



**TO:** Mayor and Members of City Council  
**FROM:** Lori Grigg Bluhm, City Attorney  
Christopher J. Forsyth, Assistant City Attorney  
**DATE:** June 21, 2006  
**SUBJECT:** Gerback v. City of Troy – Settlement Proposal

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Mr. Gerback has filed two zoning challenges against the City of Troy- the proposed Binson's development (Rochester Road, near Marengo) and the 2.74- acre parcel on the west side of Rochester Road, south of Trinway, in the City of Troy (the subject of this settlement proposal).

Gerback filed his lawsuit against the City in November 2004, after being denied his request to rezone the Property from its current classification of R-1 C (single family residential) to R-1T (medium density residential). City Management and the Planning Commission had recommended the rezoning, since the frontage of the Property was designated as R-1 T on the City's Master Land Use Plan (Plan). The City Council denied the requested rezoning on February 21, 2005, based in part on the long depth of the Property that was requested for rezoning, and its impact on the adjacent residential homes.

Plaintiff's lawsuit challenged that the R1-C zoning classification is not reasonable for the property, and therefore argued that the requested rezoning should have been granted. He also challenged the denial of rezoning as an equal protection violation, based on the fact that other properties with similar depths had been rezoned to an R-1T classification.

The parties have conducted discovery and are preparing for trial. However, in the interim, the City has received a settlement proposal from Plaintiff. Upon receipt of this proposal, City Administration requested some modifications to the original proposal, in an effort to reach a settlement that could be recommended to City Council. The Planning Commission reviewed the proposal and the site plan at their June 27, 2007 meeting, and made additional recommendations that have been incorporated into the revised settlement proposal. The Planning Commission modifications include additional landscaping and screening from headlights on cars traversing the new roadway.

According to this settlement proposal, the easternmost  $\frac{3}{4}$  of the property would be developed consistent with the R1-T zoning classification. The westernmost  $\frac{1}{4}$  of the property would be consistent with the E-P zoning classification, and would contain the required water detention for the site, which would serve as a buffer to the existing residential properties. The plan proposes to retain the existing home on the north side of the property, but the two- car garage will be either relocated or rebuilt (which would likely require a variance of the existing 40 foot set back requirement). The plan exceeds the landscaping that would otherwise be required in an R-1T development. The plan also provides for one unit less than the maximum density allowed in an R-1T development (12 units are proposed, 13 would be allowed under R-1T). The plan calls for only one curb cut on Rochester Road, and provides a more satisfactory placement of the interior road, which was initially proposed to be located at the southernmost end of the Property. The revised plan also requires additional evergreen trees to be planted at the end of the street and at the first curve, as well as the installation of a three-foot high berm along the north side of the street.

We recommend that City Council approve the proposed Consent Judgment and attached plans which will be incorporated by reference, and authorize our office to execute the final document, which shall be attached to the original minutes of City Council.

If you have any questions concerning this proposed consent judgment and plans, please let us know.

STATE OF MICHIGAN  
IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

JAMES L. GERBACK, Successor Trustee  
Under the Amended Robert S. Binder Trust  
Agreement dated March 1, 2004,

Plaintiff,

Case No. 05-067157-AA

v.

Hon. Deborah G. Tyner

THE CITY OF TROY,

Defendant.

\_\_\_\_\_/

Ernest J. Essad, Jr., (P32572)  
David E. Plunkett (P66696)  
Attorneys for Plaintiff  
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Lori Grigg Bluhm (P46908)  
Allan T. Motzny (P37580)  
Christopher J. Forsyth (P63025)  
City of Troy – City Attorney's Office  
Attorneys for Defendant  
500 W. Big Beaver Road  
Troy, MI 48084  
(248) 524-3320

\_\_\_\_\_/

**JUDGMENT BY CONSENT**

At a session of said Court, held in the City of Pontiac,  
County of Oakland, State of Michigan on \_\_\_\_\_.

PRESENT: Hon. \_\_\_\_\_  
CIRCUIT COURT JUDGE

Plaintiff James L. Gerback is the Successor Trustee under the Amended Robert S. Binder Trust Agreement dated March 1, 2004 (“plaintiff” or the “Trust”). The Trust is the owner of real property located in the City of Troy, Michigan (“Troy”) on the west side of Rochester Road, south of Trinway (the “Property”). The Property is approximately 2.74 acres in size, with a depth of approximately 570 feet. The Property is further described in Exhibit A, which is attached and incorporated into this Judgment. The Property is currently zoned R-1C One Family Residential under Troy’s zoning ordinance set forth in City of Troy Code of Ordinances, Chapter 39 section 10.00.00.

Plaintiff commenced this lawsuit claiming that the current R-1C zoning is unreasonable and unconstitutional, and requesting injunctive relief to prevent Troy from interfering with Plaintiff’s proposed use of the Property. Troy contends that the R-1C zoning of the property is constitutional and reasonable.

After extensive negotiation, the parties have reached a settlement of this lawsuit. The parties agree that a proposed condominium development that is consistent with the provisions of this Consent Judgment, as well as the attached site plan (Exh. B, incorporated by reference) can be allowed on the Property, even though it is inconsistent with the existing zoning. This proposed development is agreeable, in part, since it is limited in both depth and density, as set forth below, and is designed to provide some protection to the adjacent residential properties.

The parties have agreed to entry of this Consent Judgment to reflect their agreed compromise and settlement, as evidenced by the signatures of their respective counsel. The parties agree that this Consent Judgment shall be binding upon the parties, their successors and assigns. The Court also has reviewed the proposed Consent

Judgment, and has verified that it currently possesses jurisdiction over this action, and has approved the form and substance of this Consent Judgment.

NOW, THEREFORE, IT IS HEREBY ORDERED as follows:

1. This Consent Judgment shall constitute the final judgment of the Oakland County Circuit Court in this case, and resolves all claims between the parties relating to the Property.

2. After the date of entry of this Consent Judgment, the subject parcel may be developed, used and occupied for the purposes now set forth in City of Troy Code of Ordinances Chapter 39, Section 12.00.00 (R1-T, One-Family Attached Residential District), except as otherwise modified by the terms of this Consent Judgment. All restrictions and requirements as set forth in that zoning district classification on the date of entry of this Consent Judgment shall apply to the subject parcel.

3. The following modifications and additional land use regulations shall apply to the subject property in conjunction with the construction and occupancy of the attached residential development:

- a. The area at the rear (west) of the Property, which is 117.57 feet as shown in attached Exhibit B, shall be governed by the provisions of the Environmental Protection District (EP) as set forth in Chapter 39 section 08.00.00 of the City of Troy Code of Ordinances.
- b. Plaintiff shall maintain this EP classified portion of the Property in an undeveloped state and shall construct a storm water detention area within this portion of the Property, as set forth in attached Exhibit B.

- c. Plaintiff shall install landscaping on the Property in accordance with the attached Exhibit C (Landscaping Plan), which is incorporated by reference. It is acknowledged that the requirements of the Landscaping Plan exceed the requirements of the R1-T zoning classification.
- d. Plaintiff shall receive dimensional variances from the City of Troy to relocate or rebuild the 2 ½ car garage that also currently exists on the Property. These variances shall allow:
  - i. The relocation or rebuilding of the garage to a location within the required site setback from the property line and the new street, as shown on Exhibit B; and
  - ii. The relocation or rebuilding of the garage to a location closer to the existing house than the required setback between buildings, as shown on Exhibit B.
  - iii. If the garage is rebuilt, it shall be rebuilt with the same dimensions as it currently exists on the property.
- e. Plaintiff shall receive a dimensional variance for the setback between the existing house and proposed roadway as shown on Exhibit B.
- f. Other than as set forth above, Plaintiff shall comply with the City's zoning ordinances, building codes, engineering standards, design standards, and all other City ordinances, including but not limited to, setbacks, tree/landscaping, detention basins, ingress and egress, curb cuts, sidewalks, occupancy, rooftop equipment, signs, deceleration

lanes, drainage, grades, dumpsters, lighting, parking, screenwalls, greenbelts or any other ordinance, codes or engineering standards required for site plan approval and/or certificate of occupancy.

- g. Plaintiff shall develop no more than 12 attached condominiums on the Property, which shall be consistent with the attached Site Plan, which is incorporated by reference. The existing house will become part of the condominium development.
- h. The execution of this Consent Judgment shall also serve as an approval of the attached Site Plan, which is attached as Exhibit B, and is incorporated by reference. Even with the approval of the attached Site Plan (Exhibit B), which sets forth the allowable footprint of the condominium development, before any development can occur, the Plaintiff and/or its successor in interest must comply with the additional site plan approval requirements that are set forth in the City of Troy Code of Ordinances Chapter 39 sections 03.40.03, 03.41.00, and 03.42.00. These requirements include, but are not limited to, the submission and review by the Planning Commission of elevations of the proposed buildings, grading plan, proposed location of garbage receptacles, etc..

4. The parties agree to waive all costs and attorney fees incurred as result of the case.

5. By entry of this Consent Judgment, the parties, their agents, successors, and assigns waive and discharge any and all claims that they may have against the

other party, including its officials and employees, relating the to subject of this lawsuit.

5. A certified copy of this Consent Judgment shall be recorded at the Oakland County Register of Deeds for the subject property as described in Exhibit A, and the Register of Deeds is directed to accept the same for recordation.

6. In order to effectuate the intent of this Consent Judgment and to reconcile any differences of the parties that may arise in connection with the performance of this Consent Judgment, this Court shall retain jurisdiction of this action.

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CIRCUIT COURT JUDGE

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Ernest J. Essad, Jr. (P32572)  
Attorney for Plaintiff

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Christopher J. Forsyth (P63025)  
Attorney for Defendant



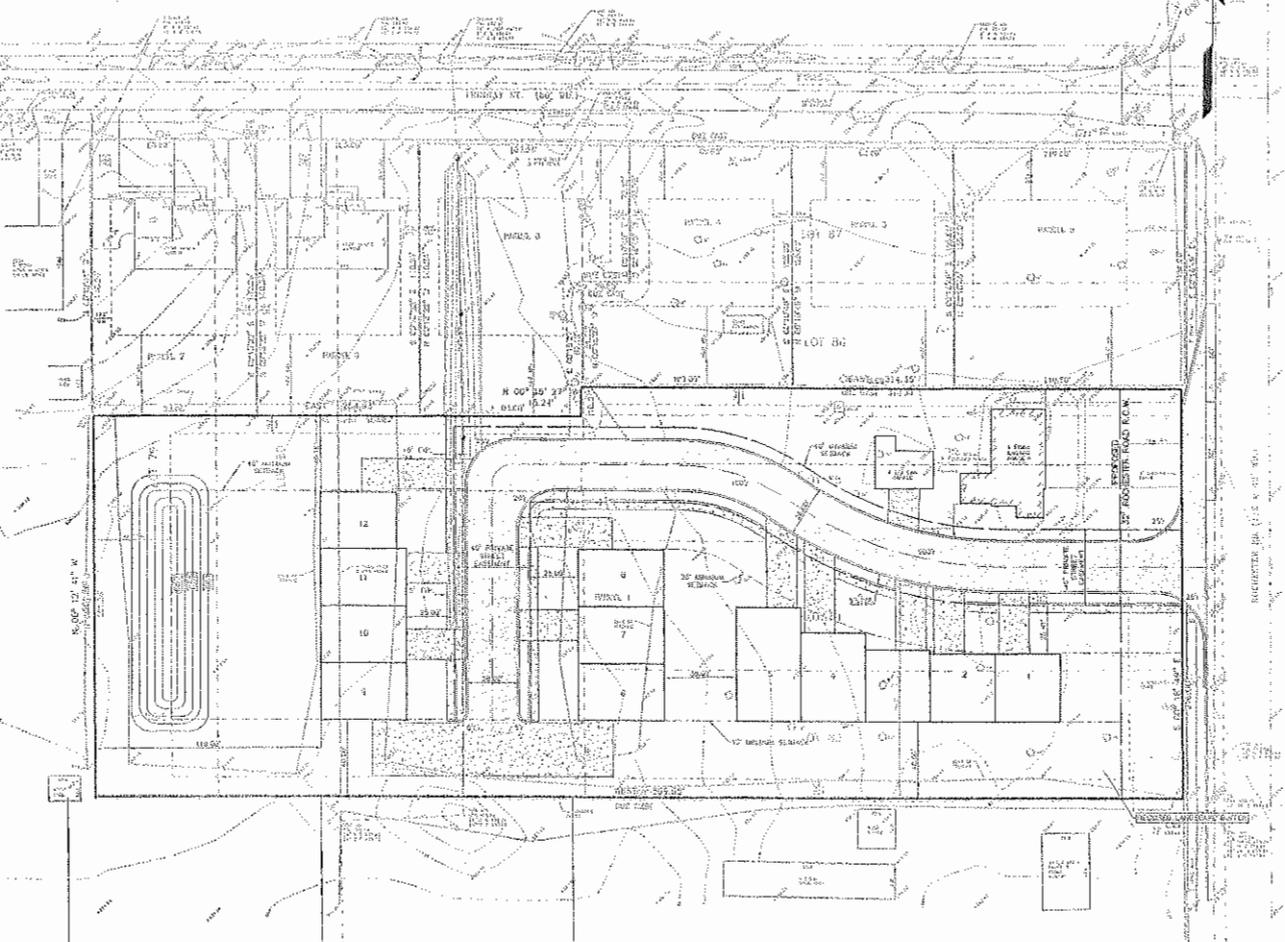
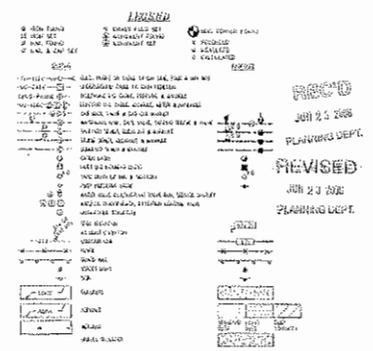
**ZONING:**  
 EXISTING ZONING: M-1C  
 PROPOSED ZONING: R-11  
 GROSS AREA = 268,799 SQ. FT.  
 NET GSA / 7800 = 19,34 DOLLAR VALUE  
 IS EXISTING ZONING APPLICABLE TO PROPOSED ZONING?

**SIGNS OR OTHER PLACES:**  
 TOTAL PROPOSED = 274 AC.  
 INTERIUS AREA = 1,120 AC.  
 PERMISSIBLE AREA = 1,820 AC.  
 1/2 FACTOR = 0.50  
 1/2 FACTOR OF SURFACE = 1,400 (GROSS FEET)  
 (MIN. CITY OF 1000 IS-100 SERVICE)

**PROPOSED BUILDINGS:**

BUILDING 1, 2	28720' = 1224 SQ. FT.
BUILDING 3	24552' = 1222 SQ. FT.
BUILDING 4	18484' = 1528 SQ. FT.
BUILDING 5	37488' = 2240 SQ. FT.
BUILDING 6, 7, 8, 9, 10, 11	32740' = 1350 SQ. FT.
BUILDING 12	27440' = 1200 SQ. FT.

- ASSUMPTIONS:**
- 1) GRADE WILL BE RE-GRAINED AND TAPPED INTO AN EXISTING SURFACE OFF-LINE.
  - 2) CALCULATION CALCULATIONS BASED ONLY ON SOUTHERN PORTION OF SUBDIVISION.
  - 3) EXISTING UNDER-GROUND UTILITIES WILL BE DOCUMENTED AND REVEALED NORTH OF EXISTING LOCATION.



**TOPOGRAPHIC AND BOUNDARY SURVEY ENCLOSURE**  
 THIS SURVEY WAS CONDUCTED BY THE PROFESSIONAL ENGINEER, ROBERT BINDER TRUST, IN ACCORDANCE WITH THE PROFESSIONAL ENGINEERING ACT, CHAPTER 471, MICHIGAN COMPILATIONS, 1996. THE SURVEY WAS CONDUCTED ON 08/14/2003. THE SURVEY WAS CONDUCTED BY THE PROFESSIONAL ENGINEER, ROBERT BINDER TRUST, IN ACCORDANCE WITH THE PROFESSIONAL ENGINEERING ACT, CHAPTER 471, MICHIGAN COMPILATIONS, 1996. THE SURVEY WAS CONDUCTED BY THE PROFESSIONAL ENGINEER, ROBERT BINDER TRUST, IN ACCORDANCE WITH THE PROFESSIONAL ENGINEERING ACT, CHAPTER 471, MICHIGAN COMPILATIONS, 1996.

DRAFT: NOT FOR CONSTRUCTION

**PROFESSIONAL ENGINEERING ASSOCIATES**  
 2420 HOLLAND AVENUE, SUITE 100  
 TROY, MI 48068-3002  
 PHONE: (313) 489-0000  
 FAX: (313) 489-0001  
 WWW: WWW.PEIA.COM

**REVISIONS**

NO.	DATE	DESCRIPTION
1	JUN 23 2006	PLANNING DEPT.
2	JUN 23 2006	PLANNING DEPT.

**ROBERT BINDER TRUST**  
 1700 W. HOLLAND AVENUE, SUITE 100  
 TROY, MI 48068-3002  
 PHONE: (313) 489-0000  
 FAX: (313) 489-0001  
 WWW: WWW.PEIA.COM

**CONCEPTUAL SITE PLAN**  
**BRIGGS CROSSING**  
 CITY OF TROY, CLACK COUNTY, MICHIGAN

SCALE: 1" = 30'

DATE: 08/14/2003

PROJECT NO: 2003-001

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