



**TO:** Members of Troy City Council  
**FROM:** Lori Grigg Bluhm , City Attorney  
Susan M. Lancaster, Assistant City Attorney  
**DATE:** January 21, 2008  
**SUBJECT:** Milano Development v. City of Troy et. al.

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Milano Development Company, Inc. has filed a lawsuit against the City of Troy, and all other necessary public entities, as well as all neighboring property owners within 300 feet, in order to vacate a 43 foot wide private easement that was recorded on Lot 17 of the Supervisor's Plat of Square Acres Subdivision plat. The vacation is required in order to proceed with the approved condominium development on the property located on Rockfield (west of John R. Road, north of Wattles). The approved condominium development is overlaid on top of the platted land, but the private easement would preclude the development of some of the proposed condominium units on Lot 17. Although the 43 foot private easement reserves the right to locate a private roadway in that area, the easement has not been used for such purposes and is not intended to be used for the proposed development.

Under state law, any amendments to a plat must be accomplished through a lawsuit that provides notification to those persons who may be impacted. The lawsuit must be served on the municipality, as well as the School District, State of Michigan, Oakland County, and the Oakland County Road Commission, as well as all neighboring property owners within 300 feet. If all of the necessary parties consent to amend the plat through a consent judgment, the parties are then authorized to amend the plat and record it with Oakland County.

The attorney for Milano Development Company, Inc., has indicated that all necessary parties have been served with the Complaint, as required by the statute. The Court has already entered Default Judgments for those defendants who chose not to participate in the lawsuit, since there were no answers filed or other communication with Plaintiff's attorney. There are no formal objections to the requested vacation of the private easement.

City Administration recommends approval of the proposed attached Consent Judgment, which has been negotiated by the attorneys for the parties who have participated in the lawsuit. The Consent Judgment would also need to be approved by the State of Michigan, Oakland County, and all other public entities, as well as the neighbors who have continued to participate. The Consent Judgment terminates the 43-foot easement for private roadway purposes on the current plat. The Consent Judgment also reserves the right for the City Administration to review and approve the amended plat prior to submission to the Michigan Department of Consumer and Industry Services, Office of Land Survey and Remonumentation. Once City Administration is satisfied that the proposed amended plat accurately incorporates the approved Consent Judgment and is compliant with the City's laws and regulations, then the City Clerk can send a letter to Milano Development Company, Inc. indicating that the City has no objections to the proposed amended plat.

A proposed resolution is attached for your review, which approves the proposed Consent Judgment, and authorizes the Assistant City Attorney to sign the Consent Judgment on behalf of the City of Troy. If you have any questions, please let us know.

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

MILANO DEVELOPMENT COMPANY, INC.,  
a Michigan corporation,

Plaintiff.

Case No. 06-079401-CZ  
HON. MICHAEL WARREN

-vs-

SCOTT AURAND and PATRICIA AURAND,  
husband and wife; JAMES P. MARTIN,  
CHI HO KWONG and SUK FONG LI,  
husband and wife; THERESA FOUNDERS and  
JAMES FOUNDERS , husband and wife;  
CHARLES SLATE and RUTH SLATE,  
husband and wife; ARTENIO A. DELCARMEN  
and EVANGELINE M. DELCARMEN, husband and wife;  
RODNEY A. LEAKE and ELAINE M. LEAKE, husband and wife;  
JAMES BERAR; HANAA S. NICKOLA, a married woman;  
BRIAN WIGNER, a single man; ANGELLA DIAMANTIS,  
a single woman; JACK HAY and SUSAN M. HAY,  
husband and wife; JEFFREY G. HARPER, a single man;  
KENNETH CRUM and AMANDA CRUM, husband and wife;  
MICHAEL L. AMES and LINDA S. AMES, husband and wife;  
SHARON A. VALENTE; LEONIDAS NICK TSANGANOS and  
LABRENE MARIE TSANGANOS, husband and wife;  
ERNIE C. RACKLEY and TINA M. RACKLEY, husband  
and wife; CLIFFORD CRIST; DAVID R. PURVIS and  
LINDA M. PURVIS, husband and wife;  
GREGORY PERONIS and HELEN PERONIS, husband and wife;  
PETER MELARANGI and FRANCIS MELARANGI, husband and wife;  
PETER JOSEPH NAGY and RUTH ANN NAGY, husband and wife;  
DIANA L. NOFZINGER; ELIZABETH R. HARRINGTON;  
VICTOR A. TSOKUR and MARINA V. TSOKUR, husband and wife;

CHRISTOPHER J. OSELETT and SUZANNE M. OSELETT,  
husband and wife; TROY SCHOOL DISTRICT,  
HAMMAN SOUTH SIXTY, INC., a non-profit Michigan corporation;  
EDMUND C. SZOKA, Roman Catholic Archbishop of the Archdiocese of Detroit;  
CITY OF TROY, a Michigan municipal corporation; JAY B. RISING,  
State Treasurer of the State of Michigan; JOHN MCCULLOCH,  
Drain Commissioner of the County of Oakland; BRENT BAIR,  
Chairperson of the County Road Commissioners for the  
County of Oakland,

Defendant.

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**CONSENT JUDGMENT**

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

on \_\_\_\_\_, 2008.

Present: Hon. \_\_\_\_\_  
Circuit Court Judge

A. That Plaintiff, Milano Development Company, Inc. ("Milano") is the owner of record of property commonly known as 1703 Rockfield, Troy, MI, which property is legally described as:

"Lot 17 of Supervisor's Plat of Square Acres Sub, as recorded in Liber 14 of Plats, Page 49, Oakland County Records, being a part of the south half of Section 14, Town 2 North, Range 11 East, City of Troy, Oakland County, Michigan" ("Milano's Property").

B. That Milano's Property is part of the Supervisor's Plat of Square Acres Sub ("Plat for Square Acres Subdivision"), as recorded in Liber 14 of Plat, Page 49, Oakland County Records.

C. That the Plat for Square Acres Subdivision includes a 43 foot easement for roadway purposes (private) (the "43' Easement for Roadway Purposes (Private)"), as depicted on a portion of the recorded Plat for Square Acres Subdivision, as set forth on attached Exhibit "A".

D. That Milano filed an action to partially vacate the Plat for Square Acres Subdivision, so as to terminate the 43' Easement for Roadway Purposes (Private) in the area legally described on attached Exhibit "B", so as to permit the development of Milano's Property, in accordance with an approved site plan.

E. That the above-captioned Defendants were joined as party defendants to the action, in accordance with MCL 560.224A. (Milano and the party defendants shall be collectively referred to as the "Parties").

F. That the Parties acknowledge that there exists an opportunity to resolve the action, without further cost or expense, and the Parties are desirous of entering into this Consent Judgment to resolve this matter in accordance with terms contained herein.

NOW THEREFORE, pursuant to stipulation of the Parties, and the Court having determined that this Consent Judgment is reasonable and just, and being otherwise fully advised in the premises,

***IT IS HEREBY ORDERED AND ADJUDGED*** as follows:

1. **Partial Vacation of Plat**. The 43' Easement for Roadway Purposes (Private), in the area which is legally described on attached Exhibit "B", is hereby vacated and all rights, benefits, burdens and restrictions related thereto shall accordingly terminate and be of no further force or effect.
2. **Recordation of Judgment**. Within thirty (30) days after entry of this Consent Judgment, Milano shall record the Consent Judgment in the office of the Oakland County Register of Deeds in accordance with MCLA 560.228.
3. **Preparation of New Plat**. In accordance with MCLA 560.229(1), Milano shall prepare an amended plat (the "New Plat") of Lot 17 of the Plat of Square Acres Subdivision affected by this Consent Judgment, which New Plat shall reflect the termination of the 43' Easement for Roadway Purposes (Private) in the area legally described on attached Exhibit "B".
4. **Filing New Plat with State Treasurer**. Plaintiff shall prepare and file, within one hundred twenty (120) days of entry of this Judgment by the Court, the New Plat on the material specified in R560.104, in recordable form in accordance with MCL 560.101, et seq., and this Judgment, for the review and approval of the Office of Land Survey and Remonumentation Michigan Department of Labor and Economic Growth. The one hundred twenty (120) day period pursuant to this paragraph, may be extended by agreement of the City of Troy, the Michigan Department of Labor and Economic Growth, and Milano and/or its successors-in-interest, or by order of the Court.
5. **Approval by the City of Troy**. Prior to submittal of the New Plat to the Office of Land Survey and Remonumentation Michigan Department of Labor and Economic Growth in accordance with paragraph 4, above, the New Plat shall be submitted for approval by the City of Troy. Approval by the City of Troy shall mean that the City of Troy's Clerk has presented a letter to Milano acknowledging that he or she has reviewed the New Plat and the City is satisfied with the changes, additions or amendments to the New Plat. Notwithstanding the foregoing, the City of Troy

shall provide approval for the New Plat within ten (10) days of submittal of the New Plat to the City of Troy, provided that the New Plat is in conformity with the terms of this Consent Judgment.

6. **Fees for Recording and Filing Documents**. All fees for the recording and filing of the documents as required by this Consent Judgment in accordance with MCLA 560.229, shall be the responsibility of Milano.

7. **Good Faith**. The parties and their respective successors, heirs, grantees and assigns shall treat each other in good faith and shall neither take any action which is contrary to or interferes with the spirit of this Consent Judgment, nor omit any action which is necessary or convenient to or consistent with the spirit and intent of this Consent Judgment

8. **Authority**. By their execution of this Consent Judgment, the Parties warrant that they have the authority to execute this Consent Judgment and bind their respective entities, successors, heirs and assigns to its terms and conditions

9. **Amendment**. The terms of this Consent Judgment may be amended, changed or modified but only by separate order of the Court or by written agreement executed by the Parties to this Consent Judgment, or their respective successors or assigns, and later approved and ordered by this Court.

10. **Clerical Errors**. Any clerical errors or mistakes in this document or exhibit descriptions contained in this Consent Judgment may be corrected by written agreement of the Parties to this Consent Judgment and later approved and ordered by this Court, and the Parties to this Consent Judgment agree to cooperate in making such corrections in order to effectuate the spirit and intent of the parties in entering into this Consent Judgment.

11. **Consent Judgment and Exhibits**. This Consent Judgment is hereby deemed to include all exhibits attached here, said exhibits being incorporated herein and made a part hereof as fully and to the same extent as if the contents of the exhibits were set out in their entirety in the body of this Consent Judgment. All references to this Consent Judgment are deemed

to be a reference to the body of this Consent Judgment and to the exhibit.

12. **Continuing Jurisdiction**. This Court retains continuing jurisdiction to assure enforcement and compliance with the terms of this Consent Judgment.

13. **Easements**. Only recorded easements located within the boundary of the New Plat are hereby preserved, and the New Plat shall show only recorded easements and shall be accompanied by a statement of the surveyor that he or she, in determining the type, width and location of any recorded easements shown has reviewed any existing title search and/or policy of title insurance and had searched, or caused to be searched, the records of the Register of Deeds for any recorded easements burdening the subject lands which were created between the date of a title search or issuance of a title policy, and the most recent submittal date of the amended plat and shall provide a copy of those records to the Office of Land Survey and Remonumentation Michigan Department of Labor and Economic Growth, upon submission of the amended plat.

14. **Notice**. Upon notice and hearing, and upon it appearing to the Court that the New Plat will not be submitted within a reasonable time after the period set forth in paragraph 4 above, and unless good cause is shown for failure to file the New Plat within the time prescribed by paragraph 4 above, this Judgment will be declared null and void nunc pro tunc should the New Plat not be prepared and filed as required by this Judgment and by the requirements of the Land Division Act. In the event that this Judgment is declared null and void nunc pro tunc in accordance with this paragraph, nothing herein shall be deemed to prevent Milano or its successors-in-interest from re-filing any claim or cause of action to vacate or partially vacate the Plat for Square Acres Subdivision in accordance with MCLA 560.101 et seq., any such consequent dismissal being without prejudice.

**THIS JUDGMENT RESOLVES THE LAST PENDING CLAIM AND CLOSES THIS CASE**

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Circuit Court Judge

Approved as to form, substance and entry:

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Attorney for Plaintiff

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Attorney for John McCulloch, only

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