 30'

Max. Building Height permitted: 3 stories/36'

Total Parking: 225 spaces including 7 barrier free spaces.

The above setback & height requirements were obtained from the City of Troy Zoning Ordinance.

## FLOOD HAZARD NOTE

The Property described on this survey does not lie within a Special Flood Hazard Area as defined by the Federal Emergency Management Agency; the property lies within Zone X of the Flood Insurance Rate Map identified as Map No. 26125C0561G bearing an effective date of 1-16-2009.

## CEMETERY NOTE

There was no observable evidence of cemeteries or burial grounds within the subject property.

## UTILITY NOTE

All utilities are underground unless otherwise noted.

The utilities shown on this survey were determined by field observation. All locations are approximate. The location of any other underground services which may exist can only be depicted if a Utility Plan is furnished to the surveyor.

## SURVEY NOTES

There was no observable evidence of current earth moving work, building construction or building additions.

There are no known proposed changes in street right-of-way lines available from the controlling jurisdiction EXCEPT as shown for 14 Mile Road

There was no observable evidence of recent street or sidewalk construction or repairs.

There was no observable evidence of site use as a solid waste dump, sump or sanitary landfill.

## LEGEND

| | | |
|---|---|---|
| ASPH | = | Asphalt |
| C | = | Cable |
| CATV | = | Cable TV/Box/Riser |
| CB | = | Catch Basin |
| CO | = | Clean Out |
| CONC | = | Concrete |
| E | = | Electric |
| EM | = | Electric Meter |
| EC | = | Electric Conduit/Riser |
| F.I. | = | Found Iron |
| G | = | Gas |
| GL | = | Ground Light |
| GP | = | Guard Post |
| GV | = | Gate Valve |
| HYD | = | Hydrant |
| LP | = | Light Pole |
| L/S | = | Landscape |
| MH | = | Manhole |
| MON. | = | Monument |
| MW | = | Monitor Well |
| OH LINES | = | Overhead Lines |
| P | = | Phone/Box/Riser |
| PH | = | Physically Handicapped |
| PIV | = | Post Indicator Valve |
| P/L | = | Property Line |
| PM | = | Parking Meter |
| ROW | = | Right of Way |
| SAN | = | Sanitary Sewer |
| SB | = | Stop Box (Water) |
| S.I. | = | Set Iron |
| SO | = | Shutoff (Water) |
| STM | = | Storm Sewer |
| TRANS | = | Transformer |
| UP | = | Utility Pole |
| WM | = | Water Main |
| (R) | = | Record Measurement |
| (M) | = | Surveyed Measurement |
| (C) | = | Calculated |

40 0 20 40 80

GRAPHIC SCALE 1"=40'

## BASIS OF BEARING NOTE

The basis of bearing for this survey was established by Mark Builders Subdivision as recorded in Liber 84, of plats Page(s) 14 and 15.

## TITLE NOTES

Subject to:

A. Rights or claims of parties in possession not shown by the public records.

C. Easements or claims of easements not shown by the public records and existing water, mineral, oil and exploration rights.

E. Any and all oil, gas, mineral, mining rights and/or reservations thereof.

3. Rights of tenants, if any, in any unrecorded leases or otherwise.

4. Rights of the public and of any governmental unit in any part thereof taken, used or deeded for street, road or highway purposes.

5. Easement for public utilities over the Northerly 6 feet of Parcel 1, as set forth on the plat. [Said easement is plotted hereon].

6. Terms and conditions of Pole Line Permit in favor of The Detroit Edison Company as set forth in Liber 3806, Page 822. [Approximate location of described line is shown hereon; Said easement width is not specified].

7. Terms and conditions of resolutions concerning the construction and maintenance of drains as set forth in Liber 4215, Page 767 and Liber 4263, Page 625. [Not a plottable exception].

8. Terms and conditions of Easement in favor of the City of Troy for construction and maintenance of a water main as set forth in Liber 4556, Page 262. [Said easement is within Fourteen Mile Road Right-of-Way and is not plotted].

9. Terms and conditions of the Master Right-of-Way Plan as set forth in Resolution concerning amendments as set forth in Liber 5686, Page 649. [Right-of-Way increase described in said exception is shown on survey].

10. Terms and conditions of Grant of Easement in favor of the City of Troy for the construction, installation, repair, maintenance and replacement of a storm sewer as set forth in Liber 7091, Page 807. [Said easement is plotted hereon].

All exceptions shown or noted on this survey were obtained from Title Commitment No. No. 21200404, Local No. 07168651, with an effective date of 02-16-2012, issued by Chicago Title Insurance Company.

## LEGAL DESCRIPTION

Land situated in the State of Michigan, County of Oakland, City of Troy described as follows:

Parcel 1:
Lots 1, 2 and 3, Mark Builders Subdivision, according to the plat thereof recorded in Liber 84, of plats Page(s) 14 and 15, Oakland County Records.

Parcel 2:
Part of the Southwest 1/4 of Section 35, Town 2 North, Range 11 East, City of Troy, Oakland County, Michigan, being described as beginning at a point on the South line of Section 35 distant South 88 degrees 24 minutes 00 seconds East 664.61 feet and South 88 degrees 13 minutes 12 seconds East 665.17 feet from the Southwest corner of said Section 35; thence continuing along the South section line, South 88 degrees 13 minutes 12 seconds East 354.67 feet; thence along the West line of Stephenson Highway (204 feet wide) North 01 degree 57 minutes 38 seconds East 358.88 feet; thence North 88 degrees 35 minutes 27 seconds West 351.11 feet; thence South 02 degrees 31 minutes 48 seconds West 356.63 feet to the point of beginning. For tax purposes, Parcel 2 is described as:

T2N, R11E, SEC 35 MARK BUILDERS SUB LOTS 1, 2 & 3, ALSO PART OF SW 1/4 BEG AT PT DIST S 88-24-00 E 664.61 FT & S 88-13-12 E 655.17 FT FROM SW SEC COR, TH S 88-13-12 E 354.67 FT, TH N 01-57-38 E 358.88 FT, TH N 88-35-27 W 351.11 FT, TH S 02-31-48 W 357.14 FT TO BEG EXC S 60 FT TAKEN FOR RD

1250 West Fourteen Mile, Troy
Tax ID: 20-35-356-054

Based on a field survey all of the above being described as:

Lots 1, 2 and 3, Mark Builders Subdivision, according to the plat thereof recorded in Liber 84, of plats Page(s) 14 and 15, Oakland County Records, also part of the Southwest 1/4 of Section 35, Town 2 North, Range 11 East, City of Troy, Oakland County, Michigan, being described as: Commencing at the Southwest corner of said Section 35; thence South 88 degrees 24 minutes 00 seconds East 664.61; thence along the South line of said Section 35 South 88 degrees 21 minutes 07 seconds East 665.17 feet to the point of beginning; thence North 02 degrees 31 minutes 48 seconds East 60.01 feet to a point on the North Right-of-Way line of Fourteen Mile Road (120' wide) said point also being the Southeast corner of said Lot 1; thence along said North Right-of-Way line North 88 degrees 21 minutes 07 seconds West 549.37 feet to a point which is the Southwest corner of said Lot 3; thence along the West line of said Lot 3 North 02 degrees 54 minutes 30 seconds East 338.03 feet to a point which is the Northwest corner of said Lot 3; thence along the North line of said Lots 1, 2 & 3 South 87 degrees 05 minutes 30 seconds East 547.11 feet to a point which is the Northeast corner of said Lot 1; thence along the East line of said Lot 1, South 02 degrees 31 minutes 48 seconds West 29.33 feet; thence South 88 degrees 43 minutes 31 seconds East 351.15 feet to a point on the West Right-of-Way line of Stephenson Highway (204' wide); thence along said West Right-of-Way line South 01 degrees 57 minutes 38 seconds West 358.88 feet to a point on said South line of Section 35; thence along said South line North 88 degrees 21 minutes 07 seconds West 354.67 feet to the point of beginning.

## SURVEYOR'S CERTIFICATION

I, the undersigned, hereby certify to Charter One Bank, FSB formerly known as First Federal of Michigan formerly known as First Federal Savings and Loan Association of Detroit, Chicago Title Insurance Company and Level One Bank, a Michigan banking corporation, that this print of survey is based on a survey made by Kevin Navaroli, Registered Surveyor No. 53503, on March 26, 2012, and that this print of survey correctly shows the location of all buildings, structures and other improvements situated on the premises herein described and that except as shown hereon, there are no visible easements or rights-of-way across said premises, or easements or rights-of-way of which the undersigned has been advised, or party walls or encroachments upon adjoining premises, streets or alleys by any of said buildings, structures or other improvements, or cemeteries or family burying grounds, or encroachments of any nature upon the premises herein described. II further certify that the property abuts an accessible street or that there is ingress and egress to and from the property. I further certify that on the date aforementioned, I found the following party(ies) to be in possession of the premises in the indicated capacities:

Dated: 04-04-2012

Registered Surveyor No. 53503

STATE OF MICHIGAN ★ KEVIN NAVAROLI PROFESSIONAL SURVEYOR NO. 53503 ★ LICENSED PROFESSIONAL SURVEYOR

PROJECT
OFFICE & BANK BLDG.

PROJECT LOCATION
No. 1250
WEST 14 MILE ROAD
Part of the SW. 1/4 of Section 35, T.2N., R.11E., City of Troy, Oakland County, MI

SHEET
ALTA/ACSM
Land Title Survey

REVISIONS

DRAWN BY: A.G.
APPROVED BY: K.N./R.FRAUS
EMAIL: rfraus@nowakfraus.com
DATE ISSUED: 04-04-2012
SCALE: 1"=40'
NFE JOB NO. G833
SHEET NO. 1

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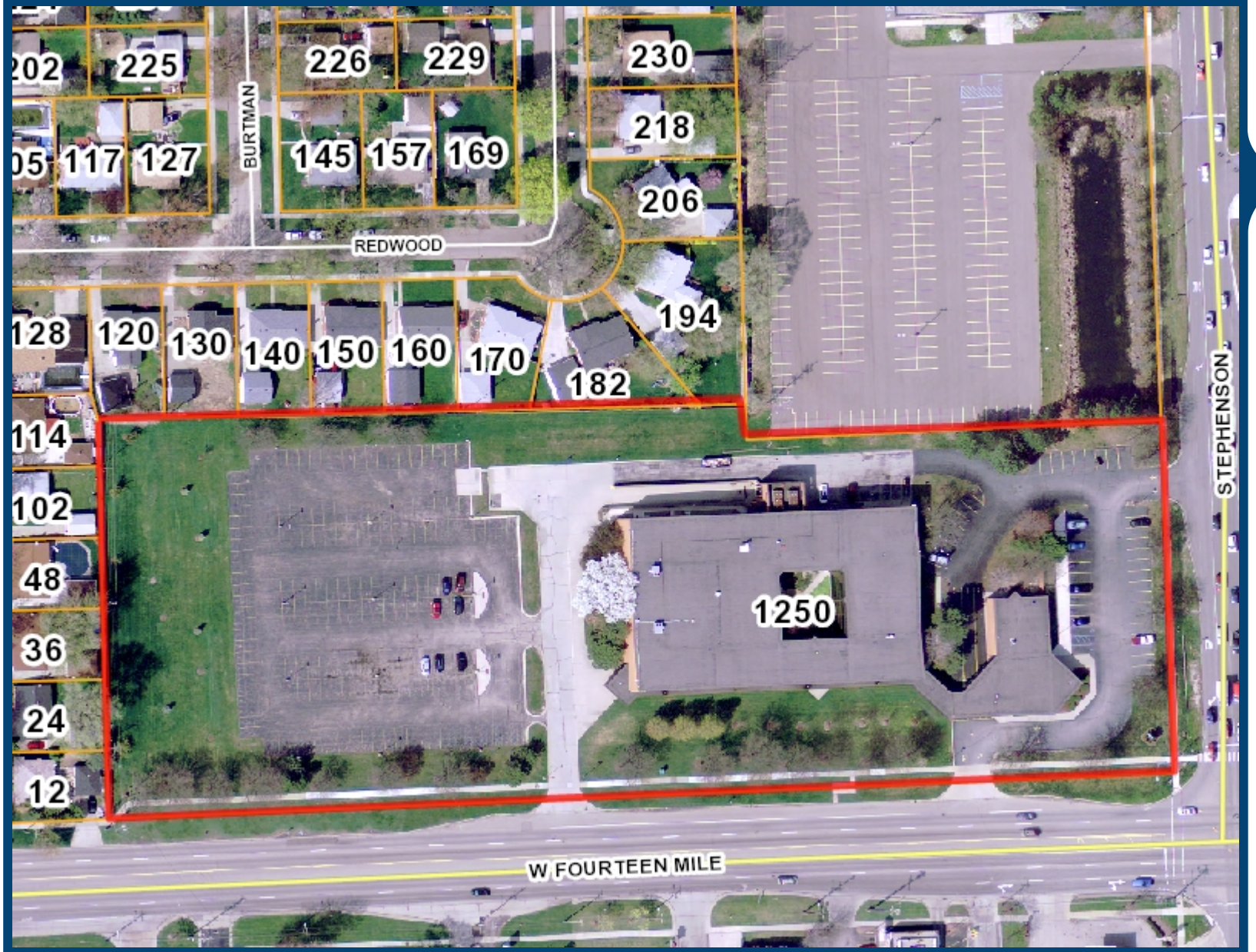
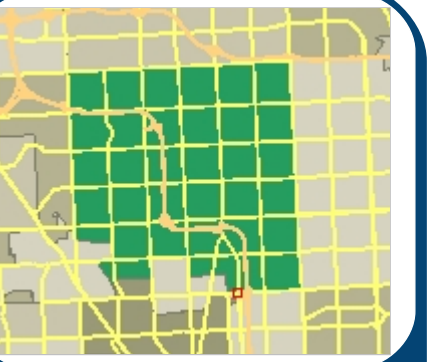
# 125 Stephenson & 1250 W 14 Mile

City of Troy Planning Department



Legend

- I-75
- Road Centerline
  - Major Road
  - Industrial Road
  - Local Road
- Ponds and Basins
- Streams and Creeks
- Parcels
- Aerial Photos - 2010
  - Red: Band_1
  - Green: Band_2
  - Blue: Band_3

250 0 125 250 Feet

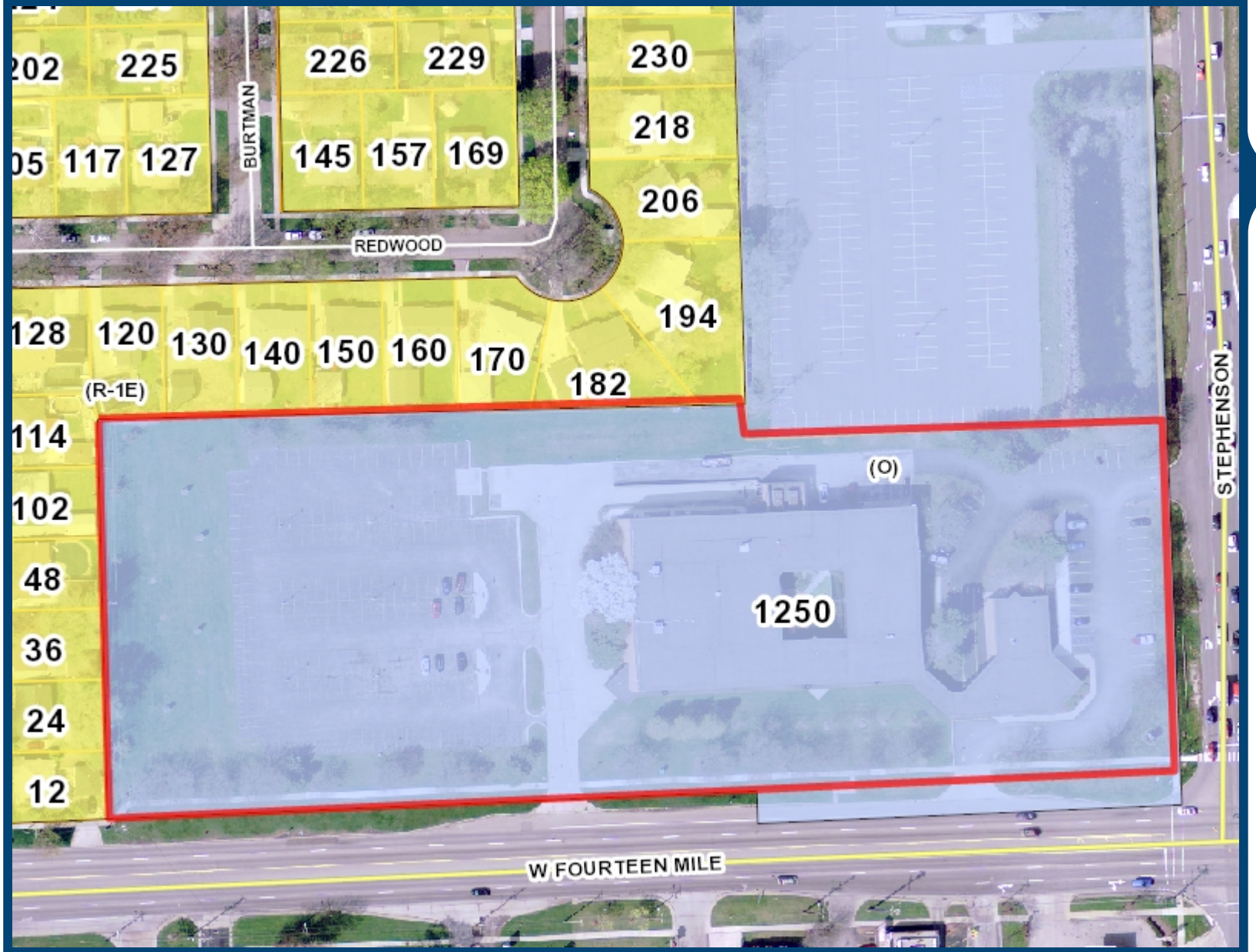
Scale 1: 1,498

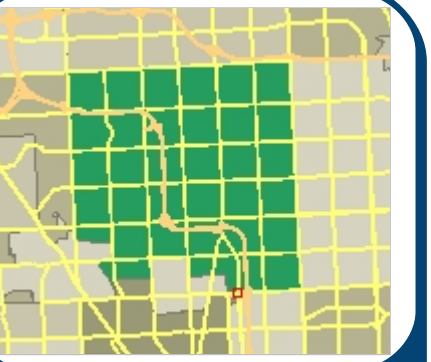
Note: The information provided by this application has been compiled from recorded deeds, plats, tax maps, surveys, and other public records and data. It is not a legally recorded map survey. Users of this data are hereby notified that the source information represented should be consulted for verification.

Printed: 5/11/2012

# 125 Stephenson & 1250 W 14 Mile

City of Troy Planning Department



## Legend

- I-75
- Road Centerline
  - Major Road
  - Industrial Road
  - Local Road
- Current Zoning Ordinance
  - (PUD) Planned Unit Development
  - (CF) Community Facilities District
  - (EP) Environmental Protection District
  - (BB) Big Beaver Road (Form Based)
  - (MRF) Maple Road (Form Based)
  - (NN) Neighborhood Nodes (A-U)
  - (CB) Community Business
  - (GB) General Business
  - (IB) Integrated Industrial Business District
  - (O) Office Building District
  - (OM) Office Mixed Use
  - (P) Vehicular Parking District
  - (R-1A) One Family Residential District
  - (R-1B) One Family Residential District
  - (R-1C) One Family Residential District
  - (R-1D) One Family Residential District
  - (R-1E) One Family Residential District
  - (RT) One Family Attached Residential District
  - (MR) Multi-Family Residential
  - (MHP) Manufactured Housing
  - (UR) Urban Residential
  - (RC) Research Center District
  - (PV) Planned Vehicle Sales
- Ponds and Basins
- Streams and Creeks
- Parcels
- Aerial Photos - 2010
  - Red: Band_1
  - Green: Band_2
  - Blue: Band_3

250 0 125 250 Feet

Scale 1: 1,498

Printed: 5/11/2012

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STATE OF MICHIGAN

COUNTY OF OAKLAND

CITY OF TROY

# CONDITIONAL REZONING AGREEMENT

This Development Agreement ("Agreement") is entered into by and between 1250 W. Fourteen Mile Road LLC, a Michigan limited liability company, the address of which is 6755 Daly Road LLC ("Developer"), and the City of Troy, a Michigan municipal corporation, having its principal offices at 500 W. Big Beaver Road, Troy, Michigan 48084 ("City").

## R E C I T A L S:

A. Developer is the owner of certain real property located in the City of Troy, Oakland County, Michigan, containing approximately 7.076 acres, as more particularly described on Exhibit A attached hereto (the "Property").

B. Developer has applied for Conditional Rezoning pursuant to Troy's Zoning Ordinance, Chapter 39, Section 16.04 from O (Office) district to IB (Integrated Industrial and Business) district. That Ordinance requires that an applicant for conditional rezoning prepare a Conditional Rezoning Agreement ("Agreement") which requires that specific provisions be included in the Agreement.

C. As part of approval of this Agreement, which will result in a rezoning of the Property from O (Office) district to IB (Integrated Industrial and Business) district, Developer has offered and agrees to make all required improvements as described in this Agreement. All conditions, representations and promises included in the Agreement have been voluntarily offered by the Developer to induce the City to rezone the land to the proposed classification. The Developer and the City agree that the rezoning and the terms of this Agreement provides for: (i) the promotion of the public health, safety and welfare; (ii) compatibility with the Master Plan; (iii) compliance with all terms and conditions of the zoning district to which the land is to be rezoned, except as otherwise allowed in the Agreement; (iv) compatibility with adjacent uses of land; and (vi) other legitimate objectives authorized under the Michigan Municipal Planning Act, MCL

125.3101, et. seq. and Chapter 39, Section 16.04 of the City of Troy Zoning Ordinance. Further, it is also agreed that the burden of the conditions on the Developer is roughly proportionate to the burdens being created by the development, and to the benefit which will accrue to Property as a result of the requirements represented in the project and/or development.

D. For the purpose of confirming the rights, obligations and restrictions in connection with the improvements and development undertaken on the Property, the parties have entered into this Agreement. The rezoning of the Property to IB (Integrated Industrial and Business) district shall become effective as set out in Section 3.1 of this Agreement. Once this Agreement is approved by the Troy City Council, it shall be binding upon the City, the Developer, the owner, the owner of units within the Development, any owners associations, and their agents, successors and assigns. The City's Zoning District Map shall be updated to reflect the amendment to the Zoning Ordinance and the District Map within a reasonable period of time after the effective date of the rezoning.

NOW, THEREFORE, the Developer and the City, for the good and valuable consideration outlined in this Agreement, the receipt and sufficiency of which are hereby acknowledged, agree as follows:

## ARTICLE I

## GENERAL TERMS

1.1 This Agreement shall run with the land. The land is the Property described in the attached Exhibit A. Reference to "Developer" in this Agreement shall include the owner and future owners of the Property, Developer's agents, successors and assigns. It is the intent of Developer and the City to put all future owners of the Property, all future leaseholders and/or all parties in interest on notice of the rights, obligations and restrictions contained herein by recording this Agreement with the Oakland County Register of Deeds. If the project or development plan includes any type of condominium element, any termination of any condominium community or association shall not nullify or void this Agreement. As part of this Agreement and pursuant to State statute, if a Master Deed is not controlling for all or any portion of a condominium project, the terms and conditions of this Agreement shall be considered "Deed Restrictions" for any successors or assigns of the Property.

1.2 The Property shall be developed and improved only in accordance with the following which shall be referred to herein as the "Conditional Rezoning Agreement Documents":

A. Chapter 39, Section 16.04 of the City's Zoning Ordinance, and amendments, if any.

B. This Conditional Rezoning Agreement

C. Chapter 39, Section 4.15, which set out the requirements for development in an IB (Integrated Industrial and Business) district classification, unless those requirements are amended by the Conditional Rezoning Agreement.

D. The proposed 30 foot wide open space greenbelt shown on Exhibit B.

1.3 The Ordinance amendment granting the conditional rezoning reclassifies the zoning of the Property to an IB (Integrated Industrial and Business) district and constitutes the land use authorization for the Property, and all use improvement of the Property shall be in substantial conformity with the provisions of the Zoning Ordinance applicable to the zoning district and this Agreement.

ARTICLE II

CONDITIONS FOR REZONING

2.1 In consideration for the City's rezoning of the Property from its current classification of O (Office) district to a future classification of IB (Integrated Industrial and Business) district, the Developer agrees to be bound by the following conditions:

**A. The property can be used for all permitted uses allowed in the IB zoning classification except for the following uses which are expressly prohibited:**

- Manufacturing and assembly uses which utilize hazardous materials or which release any odor, noise or vibration into the environment
- Material recovering facilities
- Bus terminals
- Building and lumber supplies
- Outdoor commercial recreation
- Outdoor storage facilities
- Open air businesses
- Adult use businesses
- Vehicle repair stations
- Vehicle auctions
- Vehicle washes

- Dry cleaners and laundries
- Central dry cleaning/laundry plants
- Outdoor dining adjacent to the east and west sides and along the north rear of any buildings
- Commercial kennels/pet day care
- Vehicle fueling stations
- Ambulance facilities
- Commercial wind energy conversion systems and meteorological towers
- Truck terminals

B. **New development occurring at the property is also subject to the following additional conditions:**

- New buildings and structures shall be subject to all applicable ordinances, site plan requirements and site plan approval.

- Heights of new buildings shall not exceed two stories.

- A 30 foot wide open space greenbelt as shown Exhibit B shall be constructed adjacent to new buildings along the north and west boundary lines which abut residential homes. Not withstanding any other zoning or site plan development requirement, the open space greenbelt shall be landscaped with trees and other plantings approved by the Planning Commission as part of the site plan approval for each new building.

- Truck deliveries between 11PM and 8AM shall be prohibited.

- Outdoor storage of materials shall be prohibited.

2.2 Developer represents and confirms that the Property shall not be used or developed in a manner that is inconsistent with conditions placed on rezoning as set out in this Agreement.

2.3 Developer shall be subject to the expiration provisions of Section 16.04E of the Zoning Ordinance and Section 5.2 of this Agreement.

## ARTICLE III

## REZONING

3.1 Directly after approval of this Agreement, City Council shall pass a Resolution rezoning the Property from an O (Office) district zoning classification to an IB (Integrated Industrial and Business) district classification. That Resolution shall also state that the Zoning Map shall be amended to reflect a new zoning classification. The Planning Director shall take necessary action to amend the Zoning Map to the new classification along with a relevant designation that will provide reasonable notice of the Conditional Rezoning Agreement. The Conditional Rezoning Approval and the amendment to Zoning Map shall not become effective until the Conditional Rezoning Agreement is recorded with the Oakland County Register of Deeds and a certified copy of the Agreement is filed with the City Clerk.

## ARTICLE IV

## DEVELOPER'S RIGHTS, OBLIGATIONS AND PROPERTY RESTRICTIONS

4.1 Developer shall have the right to develop the Property in accordance with the Conditional Rezoning Agreement Documents and shall receive Preliminary and Final approval in accordance with the City's Zoning Ordinance and this Agreement. If development and/or actions are undertaken on or with respect to the Property in violation of the Conditional Rezoning Agreement, such development and/or actions shall constitute a violation of the City of Troy Code of Ordinances and deemed a nuisance per se. In such cases the City may issue a stop work order relative to the property and seek any other lawful remedies. Until curative action is taken to bring the Property into compliance with the Conditional Rezoning Agreement, the City may withhold, or, following notice and an opportunity to be heard revoke permits and certificates, in addition to or in lieu of such other lawful action to achieve compliance.

4.2 All development, use, and improvement of the Property shall be subject to and in accordance with this Agreement, the Conditional Rezoning Agreement Documents, all applicable City Ordinances, and shall also be subject to and in accordance with all other approvals and permits required under applicable City Ordinances and State law.

4.3 Developer shall comply with the City Code of Ordinances, make any necessary application for permits and obtain any necessary permits for the development of the property including signage.

## ARTICLE V

## THE CITY'S RIGHTS AND OBLIGATIONS

5.1 The action of the City in entering into this Conditional Rezoning Agreement is based upon the understanding that the intent and spirit of the police power objectives of the City relative to the Property are embodied in the Conditional Rezoning Agreement Documents and those powers are assured based upon the development and/or undertakings on the Property. The City is thus achieving its police power objective and has not, by this Agreement, bargained away or otherwise compromised any of its police power objectives.

5.2 Conditional Rezoning Approval shall expire following a period of two (2) years from the effective date of the rezoning as set out above unless progress has been diligently pursued by Developer The Zoning Administrator shall have the sole discretion to determine if progress has been diligently pursued by the Developer of the Property. The City, through its employees and agents, shall at all times be allowed to enter onto the Property to determine the progress of the development.

5.3 The City may initiate legal action for the enforcement of any of the provisions, requirements, and obligations set forth in the Conditional Rezoning Agreement. In the event the City obtains any relief as a result of such litigation, Developer shall pay all court costs and attorney fees incurred by the City in connection with such suit;

5.4 If the Developer is developing the Property in non-compliance with the Conditional Rezoning Agreement, the City may issue a stop work order as to any or all aspects of the Development, may deny the issuance of any requested building permit or certificate of occupancy within any part or all of the Development regardless of whether the Developer is the named applicant for such permit or certificate of occupancy, and may suspend further inspections of any or all aspects of the Development.

5.5 To the extent the Conditional Rezoning Agreement Documents deviate from the City of Troy Development Standards, Zoning Ordinance or other City ordinances, or any amendments thereto, the Conditional Rezoning Agreement Documents shall control. All improvements constructed in accordance with the Conditional Rezoning Agreement Documents shall be deemed to be conforming under the Zoning Ordinance and in compliance with all ordinances of the City.

## ARTICLE VI

## MISCELLANEOUS PROVISIONS

6.1 This Agreement may not be modified, replaced, amended or terminated except as provided for in this Agreement.

6.2 This Agreement shall be governed by and construed in accordance with the laws of the State of Michigan.

6.3 If there is a conflict between the terms of any of the Conditional Rezoning Agreement Documents, such documents shall control in the following order: (a) Chapter 39, Section 16.04 of the City's Zoning Ordinance, and amendments, if any (b) this Agreement and any Conditional Rezoning Agreement Documents. Where there is a question with regard to applicable regulations for a particular aspect of the Development, or with regard to clarification, interpretation, or definition of terms or regulations, and there are no apparent express provisions of the Conditional Rezoning Agreement Documents which apply, the City in the reasonable exercise of its discretion, shall determine the regulations of the City's Zoning Ordinance, as that Ordinance may have been amended, or other Ordinances which shall be applicable provided such determination is not inconsistent with the nature and intent of the Conditional Rezoning Agreement Documents.

6.4 After consulting with their respective attorneys, Developer and City confirm that this Agreement is authorized by and consistent will all applicable state and federal law and the United States and Michigan Constitutions, that the terms of this Agreement are reasonable, that they shall be estopped from taking a contrary position in the future, and that each shall be entitled to injunctive relief to prohibit any actions by the other inconsistent with the terms of this Agreement. Developer and the City fully accept and agree to the final terms, conditions, requirements and obligations of the Agreement and all Conditional Rezoning Agreement Documents, and shall not be permitted in the future to claim that the effect of the Agreement and the Conditional Rezoning Agreement Documents result in an unreasonable limitation upon uses of all or a portion of the Property, or claim that enforcement of any of the Agreement and the Conditional Rezoning Agreement Documents causes an inverse condemnation or taking of all or a portion of the Property. Furthermore, it is agreed that the improvements and undertakings set forth in the Agreement and the Conditional Rezoning Agreement Documents are roughly proportional to the burden being created by the development, and to the benefit which will accrue to the Property as a result of the requirements represented by the development.

6.5 This Agreement may be executed in multiple counterparts, each of which shall be deemed an original and all of which shall constitute one agreement. The signature of any party to any counterpart shall be deemed to be a signature to, and may be appended to, any other counterpart.

6.6 This Agreement shall be binding on, and shall inure to the benefit of the parties and their respective successors and assigns.

THIS AGREEMENT was executed by the respective parties on the date specified with the notarization of their name.

"Developer"

1250 W. Fourteen Mile Road LLC,
a Michigan limited liability company

By: _____
Daniel L. Stern
Its: Manager and Member

STATE OF MICHIGAN )
) ss.
COUNTY OF OAKLAND )

The foregoing instrument was acknowledged before me this ____ day of August, 2012 by Daniel L. Stern, Manager and Member of 1250 Fourteen Mile Road LLC on behalf of the limited liability company.

_____
_____, Notary Public
Oakland County, Michigan
My Commission Expires: _____

CITY OF TROY, a Michigan municipal corporation

_____
By: Janice Daniels
Its: Mayor

_____
By: Aileen Bittner
Its: City Clerk

STATE OF MICHIGAN )
) ss.
COUNTY OF OAKLAND )

The foregoing instrument was acknowledged before me this _____ day of August, 2012 by Janice Daniels, Mayor of Troy, and Aileen Bittner, Troy City Clerk.

_____
, Notary Public
Oakland County, Michigan
My Commission Expires: _____

PREPARED BY:

Jason M. Horton
6755 Daly Road
West Bloomfield, MI 48332

WHEN RECORDED RETURN TO:

Susan M. Lancaster
Assistant City Attorney
City of Troy
500 W. Big Beaver Road
Troy, Michigan 48084

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

EXHIBIT B

LOCATION OF PROPOSED 30 FOOT WIDE OPEN SPACE GREENBELT

## 21st Century Industry: A New Opportunity for Growth

- *Continued encouragement of a variety of industrial uses*
- *Light industrial uses with no outdoor storage or external nuisances are especially encouraged*
- *The emphasis for site design should be on screening, landscaping, buffering, and effective transitioning to allow this important category to succeed without negative impacts on residential or commercial areas of the City*

**The 21st Century Industry classification provides area for conventional manufacturing and assembly uses, but with a broader interpretation of what industrial areas can become.** In addition to conventional industrial uses, shops, and warehousing, this category can be home to business-to-business uses that don't require a significant public presence, but which work in tandem with the Knowledge Economy uses encouraged within the Smart Zone and Northfield. Suppliers, fabricators, printers, and many other supporting uses which strengthen the City's appeal as a home to 21st Century businesses are all encouraged in this category.

An alternative use that may be considered on a very limited basis in the 21st Century Industrial area is loft-style residential development in reclaimed industrial buildings. Opportunities for artist lofts and open-floorplan residential development may exist within new, innovative mixed-use projects. Such projects would be an ideal fit within the 21st Century Industrial area. Such housing will only be considered when all potential environmental limitations have been identified, and if necessary, neutralized.

The majority of the 21st Century Industrial lands in Troy surround the Maple Road category (see page 105), although they are intermingled with areas planned for the Automall, the Smart Zone, and the Transit Center. **Existing land uses along Maple Road vary widely, and do not have a clear, identifiable character.** Maple Road is primarily experienced as a series of nodes that center on north-to-south traffic leading into and out of Troy from the Big Beaver Corridor. For this reason, Maple Road is planned as a series of areas designed to support the Big Beaver Corridor and the Smart Zone, such as the business-to-business uses noted above.

## *DESIGN CONCEPT*

- This area will recognize that manufacturing and distribution will continue to provide valuable jobs and a tax base. Emphasis will be on maintaining a strong image by concentrating on site and building maintenance as well as redevelopment, rather than redevelopment alone.
- Code enforcement will be a critical tool to maintain the visual and physical health of the district.
- As land becomes available, green space should double and storm water management should improve.

### *SITE DESIGN ATTRIBUTES*

- Primary parking areas are located within rear or interior side yards.
- Front yards will be landscaped and well-maintained to continue an improved image.
- Green space will be placed along property perimeters to assist with controlling surface storm water runoff.

### *BUILDING DESIGN ATTRIBUTES*

- The office portion of industrial developments will locate nearest the public street.

CARLISLE | WORTMAN associates, inc.

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Date: June 5, 2012

# Conditional Rezoning Analysis
# For
# City of Troy, Michigan

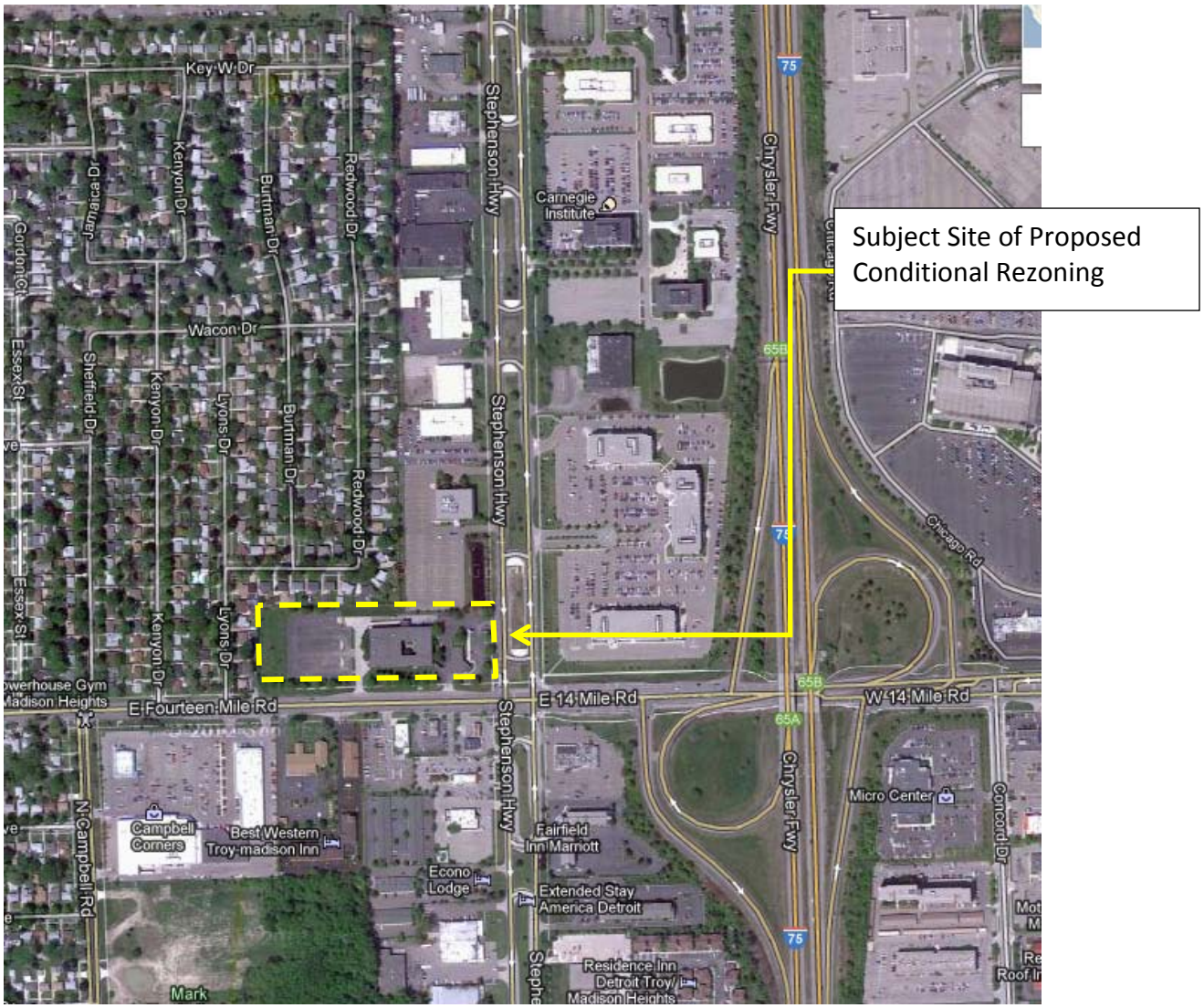
| | |
|---|---|
| **Applicant:** | Jason Horton, Lomax Stern Development Company |
| **Property Address:** | 125 Stephenson Highway |
| **Current Zoning:** | O-1, Office Building District |
| **Requested Zoning:** | IB, Integrated Industrial Business District |
| **Action Requested:** | Conditional Rezoning Request to:<br>- IB, Integrated Industrial Business District |
| **Required Information:** | The required information for a rezoning has been provided. |

## DESCRIPTION

The applicant is requesting a Conditional Rezoning from O-1, Office Building District to IB, Integrated Industrial Business District for the parcel located at 125 Stephenson Highway. The 7-acre property in currently improved with a 29,600 sq/ft, two-story office building and a 3,600 sq/ft bank with drive-through. The two buildings are attached via a canopy. The applicant has not indicated a potential for redevelopment or the future use of the property.

## PROPERTY BACKGROUND

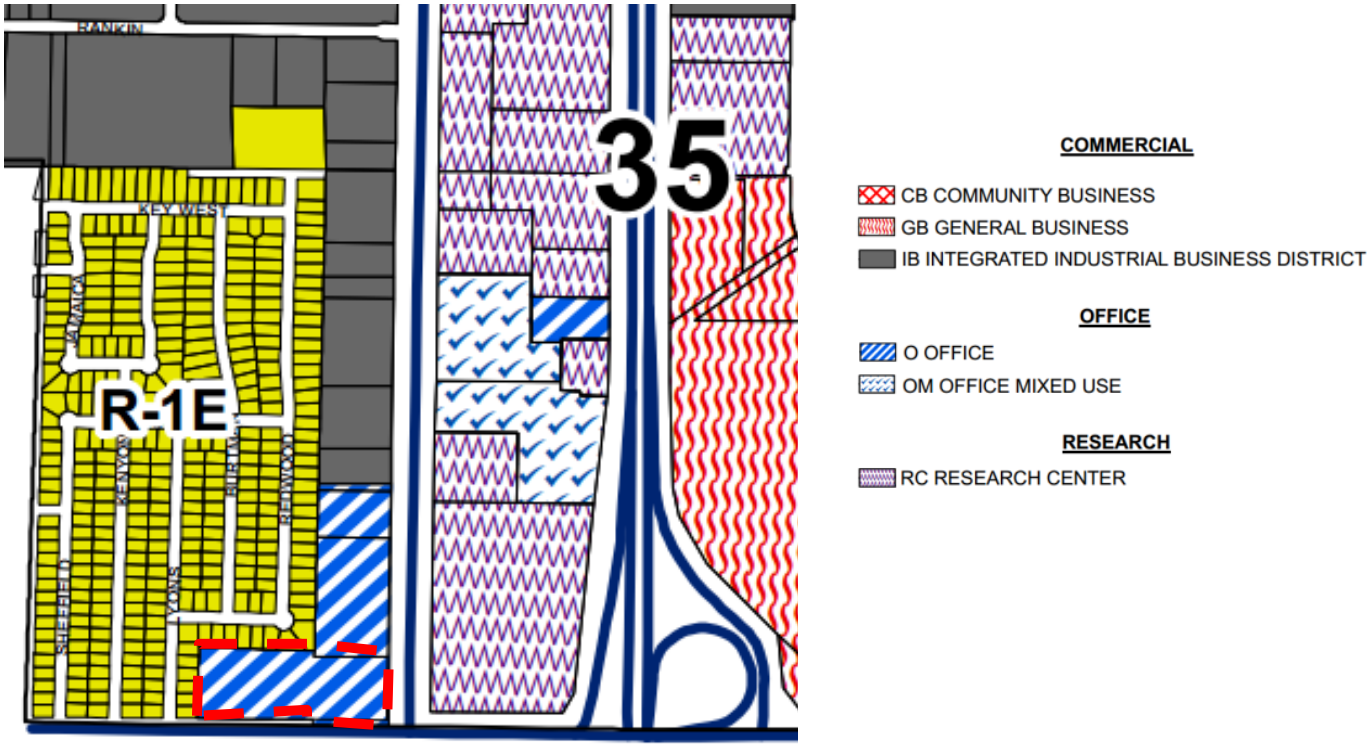
| **Subject Site** | |
|---|---|
| Approximite Site Area | 7 acres |
| Current Use | Office and Bank |
| Master Plan Recomonded Use | 21st Century Industrial |



## ADJACENT PROPERTIES

The existing zoning in the surrounding area is a mixture of Integrated Business (IB), Research Center (RC), Office (O-1) and One-family residential (R1-E). Adjacent zoning and land uses to the subject property is listed below:

| **Adjacent Properties** | | |
|---|---|---|
| | **Existing Use** | **Zoning** |
| North | Single-family residential (western half)<br>Office (eastern half) | R-1E, One-family residential (western half)<br>O-1, Office (eastern half) |
| South | Various commercial | Not Applcable (Madison Heights) |
| East | Valeo | RC, Research Center |
| West | Vacant | R-1E, One-family residential |




An 8' high brick wall screens all adjacent single-family residents along the western half of the north property line and the entirety of the western property line.

***Items to be addressed:*** *None*

## CONDITIONAL REZONING PROCEDURE

Conditional rezonings such as the current proposal are enabled under Section 405 of the Michigan Zoning Enabling Act (PA 110 of 2006). Under this type of rezoning, conditions may be imposed on the rezoning request if voluntarily offered by the applicant. The Planning Commission is not authorized to offer or place any additional conditions upon the rezoning unless voluntarily offered by the applicant.

***Items to be addressed:*** *None*

## VOLUNTARILY IMPOSED CONDITIONS

The applicant has volunteered on their site plan a permanent 30' greenbelt open space dedication along all existing single-family residential uses. This 30' greenbelt open space runs along the entire western property line and western half of the northern property. It appears that a portion of the existing office building parking lot is within a part of the northern portion of the proposed 30' greenbelt. The applicant should confirm this.

***Items to be addressed:*** *Confirm if a portion of the existing office building parking lot is within the proposed 30' greenbelt.*

## MASTER PLAN RECOMMENDATION

The future land use plan of the Troy Master Plan has designated the subject property, as well as those parcels on the west side of Stephenson Highway, as 21st Century Industry. The 21st Century Industry use category focuses on properties in the southeast corner of the city around the Maple Road Category. This designation encourages a variety of general and light industrial uses including conventional manufacturing and assembly uses, but also promotes a broader spectrum of future higher technology industrial uses. The IB Zoning District mostly closely mirrors the intent of the 21st Century Industrial designation. While the future use of this property is unknown, the proposed IB designation and permitted uses are consistent with the 21st Century Industrial designation of the Master Plan.

***Items to be addressed:*** *None*

## IB ZONING APPLICABLITY

As noted the future use of this property is unknown. However, the IB district permits greater flexibility in use including permitting multiple family residential, additional retail, service, and entertainment uses, and limited light industrial and automotive uses. Unless additional conditions are volunteered by the applicant, the future redevelopment of this site will permit all those uses allowed in the IB District.

In regards to the potential for the creation of non-conformities, rezoning this parcel to the IB district will not create any new legal non-conformity. It is worth noting that the parking lot located between the existing building and the street is not permitted in the new ordinance for either the IB District or O district, thus redevelopment of this parcel will bring the site into conformance with the zoning ordinance.

While the rezoning of this parcel will not be adjacent to existing IB district, the rezoning will bring this parcel into greater conformance with the master plan. Furthermore as noted, the future redevelopment of this site, which is advanced by the proposed rezoning, will bring the site into conformance with the zoning ordinance. Future zoning considerations for those parcels remaining O, Office District zoning should be examined as development opportunities on those sites arise.

***Items to be addressed:*** *None*

## CONDITIONAL REZONING FINDINGS

Section 16.04.C.3

The Zoning Ordinance identifies five (5) findings that the Plan Commission should evaluate when considering a Conditional Rezoning petition ((Section 1299.037(3)). A Conditional Rezoning may only be approved upon a finding and determination that all of the following are satisfied:

a) The conditions, proposed development, and/or proposed use of the land are designed or proposed for public health, safety, and welfare purposes.

   *The only condition proposed by the applicant is a 30-foot permanent greenbelt. This 30-foot buffer does not permit any buildings, parking, or drive-aisles. In addition, there is a 50-foot building setback for all buildings within the IB District from the boundary of any single-family residential district. This 50-foot building setback only applies to buildings and thus would allow parking and drive-aisles between this 50-foot buffer and the 30-foot greenbelt. A 30-foot greenbelt used in combination with the 50-foot land use buffer advance public health, safety, and welfare.*

b) The conditions, proposed development and/or proposed use are not in material conflict with the Master Plan, or, if there is material conflict with the Master Plan, such conflict is due to one of the following:
   I. A change in City policy since the Master Plan was adopted.
   II. A change in conditions since the Master Plan was adopted.
   III. An error in the Master Plan.

   *The proposed development is consistent with the Master Plan. The Master Plan recognizes that a significant area of the City has been devoted to uses that may be conductive to be redeveloped to other uses. The IB District is consistent with the 21st Century Industry area of the Master Plan by encouraging redevelopment and reuse of existing buildings and sites by permitting other compatible uses.*

c) The conditions, proposed development and/or proposed use are in accordance with all terms and provisions of the zoning district to which the land is to be rezoned, except as otherwise allowed in the Conditional Rezoning Agreement.

*The proposed 30-foot permanent greenbelt is in accordance with all terms of the IB zoning district and goes above and beyond the screening of differencing land use as required in the Landscaping Section of the Ordinance (Section 13.02.B).*

d) Public services and facilities affected by a proposed development will be capable of accommodating service and facility loads caused by use of the development.

*All necessary public services, utilities, and facilities already adequately serve this site. Any permitted uses and development within the IB district would not require any additional public services and facilities; however private utilities including water will be reviewed as part of the building permit process.*

e) The conditions, proposed development and/or proposed use shall insure compatibility with adjacent uses of land.

*While future development and reuse of this property is unknown, redevelopment of this site to uses and standards of the IB district is consistent with the Master Plan. Furthermore the site is surrounded by a mix of both commercial and industrial uses. The redevelopment and reuse of the site within the IB Zoning District would be compatible with the adjacent uses. Lastly, the proposed 30-foot greenbelt buffers and protects all adjacent single-family residential.*

## SUMMARY OF FINDINGS

After reviewing the current land use, adjacent zoning districts, and future plans for the subject properties and vicinity, we would recommend that the Planning Commission proceed with the rezoning request.

A. The rezoning is supported by the Master Plan and advances the general and specific development policies of the Master Plan.

B. The proposed rezoning would be consistent and non-disruptive to the surrounding land use pattern.

C. Rezoning will facilitate redevelopment of this site, which would bring the site into conformance new zoning ordinance standards.

I look forward to discussing this with you at the next Planning Commission meeting.

Sincerely yours,

**CARLISLE/WORTMAN ASSOCIATES, INC.**
Benjamin R. Carlisle, LEED AP, AICP

## REZONING REQUEST

6. PUBLIC HEARING – REZONING APPLICATION (File Number Z 740) – Proposed Charter One Bank Branch, 125 Stephenson Highway and 1250 W. 14 Mile Road, Section 35, From O (Office) to IB (Integrated Industrial and Business) District

Mr. Carlisle reviewed the proposed rezoning request. Mr. Carlisle recommends that the Planning Department proceed with the rezoning request, contingent on the three conditions as noted in his report, dated June 5, 2012.

The petitioner, Jason Horton of Lormax Stern Development Company, was present.

There was discussion on potential future development on this site.

PUBLIC HEARING OPENED

No one was present to speak.

PUBLIC HEARING CLOSED

The members and the petitioner agreed to table the item for further study. Chair Tagle announced a second Public Hearing would be scheduled and Meeting Notice published, should the request go forward.

***Resolution # PC-2012-06-035***
Moved by: Sanzica
Seconded by: Schultz

***RESOLVED***, To table the proposed rezoning request for further study.

Yes: All present (7)
Absent: Hutson

**MOTION CARRIED**

## REZONING REQUEST

9. REZONING APPLICATION (File Number Z 740) – Proposed Charter One Bank Branch, 125 Stephenson Highway and 1250 W. 14 Mile Road, Section 35, From O (Office) to IB (Integrated Industrial and Business) District

Mr. Savidant gave a brief review of the proposed rezoning application postponed by the Board for an informal discussion.

The petitioner, Jason Horton and Daniel Stern of Lormax Stern Development Company, were present.

It was determined the petitioner would prepare a list of uses allowable within the IB zoning district that they project to be viable and residentially friendly.

Members of the Board were encouraged to review in detail the allowable uses within the IB zoning district in preparation to reach an agreement with the petitioner on potential uses.

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## OTHER BUSINESS

8. REZONING APPLICATION (File Number Z 740) – Proposed Charter One Bank, 125 Stephenson Highway and 1250 W. 14 Mile, Section 35, From 0 (Office) to IB (Integrated Industrial and Business) District

Mr. Savidant gave a brief review of the application.

The petitioner, Jason Horton of Lormax Stern Development Company, was present. Mr. Horton distributed three drawings. The first drawing depicted the existing site. The two conceptual drawings showed: a) use of the existing building for storage and potentially adding a Building A; and b) the existing building demolished and redevelopment of the site.

Mr. Hutson shared his position on conditional rezoning applications and stated he would not be in favor of the application at this point in time because there are too many options open for development of the site.

There was discussion on:
- Prohibited use list provided by the petitioner.
- Allowable uses in IB district.
- Layout of two story buildings with respect to surrounding residential.

Mr. Carlisle addressed the following items with the petitioner:
- Light and heavy manufacturing use.
- Bus terminal use.
- 30’ greenbelt.
- Parking.

## CONDITIONAL REZONING REQUEST

9. PUBLIC HEARING – CONDITIONAL REZONING APPLICATION (File Number CR 007, *formerly File Number Z 740*) – Proposed Charter One Bank Branch, 125 Stephenson Highway and 1250 W. 14 Mile Road, Section 35, From O (Office) District to IB (Integrated Industrial and Business) District

Mr. Savidant gave a review on the conditional rezoning application. He read the petitioner's list of uses that would be prohibited and criteria relating to any new construction. Mr. Savidant said the application is consistent with the Master Plan and the conditions volunteered by the petitioner are reasonable. The Planning Department recommends moving the request forward to City Council with a favorable recommendation.

There was discussion on:
- Site plan approval process; conditions.
- Landscaping 30' greenbelt with coniferous trees.
- Site plan submittal not required by Zoning Ordinance.
- Conditional Rezoning Agreement, required by Zoning Ordinance.
- 50 foot total buffer to residential; 30 foot volunteered by petitioner plus 20 foot setback.

Mr. Strat said he would vote no because the application does not meet the intent of the State to permit conditional rezonings.

The petitioners, Daniel Stern and Jason Horton, of Lormax Stern Development Company were present. Mr. Stern announced the company has a potential viable user for the building on site.

Mr. Horton said it is their intent to plant trees along the 30' greenbelt. He briefly discussed marketing strategy for the site.

PUBLIC HEARING OPENED

No one was present to speak.

PUBLIC HEARING CLOSED

***Resolution # PC-2012-07-051***
Moved by: Schultz
Seconded by: Sanzica

***RESOLVED***, That the Planning Commission hereby recommends to the City Council that the O (Office) to IB (Integrated Industrial and Business) conditional rezoning request, as per Section 16.04 of the City of Troy Zoning Ordinance, located on the northwest corner of Stephenson Highway and 14 Mile Road (125 Stephenson Highway and 1250 W. 14 Mile Road), within Section 35, being approximately 7 acres in size, be granted, for the following reasons and with the following conditions:

1. The execution of a Conditional Rezoning Agreement.
2. The application is consistent with the Master Plan.
3. The application is compatible with existing zoning districts and land uses.
4. The applicant proposes the following conditions that reduce potential impacts of the proposed IB district on abutting residential properties:
   A. The property can be used for all permitted uses allowed in the IB zoning classification *except* for the following uses which are expressly prohibited:
      a) Manufacturing and assembly uses which utilize hazardous materials or which release any odor, noise or vibration into the environment
      b) Material recovering facilities
      c) Bus terminals
      d) Building and lumber supplies
      e) Outdoor commercial recreation
      f) Outdoor storage facilities
      g) Open air businesses
      h) Adult use businesses
      i) Vehicle repair stations
      j) Vehicle auctions
      k) Vehicle washes
      l) Dry cleaners and laundries
      m) Central dry cleaning/laundry plants
      n) Outdoor dining adjacent to the east and west sides and along the north rear of any buildings
      o) Commercial kennels/pet day care
      p) Vehicle fueling stations
      q) Ambulance facilities
      r) Commercial wind energy conversion systems and meteorological towers
      s) Truck terminals
   B. Further, that new development of the property is also subject to the following additional conditions:
      a) New buildings and structures shall be subject to all applicable ordinances, site plan requirements and site plan approval.
      b) Heights of new buildings shall not exceed two stories.
      c) A 30 foot landscaped greenbelt shall be constructed adjacent to the north and west boundary lines that abut residential homes.
      d) Truck deliveries between 11 p.m. and 8 a.m. shall be prohibited.
      e) Outdoor storage of materials shall be prohibited.

Yes: Edmunds, Hutson, Kempen, Krent, Sanzica, Schepke, Schultz, Tagle
No: Strat

**MOTION CARRIED**