

TO: Mayor and Members of Troy City Council
FROM: Lori Grigg Bluhm, City Attorney
DATE: August 9, 2005
SUBJECT: Gerback et. al v. City of Troy

Enclosed please find a complaint that was recently filed against the City of Troy and the Troy City Council by James Gerback, Successor Trustee under the Amended Robert S. Binder Trust Agreement. The complaint was filed on June 17, 2005, but was not immediately served on the City. The lawsuit stems from City Council's denial of a requested re-zoning of a 2.74 acre parcel of property located on the west side of Rochester Road, south of Trinway. The property is owned by the Plaintiff trust, and is currently zoned R-1C (one family residential). Plaintiff unsuccessfully sought to re-zone the property to R-1T (one family attached residential). In its meeting of December 14, 2004, the Troy Planning Commission recommended the re-zoning, since it was consistent with the Master Land Use Plan, which designated the area as medium density residential. City Administration similarly recommended the re-zoning. However, the Troy City Council voted 3-4 against the re-zoning at the February 21, 2005 City Council meeting. The most prevalent concern about the requested re-zoning was the depth of the property (approximately 570 feet). The complaint alleges that the denial of the requested re-zoning was "arbitrary and capricious," and fails to advance a legitimate government interest.

Count I of the complaint alleges a denial of substantive due process, and argues that the denial of the rezoning bears "no reasonable relationship to the health, safety and welfare of the public of Troy". Count II asserts an equal protection claim, where Plaintiff argues that it has been treated less favorably than other owners of "similarly situated" property, since properties of greater depths have received the requested R-1T zoning. The complaint seeks an injunction that "prevents the City of Troy from interfering with Plaintiff's proposed use of the property."

Our office will assume the defense of this case, absent objections from City Council.

STATE OF MICHIGAN
JUDICIAL DISTRICT
SIXTH JUDICIAL CIRCUIT

SUMMONS AND COMPLAINT

05-067157-AA



OAKLAND COUNTY JUDGE DEBORAH G. TYNER
GERBACK, JAMES V TROY CITY

Court Address 1200 N. Telegraph; Pontiac, MI 48341

Plaintiff name(s), address(es) and telephone no(s).

James L. Gerback, Successor Trustee under the
Amended Robert S. Binder Trust Agreement Dated
March 1, 2004

c/o Plaintiff's Attorney

Plaintiff attorney, bar no., address, and telephone no.

Ernest J. Essad, Jr. (P32572)
David E. Plunkett (P66696)
Williams, Williams, Ruby & Plunkett, P.C.
380 N. Old Woodward, Suite 300
Birmingham, MI 48009
(248) 642-0333

Defendant name(s), address(es), and telephone no(s).

City of Troy City Council
500 W. Big Beaver
Troy, MI 48084

(248) 524-3300

SUMMONS NOTICE TO THE DEFENDANT: In the name of the people of the State of Michigan, you are notified:

1. You are being sued.
2. YOU HAVE 21 DAYS after receiving this summons to file an answer with the court and serve a copy on the other party or to take other lawful action (28 days if you were served by mail or you were served outside this state).
3. If you do not answer or take other action within the time allowed, judgment may be entered against you for the relief demanded in the complaint.

Issued JUN 17 2005	This summons expires SEP 16 2005	Court clerk RUTH JOHNSON
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*This summons is invalid unless served on or before its expiration date.

COMPLAINT Instruction: The following is information that is required to be in the caption of every complaint and is to be completed by the plaintiff. Actual allegations and the claim for relief must be stated on additional complaint pages and attached to this form.

Family Division Cases

- There is no other pending or resolved action within the jurisdiction of the family division of circuit court involving the family or family members of the parties.
- An action within the jurisdiction of the family division of the circuit court involving the family or family members of the parties has been previously filed in Oakland County Circuit Court.

The action remains is no longer pending. The docket number and the judge assigned to the action are:

Docket no.	Judge	Bar no.
------------	-------	---------

General Civil Cases

- There is no other pending or resolved civil action arising out of the same transaction or occurrence as alleged in the complaint.
- A civil action between these parties or other parties arising out of the transaction or occurrence alleged in the complaint has been previously filed in _____ Court.

The action remains is no longer pending. The docket number and the judge assigned to the action are:

Docket no.	Judge	Bar no.
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VENUE

Plaintiff(s) residence (include city, township, or village) Birmingham, Oakland County, Michigan	Defendant(s) residence (include city, township, or village) Troy, Oakland County, Michigan
Place where action arose or business conducted Troy, Oakland County, Michigan	

I declare that the complaint information above and attached is true to the best of my information, knowledge, and belief.

6-13-05

Date

Signature of attorney/plaintiff

If you require special accommodations to use the court because of disabilities, please contact the court immediately to make arrangements.

TELEPHONE (248) 642-0333
BIRMINGHAM, MICHIGAN 48009
SUITE 300
380 N. OLD WOODWARD AVENUE,
WILLIAMS, WILLIAMS, RUBY & PLUNKETT, P.C.

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,

v.

THE CITY OF TROY and THE CITY OF TROY
CITY COUNCIL, jointly
and severally,

Defendants.

Ernest J. Essad, Jr., (P32572)
David E. Plunkett (P66696)
Attorneys for Plaintiff
Williams, Williams, Ruby & Plunkett, P.C.
380 N. Old Woodward, Suite 300
Birmingham, Michigan 48009
(248) 642-0333

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2005 JUN 17 P 3:50

05-067157-AA

OAKLAND COUNTY JUDGE DEBORAH G. TYNER
GERBACK, JAMES V. TROY CITY

BY: _____
DEPUTY COUNTY CLERK Case No.

Honorable

COMPLAINT FOR INJUNCTIVE RELIEF

There is no other civil action between these parties arising out of the same transaction or occurrence as alleged in this Complaint pending in this Court, nor has any such action been previously filed and dismissed or transferred after having been assigned to a Judge, nor do I know of any other civil action, not between these parties, arising out of the same transaction or occurrence as alleged in this Complaint that is either pending or was previously filed and dismissed, transferred, or otherwise disposed of after having been assigned to a Judge in this Court.

Plaintiff James L. Gerback, Successor Trustee under the Amended Robert S. Binder Trust Agreement dated March 1, 2004, by his attorneys, states as follows for his Complaint for Injunctive Relief against the City of Troy and the City of Troy City Council:

PARTIES AND PROPERTY

1. Plaintiff James L. Gerback is the Successor Trustee under the Amended Robert S. Binder Trust Agreement dated March 1, 2004, whose address is 300 Park Street, Suite 375, Birmingham, Michigan 48009.
2. Defendant City of Troy is a Michigan municipal body, located in Oakland County, Michigan (“Troy”).
3. Defendant City of Troy City Council is a Michigan municipal administrative board (“City Council”).
4. Plaintiff is the owner of real property consisting of 2.74 acres located in Troy on the west side of Rochester Road, south of Trinway, Section 10 (the “Property”).

JURISDICTION AND VENUE

5. This Court has jurisdiction over Troy and the City Council because they are both located in Oakland County, and this Complaint seeks equitable relief which is specifically within the jurisdictional limits of the Court.
6. This matter arises from the City Council’s denial of Binder’s zoning application and the refusal by the Troy Board of Zoning Appeals to hear an appeal of the denial. (See Ex. A, April 26, 2005 letter from Troy stating that the BZA has no jurisdiction to hear appeal).

7. Venue is proper in this Court.

FACTUAL ALLEGATIONS

8. The Property is zoned R-1C One Family Residential.
9. The Property is approximately 2.74 acres in size, with a depth of approximately 570 feet.

10. On or about November 10, 2004, Plaintiff filed a request with the Troy Planning Commission (“Planning Commission”) to rezone the Property to R1-T for the purpose of developing up to fourteen (14) attached condominiums on the Property (the “Rezoning Commission Application”). (Ex. B.)

11. At its December 14, 2004 meeting, the Planning Commission determined that the Rezoning Application was consistent with the Medium Density Residential classification shown on the Troy Future Land Use Plan, and recommended approval of the Rezoning Application. (Ex. C, relevant meeting minutes).

12. On or about January 11, 2005, Troy’s Real Estate & Development Director and Planning Director sent a Recommendation to the City Manager concurring with the Planning Commission and recommending approval of the Rezoning Application. (Ex. D.)

13. The January 11, 2005 Recommendation states as follows:

The frontage of the parcel is consistent with the Future Land Use Plan. At the December 14, 2004 Regular Meeting, the Planning Commission determined that the rezoning application is consistent with the dept of the Medium Density Residential classification shown on the Future Land Use Plan, and recommended approval of the rezoning request. The R-1T Zoning District is an appropriate buffer between a major thoroughfare and a single-family residential district. The application is compatible with abutting uses and zoning districts. City Management concurs with the Planning Commission recommendation and recommends approval of the rezoning application.

(Id. at p. 1, emphasis added.)

14. The January 11 Recommendation also states:

Research shows that other R-1T parcels located on Rochester Road within the Medium Density Residential classification exceed 570 feet in depth (see attached table).

(Id. at p. 3.)

15. The table attached to the January 11 Recommendation shows four (4) other parcels zoned R1-T located on Rochester Road within the Medium Density Residential Classification that exceed 570 feet in depth, including two (2) that exceed 1,200 feet in depth, more than twice as deep as the subject Property. (Ex. E.) The table also shows four (4) parcels zoned R1-T located on other area roads that exceed 570 feet in depth, and three (3) more that exceed 300 feet in depth. (Id.)

16. At its January 24, 2005 meeting, the City Council decided to postpone voting on the Rezoning Application until the February 21, 2005 City Council meeting, based on concern about the depth of the parcel. (Ex. F at p. 1; Ex. G at p. 1; Ex. H at pp 1-2.)

17. The purpose of the postponement was to allow Plaintiff, the Planning Commission and the Planning Department to address the concern raised by the City Council regarding the depth of the Property. (Ex. G at p. 1.)

18. At a Special/Study Meeting regarding this issue on February 1, 2005, the Planning Commission determined the following:

1. The rezoning application is consistent with the Future Land Use Plan.
2. The rezoning application is compatible with adjacent land uses and zoning districts.
3. The depth of the parcel (570 feet) is less than the depth of other parcels fronting on Rochester Road that were recently rezoned to R-1T. Specifically, these parcels include Maya's Meadows in Section 14 (671-foot depth). The Fairways in Section 11 (1221 foot depth) and the undeveloped parcel on the north side of Lamb Road in Section 14 (670-foot depth).
4. Retaining a portion of the property as R-1C would result in a small parcel that would be difficult to develop under R-1T provisions. Furthermore, it is not desirable for a site condominium development and a traditional condominium development to share a street.

(Id. at pp 1-2.)

19. On or about February 11, 2005, the Real Estate & Development Director and the Planning Director gave a second Recommendation to the City Manager recommending approval of the Rezoning Application. (Ex. G.)

20. Despite numerous recommendations by the Planning Commission and City management which were well-supported on various grounds, and despite the presence of other similarly situated parcels as deep and far deeper than the Property, the City Council denied the Rezoning Application of February 21, 2005. (Ex. I.)

21. A synopsis of the January 24, 2005 public hearing before the City Council confirms that the only concern expressed by the City Council regarding the Rezoning Application was the depth of the Property. (Ex. J.)

22. The City Council gave no other reason on the record for denying the Rezoning Application, which the Planning Commission and City management had recommended.

23. On information and belief, the depth of the Property was the sole reason the City Council denied the Rezoning Application.

24. Plaintiff attempted to obtain a use variance from the City of Troy Board of Zoning Appeals (“BZA”), but was informed by the Troy Director of Building and Zoning that the Troy Zoning Ordinance does not give the BZA jurisdiction to grant use variances or otherwise hear Plaintiff’s appeal. (Ex. A.) “Based on the restriction of the powers of the Board of Zoning Appeals noted above, the Board has no jurisdiction to hear your request. Therefore, an application for hearing before the Board of Zoning Appeals is not justified.” (Id.)

25. Defendant City Council acted arbitrarily and capriciously in denying Plaintiff’s Rezoning Application based on the Property’s depth for the reason that there are numerous other

WILLIAMS, WILLIAMS, RUBY & PLUNKETT, P.C. 380 N. OLD WOODWARD AVENUE, SUITE 300 BIRMINGHAM, MICHIGAN 48009 TELEPHONE (248) 642-0333

examples in the surrounding area where the depth of similarly situated and zoned parcels equals or exceeds the depth of the Property.

26. Defendant City Council failed to advance a legitimate governmental interest in denying the Rezoning Application.

COUNT I
Denial of Substantive Due Process

27. Plaintiff hereby incorporates by reference Paragraphs 1 through 26 as though fully set forth here.

28. The actions of the City Council in denying Plaintiff's Rezoning Application constitute an unreasonable violation of Plaintiff's constitutional right to substantive due process under the Michigan Constitution for the reason for that such action is without rational basis, is unreasonable, arbitrary and capricious, and fails to advance any governmental interest.

29. The actions of the City Council in denying Plaintiff's Application bear no reasonable relationship to the health, safety and welfare of the public of Troy.

WHEREFORE, Plaintiff respectfully requests that the Court enter an appropriate injunction preventing the City of Troy and the Troy City Council from interfering with Plaintiff's proposed use of the Property.

COUNT II
Denial of Equal Protection

30. Plaintiff hereby incorporates by reference Paragraphs 1 through 29 as though fully set forth here.

31. Plaintiff, Troy and the City Council are subject to the Constitution of the State of Michigan.

32. The Constitution of the State of Michigan requires that all persons be afforded equal protection under the law.

33. Defendants have approved zoning of R1-T for similarly situated parcels as deep and deeper than the Property in the area of Troy surrounding the Property, including multiple examples on Rochester Road.

34. The denial of Plaintiff's Rezoning Application was arbitrary and capricious and denied it equal protection under the law.

35. Said actions by the Troy and City Council are in violation of the Constitution of the State of Michigan.

36. In its denial of Plaintiff's Rezoning Application, the City Council has not cited any health, safety or welfare concern relative to the variance request to distinguish it from any other similar R1-T zoning previously approved by the City Council.

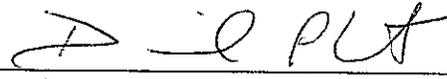
WHEREFORE, Plaintiff respectfully requests that the Court enter an appropriate injunction preventing the City of Troy and the Troy City Council from interfering with Plaintiff's proposed use of the Property.

Jury Demand

Plaintiff hereby requests a trial by jury on all issues so triable.

Respectfully submitted,

WILLIAMS, WILLIAMS, RUBY & PLUNKETT, P.C.

By: 

Ernest J. Essad, Jr. (P32572)
David E. Plunkett (P66696)
Attorneys for Plaintiff
380 N. Old Woodward, Suite 300
Birmingham, MI 48009
(248) 642-0333

Dated: June 10, 2005



500 West Big Beaver
Troy, Michigan 48084
www.troymi.gov

April 26, 2005

Area code (248)

Assessing
524-3311

Bldg. Inspections
524-3344

Bldg. Maintenance
524-3368

City Clerk
524-3316

City Manager
524-3330

Community Affairs
524-1147

Engineering
524-3383

Finance
524-3411

Fire-Administration
524-3419

Human Resources
524-3339

Information Services
619-7279

Law
524-3320

Library
524-3545

Parks & Recreation
524-3484

Planning
524-3364

Police-Administration
524-3443

Public Works
524-3370

Purchasing
524-3338

Real Estate & Development
524-3498

Treasurer
524-3334

General Information
524-3300

John D. Gaber
Williams, Williams, Ruby & Plunkett, P.C.
380 North Old Woodward Avenue, Suite 300
Birmingham, MI 48009

Re: Board of Zoning Appeals Action
Property on West Side of Rochester Road, South of Trinway
Rezoning Application Z-699

Dear Sirs:

I have received your letter regarding the Board of Zoning Appeals ability to act on a variance on the above referenced property. In general your question is whether the Troy Board of Zoning Appeals can consider a use variance to be allowed to use the property for single-family attached dwellings (townhouse) use while it is located in a One-Family Detached Residential Zoning District. Attached single-family dwellings are not a principal use permitted in a One-Family Detached Residential Zoning District per the requirements of Section 10.20.00 of the Troy Zoning Ordinance.

Section 43.72.00 of the Troy Zoning Ordinance states, in part that, "a variance must not permit the establishment of a prohibited use as the principal use within a Zoning District". Section 43.80.02 of the Ordinance also states "Nothing in this Article shall be construed to grant the Board the authority to modify any provisions of the Zoning Ordinance other than those specified, or to alter the Zoning District map because that authority is reserved to the Mayor and City Council".

Based upon the restriction of the powers of the Board of Zoning Appeals noted above, the Board has no jurisdiction to hear your request. Therefore, an application for hearing before the Board of Zoning Appeals is not justified.

If you would like any additional information regarding this matter, please feel free to contact me.

Yours truly,

Mark Stimac, R.A., C.B.O.
Director of Building and Zoning

Copies: John Szerlag, City Manager
Brian P. Murphy, Assitant City Manager/Services
Lori Grigg-Bluhm, City Attorney
Mark Miller, Planning Director

Fred Binder
5215 Rochester Rd.
Troy, MI 48085
248-835-6662
Fax: 248-865-9935
fredbinder@aol.com

November 10, 2004

City of Troy planning Department
500 W. Big Beaver Rd.
Troy, MI 48084
248-524-3364
Fax: 248-524-3382
RE: Statement of desire for zoning change 5215 Rochester Rd

To whom it may concern,

In our opinion it is in both the best interest of the residents of The City of Troy and ourselves to change the zoning of our 2.74 acres located at 5215 Rochester Rd from R-1C to R-1T. The R-1T designation is in compliance with the future land use plan, and appears to be the best use of the land.

My house is one of the original houses in Troy and we have worked very hard to restore it. By giving the R-1-T designation we will be able to best use the land, and will most likely be able to retain the house as the focal point for our proposed condominium project. This will be best to help retain the charm and character of the City of Troy, and the neighborhood. We further believe that this proposed change in zoning, and the beauty of the new development will be a positive thing for my neighbors and their property.

Thank You,

Fred Binder

NOV 12 2004
EXHIBIT B

7. PUBLIC HEARING – PROPOSED REZONING (Z 699) – Proposed Briggs Crossing Condominium, West side of Rochester Road, South of Trinway, Section 10 – From R-1C (One Family Residential) to R-1T (One Family Attached)

Mr. Savidant presented a summary of the Planning Department report for the proposed rezoning. Mr. Savidant referenced three handouts relating to the proposed rezoning request. They are: (1) an amended page 2 of the Planning Department report with respect to natural features; (2) a table identifying R-1T zoning districts parcel sizes and depths; and (3) a letter of opposition received today.

Mr. Savidant cited the sizes and depths of specific parcels located within the R-1T zoning district from former rezoning requests. Mr. Savidant reported that Article 12.40.01 states that the R-1T zoning district may be applied to property when the application of such a classification is consistent with the intent of the Future Land Use Plan, and therefore involves areas indicated as medium density or high density residential. Mr. Savidant said the subject application would meet this standard and the locational standards of the R-1T district should the Planning Commission determine that the depth of the parcel is consistent with the depth of the area classified on the Future Land Use Plan as Medium Density Residential.

The petitioner, Fred Binder of 5215 Rochester Road, Troy, was present. Mr. Binder said he thinks the request fits within the Future Land Use Plan, and it does appear that similar depths have been approved in the past.

Mr. Chamberlain referenced the Future Land Use Plan with respect to the depth of the R-1T zoning versus the commercial to the south. He said it appears that the subject parcel would be deeper or the same depth as the commercial to the south.

PUBLIC HEARING OPENED

No one was present to speak.

PUBLIC HEARING CLOSED

Resolution # PC-2004-12-154

Moved by: Chamberlain
 Seconded by: Wright

RESOLVED, That the Planning Commission hereby recommends to the City Council that the R-1C to R-1T rezoning request, located on the west side of Rochester Road and south of Trinway, within Section 10, being approximately 2.74 acres in size, be granted, for the following reason:

1. That it complies with the Future Land Use Plan of the City of Troy.

Yes: Chamberlain, Drake-Batts, Strat, Waller, Wright
 No: Littman
 Absent: Khan, Schultz, Vleck

MOTION CARRIED

Mr. Littman said he thinks the parcel goes too deep when you look at the neighborhood and how it is put together.

January 11, 2005

TO: John Szerlag, City Manager

FROM: Douglas J. Smith, Real Estate & Development Director
Mark F. Miller, Planning Director 

SUBJECT: AGENDA ITEM – PUBLIC HEARING – REZONING APPLICATION –
West side of Rochester Road, South of Trinway, Section 10 – R-1C to R-1T (Z 699)

RECOMMENDATION

The frontage of the parcel is consistent with the Future Land Use Plan. At the December 14, 2004 Regular Meeting, the Planning Commission determined that the rezoning application is consistent with the depth of the Medium Density Residential classification shown on the Future Land Use Plan, and recommended approval of the rezoning request. The R-1T Zoning District is an appropriate buffer between a major thoroughfare and a single-family residential district. The application is compatible with abutting uses and zoning districts. City Management concurs with the Planning Commission recommendation and recommends approval of the rezoning application.

GENERAL INFORMATION

Name of Owner / Applicant:

The owner is Robert S. Binder Building. The applicant is Fred Binder.

Location of Subject Property:

The property is located on the west side of Rochester Road, south of Trinway, in Section 10.

Size of Subject Parcel:

The parcel is approximately 2.74 acres in area.

Current Use of Subject Property:

A single family home presently sits on the property.

Current Zoning Classification:

R-1C One Family Residential District.

Proposed Zoning of Subject Parcel:

R-1T One Family Attached District.

Proposed Uses and Buildings on Subject Parcel:

The applicant proposes to construct a condominium development on the property.

Current Use of Adjacent Parcels:

North: Single family residential.

South: Single family residential.

East: Single family residential.

West: Single family residential.

Zoning Classification of Adjacent Parcels:

North: R-1C One Family Residential.

South: R-1C One Family Residential.

East: R-1C One Family Residential.

West: R-1C One Family Residential.

ANALYSIS

Range of Uses Permitted in the Proposed R-1T Zoning District and Potential Build-out Scenario:

PRINCIPAL USES PERMITTED:

All principal uses permitted and as regulated in the nearest R-1A through R-1E One Family Residential Districts.

Two family dwellings developed in accordance with the provisions of the Condominium Act, MCL 559.1, et seq.

One family attached dwellings as defined in sub-Section 04.20.44 developed in accordance with the provisions of the Condominium Act, MCL 559.1, et seq.

Accessory buildings and uses customarily incidental to the above principal uses.

USES PERMITTED SUBJECT TO SPECIAL USE APPROVAL:

Churches and other facilities normally incidental thereto.

Schools.

Child care centers.

Utility and public service buildings and uses.

Vehicle and Non-motorized Access:

The parcel fronts on Rochester Road.

Potential Storm Water and Utility Issues:

The applicant will be required to provide on-site storm water detention.

Natural Features and Floodplains:

The Natural Features Map indicates there are no significant natural features located on the property. A site visit indicated there is an open drain on the western half of the property. It will need to be determined during the site plan review process whether there are any wetlands on the property. There are also woodlands on the property.

Compliance with Future Land Use Plan:

The Future Land Use Plan classifies the Rochester Road frontage in this area as Medium Density Residential. The Medium Density Residential classification correlates with the R-1T Zoning District in the Plan. On the surface, the rezoning application is consistent with the Future Land Use Plan. However, the depth of the subject parcel is 570 feet. The exact depth of the Medium Density Residential classification cannot be determined from the Future Land Use Plan because it is conceptual in nature. If the City Council agrees with the Planning Commission and determines that the depth of the parcel is consistent with the Future Land Use Plan, the application would be considered to be consistent with the intent of the Future Land Use Plan.

Compliance with Location Standards:

Article 12.40.01 states that the R-1T (One-family Attached Residential) District may be applied to property when one or more of the following conditions prevail:

- (A) When the application of such a classification is consistent with the intent of the Master Land Use Plan, and therefore involves areas indicated as medium density or high density residential.
- (B) When the application of such a classification would be an integral part of a planned residential development approach, such as a planned neighborhood development (34.50.00), wherein the overall density is consistent with the intent of the Master Land Use Plan.

The Planning Commission determined that the depth of the parcel is consistent with the depth of the area classified on the Future Land Use Plan as Medium Density Residential. If the City Council has the same finding of fact, the application would meet the standard of (A) above and therefore meet the Location Standards of the R-1T District.

Research shows that other R-1T parcels located on Rochester Road within the Medium Density Residential classification exceed 570 feet in depth (see attached table).

Attachments:

1. Maps.
2. Table: R-1T Parcel Sizes and Depths.
3. Minutes from December 14, 2004 Planning Commission Regular Meeting.
4. Letter from petitioner, dated November 10, 2004.
5. Two (2) letters of opposition, both dated December 14, 2004.

Prepared by RBS/MFM/PPB

cc: Applicant
File (Z 699)

G:\REZONING REQUESTS\Z 699 BRIGGS CROSSING SEC 10\CC Public Hearing 01 24 05.doc

R-1T ZONING DISTRICTS PARCEL SIZES AND DEPTHS

Development/Units	Location	File #	Parcel Size	Parcel Depth (from ROW)
Enclave of Troy 36 units	Northwest corner of Wattles & John R Section 13	SP-92	6.6 ac.	600' from Wattles 563' from John R
Maya's Meadows 28 units	East side of Rochester Road, north of Wattles, Section 14	SP-857	5.3 ac.	617' from Rochester
Charleston Club Condominiums 12 units	North side of Long Lake Road, west of Livernois, Section 9	SP-844	0.6 ac.	333' from Long Lake
Harrington Park Condominium 34 units	North side of Long Lake Road, west of Livernois, Section 9	SP-861	5.9 ac.	333' from Long Lake
Fountain Park Condominium 14 units	West side of Rochester Road, north of Wattles, Section 14	SP-871	2.7 ac.	336' from Rochester
Sandalwood North of Troy 54 units	South side of South Boulevard, west of Rochester Rd., Section 3	SP-854	10.1 ac.	1037' from South
Sandalwood South of Troy 54 units	West side of Rochester Road, south of South Blvd., Section 3	SP-853	9.45 ac.	1255' from Rochester
Undeveloped	East side of Rochester Road, north of Wattles Road, Section 14		14.11 ac.	670' from Rochester
The Fairways 100 units	East side of Rochester Road, south side of Square-Lake Road, Section 11	SP-702	19.9 ac.	1221' from Rochester 772' from Square Lake
Wattles Creek Townhouses 210 units	South side of Wattles, west of I-75, Section 21.	SP-180	28.9 ac.	2741' from Wattles
Undeveloped	South side of Long Lake, west of Rochester, Section 15.		14.5 ac.	924' from Wattles

February 2, 2005

TO: The Planning Commission

FROM: Mark F. Miller, Planning Director
Brent Savidant, Principal Planner

SUBJECT: REZONING APPLICATION (Z 699) – West side of Rochester Road,
South of Trinway, Section 10 – R-1C to R-1T

At the December 14, 2004 Regular Meeting, the Planning Commission determined that the rezoning application is consistent with the depth of the Medium Density Residential classification shown on the Future Land Use Plan, and recommended approval of the rezoning request. City Council held a Public Hearing on this item on January 24, 2005. Some members of City Council expressed concern regarding the depth of the parcel in relation to the depth of the area classified as Medium Density Residential in the Future Land Use Plan. City Council passed the following resolution:

Resolution #2005-01-037

Moved by Beltramini

Seconded by Stine

RESOLVED, That the R-1C to R-1T rezoning request, located on the west side of Rochester Road, south of Trinway, Section 10, being 2.74 acres in size, as recommended by the Planning Commission and City Management, is hereby POSTPONED, until the Regular City Council Meeting Scheduled for Monday, February 21, 2005 to allow the Petitioner, the Planning Commission and the Planning Department the opportunity to review alternative development options of the property to address some of the concerns brought forward by City Council.

Yes: All-7

The Planning Commission discussed this item as requested by City Council at the February 1, 2005 Special/Study Meeting. At this meeting, the Planning Commission determined the following:

1. The rezoning application is consistent with the Future Land Use Plan.
2. The rezoning application is compatible with adjacent land uses and zoning districts.
3. The depth of the parcel (570 feet) is less than the depth of other parcels fronting on Rochester Road that were recently rezoned to R-1T. Specifically, these parcels include Maya's Meadows in Section 14 (617-foot depth). The Fairways in Section 11 (1221-foot depth) and the undeveloped parcel on the north side of Lamb Road in Section 14 (670-foot depth).
4. Retaining a portion of the property as R-1C would result in a small parcel that would be difficult to develop under R-1T provisions. Furthermore, it is not

desirable for a site condominium development and a traditional condominium development to share a street.

Please be prepared to discuss this item at the February 8, 2005 Planning Commission Regular Meeting.

Attachments:

1. Report prepared for City Council, dated January 11, 2005.
2. R-1T Zoning Districts Parcel Sizes and Depths.
3. Minutes from December 14, 2004 Planning Commission Regular Meeting.
4. Letter from applicant, dated November 10, 2004.
5. Letters of opposition (2).
6. Synopsis of comments from January 24, 2005 City Council Meeting.
7. Draft resolution from January 24, 2005 City Council Meeting.

cc: Applicant
File/ Z 699

G:\REZONING REQUESTS\Z 699 BRIGGS CROSSING SEC 10\Briggs Crossing PC Memo 02 08 05.doc

City Council Report
February 21, 2005 Meeting

February 11, 2005

TO: John Szerlag, City Manager

FROM: Douglas J. Smith, Real Estate and Development Director
Mark F. Miller, Planning Director *MFM*

SUBJECT: AGENDA ITEM – POSTPONED ITEM (FROM JANUARY 24, 2005) –
REZONING APPLICATION – West side of Rochester Road, South of
Trinway, Section 10 – R-1C to R-1T (Z 699)

RECOMMENDATION

At the December 14, 2004 Regular Meeting, the Planning Commission determined that the rezoning application is consistent with the depth of the Medium Density Residential classification shown on the Future Land Use Plan, and recommended approval of the rezoning request. City Council considered this item on January 24, 2005, and postponed the item to February 21, 2005, "to provide the petitioner, the Planning Department and the Planning Commission with the opportunity to review alternate development options of the property to address concerns brought forward by City Council". Specifically, the major concerns were depth and compatibility.

The Planning Commission reviewed the item at the February 1 Special/Study Meeting and the February 8, 2005 Regular Meeting. At the February 8 meeting the Planning Commission passed the following resolution:

Resolution # PC-2005-02-023

Moved by: Wright
Seconded by: Schultz

RESOLVED, That the Planning Commission hereby recommends to the City Council that the R-1C to R-1T rezoning request, located on the west side of Rochester Road and south of Trinway, within Section 10, being approximately 2.74 acres in size, be granted, for the following reasons:

1. The rezoning application is consistent with the Future Land Use Plan.
2. The rezoning application is compatible with adjacent land uses and zoning districts.
3. The depth of the parcel (570 feet) is less than the depth of other parcels fronting on Rochester Road that were recently rezoned to R-1T. Specifically, these parcels include Maya's Meadows in Section 14 (617-foot depth). The Fairways in Section 11 (1221-foot depth) and the undeveloped parcel on the north side of Lamb Road in Section 14 (670-foot depth).

4. Retaining a portion of the property as R-1C would result in a small parcel that would be difficult to develop under R-1T provisions. Furthermore, it is not desirable for a site condominium development and a traditional condominium development to share a street.

Yes: 9

No: 0

Absent: 0

MOTION CARRIED

The frontage of the parcel is consistent with the Future Land Use Plan. The proposed depth of the R-1T zone is similar to the depth of the B-2 Community Business District zone to the south. The R-1T Zoning District is an appropriate buffer between a major thoroughfare and a single-family residential district. The application is compatible with abutting uses and zoning districts. City Management concurs with the Planning Commission recommendation and recommends approval of the rezoning application.

GENERAL INFORMATION

Name of Owner / Applicant:

The owner is Robert S. Binder Building. The applicant is Fred Binder.

Location of Subject Property:

The property is located on the west side of Rochester Road, south of Trinway, in Section 10.

Size of Subject Parcel:

The parcel is approximately 2.74 acres in area.

Current Use of Subject Property:

A single family home presently sits on the property.

Current Zoning Classification:

R-1C One Family Residential District.

Proposed Zoning of Subject Parcel:

R-1T One Family Attached District.

Proposed Uses and Buildings on Subject Parcel:

The applicant proposes to construct a condominium development on the property.

Current Use of Adjacent Parcels:

North: Single family residential.

South: Single family residential.

East: Single family residential.

West: Single family residential.

Zoning Classification of Adjacent Parcels:

North: R-1C One Family Residential.

South: R-1C One Family Residential.

East: R-1C One Family Residential.

West: R-1C One Family Residential.

ANALYSIS

Range of Uses Permitted in the Proposed R-1T Zoning District and Potential Build-out Scenario:

PRINCIPAL USES PERMITTED:

All principal uses permitted and as regulated in the nearest R-1A through R-1E One Family Residential Districts.

Two family dwellings developed in accordance with the provisions of the Condominium Act, MCL 559.1, et seq.

One family attached dwellings as defined in sub-Section 04.20.44 developed in accordance with the provisions of the Condominium Act, MCL 559.1, et seq.

Accessory buildings and uses customarily incidental to the above principal uses.

USES PERMITTED SUBJECT TO SPECIAL USE APPROVAL:

Churches and other facilities normally incidental thereto.

Schools.

Child care centers.

Utility and public service buildings and uses.

Vehicular and Non-motorized Access:

The parcel fronts on Rochester Road.

Potential Storm Water and Utility Issues:

The applicant will be required to provide on-site storm water detention.

Natural Features and Floodplains:

The Natural Features Map indicates there are no significant natural features located on the property. A site visit indicated there is an open drain on the western half of the property. It will need to be determined during the site plan review process whether there are any wetlands on the property. There are also woodlands on the property.

Compliance with Future Land Use Plan:

The Future Land Use Plan classifies the Rochester Road frontage in this area as Medium Density Residential. The Medium Density Residential classification correlates with the R-1T Zoning District in the Plan. On the surface, the rezoning application is consistent with the Future Land Use Plan. However, the depth of the subject parcel is 570 feet. The exact depth of the Medium Density Residential classification cannot be determined from the Future Land Use Plan because it is conceptual in nature. If the City Council agrees with the Planning Commission and determines that the depth of the parcel is consistent with the Future Land Use Plan, the application would be considered to be consistent with the intent of the Future Land Use Plan.

Compliance with Location Standards:

Article 12.40.01 states that the R-1T (One-family Attached Residential) District may be applied to property when one or more of the following conditions prevail:

- (A) When the application of such a classification is consistent with the intent of the Master Land Use Plan, and therefore involves areas indicated as medium density or high density residential.
- (B) When the application of such a classification would be an integral part of a planned residential development approach, such as a planned neighborhood development (34.50.00); wherein the overall density is consistent with the intent of the Master Land Use Plan.

The Planning Commission determined that the depth of the parcel is consistent with the depth of the area classified on the Future Land Use Plan as Medium Density Residential. If the City Council has the same finding of fact, the application would meet the standard of (A) above and therefore meet the Location Standards of the R-1T District.

Research shows that other R-1T parcels located on Rochester Road within the Medium Density Residential classification exceed 570 feet in depth (see attached table).

Attachments:

1. Maps.
2. Table: R-1T Parcel Sizes and Depths.
3. Minutes from December 14, 2004 Planning Commission Regular Meeting.
4. Minutes from January 24, 2005 City Council Meeting.
5. Minutes from February 1, 2005 Planning Commission Regular Meeting.
6. Minutes from February 8, 2005 Planning Commission Regular Meeting.
7. Letter from petitioner, dated November 10, 2004.
8. Two (2) letters of opposition, both dated December 14, 2004.
9. Synopsis of Comments From January 24, 2005 Troy City Council Meeting.

Prepared by RBS/MFM/PPB

cc: Applicant
File (Z 699)

G:\REZONING REQUESTS\Z 699 BRIGGS CROSSING SEC 10\CC Postponed Item 02 21 05.doc

A Regular Meeting of the Troy City Council was held Monday, January 24, 2005, at City Hall, 500 W. Big Beaver Road. Mayor Schilling called the Meeting to order at 7:31 PM.

Pastor A.C. Phipps from Evanswood Church of God gave the Invocation and the Pledge of Allegiance to the Flag was given.

ROLL CALL

PRESENT: Mayor Louise E. Schilling
Robin E. Beltramini
Cristina Broomfield
David Eisenbacher
Martin F. Howrylak
David A. Lambert
Jeanne M. Stine

CERTIFICATES OF RECOGNITION:

A-1 Presentation: Officer Nickie Kaptur – First Annual Service to Children Award

CARRYOVER ITEMS:

B-1 No Carryover Items

PUBLIC HEARINGS:

C-1 Commercial Vehicle Appeal – 2774 E. Maple Road – No Action Required Due to Applicant Relocation

C-2 Rezoning Application – West Side of Rochester Road, North of Square Lake Road, Section 3 - R-1B to R-1T (Z 696-B)

Resolution #2005-01-036
Moved by Eisenbacher
Seconded by Beltramini

RESOLVED, That the R-1B to R-1T rezoning request, located on the west side of Rochester Road, north of Square Lake Road, Section 3, being one (1) acre in size, is hereby **GRANTED**, as recommended by Planning Commission and City Management.

Yes: All-7

C-3 Rezoning Application – West Side of Rochester Road, South of Trinway, Section 10 - R-1C to R-1T (Z 699)

Resolution
Moved by Beltramini
Seconded by Broomfield

RESOLVED, That the R-1C to R-1T rezoning request, located on the west side of Rochester Road, south of Trinway, Section 10, being 2.74 acres in size, is hereby **GRANTED**, as recommended by Planning Commission and City Management.

Vote on Resolution to Postpone

Resolution #2005-01-037

Moved by Beltramini

Seconded by Stine

RESOLVED, That the R-1C to R-1T rezoning request, located on the west side of Rochester Road, south of Trinway, Section 10, being 2.74 acres in size, as recommended by the Planning Commission and City Management, is hereby **POSTPONED**, until the Regular City Council Meeting Scheduled for Monday, February 21, 2005 to provide the Petitioner, the Planning Department and the Planning Commission with the opportunity to review alternative development options of the property to address concerns brought forward by City Council.

Yes: All-7

C-4 Rezoning Application – Northwest Corner of Maple Road and Livernois Road, Section 28 – O-1 to B-1, B-2 or B-3 (Z 602-B)

Resolution #2005-01-038

Moved by Lambert

Seconded by Beltramini

RESOLVED, That the O-1 to B-3 rezoning request located on the northwest corner of Maple Road and Livernois Road, Section 28, being 0.7 acres in size, is hereby **GRANTED**, as recommended by Planning Commission and City Management.

Yes: All-7

The meeting **RECESSED** at 9:24 P.M.

The meeting **RECONVENED** at 9:36 P.M.

C-5 Special Assessment Roll – Sanitary Sewer in the Charnwood Hills Subdivisions – Section 6 – Project No. 04.403.1 – Also Enclosed are Communications from Some Residents Regarding this Proposed Project

Resolution #2005-01-039

Moved by Beltramini

Seconded by Broomfield

WHEREAS, The City Council has caused Special Assessment Roll No. 04.403.1 to be prepared for the purpose of defraying the Special Assessment District's portion of the following described public improvement in the City of Troy:

MH – I was referring to a parcel near Longfellow.

RB – Move to postpone this item to February 21, 2005 City Council Meeting to provide the applicant, Planning Commission and Planning Department an opportunity to look at alternatives for this parcel.

Seconded: Stine.

JS – Could they also look at wetlands issues at the same time?

MM – There is no requirement at this time for the applicant to provide a wetland determination.

Vote on motion:

Yes – All

Item postponed until 2/21/05 City Council meeting.

A Regular Meeting of the Troy City Council was held Monday, February 21, 2005, at City Hall, 500 W. Big Beaver Road. Mayor Schilling called the Meeting to order at 7:32 PM.

Hindu High Priest Ramachandra Bhat – Bharatyia Temple gave the Invocation and the Pledge of Allegiance to the Flag was given.

ROLL CALL

PRESENT: Mayor Louise E. Schilling
Robin E. Beltramini
Cristina Broomfield
David Eisenbacher
Martin F. Howrylak
David A. Lambert
Jeanne M. Stine

CERTIFICATES OF RECOGNITION:

A-1 Presentations: No Presentations

CARRYOVER ITEMS:

B-1 No Carryover Items

PUBLIC HEARINGS:

C-1 No Public Hearings Requested

POSTPONED ITEMS:

D-1 Postponed Item (From January 24, 2005) – Rezoning Application – West Side of Rochester Road, South of Trinway, Section 10 – R-1C to R-1T (Z 699)

Resolution #2005-02-082
Moved by Beltramini
Seconded by Broomfield

RESOLVED, That the R-1C to R-1T rezoning request, located on the west side of Rochester Road, south of Trinway, Section 10, being 2.74 acres in size, is hereby **GRANTED**, as recommended by Planning Commission and City Management.

Yes: Schilling, Beltramini, Eisenbacher,
No: Broomfield, Howrylak, Lambert, Stine

MOTION FAILED

SYNOPSIS OF COMMENTS FROM JANUARY 24, 2005 TROY CITY COUNCIL MEETING

C-3 PUBLIC HEARING – REZONING APPLICATION – West side of Rochester Road, South of Trinway, Section 10 – R-1C to R-1T (Z 699)

Note: The following is a brief synopsis of comments and discussion from the meeting. It is a summary only and is not intended to be a verbatim transcript.

Presentation on Item C-3 made by Planning Director Mark Miller.

MH – How does this parcel compare to the parcel to the south on Rochester Road that was recently rezoned?

MM – This parcel is approximately twice as deep.

MH – What is the future of development for this area of Rochester Road, located between the parcel and commercial development at the corner of Long Lake Road, based on the Future Land Use Plan?

MM – The Plan calls for Medium Density Residential development in that area.

MH – How deep will the Medium Density Development be?

MM – The depth is to be determined.

JS – What is the permitted density in R-1T?

MM – 6.2 units per acre.

DL – Is this the first application we have had for rezoning to R-1T in this section of Rochester Road?

MM – Yes.

DL (to City Attorney) – Do we set a precedent if we allow a rezoning to R-1T at this depth?

LB – Yes. You make a determination or set a limit of what the appropriate depth is when you rezone the parcel. However other parcels along Rochester Road were rezoned that had more depth.

RB – Is the developer the same person that is building new homes on Trinway?

MM – I do not believe so, I believe the lots were sold to help finance the R-1T development. The applicant can answer that question.

Applicant – We are constructing two homes on Trinway as “spec” homes. I have every intention of keeping the existing home that presently sits on the property. I believe the application is consistent with the Future Land Use Plan.

RB – That is a single-family neighborhood with relatively large lots. Are neighbors aware that they could have 15 or 16 homes constructed on the parcel?

Applicant – Realistically we may get 12 units on the site.

LS – What are your plans regarding regulated wetlands on the property?

Applicant – We will abide by State law.

DE – Regarding precedent, we recently rezoned a parcel to R-1T approximately 1 mile south of your parcel. Is the proximity within the mile road important or is the proximity within the City important?

LB – Unique characteristics of a parcel may justify a different depth. Precedent could be applied based on unique characteristics of property.

JS – The City Council received an e-mail message from a person who recently purchased a home in Crystal Springs Subdivision. Did you receive that message?

Applicant – I spoke to the person, she was concerned we were going to build apartments on the property. I explained we had no intention of building apartments on the property.

RB – I am hesitant to rezone this parcel because of the 500-foot depth. However, rezoning is necessary to retain a suitable housing mix.

Moved by Beltramini, to approve the rezoning application as submitted.
Seconded by Broomfield

MH – Concerned with 500-foot depth. Could be a catalyst for major redevelopment in the area.

DE – Precedent has been set at other areas on Rochester Road. Could we fit houses behind if we rezoned the front and left the back as R-1C?

MM – We could look at this item more closely at a Planning Commission Study Session.