



CITY COUNCIL REPORT

DATE: April 9, 2007

TO: Phillip L. Nelson, City Manager

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

SUBJECT: Announcement of Public Hearing – Conditional Rezoning Application (File No: CR-001)
– Proposed Troy Medical Office Building, West side of Livernois, North of Big Beaver,
Section 21 – R-1B to O-1 (CR-001)

Background:

- A public hearing is scheduled for the May 14, 2007 City Council meeting.
- The Planning Commission recommended approval of the request to conditionally rezone the parcel to O-1 at the March 13, 2007 Regular meeting.
- This area is classified on the Future Land Use Plan as Low Rise Office, which has a primary correlation with the O-1 zoning district. The application is therefore consistent with the intent of the Future Land Use Plan. The parcel has been planned as Low Rise Office since 1972.
- Conditions were offered by the applicant to reduce the potential impacts of the development on the residential neighborhood to the north.
- The rezoning application is compatible with adjacent uses and zoning districts.

Financial Considerations:

- There are no financial considerations for this item.

Legal Considerations:

- City Council has the authority to act on this application.

Policy Considerations:

- Approval of the rezoning request would be consistent with City Council Goal I (Enhance the livability and safety of the community) and Goal III (Retain and attract investment while encouraging redevelopment).

Options:

- City Council can approve or deny the Conditional Rezoning Application.
- No action until public hearing on May 14, 2007.

Approved as to form and legality:

Lori Grigg Bluhm, City Attorney

Attachments:

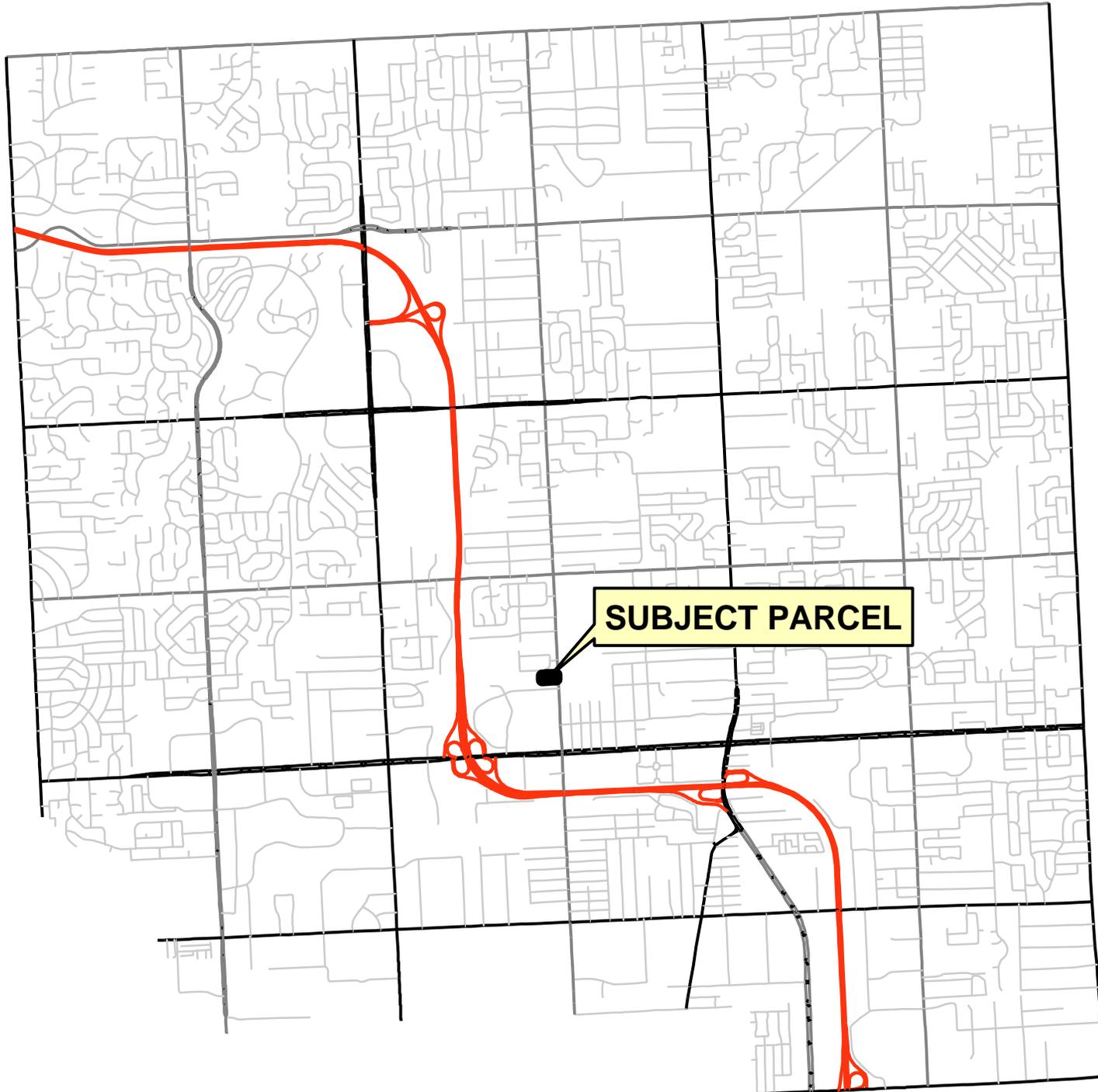
1. Maps.
2. Conditional Rezoning Agreement.
3. Minutes from March 13, 2007 Planning Commission meeting.
4. Letter of support from President of Westwood Park Subdivision Association.

Prepared by RBS/MFM

cc: Applicant
File /CR-001

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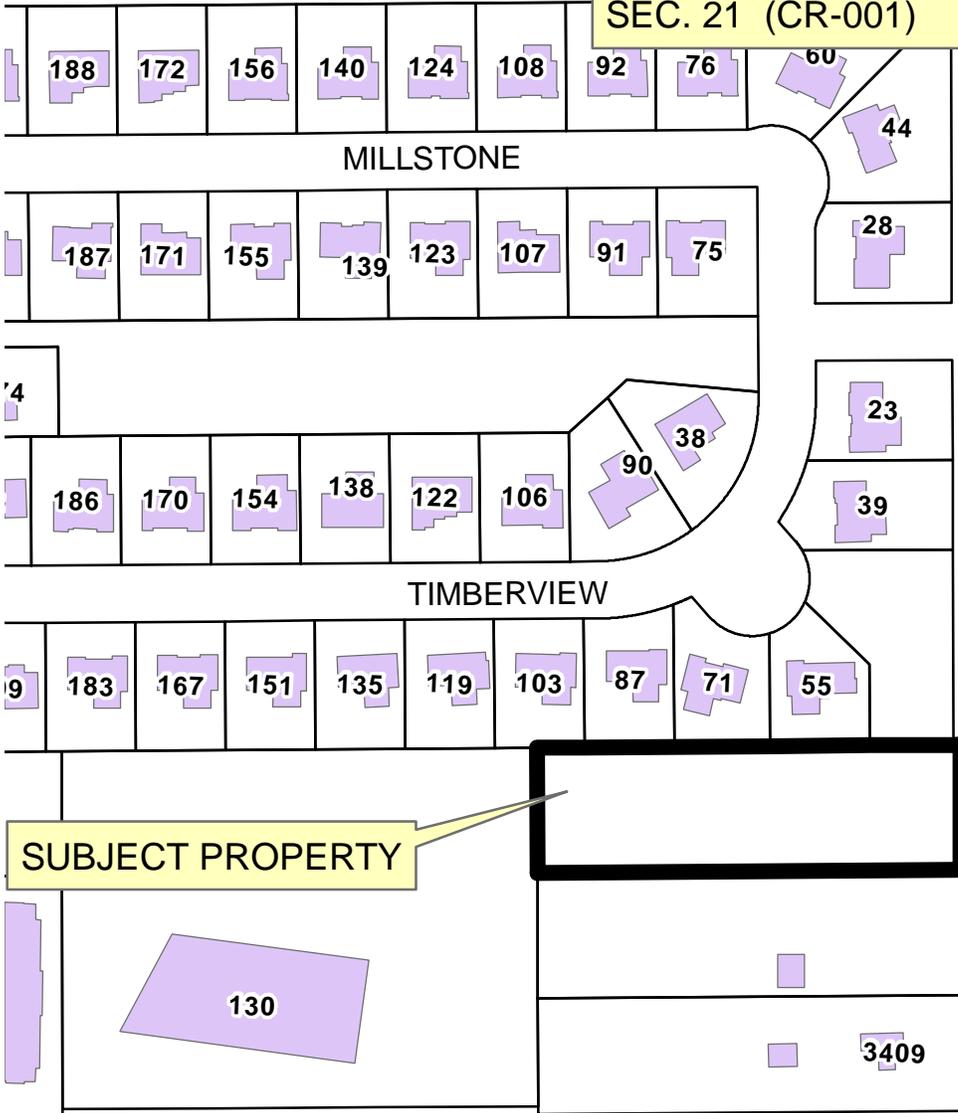
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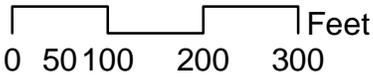
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CONDITIONAL REZONING REQUEST
FROM R-1B TO O-1
PROPOSED TROY MEDICAL OFFICE BLDG.
W SIDE OF LIVERNOIS, N OF TOWN CENTER DR
SEC. 21 (CR-001)



LIVERNOIS

SUBJECT PROPERTY



3

CONDITIONAL REZONING REQUEST
FROM R-1B TO O-1
PROPOSED TROY MEDICAL OFFICE
W SIDE OF LIVERNOIS, N OF TOWN CENTER DR.
SEC. 21 (CR-001)

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MILLSTONE

TIMBERVIEW

SUBJECT PROPERTY

LIVERNOIS

TOWN CENTER

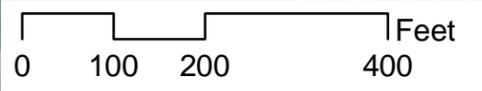
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LOUIS

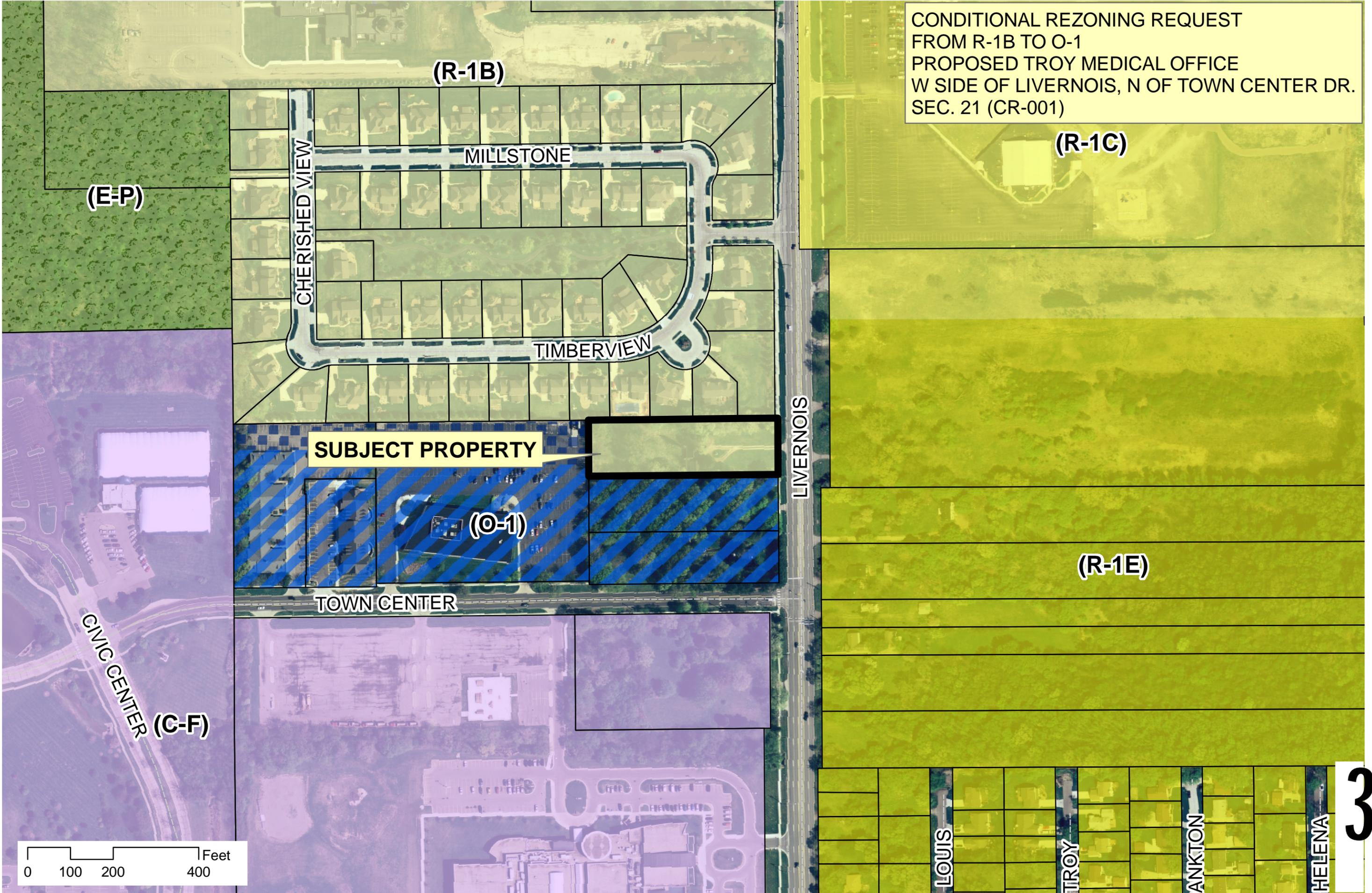
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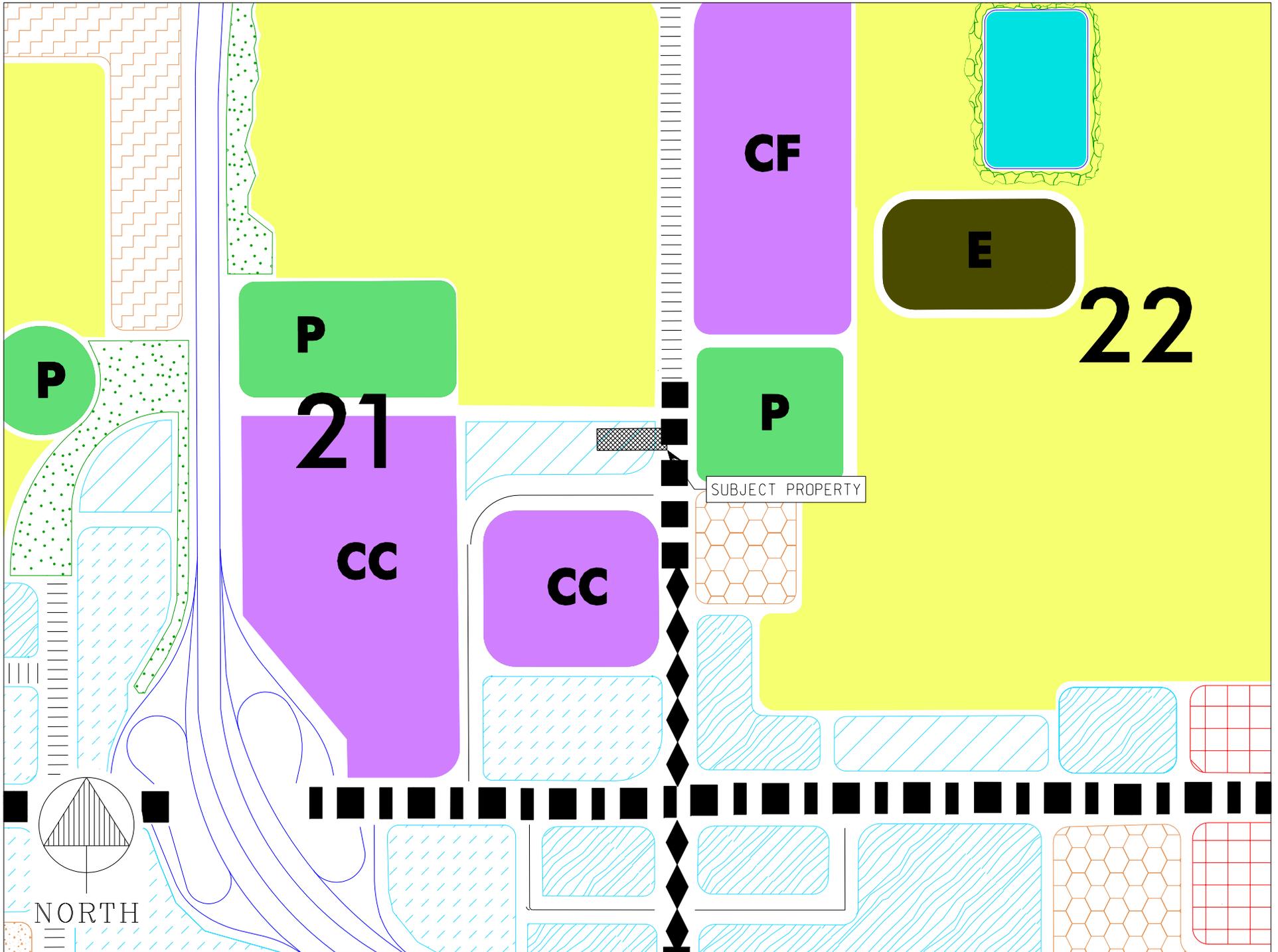
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CONDITIONAL REZONING REQUEST
FROM R-1B TO O-1
PROPOSED TROY MEDICAL OFFICE
W SIDE OF LIVERNOIS, N OF TOWN CENTER DR.
SEC. 21 (CR-001)





STATE OF MICHIGAN
COUNTY OF OAKLAND
CITY OF TROY

CONDITIONAL REZONING AGREEMENT

This Development Agreement ("Agreement"), dated January 18, 2007 is entered into by and between Vision Quest Consulting, Inc, a Michigan Company, the address of which is 4657 Wendrick Dr. West Bloomfield, MI 48323 ("Developer"), and the City of Troy, a Michigan municipal corporation, having its principal offices at 500 W. Big Beaver Road, Troy, Michigan 48084 ("City").

RECITALS:

A. Developer is the owner or the authorized agent of the owner of certain real property located in the City of Troy, Oakland County, Michigan, containing approximately 1.336+- acres, as more particularly described on Exhibit A attached hereto (the "Property").

Commonly known as 3451 Livernois, Troy, Michigan
Tax ID #20-21-426-012
(Hereinafter the "Subject Property");

B. Developer has applied for Conditional Rezoning pursuant to Troy's Zoning Ordinance, Chapter 39, Section 03.24.00. 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 R-1B One Family Residential to O-1 Low Rise Office, Developer has offered and agrees to make the improvements, proceed with the project and comply with any document submission dates and/or project completion dates, as described in this Agreement and any incorporated documents. Any conditions, representations or 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 Future Land Use 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) the accommodation of service and facility loads for public services and facilities affected by the proposed development; (v) 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 03.24.00 of the City of Troy Zoning Ordinance. 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 to be undertaken on the Property, the parties have entered into this Agreement. The rezoning of the Property to O-1 Low Rise Office shall become effective ten (10) days after the date of the City Council resolution granting conditional rezoning, or the date the Conditional Rezoning Agreement is recorded with the Oakland County Register of Deeds, whichever is later (the "Effective Date"). A certified copy of this Agreement, as recorded with the Register of Deeds, shall be filed by the Developer with the City Clerk. 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, including any attached site plans and all incorporated documents, shall run with the land. The land is the Property described in the attached Exhibit A. A preliminary site plan complying with Section 03.24.02 (A)(6) of the Zoning Ordinance is incorporated herein as Exhibit B. Reference to "Developer" in

this Agreement, any site plans and/or any incorporated documents, shall include the owner 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, including the site plan and any incorporated documents 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 03.24.00 of the City's Zoning Ordinance, and amendments, if any.
 - B. This Conditional Rezoning Agreement.
 - C. Chapter 39, Article 24 which set out the requirements for development in a O-1 Low Rise Office zoning district classification.
 - D. The Preliminary Site Plan with all conditions of rezoning included (see attached list of sheets and dates) submitted to and approved by the City Council and incorporated into the Conditional Rezoning Agreement as Exhibit B.
 - E. Any other documents that are incorporated into this Agreement as Exhibit C. Exhibit C includes the following documents:
 1. Second Amendment to Offer to Purchase Land, dated September 27, 2006 authorizing Vision Quest to become the assignee of the purchase agreement and authorized to request the rezoning.

1.3 The Ordinance amendment granting the conditional rezoning reclassifies the zoning of the Property to O-1 Low Rise Office zoning 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 R-1B One Family Residential, to O-1 Low Rise Office, the Developer agrees to be bound by the following conditions:

- A. Develop and use the Subject Property as a medical office building in conformance with that certain site plan, dated February 28, 2007, which is attached as Exhibit "B" (hereinafter "Site Plan"). The Site Plan is hereby incorporated by reference into this Agreement;
- B. On the north property line, increase the amount of landscaping and landscape screening, in lieu of a six-foot (6') solid screen wall (subject to approval by the City's Zoning Board of Appeals); and

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 03.24.03 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 R-1B One Family Residential zoning district, to O-1 Low Rise Office zoning 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 amendment to Zoning Map shall become effective ten (10) days after the date of the Resolution or on the date that the Conditional Rezoning Agreement is recorded with the Oakland County Register of Deeds, whichever is later. A certified copy of this Agreement, as recorded with the Register of Deeds, shall be filed by the Developer 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. The Preliminary Site Plan included in the Conditional Rezoning Agreement Documents (Exhibit B) shall receive final approval in accordance with the City's Zoning Ordinance and this Agreement. If a Developer presents a revised site plan to City Council, the site plan shall be remanded back to the Planning Commission for a recommendation to City Council. Failure to develop the Property in accordance with the Conditional Rezoning Agreement Documents shall constitute a deficiency under this Agreement.

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 approved bona fide development of the Property in accordance with permits issued by the City, commences within such two (2) year period and proceeds in due course to completion. This provision shall apply unless the terms of this provision are amended elsewhere in this Agreement. If a lesser period for completion has been offered by the Developer as a condition under this Agreement in Article II, only the Planning

Commission can grant an extension of that completion period and then, only for good cause shown by the Developer. The City shall have the sole discretion to determine if there has been bona fide development of the Property. The City, through its employees and agents, shall at all times be allowed to enter onto the Property to determine if bona fide development is occurring or has occurred.

5.3 In the event bona fide development has not commenced within two (2) years from the effective date of the conditional rezoning, the rezoning and the Conditional Rezoning Agreement shall be void and of no effect.

5.4 If the Conditional Rezoning Approval and Agreement become void, no development shall be undertaken and no permits for development shall be issued until such time as a new zoning district classification of the Property has become effective as a result of one or both of the following actions that may be taken:

- A. The Property owner seeks a new rezoning classification for the Property, and/or
- B. The City initiates a new rezoning request for the Property to a reasonable district classification, in accordance with the conventional rezoning procedure.

5.5 If the City determines that no bona fide development of the Property has occurred, the City shall file a Dissolution of Conditional Rezoning Agreement Due to Non-Performance with the Oakland County Register of Deed stating that the Conditional Rezoning Agreement is null and void and that the Property has reverted back to a R-1B One Family Residential zoning district classification.

5.6 In the alternative, 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;

5.7 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.

5.8 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 03.24.00 of the City's Zoning Ordinance, and amendments, if any (b) this Agreement and any Conditional Rezoning Agreement Documents, (c) the Final Site Plan and (d) Chapter 39, Article 24 which set out requirements for the O-1 Low Rise Office zoning district classification. 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 with 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

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

**LAND SITUATED IN THE CITY OF TROY, OAKLAND COUNTY, MICHIGAN,
DESCRIBED AS:**

**THE EAST 443 FEET OF LOT 3, SUPERVISOR'S PLAT No. 26, ACCORDING TO
THE PLAT THEREOF AS RECORDED IN LIBER 57, PAGE 59 OF PLATS,
OAKLAND COUNTY RECORDS.**

Commonly known as:
3451 Livernois,
Troy, Michigan

Tax ID #20-21-426-012

EXHIBIT B

PRELIMINARY SITE PLAN SETTING FORTH ALL CONDITIONS AS REQUIRED BY
SECTION 03.24.02 (A)(6) OF THE ZONING ORDINANCE

See attached Drawings:

Title Sheet

C-1	Topographic Survey (by Fenn & Associates)	Dated 2-28-07
C-1TS	Tree Survey (by Fenn & Associates)	Dated 2-28-07
C-2	Site Plan (by Fenn & Associates)	Dated 2-28-07
C-3	Grading Plan (by Fenn & Associates)	Dated 2-28-07
LP-4	Landscape Plan (by Fenn & Associates)	Dated 2-28-07
A1.01	Floor Plans (by AJ Design – Architects)	Dated 2-28-07
A2.01	Exterior Elevations (by AJ Design – Architects)	Dated 2-28-07

POSTPONED ITEM

5. **PUBLIC HEARING – CONDITIONAL REZONING REQUEST (CR-001)** – Proposed Troy Medical Office (formerly Z 719), West side of Livernois, North of Big Beaver, Section 21 – From R-1B (One Family Residential) to O-1 (Low Rise Office)

Mr. Miller summarized the revisions and additions to the proposed conditional rezoning request, and reported it is the recommendation of City Management to approve the Conditional Rezoning Agreement and preliminary site plan.

Mr. Wright requested clarification on the width of the cross access easement driveway.

The petitioner, Brandon Kaufman of Vision Quest Consulting, 4657 Wendrick Drive, West Bloomfield, was present.

There was discussion on the proposed landscaping, specifically the caliber of the spruce trees, and the possibility of locating the sidewalk along the southern property line down the center between the one-way and two-way parking.

Mr. Kaufman indicated his intent to continue to work with and communicate with the residents.

PUBLIC HEARING OPENED

No one was present to speak.

PUBLIC HEARING CLOSED**Resolution # PC-2007-03-057**

Moved by: Wright
Seconded by: Troshynski

RESOLVED, That the Planning Commission hereby recommends to the City Council that the R-1B to O-1 conditional rezoning request, as per Section 03.24.00 of the City of Troy Zoning Ordinance, located on the west side of Livernois, north of Big Beaver, within Section 21, being approximately 1.26 acres in size, be granted, for the following reasons:

1. The application is consistent with the intent of the Future Land Use Plan.
2. The application is compatible with the existing zoning districts and land uses.
3. The applicant has worked with the neighbors to the north to reduce the impacts of the proposed office on the abutting residential property.

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

MOTION CARRIED

Karen J. Collingsworth-Crusse

Attorney at Law

55 Timberview Drive, Troy, MI 48084 Telephone: 248/680-1100 Fax: 248/743-6801

January 8, 2007

Brandon Kaufman
Vision Quest Consulting, Inc.
4657 Wendrick Drive
West Bloomfield, MI 48323

Dear Brandon,

Due to a personal conflict, I am unable to attend the site plan meeting on January 9, 2007, for your project located on Livernois adjacent to my subdivision, Westwood Park.

I do want to express my support for your project and regret that I am unable to do so in person.

Additionally, I would like to communicate my appreciation for the time, honesty, and creativity you have provided to the bordering homeowners over the past five months. It has certainly helped alleviate some of our concerns knowing that you understand our position. It is apparent you want to design a building that will minimize the impact on our homes and be aesthetically pleasing.

Although we will miss the open space, we realize this is the probably the highest and best use for the property and we support the proposed site plan.

Sincerely,



Karen J. Collingsworth-Crusse
President
Westwood Park Subdivision