

DATE: May 11, 2004

TO: John Szerlag, City Manager

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

SUBJECT: AGENDA ITEM – PRELIMINARY SITE CONDOMINIUM REVIEW (REVISED) – Hidden Forest Site Condominium, south side of Wattles, east of Livernois, section 22 – R-1C.

RECOMMENDATION

At the April 12, 2005 Regular Meeting, the Planning Commission recommended approval of the Revised Preliminary Site Condominium as submitted, with the following conditions:

1. That the petitioner prior to City Council approval meet with the neighbors on Wattles directly east and west, the City Engineer and the City Planner to resolve storm water problems and issues and the debris brought by the storm water issues.
2. That the petitioner prior to City Council approval meet with the Engineering and Planning Departments, the Fire Department and emergency vehicle people to determine rather than using asphalt pavement for the emergency access and pedestrian access to Troywood and the school, to be some kind of pervious pavers that would hold the largest emergency vehicles the City has.

All of these conditions have been met.

City Management concurs with the Planning Commission and recommends approval of the Preliminary Site Condominium as submitted.

BACKGROUND

The petitioner met with the neighbor to the east on Wattles, together with representatives of the Planning Department and Engineering Department, to discuss and resolve storm water problems and issues and the debris brought by the storm water issues. Representatives of the Planning Department met with the neighbors to the west of the development. The neighbors request that the developers mark the trees near their property line that are to be removed, to ensure no trees on their property will be removed.

The Engineering Department and Fire Department have no objections to utilizing pervious pavers for the emergency vehicle access (EVA) in the southeast corner of the parcel. However, it must be noted that the path is to be located at the top of the eastern slope of the storm water detention basin. Storm water can simply sheet flow off of the path into the basin. The benefits of pervious pavers versus impervious pavement as related to storm water will be insignificant. Given the high cost of pervious pavers compared to simple asphalt, the need for a pervious path in this area is not as justified as it would be in other areas. Pervious pavers would assist in differentiating the EVA from Troywood, however less expensive pervious pavement such as stamped concrete or dyed asphalt could also accomplish this.

PARCEL HISTORY

The applicant received Preliminary Site Condominium Approval from City Council for a 34-unit site condominium on April 19, 2004, and has completed the engineering design and is ready for Final Approval.

However, the applicant purchased the 0.82-acre parcel on the east side of the Wattles Road entry drive and proposes to incorporate the property into the site condominium and develop three additional units on the property. The applicant has revised the Site Condominium application for a 37-unit site development and seeks Preliminary Site Condominium Approval from City Council for the revised design.

GENERAL INFORMATION

Name of Owner / Applicant:
Gary Abitheira.

Location of subject property:
The property is located on the south side of Wattles, east of Livernois in section 22.

Size of subject parcel:
The parcel is approximately 17.79 acres in area.

Current use of subject property:
The property is presently vacant.

Proposed Use of subject property:
The applicant proposes a 37-unit site condominium.

Current use of adjacent parcels:

North: Single family residential and vacant.
South: McColloch Drain (City of Troy) and Wattles Elementary School.
East: Single family residential.
West: Single family residential and McColloch Drain (City of Troy).

Current zoning classification:

The property is currently zoned R-1C One 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.

Future Land Use Designation:

The property is designated on the Future Land Use Plan as Low Density Residential.

ANALYSIS

Compliance with area and bulk requirements:

Lot Area: 10,500 square feet (reduced to 9,450 using Lot Averaging).

Lot Width: 85 feet (reduced to 76.5 feet using Lot Averaging).

Height: 2 stories or 25 feet.

Setbacks: Front: 30 feet.
Side (least one): 10 feet.
Side (total two): 20 feet.
Rear: 40 feet.

Minimum Floor Area: 1,200 square feet.

Maximum Lot Coverage: 30 %.

The applicant meets the area and bulk requirements.

Off-street parking and loading requirements:

The applicant will be required to provide 2 off-street parking spaces per unit.

Environmental provisions, including Tree Preservation Plan:

A Tree Preservation Plan was submitted as part of the application.

Stormwater detention

The applicant is proposing to provide on-site detention in the southeast corner of the development. The detention pond will have a 1 on 6 slope and will be unfenced, and dedicated to the City.

Natural features and floodplains:

The Natural Features Map indicates that there are wetlands, woodlands and a drain located on the property. A Wetland Evaluation was conducted on the parcel by Brooks Williamson and Associates, Inc. on November 24, 2003. The report indicates there are 3 State-regulated wetlands on the parcel. One of these wetlands is located in the northwest corner of the parcel, the other two are located in the southern portion of the parcel. In addition there is floodway and 100 year floodplain located on the subject property.

Subdivision Control Ordinance, Article IV Design Standards

Blocks: Access to the site condominium will be provided by a two-way entry drive on Wattles Road.

Lots: All units meet the minimum area and bulk requirements of the Zoning Ordinance.

Topographic Conditions: The property is relatively flat, with elevations ranging from 666 feet above sea level to 671 feet above sea level. The Topographic Survey indicates the existing flood plain elevation is 668.3 feet above sea level.

Streets: The streets are proposed to be 28-foot wide and are to be located within a 60-foot right-of-way.

Sidewalks: The applicant is proposing to install 5-foot wide sidewalks along both sides of the drive, including the cul-de-sacs. In addition the applicant is proposing an emergency access connection to Troywood, and an 8-foot wide concrete pedestrian access path connection to the existing path, in the southeast corner of the property. This will provide a non-motorized connection between the neighborhood and both Troywood and Wattles Elementary School.

Utilities: The parcel is served by public water and sewer.

Attachments:

1. Maps.
2. Minutes from April 12, 2005 Planning Commission Regular Meeting.
3. Unplatted Residential Development Levels Of Approval.
4. Comparison Between Site Condominiums And Plats.

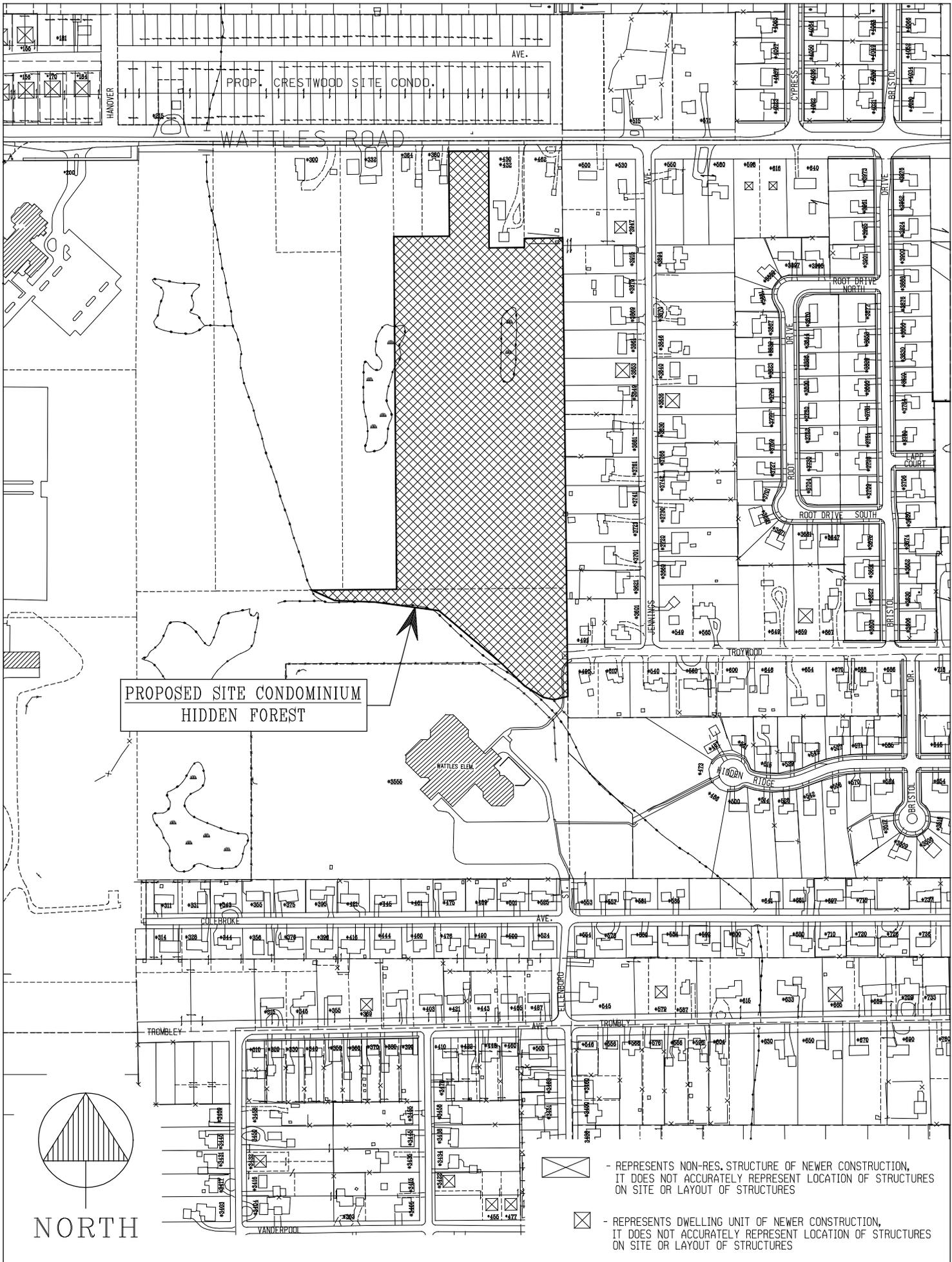
cc: Applicant
File/Hidden Forest Site Condominium

Prepared by RBS/MFM

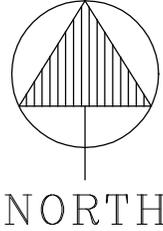
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CITY OF TROY

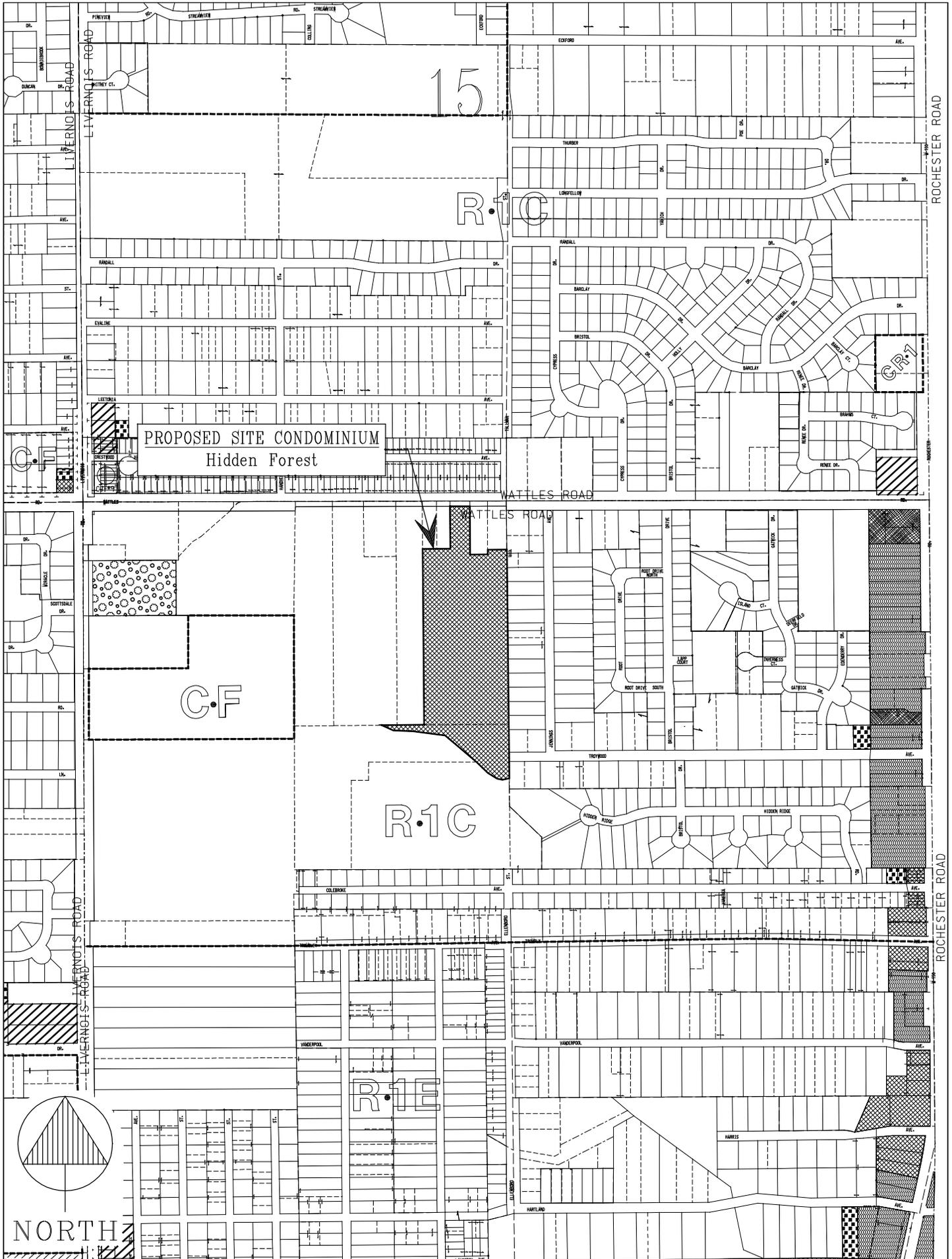




PROPOSED SITE CONDOMINIUM
HIDDEN FOREST



-  - REPRESENTS NON-RES. STRUCTURE OF NEWER CONSTRUCTION, IT DOES NOT ACCURATELY REPRESENT LOCATION OF STRUCTURES ON SITE OR LAYOUT OF STRUCTURES
-  - REPRESENTS DWELLING UNIT OF NEWER CONSTRUCTION, IT DOES NOT ACCURATELY REPRESENT LOCATION OF STRUCTURES ON SITE OR LAYOUT OF STRUCTURES



PROPOSED SITE CONDOMINIUM
Hidden Forest

15

R-1C

C-F

R-1C

R-1E

NORTH

C-F-1

SITE PLAN REVIEW
HIDDEN FOREST SITE CONDOMINIUM
S SIDE OF WATTLES, E OF LIVERNOIS
SEC. 22 (34 LOTS)

PROPOSED CRESTWOOD SITE CONDOMINIUM

HANOVER

PROPOSED SITE CONDOMINIUM
HIDDEN FOREST

JENNINGS

ROOT

BRISTOL

LAPP

TROYWOOD

WATTLES ELEM. SCHOOL

BRISTOL

0 50 100 200 300 400 Feet



9. SITE PLAN REVIEW – Revision to Proposed Hidden Forest Site Condominium, 37 units/lots proposed, South side of Wattles, West of Jennings, Section 22, Zoned R-1C (One Family Residential) District

Mr. Miller presented a summary of the Planning Department report for the proposed Hidden Forest Site Condominium. The petitioner is incorporating an additional 0.82-acre parcel on the east side of Wattles Road that allows him to add three units to the development. Mr. Miller reported that it is the recommendation of the Planning Department to approve the Hidden Forest Site Condominium plan as revised.

The petitioner, Gary Abitheira of 178 Larchwood, Troy, was present.

Chair Strat opened the floor for public comment.

M. J. Molnar of 462 E. Wattles, Troy, was present. Mr. Molnar lives next door to the parcel recently acquired by the petitioner. Mr. Molnar said the City told him at the time he purchased his home that there would be no building on the subject 18-acre parcel because it is in a floodplain. He said after the property was purchased, all the trees were cut, the stumps were ground, all vegetation was stripped and the land was disked so that there was nothing but dirt. He said the property was then graded and canals were put in, all of them leading to his back yard. Mr. Molnar said his backyard floods whenever it rains. He said the massive amount of trees and vegetation that were destroyed and left in the working ditch along the property line eventually decayed and turned into compost. Mr. Molnar said he has two sump pumps running 24 hours a day; one sump pump burned out; and his utility bills have increased significantly. Mr. Molnar said the property owner has promised to redirect water and correct the flooding situation, but nothing has happened to date. Mr. Molnar referenced the discussion at a previous Planning Commission meeting on the site condominium project going in on the north side of Wattles, as relates to the concern of potential flooding from the difference of grading. He expressed similar concerns with this proposed development.

Mr. Khan strongly encouraged Mr. Molnar to discuss the flooding problem with the Engineering Department. He also informed Mr. Molnar that floodplain maps have been recently revised and suggested that he check the current status of his property.

Mr. Molnar said he has been working with the City Engineering Department for the last two years. He had asked the field engineer if it was legal for the property owner to cause a creek to run through his backyard every time it rains. The field engineer indicated it was not legal, and Mr. Molnar asked why the matter continues to exist for two years. Mr. Molnar said the response from the field engineer was "It's in who you know."

Mr. Miller asked Mr. Molnar to contact him directly and he would arrange a meeting in which he would act as mediator with the City Engineer to resolve the issue. Mr. Miller said if Mr. Molnar's comments are true, the existing situation should not be occurring and the City should require the developer to fix it.

Mr. Chamberlain said it is obvious that Mr. Molnar's property is the lowest property within the whole area, and the City owes it to him to resolve the matter.

Mr. Abitheira was agreeable in meeting with the City and Mr. Molnar to work on a solution to the problem.

Bruce Baker of 380 E. Wattles, Troy, was present. Mr. Baker lives adjacent to the subject property on the west side. Mr. Baker expressed similar concerns with the flooding problem. He asked how he could get a copy of the revised site plan.

Mr. Miller informed Mr. Baker that he could receive a copy of the revised site plan from the Planning Department during regular business hours. [A copy of the revised site plan was provided to Mr. Baker from a Planning Commission member.]

Dan McCatty of 3721 Jennings, Troy, was present. Mr. McCatty addressed the water problem. He asked if the storm drainage easement would be used for utilities or if the trees would remain. Mr. McCatty also asked if the petitioner could replace the trees should they be removed.

Mr. Miller indicated it might not be possible to save any trees or vegetation along the storm drainage easement.

Discussion followed on:

- Authority of the Planning Commission to request the petitioner to replace cut trees.
- The existence of trees near the drainage easement.
- Acceptable trees according to the City's tree ordinance.

Mark Harrison of 3621 Jennings, Troy, was present. Mr. Harrison referenced his previous comments with respect to access from Troywood. Mr. Harrison said, in retrospect, that access might not be a good idea.

Enrique Aguilar of 3741 Jennings, Troy, was present. Mr. Aguilar voiced concerns with potential water problems, the increase of traffic and the safety of neighborhood children.

The floor was closed.

Comments followed with respect to (1) tabling the matter until the existing water problem is resolved and (2) forwarding a design recommendation to the Engineering Department as relates to the asphalt pathway.

Resolution # PC-2005-04-051

Moved by: Chamberlain

Seconded by: Schultz

RESOLVED, That the Planning Commission recommends to City Council that the Preliminary Site Plan (Section 34.30.00 Unplatted One-Family Residential Development), as requested for Hidden Forest Site Condominium, including 37 units, located south of Wattles Road and east of Livernois Road, Section 22, within the R-1C zoning district be granted, subject to the following conditions:

1. That the petitioner prior to City Council approval meet with the neighbors on Wattles directly east and west, the City Engineer and the City Planner to resolve storm water problems and issues and the debris brought by the storm water issues.
2. That the petitioner prior to City Council approval meet with the Engineering and Planning Departments, the Fire Department and emergency vehicle people to determine rather than using asphalt pavement for the emergency access and pedestrian access to Troywood and the school, to be some kind of pervious pavers that would hold the largest emergency vehicles the City has.

Yes: All present (8)

No: None

Absent: Waller

MOTION CARRIED

COMPARISON BETWEEN SITE CONDOMINIUMS AND PLATS

The site condominium is a form of development that closely resembles the more traditional form of land subdivision known as a “subdivision” or a “plat”. Although both types of development have the same basic characteristics, site condominiums are a newer form of development and are not, therefore, as familiar to homebuyers and neighbors as the more customary plats. An important concept related to any type of condominium development is that condominiums are a form of OWNERSHIP, not a type of physical development.

The following summary is intended to compare and contrast the two types of development.

1. **Comparisons between site condominiums and plats.**
 - a. **Statutory Basis** – Site condominium subdivisions first became possible under the Michigan Condominium Act, which was adopted by the Michigan Legislature in 1978. Plats are created under the Michigan Land Division Act, formerly the Michigan Subdivision Control Act of 1967.
 - b. **Nature and Extent of Property Ownership** – An individual homesite building in a platted subdivision is called a “lot”. In a site condominium, each separate building site or homesite is referred to by the Condominium Act as a “unit”. Each unit is surrounded by “limited common area”, which is defined as common elements reserved in the master deed for the exclusive use of less than all of the co-owners”. The remaining area in the site condominium is “general common area”, defined as the common elements reserved in the master deed for the use of all of the co-owners. The nature and extent of ownership of a platted lot and a condominium unit, with the associated limited common area, are essentially equivalent from both a practical and legal standpoint.
 - c. **Compliance with Zoning Ordinance** – Both site condominiums and subdivisions are required to comply with the minimum requirements of the City of Troy Zoning Ordinance for area and bulk, including minimum lot size, lot width, setbacks and building height. Essentially, site condominiums and subdivisions in Troy must “look” similar.
 - d. **Creation/Legal Document** – A site condominium is established by recording in the records of the county in which the land is located a master deed, bylaws and condominium subdivision plan (“plan”). A platted subdivision is created by the recording of a subdivision plat (“plat”), usually coupled with a declaration of easements, covenants, conditions and restrictions. The plan depicts the condominium units and limited and general common areas, while the plat defines the lots. Both have

substantially the same geometrical appearance and characteristics. The master deed and bylaws on the one hand and the declaration on the other have essentially the same functions with respect to the site condominium or platted subdivision, namely, establishment of: (i) building and use restrictions; (ii) rights of homeowners to use common areas; (iii) financial obligations of owners; and, (iv) procedures for operation of the subdivision.

- e. **Home Maintenance and Real Estate Taxes** – Each unit and lot, as respectively depicted on a condominium plan or subdivision plat, together with any home located thereon, are required to be individually maintained by the owner. Likewise, separate real estate taxes are assessed on each condominium unit or platted lot and paid individually by each homeowner.
- f. **Roads and Utilities** – In most plats, roads are dedicated to the public and maintained by the county road commission or the municipality in which the subdivision is located. Site condominium roads can be either public or private. Sanitary sewer and water supply are public in both. Storm water detention can vary between public and private dedication in both platted and condominium subdivisions.
- g. **Common Areas** – In a site condominium, general common areas, such as open space, entrance areas and storm drainage system, are owned by condominium unit owners in common as an incident of ownership of each unit. In a platted subdivision, legal title to common areas is owned by a homeowners association. In both forms of development, a homeowners association administers the common areas for the benefit of all homeowners equally.
- h. **Homeowners Association** – It is important in both types of development to incorporate a homeowners association comprised of all lot owners or unit owners, as the case may be, to maintain common areas, enforce restrictions and regulations, collect assessments and otherwise administer the common affairs of the development. Because the Condominium Act confers special enforcement powers upon homeowner associations, which are not characteristic of platted subdivision associations, it is generally thought that the condominium form is superior from the standpoint of enforcing rules and regulations of the private community.
- i. **Financial Obligations of Homeowners** – In both types of development, the homeowners association is given the power to assess property owners to pay for maintenance of all common areas and other expenses of administration. Failure to pay give rise to a lien on the defaulting owner's homesite thus providing financial security that the common areas will be properly maintained for the benefit of all homeowners.

- j. **Public Relations** – The same types of public health, safety and welfare regulations apply to both forms of development. Procedurally, the methods of applying for and obtaining plat or condominium plan approval are similar at the municipal level.
- k. **Unique Characteristics of Condominium Unit Purchase** – The Condominium Act provides special benefits for site condominium unit purchasers: (i) a 9-day period after signing a purchase agreement within which a purchaser may withdraw without penalty; and (ii) a requirement that all condominium documents, supplemented by an explanatory disclosure statement, be furnished to all purchasers at the time of entry into a purchase agreement. There are no similar benefits to purchasers provided under the Land Division Act.
- l. **Local and State Review** – Both development types require City Council approval, following a recommendation by the Planning Commission. Unlike subdivisions, site condominiums do not require the review and approval of the Michigan Department of Consumer and Industry Services. For this reason it can sometimes take a substantially shorter period of time to obtain necessary public approvals of site condominiums than platted subdivisions.

2. Reason for choosing one form versus another.

Developers and municipalities often prefer the site condominium approach because of better control of market timing. It should be emphasized that the site condominium choice never sacrifices any public protections that would otherwise be present in the case of a platted subdivision under similar circumstances.

3. Conclusion.

The platted subdivision approach and the newer site condominium technique are two different statutory methods of reaching essentially the same practical and legal result of subdividing real estate into separate residential building sites. Both methods are required to meet substantially the same public health, safety and welfare requirements. The site condominium is sometimes chosen over the platted subdivisions because of perceived benefits to purchasers, homeowners, and developers.

UNPLATTED RESIDENTIAL DEVELOPMENT LEVELS OF APPROVAL

Preliminary Plan Approval

A sign is placed on the property informing the public of the proposed development.

Adjacent property owners are notified by mail

Public meeting held by **Planning Commission** for review and recommendation to City Council
City Council reviews and approvals plan

The following items are addressed at Preliminary Plan Approval:

- Street Pattern, including potential stub streets for future development
- Potential development pattern for adjacent properties
- Fully dimensioned residential parcel layout, including proposed building configurations
 - Number of lots
 - Building setbacks
 - Lot dimensions
 - Locations of easements
- Preliminary sanitary sewer, storm sewer, and water main layout
- Environmental Impact Statement (if required)
- Location(s) of wetlands on the property

Final Plan Approval

Notice sign is posted on site

City Council review and approval of:

- Final Plan
- Contract for Installation of Municipal Improvements (Private Agreement)

The following items are addressed at Final Plan Approval:

- Fully dimensioned plans of the total property proposed for development, prepared by registered Civil Engineer or Land Surveyor
- Corners of all proposed residential parcels and other points as necessary to determine that the potential parcels and building configurations will conform with ordinance requirements
- Warranty Deeds and Easement documents, in recordable form for all ROW. and easements which are to be conveyed to the public
- Construction plans for all utilities and street improvements, prepared in accordance with City Engineering Design Standards:
 - Sanitary and Storm sewer
 - Water mains
 - Detention / Retention basins
 - Grading and rear yard drainage
 - Paving and widening lanes
 - Sidewalk and driveway approaches
- Approval from other government agencies involved with the development
- Verification of wetlands and M.D.E.Q. permit if necessary
- Financial guarantees to insure the construction of required improvements and the placement of proper property and parcel monuments and markers shall be furnished by the petitioner prior to submittal of the Final Plan to the City Council for review and approval
- Floor Plans and Elevations of the proposed residential units